

The
University of the
Education

State of New York
Department

In the Matter of
A Privacy Complaint
Filed Against

Review and Determination by
New York State Education Dept.
Chief Privacy Officer

Saugerties Central School District

In May 2023, a complaint was filed with the New York State Education Department's ("NYSED's") Chief Privacy Officer by a parent ("Complainant"), whose children ("students") attend Saugerties Central School District ("District"). Complainant states that an employee of the District inappropriately disclosed the students' personally identifiable information ("PII") to Complainant's former spouse. Complainant alleges this violated the Family Educational Rights Privacy Act ("FERPA") and Education Law § 2-d.

In response to the complaint, NYSED's Chief Privacy Officer requested that the District investigate and provide a written response, including a summary of its investigation and addressing specific questions and issues. The District submitted its response on July 14, 2023.

Applicable Law

FERPA¹ protects the privacy of student educational records and places restrictions on the release of student PII. New York has adopted additional privacy laws and regulations. Education Law § 2-d, for example,² protects PII from unauthorized disclosure and provides parents with rights regarding their child's PII, especially as it pertains to third party contractors.

In accordance with the requirements of Education Law § 2-d, NYSED has adopted a § 2-d Bill of Rights for Data Privacy and Security that authorizes NYSED's

¹ 20 USC § 1232g; 34 CFR Part 99.

² Education Law § 2-d.

Chief Privacy Officer to address parent complaints about possible breaches and unauthorized disclosure of PII. Section 121.1 (a) of the Regulations of the Commissioner of Education defines a breach as the “unauthorized acquisition, access, use, or disclosure of student data and/or teacher or principal data by or to a person not authorized to acquire, access, use, or receive the student data and/or teacher or principal data.” Section 121.1 (t) of the Commissioner’s Regulations defines an unauthorized disclosure or release as “any disclosure or release not permitted by federal or State statute or regulation, any lawful contract or written agreement, or [a disclosure] that does not respond to a lawful order of a court or tribunal or other lawful order.”

District Response

The District indicates that it questioned the employee, a door monitor, who admitted receiving a note from Complainant regarding student pickup and relaying the information to the students’ father, with whom the employee has a personal relationship. The district asserts no student records were accessed by the employee, a door monitor, in relation to the incident, and that the father shares custody of the students. Both the employee and the District admit that the information was only shared with the father due to the employee’s personal relationship with him. The District asserts that such communication was not a violation of either FERPA or Education Law § 2-d, but admits that it was inappropriate.

The District further states that it delivers data privacy training to all employees annually and that the employee received such training on September 1, 2022. In addition, in response to this incident, the building principal met with all monitors on May 4, 2023, to remind them of privacy expectations. Finally, the employee at issue here is being moved to another District building, not attended by the students, to avoid a recurrence.

Analysis

Section 121.4 of the Regulations of the Commissioner of Education and NYSED’s § 2-d Bill of Rights for Data Privacy and Security, allow parents, eligible students, teachers, principals or other staff of an educational agency to file complaints about possible breaches and unauthorized releases of personally identifiable information. Complainant is the parent of students who attend the District and NYSED’s privacy office may therefore address the complaint. The District did not dispute complainant’s standing to bring this complaint.

The District does not dispute the facts alleged by Complainant, except to clarify that the employee did not access student records and gave information to a parent who was authorized to receive it.

FERPA—and by implication, Education Law 2-d, which incorporates FERPA’s definition of PII—protects information contained in education records; it does not protect the confidentiality of information in general. In this case, a District employee who received information directly from Complainant regarding the students’ pickup shared that information with Complainant’s former spouse. It does not appear that these details concerning the students’ pickup arrangements constituted PII obtained from the students’ education record. As such, this complaint does not fall within the scope of FERPA or Education Law § 2-d and must be dismissed.

In any event, the investigation reflects that the District understands its obligation to safeguard student PII. The District regularly delivers privacy training to its employees and did its utmost to remediate the situation when it learned of the employee’s inappropriate behavior.

Determination

While the appeal must be dismissed, I remind the District that although FERPA authorizes the disclosure of PII to school officials, educational agencies must use reasonable methods to ensure that school officials only obtain access to the education records in which they have a legitimate educational interest [34 CFR § 99.31 (a)]. Additionally, annual privacy training should ensure that District staff are taught the inappropriateness of sharing observations and personal knowledge about students obtained in their roles as District employees.

August 16, 2023



Louise DeCandia
Chief Privacy Officer
New York State Education Department