



Counsel and Deputy Commissioner for Legal Affairs
Tel. 518-474-6400
Fax 518-474-1940

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Siegel Teitelbaum & Evans, LLP
Attorneys at Law
260 Madison Avenue
22nd Floor
New York, New York 10016

Dear Ms. Evans and Messrs. Siegel and Teitelbaum:

I've been asked to respond to your letter of October 12, 2012, regarding the new Shared Learning Collaborative (SLC) initiative to create shared infrastructure and services that support the delivery of educational data and curriculum resources for New York's educators, students, and their families. Your letter contains a number of factual inaccuracies that may have led to unnecessary fears about how this service will work.

The sole purpose of New York State's participation in SLC is to improve teaching and learning to help ensure every student graduates college and career ready.

SLC is not a "joint venture of the Gates Foundation and Wireless Generation, LLC," as stated in your footnote ii. SLC is a 501(c)(3) not-for-profit organization facilitated by the Council of Chief State School Officers (CCSSO) and organized to support a consortium of states to improve instruction and support college and career readiness in each participating state. The SLC has received initial funding from the Carnegie Corporation and the Bill & Melinda Gates Foundation, both of which are non-profit philanthropic organizations. Participating states include New York, Colorado, Delaware, Georgia, Illinois, Kentucky, North Carolina, Louisiana, and Massachusetts. Wireless Generation is one of numerous vendors selected to develop the initial non-proprietary infrastructure. Other vendors include Applied Minds (for learning map applications); Double Line Partners and Intentional Futures (for educator focus groups and open software applications); and McKinsey, Alvarez and Marsal, and Connecting Education, Leadership, and Technology (CELT) (for consulting and project management activities).

Protecting the security and privacy of student data has been and remains a primary goal of this initiative. Every effort has been made to develop security and confidentiality agreements that protect students' confidentiality. Access to student data by the SLC and its vendors is strictly controlled and limited. The New York State Education Department (SED) executed an agreement with SLC on October 11 that imposes stringent rules for the security of information and the uses of data. The agreement places strict limitations on access to data, consistent with

federal and state laws and guidelines. (The SLC Agreement is posted on SED's Website at <http://usny.nysed.gov/rttt/docs/slc-service-agreement.pdf> and includes, as Exhibit C to Attachment F, a data privacy and security plan that SLC signed with its vendor, Wireless Generation.) As indicated above, Wireless Generation is one of the work-for-hire vendors contracted to help build the system by designing and developing the Shared Learning Infrastructure open license software; Wireless Generation will not provide ongoing data hosting services and will not have ownership or other rights to this non-proprietary system.

SLC is not building a platform for its own independent commercial enterprises. SLC, on behalf of its participating states, will develop an infrastructure and services to provide standardized and accessible data to each participating state's school districts. Initially, school districts will choose certain dashboard providers pursuant to a separate SED procurement. The choice of provider will be solely at the election of each school district; each school district will authorize its vendor to access student data for the sole purpose of providing the contracted services. SLC does not have authority to re-disclose student data for any purpose except with vendors that are involved in building the system or providing ongoing hosting and maintenance responsibilities; all appropriate security and confidentiality agreements, as mandated by federal and state laws, regulations, and guidelines (including FERPA), must be in force. Both SLC and SED are committed to keep student data confidential and have provided strict mandates in their agreement about security and confidentiality.

Many of the issues raised in your letter reflect misapprehended facts or a lack of information because your letter was written without a review of the SLC Agreement.

You contend that SED "has undertaken an unprecedented and troubling disclosure of school records." This is simply not true.

FERPA allows state educational agencies (SEAs) to share data as needed with contractors who are carrying out the obligations of the SEAs. The December 2011 amendments to FERPA, clarified the grounds under which a SEA could share data with a third party, and the SLC Agreement is in complete compliance with the mandates of FERPA. The FERPA regulations specifically authorize states to share student data with private contractors to conduct studies on behalf of states or local educational agencies (LEAs), and the FERPA guidance indicates this can be for purposes of developing, validating or administering tests, administering student aid programs or improving instruction (see <http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf>).

One of the primary purposes of this data system is to provide information to teachers to improve instruction, and also provide access to students and parents to facilitate instruction and learning. In addition, states are permitted to share information with designated representatives for audit, evaluation, compliance or enforcement activities. In both cases, the state must enter a confidentiality agreement to protect the confidentiality of the data. SED's SLC Agreement carefully tracks the mandates of FERPA, and provides multiple protections for maintaining the confidentiality of student data.

A number of your comments appear to be the result of a dissatisfaction with the terms of FERPA and what FERPA permits. We recognize your desire to ensure that children's data remain confidential; SED has taken every step to comply with and operate under both the constraints and the permissions granted by FERPA and applicable laws. In order to provide cost-effective tools to support the implementation of career- and college-ready Common Core standards, SED must obtain and use the services of third-party vendors for providing additional capacity and technical expertise. It would be fiscally imprudent for SED to independently develop, build and maintain a system comparable to that offered by the SLC. At the same time, we are taking every reasonable step to ensure that those services are provided in compliance with law and with agreements that mandate appropriate confidentiality and security.

You claim that SED "has entered into an agreement to disclose student records to a private entity... along with its agents and vendors." These actions are taken solely pursuant to the conditions in FERPA and solely to the extent needed to provide the educational services to SED, including assisting SED with development of the instruction system - all in complete compliance with FERPA. The SLC Agreement includes assurance that SLC will comply with all applicable state laws, and SLC is responsible for the actions of its own vendors.

Again, it is simply untrue that SED "intends to allow [personally identifiable student records] to be used for commercial purposes." Information will not be used or re-disclosed for financial gain or private use by the SLC or any of its vendors. For-profit contractors may provide services to SEAs or school districts that use the SLC's infrastructure when those services are for permissible educational purposes to benefit teachers, students and their parents to improve instruction and learning. School districts often provide student data to for-profit vendors through local contracts in order to receive student information system, scheduling, special education, school lunch, transportation, local assessment, and other educational and management services. However, under the SLC agreement, those vendors are prohibited from using any data for commercial purposes, and strong controls are in place to protect students' confidentiality. In fact, one goal of the SLC is to make strategic investments that will help local school districts receive better services than what they currently receive and at a lower cost (because each district no longer has to pay a duplicative overhead charge for the standardization of their local data to make the data compatible with each product they want to purchase).

Your letter states that the project with SLC has not been communicated to the public, and that parents are not aware that their students' data will be used in providing the services through the SLC. However, there have been at least two major discussions of the SLC and the framework of the planned instructional services system at public Board of Regents meetings, in December 2011 and April 2012 (see meeting Items at <http://www.regents.nysed.gov/meetings/2011Meetings/December2011/1212p12a3.pdf> and <http://www.regents.nysed.gov/meetings/2012Meetings/April2012/412BRA4.pdf>). SED has made significant efforts to inform the public about the SLC initiative, and to provide details about what the system would do and how it would work.

You state that NYSED "must specify what is included within the definition of student records." The student records maintained in SED's existing systems include student

biographical data, enrollment history, attendance information, assessment history, and program participation data. Please see the SED Student Information Repository System page for more information: <http://www.p12.nysed.gov/irs/sirs/>. The exact data that will be available through the SLC is still a work in progress, but a good approximation of the probable final categories can be found in the list of data domains (see Exhibit B to Attachment F of the SLC Agreement). The data anticipated to be made available to the LEAs through the SLC's services are those that are deemed useful in providing and improving instruction and learning.

We agree that any disclosure of student information should have adequate privacy provisions. We are in fact carefully taking all the steps required by FERPA and our own concerns about confidentiality and security of student information to ensure that there are indeed adequate privacy protections. However, we disagree that "consent" is mandated, and we endorse FERPA's recognition that under circumstances such as exist for the SLC project, in order to provide educational benefits for New York's educators, students, and families, disclosure without individual parental consent is appropriate. Again, the data to be maintained through the SLC are data already collected and used by schools and districts -- typically through third-party vendor relationships. What is new here is the creation of the possibility of better applications to support teaching and learning at a lower cost through philanthropic support and multi-state investment. We also disagree with your inference of "wholesale" disclosure. Any data provided to SLC for purposes of this instruction and learning service will be limited to those data that are useful for the purpose. Access to the data will be limited to persons with appropriate need to access the information, such as educators, students, and their families, as authorized primarily by local districts, with stringent rules prohibiting re-disclosure. Disclosure of data will certainly not be "wholesale" or in a manner not carefully controlled and subject to confidentiality and security protections.

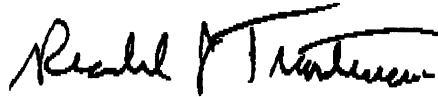
SED and all other SEAs are permitted under FERPA to acquire software and services from third-party suppliers to effectively and efficiently carry out their missions. The data that will be provided to the SLC will be for use by students, their teachers and parents, to improve instruction and learning, and will be relevant to that use and purpose.

With respect to your claim that SED should explain why its EDP requires the SLC to possess FERPA-protected student records, I refer you to the extensive items provided to the Board of Regents and the public in December 2011 and April 2012. The SLC is one of several service providers to carry out the EDP program, and provided a secure, efficient and cost-effective way to carry out one important goal of NYSED: to provide services to improve instruction and learning for New York students. We urge you to share those Items with your constituents, and to encourage them to follow the discussion in any future Regents Items that will be posted on the Board of Regents' website for future meetings.

The details of the SLC Agreement, along with this letter's additional information about the role of SLC in this important project, should assure you that student data will be protected by the strongest possible safeguards. Student information will not be sold, publicly disclosed or used for commercial profit. The goal of New York's participation in SLC is clear: to provide

parents, students and educators tools to help every student graduate from high school ready to succeed in college and careers.

Very truly yours,



Richard J. Trautwein, Esq.
Counsel and Deputy Commissioner
For Legal Affairs

c: Honorable Eric T. Schneiderman, Attorney General
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