

April 26, 2018

The Honorable Betsy DeVos
Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary DeVos,

On behalf of the American Association of Collegiate Registrars and Admissions Officers (AACRAO), I write to respectfully express our concerns with the reorganization of leadership at the Department of Education's Office of the Chief Privacy Officer (OCPO).

AACRAO is a nonprofit association of more than 11,000 higher education admissions and registration professionals who represent approximately 2,600 institutions and agencies in the United States and more than 40 other countries. 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 education records for current and former students, our members are particularly knowledgeable about privacy issues in general, and specifically about information security and privacy requirements of Federal and State laws. Compliance with the Family Educational Rights and Privacy Act (FERPA) has long been a primary area of professional jurisdiction for AACRAO members, who are often the leading FERPA experts on their campuses.

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 Department of Education 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. As such, our members have a vested interest in the organizational developments occurring within the Department.

President Trump's reform plan, "Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce," provides the Department with an opportunity to restore the office designated by the Secretary to administer FERPA from OCPO to the Family Policy Compliance Office (FPCO). FPCO (or its predecessor in name) has overseen the implementation of FERPA since the enactment of the law in 1974. However, prior to the Trump administration taking office, the Obama administration issued a final rule in January 2017 that changed the office that administers FERPA-related issues from not one, but two offices within the Department.

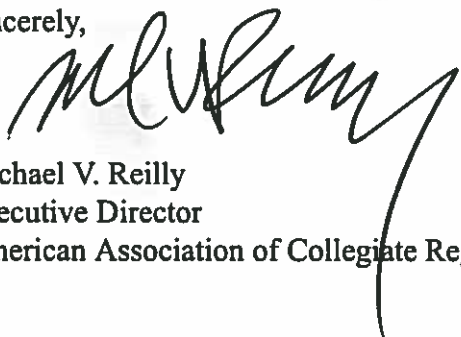
As a result of this change, FPCO now is limited to investigating complaints filed by parents at the K-12 level and students attending colleges and universities, while a newly created division in OCPO handles all requests for technical assistance concerning FERPA. Historically, institutions have worked only with the FPCO on all issues related to FERPA compliance and enforcement. The change of the office responsible for administering FERPA from FPCO to OCPO, as well as creating a new division outside of FPCO, has created a lot of confusion within the higher education community in regards to which “division” has the authority to respond to inquiries as well as requests for technical assistance.

Moreover, it should be noted that the Department issued this change in the Federal Register without seeking public stakeholder input. In fact, the Department waived the need for a notice of proposed rulemaking because the Secretary “determined that proposed regulations are unnecessary and contrary to the public interest.” AACRAO has an interest in what the Department does with regard to FERPA and to FPCO, and would have liked to have had an opportunity to comment on the proposed change.

Finally, there is need to permanently to fill the vacancy of Chief Privacy Officer (CPO) to ensure the Department has a highly qualified individual in place to fulfill the CPO roles and responsibilities as recommended in Section 522 of the Consolidated Appropriations Act of 2005 and to assume primary responsibility for privacy and data protection of personal information on students, parents, and others maintained by the Department. In a time when individual data privacy is such a contentious issue, it is important that the Department fill this position, signaling to the higher education community and the Nation that the Department takes seriously its responsibility to protect the data that the Department maintains on individuals.

AACRAO strongly urges the Department to rescind the January 19, 2017 regulatory changes, restore FPCO and its Director as the office designated to administer FERPA in all aspects and to also fill the CPO vacancy to ensure the individual privacy of data collected and held by the Department.

Sincerely,



Michael V. Reilly
Executive Director

American Association of Collegiate Registrars and Admissions Officers (AACRAO)