Background:

Recent efforts to reform public education have increased the need for scientifically valid research regarding academic programs and student performance outcomes. Both state and federal education reform efforts have requirements for rigorous research models rivaling clinical trials used for medical research. However, given the limitations on the use of student identifiable data under the Family Educational Rights and Privacy Act (FERPA), the expansion of research efforts has been hindered. The balance between protecting the privacy of student records and the need for additional research has caused considerable problems in the administration of education programs and frustration within the research community. Specific rulings from the United States Department of Education (USDE) have caused states to re-examine, and in some cases deny, providing data for research purposes.

Introduction:

In 1974, the enactment of FERPA, also known as the “Buckley Amendment”, required state and local education agencies, as well as institutions of higher education, to ensure the privacy of educational records and permit parent inspection of “any and all official records, files and data directly related to their children”. An exception to the Act allowed that “organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating or administering predictive tests, administering student aid programs, and improving instruction” could conduct research using student records so long as personal identification of students would not occur and the records would be destroyed when the research was concluded. Accordingly, state and local education agencies are free to conduct research with the data they have in their possession.

In 2004, the USDE issued a clarification letter that limited the “research exception” to the students enrolled in a particular institution. State education agencies responded by placing limitations on the transfer and use of educational records for research purposes which significantly reduced the ability of institutions of higher education and other state agencies to conduct further research.

The Need for Education Research:

The demand for research on public education increased dramatically in the 1990’s. In Texas, a massive debate over reading instruction led to the creation of the Texas Reading Initiative, which was a model for the federal Reading First Initiative enacted as part of the No Child Left Behind Act. The fundamental tenet of this reading initiative was that instruction in reading should be based on established scientific research. As state policy
shifted in favor of funding instructional models that could demonstrate scientifically valid research, school districts, education service providers and private vendors began to seek validation of their instructional methods through research studies. Fortunately, research on the subject of reading had been ongoing for decades and substantial amounts of data existed on effective methods of instruction. Proponents of the use of research for reading instruction utilized this research to bolster arguments in favor of phonemics and phonological awareness for reading instruction. Ultimately, proponents of the use of scientific research-based instruction convinced policymakers to include this requirement in subsequent reform efforts. However, the lack of existing research in subjects other than reading left the implementation of new initiatives in question.

As with research on subject matter instruction, the issue of overall school reform has been impacted by education research, or lack thereof. Efforts to reform and improve instruction in math and science as well as overall reform of high schools have been limited by the lack of high-quality scientific research illustrating successful models of instruction or campus operation. Policymakers are left with the option of either waiting for research to be conducted or experimenting on school reform through targeted interventions. The costs associated in interventions that do not have a strong research base often prove costly to state and local education agencies with mixed results on improving student performance. Given the public demand for school improvement, the latter strategy of implementing targeted interventions to develop replicable models for reform has met with some success such as the replication of the successful charter school, KIPP Academy. However, measurement of these targeted interventions will only be deemed completely successful based on ongoing research activities designed to assess student outcomes.

Legislative Action to Improve Access to Student Data for Research Purposes:

In response to increased demands by education researchers for greater access to education records, Texas policymakers have attempted a number of strategies to comply with the provisions of FERPA while making data more readily available. In the past, agreements to provide education data for research purposes required that data be submitted with several restrictions including “de-identifying” data by removing student names, scrambling social security numbers and removing any data cells with less than five records. Despite these safety precautions, concerns remain regarding the creation of multiple copies of student records and the potential for de-scrambling of encrypted data. Compliance with FERPA also requires that such data eventually be destroyed leading many researchers to complain that long-term research projects cannot be accomplished. However, these measures are consistent with guidance provided by the United States Department of Education.

Most recently, the Texas Legislature passed a provision for the creation of up to three education research centers by the two agencies responsible for public and higher education, the Texas Education Agency and the Texas Higher Education Coordinating Board. Faced with a court-ordered deadline to address overall school funding, the
legislature also added a number of education reforms to the legislation regarding school finance, including measures to improve education research. Based on previous guidance from the USDE, the creation of education research centers is an attempt to enhance education research while maintaining compliance with FERPA. It is not yet known whether the USDE will approve of this approach as recent rulemaking regarding FERPA is not complete, and this particular approach has not yet been submitted for approval.

House Bill 1, enacted by the 3rd called special session of the Texas Legislature allows the Commissioner of Education and the Commissioner of Higher Education to establish up to three research centers to

“conduct research for the benefit of education in this state, including research related to the impact of state and federal education programs, the performance of educator preparation programs, public school finance, and the best practices of school districts with regard to classroom instruction, bilingual education programs, special language programs, and business practices”.

This provision will allow the state education agency and higher education authority to effectively combine their databases at a secure location for the purpose of conducting education research. Given the recent emphasis on aligning public and higher education standards, this coordination will be essential in conducting research from early childhood through post-secondary education. The ability to control education data at a small number of centers rather than attempting to make multiple data sets available to various researchers will ensure additional security and provide greater opportunities for longitudinal studies of student performance. Furthermore, since these research centers will be acting directly on behalf of the state, they will have access to complete records for the purpose of research, eliminating the data loss from the exclusion of small data cells.

While the process for determining which entities will become research centers is not complete, it is expected that a competitive process will be utilized. Once awarded, research centers will receive initial operating expenses from the state. Future funding will be received from gifts, grants, donations and through charging fees for conducting research. Questions remain whether the long-term viability of operating research centers through this funding mechanism will be successful. For instance, if the fees charged for data increase over time, researchers may resort to filing Freedom of Information Act requests from state agencies in order to reduce costs.

The long-term implications for additional education research are extraordinarily positive. With access to greater amounts of data, research can better examine not only the overall student performance but the impact of specific reform efforts and instructional strategies. For instance, a school district that utilizes federal Title I funding on a particular form of instruction or program can be measured based on examination of data from student performance reports as well as comprehensive financial reports. Rather than simply relying on overall student performance data for accountability purposes, each campus or
program within a campus can be scrutinized for cost/benefit outcomes for specific programs and student populations.

Issues for State and Federal Policymakers:

Specific authorization and guidance on use of student records for research - As previously mentioned, the lack of clarification on the use of student records for research purposes has been problematic. While the USDE has indicated it will provide additional rules on this matter, a clear statement from the department or other federal action would provide states with greater clarity on the use of data. Additionally, federal resources to assist in the development of research models and technical assistance in compliance with federal laws and regulations would be helpful to states undertaking such efforts.

Security concerns – Scrambling of social security numbers and destruction of records are primary components of federal and state policy to ensure record security. The elimination of small data cells has been an effective method of ensuring privacy; however it has rendered research on issues such as student discipline at the campus level virtually impossible to conduct in many cases. While expanded use of data through research centers may improve access to data, additional assurances will be needed to ensure that records are not transmitted or duplicated in ways that could lead to unauthorized disclosure.

Construction of studies and oversight - Researchers may disagree over the scope of a particular study, which data elements should be used, and what methods of examining data are valid for purposes of comparing student populations. In constructing research proposals, a valid oversight structure will be necessary to prevent inadequate research from being conducted on behalf of the state. The composition of such a governing body would require representation from established researchers and policymakers in the field of education.

Making data useful to public and policymakers – While research may be most helpful to those conducting studies for academic purposes, the use of such data by the public and for policymakers is a critical goal for expanding education research. Translating data into user-friendly formats that can inform parents, educators and policymakers will be critical to the success of these efforts.

Potential profit from research centers - Since the education research centers will be allowed to charge fees for their services, the potential for profit exists. While the purpose of the fee structure is primarily for cost-recovery, products and services developed as a result of research projects could result in funding opportunities for research centers. An examination of how funds should be distributed or whether existing royalty agreements should continue will need to take place.
Potential for litigation – A major concern to state policymakers with respect to the use of education records is the emergence of lawsuits challenging the adequacy or equity of school finance systems. Since such research must be conducted “for, or on behalf of” a state or local education agency, studies may be used for litigation purposes against the state. Attempting to rebut the findings of such studies may be challenging given that the research bears the perceived approval of the state education agency.

Conclusion:

The creation of research centers for the purpose of expanding education research opportunities while maintaining compliance with FERPA represents an aggressive approach toward improving the availability of data for research purposes. Significant practical and policy considerations remain to be settled; however the recent impasse between those demanding greater access to student records and those responsible for ensuring confidentiality of student identifiable data is potentially at an end. The long-term benefits for education policy may result in the creation of additional performance indicators within accountability systems, enhanced financial operations of state and local education agencies and improved instructional methodologies. However, data security, the potential for litigation against states and uncertainties regarding federal approval of such practices will be key indicators of the success or failure of this effort.

2 Ibid. p. 5.
4 Texas Education Code, Section 28.006 (b)
5 Texas Math Initiative, Policy Proposals for the 77th Legislature, Office of Governor Rick Perry, January 2001.
6 Ibid.
8 House Bill 1, 3rd Called Special Session, 79th Texas Legislature, (Austin, Texas., May 2006)
9 Ibid, Article II Section 1.005 (e)
10 Texas Education Agency, Office of the Chief Deputy Commissioner (June 2006)
11 House Bill 1, Article II, Section 1.005 (h), 3rd Called Special Session, 79th Texas Legislature, (Austin, Texas., May 2006)