

EYE ON ED

Episode 1 - The OIG's Audit of the Department's Processing of Family Education Rights and Privacy Act (FERPA) Complaints

[Stephanie Bloom] Hi, I'm Stephanie Bloom with Eye on ED. Today I'm here with Ruth Dunlop, senior auditor with the U.S. Department of Education Office of Inspector General. Ruth joins Eye on ED to talk about a recent audit involving the Family Educational Rights and Privacy Act, commonly referred to as FERPA. Ruth thanks for joining us.

[Ruth Dunlop] Glad to be here.

[Stephanie Bloom] Privacy of personal information is such an important issue, and is increasingly in the public eye as more and more entities are collecting, and in some cases misusing, this information. How does FERPA fit into the privacy landscape?

[Ruth Dunlop] Well, FERPA is important because it grants rights and protections to students related to the personal information in their education records. Schools and educational agencies, like school districts and State departments of education, collect and maintain a lot of information about their students – everything from their grades, disciplinary history, and financial aid records, to sensitive medical information. And all of that information can have a big impact on students if it's incorrect, or if it's inappropriately disclosed to the wrong people.

FERPA allows students to review the records that their school is keeping about them, and also request that the school correct information that the student believes is not accurate. FERPA also protects student privacy by limiting when the school is allowed to disclose certain student information to other parties.

[Stephanie Bloom] Ruth, it sounds like FERPA plays a big role in protecting student information.

[Ruth Dunlop] Absolutely, and FERPA violations can have big consequences for students. For example, if the information in your education record is incorrect, it could affect your ability to graduate, get a job, or qualify for other opportunities. And if the school discloses your personal information to people who shouldn't have it, that can cause all sorts of problems. Students have said that they've been bullied, harassed, retaliated against, or that they've lost their jobs due to inappropriate disclosure of information in their education records.

[Stephanie Bloom] What is the role of the U.S. Department of Education as it relates to FERPA?

[Ruth Dunlop] Students can file a complaint with the Department if they believe their FERPA rights have been violated. And the Department is responsible for processing and investigating those complaints. The Department also provides technical assistance to the education community to help schools comply with FERPA requirements.

[Stephanie Bloom] Can you tell me what your audit looked at?

[Ruth Dunlop] We looked at the Department's processes for reviewing and resolving FERPA complaints. Specifically, we evaluated whether the Department had implemented controls to ensure that it was handling complaints in a timely and effective manner. And by "controls" we mean the mechanisms that management puts in place to ensure that activities are carried out efficiently, effectively, and as required by law or regulation. Weak controls leave any process vulnerable to mismanagement – or worse, to fraud, waste, or other abuse.

[Stephanie Bloom] And what did you find?

[Ruth Dunlop] We found that the Department was not resolving complaints timely, and in fact, had a substantial backlog of complaints waiting to be investigated. We also found that the Department had control weaknesses that undermined both the timeliness and the effectiveness of the process.

[Stephanie Bloom] Can you tell me more about the backlog?

[Ruth Dunlop] Sure, the Department has had a complaint investigation backlog since the 1990s or earlier. And officials thought they were about 2 years behind on complaint investigations, but it appeared to us that the backlog was worse than that.

[Stephanie Bloom] Why were they so far behind in processing complaints?

[Ruth Dunlop] There were a variety of reasons, but the biggest factor was a lack of resources. The office that processed complaints had more work to do than it could do with the available staff. We found that the Department had recently hired additional personnel to work on FERPA issues, but it assigned some of the new staff to do FERPA work that was unrelated to processing complaints. So the Department didn't prioritize reducing the backlog even though complaint resolution is the only FERPA activity that the Department is required by law to perform.

[Stephanie Bloom] So the biggest factor was not enough staff working on complaints. What were the other factors that contributed to the backlog?

[Ruth Dunlop] We found that the Department had put some complaints into an indefinite inactive status. Officials told us that these complaints related to policy "gray areas," which refers to areas where the application of FERPA requirements was unclear or hadn't been resolved

[Stephanie Bloom] You also mentioned that you found control weaknesses. Can you tell us a little more about that?

[Ruth Dunlop] Sure. We found that the Department was missing key controls over many aspects of the complaint process. One significant control weakness was that the Department didn't have an adequate tracking system for complaints. They didn't know how many individual complaints were coming in or where they were in the resolution process. As a result, the Department didn't have reliable data to oversee its performance.

We also found that the Department didn't prioritize the resolution of the most significant complaints. For example, the Department received a complaint alleging that a school was requiring all of its students to waive their FERPA rights as a condition of enrollment. And this complaint affected the privacy rights of thousands of students, but the Department didn't prioritize its investigation, which took over 5 years to complete.

[Stephanie Bloom] Ruth, I think a big question our listeners may have is how are students and families affected by the backlog and the other issues you found?

[Ruth Dunlop] Well, as we discussed earlier, FERPA violations can have a big impact on students. For example, violations could lead to bullying or affect students' ability to graduate or get a job. Students rely on the Department to take timely action to resolve their complaints. We found that some students and families had to wait years before hearing anything from the Department about their complaints. Some people actually contacted their members of Congress or the Office of the Secretary to complain about the Department's lack of action.

[Stephanie Bloom] What should the Department do to address the issues you identified?

[Ruth Dunlop] Safeguarding student privacy needs to be a high priority and the Department can and should do better. We made 8 recommendations to correct the key weaknesses that we identified. Our recommendations included allocating sufficient resources to the Department office that is responsible for resolving complaints, implementing an effective complaint tracking system, and resolving the key policy questions that interfere with investigating complaints.

[Stephanie Bloom] Did the Department agree with the audit results?

[Ruth Dunlop] Yes, they agreed with our finding and with all of our recommendations. In response to our report, the Department described actions it has taken, or plans to take, for each recommendation. For example, Department officials told us that they have assigned additional staff to help reduce, and eventually eliminate, the complaint backlog. They also noted that they've started improving their current tracking systems while working to implement a new, long-term solution.

And you know, as part of the audit resolution process, we'll review the Department's plan to ensure the proposed actions are responsive to our recommendations.

[Stephanie Bloom] And I'm sure students and their families will appreciate that. Ruth, thank you for your work on this audit and for discussing it with us today.

[Ruth Dunlop] Absolutely – thanks for having me.

[Stephanie Bloom] And thanks to our listeners for tuning in. You can read the full audit report and find more information about our office and our work on our website. Check back with us for additional podcasts and updates.

I'm Stephanie Bloom with the U.S. Department of Education Office of Inspector General, and this has been Eye on ED.