
In the Matter of
A Privacy Complaint
Filed Against

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

Fairport Central School District

On October 14, 2021 an anonymous complaint (complainant) was filed with the New York State Education Department's (NYSED's) Chief Privacy Officer alleging that a second grade teacher at Jefferson Avenue School in Fairport Central School District (District) displayed students' names and pronouns, which would potentially indicate a student's gender identity, on a school hallway. The allegation stated that consent was not obtained to disclose this information.

In response to the Complaint, on October 27, 2021, NYSED's office of the Chief Privacy Officer requested the District investigate the complaint and provide a written response, including a summary of its investigation and addressing the specific allegations raised by complainant. The District submitted its response to the office of the Chief Privacy Officer on November 3, 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' personally identifiable information (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.

Arguments

Complainant alleges that the District displayed second grade students' names and pronouns, which would potentially indicate a student's gender identity, on a school hallway and that consent was not obtained to display this information.

¹ 20 U.S.C. 1232g; 34 C.F.R. Part 99

² N.Y. EDUC. LAW § 2-d

Complainant states that they contacted the District's superintendent in early October and that the superintendent met with the second grade teacher but decided that the information would continue to be displayed. The complaint asserts that disclosing a student's gender identity is a violation of Title IX, FERPA and New York State's privacy laws, but does not seek specific relief.

The District asserts that its actions were compliant with NYSED's July 2015, "Guidance to School Districts for Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students" (Guidance) and states that it is unaware of any transgender or gender nonconforming students in the second grade. Upon conducting an investigation, the District determined that the project was one of "inclusivity" and that:

"[I]n instances where a nontraditional pronoun may be noted, this allows the teacher to connect with the family to better understand the child. No student shared any "non-traditional" pronouns this school year."

The District states that there was no breach of information or violation of privacy rights because this information is directory information and "used hundreds of times a day in schools." The District also states that Education Law § 2-d was not enacted to address these issues.

Determination

In July 2015, NYSED issued the Guidance³ referenced by the school to help support schools create a safe and supportive environment for transgender and gender nonconforming 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 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

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

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. It may also be appropriate to engage with community resources to assist with educational efforts. However, in other cases, transgender students do not want their parents to know about their transgender status. These situations must be addressed on a case-by-case basis and will require schools to balance the goal of supporting the student with the requirement that parents be kept informed about their children. The paramount consideration in those situations is the health and safety of the student and making sure that the student’s gender identity is affirmed in a manner in which the level of privacy and confidentiality is maintained necessary to protect the student’s safety.” *See* Guidance at p. 5.

Here, the District states that if a student used a nontraditional pronoun as part of the project, it would “allow the teacher to connect with the family to better understand the child.” However, no student shared any “non-traditional” pronouns this school year. If this had occurred, it is unclear whether the nontraditional pronoun would have been publicly placed on the school hallway.

In light of the circumstances that occurred here, it is the determination of the office of the Chief Privacy Officer that no students’ PII was inappropriately released⁴. The office of the Chief Privacy Officer cautions the District, however, to be mindful that protecting a transgender students’ privacy is tantamount to ensuring their health and safety and cases must be addressed on a case-by-case basis. There should be no policy whereby a student’s transgender or gender nonconforming status is publicly displayed, without an understanding of the implications and consent.

November 30, 2021
NYSED
Office of the Chief Privacy Officer

⁴ The office of the Chief Privacy Officer makes no determination regarding the posting or the content of the students’ artwork at issue. Allowing such viewing is generally permissible under FERPA.