State of Arizona
Department of Education

MEMORANDUM

TO: **Superintendents, Charter Operators, Directors of Accountability, and Arizona Council of School Attorneys**

FROM: **Rebecca Bolnick, PhD, Chief Data Officer**
Carrie O'Brien, Esq., Chief Privacy Officer

DATE: **June 30, 2014**

SUBJECT: **Confidentiality Obligations for Aggregate Student Data**

The Arizona Department of Education (Department) has become aware of disclosures of AIMS results by Arizona public schools or LEAs in a manner that may violate the obligations we share under the Federal Family Educational Rights and Privacy Act (FERPA). Most of these disclosures were responses to public records requests from reporters. This letter outlines responsibilities of LEAs and best practices for protecting educational records of students.

What are our obligations under FERPA?

FERPA requires recipients of federal funds to maintain the confidentiality of the educational records of its students. 20 U.S.C. § 1232g, 34 CFR Part 99.1. Education records and personally identifiable information are NOT public records subject to a public records request. A.R.S. §§ 15-1042 (I) and -1043. Education records" are defined under FERPA as records directly related to a student and maintained by an education agency. 34 CFR § 99.3.

FERPA also requires education agencies to maintain the confidentiality of "personally identifiable information" (PII). PII is information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the community who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. 34 CFR § 99.3 and 99.31(b)(1).

How can a FERPA problem arise with the publication or sharing of aggregated student data?

An inadvertent disclosure of PII is possible when a school publishes or releases aggregate student data where a reasonable person in the community without specialized knowledge about the school can identify a particular student. The risk of a disclosure releasing PII increases as the data becomes more precise (for example, as data is broken down by subgroups such as grade level, school, gender, ethnicity, etc., cell counts decrease and an individual student can be more easily identified).

What are the risks if a violation occurs?

The Family Policy Compliance Office at the United States Department of Education has the primary authority to enforce FERPA. 20 U.S.C. § 1232g. 20 U.S.C.A. § 1232g and 34 C.F.R. §99.60 - §99.67

Additionally, Arizona law has a process by which a person may complain to the school district or charter school at which a suspected knowing violation of FERPA has occurred. A.R.S. § 15-142(C). If the matter is not resolved within sixty days, the Department has authority to investigate and make a determination whether a knowing violation of FERPA has occurred which requires a referral to the Family Policy Compliance Office. *Id.*

What best practices can be implemented to ensure compliance?

Aggregating data does not eliminate the risk of disclosure of PII. Depending on the format and nature of the data, aggregate data can be an inadvertent disclosure of PII under FERPA. As education agencies and stewards of our students' data, it is our responsibility to follow best practices when publishing or releasing aggregated data about our students. Best practice would ensure there is no chance that a student could be identified by the information disclosed.

The United States Department of Education's Privacy Technical Assistance Center (PTAC) offers excellent guidance to meet FERPA's obligations, including best practices to avoid inadvertent disclosures of PII in the publication of aggregate data. The Department encourages Arizona LEAs to use PTAC's resources to ensure that disclosures to reporters or between education agencies are FERPA-compliant.

The following PTAC resources offer particularly useful directives in order to maintain the confidentiality of PII in aggregate data :

1. FERPA 101 Training Video (requires the creation of a USDOE account at no cost).
2. PTAC Toolkit—webinar, case student and technical assistance on DISCLOSURE AVOIDANCE. http://ptac.ed.gov/toolkit
3. Webinar http://ptac.ed.gov/

4. IES technical guidance at: http://nces.ed.gov/pubs2011/2011603.pdf

At the Department, we have used PTAC's guidance in order to create_our rules for publishing aggregate data so that it is FERPA-compliant. The Department suggests that Arizona's schools and LEAs adopt similar practices to protect student privacy. Several key elements to the Department's policies, which can be used as a starting point, are:

1. **Protecting small counts**: Identification of a student becomes easier as the size of the group gets smaller. Therefore, care needs to be taken to protect aggregated data for groups with few students. At ADE, we have adopted the most typical "N count" rule of 10 or fewer. That means, if a group of students, for example the Native American students in grade 3 at ABC Elementary School, has 10 or fewer students, ADE would redact (remove/not report) the count and any associated data for that group (e.g. that 4 of those 10, or 25%, scored FFB on AIMS).

2. **If possible, do not report a Total count**: When reporting counts of students, especially when there are subgroups (e.g. Males, Females, students who Fall Far Below), all your hard work to protect small counts will be wasted if you provide a total count. If you do, the redacted counts can simply be reconstructed. Better yet, report percentages rather than counts altogether. Counts are much easier to tie to a specific student than a percentage.
3. **Do not report "all" or "none"**: Reporting that all students, or 100%, at ABC Elementary School were promoted to Grade 4 in spite of the MOWR law means that a person could reasonably know that all grade 3 students who scored below Falls Far Below in Reading were exempted. While it is tempting to report 100% success, the choice for disclosing that academic success is not ours to make. That choice belongs to the parents and students.
4. **Blur the specificity of the data** to reduce the chance of identification. Rather than reporting 23 students were in danger of being retained, say "less than 25", or "between 20-25." For percentages, rather than reporting 43.25% of students participated in a new after-school program, say "43%", or "approximately 45%", or even try "less than 45%."
5. The smaller the group, the higher the risk of disclosure. Depending on the data, and how you are breaking it down, you might need to combine **these** methods to fully ensure the protection of student's identity.

Over the past year, the Department has learned a great deal about how to protect personally identifiable information contained in aggregate data. In order to assist schools and LEAs to meet their obligations under state and federal law, the Department offers the assistance of its Chief Data Officer and Chief Privacy Officer, who can provide technical assistance on how to ensure that aggregate data keeps personally identifiable information confidential. Please reach out to us at datagovernance@azed.gov