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TO: School District Superintendents  
BOCES Superintendents  
Charter School Leaders  
Data Protection Officers

FROM: Louise DeCandia, Chief Privacy Officer

DATE: July 19, 2023

### **Monitoring**

The New York State Education Department's (NYSED) Privacy Office will begin monitoring some educational agencies' websites for compliance with Education Law § 2-d and the Family Educational Rights Privacy Act (FERPA). Monitoring will begin in the fall of 2023, allowing time for educational agencies to review their websites and ensure compliance before monitoring begins.

If there are questions, concerns, or deficiencies found on your educational agency's web site, the Privacy Office will write to, and work with the Superintendent and Data Protection Office to have any deficiencies addressed.

The best practice is to maintain a page devoted to privacy requirements on the educational agency's website, which makes data privacy and security information easily accessible and transparent to parents and eligible students.<sup>1</sup> The webpage text should ensure that parents and eligible students are informed as to how they can file privacy complaints with the educational agency/the NYSED Privacy Office and how they can exercise their opt-out rights under FERPA. Specifically, the Privacy Office will confirm that the following information is readily available for parents and eligible students.

#### **Education Law § 2-d and Part 121 of the regulations of the Commissioner of Education:**

- 1) Is there a Parent's Bill of Rights (PBOR) on the website? [required by 8 NYCRR § 121.3 (a)]
- 2) Is there information as to how parents or eligible students can file a complaint? This may be included in the educational agency's PBOR [required by 8 NYCRR §121.4]

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<sup>1</sup> See [U.S. Department of Education, Student Privacy Policy Office's Final Report on Local Education Agency's Website Student Privacy Transparency Reviews](#) (September 2018-August 2022)

- 3) Is the supplemental information to the PBOR for any contract or other written agreement with a third-party contractor that will receive personally identifiable information (PII) on the website? [required by 8 NYCRR §121.3 (d)]
- 4) Is the educational agency's data security and privacy policy that implements the requirements of Part 121 and aligns with the NIST CSF published? [required by 8 NYCRR §121.5 (b)]

*Information on Education Law § 2-d and Part 121 of the regulations of the Commissioner of Education can be found here:*

- [NYSED Data Privacy and Security](#)
- [RIC ONE Resources](#)

#### **FERPA:**

- 1) Is the FERPA Annual Notification available on the website? If not, NYSED's Privacy Office may ask how the educational agency is providing notice to parents and eligible students of their rights under FERPA. [required under 20 USC §1232g (e) and 34 CFR § 99.7]. Please note that a link to the U.S. Department of Education's FERPA website and/or a link to a board of education policy on privacy does not constitute the FERPA Annual Notification.
- 2) Is the educational agency's directory information policy available on the website? If not, NYSED's Privacy Office may ask how the educational agency is providing public notice to parents and eligible students of the educational agency's directory information policy; parents' right to refuse (opt-out of) any or all of the types of information determined to be directory; and the method (including time period) to notify the educational agency [20 USC 1232g (a)(5)(A) and(B) and 34 CFR § 99.37]

*Information on FERPA requirements can be found here:*

- [FERPA Model Notification of Rights for Elementary & Secondary Schools](#)
- [Model Notice for Directory Information](#)

*An educational agency with a parental opt-out form attached to their FERPA notification can be found here:*

- <https://www.herricks.org/cms/lib/NY02208178/Centricity/Domain/1538/Pages%20from%20Registration%20Packet%202023rev5.24.23.pdf>

In addition to the above, NYSED's Privacy Office has begun and will continue to email educational agencies' data protection officers ("DPO") to ensure the accuracy of DPO information on file with NYSED [8 NYCRR § 121.8]. The best practice is for educational

agencies to include the DPO's name and contact information on their website's privacy page.

Finally, some educational agencies will be asked to share information with NYSED's Privacy Office regarding their annual data privacy and security awareness training [required by 8 NYCRR § 121.7]. Training sign-in sheets or certifications of completion, dates of training, the training itself or the name of a training service may be requested.

Please do not hesitate to contact my office at [privacy@nysed.gov](mailto:privacy@nysed.gov) if you have any questions regarding this monitoring initiative.

**School Districts with model privacy web pages:**

[Herricks School District](#)

[Williamsville Central School District](#)

[New Rochelle City School District](#)

[Holland Central School District](#) (Note this page is currently unavailable but the links are there)

[Salmon River Central School District](#)

[Victor Central School District](#)

[Hancock Central School District](#)

[Westmoreland Central School](#)

[Baldwinsville Central School District](#)