

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 of the
Chief Privacy Office

Elmira City School District
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On January 9, 2024, a complaint was filed with the New York State Education Department’s (“NYSED”) Privacy Office asserting that on two occasions the Elmira City School District (the “District”), improperly disclosed students’ Personally Identifiable Information (“PII”). Regarding the first incident, Complainant states that in November 2022 she requested a copy of her child’s test scores. In response she received a paper copy, and via email, the test scores and other reports of all the students in her child’s class. Complainant states that she reported this incident to the District but did not receive a response. The second incident occurred on February 17, 2023, when the District, without complainant’s consent, shared her children’s education records with “other people that aren’t a parent or a teacher, school staff or whoever.¹” Complainant asserts that the District’s actions violate the Family Educational Rights Privacy Act (“FERPA”) and Education Law § 2-d.

In response to the complaint, I requested that the District investigate the allegations, provide a written response summarizing its investigation and address specific questions and issues. Thereafter my Office received a response from the District (filed as a data incident report) on February 9, 2024.

Applicable Law

FERPA² is a federal law that protects the privacy of student educational records, and places restrictions upon educational agencies regarding the release of student PII. New York has adopted additional privacy laws³ and regulations that further protect a student’s PII from unauthorized disclosure, especially as it pertains to third-party contractors.

In accordance with the requirements of Education Law § 2-d, NYSED adopted a Bill of Rights for Data Privacy and Security that authorizes NYSED’s Chief Privacy Officer to address

¹ Complainant shared a copy of the emails at issue with my Office. The emails were sent to complainant, Suzanne, Hillary, Emily, Donna, and others whose names the copy of the email does not reveal. To assist its investigation, these emails were shared with the District.

² 20 USC § 1232g; 34 CFR Part 99

³ Education Law § 2-d and 8 NYCRR Pt.121

parent complaints about possible breaches of PII, and/or unauthorized disclosures or release. Protected student data is defined in the Commissioner’s Regulations as “personally identifiable information from the student records of an educational agency.” Section 121.1(a) of the Commissioner’s Regulations 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

After its investigation the District determined that it was responsible for the unauthorized disclosure of students’ educational records to complainant when it provided her with a copy of the test scores and reports of students, other than her child on November 4, 2022. The District states that it has contacted the affected parents for the students whose information was accidentally disclosed to complainant. The District also asserts that it has addressed with staff the November 4th unauthorized disclosure of education records and has undertaken a review of internal administrative procedures to reduce the risk of any future unauthorized disclosure of students’ PII.

Regarding the second incident that occurred on February 17, 2023, the District stated that “Given what she [complainant] provided, all the individuals work/worked with the students. As service providers, and primary providers of instruction, all are aware of and have access to the same data that she is accusing us of sharing.” Thus, the District contends that no breach or unauthorized release occurred because the educational records for complainant’s children were shared only with the appropriate school officials who possess a legitimate educational interest in the students’ records in accordance with FERPA [34 CFR § 99.31(a)(1)(i)(A)].

Analysis

The District concedes that an unauthorized disclosure of student PII was made on November 4, 2022. This action violates FERPA and Education Law §2-d. The District has taken steps to address the breach including notice to the affected parties, instructions to District staff and filing a data incident report with my office.

Alternatively, the District states that no breach occurred on February 17, 2023, because the individuals included in the email to the complainant/parent are “other school personnel that already have access to or are part of the student’s provision of service team.” If indeed these individuals are part of the student’s provision of service team, they would constitute school officials under FERPA who have a legitimate educational interest in the information provided via email. Complainant does not offer an explanation why these individuals do not fall within this school official exception. When asked to provide additional information, complainant stated that the people listed are “just regular people with no job title.” I note, however that the email from the District included numerous individuals in the communication, which raises the question as to whether they were all school officials with a legitimate educational interest. Without being in

possession of additional information, my Office cannot determine that the February 17th email was a violation of FERPA and Education Law §2-d.

Nonetheless, the District is reminded that FERPA requires student PII be shared as minimally as possible, and only to school officials who have a legitimate educational interest in the student's education record [34 CFR §99.31]. As an alternative, in this instance it is recommended that the District consider sending an email to necessary staff that a parent requested certain information and such information was provided, rather than copying numerous staff on the email containing the student's PII.

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.

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