



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

June 3, 2014

The Honorable John Lawrence
The Honorable Dan Truitt
The Honorable Will Tallman
The Honorable Stephen Bloom
The Honorable Rob Kauffman

Dear Representatives Lawrence, Truitt, Tallman, Bloom and Kauffman:

Thank you for your letter dated May 12, 2014, by which you have posed a number of questions and made documentary requests concerning information collected by the Department and maintained within the Pennsylvania Information Management System (PIMS). As is reflected in the Department's Student Data Access and Use Policy, the Department is strongly committed to maintaining the confidentiality of student information in PIMS in full compliance with applicable state and federal laws, most notably, the federal Family Educational Rights and Privacy Act of 1974 (FERPA). In consultation with the department's Division of Data Quality, I have attempted to address your questions as they appear in your letter. For ease of reference, your questions are repeated in boldface below. Accompanying this letter is a flash drive containing the documents referenced in this letter. I also note at the outset that because you have referenced the Pennsylvania Core Standards that we have assumed that your PIMS questions relate to primary and secondary student data and not to postsecondary data.

Our understanding is that private student data is not accessible by third parties except with parental consent or under certain exceptions identified in federal law (specifically FERPA). With that in mind we are requesting the following documents:

- 1. Assurance Statements Memorandums of Use, Cooperative Agreements, Memorandums of Understanding, or any executed Written Agreement, Letter of Intent, or other document with any approved service provider that has access to Pennsylvania student personally identifiable information [PII] data that is currently permitted under FERPA and Pennsylvania polices.**
- 2. The name of any approved service provider that has access to one-way data feeds, or subsets of data, in what format is the re-disclosure made, in what capacity are the data feeds made, and for what specific purpose.**

3. The name of the person(s) who signs these Memorandums of Use, Executed Agreements, Assurance Statements.

I concur with your understanding. As stated in the Department's Student Data and Access Policy, the Department will not release or disclose any PII to any third party except as permitted by law. The Department currently utilizes the services of only five third-party "approved service providers" with access to PII. These service providers do not have access to data feeds of PII; rather, they have direct access to PII for the purposes for which they have been engaged by the Department. The service providers are Data Recognition Corporation (DRC), which holds the contracts for the Pennsylvania System of Assessment and the Keystone Exams; Central Susquehanna Intermediate Unit, which holds the contract for the PIMS "help-desk;" SAS Inc., which is contracted for the Department's educator effectiveness program; E-Metric, the vendor for ELL testing; and Penn State, which maintains the PennData special education record system under an agreement with the Department. The applicable contract documents with respect to these providers (showing the signatories to these documents) are included in the accompanying flash drive.

As it relates to [exception number four in the Department's Student Data and Access Policy]:

- 1. What is the definition for "educational official" in Pennsylvania?**
- 2. Which educational officials have accessed PII in connection with an audit or evaluation of a federal or state supported education program? Is the Commonwealth satisfied that the PII involved was handled with due consideration?**
- 3. Please advise on which specific education(al) programs have utilized PII under this section.**

The definition of educational official in Pennsylvania would be those educational officials that are permitted access to PII pursuant to Section 99.31 of the FERPA regulations. To date as it relates to this exception, no educational officials have accessed PII in connection with an audit or evaluation of a federal or state educational program in the Commonwealth except for audit personnel associated with the Pennsylvania Auditor General's annual single audit. PDE is satisfied that the PII involved in the single audit is handled with due consideration.

- 1. Does the Commonwealth or PDE have any contracts, cooperative agreements, MOUs, etc. with Pearson PLC, ACT or Google?**

The Department can only speak for itself and not the Commonwealth as a whole. PDE does have contracts with NCS Pearson related to educator testing. Copies of these contracts are contained in the enclosed flash drive. The Department does not have any contracts with ACT or Google.

2. Is there any other partnership between the Commonwealth/PDE and a third party entity for the development of digital computer adaptive programming or software?

Please clarify what you mean by “digital computer adaptive programming or software.” I am familiar with the concept of “computerized adaptive testing,” but am not sure if that is what you intend to mean.

3. Is Pennsylvania currently using a cloud based repository for student data?

No.

4. Please provide a complete listing of the data elements collected via the PIMs “data dictionary.”

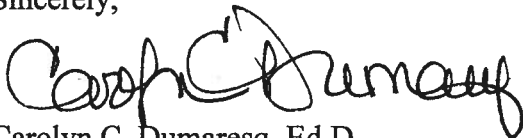
The listing you have requested is included in the accompanying flash drive.

5. It is my understanding that both an “authorized representative” and a “school official” would have access to personally identifiable information (PII) of students in Pennsylvania. Please advise how these terms are defined.

I concur with your understanding. The definition of “authorized representative” is contained in Section 99.3 of the FERPA regulations. Although not specifically defined in FERPA, the Department would be required to define the term “school official” in accordance with the term’s plain meaning and consistently with the requirements of Section 99.31 of the FERPA regulations.

In closing, I hope this information is useful to you. If you would like to arrange a time for our staff to meet to discuss this matter any further, or if the Department can otherwise be of assistance, please contact my office.

Sincerely,



Carolyn C. Dumaresq, Ed.D.
Acting Secretary of Education

Attachment