

**Appeal Court Reverses District Court:  
Department of Education Must Release CREDO Data to *Research on Reforms***

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The Louisiana First Circuit Court of Appeal reversed the judgment of the East Baton Rouge District Court in the lawsuit [\*Ferguson and Hatfield \(co-founders of Research on Reforms\) vs. the Louisiana Department of Education\*](#). The District Court had ruled that the decoded student data records created by the Department of Education were not public records, thus, the Department did not have to release the data records to Research on Reforms that it had released to CREDO. But, a three judge panel of the First Circuit Court of Appeal unanimously reversed the District Court, ruling that the decoded student data records are public records under the Louisiana Public Records Act.

In the past, the Louisiana Department of Education had released decoded student data records to Research on Reforms, but then stopped releasing the records in 2010, while continuing to release records to CREDO for years to follow. With the records that Research on Reforms did have, beginning with the 2005 state takeover year through the 2009 year, it analyzed and reported on outcomes that were often in contrast with outcomes reported by the Department. Then, beginning in 2010, the Department started denying Research on Reforms' requests for the decoded student records data, while still supplying records for subsequent years to CREDO. Thus, Research on Reforms, through its co-founders, Barbara Ferguson and Charles Hatfield, sued the Department of Education in order to obtain the records.

The importance of decoded student records data, or raw data, cannot be understated. It is the data that researchers use to determine outcomes. Researchers conduct various analyses, such as multiple regression analyses, to determine the effectiveness, or ineffectiveness, of certain variables, such as programs or governance models. While the Department of Education always conducts its own analyses, independent researchers conduct independent analyses. Sometimes independent findings agree with the Department's findings, and sometimes they do not. But, it is the collective body of research conducted by numerous researchers over many years that statistically warrants conclusions. Independent researchers

must have access to raw data to conduct analyses. Thus, when the Department denies requests for raw data, or selects those to whom it will release raw data, the Department becomes a monopoly whose self-pronouncements can never be verified.

Before the state takeover, the Department of Education controlled the data used to analyze school districts, but it did not operate a school district. Now, it operates a school district, the [Recovery School District](#). Thus, for the first time in the history of Louisiana, the Department both controls the data used to evaluate each school district, and it operates a school district. When the Department was not in the business of operating a school district, it freely released the decoded data for the evaluation of the school districts. And, when it first began operating a school district in 2005<sup>i</sup>, it continued to release the decoded data. But, when Research on Reforms began to report findings that were inconsistent with the Department's assessments of its own district, the Department began to deny access to the data. By doing this, the Department was able to control the evaluation of its own district. Now, the Court of Appeal, by ruling that the decoded student data records are public records, paves the way again for independent researchers to evaluate the outcomes of the Department's school district.

Examples of outcomes that differed from the Department's assessment of the outcomes of its district, or that provided a different perspective, can be found on the [Research on Reforms](#) website. In one article, "[State Takeover Not Working for New Orleans High Schools](#)," Research on Reforms analyzed test scores of high school students in the state takeover schools, and reported findings that differed from the Department. The report analyzed the Graduate Exit Exam (GEE) test scores in the four subject areas for the eight high schools that were being operated by the Department's Recovery School District (RSD) in New Orleans for two full years following the takeover, not including the year of the takeover. The analysis, differing from the Department's assessment, concluded that none of the eight RSD high schools had improved test scores in all subject areas, and that, in three high schools, there was a decrease in the number of students obtaining the proficiency level. In subsequent articles, Research on Reforms reported on the increasing number of expulsions and dropouts in the RSD high schools, and opined that the RSD should not be allowed to alter expulsion policies in order to expel greater

numbers of students for the purpose of improving a high school's achievement standing.<sup>ii</sup>

The Department of Education began to deny Research on Reforms' requests for decoded student records data in 2010, stating that this would violate the Family Educational Rights and Privacy Act (FERPA)<sup>iii</sup>, which is a federal law about parents' rights. Parents have privacy rights regarding the personally identifiable information that state education agencies collect on their children. FERPA prohibits state education agencies from releasing personally identifiable student information without written parental consent. However, none of the requests from independent researchers are about personally identifiable information. The requests are about decoded unidentifiable information. [FERPA](#) allows state education agencies to decode the personally identifiable information so that it is no longer personally identifiable, and to release the decoded information for research purposes. FERPA directs state education agencies on the process for decoding the information.

All state education agencies collect personally identifiable student information, such as a student's ethnicity, age, grade level and socio-economic status. FERPA does not require agencies to take the personally identifiable student information and decode the information in order to create databases of unidentifiable student information for research. However, FERPA does not prohibit state agencies from creating such databases. In the normal course of its work, a state education agency collects the information, but does not create databases of unidentifiable information. For a state education agency to create a database of unidentifiable student information, the agency would have to create a "new document;" and, under the Louisiana Public Records Act<sup>iv</sup>, a state agency is not required to create a "new document" in order to satisfy a public records request. Thus, the Louisiana Department of Education also argued that the Public Records Act did not require it to create a "new document" of decoded student records in response to Research on Reforms' request.

And, the Department was correct. In accordance with the Public Records Act, it could decide whether it would or would not create a "new document" of unidentifiable student records when so requested. It denied Research on Reforms'

request. But, it did not deny CREDO's request, and it created a "new document," a database of decoded student records. However, once a "new document" is created by a public agency using public funds that "new document" becomes a public record and is subject to release in accordance with the Louisiana Public Records Act. Thus, while the Department refused to create a decoded student records document for Research on Reforms, once the Department created such a document for whomever, that document became a public record. Now, the Department of Education's argument that it would have to create a "new document" to satisfy Research on Reforms' request is moot. The "new document" has already been created by the Department for CREDO. Thus, the Court of Appeal reversed the District Court and now the decoded records are to be released to Research on Reforms.

Research on Reforms will now be able to continue its work in analyzing the outcomes of the state takeover of the New Orleans public schools. Research on Reforms neither supports nor opposes the massive charter school initiative that resulted from the takeover; nor does it support the status quo of the past. The work of Research on Reforms is consistent with the [Louisiana legislation that created this experiment](#) in the New Orleans public schools, which stated that the experiment must only be allowed if the "experiment results are analyzed, with the positive results repeated or replicated, and the negative results identified and eliminated."<sup>v</sup> When Research on Reforms did have access to the data during the first few years following the takeover, it found that the only new strategy to improve student achievement developed by charter schools was to selectively admit and retain students. This strategy was able to be implemented because the Department granted charter schools authority to establish entrance criteria and to alter expulsion policies, making it easier for the schools to expel at-risk children and youth. This cannot be considered an innovative strategy to be replicated. With access now to data that had been denied, Research on Reforms will be able to continue its work, hopefully, being able to identify innovative strategies that improve the achievement of urban children and youth.

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## Endnotes:

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<sup>i</sup> Following Hurricane Katrina in 2005, state legislation was introduced (Act 35) that allowed additional schools to be defined as “failing.” Altogether, 107 “failing” schools were placed into the Department of Education’s Recovery School District, leaving 17 schools to be operated by the Orleans Parish School Board.

<sup>ii</sup> See Research on Reforms website: “New Orleans RSD Charter Schools Can Expel Unwanted Students.”

<sup>iii</sup> FERPA at 20 U.S.C. 1232 g, and its Implementing Regulations at 34 C.F.R. 99.1 *et seq.*

<sup>iv</sup> La. R.S. 44:1 *et seq.*

<sup>v</sup> La. R.S. 17:3972(A)