

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

Marcellus Central School District
-----X

On March 7, 2025, the New York State Education Department’s (“NYSED”) Privacy Office received a complaint by a parent (“Complainant”) whose children attend Marcellus Central School District (the “district”). Complainant states that the district’s physical education teacher records children during class and posts the recordings on a personal Instagram page. According to Complainant, these recordings are being taken and posted without parental consent and therefore constitute an improper release of student personally identifiable information (“PII”) in violation of the Family Educational Rights Privacy Act (“FERPA”) 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. The district submitted its response on March 24, 2025.

District Response

The district responded by stating that it sends a letter from the high school each July to parents explaining the district’s release of student information for publicity purposes which includes “the media, newsletters, and website regarding student accomplishments, programs and special events.” Parents are given the option to opt out of sharing their child’s name and photograph by signing, dating and returning the form¹. The district also explained that it maintains several social media accounts through a contract service with its Board of Educational Cooperative Services (“BOCES”). The district’s social media accounts are not listed on the letter/opt-out form parents receive in July.

The district also stated that it permits staff members to maintain social media accounts that feature “student learning, participation on special events and special

¹ Of note, the district does not list photographs in its student directory information policy which was last updated in 2012.

notices.” In response to my request to investigate this complaint, the district reviewed the physical education teacher’s Instagram site and determined that the account is maintained to “communicate student work in Physical Education and school sporting events,” implying that posting student photos and videos to the Instagram site is allowable by the district.

Applicable Law

FERPA² is a federal law that 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 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 of PII, and/or unauthorized disclosures or release. Protected student data is defined in the Commissioner’s Regulations 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) 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.⁴ In this case, the district states that it does not maintain any of the photographs or videos taken by the physical education teacher. Therefore, although the videos and pictures pertain to school activities that occur in the physical education class, I cannot determine that they are education records as defined under FERPA. “FERPA does not protect confidentiality of information in general, and therefore does not apply to the

² 20 USC § 1232g; 34 CFR Pt. 99

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

⁴ 34 CFR §99.3

disclosure of information derived from a source other than education records.”⁵ Thus, no unauthorized disclosure or release of student data occurred in violation of FERPA or Education Law § 2-d.

Although I do not find a violation in this instance, I strongly encourage the district to address its staff members’ posting of student photographs and videos on their social media accounts. Best practice is for educational agencies to have a policy on the taking and use of student photographs and videos by their staff. The policy should address the use of staff members’ personal social media accounts. If, as the district states in this case, an educational agency allows staff to post student photographs and videos, then the policy ought to establish parameters for sharing this information. Parents should participate in the promulgation of any such policy, and it should be shared publicly.

Additionally, I urge the district to make parents aware of what appears to be its current, unwritten policy allowing staff to take and post photographs and videos of students that feature “student learning, participation in special events and special notices.” I note that this information is not shared on the district’s opt-out form. Many parents are rightfully concerned about the use of artificial intelligence on photographs and the use of their child’s image for cyberbullying, sextortion or other unlawful purpose. It is the position of NYSED’s Privacy Office and best practice that parents be given the right to control the release of their child’s photographs or other recordings taken at their school.

Date: April 4, 2025



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

⁵ Letter to Anonymous, issued by the Student Privacy Policy Office of the U.S. Department of Education, September 28, 2021, 122 LRP 14834