

The
University of the
Education  State of New York
Department

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In the Matter of a Privacy Complaint

Filed Against

Elmira City School District
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Review and Determination
of the
Chief Privacy Office

On May 30, 2024, the New York State Education Department’s (“NYSED”) Privacy Office received a complaint from the parent (“Complainant”) of a child (the “student”) who attends the Elmira City School District (the “district”). Complainant alleges that the district improperly disclosed other students’ Personally Identifiable Information (“PII”) to her. Complainant receives weekly reports from a service provider that the district hired through its Board of Cooperative Education Services (“BOCES”). On May 16, 2024, when providing a weekly report to Complainant, the provider attached speech language evaluations of two other students. Complainant states that she reported this incident to the district but she was ignored. Complainant asserts that the district's actions violate the Family Educational Rights Privacy Act (“FERPA”)¹ and Education Law § 2-d.

In response to the complaint, I requested that the district investigate the allegations, provide a written response summarizing its investigation and address specific questions and issues. Thereafter, my Office received a response from the district on July 12, 2024.

District Response

The district does not dispute that the incident occurred. The district states that it has contacted the affected parents for the students whose information was accidentally disclosed to Complainant. The district also states that “[G]iven the fact this has happened on another occasion we are looking into putting in a rule, or notification anytime the complainant’s name is part of an email. The notification would prompt the person to verify what was being sent and to whom.” The district also complained that Complainant posted the information to Facebook.

¹ 20 USC § 1232g; 34 CFR Pt. 99

Applicable Law

FERPA 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 regulations² 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

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 PII. Complainant, the parent of a student who attends the district's schools alleges that she improperly received PII of two other students. The district does not dispute complainant's standing to bring this complaint. NYSED's Privacy Office may address the complaint.

The district concedes that an unauthorized disclosure of student PII was made on May 16, 2024. This disclosure violates FERPA and Education Law §2-d. The district has taken some steps to address the breach including notifying the affected parties. However, this is the second incident involving Complainant and the district's service provider. I issued a [determination dated February 27, 2024](#), addressing the first incident.

To further complicate matters, 



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

[REDACTED] Therefore, the best resolution to these ongoing data breaches is to ensure that they do not recur.

Determination

The district admits that an improper release of PII occurred. This release of information constitutes a breach as defined by § 121.1 (a) of the regulations of the Commissioner of Education. Therefore, the district was required to report the breach to my office no later than 10 calendar days after it learned of the incident [§ 121. 10 (d)]. It has not yet done so. Thus, the district is directed to file a data incident report within **five days** of this determination³.

It is evident that [REDACTED] however continuing to mistakenly provide Complainant with information pertaining to other students exacerbates the problems and unnecessarily tramples on the privacy rights of other students and families. This is not acceptable. Therefore, the district must also submit a plan to my office by **August 2, 2024** outlining the steps it will take to ensure that this incident does not occur again. I suggest the district take bold steps in this plan.

Finally, Complainant states that when she contacted the district about this latest breach, she was ignored. I remind the district that Education Law § 2-d and § 121.4 (b) of the Regulations of the Commissioner of Education require educational agencies, to promptly acknowledge receipt of privacy complaints, commence an investigation, and take necessary precautions to protect PII. In the future, it is expected that the district will comply with this requirement when receiving a complaint or notification of improper release from a parent.

Date: July 19, 2024



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³ <https://forms.office.com/pages/responsepage.aspx?id=6BbvFeBMw0-S4mp6bI52Xiu3S0TIErdCsyh9u-tAGK5UOVRNR0FMMTdlVTdFQkRXSjNDWUJZV09aMSQIQCN0PWcu>