

Nazareth, Mike

From: Kim Barber <kabarber@fsu.edu>
Sent: Tuesday, April 20, 2021 2:30 PM
To: Rebecca Augustyniak; Rick Burnette; Nazareth, Mike
Cc: Blair Monroe; Amy Finley; Pritz, Steve
Subject: FW: GCIS Historical Information

[External Email]

All- This is what I got from our General Counsel with respect to GCIS and FERPA. Looks like the rationale that was in place can still apply and we can move forward.

Kimberly A. Barber, Ph.D

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From: Lisa Scoles <lscoles@fsu.edu>
Sent: Friday, April 16, 2021 2:55 PM
To: Kim Barber <kabarber@fsu.edu>
Subject: RE: GCIS Historical Information

Kim – Thanks for your question. After a review of FERPA and its regulations, my response follows. Please let me know if you'd like to discuss or have questions.

From the materials provided from 2001 and 2002, it looks like the exemption relied upon in the past was 20 U.S.C. § 1232g(b)(1)(A) that allows release of education records without student consent to “. . . school officials . . . who have been determined by such agency or institution to have legitimate educational interests” in such records. As each university in the SUS determined that the other institutions had legitimate educational interests in the education records of its students, sending records to an entity formed and sponsored by the State Legislature to be pooled for use by the other SUS institutions was determined to fall within that exception.

I have taken a look at FERPA and the implementing regulations in light of your email indicating that the Legislature and the BOG appear to be divesting themselves of the oversight of the pooled system. The exemption in 20 USC § 1232g(b)(1)(A) that allows release of education records to “school officials” who have been determined by the institution to have legitimate educational interests still exists. Further, the regulations (34 C.F.R. §99.31(a)(1)(A) and (B)) clarify that “school official” for purposes of this section can include a “contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions” as long as: (i) the contractor/consultant is performing a service or function for which the entity would otherwise use employees, (ii) is under the direct control of the institution with respect to use/maintenance of education records and (iii) is otherwise

complying with FERPA regarding the use and redisclosure of personally identifiable information. Further, the institution must “use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests” and appropriate controls must be in place to control such access.

So, based on my quick research, it does not appear that the formation/sponsorship of the entity by the Legislature or BOG is the determinative factor. Instead, assuming that the SUS institutions continue to consider the other institutions as having legitimate educational interests in the education records, then basically any contractor/consultant (who meets the criteria in 34 C.F.R. §99.31(a)(1)(A) and (B) (outlined above)) could be considered to be a “school official” who can receive access to the records, as long as appropriate controls are in place to appropriately limit access.

Lisa Scoles
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From: Kim Barber <kabarber@fsu.edu>
Sent: Wednesday, April 14, 2021 1:46 PM
To: Lisa Scoles <lscoles@fsu.edu>
Subject: FW: GCIS Historical Information

Lisa-

Can you look this over and see if we can still share a data with this group under FERPA? The group was original formed and sponsored by the State legislature. We all send undergraduate graduating students to this pooled resource for other SUS schools to mine for the purpose of recruitment to graduate programs in the SUS. By all counts the Legislature and the BOG is divesting themselves of the oversight of this system. I raised the question at the last meeting of the group that I believe one of the firs things that we need to clarify is can we still send this information given that the state authorization is changing.

Rebecca listed on here works out (I believe at NWRDC) where the data is all held. She could provide an additional information as well about the current and future organization should we be allowed to continue submitting our data.

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From: Pritz, Steve <spritz@ufl.edu>
Sent: Wednesday, April 14, 2021 12:04 PM
To: Rebecca Augustyniak <raugustyniak@admin.fsu.edu>; Rick Burnette <rburnette@admin.fsu.edu>; Nazareth, Mike <mikenaz@eng.ufl.edu>
Cc: Blair Monroe <bmonroe@admin.fsu.edu>; Amy Finley <afinley@fsu.edu>; Kim Barber <kabarber@fsu.edu>
Subject: RE: GCIS Historical Information

Rebecca, I think Kim brought up the issue so I am forwarding this to her to see if she has any further questions. Thanks, Steve.

Stephen "Steve" J. Pritz, Jr.

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From: Rebecca Augustyniak <raugustyniak@admin.fsu.edu>

Sent: Wednesday, April 14, 2021 11:47 AM

To: Rick Burnette <rburnette@admin.fsu.edu>; Pritz, Steve <spritz@ufl.edu>; Nazareth, Mike <mikenaz@eng.ufl.edu>

Cc: Blair Monroe <bmonroe@admin.fsu.edu>; Amy Finley <afinley@fsu.edu>

Subject: GCIS Historical Information

[External Email]

I ran across these two letters (see attached) regarding the legal issues of using student data in GCIS. The letters date back to the beginning of GCIS (2001). Should I have the FSU legal office do a review to identify changes in FERPA or wait until we convene the GCIS Committee?

Thanks,
Rebecca

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