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On May 22, 2022, a complaint was filed with the New York State Education Department's ("NYSED's") Chief Privacy Officer by a parent ("complainant"), whose child attends Williamson Central School District ("District"). Complainant alleges that in May 2022, two ELA educators rewarded select students for exhibiting growth in their reading scores by calling those students to the front of the room and giving them an ice cream party. Students who had not exhibited growth in their reading scores were excluded. Complainant asserts that this constituted an implicit disclosure of grades (i.e., "educational records"), and thus personally identifiable information ("PII") because students were able to discern who had improved in their reading and who had not by observing which students were called to receive ice cream.

In response to the complaint, on May 31, 2022, NYSED's Chief Privacy Officer requested that the District investigate and provide a written response, including a summary of its investigation and address specific questions or issues listed as (a) through (k) in the letter. The District submitted its response on June 8, 2022.

### Applicable Law

The federal Family Educational Rights and Privacy Act (FERPA)<sup>1</sup> protects the privacy of student educational records and places restrictions on the release of students' PII. Additionally, New York has adopted additional privacy laws and regulations. Education Law § 2-d<sup>2</sup> 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 complaints about possible breaches and unauthorized disclosure of student PII. Section 121.1 (a) of the regulations of the

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<sup>1</sup> 20 USC § 1232g; 34 CFR Part 99

<sup>2</sup> N.Y. EDUC. LAW § 2-d

Commissioner of Education defines a breach as the “unauthorized, access, 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.”

### District Response

The district states that the complainant mischaracterized the incident and that there was no “breach” under FERPA or Education Law § 2-d. It explains that while students were told that they could receive ice cream if they showed growth in their performance on an “IReady” exam from fall to spring of the 2021-2022 school



While there was no disclosure in violation of Education Law § 2-d, I share complainant's concern regarding the inequity of awarding select students with ice cream for exhibiting growth in reading scores while openly excluding others in the same class. I encourage the District to consider finding alternate methods of rewarding its students.

July 13, 2022  
Louise DeCandia