

In the Matter of an Enforcement Action
against

**Order on Consent
and
Administrative Settlement**

Distributed Website Corporation
owner of **rSchoolToday**
(hereinafter referred to as "Respondent")

1. The New York State Education Department ("Department") is charged with the general management and supervision of all public schools and all the education work of the State of New York from prekindergarten to graduate school, and is responsible for setting educational policy, standards, and rules. [Education Law § 101].
2. The Department, through its Commissioner and Chief Privacy Officer, is responsible for ensuring broad protections against the unauthorized release of student data pursuant to Education Law § 2-d and Part 121 of Title 8 of the Official Compilation of Codes, Rules and Regulations ("8 NYCRR"). The Department may investigate improper disclosures of student data and enforce violations against third-party contractors. [Education Law § 2-d[7][a]].
3. This Order is issued pursuant to the Department's authority under Education Law §§ 2-d, 101, 301, 305 (1) and 8 NYCRR Part 121.
4. Respondent Distributed Website Corporation is a for-profit Florida corporation and owner of rSchoolToday, a third-party contractor or vendor offering cloud-based sports management systems to New York educational agencies.
5. East Aurora Union Free School District and Monroe-Woodbury Central School District are New York State educational agencies as that term is defined in Education Law § 2-d.
6. Student data protected under Education Law § 2-d is defined in 8 NYCRR § 121.1(q) as "personally identifiable information¹ from the student records of an educational agency."
 - a. 8 NYCRR § 121.1(a) defines a breach as the "unauthorized acquisition, access, use, or disclosure of student data and/or teacher or principal data

¹ Personally Identifiable Information ("PII") is defined in the Family Educational Rights Privacy Act ("FERPA") [34 CFR §99.3] and is adopted in Education Law § 2-d and 8 NYCRR Part 121.

by or to a person not authorized to acquire, access, use, or receive the student data and/or teacher or principal data.”

- b. 8 NYCRR § 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.”
7. On or about November 15, 2023, the East Aurora Union Free School District’s (“UFSD”) Director of Information and Instructional Technology was contacted by an out-of-state school that sought an evaluation of rSchoolToday. The out-of-state school stated that data from East Aurora UFSD was included in a product demonstration on YouTube (the “Video”).
 8. The Video was posted to YouTube by Respondent’s Sales Representative to share with athletic directors who were unable to attend a zoom presentation demonstrating the software program.
 9. The Video was viewed 66 times over the course of nine months on YouTube.
 10. The Video displayed the following PII of 11 East Aurora Union Free School District students:
 - a. Parent name 1
 - b. Parent name 2
 - c. Home address and
 - d. Associated student(s)[children].
 11. The Video displayed the following PII of an additional 5 East Aurora Union Free School District students:
 - a. Parent name 1
 - b. Parent name 2
 - c. Student Name
 - d. Student Grade
 - e. Sport signed up for
 - f. Physical date
 - g. Date registered
 - h. Medical alerts (if applicable, no details displayed)
 - i. Final clearance status.
 12. Upon investigation, the Department learned from Respondent that the Video also displayed the following PII of 8 Monroe-Woodbury Central School District students:
 - a. Parent name 1
 - b. Parent name 2
 - c. Home address and

d. Associated student(s)[children].

13. Respondent's publicly posted privacy policy states:

a. "RST [Respondent] will not sell, or otherwise use or re-disclose education records for targeted advertising or marketing purposes. RST uses data within its products only to deliver the services contracted by the educational institution."²

14. Respondent was made aware of this breach on November 15, 2023 when contacted by East Aurora UFSD. Respondent did not notify Monroe-Woodbury Central School District until after December 14, 2023 when the Department's Chief Privacy Officer directed Respondent to do so.

15. The Department finds that Respondent's conduct violated Education Law § 2-d(5)(f) (2), 8 NYCRR Sections 121.9, (a)(6), and , 121.10(a), which limit the use of education records for any purpose other than those authorized in the contract, require third-party contractors that receive student data to maintain reasonable administrative, technical and physical safeguards to protect PII, and notify educational agencies of a breach without unreasonable delay.

16. Respondent acknowledges that it has been fully informed of the Department's position and to avoid the burden and expense of further investigation and formal proceedings, hereby waives any right to a hearing as may be provided by law, consents to the issuance of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue and enforce this Order and agrees not to contest the validity of this Order or its terms or the validity of reports submitted to the Department by educational agencies as a result of this breach. This Agreement is not an admission of the facts alleged or of liability by Respondent.

IT IS HEREBY ORDERED, pursuant to the applicable provisions of the Education Law and 8 NYCRR Part 121:

1. The amount of \$120,000 will be paid by certified check to the New York State Commissioner of Taxation and Finance as a civil penalty for the violation(s) described above. Respondent shall pay the civil penalty upon signing this Order.
2. Within ninety (90) days of the effective date of this Order, Respondent will provide training, at its own expense, on the federal and State laws and regulations governing confidentiality of student data to all its officers and employees with access to such data. This training shall minimally encompass FERPA and New York Education Law Section 2-d.

2

<https://rschooldtoday.com/policies/#:~:text=RST%20will%20not%20sell%2C%20or,created%20data%20with%20its%20products.>

3. Within ninety (90) days of the effective date of this Order Respondent will implement internal procedures to ensure that its Sales Representatives are not demonstrating rSchoolToday products using PII. These procedures may include trainings, policy changes, written agreements with Sales Representatives or other effective methods deemed appropriate by Respondent.
4. Respondent shall provide the Department with an affidavit attesting to the trainings and implementation completed in satisfaction of its obligations pursuant to Paragraphs 2 and 3 above within 10 days of the completion of all requirements. The affidavit shall be sent to:

Chief Privacy Officer
New York State Education Department
89 Washington Avenue, Room 152
Albany, New York 12234

5. Respondent shall submit this Order along with payment by mailing to:

Chief Privacy Officer
New York State Education Department
89 Washington Avenue, Room 152
Albany, New York 12234

6. Upon completion of all obligations created in this Order, this Order settles only all claims for administrative penalties concerning the violations described above against Respondent and its successors and assigns.
7. The failure of Respondent to comply with any provisions in this Order shall constitute a default, shall be deemed to be a violation of both this Order and the Education Law and may subject Respondent to further penalties including preclusion from accessing student data from New York educational agencies.
8. Exclusive jurisdiction and venue for any dispute concerning this Order shall lie with the state courts located in and serving New York. Respondent hereby waives any objection based on venue or forum.
9. No change in this Order shall be made or become effective except as set forth by a written Order of the Commissioner or the Chief Privacy Officer.
10. The effective date of this Order is the date that the Commissioner or the Chief Privacy Officer signs it.

For Respondent:

Mr DLR
(signature of Respondent)

CEO
Title

July 9, 2024
Date

On the 9th day of July in the year 2024, before me, the undersigned notary public, personally appeared David Rudolph, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Dori E. Longo
Notary Public



Dated: Albany, New York, August 7, 2024

New York State Education Department

By: Louise DeCandia
Louise DeCandia
Chief Privacy Officer