

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

Guilderland Central School District
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On October 14, 2024, the New York State Education Department’s (“NYSED”) Privacy Office received a complaint from a parent (“Complainant”), whose child attends the Guilderland Central School District (the “district”). Complainant alleges that the district improperly disclosed their child’s Personally Identifiable Information (“PII”) as defined in FERPA¹ because during open house, it encouraged students to access their Chromebook and share a “leaderboard” with their parents that portrayed students’ names, scores, and rank on a digital screen.

In response to the complaint, on October 18, 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 November 6, 2024.

District Response

The district responded by explaining that during open house the teacher asked students to show their parents how they use a product called IXL in class for math. While doing so, the student used their Chromebook to access, and display, the IXL leaderboard. The district asserts that the leaderboard “does not indicate a student’s grade in the class or score on any particular assignment, as it is merely progress at that moment in time on a leaderboard that refreshes.” The district indicates that it does not maintain information on the leaderboard.

Applicable Law

FERPA protects the privacy of student education records and places restrictions upon educational agencies regarding the release of student PII from

¹ 20 USC § 1232g; 34 CFR Pt. 99.

education records. 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 (b) 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.³ In this matter however, the information on the leaderboard was not an education record. The information viewed on the leaderboard changes in real time as students practice specific math skills. According to the district, the leaderboard is meant to serve as a "motivational tool" that measures the time spent on the tool, the number of correct questions answered, or skills mastered. The information is not maintained by the district or the vendor as part of the student's education record. It is well established that 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 [an] education record []."⁴ Thus, no unauthorized disclosure or release of student data occurred in violation of FERPA or Education Law § 2-d.

However, the district should consider that a leaderboard could be discouraging or demoralizing to some students and parents. As part of the complaint, Complainant shared a screenshot of the leaderboard with their child's name listed tenth, no number listed next to "questions correct" (it was later clarified that the student had not started using the tool yet) and a "keep practicing" statement. While the teacher

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

³ 34 CFR §99.3

⁴ Letter to Anonymous, issued by the Student Privacy Policy Office of the U.S. Department of Education, September 28, 2021, 122 LRP 14834

informed Complainant that the student's name could easily be removed from the leaderboard, a better practice would be to assign a name or number to each student for this or any other tool that evaluates, and ranks, student performance.

Date: November 19, 2024

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

Louise DeCandia, Esq.
Chief Privacy Officer
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