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In the ~~March~~ <sup>March</sup> of 2024, a complaint was filed with the Privacy Office of the New York State Education Department first raised this issue school day.

Complainant acknowledges receipt of a form entitled “Display your Scholar’s Work  
“Form”)

<sup>1</sup> but asserts that she did not understand this form to include the public display of her child’s test scores. Complainant alleges that the display violates the Family Educational Rights Privacy Act (“FERPA”) and Education Law § 2-d.

In response to the complaint, on March 14, 2024, my Office requested that the School investigate the allegations and provide a written response summarizing its investigation. The School

hallway. The School argues that Complainant did not attempt to revoke her consent for the display of her child's "results" before tearing down these materials. After the incident the School removed Complainant's child's work from the classroom and hallway. The School admits that it limited Complainant's access to the building.

In its response, the School indicates that it has rescinded Complainant's ban from school property, effective March 12, 2024. The letter also apologized to Complainant for any confusion in the consent form and stated that the School is "in communication with NYSED about clarifying our display policy, as well as the parent consent form, so as to avoid any future confusion."

### Applicable Law

FERPA<sup>3</sup> protects the privacy of student educational records, and places restrictions upon educational agencies regarding the release of student personally identifiable information (PII). New York has adopted additional privacy laws and regulations<sup>4</sup> that further protect a student's PII from unauthorized disclosure, especially as it pertains to third-party contractors.

In accordance with the requirements of Education Law § 2-d, NYSED adopted a 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 or release of student PII. The Commissioner's regulations define student data as "personally identifiable information from the student records of an educational agency." Section 121.1 (a) of the Commissioner's regulations defines a breach as the "unauthorized acquisition, access, use, or disclosure of student data and/or teacher or principal data by or to a person not authorized to acquire, access, use, or receive the student data and/or teacher or principal data." Section 121.1 (t) further 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."

### Analysis

I agree with Complainant that the Form cannot be reasonably understood to mean that a child's test scores or grades would be posted in a manner visible to everyone entering a classroom or walking in the School's hallway. As I previously stated in **Matter of Success Academy Rockaway Park Middle School** the Form lists three categories of information for which consent is sought: "completed school work, art projects and academic performance." Public display of ungraded classwork (or anonymous graded classwork) and artwork is "generally permissible under FERPA."<sup>5</sup> Student assessment scores and/or grades, by contrast, are indisputably part of a student's education record. The inclusion of two areas that do not implicate FERPA suggests that "academic performance" should be interpreted similarly. Therefore, I decline to read "academic performance" broadly to encompass student test grades or scores.

Additionally, the School asserts that Complainant did not withdraw her consent before removing her child's grades from the wall. The record reflects that Complainant attempted to speak

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<sup>3</sup> 20 USC § 1232g; 34 CFR Pt. 99.

<sup>4</sup> Education Law § 2-d & 8 NYCRR Pt.121.

<sup>5</sup> [Matter of a Privacy Complaint Filed Against Fairport Cent. Sch. Dist., Nov. 30, 2021 at p. 3, n. 4](https://resources.finalsite.net/images/v1631204464/wsd3org/rw2rvmwkw19oxitdbaf1/Septembernewsletter2021-8.pdf); and see <https://resources.finalsite.net/images/v1631204464/wsd3org/rw2rvmwkw19oxitdbaf1/Septembernewsletter2021-8.pdf>.

with the School principal about the display. While I do not endorse Complainant's self-help remedy, it would be beneficial if the School's Form contained instructions explaining how a parent could withdraw their consent.

Determination

I have not received a revised consent form that the School referenced in its March 9, 2024, email to Complainant and its March 29, 2024, response to my Office. As stated in **Matter of Success Academy Rockaway Park Middle School** the Form must:

- List the specific student records being shared from the student's educational record (e.g, artwork, GPA, test scores, etc.);
- Allow a parent(s), guardian(s), or eligible student(s) to consent to share some data but not require them to consent to share all student's data (e.g., a parent may agree to share artwork but not their child's GPA);
- Explain the purpose for sharing students' data;
- Explain to the parent(s), guardian(s), or eligible student(s) 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 student(s) with instructions in the Form regarding their right to request a withdrawal of their consent in the future.

The school must submit this revised consent form to my office for review no later than May 14, 2024.



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Date: April 30, 2024