CHAPTER – PRIVACY AND DATA PROTECTION IN EDUCATION. TRANSPARENCY AND ACCESS TO INFORMATION IN EDUCATION

The chapter "*Privacy and data protection in education. Transparency and access to information in education*" will consider the legislation and regulation of privacy, data protection and transparency in educational context.

We will begin with the definition and comparison of these closely-related concepts.

We will then consider the legal background of privacy, data protection and transparency.

Also we will overview the school practice in privacy, data protection and transparency in EU perspective and in Russian Federation.

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Learning objectives

In this chapter, you will consider:

- what is the legal background of privacy, data protection and transparency in education
- to what extent educational institutions are responsible for data protection and confidentiality of personal information
- what is the legal background of transparency of information and how it is realized in educational institutions

Introduction

Privacy in education refers to practices and legislation that involve the privacy rights of individuals in the education system. The majority of privacy in education concerns are prevalent to the ***protection of student data,*** both inside and outside the classroom. Many scholars are engaging in an academic discussion that covers the scope of students' privacy rights, especially if they are minors, and the management of student data in an age of rapid information access and dissemination.

From the legal point of view, ***privacy*** is the right that determines the nonintervention of secret surveillance and the protection of an individual's information.

Privacy can be split into four categories (1) Physical: an imposition whereby another individual is restricted from experiencing an individual or a situation. (2) Decisional: The imposition of a restriction that is exclusive to an entity. (3) Informational: The prevention of

searching for unknown information and (4) Dispositional: The prevention of attempts made to get to know the state of mind of an individual[1].

Confidentiality is an obligation often associated with professions such as **teachers**, lawyers and doctors being their duty to protect and hold in strict confidence all information concerning the person who is the subject of the professional relationship.[2]

Transparency may be defined as the of being done in an way without secrets. Concerning institutions or organizations transparency is the clarity of the regulations and procedures within the organization on one hand, and between the organization and the citizens using their services on the other hand.

1. Privacy and Personal Data: Legal background

1.1 Privacy and Personal Data – EU Perspective

Under the European Union law, the right to privacy and the right to protection of personal data are two distinct fundamental human rights. *The Charter of Fundamental Rights of the European Union* (CFR, 2009) recognizes the right to privacy in Article 7 and the right to the protection of one's personal data in Article 8[3].

The *Convention for the Protection of Human Rights and Fundamental Freedoms* (1950) states that everyone has the right to respect for his private and family life, his home and his correspondence[4].

One of the core elements constituting the concept of privacy is personal data. Article 8(1) of the CFR and Article 16(1) of *the Treaty on the Functioning of the European Union* (TFEU) specifies that everyone has the right to the protection of personal data concerning him or her[5].

In 1981, a *Convention for the protection of individuals with regard to the automatic processing of personal data (Convention 108)* was adopted. Convention 108 still remains the only legally binding international instrument in the data protection field.

In spring 2018 the Data Protection Directive 95/46/EC being the primary law regulating how companies protect EU citizens' personal data will be replaced by the General Data Protection Regulation (GDPR)[6], agreed upon by the European Parliament and Council in April 2016. The new GDPR is going to radically overhaul many of the existing data protection rules in schools, since children are described as "vulnerable individuals" deserving of "special protection" under the GDPR[7].

1.2. Privacy and Personal Data – Russia's Perspective

The Constitution of the Russian Federation confirms in its Articles 23 and 24 the right to integrity of private life, personal and family secret, as well as the right to protect one's honor

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1 http://thelawdictionary.org/privacy/

2 Kathryn Dalziel, Privacy in schools: A guide to the Privacy Act for principals, teachers, and boards of trustees. Lithoprint Ltd., Wellington, 2010. P. 7.

3 Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391–407

4 Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14. Rome, 04.11.1950.

5 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences. Official Journal C 326 , 26/10/2012 P. 0001 - 0390

6 The GDPR will be applicable as of 25 May 2018. Refer to the full text at: https://gdpr-info.eu/

7 On this issue: https://gdpr-info.eu/

and dignity[8].

the Federal Law No. 149-FZ *On Information, Information Technologies and Data Protection*, the first to introduce integrity of private life as a fundamental legal principle[9], as well as the Federal Law No. 152-FZ *On Personal Data* that generally prohibits processing of personal data without prior consent of the data subject[10]. This ruling is underpinned by the Article 152.2 of *the Civil Code of the Russian Federation* restricting collection, storage, distribution and usage of any data about an individual's private life, including private life, national origin, place of stay or residence, personal and family life unless otherwise provided by law[11].

2. Personal data and Schools

2.1. Dealing with Personal Data in Schools

The Data Protection Directive comprises the following types of personal data:

a) Genetic Data

b) Biometric Data

c) Data Concerning Health

In the context of education and considering the above-mentioned types of personal data distinguished by the law, personal data an educational institution might process include, without limitation[12]: personal details (name, address, date of birth), phone numbers and email addresses, gender and gender identity, photographs, financial information, academic marks and appraisals, references, disciplinary information, criminal offence or conviction information, health and disability information, ethnicity data, sexual orientation, dietary requirements, religious belief data, caring responsibilities, information regarding hobbies and interests, any other legitimate personal data relating to academic support.

In accordance with Article 8.1., Para 1 of the Russian Federation Federal Law *On Personal Data* as of July 27, 2006, an educational institution shall take steps to ensure safety of personal data while processing. Such steps, among other things, include adoption of regulations concerning protection of students' personal data.

According to the current Russian law, publicly accessible sources of information are created for the purposes of information support. Such information sources might include data subjects' names, dates and places of birth, as well as their addresses, phone numbers, information about their occupation, or other personal data obtained only upon valid consent of the data subjects. The above-mentioned data shall be excluded from the publicly accessible information sources at any time upon request of the data subject, or under the decision of the court or other appropriate state authorities.

Processing of personal data is defined as any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making

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[8] Constitution of the Russian Federation, adopted by the national referendum on 12.12.1993, Ch. 2, Art. 23, 24. http://www.constitution.ru/

[9] Federal Law as of July 27, 2006 No. 149-FZ On Information, Information Technologies and Data Protection. http://base.garant.ru/12148555/

[10] Federal Law as of July 27, 2006 No. 152-FZ On Personal Data. http://base.garant.ru/12148567/

[11] Civil Code of the Russian Federation (Part I, II, III and IV) (as amended), adopted by the State Duma on October 21, 1994. http://ivo.garant.ru/#/document/10164072/paragraph/44878456:6

[12] From http://www.bristol.ac.uk/applicants/media/policy-documents/2017/undergraduate/personal-data.pdf as amended by the authors

available, alignment or combination, restriction, erasure or destruction[13]. Unlawful or unfair processing results in appropriate penalty.

2.2. Personal Data carelessness: the case of school in Karelia, Russia

This case was considered in Karelia, in the course of examination conducted by the Prosecutor's Office it turned out that an official website of the Loukhskaya Secondary School contains a program of professional upbringing, which not only includes general information, but also discloses children's and parents' names, addresses, phone numbers and places of work. Moreover, the website, enumerated pupils from incomplete or underprivileged families, and indicated some of the pupils' bad habits and chronical diseases. These data were made publically available without consent of the persons in question in contradiction to the Federal Law On Personal Data. Taking into consideration the violation of privacy rights of pupils and their parents, as well as a right for personal and family secret, Prosecutor's Office initiated an administrative trial against the legal entity and the principal based upon Article 13.11 of the Administrative Code of the Russian Federation. Having examined the case, the Magistrate's Court imposed a penalty of 5000 rubles upon a legal entity, while at the same time imposing a disciplinary punishment and a fine upon the principal. Illegally posted information was deleted from the school website[14].

3. Educational Privacy Principles

The Article 29 Data Protection Working Party has issued a number of opinions on the protection of personal data of children, including an opinion addressed to school authorities[15]. The purpose of the document is to analyze the general principles relevant to the protection of children's data, and to explain their relevance in a specific critical area, namely, that of school data. The document distinguishes between the fundamental principles and education-related principles by demonstrating how fundamental principles can be specified with regard to the school context.

We shall give some principles as an example:

1. Legislation permits school authorities to require forms, containing personal data, to be completed for the purpose of creating student files. On forms such as these the data subjects should be informed that their personal data will be collected, processed, and for what purpose, who are the controllers, and how the rights of access and correction can be exercised.

2. All data that might lead to discrimination must be protected by proper security measures, such as processing in separate files, by qualified and designated people, subject to professional secrecy, and other appropriate measures.

3. Children's data cannot be used for purposes incompatible with the one that justified their collection.

4. No data should be kept for longer than is necessary for the purpose for which it has been collected is applicable to this context as well.

5. Publishing students' academic results. Open access to academic results allows comparison of results and facilitate possible complaints or recourse. Schools shall, in those countries,

[13] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). OJ L 119, 4.5.2016, Art. 4, Par. 2.

[14] http://prokuratura.karelia.ru/struktura/gorodskie-i-rayonnye-prokuratury/prokuratura-loukhskogo-rayona/loukhi_news/page_2784/?forBlind=on

[15] From this point onward a review is presented of the Article 29 Data Protection Working Party, Opinion 2/2009 on the Protection of Children's Personal Data (General Guidelines and the Special Case of Schools), 398/09/EN, WP 160 (Feb. 11, 2009), http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2009/wp160_en.pdf.

strictly follow the rules set by national law and publish only the minimum of personal data necessary for that purpose.

6. Special attention should be drawn to the publishing by schools of photos of their pupils on the internet. An evaluation should always be made of the kind of photo, the relevance of posting it, and its intended purpose.

4. Transparency and Access to Information in Education

The concept of transparency in the European legislation is closely related to that of privacy and personal data processing. Preliminary provision 39 of the Regulation 2016/679[16] decrees that any processing of personal data should be lawful and fair. It should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed.

The principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and easy to understand, and that clear and plain language be used. The Regulation enacts that the principle of transparency requires any information addressed to the public or to the data subject to be concise, and, additionally, where appropriate, visualisation to be used. Such information could be provided in electronic form, for example, when addressed to the public, through a website.

National Institute for Learning Outcomes Assessment (US) treats transparency as making meaningful, understandable information about student learning and institutional performance readily available to internal and external audiences. Information is meaningful and understandable when it is contextualized and tied to institutional goals for student learning. Meaningful information may include disaggregated results, by major field, student level, gender, race and ethnicity, and by providing longitudinal analyses and perspectives and/or comparisons with national norms or peer institutions[17].

Subsequent to the Russian Federal Law on Education, there is a Regulation of the Government of the Russian Federation as of July 10, 2013 No. 582[18] enacted that specifies the scope and content of information that an educational institution shall post on an open source web-site in order to correspond to the Federal Laws On the Personal Data and On Education in the Russian Federation.

The National Institute for Learning Outcomes Assessment (NILOA) has developed a Transparency Framework[19] to support institutions in sharing evidence of student learning on and off campus. The Framework is based on a review of institutional websites and identifies six key components of student learning assessment. Institutions may use the Framework to examine their institutional websites to gauge the extent to which evidence of student accomplishment is readily accessible and potentially useful and meaningful to the intended audience.

Conclusion

An educational institution needs to follow the principles of privacy, data protection,

16 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016.

17 http://www.learningoutcomeassessment.org/TransparencyFrameworkIntro.htm

18 Regulation of the Government of the Russian Federation as of July 10, 2013 No. 582 On the approval of requirements for posting and updating of information concerning educational institution on the official website of an educational institution in the data telecommunications network Internet.

19 Transparency Framework. Urbana, IL: University of Illinois and Indiana University, National Institute for Learning Outcomes Assessment (NILOA). Available at: http://www.learningoutcomeassessment.org/TransparencyFrameworkIntro.htm

transparency and access to information. The understanding of legal background of these processes ensures the protection of human rights in educational system, effective functioning of educational institution, prevent conflicts, and guarantees competent and secure educational and organizational activity of teachers and school administrators.