Charter School Leaders Data Protection Officers

FROM: Louise DeCandia, Chief Privacy Officer

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## Commercial and Marketing

This memorandum provides general guidance regarding WKH WHUPV ´FRPPHU DQG ´PDUNHWLQJµ LQ (GuXanFidDhoWWLaRR QeducBitizina†t agency can avoid the use of student data for such purposes.

Education Law § 2 -d (3) (b) (1) states that: D VWXGHQW·V SHUVRQDOO LQIRUPDWLRQ 3,, FDQQRW EH VROG RU UHOHDVHG IRU DQ

The regulations of the Commissioner of Education further define a commercial or marketing purpose as the sale of student data; its use or disclosure for purposes of receiving remuneration, whether directly or indirectly; its use for advertising purposes; or its use to develop, improve or market products or services to students.

As educational agencies consider the applicability of the commercial and marketing prohibition , they should ask the following questions:

## 1) Is stude nt data involved?

- a. Education Law § 2 -d defines student data as PII <sup>2</sup> from student records of an educational agency.
- b. The Family Educational Rights and Privacy Act (FERPA) prohibits the improper disclosure of PII derived from an education record.
- c. Thus, educational agencies should ask whether the PII in question is GHULYHG IURP VWXGHQW. Mf it is Gn&t, FEdWdati&nQ.aW §12F-RUGV does not apply. If it is, you must consider the following two questions.

<sup>&</sup>lt;sup>1</sup> 8 NYCRR121.1 (c).

<sup>&</sup>lt;sup>2</sup> Education Law § 2d incorporates the definition of PII in the amily Educational Rights and Privacy A(HERPA). FERPA defines PII ais formation that G L U H F W O \ H J Q D P H S D U H Q W ¶,\so QaDsedulrityD G G U H V \ number, student number or biometric record) all avpaerson to reasonably infer tidentity of a student

2) Is the educational agency selling or rel easing student data?