



The Vital Link to a Brighter Future

July 23, 2010

Ms. Valerie Fisher
Director of Adult Education
North Dakota Department of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440

Dear Valerie,

In early January you requested a meeting "to discuss the recent decision by FINDET to not provide student level data of GED students who have entered employment, retained employment or entered post secondary". In my response to your request, I outlined the legal issues involved when education or employment information is to be shared across agencies. I pointed out that we would need individual student authorization to release their data, or that individual student's information could not be provided. I also suggested that the legal reference to the federal government requirement for the reporting of individual student data would be helpful in justifying the request for individual education and employment data.

In response to your request, I had an extended telephone conversation with David Massey, whom you had contacted for assistance, explaining these points and indicating that FINDET would do everything within its legal authority to respond to your request but that the required agency approvals were not in place to respond and, FINDET would be unable to respond until those approvals were in place. At the time David indicated he understood the issues involved and the need to address those issues before we could move forward to meet the request. We welcomed your request because it raised issues that need to be, and we think can be, addressed for implementation of the State Longitudinal Data System.

A meeting was arranged in the DPI 10th floor conference room on the morning of January 29th to address the issues that would enable the FINDET office to respond to your request. In addition to you and me, the meeting was attended by David Massey, Wayne Sanstead, Wayne Kutzer, Maren Daley and Debb Scharosch. I later briefed the chancellor that the meeting was positive and productive in identifying the next steps for DPI to follow to enable FINDET to respond to the request. The consensus agreement coming from that meeting was to have DPI provide:

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1. The citation in the federal law requiring submission of a report with individual student information
2. A sample copy of the signed data release form which you indicated was on file for every student

This information then could be used by the NDUS and Job Service to determine a formal response to your request. We also indicated that, absent a student release from DPI, FINDET would be required by federal law to obtain a new data set from the NDUS which suppressed the information from students who had indicated to us that they did not wish to have their individual records released, and, that the process to obtain the new data set would take additional time since it was not something immediately or typically available to FINDET. Finally, we agreed with the Maren Daley recommendation for FINDET to look for ways to incorporate the audit function now permitted under federal law so that agencies can be assured that FINDET reports are accurate without agencies having to access and verify individual records.

As the January 29 meeting was ending, you commented that you would be pursuing "another way" to meet your federal GED reporting requirements. As a result of that comment and other FINDET priorities and deadlines, I did not ask FINDET to initiate the process of obtaining a new data set from the NDUS than would include only individual student records authorized for release.

Given the previous detailed discussions and recommendations for next steps I was surprised to see your July 14 request of the FINDET director for the same GED program information without the additional background agreed to at the January 29 meeting. Valerie, let me assure you that FINDET wants to meet your data needs, but FINDET will not break the law in order to respond and FINDET will not provide information from an agency without the specific approval of that agency. The multi-agency FINDET agreement does not provide a basis for responding to your request for individual data. FINDET will need specific authorization from both the NDUS and Job Service to respond to your request. The process discussed and agreed upon on January 29th is still the first steps in obtaining agency permission. As much as FINDET wants to be able to respond to your request, if you cannot or do not take the necessary steps through FINDET you may be able to get this information through other data sharing agreements.

This past year FINDET provided more than 100 reports to state agencies and boards using data from multiple agencies. State agencies are required to submit many of these reports for accountability purposes under state law, or, they use them as the basis to make important state policy decisions. Other reports are used to document employment or some other status of program participants which enables payments of hundreds of thousands of dollars to be made. In every case, the very small staff of

Letter to Ms. Valerie Fisher

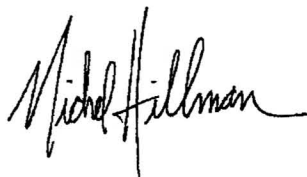
Page 3

July 23, 2010

the FINDET office works hard to meet state agency needs in flexible and responsive ways, but always within the requirements of state and federal law and the FINDET agreement, which is amended from time to time to meet agency needs.

Valerie, we have entered into a discussion of your request in good faith. We hope to be able to address the issues identified, not just for your request, but for the long term. We think your request offers a practical example of the data-sharing issues that must be addressed in the development of a State Longitudinal Data System. It is much better to address these issues on the front-end of the system design rather than correcting them later on. Please let me know as soon as possible if you are interested in taking the next steps to enable FINDET to respond to your request. The timelines in your July 14 correspondence are very short, much shorter than typical, and would require us to make special arrangements with NDUS and Job Service to meet your deadline, if it is, in fact, possible to do so.

Sincerely,

A handwritten signature in black ink, appearing to read "Michel Hillman". The signature is fluid and cursive, with the first name "Michel" and last name "Hillman" clearly distinguishable.

Dr. Michel Hillman
Vice Chancellor for Academic and Student Affairs

CC: William Goetz, Chancellor, North Dakota University System
Dr. Wayne Sanstead, State Superintendent, North Dakota Department of Public Instruction
Julie Schepp, North Dakota University System, Academic Affairs Associate & Director of Research
Maren Daley, Executive Director, Job Service North Dakota

DPI request for a meeting]

Subject: [Fwd: DPI request for a meeting]

From: Mike Hillman <michel.hillman@ndus.edu>

Date: Wed, 03 Feb 2010 09:09:25 -0600

To: Bill Goetz <william.goetz@ndus.edu>, Laura Glatt <laura.glatt@ndus.edu>, Michel Hillman <michel.hillman@ndus.edu>, Randall Thursby <randall.thursby@ndus.edu>, Debra Anderson <debra.a.anderson@ndus.edu>, Terry Meyer <terry.meyer@ndus.edu>, Pat Seaworth <pat.seaworth@ndus.edu>, Marsha Krotseng <marsha.krotseng@ndus.edu>

CC: Julie Schepp <julie.schepp@ndus.edu>

Bill, for some reason this message was not sent when I drafted it last week.

Mike

Bill,

As you requested we held a follow up meeting on the DPI data request issue described below. The meeting, attended by Valerie Fischer, Maren Daley, Maren's data person, David Massey, Wayne Sanstead, Wayne Kutzer and me, was positive and productive in identifying the next steps for DPI to follow in pursuing their request. DPI will be providing the reference to the federal law containing the requirement for individual student information and a sample copy of the release signed by every student in the program. Based on this information the NDUS and Job Service can review the request and determine an appropriate response. If appropriate, Maren has suggested that the FINDET agreement be amended to accommodate this request

An NDUS review can determine the need to report at an individual student level and the appropriateness of both the student release and existing data sharing agreements to respond to this request. It is possible that changes would be needed to be made to either or both documents before we could proceed. I have indicated that FINDET will do everything within its legal and agreement authority to respond to the request and that you, as chancellor, will determine the final FINDET and NDUS position on the request. I will forward any background and documents related to this request to Pat for a recommendation.

As a part of the discussion Maren suggested that future FINDET functions incorporate an audit function which is specifically permitted by FERPA.

Please let me know if you have any questions.

Mike

----- Original Message -----

Subject: DPI request for a meeting

Date: Fri, 15 Jan 2010 09:59:03 -0600

From: Mike Hillman <michel.hillman@ndus.edu>

Reply-To: michel.hillman@ndus.edu

Organization: North Dakota University System

To: Fischer, Valerie J. <vfischer@nd.gov>

CC: Daley, Maren L. <mdaley@nd.gov>, Olsen, Michelle D. <michelle.olsen@ndus.edu>,

Massey, G. David <dmassey@nd.gov>, Rebecca Duben

<rebecca.a.duben@ndus.nodak.edu>, Sanstead, Wayne G. <wsanstead@nd.gov>, Kutzer

Wayne <wkutzer@state.nd.us>, William Goetz <william.goetz@ndus.nodak.edu>

References: <5512DC69B0489649A4D99E1E7D9F8415756DD5F593@ITDMBX3.nd.gov>

Val, I am available the morning of the 29th. If that works for others please have Rebecca Duben in my office place the meeting on my calendar.

Your request is very timely given the planned implementation of the SLDS and all of the issues which must be resolved for successful implementation of that system.

DPI has not had representation at FINDET meetings so you may not be aware of all of these issues. You should understand that FINDET will do everything it can to be responsive to the request under the limits of the law. As I explained in a extended discussion with David Massey, this request must receive several agency approvals before any information can be provided. Generally (not a legal analysis), the issues we will need to discuss include:

Is student specific information really required or can aggregate data be used? (The legal reference to the required report should be referenced in the data sharing agreements and would be helpful in justifying the request.) To date, FINDET has been set up to provide aggregate data. For example, the NDUS data provided to FINDET includes information from students who have not released the use of their individual data. We can use the current information for producing aggregate reports but we cannot use it for producing non-aggregated reports. A request for student specific data will require the use of a special data set including only student released data, which FINDET is making arrangements to obtain. With an increasing number of students not releasing data this could result in a less complete report. An alternative approach is for DPI to obtain the individual students release of the data.

I indicated to David that FINDET policy (and several different laws) requires that agencies approve the use of their data. FINDET can only complete the request when data sharing agreements are in place for the agencies involved, in this case Job Service and the NDUS. If the requests do involve individual student information the data sharing agreement requires much more detail including information on the time the data will be maintained and how the secure data will be destroyed. FERPA, for example, specifies that the originating agency is responsible for the privacy and security of the data when it is provided to another agency or third party. It would also to be reasonable to expect that the transfer of secure information would require all individuals involved to be appropriately trained in data privacy and security, FERPA training in the case of education agencies. Inappropriate use of some Job Service data can result in a \$50,000 fine and five years in prison, that is why these issues must be addressed on the front end.

Let me assure you again that FINDET will do everything it can to respond to this request. The request has not moved forward because the appropriate approvals are not in place as required by law and as suggested to David. Stated another way, progress on this request has nothing to do with arbitrary decisions by either FINDET or NDUS staff and should not be characterized as such.

I again encourage DPI to send a representative to the FINDET steering committee which discusses these issues and which, I think, will be an invaluable resource to the SLDS in identifying and addressing issues involving cross-agency use of data.

We look forward to working through these issues with you.
Mike Hillman

Fischer, Valerie J. wrote:

PI request for a meeting]

Good morning –

I'd like to propose a meeting between us to discuss the recent decision by FINDET to not provide student level data of GED students who have entered employment, retained employment or entered post secondary. To begin the process, I would suggest any of the following dates and anticipate a meeting lasting no more than 45 minutes:

January 11	afternoon (1:00 – 4:30 pm)
January 12	afternoon (after 3:00 pm)
January 13	before 10:00 or after 2:00
January 14	prior to the Workforce Development Council meeting at 9:00 am

The week of January 25th...

January 27	morning
January 29	morning

Thank you for your time. I'll arrange a meeting site once we have a date.
Have a really nice day – stay warm!

Valerie Fischer

Director of Adult Education
Director of School Health

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