The University of the State of New York
Education Department

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

filed against

Dryden Central School District
----------X

Review and Determination of the Chief Privacy Officer

On May 10, 2024, the New York State Education Department's ("NYSED") Privacy Office received a complaint from parents ("Complainants"), of two children (the "students") who attend the Dryden Central School District (the "district"). Complainants allege that the district improperly disclosed the students' Personally Identifiable Information ("PII") when a copy of their educational records were delivered by the district to the Complainants' residence; were left in an insecure location and went missing.

In response to the complaint, on May 22, 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 June 17, 2024.

District Response

The district states that on or about April 19, 2024, Complainants submitted a Family Educational Rights Privacy Act ("FERPA") request for all their students' education records and sought to obtain the records in less than a month. [redacted] According to the district, after these delivery attempts failed, it determined that the best available option to get the education records to Complainants was to bring them to their home. This however, also presented challenges.

The district states that it is illegal to leave documentation in a mailbox; [redacted]

Applicable Law

FERPA[1] protects the privacy of student educational records, and places restrictions upon educational agencies regarding the release of student PII. New York has adopted additional privacy laws and regulations[2] 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 student PII from students' education records. Here, there is no evidence that the students' education records were made accessible to or disclosed to a person not authorized to receive the education records, which is required to establish a breach as defined in Section 121.1 (a) of the Commissioner's regulations. Complainants and the district have developed a distrustful relationship as is evidenced by the fact that

[1] 20 USC § 1232g; 34 CFR Pt. 99

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

providing the students' education records to Complainants became an unnecessarily complicated task.

FERPA allows parents the right to inspect and review their children's education records.[3] In this case, the district complied with Complainant's request within a reasonable time and made several attempts to provide the documents to Complainants. It is incumbent upon Complainants who sought this information to assist the district to ensure the safe transfer of their students' education records. I agree with Complainants that [redacted] manner to provide the information, however, without being in possession of additional information, and with only a bare assertion that the documents were missing I cannot determine that a breach occurred.

Date: June 26, 2024

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

[3] 34 CFR § 99.10