

□ Procedure No.: PS/00245/2019

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and in
based on the following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on 02/25/2019, filed a claim
before the Spanish Data Protection Agency against the DEPARTMENT OF
EDUCATION OF THE GOVERNMENT OF NAVARRA (DIRECTORATE GENERAL OF EDUCATION)
(hereinafter, the claimed).

The claimant states that his son studies in a private school in the 4th year of
(4EP hereinafter) and has carried out a nominative survey where, among other things,
questions, he asks about “your gender (boy/girl/other options), the language you use
outside of school, their feelings about school, their relationships with their peers, or the
profession of their parents, making special reference to the military career, issues that
understands they fall within the field of intimacy of the student and his family life.”

of

of

Education

Government

“To fill in the survey, students must access the web platform of the department.

apartment

Navarre

(<https://www.educacion.navarra.es/web/dpto/evaluacion-y-calidad/evaluacion/evaluacion-ex-terna/evaluation-of-navarra/childhood-and-primary-education-course-2018-2019>)”.

SECOND: In view of the facts stated, the claim was transferred on 04/01/2019

to the person claimed so that it will report the causes that have motivated the incidence, measures adopted to prevent similar incidents from occurring, and a copy of the communications of the decision adopted that has been sent to the claimant regarding the transfer of this claim.

THIRD: The respondent states:

of

1)

“Since the implementation of Organic Law 2/2006, of 3/05, on Education (LOE), all

All educational administrations must carry out, during the Primary Education stage,

general diagnostic evaluations of the basic competencies achieved by their

students (ED hereinafter). Said legislation establishes the application of these evaluations with

census character [articles 21 that indicated until its modification by LO 2/2013 “At the end

of the second cycle of primary education”- fourth grade- and 144 of the LOE]. These

evaluations have a formative and guiding character for the centers, and informative for the

families and for the entire educational community.”

“In the Autonomous Community of Navarra, from the 2009/2010 school year to the

school year 2013/2014 this 4EP census ED has been done.

With the entry into force of the Organic Law 8/2013, DE 9/12, for the improvement of the

educational quality (LOMCE), said individualized census evaluation was maintained, but transferred

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giving its application to 3rd and 6th of Primary Education. [See articles 20, 21 and 144 of the

LOMCE].

In the Autonomous Community of Navarra, a Census Diagnostic Evaluation was carried out in 3rd Primary Education during the 2014/2015 school year and 6th Primary Education during the 2015/2016 school year. During these two school years the evaluation was not carried out. diagnostic luation in 4EP.”

Royal Decree-Law 5/2016, DE 9/12, on urgent measures to expand the implementation schedule of the LOMCE in its article 3, suppressed the census nature of the evaluation in Primary Education, transforming it into a sample evaluation where the selection of students and schools must be sufficient to obtain representative data tives at the level of each Educational Administration. So since the school year 2016/2017 to the present, evaluations are carried out in the Foral Community of Navarra sample diagnoses in 3rd and 6th grade of Primary Education. In order not to lose the individual character dualized diagnostic evaluations, and by virtue of article 144.2 of the LOMCE, which contemplates that "the educational administrations may establish other evaluations with diagnostic purposes", in Navarra the history of census diagnostic evaluations was retaken. 4th year of Primary Education since the 2016/2017 academic year.

two)

Together with the ED, "simultaneously" context questionnaires are practiced, (CC in hereafter) prepared under criteria determined by the Ministry of Education, Culture and Sport, which allow obtaining information on the socioeconomic and cultural conditions rals of the centers for the contextualization of the results obtained. [See, as for example, article 7.5. of ROYAL DECREE 1058/2015, OF 11/20, which regulates the general characteristics of the tests of the final evaluation of primary education are established in the LOE]:

Simultaneously with the final evaluation of the stage, the context questionnaires, which will be prepared by the Ministry of Education, Culture and Sport.

These questionnaires will make it possible to obtain information on the socioeconomic conditions and culture of the centers for the contextualization of the results obtained.'

" Article 8 on results, indicates:

"1. The result of the final evaluation of the stage will be expressed in the following levels to each of the competencies: Insufficient (IN), Sufficient (SU), Good (BI), Remarkable (NT) and Outstanding (SB).

The competent educational administrations will record the level obtained by each student in an individual report, which will be delivered to the fathers, mothers or legal guardians and transferred to the centers in which the students have to continue their scholarship. The report will be of an informative and guiding nature for the centers in which have completed the sixth year of Primary Education and for those centers in which they go to attend the next school year, as well as for the teaching teams, the fathers, mothers or legal guardians and students."

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3) In the Autonomous Community of Navarra, during the seven school years included between 2009/2010 and 2015/2016 (both inclusive), the CCs associated with the DIs to which responds the students were made anonymously, allowing only perform es-statistics and studies of influence factors on the results of the performance achieved do, at the school level. As of the 2016/2017 school year, it was agreed, prior authorization tion of the General Directorate of Education, its completion online (with identification and Username). States that once the questionnaire has been answered, no other user or teacher, neither student nor director can know the identification data of each student. (except

two members of the technical unit that manages the evaluation procedure). "East

This change supposes an advantage and an improvement in reference to the statistical analysis carried out subsequently with the information obtained, since it allows linking the result of each study with their socioeconomic and cultural conditions, which allows obtaining more detailed information at the level of students or groups of students within the same center."

This fact favors the detection of needs or strong points for the improvement of the system. educational topic, since more individualized information can be obtained.

"During the current school year 2018/2019, in the Foral Community of Navarra, the carrying out, among others, the 4EP census ED in all public centers and concerted two who have enrollment at that educational level. The CC online application phase for the students was carried out during the month of February 2019 and the competitive tests potential in all schools in the community during the week of 6 to 05/10/2019. You can access the online questionnaire for this school year at the link <http://dpto.educacion.navarra.es/eed/> (you have to access the application with the name of Irati test username and Irati test password).

The design, organization and implementation of the DE provided for in the LOE is one of the functions associated with the Assessment, Quality, Training, Equality and Conviviality Service. expiration date, within said Service, the technical unit in charge of managing them is the Section Evaluation and Quality. [See FORAL DECREE 5/2017, of 01/11, establishing ce the organizational structure of the department of education]."

"Access to the online application that allows the survey to be carried out, through a numerical identification user and an associated password, and the data that is registered in the survey they do not contain any nominative reference."

"The addresses of the schools know the users and passwords associated with ciated to the name of each student and share them with the faculty responsible for the

supervision of the application of the survey in the center (generally tutor teachers).

These data are not public and are only accessible to the director of each center.

school teacher, prior identification with personal credentials in the school management program

strain EDUCA. This information is also known by the technician of the Department of

Education that manages the assignment of users and passwords.

“For the users surveyed, the online application only allows access to the in-

costs only once, so that the responses are recorded and the center cannot access

give to them So the school does not know or have access to the recorded answers

for his students. Neither does the technician from the Department of Education who has managed

the assignment of users and passwords knows these answers.

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“The IT technician who designs and manages data collection through the en-

costs, you do not know the nominal identification data of the respondents, you only know the

usernames and passwords.

“The Department of Education guarantees the confidentiality of the data provided

for each student in the online questionnaire. In this sense, only two technicians from the uni-

entity in charge of analyzing the registered data know the assignment of the identifiers

numeric res (users) and the answers. This connection is necessary to be able to link

the individual results obtained in the performance tests of the different compo-

competencies and associated context factors (collected through the questionnaire).

In addition, the databases are stored on the network drives of the Department's server.

Department of Education, and therefore they are only accessible from within the Department itself.

procedure, being also necessary access to the computer equipment by means of a user and password that must be changed every 30 days.”

“For everything stated in the previous point, it should be noted that although the survey did not is anonymous, its personal data is pseudonymized, that is, they cannot attributed to a data subject without using additional information. Take into consideration that such additional information appears separately and is subject to technical and organizational measures. measures aimed at ensuring that personal data is not attributed to a natural person identified or identifiable. In fact, the RGPD, explicitly introduces in its article 32, regarding security in the processing of personal data, pseudonymization as an appropriate measure to guarantee a level of security appropriate to the risk.”

4) The questions in the questionnaire are not intended to attack convictions or privacy of the respondent, the objective being to collect the minimum necessary information that allows, after its subsequent analysis, contextualize the global results of the DE, providing information training, not only on the performance in the different competencies evaluated, but also on the socioeconomic and cultural conditions of the educational system. In this sense, The usefulness of the survey is enormous, both for the schools themselves and for the Education department.

5) The CC is mandatory for each 4EP student, although they can be left unanswered questions, you can even send yourself with all your unanswered questions, “without consequences for the student.

“The necessary collaboration of students and families responding to the survey, contributes to the detection of needs and the design of improvement plans in the educational centers strain. Thus, for example, some useful studies for the educational system as a whole, that would not be possible without the collaboration of families and students, are:

o Based on the questions regarding the level of education of the parents, their level of occupation, employment and the presence in the home of different consumer goods (magazines, room

own, encyclopedias, books, mobile phone with Internet access, tablet,) can be obtained the SOCIOECONOMIC AND CULTURAL INDEX (ISEC). Thanks to this indicator, at the level of center, in the ED report, the centers have the center ISEC and the scores estimated for each competence in relation to said index, with the signaling of the position of the center. The ISEC of schools is also used, at the internal level of the

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Department of Education, along with many other factors, when distributing the hours of attention to diversity assigned to schools.

o Questions regarding the use of the language in the school and family environment are useful at the level of the Department of Education, since they allow studies to be carried out on linguistic uses and practices that contribute to the improvement in the advice of schools when it comes to defining and developing your Center Linguistic Project (PLC).

6)

“On the question of sex, with three answer options, the objective is simply to provide the survey with a completely inclusive character. In this way it is also given compliance with article 19.a) of the recently approved Provincial Law 17/2019, of 4/04, of equality between men and women, which points out that “in statistics and studies, the Administrations of Public administrations of Navarre, to guarantee the efficiency in the incorporation of the gender perspective in their ordinary activity, they must systematically include the variable of sex, collecting the different categories, in all the statistics, surveys and collections that gives data that they carry out”. Likewise, it should be emphasized that other educational organizations and institutions, such as the Public University of Navarra (UPNA) or the University of the Basque Country

(UPV), already include this format in their access questionnaires. also with that same inclusive character, to encompass all the diversity of family typologies, the term I use "parent" in questions referring to "father" or "mother". In no case traditional response options prevail, nor is it intended to indoctrinate or convince anyone. According to the respondent, the information that the students and their families share for the diagnosis and improvement of education in Navarra.

7)

"Regarding the question regarding the "level of employment" of the parents encompassed a series of blocks of possible professions, classifying them in five groups, of minor at a higher level according to the professional category in question. Therefore, the profession is not recorded. itself, but a numerical value from 1 to 5 that represents the smallest or largest employment level of the mother and father.

Taking into account the above, it is impossible to deduce whether the respondent belongs to this specifically to the "basic, medium or high scale military" category, as mentioned in the claim, or to another category in that group.

8)

"From the Technical Unit responsible for the questionnaire, it is recognized that the respondent responsible for the treatment has not provided with sufficient transparency and clarity, in the moment in which the personal data was obtained, the information referring to the purposes of the treatment to which the personal data is intended and the legal basis for such treatment, as indicated in article 13.1.c) of the RGPD and articles 12 to 18 of the LOPDGDD."

"Considers that at an informative level, they should modify the aspect of the purposes of the treatment to which the data is intended, the legal basis of the treatment and the existence of the right to request from the data controller access, rectification and deletion of data data, and therefore:

1- An explicit reference will be added to the basic information on protection of

data in the action protocol sent to schools and published on the web

of the Department of Education.

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2- A brief letter will be written to serve as a model for schools and will be distributed

A single, simple and clear informative document (diptych or triptych type) will be designed where

Carve out aspects of what an ED is, why it should be carried out, usefulness, etc.

This letter and the informative document must be sent to all families. The document

The informative document will also be published on the website of the Department of Education.

tion.

- At the time the data is requested, and during the preliminary phase of preparation, in the

own online application, the information that article 13

of the RGPD indicates that it must be made available to the interested parties (student and family).

More specifically, when collecting the data, it will be presented within the field

of vision of the interested party, the following text:

"In accordance with the provisions of the RGPD and the Organic Law 3/2018 of Pro-

tection of Personal Data and Guarantee of Digital Rights, data of character

personnel will be treated by the Evaluation and Quality Section of the Department of Education.

cation of the Government of Navarra in its capacity as «responsible» and incorporated into the activity

ity of treatment "Census Diagnostic Evaluation of Primary Education" with the purpose

to contextualize the global results of the diagnostic evaluation, providing informa-

training, not only on the performance in the different competencies evaluated, but also

on the socioeconomic and cultural conditions of the educational system or other factors

associated with it, such as linguistic uses, the school climate and coexistence or the satisfaction with the school. Likewise, we inform you that you can exercise your rights of access, rectification, deletion and portability of your data, limitation and opposition treatment, when appropriate, before the Evaluation and Quality Section of the Department of Education of the Government of Navarra at the e-mail address”.

“Purpose of the treatment Obtain information on the socioeconomic conditions cultural characteristics of the centers for the contextualization of the results obtained, as well as other factors related to school performance such as linguistic uses, school climate and coexistence or satisfaction with the school.

Legitimation of the treatment (legal obligation)

Regulation that enables data processing:

- Organic Law 2/2006, of 3/05, on Education (LOE).
- Organic Law 8/2013, of 9/12, for the improvement of educational quality (LOMCE).

It is mandatory to provide the data. There are no consequences for not doing so, although the required collaboration is essential to contribute together to improve the system educational.

The online application of the survey allows you to leave questions unanswered.

The registered data will not be transferred to third parties.

Exceptionally, for possible internal use in the technical units of the Department of Education, the data already analyzed globally will be sent, where there is no identification

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cation of the students or, if the data itself was sent, it would be shared anonymously.

zed, that is, without any reference to the identifier of each student.

There are no international data transfers.

Data retention time:

A maximum of 3 school years after the school year in which the renewal was made.

catch of them.

Automated decisions No automated decisions will be made on the information facilitated.”

9)

The respondent provides a copy of:

A- "PROTOCOL OF ACTIONS" associated with the "CENTRAL DIAGNOSTIC ASSESSMENT" SAL 4º DE PRIMARY EDUCATION COURSE 2018-2019”, published in pdf on the website of the Department of Education since 01/14/2019, at the link: https://www.educacion.navarra.es/documents/27590/1381944/Protocolo_4EP_2018_2019_castellano.pdf/fe4a6b07-50eb-12e9-88b6-ee2671d9156c, 16 pages, in the file. It is included in the file with the name "EVALUATION 4 EP”

It is accessed, highlighting:

1)

The index refers to the protocol for the online application of the socioeconomic and cultural questionnaire, who will carry out the tests, delivery and custody, specific instructions for the language proficiency test in english, introduction of data, obtaining reports -of student and center-, custody of evidence.

two)

On the protocol for the online application of the "socioeconomic questionnaire and culture” that appears in point B of the index, page 3, is indicated as most prominent:

“The Department of Education will guarantee the confidentiality of the data provided.

two for each student in the online quiz. In the diagnostic evaluation report,

the centers will have the Socioeconomic and Cultural Index, the estimated scores

for each competence in relation to said index, and the graphs with the regression line

Performance-ISEC for each competition, with the signaling of the position of the center.

For the best application of the questionnaire, the centers will follow the following instructions:

1. The questionnaire must be completed by all students in the 4th year of Primary Education, according to the criteria established in the section "(E) Adaptation of the tests".

2. The questionnaire will be accessible at the following address:

<http://dpto.educacion.navarra.es/eed/>

3. Each student will access the web application using a username (six characters).

numeric characters) and a personal password (four characters: two numbers and two letters).

after).

WATCH OUT! This password can be used only once...

5. The directors and the directors of the schools will obtain the list of names

usernames and passwords (as many as students enrolled) through the application

Educa formatica

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(Educa → Center evaluation → Diagnostic evaluation).

This list will also include the identification data of each student (course

so, group and full name). The directors and the directors will be able to access it from the

01/28/2019.

At the time of application, the director of the center will provide the names

Usernames and passwords to each tutor of 4th EP (as many as students),

for distribution to your students.

6. Preparation. Prior to the application, tutor teachers, students and families will be able to practice freely, accessing the application with the following username and password-test token:

Test username: Irati

Test Password: Irati

The center may prepare the completion of the questionnaire in the way that consider timely. In any case, it is considered convenient to carry out tutorial activities of preparation, so that the students know the questionnaire, the instructions for completing mentation, and at the time of application can answer the questions with confidence. you.

7. Application session. This session will be planned by the tutor teacher, using the center computers. The students will access the application, each tutor will distribute to each student their username and password, so they can enter them in the application. tion, and fill in the questionnaire.

The completion is simple, if it has been prepared previously, and it is worth mentioning the following: following aspects:

...To finish the quiz and save the answers, click on the En- button.

to travel This is a necessary requirement to save the answers.

If questions have been left unanswered, clicking the submit application button

The information warns of this fact, and you can continue filling in the questionnaire, or finalize it by clicking the send as is button.

After clicking the submit button and finishing the questionnaire, you will not be able to access again. with the username and password used.

8. Deadlines. The questionnaire will be completed between February 1 and 28. Questionnaires entered after the deadline, they will not be taken into account for the calculation of the center's ISEC. I know

advises not to leave the application for the last few days, in case some problem had to be solved.

access problem.

9. Clarifications and doubts. Doubts that arise may be consulted in the Evaluation Section.

and Quality, either through email (sec.eka@navarra.es) or through the

telephone

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The correct completion of the questionnaire will allow the centers to have data

more reliable and better understand important aspects for the education of their students.

Section N contains "Obtaining student and center reports", in

student report is about the evaluation of the competence of the tests of

mathematics, English and linguistics. A report is also made with the global results

of the students of the center as a whole.

It is indicated that the EDUCA application through which the tests are implemented,

In addition to the reports, it provides files with data and files with the responses of the

students, the questions left blank and the score obtained. It also focuses on

that "the corrected booklets will be guarded and kept in the school until the

11/30/2019 date from which they can be destroyed, and that "The student report is a

valid instrument to be delivered to the families in the context of the tutorial action, in the

month of June".

About the results, evaluations and data of the evaluation reports of

context, nothing is indicated.

B-DIAGNOSTIC EVALUATION SURVEY 2018-2019 header with instructions

among which it is reported that you have to “answer several questions about yourself and your family” headed by “sex”, options: a-boy, b-girl, c-other options, model language in which he studies, with references between the answers to options, in Spanish, B, in Basque with Spanish as a subject and some other subject in Spanish, language in which you watch television, or read books or use video games, social networks, talk to teachers in the classroom and outside, what language do they use preferably (distinguishing) with the friends on the street, in the schoolyard or at home with the family, in which continent have you born you, your mother, your father? Educational level of the parents, their employment situation, work of your parents, with trades and jobs by way of example such as "Watchman" "worker of the field", "doctor", "architect" military of the superior scale", or of the "middle scale", if have their own individual room, as is the relationship with classmates about if you feel alone, marginalized

-Resolution 03/30/2016 of the Secretary of State for Education "by which the context questionnaires and the common indicators of the center for the evaluation of primary education", BOE 04/15/2016. It is indicated that the LOE provides in its article 21 the conducting an individualized evaluation of all students at the end of the sixth year primary school, and that the evaluation criteria and general characteristics of this evaluation for the entire Spanish educational system will be established by the Government.

- Royal Decree 1058/2015, of 11/20, which regulates the general characteristics of the tests of the final evaluation of primary education established in the LOE. In his article 8.1, and in compliance with the provisions of article 147 of the aforementioned LOE, determines mine that the results of the final stage evaluations will be made known of the educational community, through common indicators for all educational centers Spanish, and that these common indicators will be established by the Ministry of Education, Culture and Sport. In the second section: “Context questionnaires”:

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1. The context questionnaires that will be applied in the final evaluation of Education

Primary there will be three: One aimed at students in the sixth year of Primary Education who carry out the evaluation (hereinafter, questionnaire for students), another addressed to their parents fathers, mothers and legal guardians (hereinafter, questionnaire for families), and a third party directed addressed to the management of the Primary Education teaching center (hereinafter, questionnaire for the direction).

2. The questions and answer options that must necessarily be included

included in each of the questionnaires defined in the previous section are those indicated in ANNEX ONE of this resolution

In no way is it indicated that the questionnaire must be nominative, or anonymous or the destination or treatment that is undertaken with said data. ANNEX ONE, questionnaire, does not request the inclusion of the student's name.

Articles 144 and 145 of the LOE state:

144

"1. The evaluation criteria corresponding to the individualized evaluations

indicated in articles 20.3, 21, 29 and 36 bis of this Organic Law will be common for the whole of the state.

Specifically, the tests and evaluation procedures indicated in the

Articles 29 and 36 bis will be designed by the Ministry of Education, Culture and Sports, through of the National Institute of Educational Evaluation. These tests will be standardized and shall be designed in such a way as to allow accurate assessments and comparisons as well as the monitoring of the evolution over time of the results

obtained.

The material realization of the tests corresponds to the Educational Administrations competent. The tests will be applied and graded by teachers of the System Educational Spanish external to the center.

Regulations will regulate the procedure for reviewing the results of the evaluations.

2. The educational administrations may establish other evaluations for the purpose of diagnosis."

145

"Evaluation of the centers".

"1. Educational Administrations may, within the framework of their powers, develop and carry out evaluation plans for educational centres, which will take into account the socioeconomic and cultural situations of the families and students they welcome, the environment of the center itself and the resources available to it.

2. Likewise, the educational Administrations will support and facilitate the self-assessment of educational centers."

LOE, twenty-third additional provision. Students personal data

"1. Educational centers may collect the personal data of their students that are

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necessary for the exercise of its educational function. These data may refer origin and family and social environment, personal characteristics or conditions, development and results of their schooling, as well as those other circumstances whose

knowledge is necessary for the education and guidance of students.

2. Parents or guardians and the students themselves must collaborate in obtaining the

information referred to in this article. The incorporation of a student to a

The teaching center will imply consent to the processing of your data and, where appropriate, the

transfer of data from the center in which he had been schooled with

previously, in the terms established in the legislation on data protection. In

In any case, the information referred to in this section will be strictly necessary.

for the teaching and guidance function, not being able to be treated for purposes other than the

education without express consent.

3. In the processing of student data, technical standards will be applied and

organizations that guarantee their security and confidentiality. The faculty and the rest of the

personnel who, in the exercise of their functions, access personal and family data or who

affect the honor and privacy of minors or their families will be subject to the duty of secrecy.

4. The transfer of data, including those of a reserved nature, necessary for the system

educational, it will be carried out preferably by telematic means and will be subject to the legislation in

matter of protection of personal data. In the case of the transfer of data between

Autonomous Communities or between them and the State, the minimum conditions will be

agreed by the Government with the Autonomous Communities, within the Conference

Education Sector.”

THE LOMCE reformulated the wording of article 147 of the LOE, indicating:

147:

"1. The Government, after consulting the Autonomous Communities, will present annually to the

Congress of Deputies a report on the main indicators of the system

Spanish educational, the results of the Spanish diagnostic evaluations or

and the recommendations made from them, as well as on the

highlights of the report on the education system prepared by the Council

State's scholar.

2. The results of the evaluations carried out by the educational administrations will be made known to the educational community through common indicators for all Spanish educational centers, without identification of personal data and previous consideration of the socioeconomic and sociocultural factors of the context.”

1) They have contacted the claimant by post to inform him of what manifested to the AEPD.

FOURTH: The claim was admitted for processing by the director of the AEPD on 06/11/2019.

FIFTH: On 12/20/2019, it was agreed by the director of the AEPD:

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“FIRST: START A SANCTIONING PROCEDURE of WARNING to the

GENERAL DIRECTORATE OF EDUCATION (DEPARTMENT OF EDUCATION, GOVERNMENT DE NAVARRA), for the alleged infringement of article 5.1 a) of the RGPD, in accordance with Article 83.5.a) of the RGPD.

SECOND: START SANCTIONING PROCEDURE of WARNING to the

GENERAL DIRECTORATE OF EDUCATION (DEPARTMENT OF EDUCATION, GOVERNMENT DE NAVARRA), for the alleged infringement of article 5.1 a) of the RGPD in relation to the article Article 9.1 of the same RGPD, in accordance with article 83.5.a) of the aforementioned RGPD.

THIRD: START SANCTIONING PROCEDURE of WARNING to the

GENERAL DIRECTORATE OF EDUCATION - DEPARTMENT OF EDUCATION, GOVERNMENT DE NAVARRA), for the alleged infringement of article 13 of the RGPD in accordance with art. Article 83.5 b) of the RGPD.

SIXTH: Against the initial agreement, the respondent dated 01/14/2020 makes the

following allegations:

1)

It agrees with the imputation of the infringement of article 5.1 a) of the RGPD and establishes as a proactive measure the revision, elimination and modification of any data identification of the CC made to the 4EP 2018/2019 course. In the event that it is decided to continue with the aforementioned evaluation, in this course and later it will be done anonymously, so that the GDPR is not applicable.

two)

The infringement of article 13 RGPD is assumed since when carrying out the CC, no information was conveniently informed about the processing of data and their rights to the parents and guardians of the students. Work is underway to establish a model clause. The Department of Education has published on the website a whole section dedicated to Data Protection. document in which the record of treatment activities is reported, documentation of interest and models for educational centers and managers and frequently asked questions about the treatment of data in the educational field.

3)

They do not agree with the commission of the infraction of article 5.1 a) in relation to 9.1 of the RGPD due to the inclusion in the CC of the variant "other options" in the question "sex", although the service in charge of the evaluation did not determine more specifically in the questionnaires to which he was referring when he established the "other options" box. The fact of including this option within the sex variable refers or is referring only to the gender identity of the students, and the Spanish Agency for Data Protection seems confuse it with orientation or sexual life, data that is specially protected by the European standard. Article 5 of the regional law 8/2017 of 06/19 for social equality of LGBTBI+ people in force at the time of completing the questionnaires collects it and

clearly differentiates “definitions for the purposes provided in this regional law are:

- LGBTBI+ lesbian, gay, bisexual, transsexual, transgender, intersex people

and other minorities based on sexual and/or gender identity, sexual orientation and/or expression of genre.

- sexual orientation orientation of sexual or affective erotic desire experienced by a person

sounds towards others sexual identity consciousness of belonging to a sex.

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- gender identity feeling of belonging to a human group defined around the

categories of man and woman, identifying with one of them (binary) both (non-binary)

rio) or none (to gender)”.

It ends by indicating that without prejudice to also anonymizing the CCs that are made,

From now on, this department understands that it did not violate article 9 of the regulation,

since it was only requesting gender identity of the students.

SEVENTH: On 03/04/2020 it was decided to start the period of practice tests

requesting:

1) To the Department of Education of the Government of Navarra (General Directorate of education):

1.1.1. Provision or rule of the Navarrese Government authorizing or permitting

resume the 4EP diagnostic evaluations from the 2016/2017 academic year.

On 06/02/2020, he replied that it is the resolution of the Director General of

Education 273/2016 approving the instructions that will regulate the course

16/17 the organization and operation of centers. In the fourth section, two, establish

the conditions under which the ED tests will be reapplied at the end of the 4EP. It indicates that they will carry out the diagnostic evaluation under the coordination of the evaluation section and quality. It will have external tests that will assess competencies and will be applied and corrected in schools. "This evaluation has a formative and orientation for the centers. The information obtained from this analysis will be relevant to adapt the educational attention to the needs detected. The centers will decide the moment and the of sending the reports to the families before the end of the school year, feeling It is advisable that it be carried out in the context of the tutorial action".

1.1.2

What is the distinction between census-type and sample-type evaluations?

It states that the census refers to the participation of the entire population under study, such as that of 4EP, sampled only from a certain set of the target population study.

1.1.3. You stated: "As of the 2016/2017 school year, it was agreed, pre-via authorization from the General Directorate of Education, that the online application of the socioeconomic and cultural tionary of the diagnostic and individualized evaluations of the Navarre educational system ceased to be anonymous and was accessed through a personal password. to guarantee the confidentiality of the data provided by the students in the answers answered"

In this regard, you are requested:

-It is understood that what is done online are both types of tests, the competency diagnostic tests, and context questionnaire? In this sense, it requests that Report on the need or obligation that both types of questions must identify the student, and the precept or norm from which said identity is deduced. typability.

Indicates that the DU is a tool to diagnose and identify the degree of acquisition

basic skills of all students in order to include improvements at the individual level.

dual and center. The need to generate reports for families in the field of action

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tutorial with the level of acquisition of assessed skills of each compulsory student

ga that the diagnostic evaluation tests are of a nominal nature and in Navarra the

Competency diagnostic tests have always been done manually on paper.

As for the CC, it had been done online since the 2011/2012 academic year and until the

2016/17 had always been answered anonymously

1.1.4. You are requested to report on the generation of the password keys and

user in the questionnaires, in the diagnosis and in the context, in addition, if the keys

username and password are the same as those of the second, if they are related or can be

relate both questionnaires as to their author.

Taking into account that only the context questionnaire was done online, it was answered

about what:

-During the 2018-19 academic year, credentials were generated that made it possible to identify the participating students.

-“The iidgnrpersona of EDUCA, the management information system

education of the Department of Education. The centers distributed the identifiers to the

male and female students, each one his own, and they completed the questionnaire. “

“Since the questionnaire did not allow access for a second time, the centers could not

They didn't know the answers entered.” “In the Department, not all the people who

had access to the answers to the questionnaire were able to identify the people who

introduced, but some did, specifically the managers of the unit responsible for responsible for the process, because they had the answers and also the list of identifiers and people.”

In EDUCA, the users and passwords of the questionnaires of the 2018-19 academic year and previous ones have been deleted (this is done every time the current school year ones are loaded). EDUCA only serves as a facilitation system for these credentials. Both the questionnaire as the response records are outside of EDUCA.

1.1.5. In "Actions Protocol" associated with the "Census Diagnostic Evaluation 4th EP course 2018-2019" published on the website of the Department of Education refers to Reference to the protocol for the online application of the socioeconomic and cultural questionnaire. On the same, which appears in point B of the index, page 3, it is indicated as more outstanding-do

For the best application of the questionnaire, the centers will follow the following instructions:
nes:

-it is indicated that 3: Each student will access the web application using a name of username (six numeric characters) and a personal password (four characters: two numbers, numbers and two letters). CAUTION! This password can be used only once...

Regarding the key generation system, they are asked for the generation mode of the user keys and password, for this CC data that must be filled in to obtain-the storage method, how long the questionnaires are kept, and what units, and people had access and why they could and had to access.

It is reported that measures have been taken since the 2019/2020 academic year, related to

The questions that are the subject of this practice test:

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The Instruction of the General Director of Education was issued, dated 01/23/2020, by which it is provided that the online questionnaire will be anonymous this academic year 2019-2020 and through a random key that will guarantee the confidentiality of the data provided by the student-do in the answers. In the copy of the same, signed on 01/23/2020, it also appears: "Once answered the questionnaire, no other user or teacher, or students, or director-prayer, or personnel of the education department will be able to know the identification data of each student". The directors of the centers will obtain through EDUCA the relationship names of usernames and passwords that will be awarded among the students in a manner was random."

All records, files, and backups in which they could be found have been destroyed.

Confidential data of students from previous courses would appear.

It also provides a pdf guide that appears on the web the one claimed on "diagnostic evaluation"

Census nostica fourth primary course 2019-2020, protocol of actions" It is indicated that de-

The questionnaire must be completed by all students in 4EP and who, in order to access di-

this application will use a random password user but only once, although usu-

rio- password will be obtained through the EDUCA application will be distributed randomly

tory to the students. There are also instructions for the assessment of competencies

which is done by hand on paper, in the form of booklets in which the answer is selected.

ta. It is indicated that a student report is generated and with the generic definition of the levels

competence levels the level reached in each evaluated competence direct score obtained

taken in each test and space for observations that can be completed by tu-

tor or tutor. As for the custody of the evidence, it is said that the notebooks are kept

Dian and keep until 11/30/2020.

1)

Educational Administrations:

To the Ministry of Education and Vocational Training - Evaluation Institute and the

2.1 About the ED questionnaire of the basic competences and the CC, please

that report:

2.1.1. On what courses are they compulsory?

Dated 03/12/2020, it indicates that Organic Law 8/2013 of 9/12 provides for three evaluations external education, in primary education: third and sixth grade (end of primary), and in secondary Daria, in fourth year (articles 20.3, 21 and 29).

It states that CCs are carried out in cases of:

a) Individualized evaluation of the third year of primary education, carried out se-

according to the educational administrations, being competent to regulate if

CC applied or not and what type.

b) It is carried out in the final evaluation of primary education, sixth grade, in accordance with

article 7.5 of RD 1058/2015 of 11/20 that regulates the general characteristics of the

tests of the final evaluation of primary education, it is indicated: "simultaneously with the

celebration of the final evaluation of the stage, context questionnaires will be applied that

the Ministry of Education, Culture and Sport will approve. These questionnaires were described in

the resolution of 4/12/2017 of the Secretary of State for Education, vocational training and

Universities. These evaluations have been carried out at the end of the 2015-2016 academic years, until

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2018-2019. The application of these evaluations is the responsibility of the Administrations

educational institutions, so it is up to them to comply with this regulation.

It refers to the appeal resolved by the Constitutional Court on various precepts of the Royal Decree 310/2016 of 07/29, by judgment 114/2019 of 10/16 which estimates partially a positive conflict of competences and declares the unconstitutionality and nullity of precepts of said Royal Decree related to the elaboration of the CC, which already It is not the responsibility of the Ministry of Education as it corresponds to the competences of execution of the CCAA (STCO 109/2019 FJ 9) because "it does not constitute an element direct configuration of the requirements for obtaining a degree academic.". Therefore, article 5.1 of said RD agrees that "as of the ruling, the information on the socioeconomic and cultural context conditions of the centers teachers will be obtained through the application of different context questionnaires", has not to be prepared by the National Institute of Educational Evaluation, of the Ministry of Education, Culture and Sport. The same sense of the content of this ruling is appreciated, referred to RD 1058/2015 that regulate the general characteristics of the tests of the final evaluation of Primary Education, is contained in the related sentence, of the Plenary of T Co, no. 109/2019 of 3/10.

2.1.2.

CC are also carried out in the final evaluation of Compulsory Secondary Education that It is regulated by the provisions of article 22 of Royal Decree Law 5/2016 of 9/12 of measures urgent for the extension of the calendar of implementation of the Organic Law 8/2013. These Questionnaires have been established by means of an annual ministerial order for the courses 2016, 2017, 2018.

Indicate if both questionnaires are developed in the same act.

They state that the CC can be addressed to students, their parents and guardians legal and addressed to the management of the primary education teaching center.

He adds that during the scheduled times for the application of the tests, a small period for the students to complete the CC and for their families to complete

the questionnaire at home.

2.1.3.

Inform if both questionnaires are nominative and can and should be identified.

can the student who completes it. Legal basis from which said identifiability is deduced

It states that both the evaluation tests and the CC "are carried out in an anomaly

nima". It is appreciated that this statement goes against what was also stated in tests

by the respondent who stated that the "diagnostic evaluation is of a nominal nature"

nally and in Navarra they have always been done manually on paper" although the questioned

could have understood the question about the different context questionnaires that exist.

have. Regarding the legal basis:

3rd EP

"It is the responsibility of the educational administrations. Within the scope of the Ministry of

Vocational education and training the instructions issued each school year re-

expressly allow the anonymous treatment of the evaluation data. "To guarantee the

anonymity of the responses to the family questionnaire will be distributed in envelopes that families

lias will be able to close once the completed questionnaires have been entered"

EP, final evaluation

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"Article 8.4 of Royal Decree 1058/2015 indicates that "the results of the evaluations

final stages will be made known to the educational community through in-

Common indicators for all Spanish educational centers without identification of data of

personal nature and prior consideration of the socioeconomic and cultural factors of

context.

It must be taken into account that since the entry into force of Royal Decree Law 5/2016 the evaluation is sample and has a diagnostic purpose, so the indicators are not common.

nes for all Spanish centers. According to article 3: “the provisions of the Royal Decree 1058/2015 of 11/20 will only be applicable what does not oppose this provision.

The competence for the material realization of the tests falls to the educational administrations.

catives. In the area of competence of the Ministry, the annual instructions include in

the following section: “Confidentiality. All participants in the evaluation process

will maintain the maximum confidentiality at all times regarding the content of the

tests and their results until they have been made public. In any case, the

Personal data derived from the application of the tests must be treated in accordance with

the provisions of current regulations. “

ESO final evaluation

Royal Decree 310/2016, of 07/29, which regulates the final evaluations of

Compulsory Secondary Education and Baccalaureate in its article 3.1 g) indicates that it corresponds

to the educational administrations the adoption of measures to guarantee the custody and

confidentiality of the tests as well as ensuring the anonymous nature of the data of the

students in the phase of correction and qualification of the tests”

article 5.3 “the context questionnaires will be anonymous in any case”.

2.1.4. Indicate whether that Institute develops uniform criteria related to the identification

capacity of the questionnaires/student.

It states that the Institute coordinates the performance of the evaluation in the area of com-

request of the Ministry. The identification of the students in these evaluations is carried out

by means of a unique numerical code that is assigned to the students prior to carrying out the

the evaluation. The Institute does not know the correspondence between codes and names, so

cannot identify students.

In 3rd year of EP, the only course in which the evaluation is individualized and a report is delivered of results to students, the identification is carried out in the educational centers themselves and in the Provincial Directorates of Education of Ceuta and Melilla or the Ministries of Education of the different countries. Since the evaluations of 6th of EP and 4th of ESO are not Individualized, the students are not identified at any time. The Institute shares with the Autonomous Communities the method used for the anonymization of the evaluations but it is up to them to implement this system or not.

2.1.5. As to whether that Institute is aware of the context questionnaires carried out by the different Autonomous Communities, and if it has to issue any type of report.

It states that it is not mandatory in relation to the evaluations of its competence.

2.1.6. About whether you have implemented in said questionnaires or has the issue of questions about gender identity?

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The website of the defendant is accessed at the address <https://www.educacio->

It states that the CC prepared by the Institute and those defined in the BOE for the 6th of EP and 4th of ESO that have been prescribed for all educational administrations up to ta the course 2019/2020 do not contain questions about gender identity, they only asked to the student body if it is a boy or a girl and to the families the questionnaires refer to their son or their daughter.

1)

n.navarra.es/web/dpto/evaluacion-y-calidad/evaluacion/evaluacion-externa/evaluacion-de-navarra/educacion-infantil-y-primaria-curso-2018-2019, entitled "Protocol of actions

CENSUS DIAGNOSTIC EVALUATION 4th year of Primary Education Academic year

2018-2019", in the file it appears incorporated with the name "webnavarra eva 4 instru" and

can be seen in the file that contains the publication of all the elements of the test

ba even the answers. Opens title check, math test, com-

petition, and it can be seen that on the front of the booklet there are spaces for the identification

cation of the student, center, classroom, date, location, referring to the ED as mentioned.

It is therefore accredited that the competency evaluation questionnaire that is developed in

the diagnostic assessment test must be nominative.

In the guide for the use of the EDUCA computer application it is indicated that in this

application you can perform tasks based on an assigned profile and by way of example,

generate a report for families in relation to the diagnostic evaluation, Identify the student

exempt party, mark observations, record responses, access the report of the results

global states of the center, and there are three profiles: director, tutor and managers-management team and

administrative staff.

EIGHTH: On 09/08/2020, a resolution proposal is issued, of the literal:

"1-That the Director of the Spanish Agency for Data Protection sanction

with a warning to the claimed, by:

- an infringement of article 5.1.a) of the RGPD, in accordance with article 83.5 a)

of the GDPR.

- an infringement of article 5.1.a) of the RGPD, in relation to article 9.1 of the

RGPD and 9.1 of the LOPDGDD, in accordance with article 83.5 a) of the RGPD.

-an infringement of article 13 of the RGPD, in accordance with article 83.5 b) of the

GDPR"

On 09/23/2020, allegations were received in which he reiterated what was stated.

PROVEN FACTS

1)

The claimant states that his son attends in 2018/2019, 4th year of primary school (9-10 years) in a concerted School of the CCAA of NAVARRA and has had to complete a nominative questionnaire that, among other extremes, contains questions such as gender: (boy/girl/other options), about the language they use outside of school, their feelings toward school, their relationships with their peers, or the profession of their parents.

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In the Spanish educational system of primary education, there are two modalities of two)

individualized diagnostic evaluation (ED) for all students.

Third year evaluation: the degree of mastery of the skills will be verified, skills and abilities in oral and written expression and comprehension, calculation and resolution from problems. If this evaluation is unfavorable, the teaching team must adopt, in collaboration with the families, the most appropriate ordinary or extraordinary measures setting and executing plans to improve individual or collective results that allow solve the difficulties.

Final evaluation of Primary Education, in the sixth year, in which the degree of acquisition of skills in linguistic communication and mathematics, and of the basic competences in science and technology, as well as the achievement of the objectives of the stage. The result of the evaluation will be expressed in the following levels: Insufficient (IN), Sufficient (SU), Good (BI), Notable (NT) or Outstanding (SB). The level obtained by each student is It will be recorded in a report that will be delivered to the parents or legal guardians. said report It will have an informative and guiding nature for the centers in which the students have

completed the sixth year of Primary Education and for those in which they are going to continue their studies, as well as for teaching teams, parents or legal guardians and students.

3)

Simultaneously with the conclusion of the final evaluation of the stage, context questionnaires (CC), complementary to the competency test, which

The Ministry of Education, Culture and Sport will elaborate (at the date of the claim).

These questionnaires allow obtaining information on the socioeconomic conditions and culture of the centers for the contextualization of the results obtained.

Royal Decree 1058/2015 of 11/20, which regulates the general characteristics of the tests of the final evaluation of primary education established in the LOE in its article 8.1 and 8.2 referred to the evaluations aimed at the sixth grade of primary school, carried out by the CC indicates that there would be three, one for the student, one for the families and one for the school. and that “the questions and response options that must necessarily be included in each of the questionnaires defined in the previous section are those indicated in ANNEX ONE of the resolution”

4)

The education regulations provide that the Autonomous Communities can carry out other evaluations for diagnostic purposes, in accordance with article 144 section 2 of Organic Law 2/2006, of 3/05, of Education, modified by the Organic Law 8/2013, of 9/12, for the Improvement of the Educational quality. In the C. A. of Navarra, this power is used and ED and CC are carried out for the fourth year of primary since the 2009/2010 academic year.

In the C. A. of Navarra, the EDs are carried out in nominative forms for each student, in paper format, (booklets in which the data is filled in by each student at perform them) including your personal data reflected in the test, considering that it has been to relate the degree of acquisition of skills and improvement of the student.

5)

In the CA. Navarra, during the seven school years between

2009/2010 and 2015/2016 (both inclusive), the CC forms for fourth grade

to which the students respond were made anonymously, without containing their data

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personal. As of the 2016/2017 school year, "it was agreed" to carry out the CC through a

application, online, ceasing to be anonymous, accessing through the pair (user-

password) that was assigned to the students. In the 18-19 academic year, the CCs became

during the month of February 2019 and the tests of the ED during the week of 6 to

05/10/2019.

The defendant had an action PROTOCOL associated with the evaluation

6)

census diagnosis of fourth grade of primary education for 2018/2019 published on its website

from 01/14/2019, in which it referred to both the ED and CC tests. at the point

5 of the INSTRUCTIONS for applying the questionnaire, it was indicated (for the questions

context investigations that were carried out online- the ED was done on paper, by hand- that the Directors

The directors and directors of the schools will obtain a list of usernames

river and passwords, as many as students enrolled, through the computer application

EDUCATE. In this list, the identification data of each student will also appear.

(course, group and full name). The directors and the directors will be able to access it after

from 01/28/2019. At the time of application, the director of the facilitating center

User names and passwords will be sent to each 4th grade PE tutor (as many as there are

students), for distribution among their students.

The development of the test is carried out using the center's computers, distributing each tutor to each student their user-password keys so that they can enter them in the application and fill out and submit the questionnaire. Before being sent, the application warns of the possible unanswered questions, being able to ignore said option and end the same mo by sending it like this, or fill in what's missing.

7)

The personal data of the students collected in the CC forms were stored in databases of the claimed party that were kept in the Department of Education server network drives, accessible from inside of the Department itself, and on the computer equipment by username and password.

In the CC form associated with the ED, for the 2018-2019 fourth grade year,

8)

contains "Questions and answer options that must be included in the given in each of the questionnaires", "QUESTIONNAIRE FOR STUDENTS" appears the heading with instructions, informing you that you have to "answer several questions about Open yourself and your family". All questions are answered by ticking boxes in the answers. positions that are offered headed by "sex", options: a-boy, b-girl, c-other "In pro-Medium How often have you been absent from class this year in an unjustified way? Many days a week do you spend doing homework? options, linguistic model in which you study, with references between the answers to options, in Spanish, B, in Basque with the Spanish level as a subject and some other subject in Spanish, the language in which he watches television, or read books or use video games, social networks, talk to teachers in the classroom and go-ra, what language do you use preferably (distinguishing) with friends in the street, in the patio from school or at home with the family, in which continent were you, your mother, your father born? Educational level of the parents, their employment situation, current job of your parents, with trades

and example jobs such as "Watchman" "field worker", "doctor", "architect
"upper scale military", or "middle scale", if they have their own individual room,
how is the relationship with classmates about whether they feel alone, marginalized.

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The context questionnaire must not contain the identification data of the student who completes it.

liza This is derived by analog application of what is foreseen for these CC in the RD that refers
the CC for the compulsory tests of the sixth grade of primary school

Completing the CC form is mandatory for each fourth-year student.

9)

primary, although questions can be left unanswered, it can even be sent with
all your unanswered questions.

10)

According to the respondent, the legal authorization of data processing for the CC

is the fulfillment of a legal obligation derived from LO 2/2006, LOE, with the

modifications of LO 8/2012 LOMCE, although no regulation contains that the CC

must contain student identification data. The aforementioned regulations for education

Primary education is made up of Organic Law 2/2006, of 3/05, on Education, modified by the Law

Organic 8/2013, of 9/12, for the Improvement of Educational Quality, which provides in its article

21 carrying out an individualized evaluation of all students at the end of the sixth

Primary Education course. Royal Decree 1058/2015, of 11/20, regulates the

general characteristics of the tests of the final evaluation of Primary Education,

eleven)

About the question in the CC of, sex of the student who fills out the questionnaire, with three answer options, boy-girl, other options, was introduced unilaterally by that claimed in application of article 19.a) of Provincial Law 17/2019, of 4/04, on equality between men and women, which points out that "in statistics and studies, the Administrations Public Administrations of Navarre, to guarantee the efficiency in the incorporation of the perspective of gender in their ordinary activity, they must systematically include the gender variable, managing the different categories, in all statistics, surveys and data collection that they carry out". As determined by the regulations applicable to the CC, the questions of said questionnaire was prepared by the Ministry of education, which did not introduce an alone on the matter. If it was pointed out that educational administrations could introduce new questions, but do not expand on them.

12)

With the EDUCA application in which the data is stored, information can be prepared month and access the questionnaires, see the answers, the questions left blank, and the score. The "corrected booklets", alluding to the ED, are kept in the school center until 11/30/2019. Families are given a "student report in the month of June"

13)

At least in the CC, there was no reference to the collection, conservation, fi-terms of the treatment to which the personal data is intended, legal basis or exercise of rights guys. It is unknown if the same thing happened in the competency diagnostic questionnaire (ED) which has not been the object of the complaint, although the interdependence between both boo.

14)

In the course of this proceeding, the respondent has stated that:

-It has added explicit references to the basic information on data protection in

the protocol of actions sent to schools and published on the website of the De-

Department of Education.

-Implements the information on the ED and CC that will be delivered to the families, in addition to be exposed on the Ministry's website.

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-The information aspects of data collection and processing will be provided when the data is requested in the online application itself.

-Provides for a data retention period of three school years after the course in which they are collected.

- In EDUCA, the users and passwords of the course questionnaires have been eliminated. so 2018-19 and earlier (this is done every time the current school year is loaded) and in evidence he stated that he had destroyed all the records, files and backup copies in which data of students from previous courses could appear.

-The Instruction of the General Director of Education was issued, dated 01/23/2020, by which it is provided that the online CC will be anonymous this academic year 2019-2020 and through a password random.

-The protocol of actions for the questionnaires of the 2019-2010 academic year has been changed of fourth of primary that appear published in the web.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the

Spanish Agency for Data Protection is competent to resolve this procedure.

II

As a starting point, it should be noted that the twenty-third additional provision of Organic Law 2/2006, of 3/05, on Education, generally establishes the principles basic in relation to the processing and communication of personal data within of its scope of application, by providing the following:

"1. Educational centers may collect the personal data of their students who are necessary for the exercise of its educational function. These data may reference to origin and family and social environment, to characteristics or conditions personal, to the development and results of their schooling, as well as to those other circumstances knowledge of which is necessary for the education and guidance of the students.

2. Parents or guardians and the students themselves must collaborate in obtaining the information referred to in this article. The incorporation of a student to a teaching center will imply consent to the processing of your data and, where appropriate, the transfer of data from the center in which it would have been schooled previously, in the terms established in the legislation on Data Protection. In any case, the information referred to in this section will be strictly necessary for the teaching and guidance function, not being able to processed for purposes other than educational purposes without express consent.

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3. In the processing of student data, technical and administrative standards will be applied.

organizations that guarantee their security and confidentiality. The faculty and the other personnel who, in the exercise of their functions, access personal data and family or that affect the honor and privacy of minors or their families will be subject to the duty of secrecy.

4. The transfer of data, including those of a reserved nature, necessary for the educational system, it will preferably be carried out electronically and will be subject to the legislation on the protection of personal data, and the minimum conditions will be agreed by the Government with the Communities Autonomous within the Sectoral Conference on Education.”

In this claim, the issue at hand is the competence of the evaluation of the quality of teaching through questionnaires, in this specific case, not in the te of the evaluation of acquired knowledge, but in that of socioeconomic factors and cultural related to the homes, the environment and the means where the pupil. Thus, for example, the Socioeconomic and Cultural Index (ISEC), which is also included among others, in the PISA tests, it is calculated from some of the answers of the students and their families in the context questionnaires, which summarize diverse in-training on the social and family context of the students and is elaborated from data such as the educational level of the father, the mother, their professions, or level of domestic resources. mésticos such as computer desk table for personal use, etc.

On whether for the 2018/2019 academic year the current regulations required the course to be carried out fourth grade of primary education, some type of context evaluation, and if it was forced, if this must be anonymous or identifying, it should be noted:

Even with the modification of the LOE by the LOMCE (2013), it is not appreciated that there is a reference to the obligation to carry out any evaluation of 4EP students. an-prior to said modification, article 21 of the LOE did not indicate the obligation or its census character, indicating: “At the end of the second cycle of primary education, all

centers will carry out a diagnostic assessment of the basic skills achieved

for his students. This evaluation, competence of the educational Administrations, will have

formative and guiding character for the centers and informative for the families and for the con-

together with the educational community. These evaluations will have as a frame of reference the

general diagnostic evaluations established in article 144.1 of this Law”

Article 20.3 of the LOMCE states:

“The teaching centers will carry out an individualized evaluation of all students.

boys and girls at the end of the third year of Primary Education, according to the Administration

educational administrations, in which the degree of mastery of the skills,

skills and abilities in oral and written expression and comprehension, calculation and resolution of

problems in relation to the degree of acquisition of competence in linguistic communication

gistics and mathematical competence. If this evaluation is unfavorable, the balance

The teaching staff must adopt the most appropriate ordinary or extraordinary measures

Since 12/30/2013 the diagnostic evaluation is about the teaching of sixth grade.

primary school, inferring that it will not be anonymous since article 21.3 indicates that the result

tado will also be given to parents.

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The claimant indicates that with the entry into force of the LOMCE, the individual evaluation

4EP census was maintained for those in 3rd grade and 6th grade, and that voluntarily

by virtue of article 144.2 of the LOMCE in Navarra, the history of evalua-

4EP census diagnostic tions from 2016-2017.

The result is that there is no obligation derived from law, which expressly establishes

performing 4EP evaluation of any kind, nor specifically, evaluation of context, although article 144.2 of the LOE states: "Educational Administrations may establish other evaluations for diagnostic purposes." to which the claimed

Taking as an example of context evaluation, the end of primary school, it is pointed out in Royal Decree 1058/2015, in its article 7.5, which simultaneously with the celebration of the final evaluation of the stage, context questionnaires prepared by the Ministry of Education Culture and Sports. These questionnaires will allow information on the socio-economic and cultural conditions of the centers for the contextualization of the results obtained. Also in its article 8.1, and "giving compliance with article 147 of the LOE, the results of the final stage evaluations will be made known to the educational community through common indicators for all Spanish educational centers, and that these common indicators will be established by the Ministry of Education, Culture and Sport."

On whether the applicable regulations establish that the data from the background questionnaire must be anonymous or establishes their nominative character, the resolution of 03/30/2016, of the Secretary of State for Education, Vocational Training and Universities, by which define the context questionnaires and the common school indicators for the final evaluation of primary education determines in its article 7.5 that «in a Simultaneous to the celebration of the final evaluation of the stage, questionnaires will be applied context, which will be prepared by the Ministry of Education, Culture and Sport. These questionnaires will allow obtaining information on the socioeconomic and cultural conditions of the centers for the contextualization of the results obtained. Indicated as highlighted:

Second article: Context questionnaires.

"1. The context questionnaires that will be applied in the final evaluation of Educa-

There will be three Primary Education: One aimed at students in the sixth year of Primary Education

that carry out the evaluation (hereinafter, questionnaire for students), another addressed to their fathers, mothers and legal guardians (hereinafter, questionnaire for families), and a third party addressed to the management of the Primary Education teaching center (hereinafter, questionnaire for address).

2. The questions and the answer options that must necessarily be included in each of the questionnaires defined in the previous section are those indicated in ANNEX I of this resolution

3. Educational administrations may:

a) Apply questionnaires aimed at other groups, in addition to those indicated in the article the second, section 1, of this resolution.

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b) Include other questions in each questionnaire in addition to those referenced in the article. the second of this resolution. However, you will not be able to add answer options other than the questions that appear in ANNEX ONE of this resolution.

c) Apply the different questionnaires in the format that is considered most appropriate (paper or digital).

d) Define the time and place to fill in the different questionnaires.

e) Layout the questionnaires according to your needs and alter the order of the questions.

This includes the possibility of jointly layout the questionnaire for the

students and the questionnaire for families, provided that it is clearly indicated who

You must complete each part.

It is indicated in the third point, that "The National Institute of Educational Evaluation facilitates

The educational administrations will publish a code book with the necessary instructions and mandatory for the correct recording of the data and the subsequent elaboration of common indicators.

This resolution of the Secretary of State has been modified by another resolution of 12/4/2017, BOE of 12/27, which varies a question of this ANNEX ONE.

Regarding data protection, no aspect is included in the resolution or in the one that modifies it.

The aforementioned ANNEX ONE collects the questions and the answer options that must be included in each of the questionnaires, indicating and differentiating emphasizing that of students, which parents or guardians have to fill in. The questionnaire of students begins with the question are you a boy or a girl, with only two options in response. set, and contains questions such as how often do you use a computer or tablet for school work at each of the following places, how many days a week do-

You say to do homework. It contains a block total of 11 questions, ending with "In general, to what extent do you agree with these statements about your teachers and teachers? A) I know what they expect me to do... It is not indicated in any section that the question context tionary must be nominative or have or can identify the student in- therefore, the identity of the students who complete the questionnaire does not appear as necessary in any norm, nor is it justified in relation to the purpose of the data. cough to which they are destined

The questionnaire for families begins with questions such as in which country were they born? Do you and your daughter or son indicate the frequency with which you use the family home? following resources..., with four response options, number of people who they see at home, degree of satisfaction with the following aspects related to the School... in Regarding the teaching staff, tutors, or the question of would you recommend this center, how many days a week your daughter or son does homework including studying how often you

or another person in the house talk about the following with your son daughter... you also wonder the highest level of education that the mother or father has completed, or the category that best describes the employment status of the mother and father.

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In the context test made by the claimed 4 EP, for the student there are

17 questions, some different from ANNEX ONE, in addition to the aforementioned boy/girl, related to the use of the language, and includes those that in ANNEX ONE refer to questionnaire for families, such as those referring to parents, employment status of parents, their level of education and the type of work they do.

The issue must be linked, in addition to current regulations, to the nature of context assessments that are carried out in conjunction with assessments of official diagnosis, and with the purpose of the data extracted from said evaluation of context.

The result is that there is no obligation derived from law, which expressly establishes performing 4EP evaluation of any kind, nor specifically, evaluation of context, although article 144.2 of the LOE states: "Educational Administrations may establish other evaluations for diagnostic purposes." to which the claimed.

The conclusion is reached that the online context questionnaire for

4EP students contains personal data, it is not anonymous, it is not justified because

It must not be anonymous, having been so in the past, and it does not have a disclosure clause.

data Collect.

While the ED competency questionnaire is nominative, it contains the data personal data, and it is deduced from the regulatory regulations that said identification must contain tion, however, such nature is not apparent from the CC, which are also completed in different moments. Nor does it follow from its purpose, that it must be nominative when, they were anonymous, those carried out before the one carried out in the 2018-2019.

However, the one for the 2018-19 academic year that is the subject of a claim, the CC was nominated vo, assigning the access and user codes by the implanted system itself. It is not indicated Does it not appear in any section of the current regulations that the CC must be nominative or have or the student surveyed must be identified, thus, the identity of the students who meet fill out the questionnaire does not appear as necessary in any regulation, nor is it justified in relation to the purpose for which the data is intended, being possible to obtain the same fi- without processing the personal data of the students, that is, without filling in the names name and surname the questionnaire.

III

The defendant collected information associated with some data and saved it in her systems for the realization of indicators, which according to the precedents do not specify san of the author identification of the questionnaire. Having collected and processed said data involves processing specific personal data that is not necessary aries in terms of the record of identifying personal data, and therefore ex- tricks of the legality in terms of data protection, which does have the ED test.

As an example, it should be noted that the statistical analyzes of the center group or at the national level nal are not to be correlated with the identified or identifiable author of the questionnaire.

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Regarding the statement of the claimed that "although the survey is not anonymous, the personal data of the same are pseudonymized, that is, they cannot be attributed to an interested party without using additional information", the aforementioned Regulation extends its protection, as established in its article 1.2, to the rights and freedoms rights of natural persons and, in particular, their right to the protection of personal data, defined in its article 4.1 as "all information about a person identified or identifiable physical ("the interested party"); shall be considered an identifiable natural person any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number, data of location, an online identifier or one or more elements of the identity physical, physiological, genetic, psychic, economic, cultural or social of said person."

For this reason, the respondent is imputed, in general, above all the questionnaire of context of the 2018-2019 academic year carried out with personal data of 4EP students, the commission of the infringement of article 5.1.a) of the RGPD, which indicates:

"Personal data will be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency");"

The infraction connects with the assumptions in which the various bases are determined legitimate are contained in article 6 of the RGPD which is entitled "Legality of the treatment", and that indicates:

1. The processing will only be lawful if at least one of the following conditions is met: nes:", mentioning those that serve that purpose.

In this case, there is no need for such questionnaires to be associated to the student who completes them, which must be nominative, and the rule does not indicate that it affects

to the student or must contain their data. This reaches the entire questionnaire in general, proving that there is no legitimate basis for the treatment carried out.

As a general applicable rule, data should only be collected for specific purposes.

cos, and legitimate and explicit purposes. This prerequisite involves analyzing whether the personal data purposes that are intended are actually necessary and have reason to be for the treatment pursued, in this case the elaboration and assessment of the CC The specification of the purpose of data processing analyzed the current regulations and purposes of the treatment of the CC does not result in personal data having to be used to fulfill the purpose for which appears designated in the LOE and concordant regulations.

If the purposes of processing the questionnaires can be achieved without processing to collect personal data, the treatment carried out with said data, in addition to being demonstrated not If necessary, it follows that it does not have a specific legitimate basis, considering that the processing of personal data has an impact on the fundamental rights of the student, in terms of personal data and privacy. So if the same purpose can be achieved without processing the data, if it is not derived from the current regulations to be processed, no There is a legal basis for processing them.

To treat in the same questionnaire, the data of "sex": with the options "boy",

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"girl", and "other options" the infringement of article 5.1.a) of the RGPD is imputed, considering data of a special category because it is related to the "data related to sexual life or sexual orientation of a natural person", which has no basis

legal to be treated as it has been in the CC questionnaire, when introducing in the

question: gender: boy, girl, a third with the selection of "other options".

The respondent does not detail what this option refers to, which is intended to

questionnaires of socioeconomic type that accompanies the test of evaluation of

diagnosis where knowledge and skills are valued. ED tests are

nominate, those of the CC of the year 2018-2019 that are denounced were also, without

parents were not informed of the data processing, nor were the questionnaires containing the

informative clauses that must contain the aspects and purposes of the data for the purposes of

information and exercise of rights.

These articles point out:

5 "1. The personal data will be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency");"

9. 1. The processing of personal data that reveals ethnic origin is prohibited

or racial background, political opinions, religious or philosophical convictions, or affiliation

union, and the processing of genetic data, biometric data aimed at identifying

unambiguously to a natural person, data relating to health or data relating to life

sexual orientation or sexual orientation of a natural person.

9.2. Section 1 shall not apply when one of the circumstances

following:

a) the interested party gave their explicit consent for the processing of said data

for one or more of the specified purposes, except when the Law of the

Union or of the Member States establishes that the prohibition mentioned in the

section 1 cannot be lifted by the interested party;"

Adding article 9.1 of the LOPDGDD "For the purposes of article 9.2.a) of the

Regulation (EU) 2016/679, in order to avoid discriminatory situations, the only

The consent of the affected party will not be enough to lift the prohibition of data processing.

whose main purpose is to identify their ideology, union affiliation, religion, orientation sexual orientation, beliefs, or racial or ethnic origin.”

It is recalled that the option present in the context questionnaire was "sex", in addition from the boy-girl, "other options". This is a question included in ANNEX ONE of the Royal Decree 1058/2015 and in the resolution of 03/30/2016, remembering that the possibility of the Autonomous Communities to "Include other questions in each questionnaire in addition to the re-differentiated in the second article of this resolution. However, you cannot add options different response tions to the questions that appear in ANNEX ONE of the pre-feel resolution. There is the possibility of introducing new ones. This regulation provides for ANNEX ONE: "Questions and answer options that must be included in the in each of the questionnaires“.” The questions and the answer options that require

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They must necessarily be included in each of the questionnaires defined in the epigra-previous faith are those indicated in ANNEX I of this resolution”

In the first place, the questionnaire model created by the respondent is out of the established by regulation by the model of ANNEX ONE of the resolution of 03/30/2016 that does not include said term.

It is observed that within sex the given option of "other options" is not related.

nes”, since it does not correspond to the biologically determined sex of the student, but that would be embedded in the issue of gender identity that is introduced without explanation in the questionnaire.

Gender refers to the social and cultural construction that defines the different characteristics emotional, affective, intellectual characteristics, as well as the behaviors that each society assigns men or women as proper and natural, but there may be personalities women who do not identify with these characteristics of men and women and thus, apart from the masculine and feminine there would be other genders: trans, intersex, non-binary gender, pangender, etc. In this way, there are as many genders as there are identities, and therefore as many identities of gender as people.

On the specific term "gender identity", the RGPD makes no allusion.

On the other hand, "sexual orientation" is the affective, romantic, sexual and psychological attraction psychological that the person feels sustained over time. (Wikipedia) and that is how describes other than gender identity.

The Universal Declaration of Human Rights, the International Covenant on Human Rights Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights include in their guarantees on non-discrimination, lists of prohibited grounds of discrimination. These lists do not explicitly mention sexual orientation or identity of gender, but conclude with the expressions "any other condition" or "any other social conditions". The use of those expressions shows that the intention was that those lists were open and illustrative; in other words, the grounds of discrimination are not closed.

It is clear and corroborated that sexual orientation and gender identity are two as-different specs. In its jurisprudence, general observations and concluding observations, the United Nations treaty bodies have consistently upheld that sexual orientation and gender identity are prohibited grounds of discrimination under international law. In addition, procedures have long of the Human Rights Council have recognized the discrimination that exists due to sexual orientation and gender identity.

In the same sense, various mechanisms for the protection of Human Rights at the international level, such as the Committees, have affirmed that States have the obligation to protect people from discrimination because of their sexual orientation. This position is reflected in decisions of the Human Rights Committee – (Toonen v. Australia 1994) and in general comments of the Economic Rights Committee, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee Against Torture, the Co-committee for the elimination of discrimination against women. For example in your observation In general, the Committee on Economic, Social and Cultural Rights points out that the Member States

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they must make sure that a person's sexual preferences do not constitute a obstacle to realizing the rights recognized by the pact. gender identity it is also recognized as a prohibited ground of discrimination. The Rights Committee of the Child has interpreted that the right to non-discrimination of article 2 of the Convention tion on the Rights of the Child includes sexual orientation and gender identity.

The CC that was made in February 2019, according to the respondent, is about complying with the mandate contained in legal precepts to guarantee the effective integration of the gender perspective in the ordinary activity of public authorities "including systematically the variable of sex in the statistics, surveys and data collection that carry out", an action that is indicated in article 19 of Law 17/2019 of 4/04 of equal-relationship between men and women that indicates:

The Public Administrations of Navarra, in order to guarantee efficiency in the incorporation tion of the gender perspective in their ordinary activity, they must:

a) Systematically include the gender variable, collecting the different categories, in

all the statistics, surveys and data collection they carry out.

b) Establish new gender indicators that enable greater knowledge of

differences in values, roles, situations, conditions, aspirations and

the needs of women and men, and their manifestation and interaction in the reality that

must be analyzed, and include them in the statistical operations.

c) Carry out sufficiently large samples so that the various variables

included can be analyzed according to the gender variable, and treat the available data

so that the different situations and needs of women and

men in the various spheres of action.”

As can be seen, the aforementioned reference regulation that is based on the ANNEX

ONE, refers exclusively to the variable "sex" differentiating exclusively between

boy-girl

The introduction of said gender identity, identifying its owner, would have to

be carried out in any case, when there is a relationship between what is asked, with some purpose that

you want to obtain for which the data should be processed, without it being a matter of collecting data by

have them, without a specific purpose, and in this case, the survey was socioeconomic and

family, without any aspect of the assessments referring to the gender issue, or

studies or analyzes that aspect, so it makes no sense to establish a single question of

that scope, without connection with the rest of the issues. In this sense, it is not appreciated

need in the treatment of that option when carrying out the questionnaire.

Likewise, for statistical purposes, the Spanish regulations maintain, as does the

majority of European countries, the binary model of sex: man and woman, which appears

normative level in article 170 of the Decree of 11/14/1958 approving the

Regulation of the Civil Registry Law. In this case, in addition, the possibility of introducing

in the questionnaires the variable “other options” in “sex” does not correspond to this

notion and lacks in our legal system the necessary legal basis.

In the opinion of the Agency, the exception provided for in letter j), as the treatment necessary for statistical purposes, it is not applicable, since it requires that it be

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provided for in the Law of the Union or of the Member States, which must be proportional to the objective pursued, respect essentially the right to data protection and establish adequate and specific measures to protect the interests and fundamental rights of the interested party, and the aforementioned regulations only contemplate the variable “sex”.

In any case, here is a questionnaire in which the student, although not mentioning his sexual orientation, it can be deduced that he does not feel like a boy or a girl, if he marks other options, an issue that can be considered related to sexual orientation, which is usually develops in the rules in a unitary way, and basically, to an issue that could be related to expressing their beliefs, since gender identity is a question internal to each, as derived from the definition made by the Inter-American Committee

Human Rights in compliance with resolution AG/RES. 2653 (XLI-O/11) :

Human Rights, Sexual Orientation and Gender Identity, 04/23/2012 that defines it

What:

“Gender identity is the internal and individual experience of gender as each person experiences it deeply, which may or may not correspond to assigned sex.

born at the time of birth, including the personal experience of the body (which could include involve the modification of bodily appearance or function through medical techniques, surgical or of another nature, provided that it is freely chosen) and other expressions

gender biases, including dress, speech, and mannerisms.”

That is to say, he is questioning his felt sex, with which he identifies, if he co-affects the one assigned at birth: woman or man, or “others”, when their felt sex, with the that is identified, does not coincide with the one assigned at birth, that is out of character and purpose of the educational context questionnaire because it is not oriented in that sense and it should not be compel minors or any other person to manifest or declare about their beliefs personal and intimate relations. Said prohibition finds its justification, as points out the transcribed precept, in avoiding discriminatory situations, such as those that could occur when there is a public registry that records the sexual orientation of the people or collection of the gender identity of various groups without a purpose determined or without legitimate basis, or beliefs.

In accordance with the aforementioned precept, the general rule is the prohibition of treatment of said data, unless any of the exceptions established in its paragraph 2.

The contribution of the information of the questionnaire was obligatory, not being it to answer to all questions. In any case, it should be clearly reported. thus indicating it in the data collection systems.

The infringement of article 5.1.a) of the RGPD in relation to 9.1 of the RGPD and 9.1 of the LOPDGDD.

Regarding the questionnaire, there is no informative clause on the protection of data.

v

No information has been contained or given to students, parents/parents on the completion of said questionnaire.

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Considering the previous declaration of infringement of article 5.1. a) of the RGD based given in the absence of a legitimizing basis for the treatment of the CC of the 4EP students, and to effects of analyzing the behavior of the defendant that, in this case, data were collected personal data of all the students of the course.

As soon as personal data is collected, it means that it was not contained in the same information on the purpose, legitimate basis and exercise of rights of the students us, since it did not appear in the questionnaire, and it is not confirmed that the information was given a, parents/guardians about the completion of said questionnaire.

In this case, it was possible to know to whom each of the questionnaires corresponded by have associated user data and password, identifiable since they were assigned by center directors.

The information on the collection and the transparency in said collection and treatment is a principle established by the RGD in articles 12 and 13. These elements, by themselves are not sufficient to legitimize the processing of personal data, but they are a strict condition essential to guarantee the legality of the treatment.

To be valid, the treatment must meet both extremes, be lawful, loyal and transparent. supported on a legitimate basis and also be informed at the time it is re- they take the data from the extremes indicated in articles 12 and 13 of the RGD. Also the violations of these principles are independent.

The claimed party does not comply with the provisions of article 13 of the RGD that indicates the Informa- Information that must be provided when the personal data is obtained from the interested party:

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide you with all the

information listed below:

- a) the identity and contact details of the person in charge and, where appropriate, of his representative;
- b) the contact details of the data protection delegate, if any;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment.

treatment;

- d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests

of the person in charge or of a third party;

- e) the recipients or categories of recipients of the personal data, if any;

- f) where appropriate, the intention of the controller to transfer personal data to a third country or

international organization and the existence or absence of a decision on the adequacy of the

Commission, or, in the case of transfers indicated in articles 46 or 47 or article

49, section 1, second paragraph, reference to the adequate or appropriate guarantees and the

means to obtain a copy of them or to the fact that they have been loaned.

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2. In addition to the information mentioned in section 1, the data controller

will provide the interested party, at the time the personal data is obtained, the following

information necessary to guarantee fair and transparent data processing:

- a) the period during which the personal data will be kept or, when this is not possible,

the criteria used to determine this term;

- b) the existence of the right to request access to the data from the data controller

related to the interested party, and its rectification or deletion, or the limitation of its

treatment, or to oppose the treatment, as well as the right to data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent at any time, without affecting the legality of the treatment based on prior consent upon his withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a requirement necessary to sign a contract, and if the interested party is obliged to provide the data personal and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, to which refers to article 22, sections 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and the foreseen consequences of said treatment for the interested party.

3. When the data controller plans further data processing

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information about that other purpose and any additional relevant information pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and to the extent that the interested party already has the information.”

In the context of information provided to children or their legal representatives

We must especially insist on the use of brief notices with sensuous language.

Simple, concise and didactic, easy to understand. A short-term notice will contain the information basic training that will be communicated when collecting personal data directly from the interested party or third parties (articles 10 and 11). This notice shall be accompanied by a more extensive notice. In addition, perhaps a hyperlink, which will contain all the relevant details. The information will (always) be communicated to legal representatives and children who have the capacity required

SAW

Article 83.5 a and b of the RGPD, considers that the infringement of "the principles basic for the treatment, including the conditions for the consent in accordance with the articles 5, 6, 7 and 9" and "the rights of the interested parties under articles 12 to 22; is punishable, in accordance with section 5 of the aforementioned article 83 of the aforementioned Regulation, with administrative fines of a maximum of €20,000,000 or, in the case of

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a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, opting for the highest amount."

In addition, article 83.7 of the RGPD indicates:

"Without prejudice to the corrective powers of the control authorities under the Article 58(2), each Member State may lay down rules on whether it can, and to what extent, impose administrative fines on state authorities and public bodies established in that Member State.

The Spanish legal system has chosen not to sanction with a fine those public entities, as indicated in article 77.1. c) and 2. 4. 5. and 6. of the LOPDDGG:

"1. The regime established in this article will be applicable to the treatments of which are responsible or in charge:

c) The General Administration of the State, the Administrations of the communities autonomous and the entities that make up the Local Administration.

2. When those responsible or in charge listed in section 1 committed

any of the infractions referred to in articles 72 to 74 of this organic law, the

competent data protection authority will issue a resolution sanctioning the same with warning. The resolution will also establish the measures that appropriate to adopt so that the conduct ceases or the effects of the infraction are corrected. would have committed

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which depends hierarchically, where appropriate, and those affected who had the status of interested, if any.

4. The data protection authority must be notified of the resolutions that fall in relation to the measures and actions referred to in the sections previous.

5. They will be communicated to the Ombudsman or, where appropriate, to the analogous institutions of the autonomous communities the actions carried out and the resolutions issued to the protection of this article.

6. When the competent authority is the Spanish Agency for Data Protection, this will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the responsible or in charge of the treatment that had committed the infraction."

Article 58.2 of the RGPD indicates: "Each control authority will have all the following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with a warning when the processing operations have violated the provisions of this Regulation-mint;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a specified manner and within a specified time.

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Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE THE DEPARTMENT OF EDUCATION OF THE GOVERNMENT OF NAVARRA, with NIF S3100007H:

A sanction of warning for an infringement of article 5.1.a) of the RGPD, of

-

in accordance with article 83.5 a) of the RGPD.

-

A sanction of warning for an infringement of article 5.1.a) of the RGPD, in relation to article 9.1 of the RGPD and 9.1 of the LOPDGDD, in accordance with article 83.5 a) of the GDPR.

A sanction of a warning for an infringement of article 13 of the RGPD,

-

in accordance with article 83.5 b) of the RGPD.

SECOND: NOTIFY this resolution to the DEPARTMENT OF EDUCATION OF THE GOVERNMENT OF NAVARRE.

THIRD

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the OMBUDSMAN, of

FOURTH: In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of one month from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, with in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of 13/07, regulating the Contentious-administrative Jurisdiction, in the period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the interested party states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the remaining records provided for in art. 16.4 of the aforementioned LPACAP. You will also need to transfer the Agency the documentation that proves the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution, would terminate the precautionary suspension.

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