

Dear Chairwoman Foxx, Ranking Member Scott, and Members of the House Education and Workforce Committee,

Thank you very much for holding the January 30 hearing, “Protecting Privacy, Promoting Policy: Evidence-Based Policymaking and the Future of Education.”¹ It was refreshing and encouraging for parents and other citizens who care about data privacy and decreasing the federal role in education to see that their concerns were heard.

We are also glad to hear of a potential rewrite of the Family Educational Rights and Privacy Act (FERPA). We strongly agree with testimony of Ms. Robbins and Professor Ohm, particularly on these points:

- Citizens have a property interest in their personal data, and Congress should protect that interest.
- Data collection without consent is an affront to freedom. The federal government has no right or authority to vacuum up mountains of personal data on its citizens without their consent, with only the vague intent to “help” them or others make decisions. This is especially true for children.
- Collecting data on the mindsets and attitudes of children in the name of social emotional learning (SEL) research is never acceptable. It is not the role or right of government to probe a child’s most personal and sensitive attributes.
- Data, especially SEL data, should not be used for predictive testing, as allowed by FERPA.² Such data and testing are subjective and inaccurate and can steer students to one career and close off others, contrary to the choices and aspirations of the students and their families.
- The public, and especially parents, object to having more data collected and shared on their children when so much data already collected shows the failure of most government programs -- but is ignored, with no decrease in funding for these useless or harmful programs.³
- Data given to the government for one purpose should not be “repurposed” for something else without the consent of the person whose data is being used.
- It is critical to distinguish between data security and data privacy. Data security refers to protecting data already collected; data privacy refers to the citizen’s right not to have certain data collected at all. With respect to security, technological improvements on the horizon to protect the data are imperfect solutions, and hackers and other malefactors are also perfecting methods to evade these protections. Decreasing the amount of data collected is the better solution, not only because what isn’t there cannot be hacked but, more broadly, because government’s collecting sensitive data without consent has an intimidating effect that is unacceptable in a free society.
- A future job and potential income, while important, should not be the only focus of education. Government’s insinuation that little else matters will inevitably lead to bad policy and the diminishing of individual liberty -- to centrally controlled “nudging” in a direction that the government deems superior to what individuals would choose on their own.

Based on these principles, we would respectfully but firmly submit the following recommendations for a FERPA rewrite.

1. Do whatever is possible to decrease the amount of data collected on students, especially SEL data. Collection of such data should be eliminated or at the very least a) not collected without informed opt-in parental consent and b) be treated as medical data.

¹ <https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=402409>

² 20 U.S.C. §1232g (b)(F)

³ <http://edlibertywatch.org/wp-content/uploads/2017/07/Effectiveness-Research-from-the-U.pdf>; see also <https://townhall.com/columnists/janerobbins/2018/03/23/yet-another-reason-president-trump-should-veto-omnibus-n2464038>.

2. Treat whatever mental health, social emotional, or behavioral data collected for special-education evaluations or any other related program, such as Positive Behavioral Intervention and Supports (PBIS) or Multi-Tiered Systems of Support (MTSS), as medical data that cannot be housed in longitudinal databases.
3. Use aggregate rather than individual data to the greatest extent possible.
4. Obtain parental consent if data collected for one purpose is to be repurposed or shared with another federal agency.
5. Eliminate the current language in FERPA allowing predictive testing.

Since the January 30 hearing, another issue has arisen that implicates FERPA protections. In the wake of the Florida school shooting, the White House has encouraged a review of FERPA and the Health Insurance Portability and Accountability Act (HIPAA). Unfortunately, the context of this statement suggests the goal of enhancing data-sharing in the sensitive area of student mental health: “reviews will determine if any changes or clarifications are needed to improve coordination between mental health and other healthcare professionals, school officials, and law enforcement personnel.” We caution that such increased “coordination” in sharing such student data can be extraordinarily dangerous.

Screening and even full evaluations by highly trained mental-health professionals are admittedly subjective and frequently inaccurate⁴ (with one screening tool demonstrated to have an 84% false-positive rate)⁵, unable to predict who will become violent,⁶ and sometimes even politically motivated.⁷ In light of these problems, the government should be extremely hesitant to expand sharing of such data among various agencies. This is especially true when FERPA (as it currently exists) has been gutted and when data breaches are rife within all levels of public education. And it is especially true when such data may be entered into the statewide longitudinal data systems, to follow the targeted student forever – perhaps to preclude him or her from college, employment, military service, or gun ownership.

As parents, grandparents, and decent human beings, we are appalled at the carnage in the Parkland high school. But it is crucial to recognize that if the legal and mental-health procedures already in place had been properly followed – and if the local school had not gutted its disciplinary procedures in response, at least in part, to federal pressure – this horrific crime would not have happened. The solution is to enforce laws and implement policies already on the books, not subject vast numbers of innocent students to further invasion of privacy.

In sum, we reiterate that student privacy has greatly suffered in the effort to obtain more education data. We believe that the government already has more than enough data to guide policy decisions and should therefore be minimizing, not expanding, the collection and use of student data.

Thank you again for turning the focus back towards student data privacy and security. We look forward to working with the Committee as the FERPA-reauthorization process proceeds. Should you or your staff have any questions or need further detail, please contact any of the following:

⁴ <http://edlibertywatch.org/wp-content/uploads/2014/11/Child-Mental-health-Quotes-and-references1.pdf>

⁵ “Although the sensitivity of the CSS [Columbia Suicide Screen] is excellent, in practice a specificity of 0.83 would deliver many who were not at risk for suicide, and that could reduce the acceptability of a school-based prevention program. The CSS’s positive predictive value of 16% (determined by a weighted prevalence of DISC positive in the sample) would **result in 84 nonsuicidal teens’ being referred for further evaluation for every 16 youths correctly identified.**” (Emphasis added.) - David Shaffer et al. (2004). The Columbia Suicide Screen: Validity and Reliability of a Screen for Youth Suicide and Prevention. *Journal of the American Academy of Child and Adolescent Psychiatry*, 43(1), 71-79; p. 77.

⁶ <http://www.latimes.com/science/sciencenow/la-sci-sn-florida-shooter-psychology-20180226-htlstory.html>

⁷ <http://thefederalist.com/2016/10/19/schools-ditch-academics-for-emotional-manipulation/>

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Sincerely,

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