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In the Matter of A Privacy Complaint  
Filed Against

Review and Determination of the  
Chief Privacy Officer

Wappingers Central School District  
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On October 30, 2023, a complaint was filed with the New York State Education Department’s (“NYSED”) Privacy Office by the parent of a child (“Complainant”) who attends a different school, but whose transportation is provided by the Wappingers Central School District (the “School District”), the student’s district of residence. Complainant asserts that the School District improperly disclosed the student’s Personally Identifiable Information (“PII”) when its transportation department was notified that the student did not need to be picked up for several days because the student was the subject of a disciplinary matter. Complainant asserts that this notification constitutes a violation of the Family Educational Rights & Privacy Act (“FERPA”), and Education Law § 2-d.

In response to the complaint, I requested that the School District investigate the allegations and provide a written response summarizing its investigation and address specific questions and issues posed. My Office received a response from the School District by letter dated November 28, 2023.

Applicable Law

FERPA<sup>1</sup> is a federal law that protects the privacy of student educational records, and places restrictions upon educational agencies regarding the release of student PII. New York has adopted additional privacy laws<sup>2</sup> and regulations that further protect a student’s PII from unauthorized disclosure, especially as it pertains to third-party contractors.

In accordance with the requirements of Education Law § 2-d, NYSED adopted a Bill of Rights for Data Privacy and Security that authorizes NYSED’s Chief Privacy Officer to address parent complaints about possible breaches of PII, and/or unauthorized disclosures or release. 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) defines an unauthorized disclosure or release as “any

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<sup>1</sup> 20 USC § 1232g; 34 CFR Pt. 99

<sup>2</sup> Education Law § 2-d & 8 NYCRR Pt.121

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.”

### School District’s Response

In its response to the complaint, the School District contends that two people, a school bus driver and monitor, both employed by the School District, were advised by the student’s school they attend, that transportation would not be needed for specific days due to a disciplinary matter involving the student. The School District contends that both individuals who received this PII were employees of the School District, and according to the School District’s directory policy, both employees had a legitimate educational interest to be informed of their work schedule regarding transportation of the student.

### Analysis

Protected student data is defined in the Commissioner’s regulations as “personally identifiable information from the student records of an educational agency.” As applied to students, Education Law § 2-d(1)(d) and Section 121.1(m) of the Commissioner’s Regulations provide that PII has the same meaning as in FERPA’s regulations. In this matter, the School District is an educational agency that comes under the jurisdiction of FERPA and Education Law § 2-d. The Complainant is the parent of a student who attends a different school, but whose transportation is provided by the School District, the student’s district of residence. Consequently, my office has the authority to investigate this complaint. The PII at issue here is the student’s disciplinary record, which Complainant asserts was improperly disclosed to employees of the School District’s transportation department.

FERPA authorizes the sharing of educational records with school officials who have a legitimate educational interest.<sup>3</sup> The School District’s policy (#5500) states that a school official has a legitimate educational interest if they need to review a student’s record to fulfill their professional responsibilities, and further defines the districts’ employees as ‘school officials’ for purposes of having access to students’ records.

### Determination

Here, the parties disagree regarding how employees from the School District’s transportation department were first notified about the student’s disciplinary record. The school district claims that the school the student attends informed the transportation employees. Complainant claims that the School District informed the transportation employees. However, the manner in which the School District’s transportation employees first learned of the student’s disciplinary record is irrelevant because they had a legitimate educational interest in obtaining the information - maintaining their schedule with the pick-up and drop-off of students. Complainant indicates her displeasure that employees from the School District’s transportation department may now be in possession of (s)2 (u)2 (i)2 (on )T1.99 0 Td(-)Tj0.33 0 Td(c 0.3b3-(a)(tio)2b2 (u).nd dr)3 2 (is

always legitimate, in this circumstance there is no evidence that the School District shared the student's information for improper reasons.

Although I do not find that the School District's actions constituted a violation of FERPA or Education Law § 2-d, I remind the School District that best practice dictates that the amount of PII shared with school officials should always be limited to the minimum amount necessary for the employee to perform their job duties [34 CFR § 99.31 (a)].

A handwritten signature in cursive script, appearing to read "Louise DeCandia".

December 13, 2023

Louise DeCandia, Esq.  
Chief Privacy Officer  
New York State Education Department  
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