

The  
University of the  
Education



State of New York  
Department

---

In the Matter of  
A Privacy Complaint  
Filed Against

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

Cairo-Durham Central School District

---

On October 19, 2023, a complaint was filed with the New York State Education Department's ("NYSED's") Chief Privacy Officer by a parent ("Complainant"), whose child attends Cairo-Durham High School. Complainant states that a photograph of the entire Cairo-Durham freshman class, which included Complainant's child, was posted to the Cairo-Durham School District's (the "District") Facebook account, in violation of his request not to post his children's pictures. Complainant asserts that when he notified the District's Superintendent of the violation, he was told that because there were so few parents opting-out of the disclosure of directory information, the District does not consult its opt-out list before posting photographs of students. Additionally, Complainant asserts that a few days after his conversation with the Superintendent the photograph was removed, however parents were not provided notification or information as to why the photograph was removed from the District's Facebook page.

In response to the complaint, NYSED's Chief Privacy Officer requested that the District investigate these allegations and provide a written response, including a summary of the investigation that addresses specific questions asked of the District. The District's Superintendent submitted a response on November 22, 2023.

### Applicable Law

FERPA<sup>1</sup> 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 including Education Law § 2-d<sup>2</sup> that 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.

---

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

<sup>2</sup> 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) 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:

As requested, the District submitted its Directory Information policy (identified as #7241) to my office. This policy states that the District will publish an annual public notice informing parents and eligible students of their right to refuse the release of student directory information. The policy proceeds to list certain information that the District deems to be Directory Information, and that list includes photographs.

The District also provided a copy of its "Media Permission Form (Opt-Out)." This form does not use the term Directory Information in the title, but in their response to my office, the District clarified that there is only one opt-out form for both Directory Information and media. If a parent or eligible student wishes to opt-out, this form is required to be filed with the District by October 1<sup>st</sup> of each school year.

The District asserts in its response that its Media Permission Form (Opt-Out) is "sent home with every student at the beginning of each school year in the 'Student Welcome Folder'." For the current school year, that folder was sent home with each student on September 7, 2023. This is the same date that the photo at issue was posted to the District's Facebook page and was available for viewing on the District's website. It is unclear if the District checked the previous academic year's opt-out filings before posting the picture, since parents and eligible students still had time to opt-out of media postings for this school year.

In its response to my office, the District asserted that it has no opt-out form on file from Complainant and further, that after meeting with Complainant on or about the week of October 9<sup>th</sup>, the District still does not have an opt-out form for the students as of November 27<sup>th</sup>.

#### 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 students who attend 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 that the photograph was posted on the District's Facebook page on September 7, 2023, and was also available for viewing on the District's website and mobile application until November 15, 2023. But in its defense, the District asserts that it has no opt-out forms on file from any of the parents of the students in the photograph, including Complainant. However it is unclear, since the photograph was posted before the District's imposed deadline to opt-out of the 2023-2024 school year, whether the District reviewed the previous year's opt-out filings, which it should have done before posting the photograph on September 7, 2023.

Finally, the District maintains that it is working on implementing an on-line Media Permission Opt-Out form and that this should be available by the start of the 2024-2025 school year.

### 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."

Based upon all the information provided, I cannot determine that the publishing of the photograph of the freshman class constitutes an unauthorized disclosure. The District claims that it does not have an opt-out form from complainant on file, and although complainant states that he "requested that his child's photograph not be posted," it is not clear if he filed the District's required opt-out form, and if so, why the District has no record of it.

I must note that the District's "Media Permission Form (Opt-Out)" is somewhat confusing since it does not include Directory Information in the title, that could lead a parent misunderstanding if there is another form for Directory Information. Also, the District's Directory Information Policy, requires the District to "publish an annual public notice informing parents or eligible students. . . of the District's definition of directory information, [and] the parent or eligible student's right to refuse the release of student directory information." If, in accordance with its policy, the District's Media Permission Form (Opt-Out) is also intended to serve

as the District's Directory Information Annual Notice, then this should be made more evident to parents.

The District contends that it is working on implementing an on-line Media Permission Opt-Out form and that this should be available by the start of the 2024-2025 school year. I welcome this effort and direct the District to read my [July 19, 2023 memo to School District Superintendents in preparation for monitoring](#). That memo outlines legal requirements and best practices as to what must and should be on an educational agency's website regarding FERPA and Part 121 of the regulations of the Commissioner of Education.

I decline to address complainant's allegation that the District's Superintendent told him that the District does not check opt-out forms before posting information, but I note that in the District's response, it described how it verifies whether opt-out forms were filed before posting information and pictures.

Finally, the District is reminded that when posting student information at the beginning of the school year (prior to its October 1<sup>st</sup> deadline) it must ensure that the opt-out forms from the previous school year are being applied.

December 1, 2023



Louise DeCandia  
Chief Privacy Officer  
New York State Education Department