BE IT ENACTED BY THE GENERAL ASSEMBLY OF ______:

PART I

SECTION 1-1.

The General Assembly finds that:

(1) Creators of education technology products are increasingly pushing interactive digital-learning platforms, including video-gaming platforms, for use in K-12 education;
(2) The software in many of these platforms is capable of collecting and analyzing a wealth of "fine-grained" data on students, including their personal psychological characteristics and even physiological characteristics;
(3) Such data-collection and –analysis can create a threat to student privacy;
(4) Most parents are not aware of the capabilities of such software in the digital-learning platforms that may be used in their children's school; and
(5) Parents have the right to full transparency concerning all types of data that is collected on their children.

SECTION 1-2.

Title __ of the __, relating to education, is amended by inserting Code Section ________, relating to transparency regarding use of digital-learning platforms, as follows:

"[section number].

(a) A digital-learning platform is defined as an interactive digital platform that collects and records students' personally identifiable information, whether maintained by the school or by a third-party provider, and including any video-gaming platform. Before implementing any digital-learning platform, a school shall give eligible students (defined as students 18 years of age or older) or parents or guardians a formal written explanation of the goals and capabilities of the platform, including of any software, whether loaded onto that platform or hosted externally by a third party. Such explanation shall include an understandable description of:

(1) How the platform works and its principal purpose or purposes;

(2) The title and business address of the school official who is responsible for the platform, and the name and business address of any contractor or other outside party maintaining the platform for or on behalf of the school;

(3) The information the software is designed to collect from or capture and record about the student, including any data matches with other personally identifiable information about the student;

(4) Every element of data that the platform or software will collect or record about the student, including any personal psychological characteristics; noncognitive attributes or skills such as collaboration, resilience, and perseverance; and physiological measurements;

(5) The purpose of collecting and recording such data;

(6) Every contemplated use or disclosure of such data, the categories of recipients, and the purpose of such use or disclosure;

(7) A full explanation of the data-privacy policy maintained by the digital-learning provider; and

(8) The policies and practices of the school regarding storage, retrievability, access controls, retention, and disposal of the records collected and/or recorded by the platform.

(b) No digital-learning platform shall be used unless it includes a portal or other mechanism allowing parents access to the platform and to all the content available to the student users.

(c) Any data of any type collected on a student through his or her use of a digital-learning platform shall be destroyed at the end of the course in which the platform is used.

(d) Unless the school certifies the platform to be essential to its educational mission with an explanation of the basis for such certification, eligible students, or parents or guardians, shall be allowed to opt out of using any digital-learning platform.

American Association of Collegiate Registrars and Admissions Officers

One Dupont Circle, NW, Suite 520 / Washington, DC 20036-1135
(202) 293-9161 Main / (202) 872-8857 Fax
www.aacrao.org

Please Read

May 23, 2011

Ms. Regina Miles
U.S. Department of Education
400 Maryland Avenue, SW.
Washington, DC 20202

Re: April 8, 2011 Notice of Proposed Rulemaking
Family Education Rights and Privacy Act of 1974, as amended
Docket ID ED-2011-OM-0002

Dear Ms. Miles:

On behalf of the American Association of Collegiate Registrars and Admissions Officers (AACRAO), I write to respectfully submit our comments on the Notice of Proposed Rulemaking (NPRM) published in the April 8, 2010 *Federal Register*.

AACRAO is a nonprofit association of more than 2,600 institutions of higher education and more than 10,000 campus enrollment officials. By far the vast majority of our individual members are campus officials with direct responsibility for admissions, recruiting, academic records, and registration functions.

Because they serve as custodians of educational records for current and former students, our members are particularly knowledgeable about privacy issues in general, and about information security and privacy requirements of Federal and State laws. Compliance with the Family Educational Rights and Privacy Act of 1974, as amended (FERPA), has long been a primary area of professional jurisdiction for AACRAO members, who are often the leading FERPA experts on their campuses. Because they are so central to the interests and priorities of our members, data security, privacy, and FERPA have also been top priorities for AACRAO, and we devote considerable attention and resources to them as primary policy issues of concern.

Since its original enactment in 1974, and through the numerous amendments, court decisions, and administrative policy revisions that have further refined that original construct over the years, AACRAO has been constructively engaged with the U.S. Department of Education (Department) to promote FERPA compliance and achieve the right balance between individual educational privacy rights and the rights of third-parties to obtain access to data for appropriate purposes. We recognize that judgments about

where to strike that balance are ever evolving, and we have always been open to discussions about changes to FERPA. Examples of our receptivity to change include past modifications to FERPA necessitated by campus security concerns, the needs of military recruiters, and governmental access to records for anti-terrorism purposes. In keeping with that tradition of accommodating reasonable evolutionary changes to FERPA, we remain open to any regulatory or legislative modifications that might be needed to accommodate legitimate and well-articulated policy goals.

In reviewing the regulatory changes proposed by the Department, we are alarmed by several striking facts.

First, the proposed changes represent a wholesale repudiation of fair information practices. Well-settled principles of notice, consent, access, participation, data minimization, and data retention are all undermined by the new paradigm promoted by this proposal.

Second, the substantive goals that the Department cites as motivating these changes could be just as effectively achieved through much more artfully crafted modifications that would avoid the proposed regulations' *de facto* nullification of individual privacy rights.

Third, we believe that the Department has shortsightedly avoided a sufficiently inclusive policy development process, and that the proposed regulations have been overwhelmingly influenced by the single-issue lobbying of a well-financed campaign to promote a data free-for-all in the name of educational reform. Lost in the frenzied rush to do good with other people's education data is FERPA's underlying purpose. We sincerely believe that reasonable compromises can be made to accommodate legitimate policy goals, but the Department has instead chosen to facilitate an unconditional surrender of educational privacy rights of American families and students.

Finally, most of the radical changes proposed by the Department require legislative amendments to FERPA, and the Department lacks legal authority to implement them through regulatory action. As our section-by-section analysis and commentary below indicates, the Department seems to grasp at straws and appears to be manufacturing statutory authority out of thin air to justify these changes, several of which clearly conflict with congressional intent.

We offer comments on each section of the proposed regulations, in the order issues are presented in the NPRM.

I. Definitions

A. Authorized Representative (§§99.3, 99.35)

Section (b)(1) of FERPA conditions receipt of any Department funds to any educational agency or institution having a policy or practice of permitting the release of education

records (or personally identifiable information (PII) other than directory information) of students without first obtaining written consent, except under very specific circumstances. One exception to this requirement is for release of education records to "authorized representatives" of the Comptroller General of the United States, the Secretary, State educational authorities, or (for law enforcement purposes) the Attorney General. 20 U.S.C. 1232g (b)(1)(C). Redisclosure of information obtained by "authorized representatives" of State educational agencies may only occur under the conditions set forth in Section (b)(3):

> Provided, that except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials....

20 U.S.C. 1232g (b)(3). The statutory language makes clear that Congress intended to restrict redisclosures by such official recipients of personally identifiable information from student education records. In addition, the use of the word "officials" twice to signify who was collecting the data and releasing such data on behalf of the State educational agencies demonstrates that Congress envisioned "authorized representatives" to be employees of the State educational agencies or agents under the direct control of such employees. This legal position is supported in the Joint Statement included in the Congressional Record in 1974 when Congress amended FERPA. 120 Cong. Rec. at 39863 (December 13, 1974) (stating that existing law at Section (b)(1) "restricts transfer, without the consent of parents or students, of personally identifiable information concerning a student to...auditors from the General Accounting Office and the Department of Health, Education, and Welfare").

In direct conflict with that longstanding and well-settled interpretation of the law, the NPRM rescinds the guidance issued by U.S. Deputy Secretary of Education William D. Hansen, dated January 30, 2003, which clarified that for purposes of FERPA, an "authorized representative" of a State educational authority must be under the direct control of that authority (in other words, either an employee or contractor). Instead, the proposed regulation advances a novel and counterintuitive definition of "authorized representative," which would allow "*any entity or individual* designated by a State or local educational authority or agency headed by an official listed in §99.31(a)(3) to conduct—with respect to Federal or State supported education programs—any audit, evaluation, or compliance or enforcement activity in connection with Federal legal requirements that relate to these program." (Emphasis added.) The State or local education authority or agency headed by an official listed in §99.31(a)(3) would be required "to use reasonable methods" to ensure that any entity designated as its authorized representative remains compliant with FERPA. Future non-regulatory guidance may be issued on what would be considered "reasonable" methods by the Department.

The effect of this extraordinarily overbroad definition is to expand the scope of who can be designated as an "authorized representative" of a State or local educational agency to entities and individuals well outside its direct control. Virtually any State or local employee could be designated an authorized representative under the proposed regulations, no matter how remote or dubious their actual standing as an educational functionary. What's worse, nongovernmental entities, including non-profits, religious organizations, foundations, independent researchers, and for-profit companies, as well as individuals, could be granted access to personally identifiable information without notice or consent. While this information free-for-all may be conducive to the Department's policy goal of simplifying State compliance with the requirements of the American Recovery and Reinvestment Act of 2009 (ARRA) and the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Act (America COMPETES Act), it is unnecessarily and unjustifiably overbroad.

In addition, the Department lacks the legal authority for abandoning its longstanding interpretation that an authorized representative must be under the direct control of the State or local agency. In so narrowly enumerating, by title, the officials who may access personally identifiable records without the student's consent, Congress surely meant "authorized representative" to be tightly linked to those positions. The Department, however, would eviscerate that intent by allowing literally *anyone* (presumably even including representatives of foreign governments) to exercise that authority, if they are so designated. In justifying this radical shift, the Department merely asserts that the current interpretation is "restrictive" given "Congress' intent in the ARRA to have States link data across sectors." Nothing in the ARRA explicitly amended FERPA, however. In fact, ARRA did not amend a preexisting statutory requirement in the America COMPETES Act that explicitly requires States developing state longitudinal data systems (SLDS) to comply with FERPA. Congress could easily have provided a different standard for release and protection of data by States linking education records across sectors, but it did not do so. The Department's reference to ARRA, therefore, can hardly justify the dangerous experiment with the sensitive information contained in Americans' education records that this proposal would promote.

Under the proposed definition, a chief state school officer or higher education authority could authorize as its representatives nonprofit organizations, independent researchers, or other state agencies, which would enter into a written agreement with the State or local educational authority to make sure that student records and personally identifiable information would be protected. Such agreements, however, will be virtually useless in stopping an authorized representative who is not under the direct control of the State or local agency from misusing the data for other purposes or redisclosing the data to others. Under the proposed regulations, the written agreements may be required to spell out how nonconsensually redisclosed data should be used and released, but without the element of direct control, the State or local educational agencies will have no ability to enforce them. A chief state school officer could call over to her colleague heading the State labor or health department and beg the colleague to crack down on a rogue authorized representative working under the colleague's direct control, but there would be no regulatory assurance that the improper activity would stop, or could be stopped.

Similarly, a researcher conducting an independent higher education evaluation could not easily be stopped from using student records for purposes other than those envisioned when she was made an authorized representative for a legitimate evaluation.

Without retaining the element of meaningful direct control, the proposed definition of an authorized representative invites mischief and creates predictable data disclosure problems that Congress was clearly seeking to prevent by enacting FERPA in the first place. This novel definition of authorized representative, as proposed, would take control of education records away from parents and students, and hand it over to entities and individuals over whom State and local authorities would have no control.

B. Directory Information (§§99.3)

The NPRM would modify the definition of "directory information," as defined in current 34 CFR 99.3, to clarify that

> an educational agency or institution may designate as directory information and nonconsensually disclose a student ID number or other unique personal identifier that is displayed on a student ID card or badge if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity....

76 Fed. Reg. 19729 (Apr. 8, 2001). AACRAO supports the clarification that institutions may require students to carry ID cards or display badges. See additional discussion below at IV.A., analyzing proposed regulations at Section 99.37(c) (Student ID Cards and ID Badges).

C. Education Program (§§99.3, 99.35)

For the first time, the Department proposes a definition for the term "education program," which is used in current 34 CFR 99.35(a)(1). That subsection provides that authorized representatives of the officials or agencies headed by officials listed in §99.31(a)(3) may have nonconsensual access to personally identifiable information from education records in connection with an audit or evaluation of Federal or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements relating to those programs. The proposed definition defines "education program" as

> any program that is principally engaged in the provision of education, including, but not limited to early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, *regardless of whether the program is administered by an education authority.*

(Emphasis added.) 76 Fed. Reg. 19729-19730 (Apr. 8, 2001). The Department's rationale for including programs not administered by an education agency include: (1)

education may begin before kindergarten and may involve learning outside of postsecondary institutions, and not all of these programs are administered by State or local educational agencies; (2) agencies other than State educational agencies may administer career and technical education or adult education programs; (3) the Department believes all these programs could benefit from the type of rigorous data-driven evaluation that SLDS will facilitate; and (4) greater access to information on students before entering or exiting the P-16 programs could be used to evaluate these education programs and provide increased opportunities to build upon successful ones and improve less successful ones.

The rationale articulated by the Department in support of this astonishing definition strains credulity. First, Congress never intended such a broad sweep in terms of the kinds of audits or evaluations for which nonconsensual access to personally identifiable information from education records may be provided. Second, even accepting, *arguendo*, that the policy purposes articulated in the preamble are sufficiently compelling, the proposed definition is unnecessarily overbroad and recklessly imprecise. Finally, completely missing in the rationale is any shred of legal authority for such a wholesale weakening of the legal protections of personally identifiable information provided under the statute. The proposed definition, when combined with the proposed definition of "authorized representative," could permit every federal or state-supported county recreation program to be considered an education program eligible for evaluation using personally identifiable information from education records, without the evaluator needing to obtain consent from the parents or student. The proposed definition would provide virtually unlimited access to education records in the name of evaluating program outcomes to any program evaluators that can convince an authorized representative that they are reviewing an education program, as loosely defined by the proposed definition.

II. Research Studies (§99.31(a)(6))

Section (b)(1)(F) of FERPA permits educational agencies and institutions nonconsensually to disclose personally identifiable information to organizations conducting studies "for, or on behalf of" educational agencies and institutions to improve instruction, administer student aid programs, or develop, validate, or administer predictive tests. 20 U.S.C. 1232g (b)(1)(F). Current regulations in 34 C.F.R. 99.31(a)(6)(ii)(C) require that an educational agency or institution enter into a written agreement with the organization conducting the study that specifies the purpose, scope, and duration of the study and the information to be disclosed and meets certain other requirements. The proposed regulations would circumvent the statutory requirement that any disclosures of personally identifiable information under the studies exception be done "for, or on behalf of" educational agencies or institutions by allowing State or local educational authorities (or agencies headed by an official listed in 34 CFR 99.31(a)(3)) to enter into agreements with organizations conducting studies under 34 C.F.R. 99.31(a)(6)(i) and to redisclose personally identifiable information on behalf of educational agencies and institutions that provided the information in accordance with other FERPA regulatory requirements. The proposed regulations would also make the written agreement requirements and other provisions in 34 CFR 99.31(a)(6) apply to

State and local educational authorities or agencies headed by an official listed in 34 CFR 99.31(a)(3), as well as educational agencies and institutions.

The Department claims that these changes to existing regulations

> are necessary to clarify that while FERPA does not confer legal authority on State and Federal agencies to enter into agreements and act on behalf of or in place of LEAs and postsecondary institutions, nothing in FERPA prevents them from entering into these agreements and redisclosing PII on behalf of LEAs and postsecondary institutions to organizations conducting studies under §99.31(a)(6)....

76 Fed. Reg. 19730 (Apr. 8, 2001). The Department notes that State educational authorities, and State higher educational agencies in particular, typically have the role and responsibility to perform and support research and evaluation of publicly funded education programs for the benefit of multiple educational agencies and institutions in their States.

While deferring to the Department's policy goals of enhancing the ability of State educational authorities to enter into research agreements with institutions of higher education and then redisclose the information they gather, AACRAO is very concerned that the Department is expansively broadening the scope of both access to and redisclosures of personally identifiable information without statutory authority to do so. In particular, in the event that an educational agency or institution objects to the redisclosure of personally identifiable information it has provided to the State educational authority for other purposes, under the proposed regulations, the State educational authority need only play its new trump card—that it has *implied* authority to do whatever it wants with the personally identifiable information in the name of supporting research and evaluation efforts.

This represents a disturbing erosion of educational privacy rights and a renunciation of the Department's historic role as the protector of educational privacy rights of American students and families. Particularly because the Department fails to mandate compliance with the most basic fair information practices by such recipients of personally identifiable information, students and families would not even be aware that various and sundry data repositories of education records may have redisclosed their information to other third parties.

This ill-advised proposal also makes FERPA compliance a nightmarishly impossible task for institutions. Educational institutions would be unable to verify the extent to which and the parties to whom personally identifiable information they have previously disclosed has been redisclosed. Institutions would be realistically unable to provide students who request records of what items of their personally identifiable information have been released and to whom with complete records under FERPA's regulatory recordation requirements. Currently, an institution of higher education has control over disclosures of student education records and personally identifiable information. Under the proposed

regulations, the State educational authority will be required to record redisclosures, but need not send those recordations back to the institution, or, for that matter, to the students and families. Only on specific request to the State educational authority would an institution or student be able to determine what redisclosures have been made of a student's education records and personally identifiable information and to whom. At a minimum, the State educational authority considering the redisclosure of student education records and personally identifiable information should be required to notify the student and institution of the redisclosure and provide an avenue for the student to opt out of the redisclosure. As written, the proposed regulations are unnecessarily overbroad and do great violence to the underlying privacy tenets of FERPA.

III. Authority to Audit or Evaluate (§99.35)

Current regulations in 34 CFR 99.35(a)(2) provide that in order for a State or local educational authority or other agency headed by an official listed in §99.31(a)(3) to conduct an audit, evaluation, or compliance or enforcement activity, its authority to do so must be established under other Federal, State, or local authority because that authority is not conferred by FERPA. The proposed regulations seek to remove the requirement to establish legal authority under other Federal, State, or local law to conduct an audit, evaluation, or compliance or enforcement activity. The Department's stated purposes are (1) to clarify that the authority for a State or local educational authority or Federal agency headed by an official listed in 34 CFR 99.31(a)(3) to conduct an audit, evaluation, enforcement or compliance activity may be express or implied, and (2) to promote Federal initiatives to support the robust use of data by State and local education authorities to evaluate the effectiveness of Federal or State-supported education programs, in particular by providing postsecondary student data to P-12 data systems in order to permit the evaluation of whether P-12 schools are effectively preparing students for college.

The proposed change, therefore, would substitute the mere invocation of an audit or evaluation for actual authority. This extraordinary proposal thus turns another narrow consent exception into a magic incantation by which entities with no legal authority and no intention of actually conducting audits or studies can circumvent congressional intent, violate the privacy rights of students and families, and obtain unfettered access to personally identifiable information.

This breathtaking new approach, which would make the Department an accomplice in facilitating false, evasive, or dubious assertions of audit or evaluation authority, is not only ill-advised, it is unnecessary. Third parties with real legal authority to engage in auditing or evaluating programs have always had access to data. Once again, in attempting to facilitate somewhat broader access, the Department is proposing an overbroad remedy that would result in predictably unfortunate outcomes that we doubt it truly intends to enable.

In addition, the amorphous expansion of this exception to entities that the Department suggests may have "implied authority" to conduct audits will result in confusion and

noncompliance as institutions struggle to separate real claims of authority from frivolous ones. Finally, the Department does not have legal authority to eviscerate the clear statutory limitations imposed by Congress through linguistic equivocations and euphemistic redefinitions.

IV. Directory Information (§99.37)

A. Section 99.37(c) (Student ID Cards and ID Badges)

The proposed regulations for 34 CFR 99.3(c) clarify that the right to opt out of directory information disclosures is not a mechanism for students, when in school or at school functions, to refuse to wear student badges or to display student ID cards that display information that may be designated as directory information under 34 CFR 99.3 and that has been properly designated by the educational agency or institution as directory information under 34 CFR 99.37(a)(1). This proposed regulation responds to the need for school and college campuses to implement measures to ensure the safety and security of students and is intended to ensure that FERPA is not used as an impediment to achieving school safety.

AACRAO supports and welcomes the additional flexibility offered by the proposed regulation on this topic.

B. Section 99.37(d) (Limited Directory Information Policy)

The proposed regulations would clarify that an educational agency or institution may specify in the public notice it provides to parents and eligible students in attendance provided under 34 CFR 99.37(a) that disclosure of directory information will be limited to specific parties, for specific purposes, or both. The proposed regulations also clarify that an educational agency or institution that adopts a limited directory information policy must limit its directory information disclosures only to those parties and purposes that were specified in the public notice provided under 34 CFR 99.37(a). The purpose of these regulations is to give educational agencies and institutions greater discretion in protecting student privacy by permitting them to limit the release of directory information for specific purposes, to specific parties, or both, and to provide a regulatory authority for the Department to investigate and enforce a violation of a limited directory information policy by an educational agency or institution.

We note that the ability to limit directory information to specific parties or purposes currently exists under FERPA. The proposed regulations require an institution that includes such restrictions in its notice of directory information to abide by the policy specified in its public notice.

The Department does not propose changes to the recordkeeping requirement in 34 CFR 99.32(d)(4) or the redisclosure provisions in 34 CFR 99.33(c), instead recommending that educational agencies and institutions that choose to adopt a limited directory information policy assess the need to protect the directory information from further disclosure by the

third parties to which they disclose directory information. When a need to protect the information from further disclosure is identified, the Department recommends that educational agencies and institutions should enter into non-disclosure agreements with the third parties.

AACRAO supports this proposed regulation.

V. Enforcement Procedures with Respect to Any Recipient of Department Funds that Students Do Not Attend (§99.60)

Current regulations in 34 CFR 99.60 designate the Family Policy Compliance Office (FPCO) as the office within the Department responsible for investigating, processing, and reviewing alleged violations of FERPA. Current FERPA regulations addressing enforcement procedures (subpart E, at 34 CFR 99.60 through 99.67) only address alleged violations of FERPA committed by an educational agency or institution. The proposed regulations would provide that, solely for purposes of subpart E of the FERPA regulations, an "educational agency or institution" includes any public or private agency or institution to which FERPA applies under 34 CFR 99.1(a)(2), as well as any State educational authority or local educational authority or any other recipient (for example, a nonprofit organization, student loan guaranty agency, or a student loan lender) to which funds have been made available under any program administered by the Secretary. The proposed regulations update the Department's authority to investigate and enforce alleged violations of FERPA by the expanded range of State and local educational authorities and other recipients of Department funds that may come into possession of student records and PII. The proposed regulations also clearly authorize FPCO to investigate, review, and process an alleged violation committed by recipients of Department funds under a program administered by the Secretary in which students do not attend. The Department states that it believes that these enhanced enforcement procedures are especially important given the disclosure of personally identifiable information needed to implement SLDS.

Given the vast expansion of entities that would gain access to and maintain education records, AACRAO would certainly understand and support greater enforcement authority for the Department should the proposed regulations be adopted. Desirable and necessary as such expanded authority would be, it cannot be unilaterally manufactured by the Secretary. Nothing in the underlying statute even remotely hints at the Secretary having any authority to treat entities enumerated in the preamble discussion of this section as educational agencies or institutions. This lack of statutory enforcement authority, in fact, should give the Department some pause with regard to its expansive approach to the sharing of personally identifiable information with entities with remote or questionable educational interest in the records they would access under the new regulations. We note, in addition, that it is not clear which enforcement tools legally available to the Secretary would be utilized in actions against State education authorities and other entities.

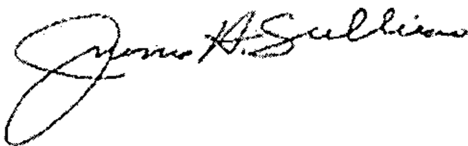
It is also quite puzzling that the Secretary is not using this putative authority to subject these entities to other critical FERPA compliance requirements such as the right to inspect or the right to correct or amend education records. We strongly believe that extending these requirements to the new actors would be just as legally justifiable as what has been proposed, and that it would provide an important tool for parents and students to at least have awareness and minimal access *to their own records.*

Indeed, we believe that the Department is confounding privacy and security in this proposal. The dire need to manufacture new enforcement authority out of whole cloth is the direct consequence of the overbroad and ill-thought-through access and disclosures that would be permitted under the proposed regulations. A much wiser approach would be to limit nonconsensual data disclosures to compelling cases where a specific and articulable need can be demonstrated, and focus enforcement attention on the much smaller universe of entities maintaining these data. The Department is, instead, proposing a rule under which data are released to the custody of a vastly expanded number of entities, which the Department lacks legal authority and resources to adequately police.

While each of the changes discussed above might, by itself, do limited damage to privacy rights, we are all the more alarmed at the interactive effects of so many ill-conceived and legally unsupportable changes. The Department is arbitrarily expanding the number of entities that can gain access to personally identifiable information from education records, the reasons why they get access, and what they may do with the information they collect, even over the objections of the custodians of those records. We are dismayed by the Department's disregard for privacy rights, as well as its failure to consider the impossible compliance environment these proposed regulations would create. In addition, given the radical abandonment of historical interpretation, we find the short comment period quite insufficient and inadequate for purposes of eliciting broad community input.

We thank you for your consideration of our views and stand ready to work with you in addressing changes to the Family Educational Rights and Privacy Act within the framework of the statute.

Sincerely,



Jerome H. Sullivan
Executive Director

COLORADO
Department of Education

Student Privacy

Are there data collection requirements associated with the Common Core State Standards?

There are no data collection requirements of states adopting the Common Core State Standards. Standards define expectations for what students should know and be able to do by the end of each grade. Implementing the Common Core State Standards does not require data collection.

Do the new assessments that are aligned to the Common Core State Standards provide individual student data to the federal government?

The U. S. Department of Education does not, and will not, request or collect personally identifiable information and it is not legally authorized to create a student-level database. As stewards of the taxpayers' funds, the U. S. Department of Education collects only project information—such as aggregate research results—to evaluate the progress the grantees are making.

See PARC
RTTT
Mandate

Will a national student database and students' personal information be collected?

The U. S. Department of Education does not collect personally identifiable information at all except as required for mandated tasks such as administering student loans and grants and investigating individual complaints. The U. S. Department of Education is not legally authorized to create a national, student-level database and has no intention to create a student records data system at the national level.

Done Through P20 Council SLDS - CO developed 2007

Did the U. S. Department of Education institute changes to the Family Educational Rights and Privacy Act (FERPA) to pave the way for the Common Core State Standards?

The 2011 amendments to FERPA regulations did not require states to adopt the Common Core State Standards, nor did they make any changes to those standards. The amendments did provide greater clarity and guidance to states and researchers in the protection of student privacy.

Are the Common Core State Standards being used to collect biometric data about children?

The Common Core State Standards initiative does not collect or require the collection of any biometric data. Common Core has no connection to the BRAIN (Brain Research through Advancing Innovative Neurotechnologies) Initiative, a recently-proposed scientific endeavor to map the brain.

Will student data be hosted "in the cloud" and will commercial entities be allowed to mine that data to market products to students?

While some schools and districts may independently contract with third-party data or technology firms that use cloud services, each school and district is still the owner of that information, and such a [illegible]

SOURCE: http://www.cde.state.co.us/standardsandinstruction/[illegible]

COOPERATIVE AGREEMENT
Between the
U.S. DEPARTMENT OF EDUCATION
and the
PARTNERSHIP FOR ASSESSMENT OF READINESS OF COLLEGE AND CAREERS

Date: January 7, 2011. PR/Award #: S395B10001 and S395B10001A

In accordance with 34 CFR 75.200(b)(4), this award is a cooperative agreement because the Secretary of Education (Secretary) has determined that substantial communication, coordination, and involvement between the U.S. Department of Education (Department or ED) and the recipient is necessary to carry out a successful project. Consistent with 34 CFR 75.234(b), the terms and conditions identified in this cooperative agreement set out the explicit character and extent of the anticipated collaboration between ED and the award recipient.

PURPOSE

The purpose of this agreement is to support the consortium recipient in developing new, common assessment systems that are valid, reliable and fair for their intended purposes and for all student subgroups, and that measure student knowledge and skills against a common set of college- and career-ready standards in mathematics and English language arts. In light of the technical nature of this grant and the fact that the Elementary and Secondary Education Act (ESEA) will likely be reauthorized during the course of this project, the Department will provide necessary flexibility to respond to changing circumstances, technology, and laws by working collaboratively with the recipient through this agreement. The objective is to assist the consortium in fulfilling, at minimum, the goals articulated in the consortium's approved Race to the Top Assessment (RTTA) application, requirements established in the RTTA Notice Inviting Applications (NIA) for New Awards for Fiscal Year (FY) 2010 that was published in the *Federal Register* on April 9, 2010, and any subsequent additions detailed through this agreement.

SCOPE OF WORK

The work to be performed under this agreement shall be that described in the consortium's approved RTTA application, requirements established in the RTTA NIA, conditions on the grant award, and any subsequent additions detailed through this agreement (e.g., plans for development and delivery of the technology platform for assessment), along with any modifications or specifications ED and the consortium determine to be necessary to carry out this work in accordance with the approved application and requirements. Any subsequent changes in the scope of work must be communicated by the grantee to the Program Officer in writing and approved by the Officer in writing.

ARTICLE I
STATEMENT OF JOINT OBJECTIVES

A. OBJECTIVES TO BE ACHIEVED

The recipient, with the Department's support, will use RTTA grant funds to develop assessment systems that are valid, reliable, and fair for their intended purposes and for all student subgroups; support and inform instruction; provide accurate information about what students know and can do; and measure student achievement against standards designed to ensure that all students gain the knowledge and skills needed for successful entry to college and the workplace. These assessments are intended to play a critical role in educational systems; provide administrators, educators, parents, and students with the data and information needed to continuously improve teaching and learning; and help meet the President's goal of restoring, by 2020, the nation's position as the world leader in college graduates.

B. RESULTS EXPECTED

Specifically, the recipient will develop an assessment system that measures student knowledge and skills against a common set of college and career-ready standards in mathematics and English language arts in a way that covers the full range of those standards, elicits complex student demonstrations or applications of knowledge and skills as appropriate, and provides an accurate measure of student achievement across the full performance continuum and an accurate measure of student growth over a full academic year or course. This assessment systems will include one or more summative assessment components in mathematics and in English language arts that are administered at least once during the academic year in grades 3 through 8 and at least once in high school and that produce student achievement data and student growth data that can be used to determine whether individual students are college- and career-ready or on track to being college- and career-ready. Additionally, the recipient's assessment systems developed with the RTTA grants will assess all students, including English learners and students with disabilities (as defined in the NIA). Finally, the assessment systems will produce data (including student achievement data and student growth data) that can be used to inform (a) determinations of school effectiveness; (b) determinations of individual principal and teacher effectiveness for purposes of evaluation; (c) determinations of principal and teacher professional development and support needs; and (d) teaching, learning, and program improvement.

ARTICLE II
PROJECT MANAGEMENT PLAN

A. RECIPIENT'S RESPONSIBILITIES

In addition to carrying out the tasks and activities described in the recipient's application, as indicated in the Scope of Work section of this agreement, the recipient will:

1) Perform tasks identified in Article I of this agreement.

2) Provide updated, detailed work plans and budgets for all major activities identified in the recipient's application, including but not limited to:
   - development, quality control, use and validation of artificial intelligence for scoring;
   - selection of a uniform growth model consistent with test purpose, structure, and intended uses;
   - development of performance tasks (addressing items such as technical challenges of scoring, reliability, and large-scale administration of performance-based items);
   - development of a research and evaluation agenda (addressing items such as validity, reliability, and fairness);
   - development and delivery of the technology platform for assessment.

3) Actively participate in any meetings and telephone conferences with ED staff to discuss (a) progress of the project, (b) potential dissemination of resulting non-proprietary products and lessons learned, (c) plans for subsequent years of the project, and (d) other relevant information, including applicable technical assistance activities conducted or facilitated by ED or its designees, including periodic expert reviews, and collaboration with the other RTTA recipient.

4) Be responsive to requests from ED for information about the status of the project, project implementation and updated plans, outcomes, any problems anticipated or encountered, and future plans for the assessment system, including by providing such information in writing when requested.

5) Comply with, and where applicable coordinate with the ED staff to fulfill, the program requirements established in the RTTA Notice Inviting Applications and the conditions on the grant award, as well as to this agreement, including, but not limited to working with the Department to develop a strategy to make student-level data that results from the assessment system available on an ongoing basis for research, including for prospective linking, validity, and program improvement studies; subject to applicable privacy laws.

B. FEDERAL RESPONSIBILITIES

The Program Officer is responsible for supporting the recipient's compliance with Federal requirements and is the liaison with the recipient. The Program Officer will ensure project consistency with the recipient's approved application, Department goals and objectives, as well as to assist the recipient in meeting its benchmarks and objectives by providing necessary support and flexibility. The following are, at a minimum, the activities that the Program Officer may be involved in to exercise his or her responsibilities on behalf of the Department:

1) The Program Officer will work collaboratively with the recipient as it carries out tasks identified in this agreement.

2) The Program Officer will provide feedback on the recipient's status updates, annual reports, any interim reports, and project work plans and products, including, for example, selection of key personnel, and review of provisions of proposed subcontracts by recipient.

3) The Program Officer will help identify sources of technical assistance for the project to the extent these are available.

4) The Program Officer will facilitate interaction with other offices of the Department as needed to assist the recipient in the execution of its plan, as well as interaction across consortia when necessary.

5) The Program Officer will review and approve modifications to the design of activities proposed under this Agreement. Any recipient requests for changes shall be submitted in writing directly to the Program Officer. Requests are not approved until the grantee has received authorization and notification in writing from the Program Officer.

6) The Program Officer will maintain the Department's communication and coordination with the project, by, for example, providing leadership in identifying issues to be addressed by the project; stopping or redirecting proposed activities if the methodology proposed appears vague or requires further justification or the projected outcomes are inconsistent with the intended project outcomes.

7) Except as provided elsewhere in this agreement, the Program Officer is not solely authorized to make any commitments or otherwise obligate the Government or authorize any changes that affect the agreement amount, terms, or conditions.

C. JOINT RESPONSIBILITIES

1) The Program Officer and Project Director will maintain frequent communication to facilitate cooperation under this agreement.

2) The Program Officer will work with the Project Director to determine a timeline for project updates that will be provided by the Project Director through the course of each project year.

3) The Program Officers for the RTTA and the General Supervision Enhancement Grants consortia to develop Alternate Assessments based upon Alternate Academic Achievement Standards (GSEG AA-AAAS) projects and the respective Project Directors for RTTA and GSEG AA-AAAS will collaborate to coordinate appropriate tasks and timelines to foster synchronized development of assessment systems supported by these grants.

4) The Program Officer for the RTTA grantees will work with the Project Directors for both RTTA grantees to coordinate and facilitate coordination across consortia.

ARTICLE III
FINANCIAL SUPPORT AND BUDGET MODIFICATIONS

A. The estimated cost for the work to be performed under this Agreement is $169,990,272 and $15,872,560 for the supplemental award.

B. The detailed budget for the implementation of this project is the budget contained in the application; and for the supplemental award for this project, the budget submitted by the recipient and approved by the Program Officer, attached to this agreement. The work of the project will be performed according the budget negotiated and approved in the application and confirmed by this cooperative agreement. With respect to 34 CFR section 80.30(c) "Budget changes" provisions, the Grantee and sub-recipients must obtain prior written approval from ED for transfers among direct cost categories and among separately budgeted programs, projects, functions, or activities that exceed $100,000 of the current total approved budget.

ARTICLE IV
COMMUNICATIONS AND REPORTS

The recipient will undertake communications and submit reports in the quantities and frequencies shown below:

Required Communications/Reports	Quantity/Transmittal	Frequency
Monthly Project Update	Brief update submitted electronically to the Program Officer followed by call	Monthly
Minutes of the quarterly Governing Board meetings and the summaries of the weekly Leadership Team conference calls	Submitted electronically to the Project Officer, as requested	30 days after meetings
Semi-annual Performance check-in against timeline and benchmarks	Update submitted electronically to the Program Officer	Semi-annual
Reporting Required by Sec. 1512 of the American Recovery and Reinvestment Act (ARRA)	Submitted via the www.federalreporting.gov website	Quarterly, schedule available at: http://www.recovery.gov/FAQ/Pages/RecipientReporting.aspx#schedule

Annual Performance Report	Submitted electronically to the Department using e-Report	Recipient will be notified by the Department of Education at least 60 days prior to report due dates
Final Report	Submitted electronically to the Department	90 days after project performance end date

ARTICLE V
CHANGES TO THE COOPERATIVE AGREEMENT

The recipient shall submit any requests for changes to the cooperative agreement (e.g., scope of work, terms or conditions of award) to the Program Officer for review and/or approval, as required by EDGAR or the terms of this agreement.

DEPARTMENT PROGRAM OFFICER CONTACT INFORMATION

For this cooperative agreement, Patrick Rooney is the Program Officer for the U.S. Department of Education. The Program Officer's contact information is:

Office of the Deputy Secretary
U.S. Department of Education
400 Maryland Ave, SW Room 7C106
Washington, DC 20202
Phone: (202) 453-1554
E-mail: Patrick.Rooney@ed.gov

All items submitted to the Department must contain the assigned Department of Education Grant Number, found on page one of this document.

CONSORTIUM CONTACT INFORMATION

For this cooperative agreement, Kris Ellington is the Project Director for Florida. The Program Representative's contact information is:

Kris Ellington, Deputy Commissioner
Florida Department of Education
325 West Gaines Street, Suite 844
Tallahassee, FL 32399-0400
Phone: (850)-245-0437
Fax: (850) 245-9288
E-mail: kris.ellington@fldoe.org

ARTICLE VI
FAILURE TO ADDRESS OBJECTIVES

Failure to comply with the content of this agreement may result in the Secretary imposing special conditions on the award pursuant to EDGAR §80.12 or taking other enforcement actions, including partly suspending or terminating the award, pursuant to EDGAR §80.43.

Patrick Rooney
Program Officer
U.S. Department of Education

Kris Ellington
Project Director
Florida Department of Education

Joseph C. Conaty, Ph.D.
U.S. Department of Education

Eric J. Smith
Commissioner
Florida Department of Education

APPENDIX E: RTTA GRANT CONDITIONS

(attached for reference purposes)

A. The Grantee may draw down no more than 50 percent of the grantee's Year 1 budget total until a final cooperative agreement has been negotiated and signed with the Department of Education (ED), or until ED has provided written permission to draw down a specific, interim amount of funds.

B. All Race to the Top Assessment funds must be used in accordance with the Grantee's approved application and the requirements of section 14005 and 14006 of the American Recovery and Reinvestment Act (ARRA), as authorized under P.L. 111-5, and applicable regulations including 34 CFR Parts 75, 77, 80 (except section 80.30 (c)), 81, 82, 84, 85, 97, 98, and 99.

C. The Grantee and its sub-recipients must comply with all of the assurances and certifications that the Grantee submitted with its Application, including OMB Standard Form 424B (Assurances for Non-Construction Programs), the certifications in ED Form Certification regarding Lobbying, as well as all applicable operational and administrative provisions in Title XV and XVI of ARRA.

D. Pre-award costs, used in accordance with the Grantee's approved application, and incurred by the Grantee, beginning on September 2, 2010, are allowable under this grant.

E. With respect to 34 CFR section 80.30(c) "Budget changes" provisions, the Grantee and sub-recipients must obtain prior written approval from ED for transfers among direct cost categories and among separately budgeted programs, projects, functions, or activities that exceed $100,000 of the current total approved budget.

F. The Grantee and its sub-recipients will conduct all procurement transactions for services or goods with Race to the Top Assessment grant funds in a manner providing full and open competition, consistent with the standards in 34 CFR section 80.36. This section requires that Grantees use their own procurement procedures (which reflect State and local laws and regulations) to select contractors, provided that those procedures meet certain standards described in EDGAR.

G. The Grantee will maintain and enforce applicable state procurement laws and procedures regarding standards of conduct governing the performance of its employees, officers, directors, trustees, and agents engaged in the selection, award, and administration of contracts or agreements related to the Cooperative Agreement. The standards of conduct must, at a minimum, be consistent with the requirements in 34 CFR section 75.525.

H. The Grantee will not commingle Race to the Top Assessment Grant funds with other funds under control of the Grantee, even if such other funds are used for similar purposes. Similarly the Grantee will ensure that its sub-recipients adhere to this same standard. The Grantee will ensure that all Grant and sub-recipient costs incurred using Grant funds are necessary and reasonable. The burden of proof is upon the Grantee to establish that costs are necessary and reasonable.

I. Consistent with 34 CFR section 80.20, the Grantee and its sub-recipients are required to establish procedures to minimize the time elapsing between the receipt of Federal funds and their actual disbursement. When advances are made by letter-of-credit or electronic transfer of funds methods, the Grantee must make drawdowns as close as possible to the time of disbursement and also ensure that sub-recipients adhere to a similar standard.

J. Additionally, as required by 34 CFR section 80.20 and applicable OMB cost circular A-87, grantees must keep adequate records of salaries and wages charged to the RTT grant.

K. The Grantee agrees to cooperate with and assist ED in performing any financial, performance or compliance reviews or audits conducted of the Grant Project, as ED may determine to be necessary, and to comply with all program reporting requirements including participating in an electronic monitoring system if ED develops one during the course of this grant.

Specifically, the Grantee will cooperate with ED by providing information that ED may request relative to this program, including information on the steps that the Grantee is taking to ensure accountability for the use of funds by all entities. Consistent with 34 CFR section 80.40, grant performance reports will contain, at a minimum, information on the following:

1) A comparison of actual accomplishments to the objectives established for the period;
2) The reasons for established objectives not being met; and
3) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs. Consistent with 34 CFR section 80.41, grant financial reports must be in the form and at the frequency that ED prescribes for each fiscal year that the Grantee's obligation to ED remains in effect.

Additionally, the Grantee agrees to cooperate with audits conducted by the General Accountability Office (GAO), and will arrange for the non-federal audit as required by 34 CFR section 80.26.

M. These Federal funds may be used for construction or major renovation if it is detailed in the Grantee's approved grant application. Any laborers and mechanics employed by contractors or subcontractors on minor remodeling (as defined in 34 CFR section 77.1) projects over $2,000 assisted with these funds must be paid in accordance with prevailing wage requirements in the Davis-Bacon Act. If the Grantee or a sub-recipient plans to use grant funds for any of these types of projects, the Grantee must consult with ED and ensure that any applicable ARRA-related construction conditions included in Attachment T to this grant are implemented.

N. Consistent with 34 CFR section 80.40, the Grantee is responsible for managing the day-to-day operations of grant and sub-recipient-supported tasks and activities. This includes:

1) The Grantee and its sub-recipients actively participating in all relevant convenings, communities of practice, trainings, or other activities that are organized or sponsored by the State or by ED;

2) The Grantee and its sub-recipients making work developed under the grant freely available, including by posting to any website or other publication process and to any technical standards specified by ED (and the Grantee for sub-recipients), in a timely manner, unless otherwise protected by law or agreement as proprietary information;
3) Participating, as requested, in any research and evaluations of this grant conducted by ED or its designees (or the Grantee for sub-recipients);
4) Responding to ED's or its designee's (or the Grantee for sub-recipients) requests for information including on the status of the project, project implementation, lessons learned, outcomes, and any problems anticipated or encountered;
5) Participating in meetings and telephone conferences with ED or its designees (or the Grantee for sub-recipients) to discuss (a) progress of the project, (b) potential dissemination of resulting work, (c) plans for subsequent years of the Race to the Top Assessment grant period, and (d) other matters related to the Race to the Top Assessment grant and associated plans;
6) The Grantee must provide timely and complete access to any and all data collected at the State level to ED or its designated program monitors, technical assistance providers, or researcher partners, and to GAO, and the auditors conducting the audit required by 34 CFR section 80.26.
7) Appointing a Grantee key contact person for this Race to the Top Assessment grant;
8) Complying with 34 CFR section 75.517 regarding acquiring ED prior approval regarding changes in key grant personnel or their level of involvement; and
9) Maintaining frequent communication between ED and the Grantee and its sub-recipients to facilitate cooperation under this grant.

O. The Grantee must monitor its grant and sub-recipient-supported activities to assure compliance with applicable Federal requirements and that the grant performance goals are being achieved throughout the whole project period. This includes ensuring that:
1) Sub-recipient personnel the Grantee work together to determine appropriate timelines for project updates and status reporting throughout the whole grant period;
2) Grantee and sub-recipient personnel negotiate in good faith to continue to achieve the overall goals of the Race to the Top Assessment grant project.

As soon as possible, but no later than 180 days from the receipt of the grant, the Grantee must submit a plan, protocols, and a schedule for sub-recipient monitoring, including both programmatic and fiscal issues. As part of the plan, the Grantee must provide a description of how it will distribute funding to its sub-recipients.

Condition for the supplemental award

This supplement is awarded to support the consortium and its participating States efforts successfully transition to common standards and assessments. As soon as possible but no later than January 7, 2011, or when the cooperative agreement is signed (if sooner), the consortium will complete a plan that details transition strategies and activities recommended to the Department of Education by the Peer Reviewers. These items include such activities as:

- Developing gap analyses between current and new standards, curriculum analysis tools, professional development related to the new standards and assessments including support

for educators to better understand the content of the new standards, state and local assessment audits to determine what assessments will no longer be needed;

- Enhancing technology to be used in the assessments systems, including assessment delivery; and
- Supporting educator understanding and use of assessment results, and other steps needed to build the professional capacity to implement more rigorous common standards.

The final approved plan and budget will be incorporated into the cooperative agreement that is signed by the consortium and the Department of Education.

APPENDIX F: RTTA PROGRAM REQUIREMENTS

(attached for reference purposes)

These requirements are from the RTTA NIA published in the *Federal Register* on April 9, 2010, pages 18174-18175:

An eligible applicant awarded a grant under this category must—

1. Evaluate the validity, reliability, and fairness of the summative assessment components of the assessment system, and make available through formal mechanisms (*e.g.*, peer-reviewed journals) and informal mechanisms (*e.g.*, newsletters), and in print and electronically, the results of any evaluations it conducts;
2. Actively participate in any applicable technical assistance activities conducted or facilitated by the Department or its designees, including periodic expert reviews, collaboration with other consortia that receive funds under this program, and other activities as determined by the Department;
3. Work with the Department to develop a strategy to make student-level data that result from the assessment system available on an ongoing basis for research, including for prospective linking, validity, and program improvement studies;[1]
4. Ensure that the summative assessment components of the assessment system in both mathematics and English language arts are fully implemented statewide by each State in the consortium no later than the 2014-2015 school year;
5. Maximize the interoperability of assessments across technology platforms and the ability for States to switch their assessments from one technology platform to another by—
   (a) Developing all assessment items to an industry-recognized open-licensed interoperability standard that is approved by the Department during the grant period, without non-standard extensions or additions;[2] and
   (b) Producing all student-level data in a manner consistent with an industry-recognized open-licensed interoperability standard that is approved by the Department during the grant period;
6. Unless otherwise protected by law or agreement as proprietary information, make any assessment content (*i.e.*, assessments and assessment items) developed with funds from

[1] Eligible applicants awarded a grant under this program must comply with the Family Educational Rights and Privacy Act (FERPA) and 34 CFR Part 99, as well as State and local requirements regarding privacy.

[2] We encourage grantees under this competition to work during the grant period with the Department and the entities that set interoperability standards to extend those standards in order to make them more functional for assessment materials.

this grant category freely available to States, technology platform providers, and others that request it for purposes of administering assessments, provided they comply with consortium or State requirements for test or item security;

7. Use technology to the maximum extent appropriate to develop, administer, and score assessments and report assessment results;
8. Use funds from this grant category only for the design, development, and evaluation of the assessment system. An eligible applicant awarded a grant under this category may not use funds for the administration of operational assessments;
9. Comply with the requirements of 34 CFR 75.129, which specifies that--
   - (a) The applicant (*i.e.*, the State applying on behalf of the consortium, or the consortium if established as a separate legal entity and applying on its own behalf) is legally responsible for—
     - (i) The use of all grant funds;
     - (ii) Ensuring that the project is carried out by the consortium in accordance with Federal requirements; and
     - (iii)Ensuring that indirect cost funds are determined as required under 34 CFR 75.564(e); and
   - (b) Each member of the consortium is legally responsible to—
     - (i) Carry out the activities it agrees to perform; and
     - (ii) Use any grant funds it receives under the consortium's Memoranda of Understanding or other binding agreements in accordance with Federal requirements that apply to the grant;
10. Obtain approval from the Department of any third-party organization or entity that is responsible for managing funds received under this grant category; and
11. Identify any current assessment requirements in Title I of the ESEA that would need to be waived in order for member States to fully implement the proposed assessment system.

January 23, 2014

The Honorable Arne Duncan
Secretary
United States Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Secretary Duncan:

As chief state school officers in states participating in the two common assessment consortia, we appreciate your continued leadership and collaboration with states as we work to raise our standards, improve our assessments, and strengthen our accountability systems.

Our states have been collaborating for the last three years to design and develop next generation, computer-based assessment systems that will give students, parents and educators better information about children's progress toward preparation for college and careers. This work is critically important, and we are committed to the success of the Partnership for Assessment of Readiness for College and Careers and the Smarter Balanced Assessment Consortium.

Over the last several months, some concerns have been raised about whether states' transition to the consortia assessments will create new requirements for states to provide student information to the U.S. Department of Education (USED) or any agency of the federal government.

We are writing today to confirm that the consortia will not share any personally identifiable information about K–12 students with USED or any federal agency. Our states have not submitted student-level assessment data in the past; the transition to the new assessments should not cause anyone to worry that federal reporting requirements will change when, in fact, the federal government is prohibited from establishing a student-level database that would contain assessment data for every student. As we have historically done, our states will continue to provide USED with school-level data from our state assessments as required under the Elementary and Secondary Education Act, as amended in 2002. Our states and local education agencies will continue to retain control over student assessment data and will continue to comply with all state and federal laws and regulations with regard to the protection of student privacy.

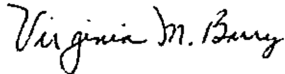
We understand that it has long been USED's practice not to require states to provide information from assessments about individual K-12 students. We are confirming that our states will not provide such information to USED and that everything we have said here is consistent with our understanding of the cooperative agreement between the consortia and USED.

Thank you for your consideration and your continued commitment to our states' success.

Sincerely,

June St. Clair Atkinson
State Superintendent
North Carolina Department of Public Instruction

Kirsten Baesler
State Superintendent
North Dakota Department of Public Instruction



Virginia M. Barry, Ph.D.
Commissioner of Education
New Hampshire Department of Education

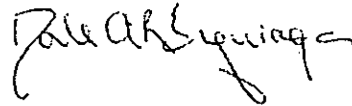
Brad A. Buck
Director
Iowa Department of Education

Chris Cerf
Commissioner
New Jersey Department of Education

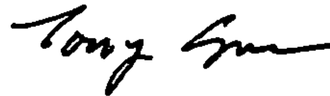
Mitchell Chester
Commissioner
Massachusetts Department of Elementary and
Secondary Education

Richard Crandall
Director
Wyoming Department of Education

Randy I. Dorn
Washington State Superintendent
of Public Instruction



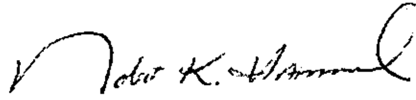
Dale Erquiaga
Superintendent of Public Instruction
Nevada Department of Education



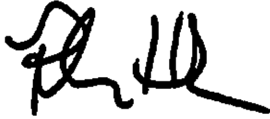
Tony Evers
State Superintendent
Wisconsin Department of Public Instruction

Michael P. Flanagan
State Superintendent
Michigan Department of Education

Deborah Gist
Commissioner
Rhode Island Department of Elementary and
Secondary Education

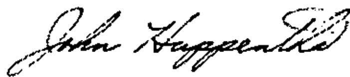


Robert K. Hammond
Commissioner
Colorado Department of Education



Rebecca Holcombe
Secretary of Education
Vermont Agency of Education

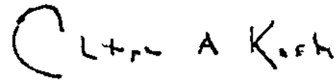
Kevin Huffman
Commissioner
Tennessee Department of Education



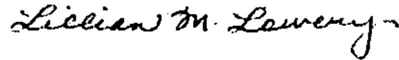
John Huppenthal
State Superintendent
Arizona Department of Education

Denise Juneau
Superintendent
Montana Office of Public Instruction

Tom Kimbrell
Commissioner
Arkansas Department of Education



Christopher Koch
State Superintendent
Illinois State Board of Education



Lillian Lowery
Superintendent of Schools
Maryland State Department of Education

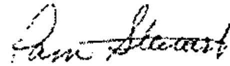
Tom Luna
Superintendent of Public Instruction
Idaho State Department of Education

Kathryn Matayoshi
Superintendent
Hawaii State Department of Education

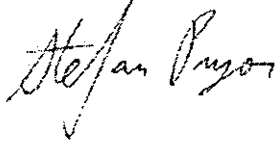
Mark T. Murphy
Secretary of Education
Delaware Department of Education

Chris L. Nicastro
Commissioner
Missouri Department of Elementary and
Secondary Education

James P. Phares
Superintendent
West Virginia Department of Education



Pam Stewart
Commissioner of Education
Florida Department of Education



Stefan Pryor
Commissioner
Connecticut State Department of Education

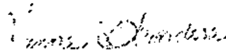
John White
State Superintendent
Louisiana Department of Education

Richard Ross
Superintendent of Public Instruction
Ohio Department of Education

Carey Wright
State Superintendent of Education
Mississippi Department of Education

Rob Saxton
Deputy Superintendent of Public Instruction
Oregon Department of Education

Melody Schopp
Secretary of Education
South Dakota Department of Education



Hanna Skandera
Secretary Designate
New Mexico Public Education Department

PARCC Data Privacy & Security Policy
Executive Summary
December 2013

Overview

The PARCC states have developed a consortium-wide policy that lays out how PARCC and its contractors will work with states to comply with legal requirements regarding the protection of student data. The policy was drafted for PARCC by legal counsel from Education Counsel, LLC (and its affiliate, Nelson Mullins Riley and Scarborough LLP), and were reviewed by state assessment, data, contracts and legal staff.

States currently contract with assessment vendors to administer, score, and report results for their existing state assessment programs. In order to support the states' administration of the assessments, these vendors have access to a limited set of personally identifiable information (PII). Through contracts with those vendors and through other state policies, state education agencies set rules and policies that require vendors to protect the privacy and security of PII.

As states move to the PARCC consortium assessments, they will also provide limited access to PII to the contractors – just as they do now with their current testing programs and current assessment vendors. The PARCC policy is designed to provide states with rigorous protections necessary to ensure that PARCC and PARCC contractors:

- Only have access to personally identifiable student information as authorized in the agreement and data policy, or if further authorized by the state education agency to use that data for specified purposes; and
- Implement stringent policies and procedures to ensure the security of data and limit access to PII to only those employees who require it to conduct activities authorized by state education agencies.

Key Principles

The key principles that guide the policy are:

1. **States retain responsibility for and control over their data. Neither PARCC nor PARCC contractors will share student data with any outside entity, including the federal government.**

2. **States must give permission to PARCC and PARCC contractors in order for them to access any personally identifiable information – and only for specific purposes defined by states.**

3. **The policies and requirements apply not just to PARCC but to its PARCC contractors.**

These are foundational policies that will guide the way PARCC states conduct business with PARCC and the contractors delivering the PARCC assessments in 2014-15 and beyond. These policies will be incorporated into contracts with future PARCC contractors to ensure their compliance with the states' requirements.

Data Privacy & Security Policy

The Data Privacy & Security Policy includes a number of important provisions:

- Defines "personally identifiable information" as data that includes direct characteristics that would allow identification of a student (e.g., name, Social Security number) or indirect characteristics (e.g., small cell sizes), consistent with FERPA.
- Stipulates that state education agencies determine whether PARCC or PARCC Contractors have access to any PII.
- Establishes the purposes for which states would disclose PII to PARCC or PARCC contractors, which includes:
  - conducting research studies for states and districts to develop, validate, and administer assessments, and
  - assisting states in program evaluation and compliance with federal requirements (e.g., reporting student achievement results as required under ESEA).
- Sets basic privacy protections and limits on access to PII that states provide to PARCC or PARCC contractors, such as access rules and electronic data encryption requirements.
- Establishes key physical, administrative, and technical safeguards to ensure PARCC and PARCC contractors manage and control risks related to the availability and security of data – and ensure accountability for any breaches of security.
- Sets guidelines for the enforcement of this policy by PARCC and PARCC states, including disciplinary actions for employees of PARCC or PARCC contractors.
- Requires that PARCC designate a senior official to manage the policy and data agreements and establish a committee to monitor implementation of the policy, and that each member state designate a privacy administrator to oversee state functions under the agreement.

See pg. 52 Revised FERPA

Together, these provisions establish a rigorous set of policies and procedures that will help states ensure the highest levels of security for student data.

Data Agreements

In the future, as a companion to the consortium's Data Privacy & Security Policy, states will ask PARCC and PARCC contractors to sign data agreements that set the terms under which they will share data for purposes authorized by the states.

The agreements are expected to include the following elements:

- Affirms that only individual states can authorize the use of student data by any outside organization that requests it from PARCC.
- Establishes the limited set of allowable uses for student data by PARCC and the terms under which that data will be provided by states to PARCC.
- Outlines the limited conditions under which PARCC can use PII in studies approved by state education agencies.
- Sets administrative, technical, and physical data privacy and security controls for PARCC and PARCC contractors, such as requiring contractors to abide by all policies set by PARCC and accounting for the appropriate destruction of all PII when the information is no longer needed for PARCC services to a member state (or when requested by the state).

anita stapleton <amspue67@gmail.com>

Colorado Common Core Implementation Costs -- by Henry W. Burke -- 1.27.14
1 message

Henry W. Burke <hwburke@cox.net> Mon, Jan 19, 2015 at 5:45 PM
To: "Henry W. Burke" <hwburke@cox.net>

Boulder County Schools:

Colorado Common Core Implementation Costs

by Henry W. Burke

1.27.14

<u>It will cost Colorado $213 million (net amount) to implement the Common Core Standards (CCS). Where will Colorado find $213 million to implement the mediocre Common Core Standards?</u>

I will call your attention to an excellent Pioneer Institute report,

"National Cost of Aligning States and Localities to the Common Core Standards," dated February 2012 (PI report).

http://pioneerinstitute.org/download/national-cost-of-aligning-states-and-localities-to-the-common-core-standards/

I wrote the report "States' Taxpayers Cannot Afford Common Core Standards" on 10.15.12 (Burke report). I completely updated this report on 1.26.14; I issued this report in two versions -- a full version and a condensed version. The condensed version of the report is essentially the same except that it includes only two of the Tables. The reports are as follows:

1. Full report -- "States' Taxpayers and the Common Core Standards"

2. Condensed report -- "States' Taxpayers Left to Pay for Common Core." This report is posted here:

http://www.educationviews.org/states-taxpayers-left-pay-common-core

I also wrote a companion report applicable to the states that did not adopt the Common Core Standards, "Non-Common Core States Will Save Millions of Dollars," by Henry W. Burke, 10.18.12:

http://educationviews.org/non-common-core-states-will-save-millions-of-dollars-2/

Colorado gave up very good state standards to adopt the inferior Common Core Standards. According to a 2010 Fordham Institute report that compared the state standards with the Common Core Standards, Colorado had good English Language Arts standards ("Too Close to Call").

I encourage you to realistically evaluate the costs versus the benefits for the State of Colorado. I will focus only on the cost of implementing the Common Core Standards (CCS) versus the dollar awards received from the federal government.

I thought I would offer a little insight into the CCS implementation costs. This explanation includes the Pioneer report figures and my assumptions. Obviously, I cannot speak for the Pioneer Institute nor its partners in the white paper, Accountability Works and Pacific Research Institute. These are strictly my thoughts, assumptions and calculations.

The Pioneer Institute report identified four cost categories for CCS implementation. The categories are: Testing, Professional Development, Textbooks, and Technology. Pioneer calculated the total CCS implementation cost over a 7-year time period.

The PI report included bar graphs (without dollar figures) for each state in Professional Development, Textbooks, and Technology. The

Appendices to the PI report showed exact dollar figures for each state in only the Textbooks and Technology categories. This is the link to the Pioneer Institute Appendices:

http://www.accountabilityworks.org/photos/Appendices.Common_Core_Cost.AW.pdf

Consequently, I had to derive figures for Testing and Professional Development for each of the 46 states. My goal was to duplicate the Pioneer figures as closely as possible. My nationwide totals for the four categories agree quite closely with the Pioneer Institute report.

A. Colorado CCS Loss

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The State of Colorado submitted a proposal to the U.S. Department of Education (USDOE) for Phase 1 and Phase 2 of the Race to the Top (RTTT) program and received a rank of No. 14 in Phase 1 and a rank of No. 17 in Phase 2 of that competition. The 12 "winning" states under Phase 1 and Phase 2 of RTTT received a total of $3.94 billion. Colorado was not awarded any funds under the Phase 1 and Phase 2 competitions.

Under RTTT - Phase 3, Colorado was awarded $17,946,236. In subsequent competitions, Colorado received $73,778,692. This brings Colorado's total to $91,724,928 ($91.725 million) for competitive stimulus awards.

In the Burke Table 1, CCS Loss Per State, the CCS Total Cost for Colorado is $304.494 million; and the federal competitive award total is $91.725 million. The difference is $212.769 million.

[$304.494 million - $91.725 million = $212.769 million]

This means Colorado will have to find $213 million to pay for the implementation expense of CCS.

B. Colorado CCS Cost

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In the Burke Table 2, CCS Cost Per Student, we can see that Colorado has a CCS Cost per Student of $366. This is slightly below the average cost per student of $379 (average cost for the 46 CCS states).

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Table 3, Total CCS Cost, lists the components making up the Total CCS Cost of $304.494 million for Colorado. Testing cost is $24.702 million; Professional Development cost is $94.735 million; Textbook cost is $48.476 million; and Technology cost is $136.581 million.

In round numbers, Colorado will spend $25 million on Testing, $95

million on Professional Development, $48 million on Textbooks, and $136 million on Technology. The Total CCS Cost for Colorado will be $304 million.

Explanation of Figures

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1. Testing

a. Nationwide CCS Testing Cost

Testing is a function of the number of students tested. Table 5 in my report shows the Total Nationwide Cost for the 46 CCS states. My Table 5 duplicates Pioneer Figure 2B (on page 2 of the PI report). Figure 2B shows a Total Testing Cost of $1,240,641,297.

Table 6 (Burke report) lists the number of students and teachers in each of the 46 states; the total for the 46 states is 41,805,062 students. I obtained all of the numbers in Table 6 from the Pioneer report Appendices (NCES: 2009 - 2010 School Year).

When I divided $1,240,641,297 by 41,805,062 students, I obtained a factor of $29.67681993 per student. This Testing cost factor was applied to each of the 46 states to get the Testing cost for each state. My Total Testing Cost of $1,240.641 million agrees with the Pioneer Figure 2B number.

b. Colorado CCS Testing Cost

Colorado has a total student enrollment of 832,368 students. When I multiplied 832,368 students by the $29.6768 factor per student, I obtained $24.702 million.

[832,368 students x $29.67681993 per student = $24,702,035]

2. Professional Development

The purpose of Professional Development is to train the teachers on the new Common Core academic standards. Professional Development is a function of the number of teachers that must be trained. Pioneer used a Professional Development cost of $1,931 per teacher.

Colorado has 49,060 teachers. When I multiplied 49,060 teachers by $1,931 per teacher, I obtained $94.735 million.

[49,060 teachers x $1,931 per teacher = $94,734,860]

Incidentally, my calculations produced a Professional Development Cost for California of $605.938 million. The PI report bar graph showed the number $606 million for California. This verifies that my calculation assumptions and methodology are correct.

3. Textbooks

I obtained the Textbook cost for Colorado directly from the Pioneer Institute Appendix. The Table in the Appendix showed a Total Textbook Cost for Colorado of $48,476,110 ($48.476 million).

The PI Appendix listed the following numbers for Textbooks and Instructional Materials:

Colorado Textbook Cost

(Millions of Dollars)

Grade	Textbook Cost ($ Millions)
K	4.595
1	4.406
2	3.498
3	3.538
4	3.168

5	3.098
6	3.534
Subtotal – K - 6	25.837
7	3.554
8	3.575
Subtotal – 7 - 8	7.129
9	3.991
10	3.737
11	3.945
12	3.837
Subtotal – 9 - 12	15.510
Total – K - 12	48.476

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4. Technology

I obtained the Technology cost for Colorado directly from the Pioneer Appendix. The PI Appendix lists the Total Technology Cost for

C. Urgency of Decision

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We know that the total cost to implement CCS in Colorado will be $304.494 million ($304 million), but we have not said anything about the timing. The timing for the expenditures is extremely important!

A sizeable portion of the total CCS implementation cost is spent early in the implementation. In the Pioneer Report Figure 2B, two-thirds (about 66 %) of the Total Cost falls into the up-front, one-time cost period. Pioneer shows a one-time cost of $10,522,885,028; the Total Cost is $15,835,121,347. When I divide these two numbers, I get 66 %.

For Colorado, the figures are as follows:

Timing of Colorado CCS Costs

(Millions of Dollars)

Cost Category	Up-Front, One-Time Cost ($ Millions)	Years 1 - 7 Cost ($ Millions)	Total Cost -- Up-Front & for 7 Years ($ Millions)
Testing	–	24.702	24.702
Professional Development	94.735	–	94.735

Textbooks	**48.476**	**–**	**48.476**
Technology	**55.676**	**80.905**	**136.581**
Total Cost	**198.887**	**105.607**	**304.494**
Percentage of Total	**65 %**	**35 %**	**100 %**

As this table shows, 65 % of the total cost ($198.887 million) is incurred as an up-front, one-time cost. If Colorado has any interest in dropping the CCS, the state should act very soon. Much of the CCS implementation expense (65 %) hits very early in the process. If the state delays the decision to drop CCS, it could waste $199 million on a system that it is not going to use. The decision is urgent!

Please contact me if you would like copies of my two reports.

Henry W. Burke

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