
In the Matter of
A Privacy Complaint
Filed Against

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

The Charter High School for
Law and Social Justice

On or about October 19, 2019, a complaint was filed with the New York State Education Department (“NYSED”) by the Dr. Richard Izquierdo Health & Science Charter School (“Complainant”). Complainant alleged that former staff members had improperly retained Personally Identifiable Information (“PII”) in the form of student names, phone numbers, grades, and mailing addresses before leaving employment at Complainant’s charter school. The former staff members then allegedly used the improperly acquired PII to recruit students for their new employer, the Charter High School for Law and Social Justice (“CHSLSJ”). This complaint was referred to NYSED’s Privacy Office on October 15, 2019.

In response to the complaint, NYSED’s former Chief Privacy Officer wrote to both schools (CHSLSJ on February 29, 2020 and Complainant on March 2, 2020) requesting that they investigate and provide written responses, including summaries of their investigations and answers to specific questions. This office has no record of a written response from Complainant to that March 2, 2020 letter, though many answers to the questions asked therein appear in correspondence that predates the letter. CHSLSJ responded via its attorney on May 15, 2020.

It appears that the former Chief Privacy Officer never rendered a decision on this matter. Although this complaint was filed several years ago, the current Chief Privacy Officer has determined that rendering a determination is appropriate. .

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. Additionally, 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 it pertains to third party contractors.

¹ 20 USC § 1232g; 34 CFR Part 99

² 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."

CHSLSJ and Complainant's Response

CHSLSJ's attorney states on its behalf that the Complainant is mistaken, and no former employees took any PII from Complainant's school in order to recruit for CHSLSJ. The former employees at issue claim that families reached out to them upon learning of their move to the new school, and that is how the PII was obtained. CHSLSJ claims that it offers educational services that Complainant no longer offers and that families reached out of their own volition upon learning that certain staff were now employed at CHSLSJ.

Complainant states that families reported being contacted, unprompted by CHSLSJ, and were upset as a result. Complainant further states that these families reported that they had been contacted by CHSLSL with outdated information (i.e. last year's grade levels) even though they had not reached out to CHSLSJ.).

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 chair of the board of the Complainant charter school, and NYSED's privacy office may therefore address the complaint. CHSLSJ does not dispute Complainant's standing to bring this complaint.

Both FERPA and Education Law §2-d prohibit the unauthorized disclosure of student PII from educational records. However, a school may disclose directory information without parental consent if it has given public notice of the types of information it has designated directory; provided parents and eligible students a right to restrict the disclosure and provided a period within which the parent or eligible student must notify the school in writing that they do not want all or some of the information designated as directory. Directory information is information in a student's educational record that would not generally be considered harmful or an invasion of privacy if disclosed. It often includes but is not necessarily limited to

information such as student's name, address, telephone number, date of birth, parent's email and participation in activities and sports³.

However, in order to comply with both FERPA and Education Law §2-d, the decision to disclose PII, must be made at the school's administrative level and it must be determined that the disclosure is in the educational interest of the student(s). Staff who appropriate PII, even PII that might otherwise be designated "directory information," in order to advertise for a for-profit school, as is the allegation here, are violating both FERPA and Education Law §2-d.

Determination

On this record, I do not have enough evidence to find that any member of CHSLJS's staff violated FERPA or Education Law §2-d by taking student PII from Complainant's records. I can state, however, that such actions, if proven, would constitute a violation of both FERPA and Education Law §2-d.⁴

While I cannot find that there was disclosure in violation of FERPA and Education Law § 2-d, I share Complainant's concern regarding the possibility of staff appropriating student PII in order to attempt to benefit a future employer. Such an action, if proven, would be problematic for the school and individuals involved. I encourage all schools to ensure that they are compliant with the legal and regulatory requirements to train their officers and employees with access to PII regarding data privacy and security that includes FERPA and Education Law §2-d; to maintain vigilance regarding PII, and especially to refrain from using PII obtained from improper sources.



March 28, 2023
Louise DeCandia
Chief Privacy Officer
NYSED

³ 34 CFR § 99.3 and § 99.37

⁴ U.S. Student Privacy Policy Office Letter to Fort Lewis College, October 11, 2005.