

Court Rules that Louisiana Department of Education Has Discretion to Select Its Evaluators

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Research on Reforms, Inc. sued the Louisiana Department of Education (LDOE) to obtain the raw data that is used by researchers to evaluate education initiatives, such as, the charter school reforms. Research on Reforms had first requested the information from LDOE, but was denied. CREDO had requested the information from LDOE and its request was granted. In its lawsuit, Research on Reforms alleged violation of the Louisiana Public Records Act. After nearly a year of litigation, the 19th Judicial District Court in Baton Rouge ruled against Research on Reforms, stating that the raw data was not a public record and that the LDOE has the discretion to select those researchers to whom it will release the raw data. Selecting its researchers is the same as selecting its evaluators. Thus, the evaluation of charter schools or any other state education initiatives must be viewed with suspicion because of this sweetheart arrangement between the LDOE and its selected researchers.

The only way to determine whether or not the Louisiana Department of Education's reforms and initiatives are effective is through educational research. And, the only way to conduct educational research is through the use of de-identified student level data, which is referred to herein as raw data. When the LDOE gets to select to whom to distribute this raw data, then the LDOE is, in effect, skewing the research.

However, the 19th Judicial District Court recently ruled that the LDOE gets to do exactly that.ⁱ The Court ruled that the raw data is not subject to the Public Records Act, which means that researchers cannot access the raw data through a Public Records request. Rather, according to the Court, the release of the raw data is controlled by the LDOE, thus, allowing only selected researchers to report on the effectiveness of the state's education reforms, *e.g.*, the charter school movement.

Lawsuit filed by Research on Reforms, Inc.

The lawsuit filed by Research on Reforms, Inc. against the Louisiana Department of Education (LDOE) asserted violation of Louisiana's Public Records Act.ⁱⁱ One of the greatest safeguards of the public good is Louisiana's Public Records Act.ⁱⁱⁱ Under this law, state agencies cannot hide information. However, when an agency does not want to disclose the requested information, it generally asserts a challenge as to whether or not the requested information fits the definition of a "public record."

What caused Research on Reforms to file the lawsuit was the LDOE's denial of its request for raw data, *i.e.*, de-identified student level records. Research on Reforms was requesting records that had already been produced by LDOE and released to other researchers. For example, LDOE had released to CREDO (Center for Research on Education Outcomes) the exact same records requested by Research on Reforms. Because LDOE denied Research on Reforms' request, the lawsuit was filed, asserting violation of Louisiana's Public Records Act.

Thus, the issue before the Court was whether the raw data, *i.e.*, the de-identified student level records, which LDOE had previously released to CREDO^{iv}, were public records or not. If they were determined to be public records, then the LDOE would be required to release them to Research on Reforms. However, the Court found in favor of LDOE and ruled that the records did not fall within the definition of a "public record." Thus, the LDOE has no obligation to release them to researchers who so request, meaning that the LDOE can select its researchers, and, ultimately, skew the outcomes.

What are de-identified student level records?

De-identified student level records are the raw data that is used by researchers to determine the effectiveness, or lack thereof, of educational reforms, such as, the charter school movement.

De-identified student level records originate in the LDOE's Student Information System (SIS), which is a data file containing information on all public school students.^v Examples of the types of data within the Student Information System are data relating to enrollment, attendance, withdrawals, grade levels, student ages, suspensions, and expulsions. The data on each public school student is collected at the school site level, wherein each school is responsible for delegating a staff member to input the data. The database contains a personally identifiable code number for each student. When researchers, such as CREDO and Research on Reforms, request the student data, the request asks for the personally identifiable information to be removed through the assignment of random identifiers. Thus, the requested data is referred to as "de-identified student level data," or "de-identified student level records."

Why are de-identified student records important?

The only persons who would have any interest in de-identified student records are researchers. The de-identified student data files are massive and must be aggregated in order to arrive at statistically significant findings. De-identified student records are critical to researchers who conduct longitudinal studies on education reforms. Using the records, researchers can answer questions with regard to the effectiveness, or lack thereof, of school reforms initiatives, such as the charter school movement.

Other examples include using the de-identified student records to determine if students who enter schools remain in those schools, and to determine the number of years of their enrollment. Other uses include determining the numbers of suspensions and expulsions from schools, the whereabouts of students who have been removed from schools, the grade progress of students, and the dropout and graduation rates.

Why did the LDOE allege that FERPA gives them the discretion to determine to whom to release the student level records?

In attempting to avoid the Public Records Act issue, the LDOE attempted to base its case upon non-release of the data by citing FERPA, the Family Educational Rights and Privacy Act.^{vi} Basically, FERPA is federal law governing the privacy of personally identifiable information. The law specifies that personally identifiable student information cannot be released without the consent of the parent. FERPA goes to great lengths to protect the privacy of information citing specific examples for when the personally identifiable information can be released without consent.

FERPA is a privacy act that focuses on personally identifiable information, not the de-identified information that is being requested by Research on Reforms. The entire massive federal act only uses half of a page to discuss de-identified student records. That half of a page states that de-identified student records “may be released to researchers.”^{vii} There is no one else who would know how to use de-identified student records except researchers. However, LDOE used this to assert that FERPA, not the Public Records Act, controlled the release of de-identified records, and the Court agreed.

Court concludes that De-Identified Student Level Records Are Not Public Records

The Court ruled that the de-identified student level records did not fall within the definition of a public record; hence, the Public Records Act was not controlling and the LDOE was under no obligation to release the records to Research on Reforms.

The Court recognized that the same de-identified student level records were released by LDOE to other researchers including, Mathematica Policy Research, Inc, and RMC Research Corporation.^{viii} The Court concluded that LDOE has this discretion to select its researchers, thus, to select its evaluators.

In Conclusion

The Louisiana Department of Education’s assertion that it can select the researchers to whom to release its raw data has been affirmed by the Court. According to the 19th Judicial District Court in Baton Rouge, the raw de-identified student level data is not subject to the Public Records Act. Thus, the LDOE gets to select to whom to release the data, in effect, selecting

those who will evaluate its programs. It is an anomaly to think that Louisiana will ever learn how to improve schools through selective research.

ⁱ Dr. Barbara Ferguson and Charles Hatfield vs. Louisiana Department of Education, 19th Judicial District Court for the Parish of East Baton Rouge; Section 23, Judge William A. Morvant, Case No. C616296. Final Hearing on Sept. 30, 2013

ⁱⁱ *Ibid.*

ⁱⁱⁱ Louisiana Public Records Act, La. R.S. 44:1 *et seq.*

^{iv} CREDO: Stanford University, Center for Research on Education Outcomes

^v See LA Dept of Education website for information about the Student Information System.

^{vi} FERPA: Family Educational Rights and Privacy Act (FERPA) (20 U.S.C 12§1232g; 34 CFR Part 99

^{vii} CFR99.31 (b)(2): De-identified records and information. “An educational agency. . may release de-identified student level data from education records for the purpose of education research. . .”

^{viii} Raw de-identified data released by the LDOE to other entities include Education Innovation Laboratory at Harvard University and RAND Corporation.