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Required Security Screenings for Researchers: A Policy Analysis and Commentary

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Abstract: After the attacks of 9/11/2001 the federal government implemented new policies intended to protect people and institutions in the United States. A surprising policy requires education researchers conducting research under contract to the U.S. Department of Education (ED) to obtain security clearances, sometimes known as security screenings. Contractor employees whose work meets any of four conditions are required by to "undergo personnel security screenings." Two of the four conditions are mandated by Homeland Security Presidential Directive 12, issued by President George W. Bush in 2004. This article focuses on the other two conditions triggering security screenings by ED, which are when contractor employees either "require access to unclassified sensitive information, such as Privacy Act-protected, personally identifiable, proprietary or other sensitive information and data" or "perform duties in a school or location where children are present." Neither is a national security concern. Since 2007 the American Educational Research Association has objected to security screenings triggered by these two requirements; however, the policy was reissued by ED in July 2010. This article describes the experiences of contracting organizations and their employees. The majority have complied with the requirements, although

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often under duress. Two historical precedents are cited and discussed, when the government in the 1950s implemented loyalty oath provisions allegedly to protect citizens. Sociological and psychological research is explored that sheds light on people's behavior when faced with requirements such as these screenings. A lengthy list of objections to the policy is explained and discussed.
Keywords: federal policy; security screenings; loyalty oaths; U.S. Department of Education; privacy; background checks; contract research.

La política de "controles de seguridad" para investigadores: un análisis y comentario
Resumen: Tras los atentados del 11/09/2011, el gobierno federal implementó nuevas políticas para proteger a las personas e instituciones en los Estados Unidos. Una política sorpresiva requiere que los investigadores vinculados por contrato con el Departamento de Educación de EE.UU. (ED) obtener licencias de seguridad, conocida como "controles de seguridad." Empleados contratados cuyo trabajo cumplen alguna de cuatro condiciones contempladas deben "someterse a la autorización de seguridad personal del departamento." Dos de las cuatro condiciones fueron impuestas por la Directiva Presidencial de Seguridad 12, firmada por el presidente George W. Bush en el 2004. Este artículo se centra en las otras dos condiciones que dieron lugar a las licencias por ED de seguridad: cuando los empleados están contratados "necesitan tener acceso a información no clasificada relativa a la seguridad nacional, tales como los protegidos por la Ley de Privacidad, información de identificación personal o privada" o " trabaja en una escuela o un lugar con niños ". Ninguna de esas condiciones es una interés nacional. Desde 2007, la *American Educational Research Association* ha protestado contra esas licencias de seguridad impuestas por estos dos requisitos, sin embargo, la política de re-fue lanzado por la ED en julio de 2010. Este artículo describe las experiencias de contratación de organizaciones y sus empleados. La mayoría ha cumplido con los requisitos, aunque casi siempre con gran dificultad. Dos antecedentes históricos son citados y discutidos del periodo cuando el gobierno puso en marcha en 1950 dispositivos de juramento de lealtad para proteger a los ciudadanos. Investigaciones psicológicas y sociológicas son utilizadas para estudiar comportamiento de las personas cuando se enfrentan a este tipo de demandas. Una larga lista de objeciones a estas políticas son presentadas y discutidas.
Palabras clave: controles de seguridad; investigación en educación; empleados contratados; seguridad nacional; protección de ciudadanos.

A política de "controles de segurança" exigida para pesquisadores em educação: uma análise e comentário
Resumo*:* Após os ataques de 11/9/2011, o governo federal implementou novas políticas para proteger as pessoas e instituições nos Estados Unidos. Uma política surpreendente exige que pesquisadores de educação com pesquisa vinculada por contrato junto ao U.S. Department of Education (ED) obtenham licenças de segurança, conhecidas como "controles de segurança". Empregados contratados cujo trabalho se encaixam em qualquer uma das quatro condições devem "se submeter a licenças de segurança do departamento pessoal". Duas das quatro condições são impostas pela *Homeland Security Presidential Directive 12*, sancionada pelo Presidente George W. Bush em 2004. Este artigo trata das duas outras condições que resultaram nas licenças de segurança pelo ED: quando os empregados contratados "exigem acesso a informações não classificadas relativas à segurança nacional, como aquelas protegidas pelo *Privacy Act*, identificáveis pessoalmente, privadas ou outras informações e dados relativos à segurança nacional" ou "trabalham em uma escola ou um local com crianças". Nenhuma delas é uma preocupação nacional. Desde 2007, a *American Educational Research Association* tem protestado contra as licenças de segurança resultantes destas duas

exigências; entretanto, a política foi relançada pelo ED em julho de 2010. Este artigo descreve as experiências de contratar organizações e seus empregados. A maioria tem cumprido com as exigências embora quase sempre sob pressão.Dois precedentes históricos são citados e discutidos, quando o governo nos anos 1950 implementou dispositivos de juramento de lealdade supostamente para proteger os cidadãos. A pesquisa sociológica e psicológica é explorada para esplicar o comportamento das pessoas quando se deparam com exigências, como estas licenças. Um longa lista de objeções à política é explicada e discutida.
Palavras-chave: licença de segurança; pesquisadores de educação; empregados contratados; segurança nacional; proteção aos cidadãos.

Introduction

The shocking events of 9/11/2001 led to federal policy changes intended to protect people and institutions in the United States and abroad. Airport security was greatly improved, for example. Yet not all of these changes made sense. One of the surprising post-9/11 policy changes requires thousands of education researchers conducting research in public schools to obtain security clearances.

One reason is the misinterpretation of a government-wide policy initiated by President George W. Bush (2004), Homeland Security Presidential Directive (HSPD) 12, requiring "contractor employee security clearances" (sometimes known as "security screenings"). HSPD-12 focuses on people working on a federal contract awarded to a company or institution who (a) often work on federal property or who (b) access "Federally controlled information systems," notably federal computers that could be used for terrorist purposes. The American Educational Research Association (AERA), which has been a leader in raising questions about security screening policy, has *not* expressed concerns about HSPD-12 because this post-9/11 requirement is clearly intended to bolster homeland security by protecting federal facilities and computers.[1]

In 2005, however, the U.S. Department of Education (ED) implemented a policy memorandum (revised in 2008 and 2010) requiring detailed personnel screenings in situations far removed from homeland security—screenings that are not required by HSPD-12 (ED, 2010). Because ED policy goes beyond Bush's homeland security directive—for example by requiring security screenings for employees under contract who conduct research in school buildings—AERA has raised concerns about the parts of ED's clearance policies unrelated to national security (Levine, 2007), as have dozens of individuals (Glater, 2007). In 2007 AERA's director of government relations was quoted by the *New York Times* as saying, "Our concern is really whether or not all the measures that have been introduced are necessary" (Glater, 2007).

The bipartisan 9/11 Commission, which was created by congressional legislation and signed by President Bush, warned citizens not to allow the executive branch of the federal government to impose unnecessary or unwise policies in the name of national security. In its 2004 report the commission wrote, "The burden of proof for retaining a particular governmental power should be on the executive, to explain … that the power actually materially enhances security" and insisted that the government "defend our civil liberties," not only protect homeland security (National Commission on Terrorist Attacks Upon the United States, 2004).

This article analyzes ED's security screening requirements and asks members of the education research community to compare the recommendations of the 9/11 Commission with

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[1] This article cites several sources that describe AERA's concerns. Other views and conclusions expressed herein are the author's responsibility, and are not necessarily the opinions of AERA.

current ED policy. Commentary on these requirements, integrated in the article, is supported by scholarship. The issues raised here are relevant to anyone interested in determining appropriate limits on government investigations of citizens.

ED's Security Screening Policy

ED's 2010 policy directive (ED, 2010) states, "All ED contractor and subcontractor employees must undergo personnel security screenings if, during the performance of the contract, they will:

1. Require an ID badge granting unescorted access to ED facilities;
2. Require ED IT system access;
3. Require access to unclassified sensitive information, such as Privacy Act-protected, personally identifiable, proprietary or other sensitive information and data; or
4. Perform duties in a school or location where children are present."

Items 1 and 2 above reflect the requirements of HSPD-12. Items 3 and 4 are different, and are the primary focus of this article.

According to ED's directive, the nature of personnel screening for contractor employees depends on the work they are hired to do. As an actual example under item 3 above, an ED contract awarded in the fall of 2010 involves reanalyzing existing data in a number of federal education databases, such as data from the National Assessment of Educational Progress (NAEP, "the Nation's Report Card"). None of the databases to be analyzed contains personally identifiable information, and no new information will be collected. ED is requiring clearances for people who work on this contract. Those individuals must submit fingerprints, answer many personal questions about themselves (e.g., identify family members, list places they have lived, and indicate whether they have used illegal drugs), authorize a credit background check, and also authorize government investigators to contact *any* person in order to gather *any* information that might "include, but is not limited to … academic, residential, achievement, performance, attendance, disciplinary, employment history, criminal history record information, and financial and credit information."

In situations covered under item 4 above, when researchers do some of their work in a school, ED requires a National Agency Check with Inquiries. This means fingerprints and criminal background checks are required, as well as answering many personal questions on federal forms (the SF-85 and the OF-306) and signing an authorization for government investigators to ask any person any question as part of a background investigation.

Contractors' Reactions to these Policies

The federal government has issued contracts since the United States was founded, yet apart from contracts involving classified information, for hundreds of years there were no requirements for contractor employee security screenings. Concerns are being raised about the ED requirements because they are so unlike pre-9/11 policies.

The most common reaction among contracting organizations—including universities, for-profit, and not-for-profit companies—is compliance. As the dean of a large college of education wrote, "We have agreed to abide by the terms of our contract and we are therefore subject to these interpretations."[2] An official in a different organization that also conducts classified contract work

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[2] Unless otherwise indicated, quotations such as this one come from emails to the author, who spoke or corresponded with more than 100 individuals in dozens of institutions—including more than a dozen staff at

wrote, "[Our company] has a general requirement for its employees to hold a security clearance, although exceptions can possibly be made. It seems reasonable to me that some sort of security clearance is required for people getting access to sensitive data and schools."

Few contracting organizations ask ED clarifying questions. Yet those companies asking questions find that ED sometimes modifies its policy. For example, the company doing the re-analysis of NAEP and other data asked ED that secretaries and editors working on the public report *not* be subject to personnel screening because they will not work with raw data. ED agreed. Another contractor questioned a requirement that certain employees authorize government investigators to ask questions of their physicians about their suitability, and the requirement was eliminated by ED for that contract.

A few companies decided not to work under contract to the federal government because they object to the new personnel screening requirements. Such a decision is much easier to make if ED contracts account for a small share of an organization's revenues.

Organizations heavily dependent on ED contracts have a strong interest in being viewed favorably by the government. The CEO of a small education R&D company, who has said the ED policy is excessive, asked that neither her name nor her organization's name be divulged, because the organization would not want to be viewed as objecting to the policy. Similarly, a senior researcher at a much larger R&D company—a person who has managed tens of millions of dollars in ED contracts—objected strongly to the policy inside her organization but reluctantly "goes along." Both she and her company fear the consequences of speaking out. She did not want her name used even in communications with AERA, and her company held the same view about its name.

ED supports a network of ten Regional Educational Laboratories to conduct applied research and development projects under contract.[3] Contracts totaling about $65 million per year, for five years, were awarded to these institutions in 2006. An association of the ten Labs and related institutions, NEKIA[4], discussed security screening requirements in 2006 and the organization decided not to raise objections or ask questions. Acceptance of the policy by the Regional Labs and their association does not mean that all of the Lab employees support the policy, or are willing to abide by it. Asked about the screening policy during a phone call, the immediate reaction of a senior manager at a company with a Lab contract was, "J. Edgar Hoover is alive and well!"

A Vice President at another research firm with a Lab contract wrote, "While there is a lot of money on the line, there are some things that one shouldn't just swallow without being pretty aggressive about resistance. Nevertheless, this [issue] has been handled by others … and I have been steering clear of being involved in the lab work here." Many people make a similar decision not to work on tasks funded by ED contracts if they can avoid it.

Large numbers of employees comply because they believe they have no choice if they want to keep their job. One researcher was concerned about the confidentiality of data she was required to provide to ED, saying, "I wasn't provided the same confidentiality protections that we ensure for participants in our own research" (Viadero, 2008). (Researchers typically promise to use personally

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ED—in an effort to understand ED's policy and reactions to it. Those contacted include several dozen people in institutions conducting work under contract to ED. Although these contacts comprise a "convenience sample," the institutions represented are diverse and include universities, for-profit and not-for-profit institutions, of varied size (hundreds of employees to fewer than a dozen) and varied geographic location. Among them are some of the largest and best-known contract research organizations in the nation. In addition, the author communicated with an organization (NEKIA) representing institutions that together have conducted hundreds of millions of dollars of contract research.

[3] http://ies.ed.gov/ncee/edlabs/

[4] The National Education Knowledge Industry Association, now known as Knowledge Alliance.

identifiable data only for statistical purposes. In contrast, the government enters employee information into a national computer database and "may disclose relevant records to a Federal, State, local, foreign, or tribal entity" for enforcement purposes [ED, 2004].) She objected to providing her children's names to investigators, or the phone numbers of friends and relatives. Finally, however, she complied.

Besides AERA's concerns, which were sent to all 25,000 members as part of *Educational Researcher*, and also in a 2007 email to all members from the executive director, another nationally-publicized objection to the policy (organized independently, not by AERA) was an open letter sent to the then-Secretary of Education, Margaret Spellings, at the end of 2006. There were more than 100 signatories, coming from organizations across the United States, and articles about it appeared in the *New York Times*, *Education Week*, and elsewhere (Glater, 2007; Hoff & Cavanaugh, 2007). The letter said, in part, "These [clearance] requirements are far beyond bounds of reason, necessity, and decency. There are ample provisions in law, contract language, and regulations to protect the privacy of any personally identifiable data gathered by researchers (e.g., student test scores) and to address other reasonable concerns."

Nonetheless, among individuals as among institutions, compliance is the norm. Thousands of people have been screened by ED in order to work on contracts.

Some people believe the issue is only a minor irritant, such as a senior-level person at a large R&D organization who wrote, "I see it as not unlike having to take off one's shoes at the airport security screening—not entirely logical, certainly inconvenient, and often frustrating ... but an irritant that most of us reluctantly accept so as to be able to board our planes."

Objections to ED Policy

Is the contractor security screening policy nothing more than a frustrating, not entirely logical inconvenience?

First, consider the risks and how screening might reduce them. The risks to air travelers from terrorists include loss of life and limb. To reduce or eliminate such events, airport security screening is intended to find concealed bombs or other weapons—a specific, credible threat. What does ED screen for when it investigates potential contractor employees? HSPD-12 identifies "potential for terrorist attacks" as the rationale for screening employees in categories 1 or 2 above, but ED's policy directive mentions no specific risks associated with items 3 and 4; that is, no reasons are provided for the policy. To the best of the author's knowledge, no damaging event has occurred due to contractor employees improperly using unclassified sensitive information, or because some of them conduct work in schools.

ED also has not identified specific criteria by which individuals are judged fit or unfit to work on a contract. Would use of marijuana disqualify someone? Or being fired from a previous job? What about an individual's sexual preferences, a pending court case, or some neighbor's negative opinion? We do not know if these are disqualifications or not. Instead, an ED document simply says that the purpose of security screenings is to investigate someone's "character, conduct, and loyalty to the United States as relevant to their association with the Department" (ED, 2004). These vague criteria may be necessary for contractor employees in categories 1 and 2, but are they appropriate for categories 3 and 4, which are not national security concerns?

Although losing life or limb in a terrorist attack poses a serious risk, air travelers are not subject to clearance requirements as stringent as those now applied to education researchers in categories 3 and 4 (employees who do not work in federal buildings or with ED's IT systems). Given the potential harm involved, should all air travelers be subject to fingerprinting, background

investigations, criminal record checks, credit checks, and inquiries to their doctors about the potential traveler's state of mind? If not, why impose these requirements for contractor employees in categories 3 and 4 for risks that are less serious?

Current laws and regulations adequately safeguard unclassified sensitive information and school buildings. These provisions include the Federal Information Security Management Act of 2002 (FISMA), which provides for "development and maintenance of minimum controls required to protect federal information and information systems," and Parts 34 and 45 of the Code of Federal Regulations, governing protections of human subjects in federally funded research studies—studies that must be approved by Institutional Review Boards which review confidentiality procedures and protections. Unauthorized disclosure of individually identifiable data held by the research branch of ED, the Institute of Education Sciences, is subject to a penalty of up to five years in prison and a $250,000 fine (ED, 2007). Respected organizations such as the National Academy of Sciences and AERA review protections for people who are the subjects of social science research, and these organizations do not believe that security screenings are needed (National Research Council, 2003). Some school systems concerned about outsiders who enter schools require authorization for a criminal offense records check, for which a social security number is needed. Even less frequently, researchers are also asked for fingerprints. No school system requires a screening process similar to what ED mandates.

Although it is an executive order, not legislation, HSPD-12 is effectively the law of the land. A recent U.S. Supreme Court decision in a case involving scientists working under contract at NASA's Jet Propulsion Laboratory found that the federal government's personnel screening requirements under HSPD-12 are constitutional (NASA vs. Nelson, 2011). On the other hand, ED's requirements for items 3 and 4 are neither mandated by law nor by executive order. Indeed, doubt can be raised about the legal authority for ED to require screenings of contractor employees working in locations where children are present, because the justification cited for these requirements in ED's policy directive is a decades-old law about screening people hired to provide federal child care services (Crime Control Act of 1990, P.L. 101-647). Educational researchers do not provide child care, and ED's intent in citing that Act is unclear, at best.

Even if we suppose that high-risk contractor employees can be identified, how do the costs and the benefits compare? ED has spent millions of dollars conducting security screenings (Clark, 2007). In addition, contractors and employees spend substantial time and money to meet ED's requirements. Is it likely that the benefits of security screenings unrelated to national security are worth so much money and effort?

The cost-benefit calculation depends on total dollars and on the accuracy of the screenings. Any screening procedure—a cancer screening, say—is imperfect and results in "false positives"—concluding that someone has cancer, as an example, yet they do not. Suppose that one percent of the contractor employees actually pose a risk, and that security screenings reach the correct conclusions 97% of the time. With these assumptions, an amazing 75% of the people screened and identified as risks would *not* be risks. Calculations like this are made routinely for health screenings, but studies find that physicians themselves have difficulty estimating such counter-intuitive reliability statistics (Hoffrage & Gigerenzer, 1998). Nonetheless, false positives are a serious unintended cost of employee security screenings.

In a dramatic contrast to ED's policy, the National Science Foundation (NSF is a federal agency) has *no* security clearance requirements for contractor employees that correspond to ED's cases 3 and 4. The Foundation supports education research contracts, but the agency decided security screenings are not a good investment of time and money. In fact, NSF is implementing policies that move in the opposite direction, strongly encouraging grantees to share data with other

researchers. An NSF guide tells grant applicants: "Investigators are expected to share with other researchers, at no more than incremental cost and within a reasonable time, the primary data, samples, physical collections and other supporting materials created or gathered in the course of work under NSF grants. Grantees are expected to encourage and facilitate such sharing" (NSF, 2010).

There are also *zero* security screening requirements for researchers funded by grants from *any* federal agency—which is how the great majority of federally sponsored education research is funded. Specifically, there are no security screening requirements even if grantees work in locations where children are present, or if they use "sensitive" personally-identifiable data, i.e. ED's cases 3 and 4. As a case in point, the Consortium on Chicago School Research has conducted school-based research costing millions of dollars—research that is surely well known to Secretary of Education Arne Duncan because before becoming Secretary he was chief executive officer of the Chicago schools. Logically, if education researchers in categories 3 and 4 pose serious risks, and if existing laws *are not* sufficient protection, and if one believes that the costs of screening *are* worth the benefits, then one would want to require that researchers funded by grants be screened, too. Does Secretary Duncan believe security screening is appropriate for colleagues whose work was, and probably still is, funded by federal grants?

This patchwork policy is not sensible. ED's contractor employee security policy costs millions of dollars yielding no significant benefit—and that accounting is too generous. If one includes the costs of losing qualified researchers now unwilling to work under contract, damaging the relationship between ED and the research community, and of ED acquiring a reputation for imposing screening policies that few believe are rational, the costs far outweigh any benefits.

Risks posed by education researchers are not due to improperly using unclassified sensitive information, or abusing the privilege of entering school buildings. The primary risks of education research are poor quality, on the one hand, or overturning cherished beliefs, on the other. Funds spent by ED on contractor employee security screenings in categories 3 and 4 could be spent on important, well-documented risks to children, such as the obesity epidemic, abuse by relatives, or unsafe schools, to name a few.

Precedent: JFK and the National Defense Education Act

This is hardly the first time zealous but unnecessary federal action has been justified as a safeguard to security. A twentieth-century precedent of particular interest to the education community is the loyalty oath provisions of the National Defense Education Act (NDEA).

NDEA—a federal law passed in 1958 partly in reaction to the launch of Sputnik a year earlier—provided funds to institutions of higher education, including colleges of education, which were used to support students. Students receiving scholarships under NDEA were required to sign loyalty oaths and accompanying disclaimer affidavits stating that the student was not a member of any group advocating the violent overthrow of the government.

In the late 1950s, then-Senator John F. Kennedy tried twice to overturn these requirements, and failed both times (Comstock, 1959). Although the Army-McCarthy hearings earlier in the 1950s had discredited the tactics of McCarthyism, Kennedy's objections to loyalty oaths were still perceived by some legislators as pro-communist sympathy. Only a handful of colleges and universities objected to the NDEA policy publicly, or refused the federal money. (Institutions refusing the funds included Princeton, Haverford, Bryn Mawr, Amherst, Antioch, and Reed, and later Yale, Barnard, Brown, Columbia, and Harvard.) Among more than 1,200 institutions that applied for the student loan funds, just six sent representatives to 1959 Senate hearings on a bill that

Senators Kennedy and Clark co-sponsored to eliminate loyalty oaths and the accompanying disclaimer affidavits.

Kennedy, who authored eloquent articles about loyalty oaths in popular national magazines (e.g., Kennedy, 1960), wrote, "The NDEA loyalty provision has no place in a program designed to encourage education," calling the requirement "distasteful, humiliating, and unworkable to those who must administer it" (Kennedy, 1959). Most people, however—students, professors, and administrators alike—were silent, and members of congress noticed that silence. Senator Russell (D-GA) noted that "I have not received a single letter from a single student in my state." A contemporaneous pamphlet published by the Harvard Crimson reported that "protest from students was negligible and easily ignored" (Comstock, 1959).

The NDEA history shows that to effect change in a misguided federal policy supposedly aimed at protecting citizens, it is not enough to enlist a prominent champion. In the 1950s Senator Kennedy received very little grassroots support, which affected attitudes in the Congress and inhibited his efforts in the Senate to repeal the loyalty oaths.[5] Today, the American Educational Research Association is in an analogous situation; the vast majority of affected individuals and institutions remain silent while AERA, working on behalf of its 25,000 members, remains a lonely voice and is largely powerless.

In important respects contractor employee security screenings are more objectionable than loyalty oaths. Individuals are not told what criteria they must meet, or for what specific purpose they are being screened. Instead of an individual swearing to be loyal to the nation, *bureaucrats now decide* whether an employee's "character, conduct, and loyalty to the United States" meet federal criteria. If the bureaucrats decide someone is unsuitable then that individual is not permitted to conduct education research under contract—although such a decision would not prevent the same person from conducting research supported by a federal grant.

A Sociological and Psychological Perspective

Like the historical perspective, a sociological and psychological view of security issues can also be useful. Psychologists and sociologists point to probable reasons why the majority of people are silent about contractor employee security screenings.

Sociological research shows that intimidation and bullying is "strongly influenced by peer behaviors and reactions. Bystanders … can have a powerful effect on bullying, positive or negative" (Swearer et al., 2010). Many education researchers and officers of their institutions have been fearful of voicing opposition to contractor employee security clearances[6]. So long as the great majority of people are silent the policy is implicitly sanctioned. In the case of security screenings powerful people and institutions have not objected to the government's policy even in the dozens of cases where employees in their own organizations have resisted the policy, or refused to work on government contracts. The message to thousands of contractor employees in institutions contracting

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[5] The NDEA loyalty oath provision was finally repealed in 1962.

[6] Remember that the Bush administration claimed authority to put people (even American citizens) in jail indefinitely if they were deemed "enemy combatants," and took other steps contributing to a climate of intimidation. In fact, former Vice President Al Gore (2007) reported that experts at Oak Ridge Laboratory, where nuclear enrichment is well understood, believed there was "zero possibility" that the aluminum tubes ordered by Iraq were for the purpose of enriching uranium but "felt intimidated … from making any public statement that disagreed with the assertions being made to the people by President Bush," assertions that were a major step toward the Iraq war.

with ED is clear, whether intended or not: treat this policy as a minor irritant, and don't make waves.

Once silence is understood to be the "correct" reaction, based on the example of powerful people, individuals' opinions and even their perceptions may change. Psychologists know that individuals will go so far as to say a certain line is longer than others, when it obviously is not, if that is what other members of a group they belong to say (Asch, 1963). Importantly, individuals are more likely to tell the truth in such situations if given even limited encouragement to do so.

Another factor at work is called the "free rider" (Olson, 1971). Many people avoid expending their own resources because they expect their goals will be achieved by others' efforts. Experiments conducted by economists show that about one-fourth of people *always* free ride and many more often do (Fehr & Gächter, 2000a; Fehr & Gächter, 2000b). As an example, a dean at a prominent college of education who strongly disagreed with ED's policy was "sure" that a nearby contract research organization would object to the screening policy, so he need not do so. As a result, he did not bother to reply to an email on the subject. However, because the nearby contract research organization was afraid to lose ED funding, it was *not* willing to object. The dean did not know this nor did he try to find out. He wanted a free ride on others' efforts. It seems probable that many education researchers continue to assume that other people, such as AERA's leaders, are doing whatever can be done; therefore, they need do nothing, not even contact AERA.

In the early 1950s the sociologist Seymour Lipset studied an earlier loyalty oath controversy at the University of California (Lipset, 1953). All University faculty members were required to sign an oath affirming that they were not members of the Communist Party. Lipset interviewed nearly 500 students and found that more than one-quarter approved the oath requirement, and nearly half opposed employment of Communists by the University. Although it is possible that a significant proportion of current education researchers approve of the contractor employee security screening requirements, that possibility seems highly unlikely.

Lipset discovered a "barrage of slanted stories" in California newspapers, denouncing faculty opposition to the oaths as being Communist-inspired. Analyzing his student data, he concluded it was very likely "the newspapers had a great influence in this controversy." Experimental research conducted after 9/11 also shows that people's beliefs and values about national security and civil liberties depend on points of view presented in media (Barone & Swan, 2007). In the current case of security screenings, there has been less media coverage than in either of the 1950s loyalty oath controversies. Nonetheless, distinctions between cases 1 and 2 (covered by HSPD-12) and cases 3 and 4 (not mandated by law or executive order and unrelated to national security) have been blurred by the media. An example is a 2007 article in *Education Week* that does not even mention ED's requirements for screening contractor employees who enter buildings where children are present or offer a government rationale for screening employees working with personally identifiable data, but which implies that *all* the ED screening requirements are related to 9/11 and national security (Hoff & Cavanaugh, 2007).

Changing Current Policy

It seems unlikely that the President of the United States will rescind or modify HSPD-12—but that executive order is not the crux of the problem. ED's requirements affecting contractor employees who conduct work in locations where children are present, or who work with personally identifiable data, are not mandated by law or executive order. The Secretary of Education can change those policies at will. However, change is likely to happen only if there is more, and more focused, attention to the issue.

The education research community needs to consider the recommendation of the 9/11 Commission that, "The burden of proof for retaining a particular governmental power should be on the executive, to explain … that the power actually materially enhances security." Contractor employees in categories 3 and 4 pose no risk to national security. Nor can ED credibly argue that its policy provides significant value given its costs, which are greater than simply money. If the burden of proof for exercising power is on the executive even when national security matters are at stake, the burden ought to be heavier in cases such as categories 3 and 4, which are not about national security.

The latter point cannot be overemphasized. Although it is true that perceived threats to national security have too often resulted in overreactions by government—a phenomenon that in the United States can be traced back to World War I, if not earlier (Murphy, 1979)—and although it is true that warrantless wiretapping of American citizens, waterboarding of designated prisoners, and other Bush and Obama Administration policies following 9/11 have been controversial and repugnant to many citizens, nonetheless the stated rationale for those policies has been to protect national security. In contrast, it is unprecedented for the executive branch of the federal government to impose security screening requirements that are not related to national security. The absence of a written rationale by the Department of Education for imposing security screenings in cases 3 and 4 has led some people to believe that the requirements are linked to the war on terrorism and HSPD-12, but that conclusion is not correct.

In the late 1950s one percent of the institutions that might have made use of NDEA funds publicly refused to apply for or use that federal money. Prominent individuals, such as the Presidents of Yale and Harvard and Senator John F. Kennedy, wrote in opposition to loyalty oaths. Today there are no cases of organizations publicly refusing work on ED contracts, and, apart from what AERA has written, there are few public statements opposing ED's security screening policies, especially statements by respected individuals in positions of power. AERA conducted extensive background research, organized public symposia about this policy, and met numerous times with ED officials—but these and other efforts by AERA have not yet achieved the goal of eliminating provisions 3 and 4 in ED's policy.

Where are the "wise elders" of the education research community? By "wise elders" I mean the current and former Presidents and other officers of AERA, officers of for-profit and not-for-profit organizations (including universities) that use or conduct contract research, editors of education research journals, leaders of key education nonprofits, and others whose opinions are esteemed by education researchers, government officials, and the public.

The education community, especially its "wise elders," can review the many reasons to question ED's screening requirements for persons in categories 3 and 4, described above. These reasons include: there is no stated justification for the policy; there are no published criteria for screening individuals; ED's requirement gives bureaucrats excessive power, allowing them to ask any question of any individual about a person being screened and then decide whether an individual's "character, conduct, and loyalty to the United States" permits them to conduct contract research; there is a substantial risk of screening out qualified individuals; there are federal laws and regulations in place to achieve reasonable protections without the screening requirements; the costs of the policy far exceed the benefits; the policy imposes requirements mismatched to the alleged problem (the proverbial sledgehammer used as a nutcracker); local school systems may implement their own requirements for screening researchers, and some do, but none of their requirements are as extreme as ED's policy; ED has imposed its policy over the objections of AERA and many individuals; people may believe that ED's items 3 and 4 are required to protect national security, but they are not; many contractors and employees are coerced into compliance, despite private objections; some

highly qualified contractor employees avoid working on ED contracts because of the policy; there is no assurance of the privacy of information provided during screenings, and in fact such information is entered into a national database where it can be shared; John F. Kennedy's statement about loyalty oaths—that they are "distasteful, humiliating, and unworkable to those who must administer [them]"— apply to ED's screening policy; the National Science Foundation has no similar requirements, nor believes it needs them; there are no similar requirements for research funded by federal grants, the source of funding for most federally-sponsored education research; and, ED's policy does not pass the test of the 9/11 Commission that the executive branch use its power only to materially enhance security, with careful attention to civil liberties. It is not necessary to assign equal weight to each objection to conclude that ED's policy is misguided.

Current policy can be changed by ED with the stroke of a pen. If even a small number of wise elders in the education community were to publicly oppose current policy, the odds of removing the offensive, irrational provisions 3 and 4 might increase greatly. On the other hand, if the community remains largely silent, nothing is likely to change. It does not need to be that way. It took years, but the loyalty oath provisions of NDEA were finally withdrawn. Contractor employee security screening policy can be changed, too.

References

Asch, S.E. (1963). Effects of group pressure upon the modification and distortion of judgments. In *Groups, leadership, and men: Research in human relations,* ed. by Harold Guetzkow. New York: Russell & Russell.

Barone, J.C. & Swan, K. (2007). Effects of media framing on beliefs and values concerning detainees, civil liberties, and national security after 9/11. *Journal of the Research Center for Educational Technology*, 3:1.

Bush, G.W. (2004). *Homeland security presidential directive/Hspd-12*. Washington, DC: The White House.

Clark, M. (June 2007). Letter from Assistant Secretary Michell Clark.

Comstock, C.K., ed. (1959). *'Worse than futile': The "loyalty" provision of the National Defense Education Act*. Cambridge, MA: The Harvard Crimson.

Fehr, E. & Gächter, S. (2000a). Fairness and retaliation: The economics of reciprocity. *Journal of Economic Perspectives*, 14, 159-181.

Fehr, E. & Gächter, S. (2000b). Cooperation and punishment in public goods experiments. *American Economic Review*, 90:4, 980-994.

Glater, J. (February 11, 2007). Critics question Education Department's screening. *The New York Times*, p. A18.

Gore, A. (2007). *The assault on reason*. New York: The Penguin Press.

Hoff, D.J. & Cavanaugh, S. (February 21, 2007). Education Dept.'s stricter background checks questioned. *Education Week*.

Hoffrage, U. & Gigerenzer, G. (1998). Using natural frequencies to improve diagnostic inferences. *Academic Medicine*, 73(5), 538-540.

Kennedy, J.F.K. (1959). Introduction. *'Worse than futile': The "loyalty" provision of the National Defense Education Act*. Cambridge, MA: The Harvard Crimson.

Kennedy, J.F.K. (April 1960). Let's get rid of college loyalty oaths! *Coronet*, pp. 88-94.

Levine, F. (2007). Background investigations for research personnel working under federal contract—the state of the issue. *Educational Researcher*, 36:9, 579-580.

Lipset, S.M. (1953). Opinion formation in a crisis situation. *The Public Opinion Quarterly*, 17:1, pp. 20-46.

Murphy, P.L. (1979). *World War I and the origin of civil liberties in the United States*. New York: W.W. Norton & Co.

NASA vs. Nelson, Supreme Court decision No. 09-530, 1/19/2011.

National Commission on Terrorist Attacks Upon the United States. (2004). *The 9/11 Commission Report*. Washington, DC: Government Printing Office, pp. 394-395.

National Research Council. (2003). *Protecting participants and facilitating social and behavioral sciences research*. Washington, DC: The National Academies Press.

National Science Foundation. (2010). *The National Science Foundation proposal and award policies and procedures guide.* Arlington, VA: Author. (NSF document 11-1; see http://www.nsf.gov/pubs/policydocs/pappguide/nsf11001/aag_6.jsp#VID4.)

Olson, M. (1971). *The logic of collective action: Goods and the theory of groups.* Cambridge, MA: Harvard University Press.

Public Law 101-647, title II, Sec. 231, 1990 (42 USC Subchapter V, Child care worker employee background checks).

Swearer, S.M, Espelage, D.L., Vaillancourt, T., & Hymel, S. (2010). What can be done about school bullying? Linking research to educational practice. *Educational Researcher*, 39:1, 38-47. (p. 39)

U.S. Department of Education. (2004). Investigatory material compiled for personnel security and suitability purposes. ED document 18-05-17.

U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics. (2007). *Restricted use data procedures manual.* Washington, DC: Author. p. 3. (See also http://nces.ed.gov/statprog/rudman/.)

U.S. Department of Education. (2010). *Contractor employee personnel security screenings. Departmental directive OM:5-101*. Washington, DC: Author. (Available at http://www2.ed.gov/policy/gen/leg/foia/acsom5101.pdf.)

Viadero, D. (April 2, 2008). Security checks of U.S. contractors to change. *Education Week*.

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