

The
University of the
Education  State of New York
Department

-----X
In the Matter of a Privacy Complaint

filed against

Review and
Determination of the
Chief Privacy Officer

Croton Harmon Union Free School District
-----X

On July 23, 2024, the New York State Education Department’s (“NYSED”) Privacy Office received a complaint from an eligible student¹ (“Complainant”), who attended the Croton Harmon Union Free School District (the “district”). Complainant alleges that the district improperly disclosed his Personally Identifiable Information (“PII”) as defined in FERPA² because it posted a photograph of him as a graduating student in front of his home that portrayed his numbered mailbox on Instagram and X (formerly known as Twitter) even though Complainant’s father had opted out of the district’s directory information policy, which includes photographs. Complainant also alleges that although the photograph has been removed from Instagram and X, the district did not reach out to either company to have the geolocation of the home removed from the image’s EXIF metadata.

In response to the complaint, on July 24, 2024, I requested that the district investigate the allegations, provide a written response summarizing its investigation, and address specific questions and issues. The district submitted its response to the Privacy Office on August 14, 2024.

District Response

The district responded by explaining that it annually provides parents information on its directory information policy³ through the district’s calendar and

¹ An eligible student is a student aged 18 or older. Rights under the Family Educational Rights Privacy Act (“FERPA”) pass from the parent to their child when the child reaches age 18.

² 20 USC § 1232g; 34 CFR Pt. 99.

³ Directory information under FERPA may include the student’s name; address; telephone listing; email address; photograph; date of birth; major field of study; gender; grade level; enrollment status; dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; honors, and awards received; and

Family Guide. For the 2023-2024 school year this information was provided to parents on September 13, 2023 through ParentSquare, the district's communication application. Additionally, according to the district, high school parents are annually sent a physical and electronic letter directing them to forms and information that include the media release form, notification of parent rights under FERPA, and the directory information opt-out form. This information is also posted on the district's website. The district further asserts that although its directory information policy states that a parent must opt-out within 14 days of receiving annual notice, the district honors all parent opt-outs regardless of when received. The district has no record of an opt-out form filed by Complainant's father.

As requested, the district provided a copy of its May 16, 2024 email to families of high school seniors seeking photographs for posting on the district's Instagram and X pages. The email explains that this was part of the district's senior celebrations.

The district further states that the photograph at issue was submitted voluntarily by Complainant's mother and was posted on or about June 3, 2024. After receiving a complaint from Complainant's father on July 10, 2024, the district removed the photograph from Instagram and X and requested that both companies purge any metadata/EXIF data that may exist in their systems.

Applicable Law

FERPA protects the privacy of student education records and places restrictions upon educational agencies regarding the release of student PII from education records. New York has adopted additional privacy laws and regulations⁴ that further protect a student's PII from unauthorized disclosure, especially as it pertains to third-party contractors.

In accordance with the requirements of Education Law § 2-d, NYSED adopted a Bill of Rights for Data Privacy and Security that authorizes NYSED's Chief Privacy Officer to address parent complaints about possible breaches and unauthorized disclosure or release of student PII. The Commissioner's regulations define student data as "personally identifiable information from the student records of an educational agency." Section 121.1 (a) of the Commissioner's regulations defines a

the most recent educational agency or institution attended. School districts decide what is directory information for their purposes. Schools are not required to have a directory information list and policy, although most schools do for purposes such as honor rolls, student athlete information, playbills, yearbooks, concert programs, etc. Additionally, FERPA requires schools to comply with certain requirements to have a directory policy, such as annually notifying the public of its directory policy and allowing parents and eligible students to opt out.

⁴ Education Law § 2-d & 8 NYCRR Pt.121.

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) further 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.”

Analysis

Both FERPA and Education Law §2-d prohibit the unauthorized disclosure of student PII from education records. Education records are defined in FERPA as records that are directly related to a student and maintained by the educational agency or by a party acting for the educational agency.⁵ Here, the photograph posted on the district’s Instagram and X pages does not constitute PII from an education record. The photograph was not taken by school staff in connection with a district activity, nor was it requested by the district to be included as part of Complainant’s education record. To the contrary, the district requested photographs of seniors to celebrate their impending graduations on social media. There is no evidence to suggest that seniors were required to submit these photographs or that they would be maintained by the district.

Indeed, even if the district possessed an opt-out form for Complainant, it would not apply in this circumstance. Such opt-out forms prohibit the sharing of certain information from students’ education records, and the photograph at issue in this complaint is not part of Complainant’s education record. “FERPA does not protect confidentiality of information in general, and therefore does not apply to the disclosure of information derived from a source other than education records.”⁶ Thus, no unauthorized disclosure or release of student data occurred in violation of FERPA or Education Law § 2-d.

Although I have determined that there is no violation of FERPA or Education Law § 2-d, Complainant’s father stated that he had difficulty obtaining information about FERPA, the district’s directory information policy, and the opt-out form. He also complained that the district was hesitant to accept the opt-out form because the 14-day filing period had passed. I therefore remind the district that its Data Protection Officer or other assigned administrator should be prominently listed on the district’s website to assist parents with questions, issues, and concerns about their child’s privacy. Also, if opt-out forms will be accepted at any time during the school year from parents, which is a best practice, then the district’s directory information policy and opt-out form should so indicate.

⁵ 34 CFR §99.3

⁶ Letter to Anonymous, issued by the Student Privacy Policy Office of the U.S. Department of Education, September 28, 2021, 122 LRP 14834

Date: September 10, 2024



Louise DeCandia, Esq.
Chief Privacy Officer
New York State Education Department
89 Washington Avenue
Albany, NY 12234