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In the Matter of  
A Privacy Complaint  
Filed Against

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

Shenendehowa Central School District  
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On June 16, 2022, a complaint was filed with the New York State Education Department's ("NYSED's") Chief Privacy Officer by a parent ("complainant"), whose child ("student") attends one of the middle schools at Shenendehowa Central School District ("District"). Complainant alleges that in May 2022, other parents were given access to the student's personally identifiable information ("PII"), [REDACTED] when the District shared video footage of an altercation involving five students, one of whom was the student.

In response to the complaint, on June 24, 2022, NYSED's Chief Privacy Officer requested that the District investigate and provide a written response, including a summary of its investigation and addressing specific questions and issues. The District submitted its response on July 21, 2022.

#### Applicable Law

The Federal Family Educational Rights and Privacy Act (FERPA)<sup>1</sup> 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-d<sup>2</sup> 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 Commissioner of Education 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."

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<sup>1</sup> 20 USC § 1232g; 34 CFR Part 99

<sup>2</sup> N.Y. EDUC. LAW § 2-d

## District Response

The district states that an incident involving four students occurred in May 2022 at a school sponsored event that was held in the evening. The incident was captured by a security camera. The security camera video was shared with two of the students as part of the District's investigation into the matter. The video was also shown to the parents of one student who was disciplined. The District states that no one else viewed the video and it was only shared with complainant, whose child was not disciplined, after they insisted on seeing it. The District states that it is an education record pertaining to the student who was disciplined. The District also admits that it did not blur the image of any of the students in the video before sharing it with the two sets of parents, although it is possible to obscure portions of an image before exporting it to hard drive. Finally, the District's response to the complaint explains that it has started to develop protocols regarding the "appropriate use of video images in the student discipline process" and the "appropriate provisions governing the extent to which identifiable features must be obscured when doing [sic] using video records".

## 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 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 students' education records. FERPA and Education Law § 2-d also provide parents and eligible students<sup>3</sup> the right to have access to their education records. In this case, complainant asserts that the parents of the disciplined student should not have viewed the video because it included images of the student.<sup>4</sup> However, the District states that the video recording is considered part of the disciplined student's education record, is maintained by the District, and was used as evidence of misconduct. This is in accord with the frequently asked questions

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<sup>3</sup> The term "eligible student" has the same definition in Education Law § 2-d as it does in FERPA: a student who is 18 years old or who attends an institution of postsecondary education at any age.

<sup>4</sup> Complainant states that the disciplined student's parents "and other parents were shown the video by school administration," but there is no evidence that any other parents other than complainant and the disciplined student's parents viewed the video.

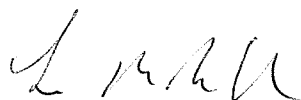
guidance issued by the U.S. Department of Education's Privacy Technical Assistance Center (PTAC) regarding photos and videos under FERPA<sup>5</sup>.

My June 24, 2022 letter to the District specifically asked whether it was able to redact or blur the images of the other students before sharing the video with the parents of the disciplined student. The District responded that there are tools available to obscure portions of a video image before it is clipped and exported for preservation, but that, to date, this has not been the standard practice. It stated that, in light of this complaint, "it is in the process of reviewing its policies and protocols . . . and will include consideration of when and to what extent images should be obscured before exporting in the future".

### Determination

The District determined that the video is an education record pertaining to the disciplined student because it was directly related to the student and it was being maintained by the District for disciplinary purposes. As such, in accordance with FERPA and Education Law §2-d, the disciplined student's parents had a right to view the video. However, PTAC's guidance regarding photos and videos under FERPA also states that educational agencies are required to redact or segregate the portions of video pertaining to other students if this can be reasonably accomplished and if the redaction or segregation would not destroy the meaning of the record. Without knowledge of the objections raised by the parents of the disciplined student that necessitated the viewing of the video—which I lack authority to compel—I am unable to make such a determination. Therefore, I am unable to conclude that there was an unauthorized disclosure in violation of Education Law § 2-d.

Although a determination regarding a violation of Education Law § 2-d cannot be made, I encourage the District to complete its review and revision of its policies and protocols regarding Data Privacy and Security (5676, 5676R) and Use of Video and Audio Systems (5686) and to ensure the PTAC guidance regarding photos and videos under FERPA, referenced in this determination, is incorporated into these policies.



July 28, 2022  
Louise DeCandia  
Chief Privacy Officer  
New York State Education Department

<sup>5</sup> <https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa> and see December 7, 2017 Letter to Wachter [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/Letter%20to%20Wachter%20%28Surveillance%20Video%20of%20Multiple%20Students%29\\_0.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Letter%20to%20Wachter%20%28Surveillance%20Video%20of%20Multiple%20Students%29_0.pdf)