



**Department of
Education**

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OFFICE OF SPECIAL INVESTIGATIONS
INVESTIGATIVE REPORT

October 19, 2016

Re: **Francesco Portelos, tenured teacher, File [REDACTED]**
10X440 – De Witt Clinton High School

OSI Case #16-07353X

ORIGIN OF COMPLAINT

On June 30, 2016, the Office of Special Investigations ("OSI") received a referral from the Special Commissioner of Investigation ("SCI") concerning the conduct of an unidentified subject. Santiago Taveras, Principal, reported that a number of X440 student transcripts, student attendance records, and student grade change records were posted on the Internet, on the website of a group calling itself UFT Solidarity.¹ The documents were partially redacted, but on one attendance record, Student A's name was not redacted and plainly visible. During the investigation, it was discovered that the domain name "uftsolidarity.org" was registered by Absence Reserve teacher Francesco Portelos.²

RESULTS OF INVESTIGATION

DOE STAFF WITNESSES INTERVIEWED:

Santiago Taveras, Principal:

Principal Taveras reported that, while reviewing the UFT Solidarity website, he discovered confidential documents concerning students from his school were posted there. Principal Taveras explained that he is under investigation by SCI, and that as part of the investigation, they requested a variety of documents including student transcript update forms and transcripts. In preparation for his interview with SCI, his union representative from the Council of School Supervisors & Administrators ("CSA") requested that he remove a subset of documents from the larger packet and prepare a written explanation for each of the documents. He gave this subset of documents—mainly transcript updates and transcripts—to his secretary to scan and upload, so that he could email

¹ UFT Solidarity is not affiliated with the United Federation of Teachers ("UFT") union.

² According to Whois.net, an internet domain name search engine, "uftsolidarity.org" is registered to Mr. Portelos. A printout of the registration information on "uftsolidarity.org" is maintained in the case file.

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the documents to CSA.³ Many of these documents were included in the online post by UFT Solidarity.⁴ Principal Taveras speculated that someone made a copy of the documents at a time when they were unattended.⁵

Mary Rodriguez, school secretary:

Ms. Rodriguez reported that she scanned the documents for Principal Taveras using a copy machine in her office. She explained that the copier does not save documents to a networked drive; a flash drive needs to be inserted into the copier in order to save scanned documents. Ms. Rodriguez did not know how the documents were obtained by the person(s) posting them to UFT Solidarity, though she could not recall if they were left unattended at any point prior to scanning. She stated that the documents have been kept in a locked closet in her office since they were scanned, with only herself and Principal Santiago having the key.

Joseph Baranello, Chief Privacy Officer at the Office of the General Counsel (DOE):

Mr. Baranello reviewed the documents posted by UFT Solidarity on the Internet. He opined that the document which was not redacted and showed Student A's name in its entirety was a clear violation of Chancellor's Regulation A-820 and the Family Educational Rights and Privacy Act ("FERPA").⁷ With regard to the remainder of the documents, Mr. Baranello stated that the DOE would not release a student transcript to a third party redacted in this manner, and that it would be possible to identify the students in the records, despite their names being redacted, by one with enough knowledge of the students' programs.

SUBJECT:

48-Hour Notice:

On September 27, 2016, this investigator notified Francesco Portelos that he was the subject of this investigation. After serving Mr. Portelos with a 48-Hour Notice, he was explicitly instructed not to discuss the details of this investigation with anyone at the location of the alleged incident other than his union representative.

Francesco Portelos, teacher:

On October 11, 2016, Mr. Portelos appeared at OSI and was interviewed in the presence of Donna Coppola, a representative for the United Federation of Teachers.⁸ At that time, Mr. Portelos confirmed that the UFT Solidarity domain name (uftsolidarity.org) is registered to him and he admitted that he was involved in posting the documents in question to its website. He stated that there were "many people involved," but he would not identify any of them, or divulge how they had obtained the documents. Mr. Portelos reviewed the documents and stated that extreme care was taken to redact student identifying information; he stated that Student A's unredacted name must have been an oversight. Mr. Portelos said that it was not his intention to divulge student information.

³ Copies of the original unredacted documents that Principal Taveras emailed to CSA are maintained in the case file.

⁴ Copies of the student records posted online are maintained in the case file.

⁵ On September 2, 2016, the undersigned investigator interviewed Yolanda Danforth, Security Applications Manager for DIIT, by telephone. Ms. Danforth reviewed the redacted ATS documents posted online and stated that it was not possible to determine which ATS user accessed the documents.

⁷ Family Educational Rights and Privacy Act (FERPA) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

⁸ On October 17, 2016, Mr. Portelos emailed the undersigned investigator and reiterated many of the points he made during his interview. A copy of his email is maintained in the case file.

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Mr. Portelos accessed the UFT Solidarity website during his interview and removed the post containing the documents, stating that he would have done so earlier had he known that Student A's name was not redacted.

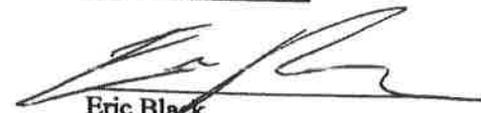
CONCLUSION

Chancellor's Regulation A-820 addresses the confidentiality of and access to student records, and incorporates pertinent provisions of the federal Family Educational Rights and Privacy Act.⁹ Under the regulation, no part of a student's education record may be divulged with personally identifiable information, including a student's name, address, or personal identifying number, to any person, organization, or agency in any manner, unless: the parent or student has provided informed written consent; a valid court order or lawfully issued subpoena requests such information; a request from an authorized educational authority requests the information for an audit or other evaluation of educational programs; there is a health and safety emergency which requires the disclosure; or any other reason permitted by law exists. As none of the exceptions to the rule apply in this case, the publication by Mr. Portelos and UFT Solidarity of Student A's education record with personally identifiable information was a violation of Chancellor's Regulation A-820 and FERPA. Additionally, the remaining, partially redacted records, published online, contained sufficient information that a person in the X440 community might be able to identify the students with reasonable certainty. Mr. Portelos admitted involvement in the posting of the records, and during his interview, accessed the offending post as an administrator of the website and removed it. While Mr. Portelos may not have intended to disclose student records in violation of the law, that was the effect of his actions. The allegation that Francesco Portelos violated Chancellor's Regulation A-820 and FERPA by posting student education records on the Internet is **substantiated**.

RECOMMENDATION

It is the recommendation of this office that a copy of this report be referred to the Administrative Trials Unit ("ATU") so that a Technical Assistance Conference ("TAC") may be convened, and appropriate disciplinary action may be determined for Francesco Portelos.

SUBMITTED BY:


Eric Black
Supervising Investigator

APPROVED BY:


For Jaclyn B. Vargo
Director

⁹ A copy of the regulation is maintained in the case file.