

The
University of the
Education  State of New York
Department

.....
In the Matter of
A Privacy Complaint
Filed Against

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

Lackawanna City School District
.....

In February 2023 a complaint was filed with the New York State Education Department's ("NYSED's") Chief Privacy Officer by a parent ("Complainant"), whose child ("student") attends Lackawanna City School District ("District"). Complainant states that the District's Dignity for All Students Act ("DASA") reporting form, upon completion by a student or parent, was and remained accessible to all District students. In other words, the District's students could easily obtain access to details of any incident or complaint reported, including the individual who reported the incident, name of the alleged offender(s), a description of the incident or problem, and Personally Identifiable Information ("PII") including the phone number and email address of the parent and/or student, among other information. Complainant states that they were able to view other DASA form filings when they filed a DASA form on behalf of the student. Complainant alleges this is a violation of the Family Educational Rights Privacy Act ("FERPA") and Education Law § 2-d.

In response to the complaint, NYSED's Chief Privacy Officer requested that the District investigate and provide a written response, including a summary of its investigation and addressing specific questions and issues. The District submitted its response on March 3, 2023.

Applicable Law

FERPA¹ protects the privacy of student educational records and places restrictions on the release of students' PII. Also, New York has adopted additional

¹ 20 U.S.C. 1232g; 34 C.F.R. Part 99

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.

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 parent complaints about possible breaches and unauthorized disclosure of PII. Section 121.1 (a) of the Regulations of the Commissioner of Education 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) of the Commissioner's Regulations 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

The District states that its DASA complaints are submitted through a Microsoft Form ("DASA Form") which is owned by the Principal of Curriculum and Instruction. The DASA Form was modified sometime in November or December 2022 and was not adequately reviewed before being posted to the District's web page. According to the District, the previous version of the DASA Form was not accessible to any staff members other than the Principal of Curriculum and Instruction and no responses were accessible to students or families.

The District further states that, upon being made aware of the problem with the DASA Form, it immediately corrected the problem and "at this time no one other than the Principal of Curriculum and Instruction has access to the complaints."

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 parent of a student who attends the District and NYSED's privacy office may therefore address the complaint. The District did not dispute complainant's standing to bring this complaint.

The District does not dispute the facts alleged by Complainant described above but notes that the problem with the DASA Form could only have existed as of November or December 2022 when the link was modified. The District further

² N.Y. EDUC. LAW § 2-d

asserts that it fixed the link to the DASA form immediately upon being made aware of the problem.

Determination

Section 121.1 (t) of the Commissioner's Regulations 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." The District admits that the link to its DASA form was working improperly for, at most, a period of three-and-one half months. There is no method to track who observed the DASA Forms submitted during that time, but any observation would fall within the definition of an unauthorized disclosure in violation of Education Law § 2-d and § 121.1(t) of the Commissioner's Regulations.

The information contained in a DASA complaint is highly personal and may include sensitive information. Revealing the identity of a filer could lead to additional bullying, harassment or intimidation rather than the protection guaranteed by law (Education Law § 12 [1]). Indeed, DASA explicitly prohibits "retaliatory action against any such person who, acting reasonably and in good faith, ... makes ... a [DASA] report or initiates, testifies, participates or assists in such formal or informal proceedings" in connection therewith (Education Law § 16).

Given these concerns, I direct the District to ascertain exactly when it modified the DASA Form in November 2022. I further direct the District to notify all families who filed a DASA Form between that date and February 16, 2023 when the issue was corrected, that the information in the DASA Form may have been accessed by unauthorized users.

The District must report back to my office by May 12, 2023 on how many families it notified pursuant to this determination and the method of notification (i.e., email, phone call, and/or written correspondence). All responses to this determination may be sent to privacy@nysed.gov.

April 7, 2023



Louise DeCandia
Chief Privacy Officer
New York State Education Department