2015 SACRAO Annual Meeting

FERPA Update and Discussion
February 2, 2015
Mobile, AL

Discussion Items
• Data collection update
• Department of Education guidance letters
• MOOCs
• Reverse Transfer
• Violence Against Women Reauthorization Act (WAVA)
• Disciplinary notations on transcript
• Request for admission records
• Update on proposed legislation

POLITICO
Big Brother: Meet the Parents

You’ve heard of Big Oil and Big Tobacco. Now get ready for Big Parent.

Moms and dads from across the political spectrum have mobilized into an unexpected political force in recent months to fight the data mining of their children. In a frenzy of activity, they’ve catapulted student privacy — an issue that was barely on anyone’s radar last spring — to prominence in statehouses from New York to Florida to Wyoming.

A months-long review by POLITICO of student privacy issues, including dozens of interviews, found the parent privacy lobby gaining momentum — and catching big-data advocates off guard. Initially dismissed as a fringe campaign, the privacy movement has attracted powerful allies on both the left and right. The American Civil Liberties Union is pushing for more student privacy protection. So is the American Legislative Exchange Council, the organization of conservative legislators.

The amateur activists have already claimed one trophy, torpedoing a privately run, $100 million database set up to make it easier for schools to share confidential student records with private companies. The project, known as inBloom, folded this spring under tremendous parent pressure, just 15 months after its triumphant public launch.

Letter to the University of Massachusetts (11/22/2013)

The Issue—
• Maryland State law requires all institutions that operate within the State, with certain exceptions, to register with the Maryland Higher Education Commission. As of July 1, 2012, state law requires that every 100% online institution that has Maryland students also must register with the Commission.
• Further, Maryland State law requires online institutions that provide distance learning to Maryland students must submit student-level enrollment data, degree data, and financial aid data to the Maryland Longitudinal Data System Center (Center).
• The University of Massachusetts questioned whether they can disclose the requested PII from education records to the Center.

The Facts—
• Maryland Higher Education Commission is the postsecondary “educational authority” within the State.
• State law specifically designates the Center as an “authorized representative” of the Commission.
• The Center uses the data compiled “to improve the State’s education system and guide decision making by State and local governments, educational agencies, institutions, teachers, and other educational professionals.”
• Massachusetts is registered as an online institution with the Commission.
The Conclusion—
• The Commission is a postsecondary educational authority
• University of Massachusetts must determine that the Commission properly designated the Center as it authorized representative through a written agreement before disclosing education records to the Center.
• Massachusetts must determine that the disclosure is in connection with an audit or evaluation of a Federal-or State-supported education program, or to enforce or comply with Federal legal requirements that relate to those education programs
• State law stating that the Center is an authorized representative is insufficient. FERPA would require the Commission to properly designate the Center as an “authorized representative” of the Commission.

Letter to University of North Carolina at Chapel Hill (4/28/14)
• The Issue—
• A newspaper requested access to certain information on student athletes maintained by the University of North Carolina at Chapel Hill under the State’s Public Records Act.
• The newspaper filed lawsuit against University seeking a copy of a spreadsheet which includes a data set on athletes that includes: Personal identification number, student name, sport, course title, degree date, student major field of study hours earned toward degree, and GPA.
• The spreadsheet was an internal document related to student athletes who participated in courses offered by the University's Department of African and Afro-American Studies.

The Facts—
• University believed the spreadsheet is either already "linked or linkable to specific students" with reasonable certainty and if made public the information it contains, in combination with other information publicly available, would allow members of the University community to identify with reasonable certainty individual student athletes who took a course.
• The requesting newspaper had previously filed over 60 related public records requests with the University.

The Conclusion—
• FPCO concluded that even if the University removed the students’ names and other direct identifiers from the spreadsheet and disclosed the other requested information, it appears based on the information provided by University, that disclosing the information would be identifiable to some students.
• The University is in the best position to make the determination.
• A student’s identity may be personally identifiable, even after removal or redaction of nominally identifying information from student-level records. This may be the case with a highly publicized disciplinary action, or case of a well known student, where a student could be easily identified even after record has been scrubbed of identifying data.
• The court ruled in favor of the University

MOOCs – What is it?
MOOC (noun) - Massive Open Online Course. A term, coined in 2008 by Professor Dave Cormier of the University of Prince Edward Island, used to describe web technologies that have enabled educators to create virtual classrooms of thousands of students.

MOOCs – Business Models

Coursera (Stanford)
Revenue: Amazon Affiliate Program, Signature Track, Proctored Exams, Career Services

edX (MIT and Harvard) – non-profit
Revenue: Retail partners (textbooks)

Udacity (Stanford)
Revenue: Retail partners (textbooks)
Reverse Transfer

- “It’s our understanding that some other schools are proceeding with reverse transfer based on the belief that FERPA allows schools to disclose education records for this purpose without the student’s consent, under the following conditions (34 CRF § 99.31):
  - School officials with legitimate educational interest
  - Other schools to which a student is transferring
  - Specified officials for audit or evaluation purposes
  - Organizations conducting certain studies for or on behalf of the school.

Is this permissible under FERPA?”

Violence Against Women Reauthorization Act (VAWA)

- VAWA amended the Clery Act to require institutions to compile and report on the numbers of incidents of dating violence, domestic violence, sexual assault, and stalking, to establish and disclose to students and employees policies, procedures, and programs pertaining to these incidents in their annual security reports.
- The final regulations were released on October 20, 2014 and will go into effect July 1, 2015, in accordance with the master calendar requirements in the Higher Education Act. However, the requirements in VAWA itself are in effect now and institutions are expected to make a good faith effort to comply with those requirements.

Status of Legislative Initiatives

- VA mandatory reporting of campus sexual assault and required transcript notation
- Markey-Hatch
- Murphy: Helping Families in Mental Health Crisis Act
- Obama proposed student data protection legislation

Giving Credit Where Credit Is Due Is Tougher Than It Seems

By Katherine Marzian

Imagine you’re a transfer student grueling away on a tough physics assignment, and an email pops up informing you that, between your community college and university courses, you’ve earned enough credits to be awarded an associate degree. It’s been a tough transition to Big State U., so you react by:

- A. Eagerly accepting the degree, which will motivate you to complete your baccalaureate.
- B. Breathing a sigh of relief because, with a degree in hand, you won’t feel so guilty if you throw in the towel on the blasted B.A.
- C. Panicking because your private scholarship ends when you receive your first degree, and you want the money to keep flowing for two more years.

Status of Legislative Initiatives cont.

- Result means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result must include any sanctions imposed by the institution. Notwithstanding Family Educational Rights and Privacy Act (FERPA), the result must also include the rationale for the result and the sanctions.
- Compliance with paragraph (k) of this section “Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking” does not constitute a violation of FERPA.

Obama Proposes Bill to Protect Student Data, but Not in Higher Education

The abundance of data being collected on students has been celebrated as an opportunity to “personalize” education. But privacy advocates have long warned that digital paper trails might leave today’s students exposed if their personal information fell into the wrong hands.

The White House announced on Monday that it would be taking up the cause of student privacy, pushing legislation that would “prevent companies from selling student data to third parties for purposes unrelated to the educational mission,” according to a news release.

However, the bill, called the Student Digital Privacy Act, would focus on students in elementary and secondary schools, not college students, according to Obama administration officials.
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