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Office of the General Counsel

Practical Issues in Data Practices: 2018 Update

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FERPA and Working with High Schools

Scenario #1: Parent Interactions

- Scenario: A parent asks to see their child's record. The child is a minor and a PSEO student.
- Response: You can only share this information if the student consents. Unless you have a consent form signed by the student, you should direct the parent to the High School, which must share the information.

Scenario #1: Parent Interactions

- All enrolled students are college/university students for FERPA purposes, including minors, dual enrollment, and concurrent enrollment students
- There is an exception. FERPA has a rule that gives campuses the option to provide parents with access to student data if the parent can prove that the student is a dependent for Federal tax purposes.
 - Campuses must set forth in policy that the campus allows this option.

Scenario #2: High School Transcripts

- Scenario: A Student asks for a copy of their high school transcript from the college/university. The student is willing to pay for copies.
- Response: You must comply with this request. However, when giving a student a copy of a third party transcript, you can indicate that the transcript is unofficial and a copy.

Scenario #2: High School Transcripts

- According to the Data Practices Act, subjects of government data are entitled to inspect their data.
- We cannot withhold copies unless the data subject refuses to pay for them.
- However, we can only issue our own “official” documents.

Scenario #3: The High Schools as a School Official

- Scenario: A High School has a program where students are assigned academic advisors. An academic advisor requests data on how the student is doing in the student's PSEO course.
- Response: The academic advisor may be a school official according to our relationship with the high school. If that is the case, you may share this data.

Scenario #3: The High Schools as a School Official

- A School Official must have a legitimate educational purpose for accessing student data.
- The School Official must agree to keep the data confidential and only use the data for the legitimate educational purpose.
- The School Official should only be given access to the data necessary for the legitimate educational purpose.



European Union General Data Protection Regulation (EU GDPR)

What is the EU GDPR?

- The EU has been developing a new data protection regulation for the past several years. The GDPR is the result of that process.
- The GDPR will protect personal data of individuals located in the EU.
- It will apply to any person or entity that accepts data from an individual located in the EU.
- The GDPR goes into effect on May 25.

Who does the EU GDPR Apply to?

- The EU GDPR applies when an individual, located in the EU, sends data to one of our colleges/universities.
- The individual does not have to be a citizen of an EU member state.
- However, the EU GDPR does not apply when the individual sending the data is not located in the EU, even if they are a citizen of a member state.

What is Affected by the GDPR?

- The application process when we are accepting data from EU residents who apply to our colleges/universities.
- Students and employees involved in official programs in the EU (e.g. study abroad, faculty exchange, permanent staff).
- The EU GDPR only applies to the extent an individual sends us data while they are in the EU. It does not apply to any data that we collect otherwise.

EU GDPR Compliance – Current Practice

- Fortunately, many of the EU GDPR requirements are things we are already doing (e.g. Data Practice Compliance Officers, Tennyson Warnings, FERPA requirements, MGDPA requirements).
- For example, the central application process already asks for a student's consent to receive data and refers to Minnesota State's Privacy Policy.

EU GDPR Compliance – Updating Forms

- One thing that we need to do is update our consent documents and waivers for when students and employees are traveling to the EU to participate in college/university programs.
- Our Office can assist campuses in updating their forms.
- Our Office will have new model forms available in advance of the May 25 deadline.

Consequences of Non-Compliance with the EU GDPR

- The regulation allows member states to issue fines of up to \$22 million Euro for GDPR violations.
- Additionally, the GDPR establishes “fundamental rights.”
- If your campus has concerns about the EU GDPR, please contact our Office.
- Stay tuned for additional compliance updates from our Office concerning the EU GDPR.



New Department of Education Directions on Financial Aid Data and Data Breaches

Data Collected on the Free Application for Federal Student Aid

- The Department of Education has been issuing informal guidance this academic year concerning data collected on the Free Application for Federal Student Aid (FAFSA).
- The Department has stated that it considers data collected on the FAFSA form to be subject to restrictions based on the Higher Education Act rather than FERPA.

FAFSA Data: What does this mean?

- “Data collected by such electronic version of the forms shall be used only for the application, award, and administration of aid awarded under this title, State aid, or aid awarded by eligible institutions or such entities as the Secretary may designate.”
- This means that FAFSA Data can only be used to award aid and administer that aid. It cannot be used for purposes unrelated to that aid.
- Additionally, it cannot be disclosed to a third party, even with the student’s consent.

FAFSA: Next Steps

- Determine what data you need from the FAFSA form that you would typically use for non-FAFSA purposes.
- Where practical, ask for that data directly from the student and store it separately from the FAFSA data.
- Additionally, you can help students provide data directly to third parties where possible.

Data Breaches

- Additionally, the Department of Education has directed that campuses provide same day notification of any actual or suspected data breach.
- This does not have to be an IT breach – it applies to any data breach.
- It applies to confirmed data breaches and potential breaches under investigation.
- Do not reach out to the Department of Education directly. If you discover or suspect any kind of data breach, please contact Craig Munson in System Office IT Security immediately. Our Office will assist as well.



Public Data Requests from Commercial Entities

Commercial Data Requests

- We often get requests for directory and other public data from commercial entities.
- Sometimes these requests come from corporate email addresses, sometimes personal email addresses.
- The MGDPA requires us to comply with these requests.

Commercial Data Requests

- Unlike the default FERPA rule, the MGDPA classifies directory data as “public data.” Therefore we have to provide the public with access to it.
- A data requestor does not have to identify themselves or their purpose.
- We have a “reasonable” time to comply with data requests (unless they come from the data subject themselves, then we have 10 business days).

Commercial Data Requests

- The good news is that we can charge for copies, search and retrieval, compiling the data, and transmission under certain circumstances.
- We can charge \$0.25 per page for copies to members of the public.
- If a request is more than 100 pages, we can charge “actual costs” for search and retrieval, compiling, and transmission of the data.
- Keep track of employee hours when working on a data request of over 100 pages. Keep in mind this has to be tracked at the lowest pay grade with the ability to fulfill these duties.
- There are different rules when the requestor is a data subject.



Guardianship/Conservatorship and FERPA

Guardianship in Minnesota

- There are different types of Guardianship in Minnesota
- A “Guardian ad Litem” is a person who is appointed by the court to be an advocate for a child who is involved in court proceedings. This can include non-minors in some circumstances.
- A “Guardian” has the right to make personal decisions for an individual.
- A “Conservator” has the right to make financial decisions for an individual.

Guardians and FERPA

- A Guardian ad Litem must have a court order to access student records.
- A Guardian or Conservator has the powers delegated to them by a Court over a ward/protected person.
- The best practice is for a guardian or conservator to still get a signed consent from their ward or protected person if possible.
- If you receive a request from a Guardian, Conservator, or Guardian ad Litem, please contact our Office.





One More Thing: DPCO's

Data Practices Compliance Officers

- Campuses: Please let the Office of the General Counsel know when you change DPCO's.
- If you have questions or comments, feel free to call (651) 201-1676 or email [Amanda Bohnhoff-
amanda.bohnhoff@MinnState.edu](mailto:amanda.bohnhoff@MinnState.edu)

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