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In the Matter of a Privacy Complaint
filed against

Review and
Determination of the
Chief Privacy Officer

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) further 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.”

Analysis

Both FERPA and Education Law §2-d prohibit the unauthorized disclosure of student PII from education records. Education records are defined in FERPA as records that are directly related to a student and maintained by the educational agency or by a party acting for the educational agency.⁵ Here, the photograph posted on the district’s Instagram and X pages does not constitute PII from an education record. The photograph was not taken by school staff in connection with a district activity, nor was it requested by the district to be included as part of Complainant’s education record. To the contrary, the district requested photographs of seniors to celebrate their impending graduations on social media. There is no evidence to suggest that seniors were required to submit these photographs or that they would be maintained by the district.

Indeed, even if the district possessed an opt-out form for Complainant, it would not apply in this circumstance. Such opt-out forms prohibit the sharing of certain information from students’ education records, and the photograph at issue in this complaint is not part of Complainant’s education record. “FERPA does not protect confidentiality of information in general, and therefore does not apply to the disclosure of information derived from a source other than education records.”⁶ Thus, no unauthorized disclosure or release of student data occurred in violation of FERPA or Education Law § 2-d.

Although I have determined that there is no violation of FERPA or Education Law § 2-d, Complainant’s father stated that he had difficulty obtaining information about FERPA, the district’s directory information policy, and the opt-out form. He also complained that the district was hesitant to accept the opt-out form because the 14-day filing period had passed. I therefore remind the district that its Data Protection Officer or other assigned administrator should be prominently listed on inutor

Date: September 10, 2024

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

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