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On October 11, 2023, a complaint was filed with the New York State Education

- specifies the records that will be disclosed, *i.e.*, those pertaining to “academic performance”;⁴
- states the purpose of the disclosure, *i.e.*, to “celebrate scholar progress, encourage high academic performance, and inspire scholars to go Beyond Z,”⁵ and
- identifies the party or class of parties to whom the disclosure may be made: “in the school building and on virtual classroom platforms.”⁶

Finally, the School argues that its use of the term “academic performance” in the Form is unambiguous. As evidence, the School cites a scholarly study⁷ that asserts the terms “academic achievement” and/or “academic performance” are commonly understood within the education community to refer to a student’s grades and/or GPA.

In light of the School’s request for reconsideration, my Office contacted Complainant with additional questions. Complainant provided a copy of the Form that she electronically signed on May 3, 2022. Complainant contends that she has not received any (e)4 (c)4 (6n)-10 (c)4 (0 (c)4 (0 (c)w 12 -t)

records in question.¹¹ Moreover, Education Law Section 2-d states that parents' rights regarding data privacy and security are to be stated in "clear and plain English terms."¹² If an academic publication is necessary to explicate the meaning of academic performance, then the term is not clear for parents, who are the intended recipients.

As discussed in the underlying determination, the U.S. Department of Education's ("USDOE") Student Privacy Policy Office ("SPPO") has opined that a student's ranking can be shared pursuant to the directory information exception, but not a student's GPA.¹³ This illustrates that consent, based on a parent's clear understanding of what they are consenting to, is required when an educational agency releases a student's GPA.

Additionally, the Form does not adequately state the purpose of the disclosure of student GPAs. While it is self-evident that the publication of high or improved scores will "celebrate scholar progress," it is unclear how publication of an entire class's scores will "encourage high academic performance." Should this reflect the School's educational philosophy, it must explain this to parents in greater detail.¹⁴ Further, while the Form's disclosure provision is broad (disclosure may occur "in the school building and on virtual classroom platforms"), it does not identify any intended or specific locations or methods of disclosure.

Revised Determination

The School does not dispute that written consent is required before it may post a student's GPA for public viewing. Its consent form, however, lacks specificity regarding the student records to be disclosed,¹⁵ does not identify the purpose for such disclosure,¹⁶ and does not clearly state to whom the disclosure will be made.¹⁷

The School previously indicated that it is in the process of revising its consent form.

- Explain to the parent(s), guardian(s), or eligible students to whom the disclosure of student records will be made (*e.g.*, students' GPAs are shared with their classmates), and
- Provide the parent(s), guardian(s) or eligible students with instructions in the Form regarding their right to request a withdrawal of their consent in the future;¹⁸

Attached to this determination as Exhibit B is a model FERPA compliant consent form prepared by the SPPO. This consent form must be used as an example by the School when revising its parent consent form.

Finally, I remind the School, a public school, that Education Law §2-d and the regulations found in Part 121 require protection of students' PII, whether or not it conflicts with its instructional methodology.



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¹⁸ Student Privacy Policy Office, 'FERPA & Coronavirus Disease 2019 (COVID-19) FAQ' Sample FERPA consent form (pg. 9) (March 2020).

Exhibit A
Display of Scholar Work Form
Showcase your Scholar's Work!

The halls and classrooms of our schools are beautiful by design and showcasing work by our exceptional scholars helps bring them to life. Celebrating academic success and charting scholar progress also

Exhibit B

[Sample FERPA Consent Form]

Disclosure of Information Protected by the Family Educational Rights and Privacy Act by _____ [Name of School/School District] to [Name of Appropriate Authority]

Pursuant to the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 C.F.R. part 99), the written consent of a parent or eligible student is required before the education records of a student, or personally identifiable information contained therein, may be disclosed to a third party, unless an exception to this general requirement of written consent applies. If a student is age 18 years or older, or is enrolled in an institution of postsecondary education, he or she is an “eligible student” and must provide written consent for the disclosure of his or her education records or personally identifiable information contained therein.

I, hereby agree to allow _____ [SCHOOL OR DISTRICT NAME] to disclose the following personally identifiable information or education records:
_____ [Specify education records or personally identifiable information that may be disclosed] on _____ [Name of Student] to [Name of Appropriate Authority] for the purpose of [State purpose of disclosure]
_____.

You may withdraw your consent to share this information at any time. A request to withdraw your consent should be submitted in writing and signed.