April 21, 2016

John C. White
State Superintendent of Education
Louisiana Department of Education
P.O. Box 94064
Baton Rouge, LA 70804-9064

Dear Mr. White:

Thank you for your letter of April 8, 2016 and for Louisiana's concern about protecting student privacy. We previously discussed some of the concerns in your letter, and in this letter I will answer the two main questions you posed, as well as address generally the U.S. Department of Education's (the Department's or ED's) expectations with regard to the application of disclosure avoidance to published data.

Question One: What is the USDOE's guidance when suppressing enrollment data that includes ethnicity, gender, and economic status?

The Family Educational Rights and Privacy Act (FERPA) requires prior written consent from a parent or eligible student before disclosing personally identifiable information (PII) from student education records, unless an exception applies. Under FERPA, educational agencies and institutions reporting or releasing data derived from education records without prior written consent are responsible for not disclosing PII in the reports, whether through single or multiple releases and taking into account other reasonably available information. 34 CFR §99.31(b)(1). In addition, when reporting achievement results under section 1111(h) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (in effect through the 2016–2017 school year), a State is not required to use disaggregated data for one or more subgroups to report achievement results "if the results would reveal personally identifiable information about an individual student." Section 1111(i) of the ESEA, as recently amended by the Every Student Succeeds Act, similarly makes clear that information collected or disseminated under section 1111, including racial, ethnic, and poverty information disaggregated by subgroup on report cards, must be collected and disseminated in a

manner that protects the privacy of individuals consistent with FERPA. Consequently, States, educational agencies and institutions releasing public reports derived from students' education records must perform an analysis of the data and apply statistical disclosure limitation methods to remove any PII from those reports prior to release.

Any release of demographic or performance information derived from students' education records, even in aggregate form, carries some level of risk of disclosure of PII, and no statistical disclosure limitation methodology can completely eliminate that risk. Thus, States, educational agencies and institutions must assess the level of disclosure risk for each proposed data release and evaluate that risk against FERPA's confidentiality standard, which prohibits the release of information that would permit a "reasonable person in the school community...to identify [an individual] with reasonable certainty." 34 CFR §99.3. Some data elements carry a greater risk of reidentification than others. For example, variables relating to socio-economic status, disability, and discipline are accorded stronger protections than other, less sensitive data elements.

Let me assure you that the data published by the National Center for Education Statistics (NCES) in the Common Core of Data (CCD) are published with statistical disclosure limitations; the only data in the CCD to which NCES does not apply disclosure avoidance are basic school and school district enrollment counts at grade level, disaggregated by gender and race/ethnicity. NCES' decision to publish this limited sub-set of the CCD without statistical disclosure limitations reflects its determination that this publication poses a low risk of reidentification given the low sensitivity of the enrollment counts, the fact that these data have been released in this manner for 30 years without complaint, and the substantial 12-18 month time delay between data collection and publication. Other data elements in the CCD, however, receive privacy protections, including the counts of students eligible for FRPL, students with disabilities, and students who are deemed English learners (ELs).

A State educational agency (SEA) publishing State enrollment counts could (but is not required to) determine that basic enrollment counts may be published without disclosure avoidance. This decision should be made based on analysis of the risk of reidentification and any unique State requirements. However, under FERPA, the Individuals with Disabilities Education Act (IDEA), and ESEA, State educational agencies will need to apply statistical disclosure limitations when counts of additional, more sensitive, attributes are included in published data on students, including socio-economic status (such as FRPL), disability status, and EL status, or when student performance, outcomes, or disciplinary data are included. While we leave States some discretion in which method of disclosure avoidance to use, we conduct disclosure avoidance analysis ourselves, and expect States to do the same.

Question Two: What Louisiana data are being released federally and what are the suppression techniques being utilized?

The Department collects data from States and districts in support of a variety of programs administered by different offices within ED. These data, in turn, are released in a variety of formats and contexts,

including reports to Congress, issue papers and briefs, research reports, and data tools and products. Because disclosure avoidance in public data releases is entirely about risk assessment and risk mitigation, and as the selection of a disclosure avoidance methodology can have a major impact on the usability of the resulting data, the Department's Disclosure Review Board evaluates each data release independently, and selects a methodology specifically tailored for that release. The following is a brief summary of the methods used for some of the higher profile data releases made by the Department.

School and Local Educational Agency (LEA)-level Assessment Data:

When publishing the two outcome category school and LEA-level math and language arts assessment data, the Department employs a combination of primary cell suppression for very small subgroups, and blurring of data for medium-sized groups using ranges and top/bottom-coding with varying widths, depending on the size of the reported subgroup.

School and LEA-level Adjusted Cohort Graduation Rate:

When publishing cohort graduation rate data, the Department employs a combination of primary cell suppression for very small subgroup cohorts, and blurring of data for medium-sized cohorts using ranges and top/bottom-coding with varying widths, depending on the size of the reported cohort.

State-level IDEA and Special Education Data:

For IDEA and special education data releases, the Department typically relies on aggregation to the State-level, coupled with primary cell suppression, complementary cell suppression, and/or top/bottom-coding, as necessary, to protect privacy and prevent reidentification of specific individuals.

Civil Rights Data Collection (CRDC):

The public-release version of the Civil Rights Data Collection employs a sophisticated rounding routine to protect privacy and prevent reidentification. Most CRDC data elements are blurred using rounding, while data elements relating to outcome/performance data and those pertaining to IDEA and special education are protected using a combination of bottom-coding and rounding. All rounding routines for the CRDC are applied at the lowest level of subgroup disaggregation, and all row, column, and multidimensional tabular totals are calculated using the rounded values.

The Department values stakeholder input in our decision-making relating to privacy protections for our public data releases. Our "Disclosure Avoidance Lifecycle" explicitly includes solicitation of stakeholder feedback as an iterative process, to be repeated at regular intervals. Most of our data releases are

accompanied by technical documentation that details the specific disclosure limitation methodologies that have been applied to protect privacy, and the ED program offices that release the data regularly consult with their grantees and data users on the efficacy of the methods and their impact on the usability of the data. Furthermore, when ED introduces a new approach to the privacy protections for a particular data product we typically present those proposals in a public forum to inform the education community and to listen to any concerns or questions they may have. We did this most notably in 2013 at the Management Information Systems conference when we unveiled the new methodology for releasing the school-level assessment data. We appreciate your suggestion to further increase State and local input into our disclosure avoidance decision-making, and will raise this as an issue to discuss with the SEA and LEA members of the National Forum on Education Statistics at their next meeting.

I trust the above information will be helpful. Please call me on (202) 453-5587 should you have questions or need additional information.

Sincerely,

Kathleen Styles/mbh

Kathleen M. Styles
Chief Privacy Officer

cc:
Emma Vadehra, Chief of Staff
Dale King, Director, Family Policy Compliance Office
Michael Hawes, Statistical Privacy Advisor
Ross Santy, Director, Administrative Data Division, NCES