
On June 1, 2021, [REDACTED] (“complainant”), the parent of a student (the “student”) who attends Bay Shore [REDACTED] filed a complaint against the Bay Shore Union Free School District (the “District”) with the New York State Education Department’s (“NYSED”) Chief Privacy Officer. Complainant alleges that one of the student’s teachers released the student’s personally identifiable information (“PII”), without consent, to a teaching web site and the teacher’s personal social media (Twitter) account.

In response to the complaint, on June 6, 2022, NYSED’s Chief Privacy Officer requested that the District investigate and provide a written response, including a summary of its investigation. The District submitted its response on June 27, 2022.

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.

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

by or to a person not authorized to
and/or teacher or principal data. ”

¹ 20 U.S.C. 1232g; 34 C.F.R. Part 99

² N.Y. EDUC. LAW § 2-d

Arguments

Complainant states that the student's teacher released PII, including information on the web site and on the teacher's Twitter account. Complaint also states that although he informed the District's regarding the disclosure, the posting remained on the web and the article at issue was subject to additional , subsequent disclosures—"retweets" in Twitter parlance —by others .

The District indicates that it was made aware of the issue on May 25, 2022 and that it took steps to address the complaint. The District further asserts that the teacher who disclosed the information

While the District contacted the teacher to ensure that the entire article was removed from the website. On June 3, 2022, the District's Assistant Superintendent emailed the owner of the website, seeking assistance in removing the archived link from the site . The link was made inaccessible to the public on June 9, 2022. ³ Additionally, the District met with the teacher regarding the incident and states that it took unspecified "employment actions." Finally, on June 10, 2022, the District met with complainant to explain , in addition to the above, that it would:

- Speak to staff beginning in fall 2022 to make them aware of privacy concerns and issues;
- incorporate notification of student privacy during the hiring process ; and
- update and refine its confidentiality training to focus on specific student privacy issues.

Determination

Section 121.4 of the regulations of the Commissioner of Education and NYSED's [§ 2-d Bill of Rights for Data Privacy and Security](#)

The District admits that a FERPA violation occurred. This release of information also constitutes a breach as defined by § 121.1 (a) of the regulations of the Commissioner of Education. Therefore, the District was required to report the breach to my office no later than 10 calendar days after it learned of the incident [§ 121.10 (d)]. It has not yet done so. Thus, the District is hereby directed to file a [data incident report](#) within five days of this determination. The form can be found in the “educational agencies” section of NYSED’s Data Privacy and Security webpage.

Training on data privacy and security is one of the most important, if not *the* most important tool in the arsenal to protect against breaches and data incidents. Indeed, Education Law § 2-d and § 121.7 of the regulations of the Commissioner of Education require annual training on the “state and federal laws that protect PII.” The District’s confidentiality training, which it submitted at my request, was last updated in 2013, prior to the enactment of Education Law § 2-d. The training also fails to address confidentiality issues, such as those involving transgender students, that would be of immediate and practical use to employees.

In light of the incident described herein,