

The
University of the
Education  State of New York
Department

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In the Matter of a Privacy Complaint

filed against

Review and
Determination of the
Chief Privacy Officer

Croton Harmon Union Free School District
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On July 17, 2024, the New York State Education Department’s (“NYSED”) Privacy Office received a complaint from a parent (“Complainant”) of children (“students”) who attend the Croton Harmon Union Free School District (the “district”). Complainant asserts that the district posted pictures of the students on Instagram, Facebook, and X (Twitter) without Complainant’s consent in violation of the Family Educational Rights Privacy Act (“FERPA”)¹ and/or New York State Education Law § 2-d. Complainant also states that the board of education agreed to have the posts taken down but, as of July 17, 2024, had not done so.

In response to the complaint, on July 23, 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 on August 14, 2024.

District Response

The district asserted that it provides parents information on their FERPA rights and the district’s directory information policy each year through the district’s calendar and Family Guide². For the 2023-2024 school year, this information was provided to parents on September 13, 2023 through ParentSquare, the district’s communication application. Additionally, the district states that copies of its media release form, notification of rights under FERPA and directory information opt-out form can be found on the district’s website as well as the website of its middle school.

¹ 20 USC §1232g; 34 CFR Pt.99

² I note that the district also included a copy of the Middle School parent handbook for 2023-2024 in its response. This handbook makes no mention of privacy, FERPA or directory information.

The district further contends that it does not consider photographs to be confidential information because it has designated photographs to be directory information. Additionally, while parents, guardians, and eligible students may opt out of the designation of photographs as directory information, the district has no record of an opt-out form filed by Complainant.

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 regulations³ 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 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 PII from education records. An exception to this prohibition is the sharing of PII that has been determined to be directory information by educational agencies such as school districts. Directory information allows the release of certain student information in circumstances that "would not generally be considered harmful or an invasion of privacy if disclosed."⁴ Directory information 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 the most recent educational agency or

³ Education Law § 2-d & 8 NYCRR Pt.121.

⁴ 34 CFR §99.3.

institution attended.⁵ Educational agencies have the discretion to decide what is directory information. While not required to do so, most educational agencies have a directory information list and policy for purposes such as honor rolls, student athlete information, playbills, yearbooks, and concert programs. Additionally, to maintain a directory information policy, FERPA requires educational agencies to annually notify the public of the policy and allow parents, guardians, and eligible students to opt out of designating all or some types of information about their child or themselves as directory information.

In this matter, the district maintains a policy entitled Notice of Rights Under FERPA,⁶ which includes a list of information the district has designated directory information; an “Objection to Release of Directory Information Designations” opt-out form, and a “Withholding of Consent for Student to Appear in School District Media Releases and Media” form on its website under the heading Data Privacy and Security.⁷

Complainant admits that he did not submit a Directory Information Opt-Out form or a Withholding of Consent for Student to Appear in School District Media Releases and Media form to the district on behalf of the students for the 2023-2024 school year. Therefore, I cannot find that an unauthorized disclosure or release of student data occurred in violation of FERPA or Education Law § 2-d.

However, the district must ensure that parents, guardians, and eligible students are annually notified of their rights under FERPA and of the district’s directory information designations. A passing reference to additional information on the district’s website is insufficient. Parents and guardians have the right to opt-out of sharing this information. Districts are responsible for ensuring that parents, guardians, and eligible students understand how they can opt-out of sharing directory information and/or participating in social media.

The district states that it is in the process of preparing a new “Use of Social Media in Instruction and Official Communications” policy to address issues of publicly sharing student photos and information. I encourage the district to solicit parental input as it develops this new policy, especially from parents and guardians who do not wish to have their children’s photographs and information shared.

⁵ *Id.*

⁶ According to the district’s Notification of Rights Under FERPA (policy 5500-E.1), this policy has not been revised since March 14, 2013. I urge the district to review and consider updating this policy.

⁷ <https://www.chufsd.org/departments/technology/data-privacy-and-security>. While not required, maintaining this information on a district’s website is a best practice.

Finally, the district must work with Complainant to remove any student photographs or information that continue to remain on the district's social media accounts.

Date: September 12, 2024

A handwritten signature in cursive script, appearing to read "Louise DeCandia".

Louise DeCandia, Esq.
Chief Privacy Officer
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