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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

Cohoes City School District  
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On April 12, 2023 a complaint was filed with the New York State Education Department’s (“NYSED’s”) Chief Privacy Officer by the parent (“Complainant”) of a child (“Student”) who attended the Cohoes City School District (“District”). Complainant alleges that the District denied her access to the Student’s records and unjustifiably disclosed the Student’s personally identifiable information (“PII”) without consent to the Cohoes Housing Authority (“CHA”).

In response, on April 28, 2023, NYSED’s Chief Privacy Officer requested that the District investigate and address the specific allegations raised by the Complainant in writing. The District responded on May 12, 2023 and June 2, 2023.

### 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. 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.

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

<sup>2</sup> N.Y. EDUC. 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 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, 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.”

### Arguments

Complainant contends that:

- (1) The District failed to provide her with access to the Student's educational and health records,<sup>3</sup> as required by FERPA, Education Law § 2-d and the District's Parent's Bill of Rights;<sup>4</sup> and
- (2) The District disclosed PII concerning the student to a third-party entity without consent.

Complainant further contends that the District's disclosure of the student's PII to the CHA resulted in the revocation of her housing voucher.

### District Response

The District states that, in order to comply with FERPA, it was unable to provide a copy of the Student's educational and health records directly to Complainant. According to the District, it was unable to verify that the individual requesting the Student's records was Complainant because the Student had left the District and Complainant's email address was different than the address on file.<sup>5</sup> Finally, the District states that once Complainant informed the District that the Student was attending a new district, it confirmed the enrollment with the new district and promptly sent the Student's records to that district.

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<sup>3</sup> While I have no jurisdiction over health records, joint guidance issued by the U.S. Departments of Education and Health and Human Services has clarified that most health records in a student's education record are covered by FERPA rather than the Health Insurance Portability and Accountability Act (HIPAA).

<sup>4</sup> The District's Parent Bill of Rights, required by Education Law 2-d, allows parents “the right to inspect and review the complete contents of their child's educational record” (*see* <https://www.cohoes.org/data-privacy-ed-law-2-d/>).

<sup>5</sup> In any event, the District maintains that Complainant never provided an address, which would have prevented it from sending the Student's records.

With respect to disclosure of the student's PII to a third-party, the District admits that its attendance officer improperly solicited information concerning the student's residency with a landlord in connection with a residency check (which, in turn, was conducted in connection with a claim of homelessness under the McKinney-Vento Homeless Assistance Act). The District further states that it learned from a family member of the Student that an investigation was subsequently conducted by the CHA.

In response to this investigation, the District indicates that it has reviewed its responsibilities toward homeless students and will ensure that it does not take action that might impact families' housing. The District further indicates that, going forward, the eligibility of homeless students, including verification of contact information, will be addressed by its homeless liaison. Moreover, the District states that it will be speaking with the attendance officer about this incident. Additionally, the District's counsel will train district employees who ascertain student residency and homelessness on their obligation to protect student PII.

#### Analysis and Determination

With respect to Complainant's records request, the District's efforts to comply with FERPA are laudable. However, special care must be taken to understand the circumstances of students and parents who may be experiencing homelessness. As such, seemingly simple requests such as obtaining a copy of a student's educational record may necessitate careful consideration of students' rights under FERPA and McKinney-Vento. The District's proposed training of its Registrar and homeless liaison represents a good first step toward better understanding the needs of homeless students and their families. Since there is no evidence that the District has yet provided these records to Complainant, who still seeks the information, I will direct the District to send an encrypted copy via email to the Complainant at an email address provided by her.

Complainant also asserts that the District disclosed the student's PII without consent to the CHA, a third party entity. While the District admits that its residency officer improperly discussed the Student's residency with the landlord, it is unclear whether this discussion resulted in the disclosure of PII. Therefore, I cannot find that the District disclosed the student's PII to the CHA in violation of FERPA and/or Education Law § 2-d. Nevertheless, I share complainant's concern that the CHA had obtained knowledge of the Student's residency around the same time that the Complainant updated her information with the District. Accordingly, I strongly encourage the District to review its data privacy and security training, required by § 121.7 of the regulations of the Commissioner of Education, and ensure that it

addresses all relevant laws, regulations and confidentiality issues affecting the District including the privacy rights of homeless students.

I thank the District in advance for its anticipated cooperation with this determination.

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, 2023  
Louise DeCandia  
Chief Privacy Officer