



UNITED STATES DEPARTMENT OF EDUCATION

STUDENT PRIVACY POLICY OFFICE

July 26, 2024

Mr. Anthony Grosso  
Superintendent  
520 Pompton Avenue  
Cedar Grove, New Jersey 07009

Protection of Pupil Rights  
Amendment

Dear Mr. Grosso:

This letter is to inform you of the U.S. Department of Education (Department), Student Privacy Policy Office's (Office's) findings in the complaints<sup>1</sup> (Complaints) filed against the Cedar Grove School District (District) by several parents (Parents) of minor District students (Students) alleging that the District violated subsections (c)(2)(A)(ii), (c)(2)(B) and (c)(2)(C)(ii) of the Protection of Pupil Rights Amendment (PPRA) (20 U.S.C. § 1232h(c)(2)(A)(ii), (c)(2)(B) and (c)(2)(C)(ii)) by failing to appropriately notify the Parents, and failing to provide the Parents with the opportunity to opt the Students out, of the District's administration to elementary school students of the "Equity and Diversity Advisory Council Elementary School Needs Assessment" (Elementary School Survey), to middle school students of the "Equity and Diversity Advisory Council Memorial Middle School Students Needs Assessment" (Middle School Survey), and to high school students of the "Equity and Diversity Advisory Council Student Needs Assessment" (High School Survey) (the Elementary School Survey, Middle School Survey, and High School Survey are hereafter referred to collectively as Surveys<sup>2</sup>). In the Complaints, the Parents allege that the Surveys included questions that fall under the protected items in PPRA. The District's Equity and Diversity Advisory Council (EDAC) created the Surveys.<sup>3</sup>

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<sup>1</sup> A list of the complaint numbers is attached as Exhibit A.

<sup>2</sup> A copy of the Surveys is attached as Exhibit B.

<sup>3</sup> See District's Exhibit A to District's August 4, 2023, letter (June 9, 2021, community e-mail from [info@cgschools.org](mailto:info@cgschools.org) regarding "Board of Education Blast"). The June 9, 2021, community e-mail describes EDAC as being a "creation of" the District composed of "parents, staff, district administration and Board members to explore issues that have or may arise in our school community concerning equity and inclusion." *Id.*; see also Cedar Grove Public Schools, "Equity, Diversity and Advisory Council," available at: <https://sites.google.com/cgschools.org/edac/home> (last accessed June 26, 2024). Given that EDAC is publicly referred to as a creation of the District, there is no evidence on which to find that a third party created the Surveys within the meaning of 20 U.S.C. § 1232h(c)(1)(A) and thus we do not further address this provision of the PPRA in this finding letter.

In addition to filing the Complaints, some of the Parents filed a petition with the New Jersey (NJ) Department of Education against the District. On November 15, 2021, Administrative Law Judge (ALJ) Gail M. Cookson in the State of New Jersey, Office of Administrative Law (OAL) determined that the District violated NJ Statutes Annotated (N.J.S.A.) §§ 18A:36-34 and 18A:36-36, and, in pertinent part, “that the appropriate remedy [was] to discard the surveys and all results derived therefrom from the District’s website, student records, the EDAC, and to similarly extend and advise any other entity with whom the surveys or results were shared of this requirement.”<sup>4</sup> On December 16, 2021, the NJ Assistant Commissioner of Education substantially adopted the ALJ’s decision.<sup>5</sup>

By letter dated November 3, 2022,<sup>6</sup> this Office informed the District of the Complaints and requested that the District investigate the matter and provide the Office with a written response. This Office requested that the District’s response include, among other things, the following information to assist this Office in our investigation of the Complaints:

1. A copy of the District’s general notice used by the District to notify parents of their rights under PPRA during the 2020-2021 and 2021-2022 school years;
2. A copy of the Surveys that were administered to students (one survey to middle school students and one survey to high school students), along with a dated copy of the specific details which informed parents of the administration of each Survey;
3. A copy of the District’s policies, if any, developed in consultation with parents pursuant to 20 U.S.C. § 1232h(c) related to the administration or distribution to students of surveys that are created by third parties. The time frame for this request is from August 2020 to August 2021. Please make clear during what time period any responsive policy was in effect.
4. Please indicate whether the District used, in whole or in part, any U.S. Department of Education funds in the development of the Survey.

By letter dated December 29, 2022, the District responded by providing this Office with a copy of the aforementioned decisions issued by the NJ ALJ and NJ Assistant Commissioner of Education and stating that the District complied with the NJ Assistant Commissioner of Education’s directive “to discard the survey[s] and results from all records.”<sup>7</sup> Among other things, however, the District did not provide the information that this Office requested in aforementioned items 1, 3, and 4 of the Office’s November 3, 2022, letter.

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<sup>4</sup> *Montana v. Grosso*, OAL Dkt. No. EDU 06551-21, 2021 WL 7162163, at \*1 (N.J. Adm. Nov. 15, 2021).

<sup>5</sup> See New Jersey Commissioner of Education, Final Decision, OAL Dkt. No. EDU 06551-21 (2021).

<sup>6</sup> This Office previously sent a letter dated October 20, 2022, to the District but used the incorrect address for the District and thus sent the letter to the District again on November 3, 2022.

<sup>7</sup> Letter from the District to the Office, p. 2 (Dec. 29, 2022) (citing to the NJ Assistant Commissioner of Education’s Final Decision at p. 4).

By letter dated March 2, 2023, email dated March 23, 2023, and letter dated July 25, 2023, this Office again requested that the District provide such outstanding information. In our July 25, 2023, letter, this Office also requested that “the District [ ] submit the general notice used for the 2022-2023 school year” and “[a] copy of the District’s policies, if any, developed in consultation with parents pursuant to 20 U.S.C. §§ 1232h(c)(1)(A) and (c)(1)(B) regarding both the administration or distribution to students of surveys containing one or more of the eight items described in clauses (i) through (viii) of subsection (c)(1)(B). The time frame for this request is from August 2020 to August 2021. Please make clear during what time period any responsive policy was in effect.” This Office also explained that it “has obtained copies of the Surveys referenced in the [NJ ALJ decision] issued by the State of New Jersey [OAL] on November 15, 2021. This Office will consider these documents as accurate copies of the Surveys in question, unless the District indicates it disputes that determination as referenced in the factual findings made by the administrative law judge in the [NJ Assistant Commissioner of Education’s] finding.”

By email dated March 24, 2023, the District recommended that this Office “accept the findings of the NJ Department of Education and close this with no further expense to the District.” By letter dated August 4, 2023, the District “continue[d] to maintain that the issues raised in the Complaints have been fully resolved following the adjudication of similar complaints filed with the [NJ] Department of Education,” and stated that “[t]he logical and economical thing to do is for your office to adopt the [NJ Assistant Commissioner of Education’s] final decision and close this matter.” In its August 4, 2023, letter, the District nevertheless provided the following additional information: (1) a “community email of June 9, 2021 from info@cgschools.org regarding ‘Board of Education Blast;’” (2) copies of District Policy 2415.05, “Student Surveys, Analysis, Evaluations, Examinations, Testing, or Treatment,” and District Policy 9560, “Administration of School Surveys;” and (3) a certification from the District Superintendent that “the District destroyed and discarded the surveys and all results derived from the surveys which are the subject of” the Complaints. The District also stated that it “did not use any federal funds to develop the survey.” Further, the District stated that it “provided training to staff members on Board Policy 9560 and N.J.S.A. 18A:36-34 . . . at faculty meetings held at each school in the District in September and October 2022. That included the development and presentation of a guidance document and the requirement that each staff member sign off on an internally developed Google Form to verify that they attended the training and reviewed the Board Policy and statute . . . . The administrators also attended a retreat on August 17, 2022, as well as a team meeting on September 14, 2022, where they reviewed the same policies and requirements. As a result, all relevant faculty and staff have been trained in the requirements of the [PPRA] as they relate to the administration and distribution of student surveys.”<sup>8</sup>

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<sup>8</sup> In support of this statement, the District provided to this Office an email dated September 15, 2022, regarding “Student Survey Policy and Statute” from the Acting Principal of North End School to North End School staff, in which the Acting Principal requested that staff “[p]lease read attached documents, CGSD Policy #9560 & NJ Statute 18A:36-34, regarding surveying students in schools . . . [and] please fill out the Google Form which acknowledges that you have read both documents.” The District did not provide the guidance document it asserts it developed and presented or a copy of any Google Form verifying “that [staff] attended the training and reviewed the Board Policy and statute.” In addition, this Office notes that Board Policy 9560 focuses, in

### Overview of PPRA

PPRA applies to the programs and activities of a state educational agency (SEA), local educational agency (LEA), or other recipient of funds under any program funded by the Department. Among other things, it governs the administration to students of a survey that concerns one or more of the following eight protected areas:

1. Political affiliations or beliefs of the student or the student’s parent.
2. Mental or psychological problems of the student or the student’s family.
3. Sex behavior or attitudes.
4. Illegal, anti-social, self-incriminating, or demeaning behavior.
5. Critical appraisals of other individuals with whom respondents have close family relationships.
6. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers.
7. Religious practices, affiliations, or beliefs of the student or the student’s parent.
8. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

PPRA requires, among other things, that LEAs obtain prior written consent from parents before students are required to submit to a survey, evaluation, or analysis that reveals information concerning one or more of the eight protected areas if the survey is funded, in whole or in part, by Department funds. 20 U.S.C. § 1232h(b). For surveys that contain questions from one or more of the eight protected areas that are not funded by Department funds or that are funded in whole or in part by Department funds but to which a student is not required to submit, LEAs must develop and adopt policies, in consultation with parents, regarding “[a]rrangements to protect student privacy that are provided by the agency in the event of the administration or distribution” of any such survey to a student, including the right of a parent of a student to inspect, upon the request of the parent, any such survey. *See* 20 U.S.C. § 1232h(c)(1)(B). At a minimum, LEAs must notify a parent, at least annually at the beginning of the school year, of the specific or approximate date(s) when such survey is scheduled or is expected to be scheduled; for any such survey scheduled after the beginning of the school year, LEAs must provide a parent with reasonable notification of such survey. *See* 20 U.S.C. §§ 1232h(c)(2)(A)(ii), (c)(2)(B). LEAs must offer a parent an opportunity to opt their child out of participating in any such survey. 20 U.S.C. § 1232h(c)(2)(A)(ii). The rights under PPRA transfer from the parents to the student when the student turns 18 years old or is an emancipated minor under State law. 20 U.S.C. § 1232h(c)(5)(B).

Please note that the Department’s PPRA regulations were last updated in 1984 and do not incorporate amendments to the statute that have since been enacted into law. You may refer

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pertinent part, only on the requirements of N.J.S.A. 18A:36-34 and incorporates only by reference a separate policy, Board Policy 2415.05, that addresses the requirements of PPRA.

to the Federal statute codified at 20 U.S.C. § 1232h, as well as this Office’s “Annual Notice to Superintendents,” which is available at: <https://studentprivacy.ed.gov/node/501>, for additional information. In addition, the following is a link to our “Protection of Pupil Rights Amendment (PPRA) General Guidance” discussing the rights of parents, and requirements of LEAs, under PPRA: <https://studentprivacy.ed.gov/resources/protection-pupil-rights-amendment-ppra-general-guidance>.

### Analysis & Findings

In making a determination as to whether a violation of PPRA occurred, this Office considers all documentation acquired through the investigatory process, in conjunction with the relevant statutory and regulatory requirements and the Department’s interpretation of those requirements. As an initial matter, this Office notes that the Final Decision of the NJ Assistant Commissioner of Education addressing similar allegations by the Parents does not resolve the Complaints. In its December 29, 2022, and August 4, 2023, responses, the District suggested that the Parents’ allegations of violations of PPRA have been resolved by the Final Decision of the NJ Assistant Commissioner of Education concluding that the District violated New Jersey law in its administration of the Surveys and ordering the District “to discard the surveys and results from all records.” While this Office appreciates the District’s compliance with this order issued by the office in the State of New Jersey that is responsible for supervising public schools,<sup>9</sup> which addressed similar allegations raised pursuant to New Jersey’s Administrative Procedure Act, N.J.S.A. §§ 52:14B-1 *et seq.*, about the District’s compliance with New Jersey law, those actions do not obviate this Office’s authority to investigate and enforce the separate requirements of PPRA.

After reviewing the information provided by the Parents and District, we note that the Elementary School Survey, Middle School Survey, and High School Survey differed in certain respects. Of particular relevance, the High School Survey asked two additional questions about the student’s, or their family’s, background that did not appear on the Elementary School Survey or Middle School Survey. Specifically, question 3 of the High School Survey asked students to specify their “Religious Affiliation,” which is a protected area under 20 U.S.C. § 1232h(c)(1)(B)(vii). The High School Survey also asked students in question 4 to specify their “Family Demographic,” which we believe implicates the protected area of “income” under 20 U.S.C. § 1232h(c)(1)(B)(viii). Family demographics typically invoke questions regarding the socio-economic status of the family that would be predicated upon the family’s income.

While the Surveys all stated that they were “anonymous” surveys,<sup>10</sup> we do not construe the applicability of subsection (c)(1)(B) of PPRA as requiring a covered survey to ask for a student’s name or other individual identifier or that the District must ask for personally

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<sup>9</sup> See “Office of the Commissioner”, available at: <https://www.nj.gov/education/about/commissioner/> (last accessed June 28, 2024).

<sup>10</sup> The NJ ALJ and the NJ Assistant Commissioner of Education both found that the surveys were anonymous. *Montana v. Grosso*, 2021 WL 7162163 at \*7 (N.J. Adm. 2021) and NJ Assistant Commissioner of Education’s Final Decision at p. 4.

identifiable information about a student through the administration or distribution of such a survey to its students in order for the requirements of that section to apply. This Office’s consistent position has been that subsection (b) of the PPRA is not concerned with whether the survey was taken anonymously; rather, the law prohibits a school district from requiring that a student submit to a survey that would reveal information about certain topics, without prior written consent. Our reasoning about subsection (b) of the PPRA applies equally to subsection (c)(1)(B) of the PPRA. Furthermore, we note that subsection (c)(1)(E) of PPRA refers expressly to “the collection . . . of personal information collected from students” for the purpose of marketing or selling that personal information, which indicates that Congress intended that only certain provisions of PPRA require the collection of personal information from students. Thus, the absence of such language in subsection (c)(1)(B) of PPRA convinces us that Congress did not intend to require the collection of personally identifiable information from students in surveys administered or distributed to students that contain any of the items listed there in order for the requirements of that subsection to apply.

Because the High School Survey asked questions relating to “religious affiliation” and “income,” PPRA required the District to directly notify the parents of high school students of the High School Survey in advance of its administration to such students and to provide those parents an opportunity to opt their children out of participation in the High School Survey.<sup>11</sup> *See* 20 U.S.C. §§ 1232h(c)(2)(A)(ii), (c)(2)(B). The High School Survey was administered to students on June 9, 2021. That same day, the District emailed families of District students to ask that they “share [their] thoughts in a needs assessment” and to inform them that the surveys would be sent to “families, staff, and students.”<sup>12</sup> The June 9, 2021, email did not contain language offering parents an opportunity to opt their children out of the High School Survey. The District provided this Office with no evidence that parents were provided, on another occasion, with notice or an opportunity to opt their children out of the High School Survey prior to its administration.<sup>13</sup> Because the District sent notice of the High School Survey to parents on the same day it was administered and the notice did not contain language offering parents an opportunity to opt their children out of the survey, the District did not satisfy the requirements of 20 U.S.C. §§ 1232h(c)(2)(A)(ii) and (c)(2)(B). Consequently, we find the District violated PPRA in regard to its administration of the High School Survey.

With respect to the Elementary School Survey or the Middle School Survey, neither survey contains the questions relating to “religious affiliation” or “income.” We recognize that these surveys contain questions that Parents assert implicate PPRA, including a question concerning

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<sup>11</sup> Based on the information provided by the District, the Surveys were developed by the EDAC and were not developed with Federal funds; this Office does not have any evidence indicating that the Surveys were developed or funded as part of a program administered by the Department. Therefore, the District did not need prior written consent under subsection (b) of the PPRA before administering the Surveys. *See* 20 U.S.C. § 1232h(b).

<sup>12</sup> It is not clear whether the June 9, 2021, email was sent to parents before, at the same time as, or after the High School Survey was administered to students.

<sup>13</sup> In its July 25, 2023, letter, this Office requested, among other things, a copy of the District’s general notice to notify parents of their rights under PPRA for the 2020-2021 school year, as such notices often contain the notice of surveys concerning one or more of PPRA’s eight protected areas that is required under 20 U.S.C. § 1232h(c)(2)(B). In its August 4, 2023, response, the District provided only a copy of the June 9, 2021, email.

“gender identity.” However, to date the Department has not issued formal guidance or regulations that would clarify the applicability of PPRA to such questions. Further, had this Office found that the administration of the Elementary School Survey and Middle School Survey violated PPRA, this Office would have required the District to take the same corrective measures that this Office is requiring of the District as a result of the District’s violation of PPRA with respect to the High School Survey, as described above. Additionally, even had this Office found such a violation, the District provided this Office the Superintendent’s certification that these surveys and their results were destroyed. Accordingly, under the circumstances, it is not necessary for this Office to determine whether the Elementary School Survey or Middle School Survey were administered consistent with PPRA.<sup>14</sup>

Before closing an investigation where we have found a violation has occurred, this Office regularly requires an LEA to provide assurance that it has addressed the violation and taken action to facilitate compliance with PPRA’s requirements moving forward. Corrective measures could include requiring an LEA to inform appropriate school officials of or otherwise train them on PPRA’s requirements, review its policies and procedures to ensure that they comply with PPRA, and provide written assurance that the LEA complies with PPRA.

In its August 4, 2023, response to our request, the District provided the District Superintendent’s certification that the Surveys, and any results, had been destroyed in accordance with the order of the NJ Assistant Commissioner of Education. The District also asserted it took a variety of actions, as described above, to train faculty and staff on Board Policy 9560 and N.J.S.A. § 18A:36-34, and thus on the requirements of PPRA. While N.J.S.A. § 18A:36-34 is modeled after the PPRA, there are substantial differences between the two statutes.<sup>15</sup> Additionally, while Board Policy 9560 incorporates by reference Board Policy 2415.05, which is the District’s PPRA policy, Board Policy 2415.05 misstates the requirements of PPRA in a few respects:

- The second sentence of the first paragraph of Board Policy 2415.05 reads, “The PPRA requires written consent from parents or the emancipated student the opportunity to opt out of participation in a survey, analysis, evaluation, examination, testing, or treatment funded in whole or in part by a program of the United States Department of Education that concerns one or more of the areas outlined in this Policy.” The sentence contains a drafting error that makes it unintelligible. Additionally, the sentence suggests that PPRA applies only when a survey is funded in whole or in part by the Department. Whether a survey is funded in whole or in part by the Department is relevant to determining the applicability of subsection (b) of the PPRA, and only to the extent such survey is required. If a survey is administered by an LEA that receives

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<sup>14</sup> With respect to other questions on the Surveys that the Parents assert implicate PPRA, this Office notes that the documentation acquired through the investigatory process does not make clear what the protected area(s) allegedly implicated by other questions would be. For example, race/ethnicity is not a protected area under PPRA.

<sup>15</sup> Among other differences between the statutes, PPRA includes as a protected area “religious practices, affiliations, or beliefs of the student or the student’s parents,” while N.J.S.A. § 18A:36-34 does not.

funds under any program administered by the Department, subsection (c) may apply if the survey concerns one or more of PPRA’s protected areas, regardless of whether the survey itself was funded in whole or in part by the Department;

- The policy appears to omit any arrangements to protect student privacy in the event of the collection, disclosure, or use of personal information collected from students for the purpose of marketing or selling that information (or otherwise providing that information to others for that purpose), as required by subsection (c)(1)(E) of PPRA; and
- The policy incorrectly states that subsection (c)(4)(A) of PPRA exempts from all of PPRA’s requirements the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, students or educational institutions. Subsection (c)(4)(A) states only that the requirements of subsection (c)(1)(E) do not apply to the collection, disclosure, or use of personal information collected from students for the purposes described in subsection (c)(4)(A).

Accordingly, any training focused on Board Policy 9560 and N.J.S.A. § 18A:36-34 may not sufficiently train faculty and staff on the requirements of PPRA.

While this Office appreciates the actions taken by the District thus far, this Office requires additional assurances that the District has taken action to facilitate ongoing compliance with PPRA’s requirements, at least insofar as those requirements differ from New Jersey state law, before the investigation can be closed. Specifically, by September 30, 2024, please provide this Office, a written response that includes the following:

1) A copy of the District’s annual notice to parents regarding their rights under PPRA, consistent with 20 U.S.C. § 1232h(c)(2)(A), that will be used for the 2024-2025 school year. For a template model notice of PPRA rights, please visit:

<https://studentprivacy.ed.gov/resources/ppra-model-general-notice-rights>.

2) An updated version of Board Policy 2415.05 - STUDENT SURVEYS, ANALYSIS, EVALUATIONS, EXAMINATIONS, Testing, or Treatment (M) that is fully consistent with 20 U.S.C. § 1232h.

3) Documentation and assurance that District staff have or will be trained<sup>16</sup> on PPRA’s application and requirements when the District administers surveys to students, with such documentation including items such as training agendas, attendance records, or memorandums sent to District staff.

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<sup>16</sup> While this Office has not issued guidance regarding the applicability of PPRA to “gender identity” questions, this Office notes that the NJ Commissioner of Education concluded the administration of the “gender identity” question, without prior written parental consent, violated New Jersey law; as a result of this finding under New Jersey law, similar questions cannot be asked on future surveys administered to students without prior written parental consent. This provides protection at least equivalent to, if not greater than, PPRA if it were to apply.



In an effort to expedite the processing of the Complaints, please email your response to [PPRA.complaints@ed.gov](mailto:PPRA.complaints@ed.gov) and include the relevant complaint numbers in the subject line. In lieu of sending your response electronically, you may send your written response to the following address:

Student Privacy Policy Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202 – 8520

Thank you for your cooperation regarding this investigation.

Sincerely,



Frank E. Miller Jr.  
Deputy Director  
Student Privacy Policy Office

Enclosures

cc: Parents  
Legal Counsel