Federal Family Educational Rights and Privacy Act (FERPA) Compliance for Hawaii Charter Schools
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ISSUE
What are the responsibilities of Hawaii’s Board of Education, the Hawaii State Department of Education (HIDOE) - acting as a State Educational Agency (SEA), the Hawaii State Department of Education - acting as a Local Educational Agency (LEA), the Charter School Commission, and individual charter schools to comply with FERPA and the Protection of Pupil Rights Amendment (PPRA)? Is there a potential role for a third party to play a role for FERPA and Protection of Pupil Rights Amendment (PPRA) with charter schools?

THE FEDERAL PERSPECTIVE
HEPC attended a HIDOE FERPA workshop, reviewed various technical documents, and arranged for a conference call with the U.S. Department of Education’s Privacy Technical Assistance Center (PTAC). PTAC works closely with the Department’s Family Policy Compliance Office (FPCO). The following is a brief summary of information provided by a program analyst at PTAC.

The questions HEPC posed to PTAC were the following:
What is the role of an SEA in ensuring compliance with FERPA?
What is the role of an LEA?
What is the role of individual charter schools in this compliance framework?

The Role of PTAC
PTAC indicated that they work with SEAs and LEAs to provide technical assistance and ensure compliance. PTAC is complaint-driven with respect to noncompliance, and does not require regular compliance reports from SEAs or LEAs. Ultimately, U.S. DOE could withhold federal funding for schools, districts or LEAs if faced with persistent and willful noncompliance, but as a practical matter, this has never happened. Recent administrative rules emphasize the power of U.S. DOE to conduct audits of state and local educational agencies when compliance is called into question.

The Role of the SEA
While the SEA receives federal funding and passes it on to LEAs, districts and schools, it is not always regarded as the entity responsible for compliance. This would depend on State laws, policies, and procedures. Federal information on FERPA sometimes refers to “SEA/LEA” roles and responsibilities, acknowledging multiple state and local legal systems for compliance. In general, the SEA is not charged with primary compliance from a federal perspective. However, the SEA is responsible for ensuring that parents are notified annually of their rights, and when personal data is transmitted to the SEA from schools, districts, LEAs or charters, the SEA is responsible for FERPA compliance. Within the HIDOE, the SEA mandates content and methods of parental notification. Charter schools are advised of this
obligation to transmit parental notifications but it is up to the individual charter schools to comply with this requirement.

The Role of the Local Education Agency - LEA
PTAC works directly with LEAs, which appear to be the fundamental FERPA compliance units for the schools they govern. (In Hawai‘i, the only LEA is our Hawai‘i Department of Education, with jurisdiction over two-hundred and fifty-four (254) public schools, not including the thirty-two (32) charter schools.)

The Role of Charter Schools
PTAC emphasized that state laws vary as to the status of charters and oversight responsibilities. However, for FERPA compliance purposes, PTAC regards charter schools as if they were independent LEAs – even if a charter school or group of schools were not officially designated as LEAs by state law.

FERPA COMPLIANCE RESPONSIBILITIES IN HAWAI‘I

The Hawai‘i Department of Education (HIDOE)
The Hawai‘i Department of Education (HIDOE) has a Data Governance Office, with a focus on protecting personally identifiable information contained in student records, including but not limited to the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA). This office coordinates applications for research in HIDOE schools, and ensures that research protocols have been reviewed and approved by an appropriate Institutional Review Board (IRB). Once the Data Governance Office approves an application, it is up to the applicant/researcher to directly contact the HIDOE schools and receive their cooperation and approval.

If a researcher proposes to gather personal data from both HIDOE and charter schools, the Data Governance Office provides an informed framework for both. From a practical point of view, this office is the repository of FERPA and PPRA compliance information.

The Hawai‘i Charter School Administrative Office (CSAO)
Common practice has been for some research involving charter schools to be approved by the Director. However, the CSAO does not have any dedicated staff for this function, and does not have the capacity to provide the same level of oversight for charters as does the Data Governance Office for HIDOE schools.

THE NEW HAWAI‘I CHARTER SCHOOL LAW
The 2012 Hawai‘i State Legislature passed S.B. 2115 S.D.2 H.D.2 C.D.1 RELATING TO CHARTER SCHOOLS, which became ACT 130. This law created the Public Charter School Commission, which serves as an authorizer. Among its duties under Section 5 (b) are the following:

1. Act as the point of contact between the department and a public charter school it authorizes and be responsible for the administration of all applicable state and federal laws;
2. Be responsible for and ensure compliance of a charter school it authorizes with all applicable state and federal laws, including reporting requirements.

This language would appear to place the responsibility for charter school compliance with FERPA and PPREA squarely with the Commission. However, to the extent that compliance with these laws might “directly and substantially impact any authorizer decision related to the authorization, renewal,
revocation or nonrenewal of the charter school,” the Commission is prohibited from providing “technical support.”

In another section of ACT 130, under definitions, (Section 1), an individual charter school’s “Governing board” has as one of its responsibilities: “(4) Ensures compliance with applicable state and federal laws.”

Future administrative rules or legislative amendments may clarify what could be seen as shared or ambiguous responsibility for compliance with federal laws, or the meaning of “technical assistance.” Technical assistance is essentially what the HiDOE Data Governance Office provides for HiDOE’s schools.

CONCLUSIONS
Hawai’i charter schools are public schools and governed by the Hawai’i State Board of Education, the Charter School Commission, and individual charter governing boards. It may be appropriate to not only clarify responsibilities under FERPA and PPRA, but also identify an entity that is willing and able to provide technical support and advice for researchers. Charters are often seen as having an important mission to include innovation, experimentation, and research. It is likely that as the charter school community of schools grows, more interest will be generated in studying them. It is also likely that the capacity of individual schools to allocate staff and resources for FERP and PPRA compliance will continue to be limited.

SOURCES:
Family Educational Rights and Privacy Act Regulations (FERPA) 34 CFR Part 99
National Center for Educational Statistics, November 2010, Brief 1, NCES 2011-601, Basic Concepts and Definitions for Privacy and Confidentiality in Student Education Records.