



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY
12234

CHIEF PRIVACY OFFICER

IN THE MATTER

OF

THE COMPLAINT OF FATIMA GEIDI
CONCERNING SUCCESS ACADEMY
CHARTER SCHOOL - UPPER WEST,
THE SUCCESS ACADEMY CHARTER
SCHOOLS, AND EVA MOSKOWITZ

DETERMINATION

Education Law § 2-d provides that the functions of the Chief Privacy Officer shall include assisting the commissioner regarding any alleged breaches of student data or teacher or principal data, as well as assisting the commissioner in establishing a protocol for the submission of complaints of possible breaches of student data or teacher or principal data. Education Law § 2-d(3)(b)(5) further provides that "[p]arents have the right to have complaints about possible breaches of student data addressed."

On June 21, 2019, Fatima Geidi ("Complainant"), the parent of a student who attended Success Academy Charter School - Upper West ("School"), filed a complaint with the New York State Education Department's ("Department") Chief Privacy Officer, alleging that the School, the School's education corporation, Success Academy Charter Schools - NYC, and charter management organization (collectively, the School's education corporation and charter management corporation are referred to as "Success"), and Success' chief executive officer, Eva Moskowitz (collectively, the School, Success, and Ms. Moskowitz are referred to as "Respondent") disclosed her son's personally identifiable information in violation of Education Law § 2-d. The complaint must be sustained.

APPLICABLE LAW

Education Law § 2-d addresses the "Unauthorized release of personally identifiable information". Education Law §2-d defines "personally identifiable information" by incorporating by reference the Family Educational Rights and Privacy Act Regulations (FERPA), 20 U.S.C. § 2132g; 34 CFR Part 99.3, which defines "personally identifiable information" as information that includes, but is not limited to:

- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

Further, "[p]ersonally identifiable information maintained by educational agencies, including data provided to third-party contractors and their assignees, shall not be sold or used for marketing purposes." Education Law § 2-d(4)(f). "A student's personally identifiable information cannot be sold or released for any commercial purposes." Education Law § 2-d(3)(b)(1).

ALLEGATIONS OF FACT

Complainant is the parent of a student ("student") who attended the School. Complainant filed a separate complaint with the United States Department of Education's ("USDOE") Family Policy Compliance Office based upon alleged FERPA violations arising out of the same facts noted in the instant complaint.

Complainant alleges that Respondent, in response to a news program in which Complainant discussed Respondent's suspensions of the student from school, posted "exaggerated details of the Student's disciplinary files first online & in emails to reporters in October 19, 2015." Complainant alleges that Respondent placed letters on its website that were sent to the public news program contradicting the statements made by Complainant on that program. Complainant alleges Respondent's actions were in retaliation for her and the student's appearance and interview on the news program regarding the student's treatment at Success.

Complainant also alleges that Ms. Moskowitz included disciplinary information from the student's educational records in her book, "The Education of Eva Moskowitz," which was published by Harper Collins and is "still for sale."

RESPONDENT'S POSITION

By letter dated July 10, 2019, Respondent replied to the allegations contained within the complaint. Respondent argues that there is a three-year statute of limitations for enforcing Education Law § 2-d. Respondent also argues that any further discussion regarding the student after October 2015, the date of the alleged disclosure, was a repeat of information already in the public domain. Respondent also argues that Education Law § 2-d only authorizes the Chief Privacy Officer to issue penalties to third-party contractors and that the School is not a third-party contractor. Next, Respondent argues that Education Law § 2-d does not apply to charter schools and appears to imply that it is exempt from complying with the law because Education Law § 2-d's implementing regulations were not adopted at the time the complaint was filed. Finally, Respondent argues that the "disclosures alleged by the Parent were authorized by law under the First Amendment to the United States Constitution".

CONCLUSIONS OF LAW

State and federal laws protect the confidentiality of personally identifiable information. Specifically, Education Law § 2-d protects personally identifiable information from unauthorized disclosure and provides parents and guardians with assurances that their child's PII will not be utilized for financial gain or used for purposes unrelated to their education or that do not benefit the student. Education Law § 2-d does not contain language restricting the amount of time within which a parent can bring a complaint pertaining to the disclosure of PII.

Education Law § 2-d protects personally identifiable information, including, but not limited to, data related to health and safety, civil right, and the assessment of students. Charter schools must comply with Education Law § 2-d. The School and Success are educational agencies under Education Law § 2-d(1)(c) and are prohibited from the unauthorized disclosure of PII.

Further, Education Law § 2-d protections are not restricted or limited to third-party contractors. For example, Education Law § 2-d(4)f) specifically states that PII "maintained by educational agencies ... shall not be sold or used for marketing purposes".

CONCLUSION

After review and investigation of the allegations contained in the complaint, along with careful consideration of the record and the law, I conclude that Respondent's disclosure of the student's personally identifiable information was unauthorized and violated the provisions of Education Law § 2-d. Respondent's claim that the School or Success is/are not a third-party contractor(s) that could be subject to potential penalties pursuant to the statute, or that the proposed regulations to implement Education Law §2-d were not in place when the complaint was filed, does not give Respondent license to ignore the provisions of the law. Respondent posted the student's personally identifiable information to its public website, and Ms. Moskowitz included information in her published book that could be linked to or used to identify student. These disclosures were improper and in violation of Education Law § 2-d. The latter disclosure is particularly concerning as it involved the release of personally identifiable information by a person of authority at the educational agency. Respondent must conform with the standards set forth in Education Law § 2-d and comply with this decision.

THE COMPLAINT IS SUSTAINED

IT IS ORDERED that, pursuant to Education Law § 2-d, Respondent must ensure that its administrators, staff, and teachers that have access to personally identifiable information receive annual data privacy and security training on the laws and regulations that protect such data and on minimum standards and best practices associated with privacy and the security of student data or teacher or principal data, and addresses the obligation of the Respondent to ensure that every proposed use of personally identifiable information would benefit its students; and it is further

ORDERED that Respondent must develop a data security and privacy policy which allows for the protection of such information from public disclosure; and it is further

ORDERED that Respondent must submit a copy of the proposed data security and privacy policy to its authorizer and the Department for review and comment no later than July 1, 2020; and it is further

ORDERED that upon the approval of the Department, Respondent must adopt the policy and publish the policy on its website and notice of the policy must be provided to all officers and employees of Respondent.

Sincerely,

A handwritten signature in black ink, appearing to read "T Akinyemi". The signature is written in a cursive, flowing style.

Temitope Akinyemi

Dated: May 12, 2020