

GUIDANCE AND PROCEDURES FOR COMPLAINTS OF UNAUTHORIZED DISCLOSURES OF PROTECTED STUDENT DATA

INTERNAL GUIDANCE

I. INTRODUCTION

Pursuant to Part 121.4 of the Regulations of the Commissioner of Education of New York State, educational agencies must establish and communicate to parents, eligible students, teachers, principals or other staff of an educational agency, procedures to file complaints about breaches or unauthorized releases of student data.

The purpose of this document is to assist schools with implementing the complaint procedures, which should be cut and pasted from the second section below, and be stand-alone, public-facing documents (e.g., posted on the school's website). This is not intended as legal advice and is written to cover only complaints that are likely to be most common. Schools should consult their legal counsel with any questions or specific sets of circumstances. Please note:

- These procedures *do not* incorporate a parent's (or eligible student's) right under the Family Educational Rights and Privacy Act ("FERPA") to inspect, review, and challenge the accuracy of the data contained within the student's education records, though all schools must have FERPA-compliant processes for these requests. The §2-d regulations extend certain FERPA protections to third party contractors.
- The school must investigate and write a report for every complaint it receives, even those it believes to be frivolous.
- The school's public-facing procedures must be posted on the school's website.
- These procedures do not apply to notification of breaches/unauthorized disclosures by a third party contractor. There are separate procedures and notice requirements that schools must follow in those instances.
- These procedures are not intended for use at schools that use APPR for teacher and principal evaluations.

II. LODGING A COMPLAINT

Any person who believes that the protected student data ("PII") has been subject to an unauthorized disclosure or breach may lodge a complaint with the school. The school should post on its website and include in its public-facing procedures the name, email, and mailing address of the Data Protection Officer, to whom the complaints should be addressed. Some schools may choose to set up a web-based complaint form as well. The school should confirm that its board policy requires that such complaints be made in writing. If the board chooses to allow verbal complaints, the procedures will need to be adjusted accordingly.

A complaint form has been included as part of this guidance and should be added as a free-standing document to the schools' website with hard copies available as requested. Importantly, the complaint form does not ask for any information that would identify the protected student. This is consistent with the state's complaint form and is based on the regulatory requirement that the school's procedures themselves take precautions to protect personally identifiable information.

The written complaint should include:

1. Reporter's Name
2. Reporter's Email Address
3. Reporter's Phone Number
4. Reporter's Role/Relationship to Student
5. Name of School Student Attends
6. Description of the Events
7. Description of the Possible Disclosed Data
8. Description of How the Reporter Learned of the Possible Disclosure
9. List of Any Persons Involved in the Possible Disclosure
10. List of Any Persons who may have Knowledge of the Possible Disclosure

A copy of the "Unauthorized Disclosure Complaint Form" is attached.

Complaints may also be made to the New York State Department of Education, by writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234, or emailed to CPO@mail.nysed.gov. This information is in both the procedures and the Board policy.

III. ACKNOWLEDGING THE COMPLAINT

Upon receipt of a complaint, the Data Protection Officer, or a staff member designated by the Data Protection Officer, shall "promptly acknowledge" receipt of the complaint to the reporter. (8 NYCRR 121.4(b)). This written acknowledgement shall be sent via email or first-class mail as quickly as possible, generally within 3-5 business days following receipt of the complaint. A sample acknowledgement form is also attached.

IV. INVESTIGATING THE COMPLAINT

The school shall immediately commence an investigation of the complaint to determine whether there was an unauthorized disclosure of data. While conducting such investigation, the school must take any necessary precautions to protect any personally identifiable information. Pursuant to these precautions, the student's name and other forms of PII are not included on the complaint form. The investigator must learn this information during the course of his/her investigation. The breadth of the investigation is dependent upon the nature of the complaint. Some investigations may only consist of a few telephone calls, while others may require engaging an outside IT company to assess a potential breach. Should the school need to engage the services of a third

party in the course of its investigation, the school must ensure that any contracts are compliant with New York Education Law 2-d.

V. REPORTING THE FINDINGS

Following the completion of the investigation, the school must provide the person who filed the complaint with a written report of its findings within a reasonable period but no more than 60 calendar days from the receipt of the complaint. If the school requires additional time to investigate the complaint beyond the 60-day window, or reporting the findings would compromise security or impede a law enforcement investigation, the school shall provide the person who filed a complaint with a written explanation that includes the approximate date when the school anticipates that it will respond to the complaint. A sample letter is attached.

VI. MAINTAINING RECORDS

The school must maintain a record of all complaints of student PII breaches and unauthorized disclosures and the disposition (e.g., reports of findings) of the same, with retention of the records as required by the New York State Records Retention and Disposition Schedule ED-1.

**[INSERT NAME OF CHARTER SCHOOL] COMPLAINT PROCEDURES
UNAUTHORIZED DISCLOSURE OF STUDENT’S PERSONALLY IDENTIFIABLE
INFORMATION**

I. INTRODUCTION

Pursuant to Part 121.4 of the Regulations of the Commissioner of Education of New York State, King Center Charter School has established these procedures for parents, eligible students, teachers, principals or other staff of the school to file complaints about breaches or unauthorized releases of protected student data.

II. LODGING A COMPLAINT

A person who believes that the protected data (“PII”) of a student has been subject to an authorized disclosure or breach may lodge a complaint with the school. Such complaints should be directed to Mr. Fernand Joseph, the Data Protection Officer, at King Center Charter School, 156 Newburgh Avenue, Buffalo, NY 14211 or emailed to fjoseph@kccs.org. The school requires that such complaints be made in writing and the school has a complaint form that should be used.

The complaint should include:

11. Reporter’s Name
12. Reporter’s Email Address
13. Reporter’s Phone Number
14. Reporter’s Role/Relationship to Student
15. Building Affiliation
16. Description of the Events
17. Description of the Possible Disclosed Data
18. Description of How the Reporter Learned of the Possible Disclosure
19. List of Any Persons Involved in the Possible Disclosure
20. List of Any Persons who may have Knowledge of the Possible Disclosure

While completing the complaint form, please do not include any personally identifiable information about the student. Instead, please use generic terms, such as “student’s birth date” or “student’s social security number” instead of the actual data.

Complaints may also be made to the New York State Department of Education, by writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234, or emailed to CPO@mail.nysed.gov.

III. ACKNOWLEDGING THE COMPLAINT

Upon receipt of a complaint, the Data Protection Officer, or a staff member designated by the Data Protection Officer, shall provide prompt acknowledgement of the complaint

to the reporter. This written acknowledgement shall be sent promptly via email or first-class mail following receipt of the complaint.

IV. INVESTIGATING THE COMPLAINT

The school shall immediately commence an investigation of the complaint to determine whether there was an unauthorized disclosure of protected data. While conducting such investigation, the school must take any necessary precautions to protect any personally identifiable information. The investigator will likely reach out to the reporter to gain more details about the alleged breach.

V. REPORTING THE FINDINGS

Following the completion of the investigation, the school must provide the person who initiated the complaint with its findings within a reasonable period but no more than 60 calendar days from the receipt of the complaint. If the school requires additional time to investigate the complaint beyond the 60 day window, or reporting the findings would compromise security or impede a law enforcement investigation, the school shall provide the person who filed a complaint with a written explanation that includes the approximate date when the school anticipates that it will respond to the complaint.

VI. MAINTAINING RECORDS

The school must maintain a record of all complaints of student PII breaches and unauthorized disclosures and the disposition of the same, with retention of the records as required by the New York State Records Retention and Disposition Schedule ED-1.

COMPLAINT FORM

UNAUTHORIZED DISCLOSURE OF STUDENT'S PERSONALLY IDENTIFIABLE INFORMATION

Parents and/or eligible students (students who are at least 18 years of age), principals, teachers, and employees of a charter school may file a complaint about a possible breach or improper disclosure of a student's personally identifiable information data in accordance with NYS Education Law §2-d and related regulations. This form must be submitted to Mr. Fernand Joseph, 156 Newburgh Avenue, Buffalo, NY 14211 or fjoseph@kccs.org. Please do NOT include any information in this form that would constitute student personally identifiable information.

Contact Information for Individual Making Complaint:

Name: _____

Phone Number: _____

Email Address: _____

Role of Individual Making Complaint:

- | | | | |
|----------------------------------|---|--|--------------------------------|
| <input type="checkbox"/> Parent | <input type="checkbox"/> Eligible Student | <input type="checkbox"/> Teacher | <input type="checkbox"/> Staff |
| <input type="checkbox"/> Student | <input type="checkbox"/> Principal | <input type="checkbox"/> Administrator | <input type="checkbox"/> Other |

Possible Improper Disclosure or Breach Information:

Date alleged violation occurred: _____

List the names of any individuals you believe were involved in the unauthorized disclosure and how they played a role: _____

Describe the type(s) of personally identifiable information that was disclosed (Please use generic terms such as "student's date of birth" or "student's social security number"): _____

List the names and contact information for any additional individuals who may be able to provide supporting information : _____

Describe how you learned of the potential disclosure: _____

Please provide any additional information you feel necessary to complete your complaint: _____

Following its investigation and within 60 days from receiving this complaint, the school shall provide the person making the complaint with a report of its findings. In extenuating circumstances, where the school requires additional time to investigate the complaint or cooperate with law enforcement, or where releasing the report may compromise security or impede the investigation of the incident, the school shall provide a written explanation that includes the approximate date when it anticipates that the report will be released.

Signature of Individual Making Complaint: _____

Date: _____

Charter School Use Only

Date Received: _____

Staff Member Responsible for Investigation: _____

Date and Method Findings Communicated: _____

Signature to Confirm Investigation Complete: _____

Sample Letter Acknowledging Receipt

January 1, 2020

VIA FIRST CLASS MAIL OR EMAIL

John Doe
123 Main Street
Anytown, NY 12345

Re: Unauthorized Disclosure of Data Complaint

Dear Mr. Doe,

ABC Charter School acknowledges your unauthorized disclosure of data complaint received on January 1, 2020. We will begin an investigation of your complaint promptly. A report of our findings will be sent to you once the investigation is complete, and expect that you will receive it no later than March 1, 2020.

If you have any questions, feel free to contact me at dataprotectionofficer@schoolname.org.

Sincerely,

Data Protection Officer

Sample Letter of Extension of Date

January 1, 2020

VIA FIRST CLASS MAIL OR EMAIL

John Doe
123 Main Street
Anytown, NY 12345

Re: Unauthorized Disclosure of Data Complaint

Dear Mr. Doe,

ABC Charter School is still investigating your complaint of an unauthorized disclosure of data, received by our office on January 1, 2020. Due to extenuating circumstances, we will be unable to provide you with a report of our findings on the previously promised date of March 1, 2020. We anticipate making our findings available to you by April 15, 2020.

If you have any questions, feel free to contact me at dataprotectionofficer@schoolname.org.

Sincerely,

Data Protection Officer