



Department of Education
Carmen Fariña, Chancellor

April 19, 2017

New York City Department of Education
Teacher Recruitment and Quality
Attn: Field Services Support
65 Court Street
Brooklyn, NY 11201

Francesco Portelos
Teacher
Employee File # [REDACTED]

Dear Mr. Portelos:

On March 23, 2017, we met at P.S. 46, located at, 41 Reid Avenue, Staten Island, NY, to discuss the allegations and conclusions contained in the attached investigative report issued by the Office of the Special Investigations (OSI) regarding OSI Case #16-07353X. Also present at this meeting were U.F.T. Chapter Leader Eileen Schmidt and Field Supervisor, Joann Peters.

After an investigation, OSI substantiated that you violated Chancellor’s Regulation A-820 and FERPA (the Family Educational Rights and Privacy Act) when you posted a number of DeWitt Clinton High School (10X440) student transcripts, student attendance records and student grade change records on the Internet, on a website which is part of a group called “UFT Solidarity.” OSI further substantiated that when you posted the above student records, Student A’s name was not redacted and the remaining partially redacted records, published online, contained other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the DeWitt Clinton High School community who does not have personal knowledge of the relevant circumstances, to be able to identify the students with reasonable certainty. It was determined that this website is not affiliated with the UFT and is registered under your name.

At our meeting, I provided you with a copy of the attached OSI report and gave you an opportunity to review the report. I then gave you an opportunity to respond to the allegations and conclusions contained in the OSI report. Prior to responding, you met privately with your union representative to review the attached OSI report.

Upon your return, you presented me with the following written response:

March 23, 2017

Mr. Mark Ryan,

I have read the OSI report (Case 16-07353X) dated October 19, 2016, I strongly disagree with the findings of the report. I assert that I have not violated any Chancellor's Regulation, nor any Federal Law as the report findings claim.

In addition, I believe that as an owner of a public educational press blog, that falls under the Freedom of the Press, I should not be disciplined as a New York City Department of Education employee, when the alleged conduct was in no way in connection to my official duties as an employee.

Sincerely,

Francesco Portelos

After reading your response, I asked you if you wanted to add anything. You indicated that you did not wish to add anything to your response. At your request, I clarified my role as a licensed supervisor.

Based on our meeting on March 23, 2017, a review of the attached OSI investigative report and your responses at our meeting, I conclude that you violated Chancellor's Regulation A-820 and FERPA when you posted a number of DeWitt Clinton High School (10X440) student transcripts, student attendance records and student grade change records on the Internet, on a website which is part of a group called "UFT Solidarity." I further conclude that when you posted the above student records, Student A's name was not redacted and the remaining partially redacted records, published online, contained sufficient information for someone in the DeWitt Clinton High School community who does not have personal knowledge of the relevant circumstances, to be able to identify the students with reasonable certainty.

More specifically, Chancellor's Regulation A-820 addresses the confidentiality of and the access to student records and incorporates pertinent provisions of FERPA. Under the regulation, no part of a student's educational record may be divulged with personally identifiable information, including not only a student's name, address or personal identifying number but also [o]ther information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty." When you published Student A's education record on your website with personal identifiable information, including the name, you violated Chancellor's Regulation A-820 and FERPA. You also violated FERPA when you published the records of other students, which were not sufficiently redacted given the definition of personally identifiable information found in FERPA and Chancellor's Regulation A-820. From the records that were posted on the website, a DeWitt student is able to identify another DeWitt student with reasonable certainty based on the particular courses the other student took (which you did not redact), and thereby learn the particular grades the student received in those courses (which you also did not redact)—and which specifically constitute relevant circumstances for which they would not have previously had personal knowledge.

When you were interviewed by OSI on October 11, 2016, you admitted that you posted the above documents to the UFT Solidarity website and stated that Student A's un-redacted name must have been an oversight. Notwithstanding the above, your actions still violated Chancellor's Regulation A-820 and FERPA. You demonstrated professional misconduct by failing to maintain the confidentiality of student records, as required by federal law and Chancellor's Regulations. The Family Educational Rights and Privacy Act (FERPA) was enacted to protect the privacy of both students and families we are entrusted to serve.

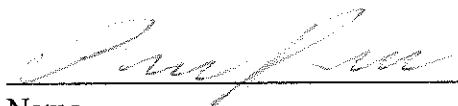
Please be advised that the above misconduct may lead to further disciplinary action including charges that may lead to the termination of your employment.

Sincerely,



Mark J. Ryan
Principal/Field Supervisor

I have received this letter.



4/26/17

Name

Date