
In the Matter of
A Privacy Complaint
Filed Against

Review and Determination by
New York State Education Dept.
Chief Privacy Officer

Williamson Central School District

On May 22, 2022, a complaint was filed with the New York State Education Department's ("NYSED's") Chief Privacy Officer by a parent ("complainant"), whose child attends Williamson Central School District ("District"). Complainant alleges that in May 2022, two ELA educators rewarded select students for exhibiting growth in their reading scores by calling those students to the front of the room and giving them an ice cream party. Students who had not exhibited growth in their reading scores were excluded. Complainant asserts that this constituted an implicit disclosure of grades (i.e., "educational records"), and thus personally identifiable information ("PII") because students were able to discern who had improved in their reading and who had not by observing which students were called to receive ice cream.

In response to the complaint, on May 31, 2022, NYSED's Chief Privacy Officer requested that the District investigate and provide a written response, including a summary of its investigation and address specific questions or issues listed as (a) through (k) in the letter. The District submitted its response on June 8, 2022.

Applicable Law

The federal Family Educational Rights and Privacy Act (FERPA)¹ protects the privacy of student educational records and places restrictions on the release of students' PII. Additionally, New York has adopted additional privacy laws and regulations. Education Law § 2-d² protects PII from unauthorized disclosure and provides parents with rights regarding their child's PII, especially as it pertains to third party contractors.

In accordance with the requirements of Education Law § 2-d, NYSED has adopted a [§2-d Bill of Rights for Data Privacy and Security](#) that authorizes NYSED's Chief Privacy Officer to address complaints about possible breaches and unauthorized disclosure of student PII. Section 121.1 (a) of the regulations of the

¹ 20 USC § 1232g; 34 CFR Part 99

² N.Y. EDUC. LAW § 2-d

Commissioner of Education defines a breach as the “unauthorized, access, 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.”

District Response

The district states that the complainant mischaracterized the incident and that there was no “breach” under FERPA or Education Law § 2-d. It explains that while students were told that they could receive ice cream if they showed growth in their performance on an “IReady” exam from fall to spring of the 2021-2022 school year, the term “growth” was not defined, and no specific grades or scores were disclosed. The district further states that students were allowed to leave the room in groups of 2-3 to get ice cream and return; it denies complainant’s characterization of the event as an “ice cream party” that occurred in the front of the classroom. The district asserts that a recognition of achievement does not constitute a disclosure of students’ educational records under Education Law § 2-d, either of the grades of the students who were rewarded, or the grades of the students who did not receive rewards.

The district also states that the educators involved had been trained in student data privacy requirements under Education Law § 2-d prior to the incident, submitting sample materials shared during that training. The district indicates that it addressed the situation by having a district administrator discuss alternative methods of incentivizing students with the educators. The district asserts that, “at no time was any student made aware of another student’s grade(s) or extent of progress, ...[therefore] there was no need to provide corrective or mitigating instructions to students since they had not received private and confidential student data.”

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 personally identifiable information. Complainant is the parent of a student who attends the District and was a member of the class, and NYSED’s privacy office may therefore address the complaint. The District does not dispute complainant’s standing to bring this complaint.

Both FERPA and Education Law §2-d prohibit the unauthorized disclosure of student PII from educational records. However, a school may disclose directory information without parental consent if it has given public notice of the types of information it has designated directory; provided parents and eligible students a right to restrict the disclosure and provided a period within which the parent or eligible student must notify the school in writing that they do not want all or some of the information designated as directory. Directory information is information in a student's educational record that would not generally be considered harmful or an invasion of privacy if disclosed. It often includes but is not necessarily limited to information such as student's name, address, telephone number, date of birth, parent's email and participation in activities and sports³.

The U.S. Student Privacy Policy Office has determined that publication of awards such as honor rolls lists does not violate FERPA because it is a disclosure of an award, which is allowable under FERPA's directory information exception if a school has properly designated "honors and awards" as a category in its directory information policy.⁴ In this case, the District's Policy 7350 explicitly states that "degrees and awards received" are considered directory information which the District "may release ... without prior approval of the parent/guardian or student for the release."⁵

Determination

Initially, I find that the practice of providing rewards to students (through stickers, snacks, or other means) in a classroom, which is a longstanding custom, is the functional equivalent of honors and awards for privacy purposes. Thus, the district's actions were in conformity with its policy and the above guidance from the U.S. Student Privacy Policy Office.

Moreover, there is no evidence that the District violated Education Law 2-d or disclosed PII. Students' actual grades or reading levels were not shared. Indeed, less information was provided to the students in the classroom than a listing of honor roll students in a newspaper. FERPA does not protect confidentiality of information in general; it applies to the disclosure of tangible records and PII derived therefrom.⁶ Tangible records were not provided to any students in this matter. Therefore, I cannot find that the District disclosed student PII under Education Law § 2-d.

³ 34 CFR § 99.3 and § 99.37

⁴ U.S. Student Privacy Policy Office, [Letter to Parent Regarding Directory Information](#), April 27, 1994; U.S. Student Privacy Policy Office, Letter to Veit, June 22, 2021 [121 LRP 32093].

⁵ Williamson Central School District Policy 7350, approved 12/10/2003, 3/26/2008, 9/12/2012, 6/15/2016 and 5/23/2018.

⁶ U.S. Student Privacy Policy Office Letter to Anonymous, July 30, 2021 [122 LRP 5771].

While there was no disclosure in violation of Education Law § 2-d, I share complainant's concern regarding the inequity of awarding select students with ice cream for exhibiting growth in reading scores while openly excluding others in the same class. I encourage the District to consider finding alternate methods of rewarding its students.

A handwritten signature in black ink, appearing to read "Louise DeCandia". The signature is written in a cursive style with a large initial "L".

July 13, 2022
Louise DeCandia
Chief Privacy Officer
NYSED