

The  
University of the  
Education  State of New York  
Department

.....-X

Application to reopen a Privacy Complaint  
Filed Against

Determination of the  
Chief Privacy Officer

Success Academy Rockaway Park Middle School

.....-X

On October 11, 2023, a complaint was filed with the New York State Education Department’s (“NYSED’s”) Privacy Office that Success Academy’s Rockaway Park Middle School (the “School”), improperly discloses student Personally Identifiable Information (“PII”) when it posts student grade point averages (“GPA”) in a manner visible to everyone entering classrooms.

On December 21, 2023, I issued a determination finding that the School’s practice of disclosing and sharing GPAs violates the Family Educational Rights Privacy Act (“FERPA”) and constitutes an unauthorized release or disclosure under State regulations (8 NYCRR § 121.1 [t]). This determination was based on an analysis of the directory information exception<sup>1</sup> under FERPA.

On February 8, 2024, the School requested reconsideration of this decision because it concedes that a student’s GPA is not Directory Information but argues that it obtains parental consent to display a student’s academic performance in writing (the “Form”).<sup>2</sup> The relevant section of the Form states:

[Y]ou grant Success Academy permission to display your scholar’s completed school work, art projects and academic performance in the school building and on virtual classroom platforms in order to celebrate scholar progress, encourage high academic performance, and inspire scholars to Go Beyond Z.

The School asserts that obtaining consent via the Form is permitted by FERPA and that the Form’s content meets the requirements found in § 99.30. The School contends that the Form:

- Is signed and dated via online registration;<sup>3</sup>

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<sup>1</sup> 34 CFR §§ 99.31(a)(11) & 99.37.

<sup>2</sup> Ex. A.

<sup>3</sup> 34 CFR §§ 99.30(a) & 99.30(d)

- specifies the records that will be disclosed, *i.e.*, those pertaining to “academic performance”;<sup>4</sup>
- states the purpose of the disclosure, *i.e.*, to “celebrate scholar progress, encourage high academic performance, and inspire scholars to go Beyond Z,”<sup>5</sup> and
- identifies the party or class of parties to whom the disclosure may be made: “in the school building and on virtual classroom platforms.”<sup>6</sup>

Finally, the School argues that its use of the term “academic performance” in the Form is unambiguous. As evidence, the School cites a scholarly study<sup>7</sup> that asserts the terms “academic achievement” and/or “academic performance” are commonly understood within the education community to refer to a student’s grades and/or GPA.

In light of the School’s request for reconsideration, my Office contacted Complainant with additional questions. Complainant provided a copy of the Form that she electronically signed on May 3, 2022. Complainant contends that she has not received another opportunity to review her consent since that time and that, if given the opportunity, she would not consent to the sharing of her child’s GPA. The Complainant also asserts that she did not understand that the language of the Form encompassed the public posting of student GPAs.

### Analysis

I agree with Complainant that the Form<sup>8</sup> cannot be reasonably understood to mean that a child’s GPA would be posted in a manner visible to everyone entering a classroom. The Form lists three categories of information for which consent is sought: “completed school work, art projects and academic performance.” The meaning of “academic performance” must be ascertained “in relation to the meaning [] of [the] adjacent words” in the policy.<sup>9</sup> Public display of ungraded classwork (or anonymous graded classwork) and artwork is “generally permissible under FERPA.”<sup>10</sup> Student GPA, by contrast, is indisputably part of a student’s education record. The inclusion of two areas that do not implicate FERPA suggests that “academic performance” should be interpreted similarly. Therefore, I decline to read “academic performance” broadly to encompass student GPAs.

The School’s reliance upon a single scholarly study to support its interpretation of “academic performance” is unpersuasive. FERPA’s regulations specifically require that a written consent “*specify* the records that may be disclosed,” which requires discrete articulation of the

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<sup>4</sup> 34 CFR § 99.30 (b)(1).

<sup>5</sup> 34 CFR § 99.30 (b)(2).

<sup>6</sup> 34 CFR § 99.30 (b)(3).

<sup>7</sup> Travis T. York, et al., “Defining and Measuring Academic Success,” *Practical Assessment, Research, and Evaluation*, Vol. 20, Article 5, p. 7 (2019), available at: <https://scholarworks.umass.edu/pare/vol20/iss1/5>.

<sup>8</sup> Complainant states that she did not sign a new Form for the 2023-2024 school year, nor was she asked to.

<sup>9</sup> *Kese Indus. v. Roslyn Torah Found.*, 15 NY3d 485, 491 (2010).

<sup>10</sup> [Matter of a Privacy Complaint Filed Against Fairport Cent. Sch. Dist., Nov. 30, 2021 at p. 3, n. 4; and see https://resources.finalsite.net/images/v1631204464/wsd3org/rw2rvmwkw19oxitdbaf1/Septembernewsletter2021-8.pdf](https://resources.finalsite.net/images/v1631204464/wsd3org/rw2rvmwkw19oxitdbaf1/Septembernewsletter2021-8.pdf).

records in question.<sup>11</sup> Moreover, Education Law Section 2-d states that parents' rights regarding data privacy and security are to be stated in "clear and plain English terms."<sup>12</sup> If an academic publication is necessary to explicate the meaning of academic performance, then the term is not clear for parents, who are the intended recipients.

As discussed in the underlying determination, the U.S. Department of Education's ("USDOE") Student Privacy Policy Office ("SPPO") has opined that a student's ranking can be shared pursuant to the directory information exception, but not a student's GPA.<sup>13</sup> This illustrates that consent, based on a parent's clear understanding of what they are consenting to, is required when an educational agency releases a student's GPA.

Additionally, the Form does not adequately state the purpose of the disclosure of student GPAs. While it is self-evident that the publication of high or improved scores will "celebrate scholar progress," it is unclear how publication of an entire class's scores will "encourage high academic performance." Should this reflect the School's educational philosophy, it must explain this to parents in greater detail.<sup>14</sup> Further, while the Form's disclosure provision is broad (disclosure may occur "in the school building and on virtual classroom platforms"), it does not identify any intended or specific locations or methods of disclosure.

### Revised Determination

The School does not dispute that written consent is required before it may post a student's GPA for public viewing. Its consent form, however, lacks specificity regarding the student records to be disclosed,<sup>15</sup> does not identify the purpose for such disclosure,<sup>16</sup> and does not clearly state to whom the disclosure will be made.<sup>17</sup>

The School previously indicated that it is in the process of revising its consent form. Therefore, as part of that process the School must revise the form to meet the requirements found in 34 CFR §§ 99.30 et al. In particular, the Form must:

- List the specific student records being shared from the student's educational record (*e.g.* artwork, GPA, test scores, etc.);
- Allow parent(s), guardian(s), or eligible students to consent to share some data but not require them to consent to share all student data (*e.g.*, a parent may agree to share artwork but not their child's GPA);
- Explain the purpose for sharing student data;

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<sup>11</sup> 34 CFR § 99.30 (b) (1); Merriam-Webster.com Dictionary, specify, <https://www.merriam-webster/dictionary/specify> ("to name or state explicitly or in detail").

<sup>12</sup> Education Law Section 2-d (3) (b); *see also* 8 NYCRR §121.10 (g) (with respect to breach notifications, "[N]otifications required by this section shall be clear, concise, use language that is plain and easy to understand...").

<sup>13</sup> [Disclosure of a student's grade point average without consent \(ed.gov\)](https://www.ed.gov/privacy/2018/06/22/18-0622-student-privacy-policy-office); *Letter to Veit*, Student Privacy Policy Office, 121 LRP 32093 (6/22/21).

<sup>14</sup> § 99.30 (b) (2).

<sup>15</sup> 34 CFR § 99.30 (b) (1).

<sup>16</sup> § 99.30 (b) (2).

<sup>17</sup> § 99.30 (b) (3).

- Explain to the parent(s), guardian(s), or eligible students to whom the disclosure of student records will be made (*e.g.*, students' GPAs are shared with their classmates), and
- Provide the parent(s), guardian(s) or eligible students with instructions in the Form regarding their right to request a withdrawal of their consent in the future;<sup>18</sup>

Attached to this determination as Exhibit B is a model FERPA compliant consent form prepared by the SPPO. This consent form must be used as an example by the School when revising its parent consent form.

Finally, I remind the School, a public school, that Education Law §2-d and the regulations found in Part 121 require protection of students' PII, whether or not it conflicts with its instructional methodology.



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<sup>18</sup> Student Privacy Policy Office, 'FERPA & Coronavirus Disease 2019 (COVID-19) FAQ' Sample FERPA consent form (pg. 9) (March 2020).

**Exhibit A**  
**Display of Scholar Work Form**  
**Showcase your Scholar's Work!**

The halls and classrooms of our schools are beautiful by design and showcasing work by our exceptional scholars helps bring them to life. Celebrating academic success and charting scholar progress also encourages high academic performance. By signing this form you grant Success Academy permission to display your scholar's completed school work, art projects, and academic performance in the school building and on virtual classroom platforms in order to celebrate scholar progress, encourage high academic performance, and inspire scholars to Go Beyond Z.

[Radio Button] Yes, I agree to the above.

[Radio Button] No, I choose not to agree to the above. I understand that my scholar's work will not be showcased for any reason.

## Exhibit B

### [Sample FERPA Consent Form]

**Disclosure of Information Protected by the Family Educational Rights and Privacy Act by \_\_\_\_\_ [Name of School/School District] to [Name of Appropriate Authority]**

Pursuant to the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 C.F.R. part 99), the written consent of a parent or eligible student is required before the education records of a student, or personally identifiable information contained therein, may be disclosed to a third party, unless an exception to this general requirement of written consent applies. If a student is age 18 years or older, or is enrolled in an institution of postsecondary education, he or she is an “eligible student” and must provide written consent for the disclosure of his or her education records or personally identifiable information contained therein.

I, hereby agree to allow \_\_\_\_\_ [SCHOOL OR DISTRICT NAME] to disclose the following personally identifiable information or education records:  
\_\_\_\_\_ [Specify education records or personally identifiable information that may be disclosed] on \_\_\_\_\_ [Name of Student] to [Name of Appropriate Authority] for the purpose of [State purpose of disclosure]  
\_\_\_\_\_.

You may withdraw your consent to share this information at any time. A request to withdraw your consent should be submitted in writing and signed.

\_\_\_\_\_  
Signature of Parent, Guardian, or Eligible Student  
Date: \_\_\_\_\_

[U.S.D.O.E. Student Privacy Policy Office \(SPPO\), 'FERPA & Coronavirus Disease 2019 \(COVID-19\) FAQ' Sample FERPA consent form \(pg. 9\) \(March 2020\).](#)