

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 Office

Brighton Central School District

November 6, 2023  
-----X

On October 4, 2023, a complaint was filed with the New York State Education Department's ("NYSED") Privacy Office. The Complainant, whose child attends Brighton Central School District (the "District"), asserts that the District improperly disclosed the Personally Identifiable Information ("PII"), including health information for a student who is not Complainant's child, when it accidentally mailed to Complainant the other student's education record, specifically their Section 504 individualized education plan. Complainant is not the legal parent/guardian for the student whose PII was accidentally disclosed and is not authorized to receive such information. Complainant asserts that they contacted the District to advise school administration of this improper disclosure but did not get any response. Complainant then filed a complaint with my Office asserting a violation of the Family Educational Rights Privacy Act ("FERPA") and Education Law § 2-d. In response to the complaint my office received from the parent, I requested that the District investigate the allegations made by Complainant and provide a written response summarizing its investigation and addressing specific questions and issues. Thereafter, my Office received a response from the District on October 26, 2023.

As background, FERPA<sup>1</sup> is a federal law intended to protect the privacy of student educational records, and places restrictions upon educational agencies regarding the release of student PII. Moreover, New York State has adopted additional privacy laws<sup>2</sup> and regulations that protect a student's PII from unauthorized disclosure and provide parents with additional rights regarding their child's PII. In accordance with the requirements of Education Law § 2-d, NYSED has adopted a Bill of Rights for Data Privacy and Security that authorizes NYSED's Chief Privacy

---

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

<sup>2</sup> Education Law § 2-d & 8 NYCRR §121.

Officer to address parent complaints about possible breaches of PII<sup>3</sup>, and/or unauthorized disclosures or release.<sup>4</sup>

In the District's response, it states that upon receipt of notice from my Office, it immediately investigated and addressed the accidental unauthorized disclosure. In its investigation, the District confirmed that a copy of one student's 504 education plan was accidentally mailed to the address for a different student. The District states that the unauthorized disclosure was limited to one student's PII, that it contacted the affected parties of the breach with a detailed explanation and mitigated any further unauthorized disclosure by ensuring the return of the copy accidentally sent to the incorrect household. Additionally, the District provided examples that show it has undertaken internal administrative procedures, including training, to reduce the risk of any future unauthorized disclosure of a student's PII, and attached supporting exhibits to that effect. The District did not address their failure to respond to the parent's initial complaint to their child's school.

The Regulations of the Commissioner of Education, including NYSED's Bill of Rights for Data Privacy and Security,<sup>5</sup> assist parents, eligible students, teachers, principals or other staff in an educational agency to file a complaint with my Office regarding a possible breach and unauthorized release of PII. Complainant is the parent of a student who attends the District's schools. NYSED's Privacy Office has the authority to investigate a complaint of this subject nature. The District concedes that an accidental unauthorized disclosure was made, and the District has provided evidence of the steps taken to timely address the breach including notice to the affected parties, issuance of new internal procedures, and instructions to District staff.

Training for data privacy and security is one of the most important tools in the arsenal to protect against breaches and data incidents. In support of this, Education Law §2-d and §121.7 require annual data privacy and awareness training on the "...state and federal laws that protect PII." Educational agencies like the District are responsible for not only offering data privacy and awareness training, but to ensure that all employees with access to PII take the training and understand their important obligations under FERPA, Education Law § 2-d and other applicable privacy laws.

The District admits that an accidental release of information occurred. Because a breach, as defined by Section 121.1(a) of the Regulations of the Commissioner, occurred the District is required to report the breach to my Office no later than 10 calendar days after it learned of the incident.<sup>6</sup> Therefore, if it has not yet done so, the District is directed to file a data incident report with my Office within **five (5) days** from the date of this determination.<sup>7</sup>

---

<sup>3</sup> The Regulations of the Commissioner of Education define 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." §121.1(a).

<sup>4</sup> An unauthorized disclosure or release is defined 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." §121.1(t).

<sup>5</sup> §121.4 & Ed. Law §2-d

<sup>6</sup> §121.10(d)

<sup>7</sup> The data incident form can be found here at: [Agencies: Report a Data Privacy/Security Incident | New York State Education Department \(nysed.gov\)](https://www.nysed.gov/Agencies-Report-a-Data-Privacy-Security-Incident).

Finally, I remind the District that Education Law § 2-d and § 121.4 (b) of the Regulations of the Commissioner of Education require educational agencies, which include the District, to promptly acknowledge receipt of privacy complaints, commence an investigation and take necessary precautions to protect PII. In the future, it is expected that the District will comply with this requirement when receiving a complaint or notification of improper release from a parent.

*Louise DeCandia*

---

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