
In the Matter of
A Privacy Complaint
Filed Against

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

Skaneateles Central School District

On August 18, 2021 a complaint was filed by the mother (complainant) of a child (student) who attended the Skaneateles Central School District (District) with the New York State Education Department's (NYSED's) office of the Chief Privacy Officer. Complainant alleges that the District disclosed the student's personally identifiable information (PII) without consent to individuals who did not have a reason to know the PII; and denied her access to the student's records.

In response to the complaint, on August 20, 2021, NYSED's Chief Privacy Officer requested the District investigate and provide a written response, including a summary of its investigation and addressing the specific allegations raised by complainant. The school submitted its response to the Chief Privacy Officer on September 10, 2021.

Applicable Law

The federal Family Educational Rights and Privacy Act (FERPA)¹ 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-d² protects PII from unauthorized disclosure and provides parents with rights regarding their child's PII, especially as pertains to third party contractors¹

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 PII.

¹ 20 U.S.C. 1232g; 34 C.F.R. Part 99

² N.Y. EDUC. LAW § 2-d

Arguments

Complainant contends that:

- (1) The District failed to provide her with access to the student's educational records, including health and counseling records, as required by Education Law § 2-d;
- (2) The District disclosed PII concerning the student to third-party service providers without consent; and
- (3) The District disclosed PII concerning the student, without consent, to employees who did not have a reason to know the PII.

Complainant further contends that the alleged unauthorized disclosures were made both verbally and via email. For relief, complainant seeks to inspect the District's health and counseling records for the student; as well as an investigation into who received the emails and notices about the student's name change.

The District denies that it refused complainant's request to view the student's education records, including health and counseling records; and contends that it has sent complainant a complete set of the student's education records. Additionally, the District alleges that there was no unauthorized disclosure of the student's PII. Specifically, the District contends that any and all disclosure of student data was made either (1) pursuant to approved contracts, subject to the vendor's Privacy Plan; (2) to District employees with a legitimate educational interest; or (3) upon consent of complainant. Lastly, the District contends that student data is controlled through the District's learning management vendors, PowerSchool and SchoolTool, which allow the District to restrict access to electronic student records to only those employees who the district has determined have a legitimate educational interest and to limit the level of access that is provided to only what is required for that purpose.

Determination

In July 2015, NYSED issued Guidance to School Districts for Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students³ (Guidance) to help schools create a safe and supportive environment for these students. In that Guidance, NYSED reminded school districts that "while disclosure of personally identifiable information from a student's education record to other school officials, including teachers, within the district whom the district has determined to have legitimate educational interests may be permissible under FERPA, the district must, among other things, use reasonable methods to ensure that school officials obtain access to only those education records in which they have

³ http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf

legitimate educational interests.” *Id.* at p. 8. This reminder is consistent with the privacy protection afforded by FERPA (Prior consent to disclosure is not required when the disclosure is made to “other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required.” 20 U.S.C. § 1232g[b][1][A]; *see also* 34 CFR § 99.31[a][1][i][A]) and Education Law § 2-d (each educational agency’s policy on data security and privacy “shall provide all protections afforded to parents and persons in parental relationships, or students where applicable, required under [FERPA]” Education Law § 2-d[5][d]).

Further, the Guidance also states that,

“Schools should work closely with the student and family in devising an appropriate plan regarding the confidentiality of the student’s transgender status. In some cases, transgender students may feel more supported and safe if other students are aware that they are transgender. In these cases, school staff should work closely with the student, families, and other staff members on a plan to inform and educate the student’s peers.” *See* Guidance at p. 5.

Complainant asserts that the school failed to provide her with access to the student’s education records. In its response to the Chief Privacy Officer, the District included a chart describing the documents provided to complainant. However, the District does not provide evidence of complainant’s receipt of the documents, nor does complainant confirm that she has received the documentation. Education Law § 2-d requires each education agency to publish a bill of rights which states that parents have the right to inspect and review the contents of their child’s education records [Education Law § 2-d (3)(b)(2)]. The school has a Parents Bill of Rights that allows parents “the right to inspect and review the complete contents of their child’s educational record” (*see*

<http://www.skanschools.org/tfiles/folder289/Parents%20Bill%20of%20Rights.pdf>).

Therefore, the Office of the Chief Privacy Officer is requiring the District to send a hard copy set of the records to the complainant within thirty (30) days after receipt of this determination.

Complainant also states that the District disclosed the student’s PII to third party providers and school employees unnecessarily. However, the limited information provided in the complaint and investigation did not adequately describe all recipients of the PII and for what reason they received the PII. The Guidance, described above, emphasizes that in order to maintain compliance with FERPA, only school officials, which would include service providers who comply with the requirements of 34 CFR § 99.31(a)(1)(i), who have legitimate educational interests may receive PII from an education record. The Office of the Chief Privacy Officer therefore cautions the District to remain vigilant with its Education Law § 2-d and FERPA

compliance by ensuring that only District officials who have legitimate educational interests are provided access to students' education records.

Finally, the nature of this complaint requires that the District be reminded to involve transgender and gender nonconforming students' parents in its process to the greatest extent permitted by the Guidance while maintaining the health and safety of these students.

November 30, 2021
NYSED
Office of the Chief Privacy Officer