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June 2, 2021

The Honorable Sandra Bruce  
Deputy Inspector General Delegated the Duties of Inspector General  
Office of Inspector General  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, D.C. 20202

Dear Deputy Inspector General Bruce:

In 2018, the Office of Inspector General (OIG) audited the U.S. Department of Education (Department) “to determine whether it had controls to ensure that it timely and effectively processed complaints received under the Family Educational Rights and Privacy Act [FERPA].”<sup>1</sup> The resulting audit report identified serious shortcomings regarding the Department’s process for reviewing and adjudicating complaints and recommended several actions to improve this process. Of great concern was OIG’s finding that the Office of the Chief Privacy Officer (Privacy office) did not effectively process FERPA complaints in a timely fashion causing a longstanding and substantial backlog of unresolved complaints. I recognize that this backlog, and related management issues, are longstanding and Committee staff has been in close communication with Department staff to ensure appropriate reforms are forthcoming.

Local education agencies (LEAs) have taken notice of the Department’s inability to adequately enforce FERPA. For instance, during a meeting of the Marjory Stoneman Douglas Commission on school safety, outside counsel for the Florida Department of Education gave a presentation of the intersection of “FERPA and Law enforcement.”<sup>2</sup> At this presentation, counsel repeatedly

<sup>1</sup> See Dep’t of Educ. Office of Inspector General, A09R0008, Office of the Chief Privacy Officer’s Processing of Family Educational Rights and Privacy Act Complaints, 5 (Nov. 26, 2018) <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a09r0008.pdf>.

<sup>2</sup> Transcript of Marjory Stoneman Douglas High School Public Safety Commission Meeting, 167 (Aug. 15, 2019) [fdle.state.fl.us/MSDHS/Meetings/2019/August/815-19-MSD-Commission-Closed-Session-Removd\\_Redact.aspx](fdle.state.fl.us/MSDHS/Meetings/2019/August/815-19-MSD-Commission-Closed-Session-Removd_Redact.aspx).

indicated that “the only enforcement right is for [the Department] to withhold funding [and] to date that has not occurred.”<sup>3</sup>

The perception of the Department’s inability to enforce FERPA makes flagrant violations of the law inevitable. A worrying example is the problematic establishment of data sharing agreements between LEAs and local law enforcement. On January 19, 2021 the Committee informed the Department of ongoing data share agreements between Pasco County Florida’s local educational institution (LEA) and the Pasco County sheriff’s office.<sup>4</sup> Though the Department has since opened an investigation into this potential violation,<sup>5</sup> it is concerning that the Department enforcement and monitoring process had not itself identified this issue.

To make matters worse, Pasco County’s data sharing agreement does not appear to be unique. In fact, Florida state law requires LEAs share student data with their local law enforcement agency.<sup>6</sup> Although Florida’s requirement indicates that LEAs must abide by federal law<sup>7</sup>, the Department’s failure to provide clear guidance regarding how such agreements can be written to comply with FERPA means that ongoing, broad data sharing agreements between school districts and law enforcement agencies are ripe for abuse. Indeed, the Committee has reviewed some of the data sharing agreements implementing this Florida law and several have a concerning lack of safeguards for student data. While the Committee has separately referred these agreements to the Department, the apparent lapses in FERPA enforcement demonstrate the need for an additional review of the Department’s enforcement and monitoring process.

Accordingly, I request OIG examine the following issues:

1. What investigations and enforcement actions does the Department take beyond the resolution of complaints, including but not limited to proactive enforcement and monitoring?
2. Does the Department monitor school compliance with FERPA?
  - a. Does the Department use information from its complaint resolution function to inform its monitoring and proactive enforcement activities?
  - b. What steps does the Department take to address potential noncompliance that it identifies through its monitoring activities?

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<sup>3</sup> *Id.* at 171, 189.

<sup>4</sup> Letter from Robert C. “Bobby” Scott, Chairman, House Education and Labor Committee to Mitchell Zais, Acting Secretary, United States Department of Education, *Potential FERPA Violations* (Jan. 19, 2021).

<sup>5</sup> Letter from Kevin Herms, Director, Student Privacy Policy Office, to Robert C. “Bobby” Scott, Chairman, House Education and Labor Committee, *Re: Potential FERPA Violations* (May 3, 2021).

<sup>6</sup> Fla. Stat. § 985.04 (“Within each county, the sheriff, the chiefs of police, the district school superintendent, and the department shall enter into an interagency agreement for the purpose of sharing information about juvenile offenders among all parties. The agreement must specify the conditions under which summary criminal history information is to be made available to appropriate school personnel, and the conditions under which school records are to be made available to appropriate department personnel.”)

<sup>7</sup> *Id.* (requiring all agreements comply with Fla. Stat. § 943.0525, which requires all agreements comply with federal law.)

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3. Does the Department conduct self-initiated investigations of potential FERPA violations?  
If so
  - a. Under what circumstances does the Department conduct a self-initiated investigation?
  - b. How many self-initiated investigations has the Department conducted?
  - c. How does the Department identify potential FERPA violations to investigate?
4. Has the Department implemented appropriate corrective actions in response to the recommendations from OIG's prior audit report?

Please send all official correspondence and information relating to this request to the Committee's Clerk at [Mariah.Mowbray@mail.house.gov](mailto:Mariah.Mowbray@mail.house.gov).

Sincerely,



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**ROBERT C. "BOBBY" SCOTT**

Chairman

cc: The Honorable Virginia Foxx, Ranking Member