

March 10, 2023

VIA EMAIL

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Tika Davé-Harris
Associate Vice President, Human Resources
Mt. San Antonio College
1100 N. Grand Ave
Walnut, CA 91789

Re: *Opinion Letter re impact of merging canvas shells on FERPA compliance*
Client-Matter: MO160/001

Dear Ms. Davé-Harris:

You have asked for an opinion as to whether there are any Family Educational Rights and Privacy Act ("FERPA") compliance issues with respect to merging Canvas shells related to the Mt. San Antonio Community College District's ("District") Canvas online system for an online or hybrid course. Our analysis follows.

I. QUESTIONS PRESENTED

1. If instructors isolate students within course sections (grouped) within a merged Canvas shell and the College identifies a process by which communication between students would be limited to students within each course section group, would that be sufficient to assure FERPA compliance?

2. Would such a process appropriately limit the expansion of interpersonal communication that could lead to FERPA violations?

3. When students enroll in an online class, are they acknowledging such enrollment limits their FERPA protections?

II. SHORT ANSWER

1. Yes. Students communicating amongst each other within a merged canvas shell that is limited *only* to students within each course section group does not raise any FERPA compliance or privacy issues. However, the District should take additional precautions in the context of a recorded online or hybrid class to ensure that FERPA violations do not arise.

2. Yes. Once the additional precautions mentioned above are taken, the expansion of interpersonal communication that could lead to FERPA violations would be appropriately limited.

3. No. Enrollment alone into an online or hybrid course is not in and of itself an acknowledgement by students that their FERPA protections are limited.

III. FACTUAL BACKGROUND

Congress enacted Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, popularly known as "FERPA," in response to a growing public awareness of and concern about the public dissemination by primary and secondary schools of information commonly considered private in nature, the withholding of secret files on students, and recordkeeping practices in general. Much like other records statutes of that era, it reflected a desire to give a measure of control to the subjects of government records – in this case, "education records." In very general terms, FERPA gives college students the rights to:

- Control the disclosure of their "education records" to others;
- Inspect and review their own "education records"; and
- Seek amendment of their "education records."

The statute defines "education records" as records that are 1) directly related to a student, and 2) maintained by an educational agency or institution or by a party acting for the agency or institution.

Unlike at the primary and secondary level, in community colleges, these rights belong to the student, and not to the student's parents or legal guardians, regardless of the student's age. Moreover, the rights continue to exist after the student's graduation and expire only upon the student's death.

Canvas is the District's online Learning Management System. Every course has a "shell" and is hosted on Canvas.¹ Students use Canvas to manage their academic course load. Canvas enables students to access course content, grades, communications, feedback, and scheduled calendar items posted by their professors all in one place within each respective course shell. Canvas also has interactive tools that allow students to directly message their professors using a "chat" feature and allows students to collaborate and engage in discussions amongst themselves.

Instructors also have the ability to teach an online or hybrid course remotely using Zoom, as Zoom is integrated into each canvas shell. Instructors have the ability to record live class sessions taught via Zoom so that students can watch a missed class session, review an earlier

¹ <https://www.mtsac.edu/asac/canvas/>

session, or for the instructor to share with a future class. Depending on who is identifiable in the recording, the recordings may constitute education records that are protected under FERPA.

IV. ANALYSIS

A. THE DISTRICT SHOULD TAKE ADDITIONAL PRECAUTIONS INCLUDING LIMITING THE USE OF RECORDINGS AND CAMERA USAGE TO ENSURE FERPA COMPLIANCE WHEN MERGING CANVAS SHELLS FOR AN ONLINE OR HYBRID CLASS

While there does not appear to be any potential FERPA compliance issues with students communicating amongst each other within a merged canvas shell that is limited *only* to students within each course section group, the District should be aware and take appropriate precautions with respect to students communicating amongst each other or with the instructor in the context of a recorded online or hybrid class.

If a recording includes only the instructor, it is not a student record and FERPA does not limit its use because it is not a record that is “directly related to a student.” 34 C.F.R. § 99.3 (emphasis added). If the recording includes students asking questions verbally or in a chat, making presentations or leading a class, and it is possible to identify the student, then the portions containing recordings of the student do constitute protected education records because FERPA defines education records as records “directly related to a student.” *Id.* Education records can only be used as permitted by FERPA or in a manner allowed by a written consent from the student. 34 C.F.R. § 99.30(a) and (b).

As such, when recording a class, instructors should keep their Zoom view set to “Speaker View” as opposed to “Gallery View.” This ensures that only the person who is speaking appears on the screen as opposed to recording a grid view of all attendees with webcams enabled. Professors should set the “Participant Video” to “Off” to allow students to opt into sharing their video rather than mandating that webcams be on. In order to comply with FERPA, instructors should share a screen capture or recording of a student only with that student’s consent.

If an instructor would like to share recordings of a previous class with another class or an outside third-party, the instructor must either obtain individualized written FERPA consents from the students shown in the recording or the instructor must edit the recordings to remove portions of the video that show students who have not consented to the use of their voice and/or image.

B. THE EXPANSION OF INTERPERSONAL COMMUNICATION THAT COULD LEAD TO FERPA VIOLATIONS MAY BE APPROPRIATELY LIMITED ONCE THESE ADDITIONAL PRECAUTIONS ARE TAKEN

The fundamental primary purpose of the FERPA statute is to protect the privacy rights of students. Students communicating amongst each other within a merged canvas shell that is limited *only* to students within each course section group does not raise any FERPA compliance or privacy issues. Students must be able to see and discuss the commentary of their peers within

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the same course group in order to learn from their peers and engage with the subject matter being taught. These interactions replicate the interactions that take place in a physical classroom. Privacy or FERPA compliance issues would only arise if these conversations from a merged canvas shell were to be disseminated either to students from another course or to third parties without the consent of the students within the applicable merged canvas shell. As such, once the District takes the appropriate precautions regarding the use of recordings and camera usage mentioned in subsection A, the expansion of interpersonal communication that could lead to FERPA violations would be appropriately limited.

C. THE DISTRICT CAN PROVIDE A FERPA WAIVER FOR STUDENTS UPON ENROLLMENT TO AN ONLINE OR HYBRID COURSE THAT UTILIZES MERGED CANVAS SHELLS

Enrollment alone into an online or hybrid course is not in and of itself an acknowledgement by students that their FERPA protections are limited. As such, the District should consider having their instructors obtain written FERPA consent from their students for instructional video recordings as long as instructors intend to use the recordings. A sample of a model consent form for the District to use is attached below as “**Exhibit A.**” However, students may decline to waive their FERPA rights and the District and/or instructor should not take any action to limit those rights. If a student does not execute the waiver, that student’s work and communications cannot be part of the recording shared with other classes or third parties.

V. CONCLUSION

For the aforementioned reasons above, the District should take precautions to ensure that merging canvas shells within an online or hybrid course protect student privacy rights, and that any disclosure to students in other classes or to third parties occurs only when each student participating in the recording has signed a FERPA waiver.

Please contact us if you would like to discuss this further. Thank you for the opportunity to be of assistance to the District in this matter.

Very truly yours,

LIEBERT CASSIDY WHITMORE

/s/ Daniel S. Ivanov

Daniel S. Ivanov

PM:DSI:ah

cc: Dr. Sokha Song
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EXHIBIT A

[DISTRICT LETTERHEAD]

**FERPA CONSENT TO RELEASE COURSE RECORDINGS &
PERMISSION TO RECORD**

Student Name _____ **ID#** _____
Last First

Course: _____ **Section:** _____

The Family Educational Rights and Privacy Act (“FERPA”) regulates the disclosure of educational information. FERPA states “when a student becomes an eligible student (18 years of age **or is attending an institution of postsecondary education**), the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

I understand that my instructor will record our synchronous online sessions to allow students in the course, including me, to view at a later time. I understand the instructor will notify the students when a session is being recorded. I understand the recordings will not be used for purposes beyond this course.

By signing this FERPA consent to release form, I agree that the course section identified above may be audio and/or video recorded. I authorize the Mt. San Antonio Community College District to release the education records pertaining to my participation in the course above, including but not limited to my likeness and voice, presentations and other materials I have created for the class.

BY SIGNING THIS FORM, I understand my agreement to the terms above is voluntary and is not a condition or requirement of my participation in the course and that, if I decline to authorize release, the faculty member will still work with me to enable my participation in the course.

Student Signature _____ **Date** _____

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To rescind the Release of Information, contact your instructor.