 File No.: PS/00412/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

to the following

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 06/02/2020 filed

claim before the Spanish Data Protection Agency. The claim is

directed against the MINISTRY OF EDUCATION AND YOUTH of the Community of

Madrid, with NIF S7800001E (hereinafter, the claimed one). The reasons on which the

claim are, in short: the claimant, a professor at ***CENTRO.1, given his

condition of population at risk, conducts evaluation sessions telematically;

in the instructions that they sent to the teaching staff, prior to carrying out the

sessions scheduled for 06/03 and 04/2020, they informed the educators that the

they would be recorded; the claimant, taking into account that a record is already prepared

officer, considers that the recordings should not be made without first obtaining

the consent of those affected, especially when the official minutes do not include the

previous deliberations but the decision of the organ. At the same time, it indicates that it sent a

email stating that these recordings could not be made and you have not

received any response. It ends by requesting that this practice cease and that

Delete the records of the video conferences.

Provides the instructions sent by the ***CENTER.1 before carrying out the

evaluation sessions, in which it is warned about recording them

(“All sessions will be recorded in order to collect a record and avoid confusion

in pedagogical decision making.

SECOND: On 06/15/2020, the claim was transferred to the entity

claimed, in accordance with the provisions of article 65.4 of the Organic Law

3/2018, of December 5, on the Protection of Personal Data and guarantee of the

digital rights (hereinafter, LOPDGDD), in order to proceed to its analysis,

notify the claimant of the decision adopted and provide this Agency

information about it.

On 07/15/2020, the respondent responded to the aforementioned transfer through her

“Data Protection Delegation”:

. Accompanying a letter from the General Directorate of Secondary Education, Training

Professional and Special Regime, in which it is stated that the action object of the

claim is in accordance with the personal data protection regulations, as

“all the members of the collegiate bodies of the center were informed about the

recording of the sessions” and “the privacy of the data has not been violated or

any other right of the interested parties.

Likewise, the aforementioned General Directorate points out, the management of the center introduced in the

agenda of the Senate and the School Council of the day 06/30/2020 the vote of the

recording system of the sessions of all the collegiate bodies of the center,

adopting unanimously that the meetings may be recorded informing

prior to this act, without the decision to do so being taken at the beginning of the

themselves.

. On the other hand, it provides various documentation provided by the ***CENTER.1, which

includes the minutes of the Senate of 06/30/2020 and minutes of the School Council, of the same

date, in which it is unanimously approved that the sessions of the respective
bodies are recorded for the purposes of preparing the minutes, without the need to carry out
take a vote for it at the beginning of the meeting, but just report that such
recording will take place. It is added that the approved measure will be incorporated into the
Operating Rules of the Center in relation to the meetings held by the
Council, Senate, Evaluation Boards and any other meeting in which they act in
collegiate manner. It is indicated that the measure is protected by Law 40/2015, which
allows the recording of the sessions of the teaching collegiate bodies.
According to these documents, the claimant is not among the “attendees” at the
Council meeting and is mentioned among those “absent” from the Senate meeting.
Both meetings were held by videoconference.
. The documentation provided by the aforementioned school also includes
a report from the Management of said center, dated 07/01/2020, regarding the
recordings of sessions of collegiate bodies and Evaluation Boards.
This report shows that during the state of alarm,
measures so that the activities carried out could be carried out in a
telematics, which entailed certain difficulties.
To mitigate the distorting effect of these difficulties, it was decided to carry out the
recording of the meetings in order to prepare the corresponding minutes, taking into account
consideration the provisions of article 18.1 of Law 40/2015, which protects the
recording of the evaluation sessions, which will be considered a document in
electronic support that can accompany the minutes of the sessions, without the need for
record in it the main points of the deliberations.
As an example of the sessions that were recorded, he cites a meeting of the Department of
Language, held on 05/06/2020, which the claimant attended. As indicated, in
this meeting was notified of the realization of the recording without any of the

attendees will show disagreement.

Prior to the holding of the Evaluation Boards, on the date

05/26/2020, an informative email was sent to the Senate about the privacy policy

the recording of student assessment tests; and on 05/29/2020 a new

mail informing about the dates, schedule and procedure for the meetings of

ordinary evaluation, in which it was indicated that such meetings would be recorded to the

effects of collecting the decisions made and avoiding possible confusion, without

No teacher will express their disagreement. He adds that the information on the

reason why the recordings are made and the purpose of the recordings is

expressed in the document that forms part of Annex I of the complaint, in which

establish the guidelines for the organization of evaluation sessions.

In response to an email sent by the Head of Studies on 06/01/2020 regarding

evaluation of students, the complainant sent an email to the center with the

following message “cannot save assessments. Ask Inspection”. Of

this message, the management of the center interprets that the complainant thinks that the

Assessment sessions cannot be recorded because it is against the norm. What

whoever was informed at the time about the document prepared by the

Data Protection Delegation and that prior to the sessions it was informed

about the recording and about its object, without any member showing their

disagreement, in the opinion of the management of the educational center it is understood that the

claimant received a response from that address to the question about whether it could be

Record. It understands that the claimant at no time explicitly objected to

the recording, but rather expressed his conviction that such a recording did not

was protected by law.

The purpose of these recordings is clearly expressed in the document that

the Head of Studies directs the teaching staff regarding evaluation, as well as in

the notice that is made prior to each session. In fact, these recordings

have been consulted when it has been necessary to clear up any doubts or some element

that was not well reflected in the minutes of the meeting. The files are left

housed in a secure place to which only the management team has access. these files

They will be removed within one year.

Finally, it gives an account of the agreements adopted in this regard by the Council and the

Senate in sessions of 06/30/2020 and indicates that the Delegate of

Data Protection on the agreed measure.

The documentation outlined does not accompany a copy of the emails cited in the report of

the address of the school, of 05/26 and 29/2020, through which it says to inform

about the recordings of the meetings; nor does it accompany the mail sent by the

Head of Studies on 06/01/2020, regarding the evaluation of students, nor the

claimant's response cited in the repeated report.

THIRD: On 10/20/2020, in accordance with article 65 of the LOPDGDD, the

Director of the Spanish Agency for Data Protection agreed to admit for processing the

claim filed.

FOURTH: On 02/18/2021, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the claimed entity, for the

alleged infringement of article 6.1 of the RGPD, typified in article 83.5.b) of the

same legal text.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written

allegations on 03/04/2021, in which he requests that the file of the proceedings of

accordance with the following considerations:

a) The agreement to make the recordings was ratified by the Senate and the Council

School unanimously in sessions of 06/30/2020. This unanimity is an indicator

that the claim is produced solely by the calls provided for the

03 and 04/06/2020.

b) The Department of Data Protection of the Ministry prepared a report

advising on the recording of the sessions of the collegiate bodies of the

educational centers, as well as the privacy policy corresponding to this

treatment, which are published on its website.

c). Article 6.1 of the RGPD, in its letters c) and e), considers the treatment of

data for the fulfillment of a legal obligation and when it is necessary for the

fulfillment of a mission carried out in the public interest or in the exercise of powers

data conferred on the data controller.

Additionally, the Ministry of Education and Science issued the Order of August 28

of 1995, which regulates the procedure to guarantee the right of

Compulsory Secondary Education and Baccalaureate students that their performance

school is evaluated according to objective criteria. This Order collects

details the procedure by which students or their parents or guardians can

file a claim against ratings or decisions that, as a result of

that evaluation process, whether formulated or adopted at the end of a cycle or course; Y

establishes that the review procedure must be followed by the educational center itself.

The regulation of these procedures that is currently applied is included in the

Royal Decree 1105/2014, of December 26, establishing the curriculum

Basic Compulsory Secondary Education and Baccalaureate.

In application of this Royal Decree, the Community of Madrid issued its Decree

48/2015, of May 14, of the Governing Council, which establishes for the

Community of Madrid the curriculum of Compulsory Secondary Education, which regulates

evaluations and promotion in its articles 10 and 11, establishing the

Collegiate actions in the evaluation process and in decision-making.

Likewise, different orders were issued that develop the regulation on the

evaluation sessions and the preparation of minutes, both those directed by the teacher

tutor and made up of all the teachers from each group of students, such as the

celebrated by the heads of department and chaired by the Director of the center

education to evaluate the students of a course with pending subjects, which

evaluation sessions are also considered.

In the first case, it is provided that the qualifications of each area are decided by the

respective teacher and by consensus the rest of the decisions or, if this is not possible, by

absolute majority.

Among these regulations, the respondent entity cites ORDER 2398/2016, of July 22, of

the Ministry of Education, Youth and Sports of the Community of Madrid, by the

that regulate certain aspects of organization, operation and evaluation

in Compulsory Secondary Education (article 24); and ORDER 2784/2017, dated 26

July, of the Ministry of Education, Youth and Sports, by which it is regulated for the

Community of Madrid the evaluation in the teachings to obtain the title of

Graduated in Compulsory Secondary Education for adults in their

face-to-face, semi-face-to-face and distance regimens, and the application documents

(article 2.5).

As in the case of Compulsory Secondary Education, in the judgment of the entity

claimed, the nature of the collegiate body of the evaluation board is also

deducted from the provisions of the regulations governing the Baccalaureate. Specifically, he cites the

Article 21 of ORDER 2582/2016, of August 17, of the Ministry of Education,

Youth and Sports of the Community of Madrid, which regulates certain

aspects of organization, operation and evaluation in the Baccalaureate.

Thus, considering that decisions on evaluation, promotion and certification are

adopted in sessions of the evaluation boards, such conclusions must

recorded in evaluation minutes; and that such decisions may be subject to

revision; the respondent entity concludes that said sessions can be recorded in

application of the provisions of article 18 of the LRJSP, in order to comply with

a legal obligation and for the fulfillment of a mission carried out in the public interest

or in the exercise of powers conferred on the data controller.

d) The claimed entity understands that the operation as a collegiate body of the

Pedagogical Coordination Commission and the meetings of the Departments

Didactics is deduced from the functions attributed to them by Organic Law 2/2006, of 3

of May, on Education, which dedicates Chapter III of Title V to the

collegiate:

. Government: faculty and School Council.

. Teaching coordination: it is up to the educational administrations to develop

its operation. In this sense, the Royal Decree is applied on a supplementary basis

83/1996, of January 26, which approves the Organic Regulation of the

Institutes of Secondary Education, where its composition, system of

operation and functions.

Based on this, it considers that with respect to the evaluation boards, the

provided in article 20 of the LRJSP:

1. They have been formally created and are made up of three or more people,

that administrative functions of decision, proposal, advice,

monitoring or control.

2. They have as essential budget:

a) Its aims or objectives.

b) Its administrative integration or hierarchical dependency. (the boards of

evaluation depend on the management of the educational center).

c) The composition and the criteria for the designation of its President and of the

remaining members.

d) The functions of decision, proposal, report, follow-up or control, as well as

any other attributed to it.

The rest of the Autonomous Communities also contemplate, as it cannot be

another way, the collegial nature of the teachers' boards when they meet in

evaluation sessions. He cites as an example the norm of the Ministry of

Education of Andalusia, or Decree 187/2015, of August 25, teachings

of Compulsory Secondary Education of Catalonia.

Also, although the Supreme Court has not ruled on it, it has

made by the TSJ of the Canary Islands in its judgment of 04/06/2011, in which it establishes that

“These professors and professors will act in a coordinated and collegiate manner in the

evaluation process and in the adoption of the resulting decisions.

process".

"... it is based on the collective work of the teaching staff and not on the qualification criteria

of the professors of some subjects, who are not for that reason unauthorized in

the specific scores that they have been able to award to the students as a result of their

controls”.

SIXTH: On 10/18/2021, the instructor of the procedure formulated

motion for a resolution as follows:

1. That the Director of the Spanish Agency for Data Protection addresses

warning against the claimed entity, for the infraction of articles 6 and 13 of the

RGPD, typified, respectively, in articles 83.5.a) and 83.5.b) of the same

Regulation, and classified as very serious and minor for prescription purposes in the

articles 72.1.b) and 74.a) of the LOPDGDD.

2. That the claimed entity be required so that, within the period determined,

adopt the necessary measures to adapt to the data protection regulations

Personal treatment operations carried out, with the scope expressed in

the Basis of Rights of the aforementioned motion for a resolution.

SEVENTH: Having notified the aforementioned motion for a resolution, dated 11/03/2021,

receives a letter from the entity claimed in which it reiterates its request to file the

procedure, basing its request on the following allegations:

1. In a report from the Legal Office of the AEPD (citing the reference of the

Ministry of Education) has indicated that within a collegiate body there is no

The formula of consent operates, which would contribute to undermine the function of adopting majority agreements. The respondent understands, therefore, that it should be considered unfounded the claim that has motivated the proceedings, which is based on the alleged lack of consent.

Considers that the legal basis for the recording of the meetings of the Board of Evaluation is found in letter b) of article 6.1 of the RGPD, referring to the data processing necessary for the execution of a contract, which may understand the relationship established between the community participation body school and its members.

2. Taking into account the nature of the collegiate body of the evaluation boards, the The claimant's opposition to the recording of the sessions should have been expressed within of the organ itself. However, it is clear from the proceedings that sessions were held that were recorded with the knowledge of the members without their manifesting disagreement or opposition.

In this case, the only statement in this regard by the claimant is made by email addressed to the address of the IES and not to the collegiate body in charge of the evaluation and of which he was a part. This email was sent from a non-corporate account, external to the Institute itself, with an address not matching the name of the claimant.

Therefore, the claimant was aware of the practical organization and operation of the evaluation board, did not exercise or refer to the right of opposition, there is no evidence that

formulate the individual vote referred to in article 19.5 of the Law
40/2015 nor that it tried to exercise any opposition in the sense expressed in 17.6
of the same law.

3. In the proven facts there is a contradiction when it comes to determining whether the recording was decided by the management of the center or by the body of the board of evaluation, which is competent in accordance with the provisions of article 19 of the Law 40/2015 to agree on the calling of ordinary and extraordinary sessions and the setting the agenda, taking into account, where appropriate, the requests of the other members, provided that they have been formulated sufficiently in advance. In the present case, the claimant did not exercise any of the powers that, as full member of a collegiate body, are provided for both in the aforementioned Law 40/2015 as the right of opposition protected by the Regulation (EU) 2016/679.

It should also be noted that, although the collegiate bodies (art. 15.2 of Law 40/2015) have the possibility to establish or complete their own standards of operation, it is a power that said Law grants to the body and, in no case, an obligation. However, in this specific case there is certain knowledge and informed that the session would be recorded, total absence of intention to exercise the right of opposition and close precedents of the same operation in the evaluation board of which the claimant was a member.

Complementary to this reasoning, adds the claimed entity that in the notification letter sent by the AEPD two cases are distinguished to record the sessions: when the recording of the session is made to be annexed to the minutes and be part of it without the need to be transcribed (and therefore its destruction is not foreseen) and when the recording is made as an auxiliary means for the drafting of the minutes by the secretary.

In the second assumption, it states that "when the recording is produced with the purpose of assisting in the drafting of the minutes, the agreement of the body or inclusion in the operating standards, but must be duly informed to the session participants. In this case, in addition, the recording must be destroyed immediately after the approval of the minutes. However, it is not clear some elements related to determining who would have the capacity to make this decision, if it can be done through the use of devices personal or under what conditions, or the role played by the platforms of videoconferences when making recordings that are housed in their servers, with possible international data transfers, regardless of the preservation time.

4. For greater guarantees, on June 30 it was approved unanimously, by part of the Senate and the School Council, that the sessions of these two bodies, Pedagogical Coordination Commission, Evaluation Boards and tutor meetings could be recorded and that said agreement will be incorporated into the Rules of Organization and Functioning of the Center.

5. Finally, he points out that immediate measures were taken to harmonize the rights held by teaching officials with the right to be evaluated according to objective criteria that students and their families have; and that has not been violated any right.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: The center ***CENTRO.1, attached to the MINISTRY OF EDUCATION AND YOUTH of the Community of Madrid, held sessions of the Boards of Evaluation on the dates 06/03 and 04/2020, relative to the ordinary evaluation of June. Teachers who were unable to attend the face-to-face session participated telematically. Such sessions were recorded by decision of the director of the school.

The claimant was summoned to these sessions and attended them telematics.

Prior to holding these meetings of the Evaluation Boards, The management of the reviewed center gave the educators some instructions, in which that it was reported that "All sessions will be recorded in order to collect a record and avoid confusion in making pedagogical decisions".

SECOND: The claimant and the entity claimed have stated that the claimant sent a email to the center indicating that the sessions of the Evaluation Boards do not they can be recorded.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

The facts denounced materialize in the recording of the sessions of the Boards

of Evaluation held in the educational center ***CENTRO.1, dependent on the

MINISTRY OF EDUCATION AND YOUTH of the Community of Madrid, on dates

06/03 and 04/2020, which the claimant attended electronically. the claimant

considers that, although the instructions sent to the teaching staff in advance

When the sessions were held, it was reported that they would be recorded, it is necessary to collect

prior consent of those affected.

The claimed entity, for its part, understands that the aforementioned data processing

is covered by the provisions of article 6.1, letters c) and e),

of the RGPD, which considers the treatment carried out for the fulfillment of

a legal obligation and when it is necessary for the fulfillment of a mission

carried out in the public interest in the exercise of public powers vested in the

responsible for the treatment. Subsequently, in his arguments to the proposal of

resolution, pointed out that the recording is based on letter b) of the same

article, referring to the data processing necessary for the execution of a

contract.

It also adds that considering the collegial nature attributed to the boards

teachers gathered in evaluation sessions, the recording of said sessions

It is provided for in article 18 of the LRJSP.

The RGPD deals in its article 5 with the principles that must govern the treatment of

personal data and mentions among them the following:

"1. The personal data will be:

b) collected for specific, explicit and legitimate purposes, and will not be processed further

in a manner incompatible with said purposes; according to article 89, paragraph 1, the

further processing of personal data for purposes of archiving in the public interest, purposes of

scientific and historical research or statistical purposes shall not be considered incompatible with the

initial purposes (“purpose limitation”);

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are

processed (“data minimization”);

(…)”.

In turn, section 2 states that "The data controller will be

responsible for compliance with the provisions of paragraph 1 and able to demonstrate it

(“proactive responsibility”)”.

The RGPD itself, in its article 6.1, refers to the "Legality of the treatment" in the

following terms:

"1. The treatment will only be lawful if at least one of the following conditions is met:

a) the interested party gave his consent for the treatment of his personal data for one or

various specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is a party

or for the application at the request of the latter of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the

data controller;

d) the processing is necessary to protect the vital interests of the data subject or another person

physical;

e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the responsible for the treatment or by a third party, provided that said interests are not prevail the interests or the fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to the treatment carried out by public authorities in the exercise of their functions.

In relation to the provisions of letters c) and e) of section 1 above, the aforementioned Article 6 of the RGPD establishes:

"two. Member States may maintain or introduce more specific provisions in order to adapt the application of the rules of this Regulation with regard to the treatment in compliance with section 1, letters c) and e), establishing more precise requirements specific treatment and other measures that guarantee lawful and fair treatment, with inclusion of other specific situations of treatment under chapter IX.

3. The basis of the treatment indicated in section 1, letters c) and e), must be established by:

a) Union law, or

b) the law of the Member States that applies to the data controller.

The purpose of the treatment must be determined in said legal basis or, as regards to the treatment referred to in section 1, letter e), will be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers vested in the responsible for the treatment. Said legal basis may contain specific provisions for adapt the application of the rules of this Regulation, among others: the conditions general that govern the legality of the treatment by the person in charge; data types object of treatment; affected stakeholders; the entities to which they can be communicated personal data and the purposes of such communication; purpose limitation; the terms of

data conservation, as well as the operations and procedures of the treatment,
including measures to ensure fair and lawful treatment, such as those relating to
other specific situations of treatment under chapter IX. Union law or
of the Member States shall fulfill a public interest objective and shall be proportionate to the end
legitimately persecuted".

Thus raised the question that constitutes the object of the proceedings, it is estimated
opportune to formulate some considerations on the nature and operation of
the Evaluation Boards of educational centers, or teachers' boards gathered in
evaluation sessions.

Organic Law 2/2006, of May 3, on Education, dedicates Chapter III of Title
V to the "Collegiate governing bodies and teaching coordination of the centers
public" (articles 126 and following). In this Chapter refers to the School Council,
Faculty of teachers and teaching coordination and guidance bodies, among the
which includes the didactic coordination departments that must exist in the
secondary education institutes. In relation to the coordinating bodies
teacher, in article 130 of this Organic Law it is established that it corresponds to the
Educational administrations regulate their operation and strengthen the teams of
teachers who teach classes in the same course, as well as collaboration and work
in a team of teachers who teach classes to the same group of students.

This issue is referred to in the Organic Regulation of educational institutes
secondary, approved by Royal Decree 83/1996, of January 26, applicable

supplementary “for educational centers whose ownership corresponds to those Autonomous Communities, which are in full exercise of their powers, in as long as they do not have their own regulations and in everything that is applicable to them”. East Regulation dedicates Title II to the "Governing Bodies" of the institutes, distinguishing between collegiate governing bodies (the School Council and the Senate teachers), single-person governing bodies and teaching coordination bodies (guidance department and department of complementary activities and extracurricular activities, didactic departments, pedagogical coordination commission, tutors and group teacher meetings).

Articles 57 and 58 of the aforementioned Regulation regulate the composition, operation and functions of the board of teachers, establishing that it will be made up of all the teachers who teach the students of the group and it will be coordinated by your tutor; and that they will meet as established in the regulations about evaluation. Among the functions assigned is that of “carrying out the evaluation and global monitoring of the group's students, establishing the necessary measures to improve their learning, in the terms established by the evaluation legislation.

In accordance with the aforementioned Organic Law 2/2006, and considering the modifications introduced by Organic Law 8/2013, of December 9, for the Improvement of the Educational Quality, Royal Decree 1105/2014, of December 26, is issued, by which establishes the basic curriculum for Compulsory Secondary Education and the Baccalaureate, which "has the character of basic rule under article 149.1.30. of the Constitution” (Second final provision. Competence title and basic character).

Specifically, in relation to the operation of the teaching teams or boards of professors gathered in evaluation sessions, this Royal Decree indicates in its articles 20.7 and 22.1 the following:

“Article 20. Evaluations”.

“7. The teaching team, constituted in each case by the student's teachers,

coordinated by the tutor, will act in a collegiate manner throughout the process of

evaluation and in the adoption of the resulting decisions, within the framework of what

establish educational administrations.

“Article 22. Promotion.

1. Decisions about the promotion of students from one course to another, within the stage,

They will be adopted collectively by the group of teachers of the student.

according to the achievement of the objectives of the stage and the degree of acquisition of the

corresponding competencies.

The development of Royal Decree 1105/2014 for the territorial scope of the community of

Madrid is carried out with the approval of Decree 48/2015, of May 14, of the

Council of Government, which establishes for the Community of Madrid the

compulsory secondary education curriculum, which incorporates the rules on

evaluation and promotion outlined above, and includes among the "Official Documents of

evaluation” the evaluation records.

Regarding the "Assessment Sessions", ORDER 2398/2016, of July 22, of the

Ministry of Education, Youth and Sports of the Community of Madrid, by which

certain aspects of organization, operation and evaluation are regulated in the

Compulsory Secondary Education, in its article 24, establishes the following:

"1. The evaluation sessions are the meetings held by the group of teachers of a

group of students, coordinated by the tutor teacher, and advised, where appropriate, by the guidance department, to assess student learning in relation to both the degree of acquisition of the competencies as well as the achievement of the objectives, and adopt the necessary support measures.

2. The tutor teacher of each group will draw up minutes of the development of the sessions, in which will record the agreements reached and the decisions adopted, and will complete and will guard the documentation derived from them, among which will be the minutes with the partial grades obtained by the students in the subjects studied.

The assessment of the results derived from these agreements and decisions will constitute the starting point for the next evaluation session.

3. In the evaluation sessions, the information that will be communicated to the each student and their parents or legal guardians about the outcome of the learning process followed and the activities carried out, including the grades obtained in each subject and, where appropriate, the support measures adopted.

4. The meetings of the heads of the departments are also considered evaluation sessions. departments of didactic coordination, under the chairmanship of the Director, to evaluate the students of a course with pending subjects".

In relation to the evaluation in the baccalaureate, the content of article 21 of the ORDER 2582/2016, of August 17, of the Ministry of Education, Youth and Sport of the Community of Madrid, which regulates certain aspects of organization, operation and evaluation in the Baccalaureate, when establishing the definition and general aspects of the evaluation sessions, is similar to that expressed previously:

"1. Evaluation sessions are called the meetings of the group of teachers that teach the same group of students, held in order to contrast the information provided by the teachers of the different subjects and check the achievement

of the objectives of the stage and the degree of acquisition of the competences.

2. The evaluation session will count as a basic instrument with the information and qualifications that, on each student and on the group, contribute the professors of the different subjects.

3. The tutor teacher of each group will record the development of the sessions, and will complete and safeguard the documentation derived from them, including You will find the partial records with the grades obtained by the students in the subjects.

4. The tutor teacher will prepare, based on the data collected, a summary report, which will be transmitted to students or their legal representatives through the corresponding bulletin informative. Said report and the corresponding communication will include the qualifications obtained in each subject.

5. The meetings of the heads of the departments are also considered evaluation sessions. didactic coordination departments or those who carry out these functions in the centers private, presided over by the director, to evaluate students with pending subjects".

In accordance with the above, the teachers' boards gathered in sessions of evaluation are governed, in terms of their operation, by the rules established for collegiate bodies.

The LRJSP dedicates the 3rd Section of Chapter II of its Preliminary Title to the "Organs members of the different public administrations. As for his "Operation", Subsection 1, Article 15 to 18, establishes that the organs

collegiate, unless its internal regulations expressly and exceptionally collect what

Otherwise, they may hold their sessions in person or remotely by means

valid emails, including videoconferencing.

Article 18 of the LRJSP establishes the obligation to keep minutes of each session that

the collegiate body celebrates. In relation to this issue, said article 18 admits

that the session can be recorded ("The sessions held by the

collegiate body") and that the file resulting from the recording can accompany the

minutes of the sessions, without the need to record in it the main points of

the deliberations. In this case, the recording "must be preserved in such a way that

guarantees the integrity and authenticity of the corresponding electronic files and the

access to them by the members of the collegiate body".

In accordance with the exposed regulations, this Agency understands that they must

distinguish those cases, such as the one provided for in article 18 of the LRJSP, in which

that the recording of the session is made to be annexed to the minutes and to be part of it

without the need to be transcribed (and therefore their destruction is not foreseen), of those

others in which the recording is an auxiliary means for the drafting of the minutes by the

secretary.

In the first case, as it is optional to make the recording or not to accompany the

minutes, this recording of the sessions must be included in the regulation of

functioning of the body itself, through an instrument such as its regulation of

internal regimen. In the absence of a standard, it can be replaced by the agreement of the body. so what

The Delegate of Data Protection of the claimed entity also exposes in the

document "Report on the legality of recordings of audiovisual content in

the field of education", quoted in the pleadings brief at the opening of the

procedure, which is dated after the facts analyzed.

When the recording is produced with the purpose of assisting in the drafting of the minutes

The agreement of the body or the inclusion in the rules of

operation, but the participants of the session must be duly informed.

In this case, moreover, the recording must be destroyed immediately after the

approval of the minutes.

The specific purpose of this case is to analyze the legality of the facts

denounced, in relation to the recording of the sessions of the Evaluation Boards

held at the educational center ***CENTRO.1, dependent on the MINISTRY OF

EDUCATION AND YOUTH of the Community of Madrid, on 06/03 and 04/2020.

In this regard, there is no evidence in the proceedings that rules of

functioning of these Boards of teachers that contemplate such recordings, nor

these were agreed upon by the Board itself. Nor is there evidence that the recording was

carried out with the sole purpose of assisting the secretary in the drafting of the minutes

mandatory nor was its immediate destruction planned.

This is how it turns out considering the indications provided to the teachers who are members of the

Together (they only warn that "All sessions will be recorded in order to collect

a record and avoid confusion in pedagogical decision-making"), and of the

information offered to this Agency by the responsible entity in response to the procedure

transfer of the claim. In this response, article 18 of the LRJSP is invoked,

in relation to the possibility foreseen in this rule of recording the sessions in support

email that can accompany the minutes; It is expressly reported that such

recordings are consulted to clear up doubts about what is reflected in the minutes of the

meeting; and it is detailed that these files are deleted within a year.

In accordance with the foregoing, the processing of personal data involved in the

The making of said recordings is not covered by the provisions of the letters

b), c) and e) of article 6 of the RGPD.

Consequently, it is evident that the claimed entity has violated article 6.1

of the RGPD, since it has carried out an illicit treatment of the data of a character

staff, through video recording of the evaluation sessions held

electronically by the educational center mentioned on dates 06/03 and 04/2020, without

that there is no cause that legitimizes the treatment.

This breach of the principle of legality regulated in article 6 of the RGPD gives rise to

to the application of the corrective powers that article 58 of the aforementioned Regulation

granted to the Spanish Data Protection Agency.

In accordance with the foregoing, it is not considered sufficient to save the illegality of the

treatment the fact that the members of the evaluation board knew that

the session would be recorded, nor can this recording be decided within other

bodies, such as the School Council or the Senate.

On the other hand, contrary to what was stated by the entity claimed in its

allegations to the motion for a resolution, the conclusion on the illegality of the recording

denounced is not based on the absence of consent, nor on the action

claimant's personal status as a member of the assessment board or in opposition to the

recording manifested by him.

III

As has been stated, prior to the holding of the aforementioned

meetings of the Evaluation Boards, the management of the reviewed center transferred the

educators some instructions, in which it was reported that "All sessions will be

recorded in order to collect a record and avoid confusion in decision making

pedagogical".

Article 12.1 of the aforementioned Regulation establishes the obligation of the person responsible for

treatment to take the appropriate measures to "facilitate the interested party with all

information indicated in articles 13 and 14, as well as any communication with

in accordance with articles 15 to 22 and 34 regarding the treatment, in concise form,

transparent, intelligible and easily accessible, in clear and simple language, in particular

any information directed at a child.

When the personal data is collected directly from the interested party, the information

must be provided at the very moment in which the data collection takes place. The

Article 13 of the RGPD details this information in the following terms:

1. When personal data relating to him is obtained from an interested party, the person in charge of the

treatment, at the time these are obtained, will provide you with all the information indicated

next:

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

responsible or 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,

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

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

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 this affecting the legality of the treatment based on the consent prior to its 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, referred to in

article 22, paragraphs 1 and 4, and, at least in such cases, significant information on the logic

applied, as well as the importance and the anticipated consequences of said treatment for the

interested.

3. When the data controller plans the further processing of personal data

for a purpose other than that for which they were collected, will provide the interested party, with

prior to such further processing, information about that other purpose and any information

relevant addition 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.

For its part, article 11.1 and 2 of the LOPDGDD provides the following:

“Article 11. Transparency and information to the affected

1. When the personal data is obtained from the affected party, the data controller

may comply with the duty of information established in article 13 of the Regulation

(EU) 2016/679 providing the affected party with the basic information referred to in section

following and indicating an electronic address or other means that allows access in a

simple and immediate to the rest of the information.

2. The basic information referred to in the previous section must contain, at least:

a) The identity of the data controller and his representative, if any.

b) The purpose of the treatment.

c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation

(EU) 2016/679.

If the data obtained from the affected party were to be processed for profiling, the

basic information will also include this circumstance. In this case, the affected

must be informed of their right to oppose the adoption of individual decisions

automated that produce legal effects on him or significantly affect him in any way

similarly, when this right concurs in accordance with the provisions of article 22 of the

Regulation (EU) 2016/679”.

In relation to this principle of transparency, it is also taken into account

expressed in Considerations 32, 39, reproduced in the Legal Basis

above, 42, 47, 58, 60, 61 and 72 of the GDPR.

In the present case, at no time were the teachers participating in the

the meetings to which the complaint refers, in relation to the recording of the

convened evaluation sessions, on the purpose of the recording, the

recipients or categories of recipients of personal data, where appropriate, the

term of conservation of the data or the rights recognized to the interested parties.

In accordance with the foregoing, the exposed facts suppose a violation of the

principle of transparency regulated in article 13 of the RGPD, which gives rise to the

application of the corrective powers that article 58 of the aforementioned Regulation grants to

the Spanish Data Protection Agency.

IV

In the present case, the breach of the principle of

transparency established in article 13 of the RGPD, as well as the principle of legality of the

treatment regulated in article 6 of the same Regulation, with the scope expressed

in the previous Fundamentals of Law, which supposes the commission of paths

offenses typified in article 83.5 of the RGPD, which under the heading "Conditions

for the imposition of administrative fines" provides the following:

"Infractions of the following provisions will be sanctioned, in accordance with section

2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company,

of an amount equivalent to a maximum of 4% of the total annual global turnover of the

previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent to

tenor of articles 5, 6, 7 and 9;

b) the rights of the interested parties pursuant to articles 12 to 22; (…)".

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute

infractions the acts and behaviors referred to in sections 4, 5 and 6 of the

Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the

present organic law".

For the purposes of the limitation period, articles 72 and 74 of the LOPDGDD indicate:

"Article 72. Infractions considered very serious.

1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, they are considered

very serious and will prescribe after three years the infractions that suppose a violation

substance of the articles mentioned therein and, in particular, the following:

(…)

b) The processing of personal data without the concurrence of any of the conditions of legality of the

treatment established in article 6 of Regulation (EU) 2016/679".

"Article 74. Infractions considered minor.

They are considered minor and will prescribe after a year the remaining infractions of a merely

of the articles mentioned in paragraphs 4 and 5 of article 83 of the Regulation (EU)

2016/679 and, in particular, the following:

a) Failure to comply with the principle of transparency of information or the right to

information of the affected party for not providing all the information required by articles 13 and 14 of the

Regulation (EU) 2016/679".

On the other hand, article 83.7 of the RGPD provides that, without prejudice to the

corrective powers of the control authorities under art. 58, paragraph 2,

each Member State may lay down rules on whether and to what extent

impose administrative fines on authorities and public bodies established in

that Member State.

The LOPDGDD in its article 77, “Regime applicable to certain categories of

responsible or in charge of the treatment”, establishes the following:

"1. The regime established in this article will be applicable to the treatments of which

are responsible or in charge:

a) The constitutional bodies or those with constitutional relevance and the institutions of the

autonomous communities analogous to them.

b) The jurisdictional bodies.

c) The General State Administration, the Administrations of the autonomous communities

and the entities that make up the Local Administration.

d) Public bodies and public law entities linked to or dependent on the

Public administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

g) Public law corporations when the purposes of the treatment are related

with the exercise of powers of public law.

h) Public sector foundations.

i) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Legislative Assemblies

autonomous, as well as the political groups of the Local Corporations.

2. When those responsible or in charge listed in section 1 commit any of the

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

protection of data that is competent will issue a resolution sanctioning them with

warning. The resolution will also establish the measures to be adopted so that

stop the behavior or correct the effects of the infraction that had been 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.

3. Without prejudice to what is established in the previous section, the data protection authority

It will also propose the initiation of disciplinary actions when there are indications

enough for it. In this case, the procedure and the sanctions to be applied will be the

established in the legislation on the disciplinary or sanctioning regime resulting from

app.

Likewise, when the infractions are attributable to authorities and directors, and the

existence of technical reports or recommendations for treatment that had not been

duly attended to, the resolution in which the sanction is imposed will include a

reprimand with the name of the responsible position and the publication will be ordered in the

Official Gazette of the corresponding State or Autonomous Community.

4. The data protection authority must be notified of the resolutions that fall

in relation to the measures and actions referred to in the preceding sections.

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 under the

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 person in charge or

in charge of the treatment that had committed the infraction.

When the competence corresponds to a regional data protection authority,

It will be, in terms of the publicity of these resolutions, to what its regulations have

specific".

Considering the possibility contemplated in this precept to correct the

processing of personal data that do not conform to your expectations, when the

Those responsible or in charge listed in section 1 committed any of the

offenses referred to in articles 72 to 74 of the aforementioned Organic Law, in

In this case, it is appropriate to address a warning to the claimed entity.

Likewise, it is contemplated that the resolution issued may establish the measures

that it is appropriate to adopt so that the conduct ceases, the effects of the infraction are corrected

that had been committed and the necessary adaptation is carried out, in this case, to

the requirements contemplated in articles 6 and 13 of the RGPD, as well as the contribution

of means accrediting compliance with what is required.

Thus, in accordance with the provisions of the aforementioned article 77 of the LOPD, it is appropriate to require

the responsible entity so that, within the term indicated in the operative part,

adapt its actions to the personal data protection regulations, with the scope

expressed in the previous Foundations of Law. Specifically, it should promote

that the Boards of teachers establish precise rules on the recording, in their

case, of the evaluation sessions and the interested parties are provided with all the information

provided for in article 13 of the RGPD. In addition, in relation to the specific sessions to be

referred to in the claim, it is proposed to eliminate the files in which

contain the respective recordings, in the event that this deletion has not yet been

have done.

In this regard, it is noted that not meeting the requirements of this body can be considered as a serious administrative infraction by “not cooperating with the Control Authority” before the requirements made, being able to be valued such conduct at the time of opening an administrative sanctioning procedure.

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: ADDRESS A WARNING to the MINISTRY OF EDUCATION AND YOUTH of the Community of Madrid, with NIF S7800001E, by the infringement of articles 6 and 13 of the RGPD, typified, respectively, in the articles 83.5.a) and 83.5.b) of the same Regulation, and classified as very serious and minor for prescription purposes in articles 72.1.b) and 74.a) of the LOPDGDD.

SECOND: REQUEST the entity MINISTRY OF EDUCATION AND YOUTH of the Community of Madrid, so that, within a month, counted from the notification of this resolution, adapt to the data protection regulations Personal treatment operations carried out, with the scope expressed in the Basis of Law IV of this resolution. Within the indicated period, the MINISTRY OF EDUCATION AND YOUTH of the Community of Madrid must justify before this Spanish Agency for Data Protection the attention of this requirement.

THIRD: NOTIFY this resolution to the entity MINISTRY OF EDUCATION AND YOUTH of the Community of Madrid.

FOURTH

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

: COMMUNICATE this resolution to the Ombudsman,

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 month from

counting from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided 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

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [https://sedeagpd.gob.es/sede-electronica-web/], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving 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 end the precautionary suspension.

Sea Spain Marti

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