

### **FERPA and Electronic Records**

The Family Educational Rights and Privacy Act ( FERPA) provides students with the right to inspect and review their educational records, exercise significant control over the disclosure of information from those records, and correct or amend erroneous information in the records. It serves as the cornerstone to ensuring student privacy.

As the Higher Education Act comes up for renewal, we would encourage these updates to FERPA.

#### **Recent Court Decisions Have Created Confusion About Electronic Records**

- AACRAO believes that the current law is media-neutral and focuses solely on the information contained in educational records.
- However, the recent court cases of *S.A v. Tulare County Office of Education* and *Phoenix Newspapers Inc. v. Pima Community College* have created confusion around the issue of whether electronic records, and emails that specifically identify the student, are considered educational records and are addressed under FERPA.

#### **S.A. v. Tulare County Office of Education**

- In this case, a student sued a branch of the California Department of Education over their refusal to release certain emails that identified the student. The student claimed that all emails that identified the student specifically were a part of the educational record and therefore must be released upon request in compliance with FERPA.
- The California Department of Education countered that only documents, including emails, that were kept in the student's permanent file were education records and therefore they were not required to release emails that identified the student specifically but were not kept in the student's file.
- The Court ruled in favor of the California Department of Education, concluding that emails that were not a part of the student's permanent file were not considered part of the education records.
- Because the emails are not protected, they are a part of public record which could lead to databases of student records becoming part of public record and the privacy of students being greatly diminished.

### **Phoenix Newspapers Inc. v. Pima Comm. College**

- This case consisted of Phoenix Newspapers Inc. suing Pima Community College over their refusal to release emails that referenced a specific student. Pima Community College did not give the newspaper the emails claiming that they were part of the educational records under FERPA.
- The court ruling stated that the emails were not part of the student record under FERPA because they were not maintained in a central location by a single person such as a registrar and were instead part of many personal inboxes. This meant that the university did not have control over the retention of the emails or how they were accessed and that this contradicted FERPA.
- Additionally, the ruling established that electronic documents are not covered under FERPA if they are spread out within a database and can only be located collectively with a search, as Pima Community College located the disputed records.

### **Third Party Record Collection**

- We seek to resolve legally ambiguous status of records collected and maintained by third-parties, or cloud based storage, for use by educational agencies and institutions.
- The increased use of third party services that directly capture and maintain information that otherwise was previously maintained by higher education institutions, or “Third Party Record Collection Agencies”, needs to be included in the list of entities that capture and maintain student data and should covered under FERPA.

### **AACRAO Proposed Updates to FERPA**

- AACRAO strongly supports the inclusion of language that will identify *electronic records* in the definition of *educational records* to diminish confusion surrounding electronic documents, such as emails, and create a national standard.
- Third Party Record Collection Agencies should be included in the list of entities that capture and maintain student data and should covered under FERPA.

### **About AACRAO**

Founded in 1910, the American Association of Collegiate Registrars and Admissions Officers (AACRAO) is one of the oldest nonprofit higher education associations in the nation and represents approximately *11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies* in the United States.

Our mission is to provide guidelines and standards for the higher education community regarding record management, admissions, enrollment management, administrative information technology and student services.