

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 by
New York State Education Dept.
Chief Privacy Officer

Bradford Central School District
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In February 2023, 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 Bradford Central School District ("District"). Complainant states that a current employee of the District accessed the student's address in order to enable a former employee of the district to mail personal correspondence to Complainant's home. The current employee was named in the complaint. Complainant alleges this is a violation of the Family Educational Rights Privacy Act ("FERPA") and Education Law § 2-d.

In response to the complaint, 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 April 5, 2023.

Applicable Law

FERPA¹ protects the privacy of student educational records and places restrictions on the release of student PII. New York has adopted additional privacy laws and regulations. Education Law § 2-d, for example,² protects personally identifiable information ("PII") from unauthorized disclosure and provides parents with rights regarding their child's PII, especially as it pertains to third party contractors.

¹ 20 USC § 1232g; 34 CFR Part 99.

² Education Law § 2-d.

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 parent complaints about possible breaches and unauthorized disclosure of 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." Section 121.1 (t) of the Commissioner's Regulations 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."

District Response

The District indicates that it questioned the employee, who admitted to accessing the student's address via the District's student management system. The employee then addressed and mailed the correspondence to Complainant. The District reviewed privacy expectations with the employee and imposed disciplinary measures.

The District further states that it delivers data privacy training to all employees annually and that privacy training, including information on Education Law § 2-d, was delivered to employees in January 2023. In response to this incident, the District reviewed and revised employee access to its student management system such that employees will only be able to access the information of students to whom they directly provide services or instruction.

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 did not dispute complainant's standing to bring this complaint.

The District does not dispute the facts alleged by Complainant, except to clarify that the employee in question addressed and mailed the correspondence to the parent, and did not, as complainant alleges, give the student's address to a former employee.

Determination

Section 121.1 (t) of the Commissioner’s Regulations 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.” That section also defines protected student data as “personally identifiable information from the student records of an educational agency.” Additionally, while FERPA authorizes the disclosure of PII to school officials, educational agencies must use reasonable methods to ensure that school officials only obtain access to the education records in which they have a legitimate educational interest [34 CFR § 99.31 (a)].

Here, it is undisputed that the employee accessed the student’s educational record for an improper purpose.³ As the district found, this violated FERPA. It also constitutes a breach as defined in § 121.1 (a) of the Commissioner’s regulations. As such, the District was required to report the breach to my office no later than 10 calendar days after becoming aware of the incident [§ 121. 10 (d)]. Therefore, I will direct the District to file a data incident report to my office within five days of this determination.

However, I do not find that any broader or systemic relief is warranted. The evidence suggests that the breach discussed herein was routine employee misconduct that cannot be attributed to specific deficiencies in the District’s policies or training. As indicated above, the District regularly delivers privacy training to its employees—and, indeed, delivered one such session a month prior to the breach at issue.

Finally, in light of this incident, I strongly encourage the District to review which employees it considers school officials and whether access to PII is provided to school officials because of a legitimate educational interest.

All responses to this determination are to be sent to privacy@nysed.gov.

May 17, 2023



Louise DeCandia
Chief Privacy Officer
New York State Education Department

³ It is unclear whether the district considers the employee a school official.