

DRAFT 19-1195 (An act relating to the closing of postsecondary schools)

Chris Winters, Deputy Secretary of State
Tanya Marshall, State Archivist & Chief Record Officer

Office of the Secretary of State

House Education Committee: March 14, 2019

BACKGROUND

As previously testified during the 2017-2018 biennium on S.237 (An Act Relating to Miscellaneous Changes to Education Law) and reiterated to the Committee by Deputy Secretary of State Chris Winters on February 28, 2019 in response to DRAFT 19-1195, responsibilities and obligations of assuming a closed postsecondary school's registrar functions include:

- Official transcripts, including evidence of serving as an agent for a closed school
- Enrollment and degree verifications, particularly in the semesters after a school closes
- Issuance of diplomas, if school closes prior to graduation, and replacement diplomas
- Receipts of transactions, such as tuition payments and loan/grant disbursements
- Compliance with Family Educational Rights and Privacy Act (FERPA) for all requests

The Vermont State Archives and Records Administration (VSARA) is not, and nor can it be, the registrar or custodian of any postsecondary school records. Under FERPA, only two entities can fulfill this role: (1) an educational agency or institution; or (2) any state educational agency and its components.

RECOMMENDATION #1

Historically, the Vermont state government has not managed nor administered access to any closed postsecondary school records for which it has taken custody very well or in compliance with FERPA. 16 V.S.A. § 175 (Postsecondary educational institutions; closing) was added in 1979 by the Vermont legislature in response to the closing of Windham College and possible mishandling of student records. Although FERPA was enacted in 1974, 16 V.S.A. § 175, however, does not appear to have been enacted with the requirements of FERPA in mind.

Any closed postsecondary school records currently in the custody of the Agency of Education cannot be transferred to an entity that is not an educational agency or institution or a component

of the Agency of Education. In fact, the Secretary of State's Office should not have agreed to take custody from the Department of Education of the closed postsecondary school records that are currently in the Vermont State Archives and Records Administration and in the state archives. The Secretary of State's Office is not an educational agency or institution or a component of the Agency of Education.

Possible Custodians

If a goal is to bring the records of closed postsecondary schools into the custody of an instrumentality of the State of Vermont, the Vermont State Colleges System or the University of Vermont are the only two feasible options in regard to: (1) FERPA; (2) existing registrar functions; and (3) expertise and familiarity with postsecondary school records. If any immediate action is to be taken, the closed postsecondary school records in the state archives should be deaccessioned and returned to their rightful legal custodian: the Agency of Education.

RECOMMENDATION #2

School closures are not unique to Vermont and recent reports offer considerable insights on proposed legislation that would be in the best interest of Vermont and those students who choose to pursue a postsecondary education in this state. DRAFT 19-1195, as currently drafted, is underwhelming in comparison to legislation enacted on this matter by other states. 16 V.S.A. § 175 is an antiquated law based on how the State of Vermont choose to resolve one particular situation with a postsecondary school that closed more than 40 years ago.

16 V.S.A. § 175 has not served the State or the students who choose to attend college in Vermont very well and continued wrong steps is not a step in the right direction. I am happy to provide records-related advice or recommendations to the Committee or serve as a consultant on a committee to propose legislation if desired and would like to offer the following examples of recent reports on this subject:

February 2019 Report to the United States Congress

On February 5, 2019, the Congressional Research Service issued the following report for the members and committees of Congress: [The Closure of Institutions of Higher Education: Student](#)

[Options, Borrower Relief, and Other Implications](#). This report offers the most current records-related requirements and expectations for all institutions of higher education upon closure including but not limited to: (1) Teachout plans and agreements; (2) Credit transfers; (3) Loan discharges, including Federal student loans; and (4) Student Aid Eligibility.

Commonwealth of Massachusetts' 2018 Investigation into the Closing of Mount Ida College

In addition, although the Massachusetts Attorney General decided yesterday, March 13, 2019, not to pursue litigation against Mount Ida College, which closed last year, the Massachusetts legislature did a considerable amount of work to address gaps in its own state laws following the closure. The June 28, 2018 legislative report, entitled [Findings and Recommendations in Response to the Acquisition of Mount Ida College by the University of Massachusetts Amherst](#), outlines their findings and offers several recommendations that are as relevant to Vermont as to Massachusetts.