

January 11, 2016

To: Dr. Sandra Collins, Chair, University Senate

Re: Recommended Policy on Integrity of Course Web Spaces in the University Learning-Management System

In October, 2015, I received a recommendation drafted by the Academic Technology Committee and adopted by the University Senate on February 18, 2015, proposing a new policy on “Integrity of Course Web Spaces in the University Learning-Management System.” The proposed policy would restrict the University’s access to course materials and student metadata hosted through CANVAS or any other learning-management system adopted by the University unless such access is needed to perform backup of data, administrative tasks, updates, and to respond to a warrant, subpoena or similar legal order. In my judgment, the proposed policy is overly restrictive, prevents the University from exercising its appropriate responsibilities for promotion of student learning, and is inconsistent with Federal law, the University’s Policy on Responsible Use of Computing, and the Agreement between the State of New Jersey and the Council of New Jersey State College Locals, AFT, AFL-CIO. Further, it is my judgment that the proposed policy is not necessary to protect the appropriate rights of faculty, which are already protected in other documents, nor do I agree that “the ease and access” characteristic of electronic records stand in contrast to the data and data-access integrity appropriate for academic instruction. I, therefore, cannot recommend to the President adoption of the proposed policy by the University. The reasoning for my judgments and decision are set forth below.

As the Proposed Policy suggests but quite opposite to its conclusion, data analytics have become ubiquitous and essential for efficient and competitive management in higher education across the country, and every day sees the emergence of a new consultant company which offers, for a fee, to show us how we can gather and apply student performance data, sometimes on a daily basis, to promote increased retention and less costly, more timely degree completion. With a tool like Canvas we are fully capable of performing these analyses internally and preserving our own “click stream” data; this is territory I agree we must carefully protect and manage but that concern is not addressed in this document. As stated in the University’s Policy on Responsible Use of Computing--“All information, records, and material maintained on the University’s computers and computing systems by University employees is the property of the University”--the University owns or has a license to use all LMS systems software and, consistent with FERPA regulations and University FERPA policy, reserves its interest in accessing metadata from the LMS for the purposes of promoting student success in individual courses and assessing student learning. The timely identification of at-risk students allows for proactive and intrusive advising and mentoring. Research increasingly demonstrates that such interventions improve student success in individual courses and support institutional goals of improved graduation rates. We owe our students, especially those who are at risk, support services equal to or better than they would get at our peer institutions.

Our Strategic Plan commits us to increase the first year retention rate to at least 88%, increase the overall six-year graduation rate from 62% to 70%, both by 2016, and by 2017 increase the six-year graduation rate for males from 55% to 60%. We are still short of all three. Male graduations remain stagnant in the mid-50s. One of the many advantages of CANVAS over both BLACKBOARD and MOODLE and a motivation, among others, for adopting it as our LMS of choice is precisely the data analytics capacity it provides for tracking student progress by a broad set of engagement indices and measures, measures most immediately useful to the instructor and secondarily to the support systems available to all students including but not limited to the student's academic advisor(s), the Center for Advising and Student Transitions, the Academic Success Center (CADA), the Office of Academic Success and Retention Programs, the Office of Adult Success Programs, the Office of Veterans and Military Resources, the Honors Program, the Office of International Services, Residence Life, the Disability Resource Center, Counseling and Psychological Services, the Red Hawk Math Learning Center. The restrictions of the proposed policy would render any such use of course meta-data impossible. The analytic systems possible through Canvas are a new set of tools for promoting student success. We would be unique and self-defeating if we were to set this tool on a virtual shelf, unused.

Concerning the addition or deletion of students to/from a course based on registration, withdrawal, and University dis-enrollment (e.g., due to nonpayment of tuition). When a student withdraws or is dis-enrolled by the University, any individual course assignments or contributions from that student are automatically removed from the course by the Canvas technology; the University cannot modify that behavior.

I have no doubt or question that existing University and State policies and collective bargaining agreements covering faculty academic freedom, the ownership of intellectual property, and responsible computing are consistent with traditional academic practice, applicable to the online environment and that they fully and appropriately protect the academic rights and facilitate the instructional obligations of the faculty.

The statements in the Faculty Handbook and Article V of the AFT contract concerning academic freedom (A. and B.1. & 2.) apply equally to the online format of instruction and research. In the absence of explicit agreements to the contrary, course materials posted on the LMS fall within the scope of "scholarly and research materials" referenced in the Policy on Responsible Computing, and as such, the "University acknowledges that faculty members may have an expectation, consistent with general practice in American higher education and any applicable collective bargaining agreement, of a proprietary interest" in them.

Student rights to privacy are appropriately protected under FERPA which specifically permits MSU to disclose student's records without individual consent when: 1) the disclosure is to employees within the University who have a *legitimate educational interest in the records*; and 2) to organizations conducting certain studies for or on behalf of the University to develop, validate, or administer predictive tests, administer student aid programs; or, improve instruction. 34 C.F.R. 99.31(a)(1).. The University's access to student data and metadata within CANVAS will be consistent with these purposes and in compliance with FERPA.

Furthermore, guidance issued by the U.S. Department of Education's Privacy Technical Assistance Center recognized that online educational services increasingly collect a large amount of contextual or transactional data as part of their operations, or metadata. This guidance states that metadata that has been stripped of all direct and indirect identifiers is not considered protected information under FERPA because it no longer contains any personally identifiable information. Moreover, the guidance reflects that a University may, under the school official exception, use any metadata that is not linked to FERPA-protected information for other purposes. See, "Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices," p. 2 U.S. Department of Education Privacy Technical Assistance Center (February 2014). Therefore, the University's access to de-identified metadata is consistent with this guidance and in compliance with FERPA.

Finally, it bears noting that the contract between MSU and Instructure, Inc., the entity that provides the CANVAS software service to MSU, specifically states that the University is the owner of all content and transaction data and other information resulting from MSU's use of the software services and any derivatives thereof. Content is specifically defined, to include, among other things, text, pictures, sound, graphics, video, data, metadata, reports, and other output generated by or for MSU as a result of MSU or its authorized users of the software services. Therefore, Instructure has no right to ownership of the data or metadata at issue, and has no right to use it other than to deliver the services to MSU.

I understand and applaud the interests of the Academic Technology Committee and the University Senate in staying ahead of the rapid developments in big data and metadata analytics as applied to and practiced in the academy. At a recent Lumina-sponsored conference I heard much discussion on the issue. However, I do not find that the present document either adds to the new instructional and pedagogical research potentials of these developments or provides faculty protections not currently addressed in its present collective bargaining agreements and University policies. I will, of course, be open to further discussion.