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## Clash Over Student Privacy

February 1, 2010

WASHINGTON -- The U.S. Education Department has fired the top federal official charged with protecting student privacy, in what the dismissed official says was a conflict with the agency's political leaders over their zeal to encourage the collection of data about students' academic performance.

Paul Gammill says he was physically escorted out of the department's offices on a Friday morning last month after he refused to resign as director of the agency's [Family Policy Compliance Office](#). Administration officials said that "[p]rivacy laws require us to keep certain employment matters confidential, so we cannot comment on Mr. Gammill."

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But Gammill, not so encumbered, maintains that he was dismissed because, on several occasions, he argued in internal meetings and documents that the department's approach to prodding states to expand their longitudinal student data systems violated the [Family Educational Rights and Privacy Act](#), which protects the privacy of students' educational records.

In arguing, among other things, that states would violate the privacy law by sharing their students' educational records with state labor agencies, as the federal economic stimulus law exhorts them to do, Gammill angered his superiors at the department to the point that they fired him despite his having only positive reviews previously, he said.

"If you do what the recovery act says, you're going to violate FERPA," Gammill says. "While I'm an advocate of data systems, it's my job to administer FERPA, and they didn't like what I had to say."

A department spokesman said its officials could not respond directly to Gammill's charges, and would say only this:

"The Department of Education does not require states to violate FERPA under ARRA, or any other grant program. The department takes our responsibility to protect student privacy very seriously. We will continue to work to ensure that states, school districts, institutions of higher education and other education agencies protect privacy and keep student information safe."

### 'Present From the Bush Administration'

Gammill seems an unlikely martyr to the cause of the fealty of federal student privacy laws. He was appointed to head the Family Policy Compliance Office in the waning days of the Bush administration -- those who chose him were gone by the time he took office in January 2009, he notes -- and some college officials viewed him suspiciously because of that pedigree.

The Bush administration, especially under Education Secretary Margaret Spellings, was criticized in many quarters of higher education for having what they perceived as the administration's single-minded pursuit of data



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for accountability purposes, and the [Education Department's holy grail](#) was a federal "unit records" system for higher education that would provide a link to and from other databases -- with the goal of tracking students from kindergarten into the work force, so that policy makers and researchers had better data with which to assess the productivity and quality of programs, institutions, states and other entities in producing graduates and furthering educational progress.

Higher education critics joined with some conservatives in Congress to beat back an Education Department proposal to create such a system, with the opposition grounded in privacy concerns (though many college officials disliked it because they opposed the additional government oversight and scrutiny, too). But formally bottled up on that front, the administration pushed the same broad goals by encouraging states to create (or in some cases enhance) their own student data systems.

Numerous advocacy groups, like the National Center for Higher Education Management Systems and the Data Quality Campaign, have envisioned the state data systems as the foundation for a network in which the state databases are stitched together to create a de facto national records system.

As a researcher who worked for public school systems and other organizations on data warehousing and quality assurance, Gammill came into his job at the Education Department, he says, sympathetic to the idea that policy makers and researchers alike need better data than they have now to improve educational outcomes.

"I know these can be very useful," he says of longitudinal data systems that track student progress through the educational pipeline. Better data on student outcomes would "take away a lot of the problems we have now, where we seem to operate by fad," embracing instructional or curricular approaches without full confidence, based on data, of their efficacy. And while privacy laws sometimes crimp the work of educational researchers, they "don't need to get in the way of research -- there are exceptions to the law that researchers can work within, and you need a balance."

Gammill's background as a accountability-focused researcher made privacy advocates who opposed the Bush administration's student records system suspicious, says Barmak Nassirian, associate executive director of the American Association of Collegiate Registrars and Admission Officers. His original perception of Gammill's appointment, Nassirian says, was as a "going-away present from the Bush administration" who would be no friend of student privacy.

**'Why Don't We Just Be Honest?'**

Despite his belief in the limitations of FERPA, Gammill asserts, his job at the Family Policy Compliance Office required him to defend the federal privacy law. And just two weeks into his time at the department, he began having to defend the law, he says -- against attacks by his own colleagues in the department.

A draft that Gammill says he reviewed in mid-February 2009 of legislation that would become the American Recovery and Reinvestment Act, the federal stimulus law, contained provisions that would allow states to use hundreds of millions of dollars to build or expand student data systems.

The problem in his eyes, though, was that the provisions, as written, would run headlong into provisions of FERPA designed to prevent the use of individual students' educational records in ways that would violate their privacy. Specifically, he argued, the requirement that states link their postsecondary data systems to those of state work force agencies violates the federal privacy law as it is currently written.

Gammill believes that the administration and Congress could have taken steps in the drafting of the economic recovery law to avoid the conflicts

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he saw with the privacy law, and says he suggested such changes (and would have favored them) in internal discussions last winter. (Because department officials declined to comment on Gammill's case, this article largely reflects his perspective on what happens.)

With that and a "host of other things that are problematic," Gammill asserts, department officials said, "Can't we just not enforce FERPA?" His reply: "You can't do it without *announcing* that you're going to do it" - - which the administration and Congress could have found a way to do by inserting language into the stimulus legislation, he says.

More philosophically, he also suggested in internal meetings that the administration be more forthright about its approach to data systems, Gammill says. Roadblocked in its attempts to create a truly federal unit records system, Gammill alleges, the administration was throwing its weight (and money) behind building statewide data systems as an end-around the Congressional ban on a federal system.

"Why don't we just be honest and tell people what we're doing?" he says he asked his colleagues in departmental meetings.

His analysis of the illegality of the recovery law provisions and his arguments for a more forthright approach to the data systems did not go over well, Gammill alleges, especially with his boss, Carmel Martin, who was a senior education aide to Sen. Edward M. Kennedy before joining the Obama administration as assistant secretary for planning, evaluation and policy development.

Gammill recalls specifically criticizing one sentence in the stimulus legislation as "silly" -- and then having Martin tell him that she had written the sentence "with my own little pen on the Senate floor" while on Kennedy's staff.

"Not a good career move," he acknowledges.

But Gammill says he is troubled by the idea that, as he portrays it, critical comments made in internal meetings were seen as somehow disloyal or inappropriate. "You should be able to have the honesty to say [things like] that within your own institution," he says. "Why wouldn't people want to hear honest assessments of, 'Here's where I see some problems for you'? You shouldn't have a fear of reprisal to make those kind of comments."

"We were doing what I thought was our job -- pointing out problems and proposing potential solutions to the problems."

Several weeks ago, Martin called Gammill into a meeting, he says, and told him that his "performance wasn't satisfactory" and that he would be let go. Gammill says Martin gave him a memo that described his shortcomings and told him that if he signed it, he would be allowed to resign. If not, he would be fired immediately.

The memo, he alleges, discussed issues that had never come up in his performance reviews -- which he described as "nothing but good" -- and he refused to sign it. "It said things I had done which I had not done, and would have had me agree that I had fallen short" of my job, he says.

On Friday, January 15, Gammill alleges, officials escorted him out of the department's headquarters on Maryland Avenue.

#### **The Broader Implications**

Nassirian, of the registrars' group, has never met Gammill, and says he and the former department official would probably see eye to eye on few education policy questions.

But Gammill's personal situation aside, Nassirian argues, his ouster from the Education Department suggests several potential policy concerns. The first is what he describes as the "problematic" shift of the Family Policy Compliance Office that Gammill oversaw from the department's Office of Management to the policy office, which "really a research and

policy office," Nassirian says. (The shift of this office occurred in March 2008, during the Bush administration, a department spokesman says.)

"It's not an obvious place to put the chief privacy officer for the department, since research [programs] typically have cared very little about people's privacy.... It's a structural shift that we think gave short shrift to privacy concerns, by putting privacy in the hands of people with contrary mandates." (Note: Department officials point out that the head of the Family Policy Compliance Office is not the agency's chief privacy officer; that is another position.)

Given Gammill's research background and his predisposition to believe in the limitations of student privacy, "it is very troubling that someone who's already as amenable to doing what the administration wants ends up being dismissed, perhaps because he insisted on following the black letter of federal law," Nassirian says.

As Gammill tells it, Nassirian says, he proposed that the administration be more honest about its promotion of student data systems "in pursuit of its accountability efforts."

Gammill, Nassirian says, was essentially arguing that "if you have accountability arguments that mandate revisions to privacy laws, let's revise the privacy laws -- take the case to Capitol Hill, and get members of Congress to object or endorse them. Don't unilaterally change them through administrative action."

**Next for Gammill**

Beyond the statement they issued about taking student privacy seriously, administration officials declined to respond to Gammill's assertions about their actions and treatment of him.

Gammill hopes to give them another chance to respond -- in a legal proceeding. He says he is seeking an administrative review of his dismissal, and is looking for a lawyer to represent him.

"You shouldn't get punished," he says, "for doing your job."

(Note: This article has been updated to add clarifications and make corrections based on information provided by the Education Department.)

— **Doug Lederman**

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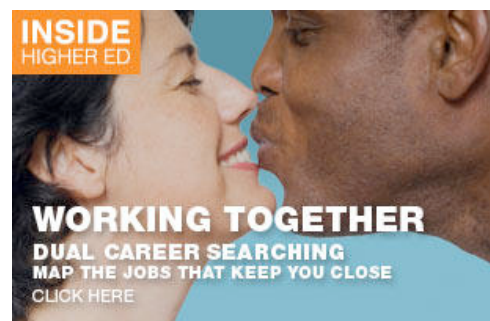
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### Comments on **Clash Over Student Privacy**

**Out of control**

Posted by **Trace Urdan** on February 1, 2010 at 10:30am EST

This Department of Education is engaged in an enormous land grab, asserting its right to institute policy above and around Congress. Shielded by the sympathetic George Miller and the clueless Tom Harkin, as well as the distractions of the Health Care bill, USDOE is moving aggressively forward without any check whatsoever. Though the Bush administration took liberties in other areas, its general ambivalence about the Federal role in education policy kept it circumscribed in this realm. The Obama administration feels no such compunction. I'm grateful to the attentive editors of IHE and

I hope the OIG is paying attention.

### Interesting Twist

**Posted by Jed , Chair/Mathematics at University of Florida on February 1, 2010 at 11:00am EST**

At UF several administrators have been removed for failure to comply with FERPA. It will be interesting to see how this plays out.

**Posted by Joe on February 1, 2010 at 11:45am EST**

I was personally a fan of the unit record level idea from the first time it was proposed. I think it is silly that we don't have a comprehensive way to track student outcomes across institutions. I don't think the FERPA was ever intended to prevent that kind of legitimate research. In fact, as I read the law, section 99.35 specifically allows for the creation of unit level databases at the state and/or federal level.

I do agree that the congress should explicitly require this system to be set up. What they are doing now DOES have the appearance of using a backdoor method and there are risks with that kind of piecemeal approach.

### The right approach

**Posted by Duncan on February 1, 2010 at 11:45am EST**

I like to give my praise to Mr. Gammill. I am coming from the similar data/research background and had done some data crossing/linking works.

Like Mr. Gammill, I understand what a longitudinal database can do and we all know there are gray areas. But to do it right, we need transparency.

On the other hand, I don't know if building a longitudinal database THE right way to improve the education. It sure will protect my and other researches' jobs, but I still not sure it is THE way to improve the education.

**Posted by Joe on February 1, 2010 at 12:00pm EST**

I could be reading it incorrectly (I'm not a lawyer) but section 99.35 seems to specifically allow exactly the kind of thing that Mr. Gammill is objecting to.

For my part I think it is absurd that the feds know pretty much everything about a student within an institution but knows next to nothing about a student across institutions. This disconnect makes it very difficult to track outcomes. This is particularly true as more and more students are attending multiple colleges in their degree path.

However, this does seem like a backdoor way around the Congress' rejection of a federal unit level record system. It would be nice if the congress could just go ahead and authorize it. The feds already know virtually everything about students WITHIN a college/university (particularly those that apply for financial aid) but they know almost nothing about students ACROSS universities. This is a foolish situation that hampers research on outcomes and maintaining it for the "illusion" of privacy isn't helping anyone.

### What's the policy outcome?

**Posted by justaguy , parent & taxpayer on February 1, 2010 at 2:00pm EST**

I think there will be a lot more heard about this episode. Thanks to Mr. Lederman for a most thorough and informative article. Mr. Gammill has undoubtedly been replaced by someone more "flexible." The question that needs to be answered is, has OPEPD gone ahead and granted approval to the expansion of longitudinal student data systems in possible contravention of FERPA requirements? DOE should be able to answer this question without breaching any confidentiality requirements regarding Mr. Gammill.

**The better way****Posted by dataguru on February 2, 2010 at 6:15am EST**

The National Student Clearinghouse performs longitudinal studies with outcome data for all 50 states already. They are a private entity and therefore the data still belongs to the schools, districts, states and individual institutions (both private and public) and not the government, which is what will happen in a federal unit level system. As far as I can tell they are FERPA compliant in every way. Get smart, read their website. We are spending hundreds of millions of dollars reinventing the wheel, when the national solution is potentially staring at us, right in the face.

**Congress out of control****Posted by Craigie on February 2, 2010 at 7:45am EST**

The special interests which have benefited from Congress' micromanagement of the Higher Ed Act over the past few decades have been spoiled. Typically with federal programs, the programs are authorized, then Congress backs out for a few years and lets the agency have almost complete control of program implementation and administration until the programs come up for review/renewal. Instead, for the HEA, the authorizing committees have taken advantage of (or actually fostered) a weak agency model with continual micromanagement of the HEA. There are even whole areas of the HEA, such as 'professional judgment,' which Congress has actually prohibited the implementing agency from explaining, interpreting or fleshing out in any way -- thus allowing potential fraud, waste, abuse, mismanagement, and, at the very least, inconsistency, to occur at schools across the nation. With a more powerful agency, these Congressional actions would possibly be considered Chadha violations. With DoEd, however, the legislative micromanagement is at the behest of Congress' lobbyist overlords, such as America's postsecondary education institutions and their "associations." Sometimes, after the seeing that the potential impact years later is not what they had anticipated, the lobbyists (and their supporters in Congress) have actually prevented implementation of legislative provisions originally supported by the lobbyists.

Each nation's central education agency is expected to develop, prepare and disclose national educational metrics. Clearly there are those who are afraid of the results and the reaction of the national and international community to those results. Yes, it might force changes to the existing paradigm in that Americans know little about postsecondary educational institutions and their quality, results and costs. Such inherently governmental responsibilities cannot be outsourced to the 'clearinghouse,' though.

**"Turnabout is fair play...hey wait a minute..."****Posted by Bob on February 3, 2010 at 1:15pm EST**

When Margaret Spellings got her long due comeuppance for trying the "end run" approach...as a democrat I applauded.

Now, we Democrats are doing the same thing to Mr. Gammill...even though he is agreeing, but simply asking for it to be done under the light of day.

Sorry team, I can't support this move...or Mr. Gammill's termination.

What is sauce for the goose...

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