



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

January 20, 2016

Dr. Nancy L. Zimpher  
Chancellor  
The State University of New York  
State University Plaza  
Albany, New York 12246

Dear Dr. Zimpher:

This is in response to your letter of May 1, 2015, regarding the disclosure of information among the State University of New York (“SUNY”) campuses for the purpose of reverse transfer. We spoke with SUNY officials on June 18, 2015, about this matter, and I trust the guidance in today’s letter will prove helpful.

The Department of Education supports the goals of reverse transfer, believing that students can benefit from knowing that they are eligible (or very nearly eligible) to receive an Associate’s Degree. Within the requirements of the Family Educational Rights and Privacy Act (“FERPA”), we support the data sharing necessary to inform students of the degrees to which they may be entitled. We appreciate that SUNY is addressing the FERPA requirements for reverse transfer, as FERPA generally prohibits the disclosure of personally identifiable information (“PII”) from students’ education records without their prior written consent, unless one of FERPA’s exceptions to consent applies.

In your letter, you assert that SUNY officials can share PII from students’ education records across campuses (2-year and 4-year) under FERPA’s school official exception because the entire SUNY system constitutes a single educational institution. This, you maintain, is FERPA-compliant, as FERPA permits the disclosure of PII from education records to school officials with a legitimate educational interest in accessing the information, including officials within the same educational institution. However, based on the material in your letter, information on your websites, and from our discussions with your staff, it does not appear that the SUNY system would constitute a single educational institution under FERPA for purposes of sharing PII from education records under the school official exception. While some factors indicate that SUNY may act as a single educational institution (*e.g.*, the fact that SUNY has a system wide FERPA policy and the Board of Trustees (the “Board”) directs curriculum on SUNY campuses), the predominance of factors indicate that SUNY is not a single educational institution for FERPA purposes. Relevant factors include the fact that students cannot transfer seamlessly between campuses, faculty are hired and appointed at individual campuses (except senior positions), degrees are conferred by individual campuses, FERPA annual notification of rights notices at most individual SUNY campuses are inconsistent and not issued by a single entity, and students are admitted and graduate from individual campuses.

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*The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering national educational excellence and ensuring equal access.*

Consequently, although your proposal for accomplishing reverse transfer within the SUNY system does not appear to be permissible under FERPA, in our June telephone call and in prior conversations with your office, we outlined several methods consistent with FERPA that could be used to accomplish the data sharing required in a reverse transfer operation. Below please find brief summaries of these methods, along with a few additional alternatives. Please be advised that each of the below-referenced methods has its advantages and disadvantages, but all are permissible under FERPA.

### **With Written Consent Obtained Under 34 C.F.R. § 99.30**

SUNY can rely on written consent to accomplish reverse transfer. In this instance, a 4-year SUNY university would send a communication to a student who transferred into that university from a SUNY community college, but who has since left without obtaining a Bachelor's Degree. The communication would (1) inform the student that he or she may be eligible for an Associate's Degree from his or her original community college, and (2) request written consent that satisfies the requirements of 34 C.F.R. § 99.30 to share his or her transcript with the community college to conduct a degree completion review. For students who provide such consent, the 4-year SUNY university would then proceed to send the students' transcript information to the community colleges in question. The community colleges would perform degree completion reviews and award degrees to eligible and willing students.

### **Using De-identified Transcripts Under 34 C.F.R. § 99.31(b)(1)**

SUNY is also free to use de-identified transcripts to accomplish reverse transfer. In this scenario, the Board would identify students who are potentially eligible for reverse transfer and remove both direct and indirect identifiers from these students' education records, attaching a unique identification code in its place. The unique identification code would allow the Board to identify the student, but could not be used by anyone else to identify the student. The Board would then send the de-identified transcripts to the community colleges that the students previously attended, with the community colleges agreeing not to attempt to re-identify specific students. The community colleges would conduct degree completion reviews for the anonymous transcripts and send the identification codes for eligible students back to the Board. The Board would identify the eligible students and notify those who are eligible to receive a degree. With the students' written consent pursuant to 34 C.F.R. § 99.30, the un-redacted (identifiable) transcripts could then be sent to the community colleges that the students previously attended for the purpose of awarding the degree.

### **Having the Board Perform the Degree Completion Reviews Using FERPA's Audit or Evaluation Exception**

If the Board constitutes a "state educational authority" with the authority, under applicable law, to audit or evaluate the community colleges' and 4-year educational institutions' education programs, as defined by 34 C.F.R. § 99.3, then the Board may use FERPA's audit/evaluation exception to consent to perform degree completion reviews as a part of its audit or evaluation of the education programs over which it has authority. The Board has indicated that it has all the student information needed to perform the

degree completion reviews itself, which, as explained above, the Board may obtain if the Board constitutes a “state educational authority” with the authority to audit or evaluate the relevant education programs. If the SUNY community colleges provided the Board with their degree requirements, the Board could perform the degree completion reviews. Even short of performing the actual degree completion reviews, the Board could identify likely candidates. Under either scenario, the Board would then contact students who are eligible (or potentially eligible) for an Associate’s Degree informing them of their eligibility, and obtaining their written consent, pursuant to 34 C.F.R. § 99.30, to transfer their transcripts to the community colleges that they previously attended for the purposes of awarding them degrees, performing degree completion reviews, or both.

### **Using FERPA’s Audit or Evaluation Exception to Designate the Community Colleges as the SUNY Board’s Authorized Representatives to Perform the Degree Completion Reviews**

Assuming the Board constitutes a “state educational authority” with the authority to audit or evaluate the relevant education programs, the Board may also enter into a series of written agreements with each of its community colleges that are compliant with 34 C.F.R. § 99.35(a)(3) designating each as its authorized representative for the purposes of conducting the audit or evaluation of the 4-year educational institutions’ education programs which may include reviewing degree completion requirements for potential reverse transfer candidates. Under such agreements, the Board would send transcript records for potential reverse transfer candidates to the relevant community colleges, and the community colleges would perform degree completion reviews on these records. The Board would need to use reasonable methods to ensure to the greatest extent practicable that the community colleges used the transcript records only to carry out the completion reviews of the degree requirements for potential reverse transfer candidates, protected the transcripts from further disclosure (other than back to the Board) or other uses, and destroyed the transcripts when the review was complete. The Board (or the community colleges acting on behalf of the Board) would then contact eligible students to notify them about the possibility of obtaining an Associate’s Degree and to obtain the students’ written consent, pursuant to 34 C.F.R. § 99.30, to transfer their transcripts to the community colleges that they previously attended for the purpose of award them Associate’s Degrees.

### **Having the 4-Year Educational Institutions Perform the Degree Completion Review Using FERPA’s School Official Exception**

In this scenario, the community colleges would provide the SUNY 4-year universities with their degree requirements, so that the 4-year universities could identify those students who were likely candidates for reverse transfer, using information already in their possession. The 4-year university would notify the students in question regarding their potential eligibility for an Associate’s Degree, and either obtain their written consent, pursuant to 34 C.F.R. § 99.30, to send their transcripts to the community colleges that they previously attended for the purpose of awarding them Associate’s Degrees, or ask the students to contact the community colleges directly for confirmation of their eligibility and to obtain their Associate’s Degrees.

As you can see, while FERPA permits reverse transfer, states must select a method that both complies with FERPA and fits the state's individual circumstances. Given the great variability in how states structure their post-secondary systems, we are happy to work with states to select an appropriate method. We trust this is helpful to you.

Sincerely,

/s/

Dale King  
Director  
Family Policy Compliance Office