
In the Matter of In t3

Complainant states that they contacted the District's superintendent in early October and that the superintendent met with the second grade teacher but decided that the information would continue to be displayed. The complaint asserts that disclosing a student's gender identity is a violation of Title IX, FERPA and New York State's privacy laws, but does not seek specific relief.

The District asserts that its actions were compliant with NYSED's July 2015, "Guidance to School Districts for Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students" (Guidance) and states that it is unaware of any transgender or gender nonconforming students in the second grade. Upon conducting an investigation, the District determined that the project was one

protections afforded to parents and persons in parental relationships, or students where applicable, required under [FERPA]” Education Law § 2-d[5][d]).

Further, the Guidance also states that,

“Schools should work closely with the student and family in devising an appropriate plan regarding the confidentiality of the student’s transgender status. In some cases, transgender students may feel more supported and safe if other students are aware that they are transgender. In these cases, school staff should work closely with the student, families, and other staff members on a plan to inform and educate the student’s peers. It may also be appropriate to engage with community resources to assist with educational efforts. However, in other cases, transgender students do not want their parents to know about their transgender status. These situations must be addressed on a case-by-case basis and will require schools to balance the goal of supporting the student with the requirement that parents be kept informed about their children. The paramount consideration in those situations is the health and safety of the student and making sure that the student’s gender identity is affirmed in a manner in which the level of privacy and confidentiality is maintained necessary to protect the student’s safety.” *See* Guidance at p. 5.

Here, the District states that if a student used a nontraditional pronoun as part of the project, it would “allow the teacher to connect with the family to better understand the child.” However, no student shared any “non-traditional” pronouns this school year. If this had occurred, it is unclear whether the nontraditional pronoun would have been publicly placed on the school hallway.

In light of the circumstances that occurred here, it is the determination of the office of the Chief Privacy Officer that no students’ PII was inappropriately released⁴. The office of the Chief Privacy Officer cautions the District, however, to be mindful that protecting a transgender students’ privacy is tantamount to ensuring their health and safety and cases must be addressed on a case-by-case basis. There should be no policy whereby a student’s transgender or gender nonconforming status is publicly displayed, without an understanding of the implications and consent.

November 30, 2021
NYSED
Office of the Chief Privacy Officer

⁴ The office of the Chief Privacy Officer makes no determination regarding the posting or the content of the students’ artwork at issue. Allowing such viewing is generally permissible under FERPA.