In the l\fatter of
A Privacy Complaint
Filed Against Review and Determination by New York State Education Dept.
Chief Privacy Officer
Lackawanna City School District

In February 2023 a complaint was filed with the New York State Education Department's ("NYSED's") Chief Privacy Officer by a parent ("Complainant"), whose child ("student") attends Lackawanna City School District ("District"). Complainant states that the District's Dignity for All Students Act ("DASA") reporting form, upon completion by a student or parent, was and remained accessible to all District students. In other words, the District's students could easily obtain access to details of any incident or complaint reported, including the individual who reported the incident, name of the alleged offender(s), a description of the incident or problem, and Personally Identifiable Information ("PII") including the phone number and email address of the parent and/or student, among other information. Complainant states that they wei'e able to view other DASA form filings when they filed a DASA form on behalf of the student. Complainant alleges this is a violation of the Family Educational Rights Privacy Act ("FERPA") and Education Law § 2·d.

In response to the complaint, 1'-IYSED's Chief Privacy Officer requested that
the District investigate and provide a written response, including a

privacy laws and regulations. Education Law § 2·d2 protects PII from unauthorized disclosure and provides parents with rights regarding their child's PII, especially as it pertains to third party contractors.

In accordance with the requirements of Education Law § 2·d NYSED has adopted a§ 2·d Bill of Rights for Data Privacy and Security that authorizes NYSED's Chief Privacy Officer to address parent complaints about possible breaches and unauthorized disclosure of PII. 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

asserts that it fixed the link to the DASA form immediately upon being made aware of the problem.

Determination

Section 121.1 (t) of the Commissioner's Regulations 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." The District admits that the link to its DASA form was working improperly for, at most, a period ofthree·and·one half months. There is no method to track who observed the DASA Forms submitted during that time, but any observation would fall within the definition of an unauthorized disclosure in violation of Education Law § 2-d and § 121.l(t) of the Commissioner's Regulations.

The information contained in a DASA complaint is highly personal and may include sensitive information. Revealing the identity of a filer could lead to additional bullying, harassment or intimidation rather than the protection guaranteed by law (Education Law § 12 [1]). Indeed, DASA explicitly prohibits "retaliatory action against any such person who, acting reasonably and in good faith, ... makes ... a [DASA] report or initiates, testifies, participates or assists in such formal or informal proceedings" in connection therewith (Education Law§ 16).

Given these concerns, I direct the District to ascertain exactly when it modified
the DASA Form in November 2022. I further direct the District to notify all families who filed a DASA Form between that date and February 16, 2023 when the issue was