MEMORANDUM

TO: Fort Wayne Senate

FROM: Bin Chen, Chair
        University Resources Policy Committee

DATE: March 23, 2023

SUBJ: Recommendations for Policies for the Use of Brightspace Learning Management System (LMS)
        Data

WHEREAS, the Senate Executive Committee (EC) charged (see SR 21-11) the Academic Computing and Information Technology Advisory Subcommittee (ACITAS) to investigate best practices for making Brightspace data available and to make recommendations, based on faculty governance principles, for related policies, practices, and procedures; and

WHEREAS, ACITAS met with Trent Klingerman, Purdue University's Deputy General Counsel (at the time of the meeting in 2022), to receive counsel on Purdue policies that faculty agree to when they agree to teach for Purdue, focusing on Policy I.A.1 regarding Intellectual Property; and

WHEREAS, ACITAS consulted FERPA policies and met with Institutional Research and Analysis representatives to receive input; and

WHEREAS, ACITAS developed the guidelines with Brightspace administrators and experts from the PFW Center for the Enhancement of Learning and Teaching (CELT) and PFW's User Technology Support (UTS) group; and

WHEREAS, ACITAS sought the approval of and made any adjustments requested to the guidelines by the University Resources Policy Committee (URPC) and submitted the guidelines to the Educational Policy Committee (EPC) and made any adjustments requested by EPC; and

WHEREAS, EPC questioned whether the guidelines exceeded the scope of the charge as outlined in SR 21-11 because the guidelines include a process related to Brightspace course access and therefore requested ACITAS to speak with EC; and

WHEREAS, ACITAS chair met with a representative from EC and EPC members to determine possible next steps, which included recommendations to meet with the Faculty Affairs Committee (FAC) to seek additional input; and

WHEREAS, ACITAS chair met with FAC and made adjustments to the guidelines as requested by FAC; and

WHEREAS, ACITAS determined that because data is created through all actions in Brightspace, guidelines for data access must include recommendations for access to Brightspace courses for those who are not instructors of the course but require access for educational purposes; and

WHEREAS, PFW UTS and CELT members confirmed the absence of any existing process for granting permission for Brightspace course access that allowed for faculty input or followed faculty governance principles; and

WHEREAS, the initial request from CELT that prompted the creation of SR 21-11 was because of concerns from PFW UTS and CELT that there was no policy in place to guide who can be added to a Brightspace course and access its data; and

WHEREAS, since the time the initial request from CELT for Fort Wayne Senate guidelines for accessing Brightspace data was made, the Brightspace LMS now allows for additional user roles that prevent extraneous data access while still allowing these users to carry out their necessary tasks, thus providing a built-in system that follows best practices of data sharing and emphasizes the role of course-level access in enabling data access;

BE IT RESOLVED, that the Fort Wayne Senate adopt the following guidelines for the use of and access to Brightspace data.

INTRODUCTION

ACITAS led an investigation and development of recommended procedures for the Learning Management System (LMS). As noted below, "Access" refers both to accessing a course in the LMS and a user's ability to access data within a course. ACITAS consulted with Purdue University's Legal Office and with Purdue University Fort Wayne (PFW) Institutional Research (IR) in order to best understand the existing policies and procedures for access. Faculty have driven the investigation and drafting of the following recommendations, and also have involved PFW LMS Administrators, as the technical experts, to inform what is and is not possible. Time was also given to learning the related policies and procedures of Purdue Northwest, Purdue West Lafayette, and the Indiana University System to obtain a more well-rounded understanding.

A preliminary step was to understand the current Purdue, FERPA, and other policies so our proposed policies and procedures would not overstep or contradict. Purdue Legal pointed us to Intellectual Property Policy (IA1). The below recommendations use IA1 and information gathered from the above-mentioned sources as the framework:

- Faculty have access to the courses, and to the student data within the LMS course(s) for which they are the instructor.
- Unless approved by the faculty member or by the (to be developed) LMS Access and Appeal Committee (recommended composition noted below; hereafter referred to as LMSACC), supervisors should not access a faculty member's course (or section/course-level identifiable, non-aggregate data) for reasons other than that fall within an Educational Purpose (see definition below).
- Though all PFW staff have Brightspace access with a "Learner" role, no one has access to data outside of the course level who does not already have a Brightspace Administrator role.
- Only top-level Brightspace administrators can access Brightspace data tools, from which are created datasets and reports.
- Deidentified aggregate data can be provided to supervisors and other appropriate administrators without any needed procedures of approval.
- Supervisor requests for access must make an earnest attempt to receive approval from the instructor.
- In these, and all cases of access, FERPA policies must be followed and access will be granted only to those current in their FERPA certification.
- Excepting emergency (including time-sensitive) requests, if an instructor denies a request to a supervisor, and the supervisor continues to believe there is an educational reason for access, the supervisor can appeal to the LMSACC. Notification to the instructor that an appeal has been submitted is required.
- In all cases in which the LMSACC approves access, the use of access must be educational (not punitive) in nature. Note that temporary supervisor access could be included, for example, in a faculty teaching improvement plan.
- If any person is accessing data or a course for research purposes, they are responsible for securing Institutional Review Board (IRB) approval. No additional approvals for access are required in these cases.

Term Definitions:

- **Access:**
  - **Course access**: the permission granted to users (faculty, students, and Brightspace administrators) to open the course site for teaching, learning, and maintenance purposes. Course access is governed by users' roles and permissions.
  - **Data access**: the users' ability to retrieve, move, and manipulate data held in a course itself, the data warehouses, or the LMS data repositories as governed by the user's role and permissions.
- **Aggregate data:** data collected from multiple sources and compiled into summaries or reports for the purpose of statistical analysis such as examining trends and making comparisons.
- **De-Identifiable Data:** data that do not contain personal information such as student name, address, and email.
- **Educational Purpose(s):** goals/objectives that are directly related to learning, teaching, training, research, and service, such as ensuring continuation of instruction, facilitating program reviews, and enabling clerical processes. Reasons for Brightspace access for these purposes can include:
  - The instructor of record is inactive or unable to continue teaching the course
  - The instructor of record would like added to the course a user to assist with teaching and learning (e.g. a teaching assistant)
  - The department is undergoing program review or curriculum revision and needs to consider courses holistically
  - Students have expressed what the supervisor and/or LMSACC deem credible concerns about a course (i.e. instructor inactivity, inappropriate communication, etc.)
  - Instructor's administrative assistant needs access to manage course evaluations
  - Supervisor has access for the purpose of providing formative feedback and summative evaluation of teaching.
- **Faculty**: as used in document includes all PFW faculty designations (tenure-track, non-tenure track, visiting, limited term lecturers).
- **Inappropriate Use:** misused data and course access that violates Purdue policies on [Intellectual Property (I.A.1)](), [Access to Student Education Records (VIII.A.4)](), [Compliance with HIPAA Privacy and Security Regulations (S-10)]().
- **LMS Faculty Advisory Committee**: interdepartmental group of faculty to assist LMS change management team in configuring LMS platform to best serve the PFW campus, including consideration of new platform features and functions, reporting issues, and gathering improvement suggestions to communicate to LMS provider.
- **UTS:** User Technology Services provides primarily student, staff, and faculty support for PFW academic technology and systems, including administration of the LMS.

LMS Access and Appeal Committee (LMSAAC) will meet only as needed (when instructor does not grant permission for access) and may meet via email. Committee consists of members:

- VCAA or designee
- ACITAS chair (faculty)
- Faculty Affairs Committee chair (faculty)
- Academic Personnel Grievance Committee Chair (faculty)
- Academic Department Chair representative (faculty)
- LMS Faculty Advisory Committee representative (faculty)

- IR or other data expert (advisory, non-voting)
- UTS representative (advisory, non-voting)

Details of the recommended process are as follows for three identified scenarios.

When a supervisor requests access:

A. Sometimes the faculty member will allow access
B. Sometimes the faculty member will deny access
C. Sometimes the faculty member will be unable or unwilling to respond within the necessary time

ACITAS has developed a process for each of the above possibilities. The faculty member must be notified of the request and, excepting emergency situations, be given time to respond. That (due) process needs to be followed.

Scenario A:

1. Supervisor consults with the faculty member and the faculty member approves course access and/or identifiable data request (hereafter simply referred to as "access") is approved
    i. The faculty member adds the supervisor to course(s) through the Enrollment Manager in Brightspace. Note that the faculty member also has the ability to remove the supervisor whether the faculty or a Brightspace Admin added the supervisor.
        1. If there is a dispute down the road, UTS has the ability to see who added the supervisor. This will serve as the record.
    ii. The faculty member (or, in cases where necessary, requesting supervisor) completes this agreement which will include (all) sections information, time table(s), type(s) of access, and reason(s) for access. Note that this form also includes a request for UTS to add the supervisor in cases where the faculty member cannot/does not know how to add the supervisor to the course, granting UTS permission to do so.
    iii. The faculty member will also have an opportunity to complete a form (to be developed by the LMSACC) to submit a grievance, making a statement to the LMSAAC, should the faculty member have felt pressured to say "yes". The faculty member can also choose to make the statement to the decision-making board confidential from the supervisor at this point.

Scenario B:

1. Supervisor consults with the faculty member and the faculty member does not approve the request and denies access.
    i. If the supervisor still wants access for educational purposes, the (TBD) LMS Enrollment form is completed and submitted to the LMSACC, which chooses whether to grant access or deny it based on the merit of the educational purpose identified by the supervisor.
    ii. The LMSACC follows the decision process:
        1. The LMSACC makes any necessary additional information requests within 2 working days.
        2. The requester will have 2 working days to respond with the requested additional information.

        3.   The LMSACC makes its decision within 5 business days total (including the above if necessary)

        4.   The majority vote determines the decision.

    iii. If the LMSACC grants access, the faculty member must not remove the supervisor from the course (through the Enrollment Manager)

    iv. Regardless of the faculty member's answer, the faculty member will have an opportunity to make a statement to the LMSACC. The faculty member can choose to make the statement to the LMSACC, confidential from the supervisor at this point.

2. If the supervisor has consulted with the faculty member, the faculty member has not responded within 3 business days, with either approval or reasoning for denial, and the supervisor still needs access for educational purposes, the emergency form must be completed (see further steps below).

Scenario C:

1. Supervisor consults with the faculty member and the faculty member does not or cannot approve the request quickly when immediate access is necessary and seeks emergency access. Viable reasons may include:

    i. Evidence has been provided that the instructor has been unresponsive and students are and/or will be significantly impacted unless remedies are immediately (1 day) put in place. Examples include but are not limited to:

        1.   Due dates are approaching and the instructor is unresponsive to students

        2.   It is known that the instructor has become incapacitated

        3.   Credible accusations of inappropriate usage of the LMS platform by the instructor

    ii. Deadlines for certifications are approaching and the instructor is unresponsive

    iii. Deadlines for students to drop a course are approaching and the instructor is unresponsive

    iv. If the supervisor wants access for educational purposes, the (TBD) LMS Enrollment form is completed. The LMSACC follows the below accelerated timeline and chooses whether to grant access or deny it based on the merit of the educational purpose identified by the supervisor.

        1.   The LMSACC makes a decision (on whether or not this is a viable emergency) within twenty-four hours (Monday-Friday).

        2.   The majority vote determines the decision.

    v. If the LMSACC grants access, the faculty member must not remove the supervisor from the course (through the Enrollment Manager).

    vi. Regardless of the faculty member's answer, the faculty member will have an opportunity to make a statement to the LMSACC. The faculty member can choose to make the statement to the LMSACC, confidential from the supervisor at this point.