

□ Procedure No.: PS/00052/2020

## 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) filed a claim on 11/22/2018

before the Spanish Data Protection Agency against the MINISTRY OF EDUCATION

AND INNOVATION OF THE COMMUNITY OF MADRID (hereinafter, the claimed one). The

reasons on which he bases are that he has a six-year-old son, who has been enrolled for several years

in the CEIP "\*\*\*\*CEIP.1" in Madrid and is in the first year of primary school and on 09/17/2018, the

parents of the students were summoned to a meeting in which they were informed as

fait accompli that the College was using the application \*\*\*APPLICATION.1 (CD in what

successive) without having been previously informed, being able to visualize on the classroom screen, the

children's first and last names, along with their behavioral ratings (points

positive and negative). Some codes were given so that "parents could register

in the application and download it to our smartphone".

Along with the claim, it provides the most important:

-document 2: Copy of writing for parents with CD logo "Please join our

Classroom Community on CD" "This year I am using CD to communicate with parents."

"Download the application or log into your existing account and enter this code" showing a

parent code and instructions for download by entering the same.

-Document 3: Letter from the claimant to the tutor of the course, director and AMPA, date

09/19/2018, the mode of delivery and receipt is ignored. In it, he states that in the application

\*\*\*APPLICATION.1 in the interface shown in the class on the 17th you could see the name of the child and

the first surname, together with the drawing of the avatar, "we have consulted the application website and

It is specified that to register users under 13 years of age, a prior parental authorization that we have not given". "We are also concerned about the use of the data that this private company based in \*\*\*PAÍS.1 can make and that is governed by other types of legislation, such as the sale of data for advertising or third parties" "Please delete our child's data since it is possible that they are being breaching the data protection law", "in addition to the inclusion without any type of parental authorization"

-document 4, burofax of 09/21/2018 addressed to the -director of the School and text in which he reiterates the lack of consent for the processing of your child's data. It states that ""The tutor confirmed that our son will be deleted from the application "although we have not received response, "We don't know if the rest of the classmates are still on the app and if they're still showing the students the virtual classroom "In the case of remaining all the children in CD except our son, there could be a case of discrimination against our son."

They ask to be informed of the day on which your child's data was registered in the application.

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-document 5, burofax addressed to the director of the center on 09/27/2018, stating that "there is no there is a data protection delegate in the center or group of centers" and they were not informed of the processing of personal data carried out by CD and they exercise the right of ACCESS and consultation of data that you have collected CD through your teacher that appears in the invitation to access the application with the code for parents and that disappear server information.

-document 6, (folio 32/1899) letter from the Director of the College to the claimant "in response

to the burofax received on 09/28" refers you to the CD web address and that the person in charge of the treatment is the COUNCIL OF THE CCAA. "In the application it does not request the name of the School or location. The only person who should give real data is the teacher who creates an account as a teacher in the application. That data is an email that can have been created explicitly for this application" It is reported that your child was given down on the app. The center "has determined that henceforth no explicit indicators such as names and surnames of students, so if you so decide your child could be part of the application again".

-document 7, data collection sheet of the claimant's son by the school, course 2014-2015, from 06/11/2014.

-document 8 certified letter from the claimant dated 10/10/2018 to the DPD of the Ministry of Education of the Community of Madrid (copy 40) communicating the facts, wanting also know if that application "is approved, authorized by the Ministry" and if it has been analyzed from the point of view of data protection law. Indicates that to Although the data has been deleted, it is likely that the application servers follow and ask for information on how you can exercise those rights.

-document 9, of 10/19/2018, from the claimant to the Director of the center stating that the CD's privacy policy is in legal English and not in Spanish, and asking that it be stop using the app in class. Copy of the letter from the Director to the claimant communicating, among other extremes, that in public educational centers, the person in charge of treatment is the Ministry of the Autonomous Community competent in matters educational. It also tells you that the first and last names are not contextualized anymore. that the application does not ask for the name of the school or its location and that the teacher is the that creates the user account, It also indicates that the address has determined that in what successively explicit indicators such as name and surname do not appear.

-document 10, notarial deed of 10/22/2018 recording of information observed in

internet screens printing the CD privacy policy in English.

-document 15, written on 11/13/2018, (folio 56/1899) from the claimant to the Ministry,

“Request for supervision of the legality of the use of the application in schools of the

Community of Madrid”, requesting the precautionary suspension of the use of CD for not adjusting and

to data protection regulations for the best interest of the minor. Indicates that "has

interested party the issuance of a legal report accompanying this request in order to

record the presumably high risks for data protection”. In

document 16 contains the report you mention, being a document from November

2018 (folios 62 to 81), there is no person or entity that authored it. In summary, he notes:

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The application corresponds to an entity with registered office in \*\*\*COUNTRY.1.

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“It offers the teaching team a visually friendly and intuitive resource for

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monitor the behavior of students through profiling that is aimed at facilitating the

teacher the evaluation of his class in an interactive way and to transmit his result to parents

and mothers in real time through a smartphone”. “It is a communication application

for the classroom, connecting teachers, parents and students who use it to share

messages during the day. It states that CD Inc. transfers data of those affected to

purposes whose knowledge requires knowing its “privacy policy”” and is only in

English. Refers to three informative legends about the application, "your information is yours",

“full supervision and control” and “Elimination after twelve months”. Copy the literal of a

informative clause in English referring to the deletion of a student account and the maintenance of some data for reasons of responsibility, including a mailing address e-mail in which the “school official” can request the removal of the student's name and contents.

The “international transfer of personal data” occurs with the use of CDs.

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outside the EU with transfers of these to 31 companies for unknown purposes”, according to reports THE CHILDREN COMMISSIONER OFFICE in the United Kingdom” (attached link in the which leads to an information brochure on the collection and transfer of data of minors, November 2018). There is an express reference to an example of “data collection by of the Class Dojo app”, indicating that it is used in more than 70% of the schools in the United Kingdom. He mentions that some questions have been contemplated about its use with personal data, which does not require sensitive information to function and children can be identified by other data than their name, with initials or aliases, instead of their real names however some teachers use sensitive information in any way ma indicates that the data is shared with 31 other entities each with its own privacy policy and that increases concern about the possible monitoring and follow-up constant lying). Indicates that “which lead to presume that the application behaves risks for the protection of personal data of children whose activity is monitored from it, resulting in a predictably high probability that these risks materialize in serious damage to those affected. It would be necessary to carry out a "risk assessment" that CD must provide, or failing that, carry out the Ministry.

It mentions the role of educational centers in the publication and dissemination of their data to through the services of the information society.

Affects the system used by the app for positive or negative scoring

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that can be viewed by students and their parents can negatively affect the classmates increasing competitiveness, in the sense that "There is a ranking graphic that is exhibited in the classrooms and that could violate the duty of secrecy by making ratings public."

It refers to CD as a service provider and as such considers it in charge of the

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treatment with all the obligations that it entails.

-document 24, addressed on 11/16/2018 by the claimant to the Educational Inspection, narrating the facts, that since 09/07/2018 your son tells you about the application in which they have a avatar and give them points, having on 09/17 a first group meeting with the tutor and the other parents, and that the next day they requested the exclusion of their child from the application, noting that it is an application that treats the behavior data of your child, and a possible discriminatory treatment, for the treatment of data that the application does, reiterating the request to stop using it.

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-document 25, response to the claimant from the Subdirector General for Training of the Teachers, indicating that CD "does not belong to any of the training activities endorsed by its Subdirector and exceeds its powers" and that "It is the sole competence of educational centers adopt work plans and forms of organization in the exercise of their own autonomy, so they will be the ones to inform the families of the use."

-document 26, claimant's letter of 11/20/2018, to the director of the CEIP in which he sends the response of the SG for Teacher Training and asks for the precautionary suspension of the

app.

-document 27, printed copy in English, of the page of the application to create a "class"

in which instructions are given to create the name of a class, assigning the grade,

level or course, then enter the students' first and last name.

SECOND: In view of the facts and the documents provided by the claimant, the

Subdirector General for Data Inspection transfers on 01/09/2019 to the claimed the

claim for analysis and "communicate the decision to the claimant to the

respect", and within a month from the receipt of this letter you must send to this

Agency the following information:

"1. Copy of the communications, of the adopted decision that has been sent to the

claimant regarding the transfer of this claim, and proof that the

claimant has received communication of that decision.

two.

3.

Report on the causes that have motivated the incidence that has originated the

claim.

Report on the measures adopted to prevent incidents from occurring

Similar.

4. Any other that you consider relevant."

The respondent did not respond to the request.

THIRD: Dated 02/15/2019, written registration number 007902/2019 is received,

from the claimant stating that one month after the transfer of the

complaint, no response has been received.

FOURTH: On 03/15/2019, the claim is admitted for processing.

FIFTH: Dated 03/20/2019, a letter is received at this Agency, with the number of

registration 014417/2019, sent by the claimant, stating that on 03/15/2019,

received a response from the Ministry, with which it does not show its agreement, and that in the educational center continues to use the CD platform with the names of the students exhibiting a "ranking" of six-year-olds, which is an excessive practice and disproportionate, which could entail a violation of articles 6 and 7 of the Law Organic Law 3/2018 on Data Protection and Guarantees of Digital Rights (in

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hereinafter, LOPGDD) since the consent of the parents or guardians has not been obtained. legal.

He adds that his son is discriminated against for not being included on a CD and for using another type of pedagogical methodology.

Dated 03/27/2019, it is received in writing at this Agency, with registration number

016009/2019, sent by the claimant adding that the CD application has the

functionality of measuring the noise level of the class, thereby having access to the microphone, and

the claimant is not sure that this functionality cannot also record

conversations and store them in the system's cloud. He adds that he is also

producing a violation of article 15 of the RGPD by not having responded to your right

of access, which he exercised in his day, to the data that was kept of his son during the ten first days of class, at which time he was dropped.

On 06/25/2019, a letter is received at this Agency, with registration number

031846/2019, sent by the claimant adding, that the communication of the day of delivery

of notes had been made through the CD platform, resulting in the claimed, at

Being his son on this platform, he found out about this fact by chance on a birthday.



On 10/4/2019, a letter is received at this Agency, with registration number 046075, from the claimant, stating that on 09/24/2019, prior to the collective meeting with the teachers, held a meeting with the Director of the center education in which he communicated that following the guidelines of the Ministry no longer would use CDs for messaging but would continue to be used in classrooms anonymized.

“In this new school year, already in the collective meeting with the teachers, it is not informed about the CD platform nor was parental consent obtained for the data processing during the 2019/2020 school year. “

The complainant points out that the fact that the children's data is not transferred to CD seems positive, but insufficient, since it interprets that data continues to be transferred within class itself among the children, not authorized by the parents, since they are capable to identify the pseudonym and avatar of others. Keep insisting on discrimination of your child for not being in CD when you requested your withdrawal. It ends by indicating no. There is also no evidence that an impact assessment has been carried out on the protection of data demonstrating the necessity and proportionality of the use of CDs to transfer data within the class itself.

SIXTH: Dated 04/17/2019 it is received at this Agency, with registration number 020463/2019, letter sent by the Ministry with the following reports:

1) Report from the GENERAL DIRECTORATE OF SCHOLARSHIPS AND STUDY AID, stating:

Article 120 of Organic Law 2/2006, of 3/05, on education establishes that centers will have pedagogical, organizational and management autonomy, so that the The use of these services responds to a decision of the center itself.

The reference to this Ministry promoting the use of "CD" is based on a teacher training course taught by a collaborating entity. This training, in

particular, like many others, are framed in the objective of the acquisition and consolidation teaching digital competence, including in these courses information on the current data protection regulations.

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They add that this General Directorate has no authority to advise against expressly the use of “CD”, since the use of this application as well as that of others within reach of the educational centers of the Community of Madrid is always subordinated, and thus transmits, to the current Data Protection regulations.

They indicate that a Commission has been created to analyze the degree of compliance with the use of computer applications in educational centers and establish instructions for use of the same in what refers to the data protection regulations, formed by different departments of the Ministry.

-They state that it has been requested from the General Directorate of Scholarships and Study Grants a complementary report to the Director of the user center of the application. Provide a copy of document signed on 03/05/2019 by the Director General. It contains the literal:

"After reviewing the report sent by the use made by your center on the application, Class Dojo, and given the doubts raised, we requested a complementary report on the regulation of the voluntary use of said application by families of the students, and how it is regulated that some families use this application and others do not participate in its use. “

We also request answers to the following questions:

-how the families have been informed about the use of the application and how the

authorization from them,

-how has proceeded within the application in the use of student data, has it been

proceeded to some anonymization?,

- What use is made of the application? Are other data shared such as photos, audios or

even student notes?

In the report they should state whether the educational center has

record on which servers and where the Class Dojo application is hosted.”

1) Letter, report, dated 11/20/2018 from the DIRECTOR OF THE CEIP “\*\*\*CEIP.1” OF MADRID,

which states that: “\*\*\*APPLICATION.1 is a methodological resource, under the format of

computer application. Specifically, its main purpose (always understood as a

methodological resource more) is behavior control in the classroom through reinforcement.

It is presented in an attractive way for the students, since each child is assigned a

different virtual doll (avatar), along with its name. In the classroom, a

moment a day (it is projected on the PDI) to review how the day has gone, trying

highlight what each student has done best to reinforce it positively. “

“For its use, only an email from the user teacher is requested.

The name and location of the educational center are not requested, nor the level at which it will be used.

Then, the user teacher enters the names of the students...”.

“The decision to use this application as one more methodological resource concerns

each teacher making use of the academic freedom guaranteed by article 20 of the

Spanish constitution.”

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“This is an application authorized by the Ministry of Education of the Community of Madrid, which offers and standardizes its own courses as well as those of other entities (unions, universities...)

“The approval is made implicitly by the Ministry of Education, offering the training that, as a sample, can be seen in the attached documents. Its use is not entails no cost to any member of the educational community. in general meeting held last Monday, September 17, between the tutors of the two groups of First of Primary with the fathers and mothers of the students, in the methodological section proceeded to show the operation of the application. To make it easier understandable, the names of the children had already been put. Also featured in that moment the possibility that, optionally, the families could be registered in the app. For this voluntary registration, the families that so decide must provide their data (email, at least), as well as accept the privacy policy of the company that created the application. In this way, families who so wish can have more immediate information on the behavior of their children, also offering a means of communication with the teacher through two-way messages, thus attending the understandable demand of the families themselves. A family, after the aforementioned meeting, he expressed to his son's tutor his disagreement with \*\*\*APPLICATION.1 alluding to the issue of data protection. Consequently, this student was terminated. in the application immediately.”

“The teaching/learning process of this student is carried out exactly the same than with the rest of the class, except in the use of this application, which is nothing more than a methodological resource added to the many others used in the classroom.”

“The aforementioned family proposed that, if their son did not use the application, he would not It should be used throughout the school. He was told, obviously, that it would continue to be used and that if he reconsidered his position, his son could return at any time to be part of

of this resource. “

“The use of \*\*\*APPLICATION.1 in this class is being carried out with total normality if

It is true that, once the first few weeks have passed, the initial childhood enthusiasm has given way to an insertion of the application in a more natural way as the resource added methodological that is, promoting, in addition, the digital competence of the students.”

2) Recommendations of the DELEGATION OF DATA PROTECTION, in which it is indicates that a letter must be sent to the educational center informing it of the need to perform the following actions when using an educational application:

“You must check if the data is stored in a country of the European Union, in a country that offers guarantees equivalent to those of the RGPD and that the data could be housed in companies of \*\*\*PAÍS.1 provided that they have adhered to the principles of the Privacy Shield.

Read the privacy policy, assess possible data transfers and collection of data.

The treatment design study is recommended, trying to minimize the data and when possible anonymize them.

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Uploading photos to these educational applications is not recommended.

Anonymize the images so that the students of the center cannot be identified.

It is necessary that the fathers and mothers of minors under 14 years of age, as well as those older 14 years of age, have given their informed consent in accordance with article 13 of the RGPD prior to registering the student in the computer application, and attach a model that

can be used if it is useful.”

3)

Submission of reports to the claimant with proof of delivery.

SEVENTH: On 06/25/2019, a letter is received from the claimant in which she expresses the “discrimination that he suffers, since he states that he found out on 06/18 that they were going to hand over the notes and had been informed by the \*\*\*APPLICATION.1 channel, which is not the tool of communication with the school officially established.

EIGHTH: Dated 07/05/2019 it is received at this Agency, with registration number 031060/2019, letter sent by the DELEGATION OF DATA PROTECTION OF THE MINISTRY, expressing its participation in the elaboration of a "decatalogue of good internships for public educational centers in the Community of Madrid". of this decatalogue It follows that the only digital platform that the Ministry recommends is its platform EDUCAMADRID resulting in a safe and controlled environment, providing the entire educational community a wide set of web services, educational tools and virtual scenarios for teaching and learning. They attach:

Decatalogue of good practices

Model for collecting consents for public educational centers of the

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Madrid's community.

When the center makes use of applications and tools external to the institutions of the Ministry of Education:

- The center must have approved and included in the GENERAL SCHEDULE ANNUAL of the course, the justified use of platforms or external applications prior verification that they comply with the privacy policy required by Regulation (EU) 2016/679 on Data Protection and which can be consulted by families or students

over 14 years of age, through the corresponding links incorporated in the page

center website.

- In the use of educational applications or platforms, it will be anonymized or the necessary personal data of the students will be pseudonymized and the minimum those strictly necessary.

-It will establish guidelines for the collection of data from the enrollment form specifying what data must be incorporated and what others must be collected in the document besides.

NINTH: After the admission of the claim, investigative actions were initiated, with the following result that appears in the report dated 01/22/2020:

“CD, belonging to the American company CD Inc., is a point system,

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rewards and goals in order to encourage student performance. we have to clarify that although the claim refers to the points obtained in CD as qualifications, these they are not the periodic qualifications of the different subjects, but a sum of points

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Language (teacher, parent, guardian and student). They are shared with the company

Name and surname (father, teacher, student and tutor). They are shared with the company

Phone (teacher).

Mailing address (teacher, parent, guardian). They are shared with the company

granted for the fulfillment of objectives and behavior of the student (it remains

attentive, participates in class, curious, etc.), although in a generic way, they could be specified

as grades. In fact, it may not be used in all subjects, but only

by teachers of some of them.”

Examined the CD platform it is verified that it collects and transfers to its systems

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of \*\*\*COUNTRY.1 the following information (the types of account that share this information):

either

US \*\*\*EMAIL SERVICE COMPANY.1 (Third Party).

either

either

US \*\*\*EMAIL SERVICE COMPANY.1 (Third Party).

either

either

either

either

\*\*\*EMAIL SERVICE COMPANY.1 (Third Party).

either

US \*\*\*EMAIL SERVICE COMPANY.1 (Third Party).

either

either

either

US \*\*\*EMAIL SERVICE COMPANY.1 (Third Party).

either

US email service company \*\*\*COMPANY.1 (third party).

either

either



Username in the application (student).

Password (parents, teacher, student and tutor).

Years (student).

Gender (teacher, teacher and tutor). They are shared with the American company

School address (teacher, parent, guardian and student).

Photographs, videos, drawings, etc. (teacher, parent, guardian and student).

Name of the school (teacher and tutor). They are shared with the company

Class attendance data (teacher).

Point count (teacher).

Other data obtained automatically according to the company to know "when the things go wrong" or to help improve CD:

IP address (teacher, parent, guardian, student and offline users).

either

Browser details (teacher, parent, guardian, student, and offline users).

either

Cookies and other similar technologies.

either

Device information (parent, teacher, student and guardian).

either

Mobile app information.

either

Service activity: access time, connection time, browser details,

either

pageviews, referring URLs, clicks, approximate location (never the location

accurate without prior consent) and collection of devices

synchronized.

School address (parent, teacher, student and tutor). They are shared with

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All this information is stored in the AWS cloud OF AMAZON.COM, INC

(hosted to the privacy shield – Privacy Shield) in encrypted form.

The PRIVACY POLICY emphasizes that the data of the

students will not be sold or rented to third parties.

It should be noted that the privacy policy is only available at \*\*\*URL.1.

-Proceeding is recorded in the SIGRID system of the AEPD with all the data collected

as stated on the CD website.

-In the CD PRIVACY POLICY, it is indicated that they only keep the information

a child's personal account for as long as the account is active, which is deleted

automatically after one year of inactivity, unless the law or the child's school (for

student accounts) require you to keep it, need it to enforce their policies

or to ensure the safety of the CD community.

-“CD has signed the “Student Privacy Commitment” and has received the SAFE seal

HARBOR of the Children's Online Privacy Protection Act (COPPA) of

IKEEPSAFE, which means that CD's privacy policy and its practices with

regarding the operation of the service have been reviewed and approved for compliance with the

iKeepSafe's COPPA Safe Harbor Program. COPPA protects the online privacy of

children under the age of 13 and is endorsed by the US Federal Trade Commission

USA. They also state in their privacy policy that they have to comply with

Federal Family Educational Rights and Privacy Act (FERPA).”

-CD Inc. declares that "it shares the personal data of users (teacher, tutor, student and parent) with service providers (third parties) for the operation of your platform in accordance with its instructions and privacy policy, although each of These providers have their own privacy policy. On the CD website it appears a list of 25 service providers \*\*\*URL.1.

-The CD service makes it clear in its article "For teachers: obtain the consent of the parents" that "in compliance with the law on online data protection of minors (COPPA), as in Regulation (EU) 2016/679 on Data Protection of Personal Character (hereinafter, RGPD) in its articles 6.1 and 8.1, teachers must inform and obtain the consent of the parents prior to the treatment of the data of the minor. To facilitate this task, the CD company itself makes available to schools a generic template for obtaining consent in 22 languages, although must be adapted to the different local regulations.

Diligence is recorded in the SIGRID system with the template in Spanish for obtaining consent.

TENTH: The Inspector incorporated:

- Dated 01/19/2020, printing of the "Data Transparency" page of the website

\*\*\*URL.1.

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Attached to this diligence is a printout of said page, with 22 pages, translated into Spanish by GOOGLE CHROME. The literal appears: "Below you can see what information we collect, why and how we collect it, where it is stored and how it is

different for each type of user on our platform.”

-Dated 01/22/2020, a printout of the result of searching for the company is obtained

\*\*\*APP.1, INC. On the website \*\*\*URL.2 obtained through the Internet Attached to

this diligence impression of said result.

ELEVENTH: On 02/03/2020, a letter is received from the claimant in which

states that the application is still being used in the class, and the data has been anonymized,

but consider that this is not irreversible. Provide a copy of your child's agenda in which

indicates that she indicates if they had given her points again, asking for explanations and

answering in the agenda that your child is not on CD and uses it with others. It emphasizes that

cumulative behavior grades remain public and all children

they know who corresponds to each avatar and each pseudonym.

TWELFTH: On 02/21/2020, the Director of the AEPD agrees:

“INITIATE PUNISHMENT PROCEDURE of WARNING to the MINISTRY OF

EDUCATION AND INNOVATION OF THE COMMUNITY OF MADRID, (CEIP \*\*\*CEIP.1” by the

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

THIRTEENTH: On 03/11/2020, allegations are received from the MANAGEMENT

GENERAL OF BILINGUALISM AND QUALITY OF TEACHING that with the new structure

organization is responsible for the treatment, indicates:

“I was unaware that the CEIP \*\*\*CEIP.1 maintained the use of the CD application”, “despite

1)

that among the recommendations disseminated to all educational centers supported with

two audiences in the Community of Madrid, the only digital platform recommended by the Con-

Counseling is EDUCAMADRID”. It was also indicated that in the official forms of consent

It was warned that “when the center decides to use applications outside the institutions,

them, you must adopt the necessary measures to comply with the data protection regulations.

cough”.

It states that "The Center had stopped using CD messaging with families and an anonymization technique was used with the rest of the students who participated in the survey. platform", "informing parents". "At the beginning of this school year, families were informed of the new way of treating their children's data and the claimant continued without participating in the platform, so the impact on consent reported is low, and none of the affected families exercised their right to object."

"Although the center has adopted measures that minimize the impact on privacy, it is true that are not sufficient and can be optimized or put into operation other measures additional". To comply with the proactive obligations for the person responsible for this treatment, the following measures have been adopted:

- The CEIP has been required to stop using the CD application since:

- a) Its current use is not in accordance with the data protection regulations because "it has not been designed a procedure that allows a robust system of pseudonymization or

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anonymization from a risk analysis of data processing in the environment of the CD application".

- b) "Despite the fact that they were informed in tutoring meetings at the beginning of the school year previous and current, the families have not been informed in such a way that it can be shown that have given their express consent freely and unequivocally or that allows them exercise their rights. Although the centers may decide to use in the exercise of their activity education without obtaining prior consent tools that allow them to offer a better service and better learning results, when these tools

include the processing of personal data outside the institutional educational field will require the express consent of the families since it is not mandatory that the center treat said data outside the institutional platforms and will be considered activities complementary, but not necessary, due to the fact that data is being transferred to third parties that may put them at risk, and in our specific case it is done jeopardize the confidentiality of said data that are the owners of the same have right to decide whether or not they are assigned on said platforms.”

c) The fact of having entered personal data in the application makes the provider of the service in charge of treatment, which would require a legal binding contract of the responsible because it processes data on its behalf in accordance with article 28 of the RGPD.

d) Therefore, they will not be able to use it again and will communicate this circumstance to their community education until:

- has carried out a risk analysis.

- has a contract that binds the center and not just one or more teachers,

that guarantees the conditions of the treatment in accordance with the regulations on Protection of Data.

- has formally authorized its use, including compelling and obtaining the consent of the families.

- has incorporated its use into its annual programming, detailing the above points

2) Statement in relation to the statement that the educational center does not have a contract of provision of services with CD (in charge of treatment) that allows proving that the treatment of the data of minors is in accordance with the principles and guarantees established in the regulation, it is necessary to know:

2.1-Each teacher registers on the CD platform as a user

registered service and the terms of service or agreement constitute the legal contract

between user and CD (see page 1 document 7.2 TERMS OF USE CD, where

expressly informed: "When registering for an account or accessing to use the

\*\*\*APPLICATION service.<sup>1</sup> You acknowledge that you have read and agree to be bound by this

agreement. If you are using the service on behalf of an institution that has an agreement

in writing with \*\*\*APPLICATION.<sup>1</sup>, that agreement governs your use of the service." "Not actually

There is no agreement of this kind between the person in charge of the treatment and the provider of

service, between this and the educational center of the center that have registered on the platform

have a contract with the service provider and each of them had a meeting with the

parents of the group that affected them the use of the application so that the families were

informed about its use. The claimant had sufficient information

that the regulation requires to be able to oppose the treatment as it did. Saying

contract will never consist of a manager contract since, as it can

appreciate the terms of service consist of an adhesion contract where there is a

inequality between the parties that does not agree with the concept of treatment manager,

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that is, the regulation establishes the possibility of regulating the relationship between the person in charge and

commissioned through a unilateral legal act of the data controller. The

contracts that are signed with service providers through platforms and

educational applications are "adhesion contracts" analogous to that of other supplies and

typical of electronic commerce where the person who draws up the clauses of the contract is not a

public administration with its exorbitant power, but rather the service provider dictates the

forecasts, and the person who contracts can only accept or reject it, which clashes

frontally with the concept of person in charge defined by the regulations who decides to hire

with a manager to provide a service according to the instructions given. By

Therefore, the contract exists, but it is not the person in charge or the person in charge, the educational center, is in a position to give instructions to \*\*\*APPLICATION.1 for the limitation of use of the data once they have been entered on the platform, leaving the autonomy of his will reduced to the minimum expression. Nor can you demand that modify your privacy policy.

3) It states that the compliance of the owner of the application would result from:

3.1 "The information you provide, which in your privacy policy" states that

"complies with American laws COPPA-online privacy protection law for

children-, FERPA-law of rights and privacy of family education-, with the RGPD and

certified with the Security Shield \*\*\*PAÍS.1." It also applies pseudonymization in the

sense defined by the regulation, ensuring "that the necessary additional information

to identify the person whose data has been pseudonymized is kept

separately and subject to technical and organizational measures to ensure non-attribution to

an identified or identifiable person".

3.2 "As a negative aspect, it should be noted that \*\*\* APPLICATION.1 collects all kinds of

of "Student Data", whether collected or provided by a school or its

users, students, or parents or guardians of students for a school purpose, which

is descriptive of the student, including, but not limited to, his/her first and last name, address, phone number

telephone, email address or other information that allows contact in

online, discipline records, videos, test results, special education data,

grades, evaluations, medical records, health records, security numbers

social, biometric information, disabilities, socioeconomic information, affiliations

policies, religious information text messages, identification documents of

students, search activity, photos, voice recordings or information from

geolocation. The data of the students, as specified in Annex B of the



Student Data Privacy Addendum,(link to the addendum in English). CD collects them or processes in accordance with its services. Student data will not include data pseudonymized or information that has been anonymized, or anonymized usage data with regarding a student's use of CD services.”

3.3 States that: “In addition, there is the possibility of integrating third parties into your service when, for example, the teacher, student or parent uses applications, websites or other third-party services that use or are integrated with the service of

\*\*\*APPLICATION.1 being able to receive information about what you publish or share, by example you can share a BIG IDEAS activity on Twitter or Facebook, these services receive the information you share through this functionality and the information you are sharing from CD. “

CD also works with service providers that may be located within or outside the European Economic Area, for example sending emails in your name, database administration services, security support. Also CDs

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You may authorize these companies to collect information on your behalf. These providers have limited access to personal information to perform these tasks and are contractually bound to protect it and use it only for the purpose for which was revealed. Additionally, these partners and service providers must comply with confidentiality and security obligations in a manner consistent with the Privacy Policy privacy. (a link is provided for a list of the third parties it works with to provide the Service and the website of \*\*\*APPLICATION.1).

4) "Despite the fact that in the use of educational platforms, they lack references between the legal relationship between the person in charge and the person in charge or provider of the service, drafting precise, specific and detailed instructions that must be complied with in centers for dissemination and urgent application. Among the measure will be that the platforms more complementary outside the institutional, if possible, do not handle personal data events, are included in the center's annual general programming, must follow a protocol what in you will have to:

- "Inform affected people of the use of the application of its privacy policy,

Obtain consent when necessary, prior assessment of the need to

host and make assignments or international transfers of data on their servers

even if the service providers store data in a country of the economic area

or even if the country offers an equivalent level of protection or is hosted on

some privacy shield.

- "A risk analysis or impact assessment will be compulsorily carried out, if appropriate, and

design personal data processing before using any application or

platform establishing criteria such as the limited use of personal data treating the

minimum possible, favoring pseudonymization, that is, dissociation of data

or when anonymization is possible (identification not possible)."

- Finally, "so that the educational center can use the applications or platforms

outside those of the Department, you must prove that you have a contract signed by the

own center with the person in charge of the treatment or company providing the service that

allows to prove the processing of personal data is in accordance with the principles and

GDPR guarantees".

- "The possibility of establishing agreements or any other legal figure has begun to be studied.

legally binding with service providers whose platforms are

frequently used by educational centers that allow obtaining a commitment

on assignment and privacy to minimize the impact on data security,

giving part to the DPD”.

5) Attach as an annex the "CD terms of service", as a numbered file in the

pdf 7.2.1 and a second part of the same terms, numbered in the pdf as 7.2.2., with

13 pages, both in Spanish.

6) A document is provided from the Director of the CEIP \*\*\*CEIP.1 signed on 03/9/2020 in which

indicates that "as has been collected in the annual general program of this course,

Since its inception, teachers who wanted to use the CD application could only use a

previous process of anonymization of the students, in which they appeared only with one or

two assigned letters and/or numbers. It was used only at the classroom level, never as a means of communication.

communication with the families-so that they would not be registered in any case in

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the application-Of this process, complete information was given in the general meetings that

were kept with the families at the beginning of the course (in which they were related to

one of the four teachers who were going to use the application).

7) They indicate that from the "data protection section of the Ministry, they have just

inform that not even taking the measures described can speak of a system

robust anonymization so the ban on using

this application to the teachers who had been doing it”

8) They indicate that they provide the annex of the conditions that a teacher accepts when they register.

high in the application. This is the “Terms of Service and Privacy Policy of

\*\*\*APPLICATION.1”, in English (25 pages pdf) and translated into Spanish (26 pages).

FOURTEENTH: On 06/1/2020, the testing practice period begins,

practicing the following:

It is accessed in GOOGLE, with the search term \*\*\*APPLICATION.1, resulting in:

1)

\*\*\*URL.1 in which it appears: “bring each family to your class

“Join 95% of schools in \*\*\*COUNTRY.1 using \*\*\*APPLICATION.1 to engage students!

children and connect with families! Free for teachers, forever.”

The information that appears in principle is in Spanish. Figure in sections

different, “register as; a” Teacher, Parent/Student/School Leader”

“Parents join the class easily using any device”

At the bottom of the company/resources/help/community page, click

resources/privacy center, opening \*\*\*URL.1, in the central part of the page are

drawings and links to the following sections:

-“GDPR Compliance”

-Compliance with the FERPA Law, “Family Educational Rights and Privacy Act” and

have earned the FERPA seal from iKeepSafe, a prestigious organization dedicated to privacy protection.”

-Compliance with the COPPA Law, “\*\*\*APPLICATION.1 fully complies with federal law

United States COPPA. Children under the age of 13 must obtain the

Parental consent to open an account, either parent or teacher

they should create one for themselves “Visit our frequently asked questions). The practices of

\*\*\*APPLICATION.1 are regularly reviewed and approved for their compliance with the

iKeepSafe's "COPPA Safe Harbor" security program.”

Below are other drawings with links, including one called “Security of

app”

In the HELP section, click on:

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-TERMS OF SERVICE: which leads to information in English, is copied-pasted on a sheet Word and is incorporated into the procedure as an associated object called "terms of service, English" with 34 pages. It is translated into Spanish through the GOOGLE translator and incorporated into the procedure as an associated object called "\*\*\*\*APPLICATION.1 term of Spanish service" occupying 33 pages, translated. As aspects to consider,

In summary, most notably:

These Terms of Service contain general terms of use and acceptance of the conditions. It is generally established who can create user accounts, and Different options, assumptions and requirements are examined in detail for each user. they must comply. As they are all in the same place, there is no quick access to the information of "User registered as teacher teachers" must first read the general, Se neatly establishes how to register, and how all the options are organized you have to configure the account and the folders that can originate.

- "If you are under 18 years of age", you represent that your legal guardian has reviewed and accepted the Agreement. Yes you cannot get your parents or guardians to read and agree to the Agreement, you do not have permission to use the Service.

- "If you are entering into this Agreement on behalf of a company or other legal entity (including if you are school personnel entering on behalf of your school), you represent that you have the authority to bind said entity to these terms and conditions, in which in the event of that the terms "you", "your" or "User" refer to said entity. If you don't have happiness authority, or if you do not agree to these terms and conditions, you should not accept this

I agree and you may not use the Service.”

- “The Company will only share and use your personal information in accordance with the Policy current privacy policy of \*\*\*APPLICATION.1 at \*\*\*URL.1.”

- However, please note that any User Content that may be in a Educational Record or Student Data (including User Content to the extent related to messages sent through \*\*\*APP Messages.1, History from class or History or school portfolios, may be kept after you delete your account for legal school compliance reasons (for example, maintenance of "educational records" under the Family Educational Rights and Privacy Act (FERPA)). See the section titled "Delete your account" in our Privacy Policy and our Removal FAQ for more information. The IP content, student data, educational records, or information are disposed of in a similar way to emptying the recycle bin or the trash in a computer. “

- PRIVACY POLICY

-It is incorporated into the file as an associated object, by copying-pasting it on the sheet word in English, with the name "\*\*\*\* APPLICATION.1 English privacy policy" occupying 53 pages, address \*\*\*URL.1 called PRIVACY POLICY HIGHLIGHTS, “LAST update December 30/2019”, ends with “visit here”. Through the translator it is incorporated into the procedure as associated object word document its translation with the title “\*\*\*APLICACIÓN.1 pol privaci español” occupying 48 pages.

On the left side of the page there is an index of the issues covered, so that by clicking on them it is possible to consult the aspects that are of direct interest.

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WHAT IS \*\*\*APPLICATION.1? It is a school communication platform that helps students

teachers to encourage students in class and involve parents. Teachers

use \*\*\*APPLICATION.1 to encourage students (or "feedback points")

to display critical skills or strengths, such as persistence, critical thinking,

Teamwork and leadership. Teachers can also post assignments using the

function Activities for students to complete in \*\*\*APPLICATION.1

("Activities"). Teachers instant message parents with messages of

text, images, videos, and stickers, and also add posts to Class Story and

School Story, a private source of classroom and school moments that only

students, parents, "verified teachers" and school leaders can see. Teachers

they can also add posts to Individual Portfolios, a private portfolio of

content that only the student, their teachers, school leaders, and the parents of the

student can see.”

“Parents can be a part of their children's classroom experiences, and those

Parents can optionally purchase Premium Features to help encourage their

children at home. Parents access and set up an account on \*\*\*APP.1 using

a unique parent code provided by your child's teacher, or through a

email / SMS invitation directly from the teacher containing the code

unique to parents, or by choosing your child's teacher from the list shown on

\*\*\*APPLICATION.1 Application or website of \*\*\*APPLICATION.1 (the application to join the

class must still be approved by the teacher). Parents can only see the points of

feedback from your own children (if your child's teacher chooses them) and Portfolios, not

those of other students. Parents can also set up an account without using a

unique parent code, but the account will not be connected to your child's school (or

any activity on your child's account at school), but they can also buy

Premium features.”

“Personal data we collect” “see this box for categories

details the personal information we collect from each type of user. puncturing

leads to another different menu called “Information Transparency” which, depending on the person

create an account, a series of data is collected, for example, the box appears for everyone,

for teacher, for parent, for student.

Figure that for the teacher user account you can take the name and

surnames, name of the school: among other purposes, to create connections within a

school community between teachers, parents and students, also the management

of the school for the same purpose.

Geolocation data during account creation through the app

web is selected where the school is and nearby schools are found using the

app. Data could also be collected from photographs, videos, documents, drawings or

audio files what communication between users means for students,

also the date of attendance of the students to improve the service of the teachers

emphasizing the attendance to class certain days and the consultation in the history of

class attendance.

Points called "feedback points" by the teacher for students in their

classes, and it is shared with the parents of the students who can see the points.

IP address to be able to estimate a location, the purpose, provide the service

provides security and quality of service, allowing to improve the product for

users,

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Indicates that the data is shared with third party service providers

such as SAN GRID in \*\*\*COUNTRY.1 to send email and the information is sent outside from the area of the European Economic Area to the United States, the legitimate basis for the treatment is that of "legitimate interest and execution of contract"

There is a section on "information to provide", "class information", which indicates as a teacher is to introduce the course and the names of the students in the class is teacher's choice enter surname abbreviations for example or enter listings with the data also teacher can share the classes he has created with others professors of the school that teaches next to him.

In the section "how long do they keep the children's information?"

"We will not retain a child's personal information for longer than necessary for educational purposes or legal obligations, or to provide the Service for which we receive or collect the personal information of the child."

"One Year Deletion Policy for Feedback Points: To protect students, \*\*\*APPLICATION.1 sets limits on how long items are retained student feedback points given in the classroom. For all students, feedback points older than 12 months are automatically deleted. By

For example, if a teacher sets a class to \*\*\*APPLICATION.1 on January 1, 2020, the January 1, 2021, all comment points added in that class will be removed (and will continue to be deleted on an ongoing basis) regardless of whether a student has or not your own account (and whether that account is active). This means that the points of feedback cannot exist in the long term. Teachers can also remove comment points at any time.

The feedback points or feedback points The teacher can customize

feedback types to any skill you like, such as "persevering" or "curiosity". A student and their parents can see all feedback points that you received when creating a student account using the unique access code provided by his teacher. These codes can only be passed by the teacher. They can't see the feedback points from other students unless the teacher decides to project the class (for example, with a Smartboard or an interactive whiteboard), then other students in the class they will be able to see the total points added by other students."

Suppression "does not include certain content uploaded by the teacher, parent, or student to the portfolio that may be considered an "education record" under FERPA or other laws student privacy laws, as we are required to retain them in the school's address ."

In "inactive account"

" figure: "Student accounts are considered "inactive"

when all of the following are true:

A teacher has not given any feedback points to the student in any class in 365 days.

If all of this is true, the student's account will be deleted.

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When deleting a student account from \*\*\*APPLICATION.1, the name will be deleted student username and password (if they previously had one), student tokens, device or any other device-specific information, the information of location (please note that we do not collect precise geolocation information from

students) and IP address.

Please note that feedback points expire automatically after 12 months.

In “safety and privacy FAQs” it is indicated:

“What happens when I delete my account?”

Teachers, parents, and students can delete their accounts by going to the setting up your account or contacting us directly at \*\*\*EMAIL.1

Professor

When deleting a teacher account from \*\*\*APPLICATION.1, the name, email address, password, profile photos, device tokens, and any other information you have provided to \*\*\*APPLICATION.1. This includes information collected through mobile app permissions\*\*.

Unshared classes, unclaimed student profiles, and all comment points are also deleted (even if they are connected to the accounts of parents and students).

Because school administrators can determine what services are available and the policies for each service, the use of \*\*\*APPLICATION.1 of each school is different. Most schools have policies governing the use of telecommunication services. zeros, such as \*\*\*APPLICATION.1, and compliance with annual reporting requirements under the Family Educational Rights and Privacy Act (FERPA). Believe-

We believe that schools are in the best position to tailor the information they share with parents based on actual use of \*\*\*APPLICATION.1 at their school. \*\*\*APPLICA-TION.1 aims to provide schools with the information they need about our services and our privacy and security practices so that they can maintain keep parents well informed. Teachers should work with their administrator to determine if they already have the proper permission to allow their students to use

\*\*\*APPLICATION.1 in the classroom.

Teachers may obtain parental consent in what is commonly

This is known as "school consent" under COPPA, where teachers have certified

do that they have received direct parental consent for their child to use

\*\*\*APPLICATION.1 for educational purposes at school or they may choose to act as the agent

of the father and consent on his behalf. For schools in \*\*\*COUNTRY.1, \*\*\*APPLY-

TION.1 provides a template to help schools obtain "consent from

the school", but it is up to the schools to determine the best way to use it, fill it out

with their own contact information and information about the services they enable, and to

share it along with the parenting resources below. For more informa-

regarding "school consent" under COPPA, see Section M for questions

FTC Frequently Asked Questions.

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"The answers to many important questions about privacy and security appear

pray in the Privacy Center of \*\*\*APPLICATION.1.

The Privacy Policy describes how the products and services of \*\*\*APLICA-

TION.1 collect and use information. As stated in this policy, \*\*\*APPLICATION.1 does not

uses any student personal information (or any information associated with a

student account) to deliver targeted advertising to students to students and the informa-

The student's personal information is never sold to anyone, including vendors and advertisers.

2) On 04/29/2020, \*\*\*URL.3 is accessed on the work PC to view on the

PLAY STORE application store, that of \*\*\*APPLICATION.1, including the so-called

\*\*\*APPLICATION.1: "Classroom and home", printing the result in a document called

“\*\*\*APPLICATION.1 in Play store”. It is indicated that “it is a free communication application for teachers, parents and students. Teachers can send messages to parents, and it works on all devices.”

Before downloading it, you can read information about "Terms of Service" and “privacy policy” referring to web address. You can also see the permissions of the app, which can access camera, microphone, storage, location, photos media and files.

It contains information on the table of third-party entities that provide services, de-

THIRD PARTIES SERVICE PROVIDERS, with links to their respective policies.

privacy case. Among other aspects, it is reported that “\*\*\*APPLICATION.1 shares information with some other reliable partners, suppliers and organizations to process it on our behalf in accordance with our instructions. These companies will only have access to the information they need to provide the Services

\*\*\*APPLICATION.1. In the tables obtained, there are two columns for each service provider.

services, one column shows “how does CD use the provider?”, and the other, what information? tion of the user shares or collects this partner and / or returns it to us?

Among them, "about the information stored in the cloud in AMAZON WEB SERVI-

CES “All user personal information and uploaded content, device ID,

request data and all logs are stored in AWS. Passwords are stored

they dine as one-way hashes. All personal data is encrypted “at rest”. " Figure-

do at rest according to google is: “The data encryption, which prevents the visibility of the data in case

from unauthorized access or theft, it is commonly used to protect data in motion

and is increasingly promoted to protect data at rest. ... The encrypted data must

remain encrypted when access controls fail, such as usernames and

the password."

3) The respondent is requested, on the performance of the CEIP \*\*\*CEIP.1, (transfer to the School for your response if applicable) regarding the application \*\*\*APPLICATION.1, (CD) that report or contribution:

a) Detail the courses, subjects, (if it was used to evaluate, elements that were valued and development of how it was carried out, if they were kept and for how long assessment records) ages and number of students in which it was used/used and date they stopped using it.

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He had a written entry on 06/18/2020 (folios 1887 file). Through the school indicates that "it was only used in second grade, A, to involve and motivate students in action. classroom activities, at no time to grade subjects, and as a messenger", "but not since September 2019 date of last message." It was used for 16 children, and alludes to the name of the claimant's son, "who was not included." Indicates that the logs motivated vacations were restarted from time to time, he cannot specify, since that was when they reached a certain number of points were awarded when the possibility of entering again began. motivate the student with appropriate attitudes. It states that "it was completely stopped using in the course 2019 2020 "

b)

Please provide information on how the children were graded, whether it was possible to score by the teacher what he considered appropriate, or he had to stick to what was contained in the application, to the elements included in it exclusively. If the notes were kept in the application, if what was entered were the sum of points awarded for compliance

of objectives and behavior of the student and how they influenced the assessment of the subject.

It indicates that the points of motivations and attitudes in no case affected the student's final grade in any subject, and that it was just a way of motivating.

There were concepts like sitting well, working in silence, as one more tool to encourage these habits.

c)

Detail the platform from which the application was downloaded (web, PLAY STORE, etc.) who downloaded it, if there was any written request to authorize it by the director of the center, if its use was communicated to the Ministry and devices in which it was stored. gave.

It states that the application was downloaded to the classroom PC, the only device on which it was saved. da, from the official website, and that "The management of the center was not informed because it was considered as a tool like so many others never more relevant."

d)

Report on the user account configuration mode used as teachers. Confirmation of whether the teacher worked the application with a blackboard in class intelligent electronics, what security systems existed in the storage and custody of the used computer devices or equipment. How accounts were created in CLASSESS DOJO, data of the minors that were introduced. Indicate whether students at home or at class accessed their own accounts.

It shows that the application was used through its website by projecting the page in a digital board. "I regularly erased the history of the computer by entering the password every time I wanted to access". "APPLICATION.1 accounts were not created in plural, only that of the teacher, the data of the minors entered were simply the first letter of the name followed by a number, for example A 1, which made it impossible to identification by other people. The students did not have access to the accounts were

parents who voluntarily with their own email could access the data of their children after voluntarily registering in the application.”

e) Specify if a user-password should be entered to access the start of the CD application, and if there were more occasions or menus in which user input was requested. rio-password, or if they accessed third-party applications, new passwords had to be entered. address.

It states that \*\*\*APPLICATION.1 requires through its website that “you enter in each access the user password, not having request by third parties of any kind of password or other information.”

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F)

Indicate whether each student interacted with the application in class or also

They used it at home, entering some kind of answer in the application and registering in the student's portfolio, and whether it was accessible to parents. Indicate if in any class videos have been uploaded for example to third-party applications offered by the application, like YOU TUBE.

It states that the students at no time interacted with the application, only

Parents who so wished could access. “The photos or videos uploaded were made by the teacher without entering data from third parties at any time.

g) If in each course that was used or has been used, before operating with it, it was informed to the parents or it was done as in the 2018-2019 academic year, which they are informed after beginning czar to use it. How did parental access work and what possibilities of access to data



cough of their children had. If after the 2018-2019 academic year it was reported whether or not it was mandatory the incorporation of students to the platform.

It states that at no time has the incorporation of students been compulsory.

us to the platform. Parents had access through their personal email and

a custom code that only allowed them to access the data of their own children. Un-

After the year 18/19, restrictions on its use were reported, "which prevented access to

families and shortly afterwards its use was prohibited in the center." "It was never used as a tool.

essential in the classroom.

h) On the measures of anonymization of personal data that have been im-

planting along the courses, indicate from which course it began, how it evolved and

which they consisted

He states that since the 2018/2019 academic year, nicknames or

aliases for non-initiation of children using names like L2 or M 1. "Once informed

certain that this was not a reliable way of anonymization either, since it was not generally

do by an algorithm and so on, it was decided not to use it" .

Yo)

Indicate whether the use of \*\*\*APPLICATION.1 was initially planned to be

mandatory or voluntary, and what person or position decided it, explaining the reasons. If informed

in this sense in the initial session to the parents. Confirm if the use of the platform starts

was not considered in the annual program of education, purposes and object

of this, and if it has been in successive courses.

It states that DC was reported at the first meeting of the 2018/2019 academic year, not

indicating at no time that it was mandatory but as one more tool to use

throughout the school year. "It has not been in the annual general programming for considering

that it was just one more tool, not at all essential".

g)

Indicate whether the person responsible for the processing, the Ministry of Education, was informed

After its establishment and start-up at the beginning of one of the courses in which it was

implanted. Indicate if the director of the CEIP authorized each teacher to use \*\*\*APLICA-

TION.1 or document in which said use was communicated and/or approved. Determine if

There was a protocol or instructions from the Director of the Center to the teachers for the use of platforms.

educational forms with the data of the students, the data being the responsibility of the Cen-

educational tro on behalf of the Ministry.

He states that he has already answered the previous questions, reiterating that he does not

trained the director of the center

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k) It is considered that the claimant requested the removal of her son from the application,

\*\*\*APPLICATION.1. Provide, if available, the request by which you proceeded to

the cancellation of data of the claimant and prove the date of cancellation of the application and as follows-

guided by qualifying the claimant's son, if the claimant was informed of these aspects,

copy of the writing. Detail of the reason that allowed the withdrawal of the student in the application.

They indicate that there is no document by which the withdrawal was requested, and the same was

As for the claimant, she showed her displeasure with the application, that is, when it carried

ba two or three days using. It indicates that the claimant's son continued to be evaluated exactly

exactly the same as the rest of the students.

i)

Indicate if you have a document or any type of support on the information

that was provided to parents, and when it was provided, or in courses

successive, clear and precise structured data, operation of the application, exercises

rights, deletion of data etc., also on whether it was reported in successive years

of the character of voluntary use for students, and system used to assess children

with whom said system was not used, and what advantages the system had or has \*\*\*APPLICA-

TION.1 over the other.

Indicates that the information provided was at all times oral,

showing them the app at the parent meeting telling them how it worked. The

advantages of \*\*\*APPLICATION.1 compared to other systems are:

1 Motivation of children compared to other more traditional methods such as

a behavioral semaphore.

2 The system is more accurate when evaluating behaviors. For example,

a child can get a point for feeling bad, but lose it for not being quiet.

This cannot easily be done with a system considered to be more traditional.

m) If the application \*\*\*APPLICATION.1 was used to communicate the qualifications to

the parents-guardians who consented and downloaded the application?, during which courses? To what

other data had access, and if parent-teacher communication was also done through

of the application \*\*\*APPLICATION.1. If the application downloaded by a parent allowed viewing

live the class in real time or what data could be verified.

Responds that at no time was the application used for rating communication.

communications. They only had access to data on motivation of their attitudes in the classroom of their

son. At no time could the parents view the class either live or recorded.

n) In allegations, it appears that it was the teachers who established the use of the platform.

by virtue of his academic freedom. In this sense, without entering to value that right, at the

may conflict with the fundamental right of data protection of minors, de-

detail the reasons why you consider that this thesis is appropriate for the establishment of

educational platforms in a public education system with a course programmed by

part of the aforementioned group of teachers who can carry it out motu proprio, according to the allegations made.

He indicates that they are two different issues and that in educational centers there is a training in data protection.

1) To the MINISTRY: GENERAL DIRECTORATE OF SCHOLARSHIPS AND STUDY AID,  
on:

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a) If any regulatory provision, protocol or guidelines have been issued that regulate the incardination of educational applications and their use in pedagogical work in schools, structuring the roles of teachers, directors and Counseling, with a copy of the same.

It indicates (folio 1895) that throughout the 2018/19 academic year there have been inquiries and claims related to the use of educational applications whose study and assessment has led to the elaboration of some models of consent and some instructions for the start of the 2020/21 course.

States that the main use of the EDUCA educational platform has been established in MADRID what is a safe environment that facilitates the performance of tasks in digital format with the students.

On the occasion of the declaration of the state of the pandemic, they provide a copy of the written report of the Directorate General for Bilingualism and Quality of Education (folio 1895) issued dated 05/12/2020, resolution on the establishment of instructions and recommendations to educational centers in relation to the use of digital platforms

for educational purposes, developed in accordance with the provisions of Decree 288/2019 of 12/11 on the use of computer platforms in educational systems centers computers linked to learning and teaching updating. It refers to the implantation in the Community of Madrid, the EDUCA MADRID digital platform and its characteristics. I know indicates that before using other different tools for learning and teaching in alternative educational applications, a risk analysis should be carried out on the that the privacy policies of said applications are analyzed, the use of techniques of robust anonymization and current regulations on Data Protection, its use must be validated by this Directorate General, references are also contained to the minimization of data in the use by educational centers and that this complementary programming that is included within the annual general programming that elaborated by the educational center in a specific area dedicated to ICT, indicating in concrete also, the educational purpose pursued. It also refers to relationships with students and families through the institutional accounts of the educational center and the of teaching staff provided by EDUCA MADRID and ends by indicating the empowerment of Training in Data Protection for teaching professionals.

States that these instructions have been disseminated to the area addresses territory and the educational centers themselves

b) In their allegations they indicate that: among the recommendations disseminated to all the educational institutions supported with public funds from the Community of Madrid, the only platform digital format recommended by the Ministry is EDUCAMADRID". In this regard, it was requested request that you report on the date on which the aforementioned recommendation was sent to the CEIP, and the that this saves with the realization of training and dissemination among the teaching staff of cur- are training officers of the Ministry with the platform \*\*\*APPLICATION.1.

States that on 05/29/2019, together with the instructions for the beginning of the course from the management, the then competent General Directorate of Scholarships and Aid to

study, a decalogue of good practices in the

use of educational applications to each direction of territorial area and said

decalogue between their respective educational centers so that all teachers were

aware of these recommendations. It shows that of the great diversity of

digital tools and educational platforms that teachers should be aware of, if their use

used in curricular matters, it has been ruled that the data must always be

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anonymized and the instructions at the beginning of the course include more specific information

on the different types of treatment to educational centers.

c) If, as the data controller, it has been considered to refer to Directors of

centers, instructions on the use of applications, platforms and/or social networks in relation to

tion with the educational activity, and if it has been taken into account to inform in some way in the

registration of the students of the use of the same.

He states that from this Directorate General, with the advice of the Delegation

of Data Protection, is carrying out a work of homogenization and assessment and

risk assessment that the projects of the different platforms or applications

propose from educational centers. It also refers to the instructions of the

Ministry of Educational Policy and Science and Educational Organization of 07/05/2019 on

the beginning of the 2019 to 2020 school year, which in its section 11 establishes that "each

The center will agree on the educational applications that will be used during the course at the PGA

school in the specific ICT section and for this the privacy policies will be analyzed

of said applications, guaranteeing compliance with the Data Protection regulations.

Data after a weighting between the transfer of data and the purpose of the application

educational”.

d)

Report on legitimate basis used in data processing in teachings in

which the use of online educational platforms is mandatory, in accordance with the law

organization of education in the CCAA of Madrid, dictated support regulations, or reports that

want to contribute to it.

It refers to the provisions of Organic Law 2/2006 of 3/05 on education in the amendment to

its wording by Organic Law 8/2013 of 9/12, article 17 that establishes the

objective of primary education the initiation in the use for learning of

information and communication technologies, in article 23 in secondary education:

as “developing basic skills in the use of information sources”, and as regulations

of development refers to the decrees of the different levels of education that mention

the development of digital competence in their curricula. They add that they have created a

protocol for the control of tools handled by the centers and in what activities

specific ones need them, establishing measures that avoid processing data of

confidentiality on these platforms and to limit their use and are developing a plan

special training on Data Protection with a general scope.

FIFTEENTH: On 11/30/2020, a resolution proposal is issued, as follows:

“That by the Director of the Spanish Agency for Data Protection, the

with a warning to the COUNCIL OF EDUCATION AND INNOVATION OF THE COMMUNITY

DE MADRID, for an infringement of article 5.1.a) of the RGPD, in accordance with article

83.5 a) of the GDPR.”

Allegations are received from the respondent that reiterate what was stated.

PROVEN FACTS

1) The complainant was informed at a meeting held on 09/17/2018 at the CEIP

\*\*\*CEIP.1, DE MADRID, where his minor son attends, that his data began to

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be used through the application \*\*\*APPLICATION.1, belonging to an entity located in \*\*\*COUNTRY.1. Claim indicating that it is not a secure application, being the information in English and parental consent not having been obtained prior to the use of the data for this purpose. It also indicates that at the meeting parents were invited to register in the application and download it to the smartphone, providing them with a few codes on a printed paper, to enter in the application, including the literal: "this year I am using \*\*\*APPLICATION.1 to communicate with parents" also serving as communication link with the teacher.

According to the claimant's statements, the data contained in the students, because the parents were shown the application, they were first and last name (only one) next to dots, positive or negative.

2) On 09/19/2018, the claimant sent a letter to the CEIP requesting that they erase the data of his son from the application, and on the 27th of the same month, he states, he asked the school access to the data that "had been collected by the application \*\*\*APPLICATION.1" "a through the teacher" and that "all the information that had been collected". In a letter from the school to the complainant dated 09/28/2018, she was informed that the Your child's data was removed from the application and that as for the rest of the students, in the application, they were going to change the name and surname data for other indicators not explicit.

3) It is accredited that the claimant sent a letter to the Ministry of Education of the



11/13/2018, requesting, despite knowing that his son's data was excluded from the application, the suspension of the use of CDs in the classrooms of the school for considering it not adjusted to data protection in security, data transfer, lack of clarity in the information on the exercise of rights among other reasons.

4) In the ANNUAL GENERAL PROGRAM that the school approves at the beginning of each course, collecting all the aspects related to the organization and operation of the same, including the projects, the curriculum, the norms, and all the action plans agreed and approved, by the School Council, was not contemplated for the 2018-2019 academic year the introduction and use of the application \*\*\*APPLICATION.1, since according to its Director, it was a Non-essential educational tool.

The Director of the CEIP, states that: "The application was downloaded by a teacher

5) on the CEIP computer, directly from the \*\*\*APPLICATION.1 website, without informing the direction by considering it a tool. The account was created by the teacher and she was the that entered the data of the students, without them having access to the account, not at home either. Indicates that the advantage of the application was its appeal to children motivating them more, and a totalizing system of the points that were awarded. only the Parents with their email could access their children's data if they registered in the app

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It was the teacher who projected a screen in the class, and it was the same one who handled the application in class. The students did not interact directly with the

app

6) The school stated that \*\*\*APPLICATION.1 “is a methodological resource that only was used in a course, for 16 children in the same class, second A,” to implicate them, motivate them in classroom activities, and reinforce habits or attitudes, with actions such as “sit well”, work in silence not to grade subjects. Each child is assigned a different virtual doll (avatar), along with its name.” In the classroom, usually uses a moment a day (it is projected on the IWB) of the class, to review how the day, trying to highlight from each student what they have done best to reinforce it positively. Usually, when they reached a certain number of points, began again the possibility of encouraging the student with appropriate attitudes, rebooting every so often. It was completely discontinued in the 2019 2020 academic year. As a messaging with parents, it was discontinued in September 2019, although states that parent-guardian communication was done through the agenda. He also stated in evidence that “at no time has the incorporation of students to the platform” and that the parents did not visualize the class, nor in direct or deferred. He adds that already in the same course 18/19 they began to be used nicknames or aliases so as not to directly identify students, formed by letters and numbers, ending up not using it and that in the 2019-20 academic year it was collected in the annual general programming that teachers who wish to use the CD application only could do so through a prior process of student anonymization, in which appeared only with one or two letters and/or numbers assigned, being used only at the of the classroom, never as a means of communication with the families, and from this process, information in the general meetings that were held with the families at the beginning of course The respondent has stated that the children did not have access by themselves to the application, nor do they handle it themselves in the classroom, but it is the teacher who accesses and value.

7) In its allegations to the initial agreement, the Ministry indicates that it was unaware of the use of the application in the CEIP and that required him to stop using it, since he considered among others, that student data was used without taking into account the projection of risks that its use could entail.

8) According to the previous investigations and the tests carried out, the characteristics of the application \*\*\*APPLICATION.1, related to the use made by the teacher in class, in the unique account that he creates and works with, and the use that the parents can carry out the same, applicable to the specific case would be:

-Among other information that appears when downloading the application are the “terms general terms of use and acceptance of the conditions”, indicating in general who can create user accounts, and examines in detail for each user, different options. It is carefully established how to register, and how all the options to configure.

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Other possibilities contained in the application include an allocation system points, rewards and goals to encourage student performance, adding or subtracting for the fulfillment of objectives and behavior of the student (it remains attentive, participates in class, curious, etc.). The data that is collected, according to the information contained in the application itself, are: student data; name and surname the data entered by the person who creates the account (in this case teachers, name and surname, email address) points account, class attendance data, figure also address and name of the school, photographs, videos, drawings, location

approximate, although in the present case the CEIP reported that they did not introduce the address data of the school when creating the account.

It appears in the general conditions of the application, in the section “how long children's information,” which \*\*\*APPLICATION.1 sets limits on how long the student feedback points given in the classroom. “For all students, feedback points older than 12 months are automatically delete... This means that feedback points cannot exist in the long term. Teachers can also delete comment points on any moment. “-In safety and privacy FAQS it is indicated:

“What happens when I delete my account?

Teachers, parents, and students can delete their accounts by going to the setting up your account or contacting us directly at \*\*\*EMAIL.1”

Professor

When deleting a teacher account from \*\*\*APPLICATION.1, the name, email address, password, profile photos, device tokens and any other information you have provided to \*\*\*APPLICATION.1. This includes information collected through mobile app permissions”” Classes are not shared, unclaimed student profiles and all feedback points are also deleted (even if they are connected to the parent and student accounts). -In the privacy policy section of \*\*\*APPLICATION.1, it is reported that parents can access \*\*\*APPLICATION.1 using a parent code provided by your child's teacher and the request to join the class must still be approved by the teacher and parents can only see their own children's feedback points and their portfolios not those of other students.

-CLASS DOJO. declares that it shares the personal data of users (teacher, tutor, student and parent) with service providers (third parties) for the operation of their

platform in accordance with its instructions and privacy policy, although each of

These providers have their own privacy policy. On the CD website it appears

a list of 25 service providers with links to them so you can see their

privacy policy \*\*\*URL.1. It is reported: “These companies will only have access to the

information they need to provide the Services of \*\*\*APPLICATION.1”. In the

The tables obtained show two columns for each service provider, in one column

figure “how does CD use the provider? and on the other, what user information is shared or

does this partner collect and/or return it to us?

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-It is indicated that the data and information are stored in the AWS cloud of AMAZON.CO

M.INC. referring that “All the personal information of the user and the uploaded content, the

Device ID, request data, and all logs are stored in AWS. The

Passwords are stored as one-way hashes. All personal data is

encrypt “at rest”, “ Encryption at rest according to google is: Data encryption, which prevents the

visibility of data in the event of unauthorized access or theft, is commonly used to

protect data in motion and is increasingly promoted to protect data in

repose. ... Encrypted data must remain encrypted when security checks fail.

access, such as usernames and passwords.”

In the informative clause of the CD privacy policy it is indicated that the teacher

you can enter the name of the students in the class or you can refer to them in

abbreviations. Likewise, it is indicated that the feedback points of more than 12

months are automatically deleted, and that “Masters can also delete points

comments at any time.

9) In June 2019, before the initiation agreement was signed, the respondent began to evaluate the degree of compliance with the use of computer applications in centers education by developing a "decatalogue of good practices for educational centers public of the Community of Madrid", published on the internet: \*\*\*URL.4 appearing as date 6/4/2019 based on the recommendation as the only digital platform EDUCAMADRID educational platform, and instructions on hosting data on the platform official and guarantees in the treatment of data such as anonymization in case of use of other technologies, with the obligation to analyze the protection of personal data before use any computer application external to those offered by the Ministry and recommending the use of instant messaging to communicate through said platform.

10) The General Directorate of Bilingualism and Quality of Teaching, competent for the preparation of guidelines for the use of computer platforms in educational centers and computer systems linked to teaching learning and updating, signed the 05/12/2020 a resolution with instructions and recommendations to educational centers in relation to the use of digital platforms for educational purposes. In addition, various resolutions and communications insist on the use of the EDUCAMADRID platform to functionalities related to online education, while creating channels of communication to resolve doubts about education.

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.

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

"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.

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

The LOPDGDD indicates.

-article 83 “”:

“1. The educational system will guarantee the full insertion of students in the digital society and learning to use digital media that is safe and respectful of the human dignity, constitutional values, fundamental rights and, particularly with the respect and guarantee of personal and family privacy and the protection of personal data. The actions carried out in this area will be inclusive, in particular with regard to students with special educational needs.

The educational administrations must include in the design of the block of subjects of

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free configuration the digital competence referred to in the previous section, as well as the elements related to the risk situations derived from the inadequate use of ICT, with special attention to situations of violence on the Internet.

2. The teaching staff will receive the digital skills and training necessary for the teaching and transmission of the values and rights referred to in the previous section.



3. The study plans of university degrees, especially those that enable for professional performance in the training of students, they will guarantee training in the use and security of digital media and in the guarantee of fundamental rights in Internet.

4. The Public Administrations will incorporate into the syllabi of the access tests to higher bodies and those in which functions are usually performed that imply access to personal data matters related to the guarantee of the digital rights and in particular data protection.”

-FINAL PROVISION 10, "modification of Organic Law 2/2006, of 3/05 of education", introducing in its article 2.1) in "purposes of education" its section I:

"I) Training to guarantee the full insertion of students in society and learning about safe use of digital media and respectful of the human dignity, constitutional values, fundamental rights and, particularly, with the respect and guarantee of individual and collective privacy".

The tools and learning support systems in the field of digital educational contents are contemplated in the modification of the aforementioned law, operated by the recent Organic Law 3/2020 of 12/29 on Education, BOE 12/30.

Article 111 bis entitled information and communication technologies establishes by the educational administrations and the management teams of the centers the promotion of information and communication technologies in the classroom, "as a means appropriate and valuable didactic material to carry out the tasks of teaching and learning". Y in its point 6, that "The Ministry of Education, Culture and Sports will prepare, after consultation to the Autonomous Communities, a common reference framework for digital competence teacher that guides the permanent training of teachers and facilitates the development of a digital culture in the classroom.

When starting activities that involve the processing of personal data, the person responsible

treatment should always take time to consider what the appropriate legal ground would be.

ordered for the planned treatment.

As a general rule on the legitimizing basis of the treatment of public entities, the

recital 43 of the GDPR, points out that it is unlikely that public authorities

can trust the data processing base on the consent of the affected party, since

as a public authority, it is assumed that there is a clear imbalance of power

in the relationship between said controller and the data subject. It is also clear in most

cases in which the interested party will not have realistic alternatives to accepting the treatment

(terms) of this person in charge. This does not mean that the use of consent as

legal basis for the processing of data by the authorities is totally ex-

cluded in the legal framework of the RGPD, but has a reduced scope. So, you have to search

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establish the lawful roots of the treatment in a legitimating basis, among which the

article 6.1 of the RGD, which are:

“a) the interested party gave his consent for the processing of his personal data for

one or more specific purposes;

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

part 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 treatment is necessary to protect the vital interests of the interested party or another

Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers vested in the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by

the data controller 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

little boy.

The provisions of letter f) of the first paragraph shall not apply to the processing

carried out by public authorities in the exercise of their functions.”

Regarding paragraph two, of the twenty-third additional provision of the Law

Organic 2/2006, if a student joins the organization of the school, he submits

to its rules and guidelines, in this case for educational purposes, the collection of your data by

example, in the registration form and your registration in the center, it would not respond to the scheme

treatment based on consent, but rather to a relationship between the parties

that includes elements that are indicated in the Education Law, and relationship in which they can

Subsequently, other types of treatment arise, in which, according to their purpose, they must

find an adequate legitimating basis for said treatment.

Regarding the promotion of digital competence, it is a mission of public interest

to contemplate in the treatment schemes, as indicated in article 6.1.e) of the

RGPD with the requirements of the aforementioned Law of Education and Guarantee of rights

affected in its implementation in terms of data protection.

It must be differentiated, since consent to data processing, which occurs

usually within a free provision or in the acceptance of goods or services, in

which both parties have autonomy of their will, which could be valid

legitimate basis for the development of the function or educational purposes, promoted by the powers

public as appropriate and necessary interventions to meet the objectives pursued,

that link with the Organic Law of Education 2/2006 of 3/05, of 2006 (LOE) as a mission of public interest that establishes the development of digital skills and technologies of the information.

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In general, consent can only be an adequate legal basis if the consent is offered.

control to an interested party and is offered a real choice regarding accepting or declining the terms offered, without suffering prejudice.

In the present case, the use of computer applications as a purpose connected with the education and promotion of new technologies could find its legitimizing base in the article 6.1.e) of the RGPD.

However, that this legitimizing basis for the treatment could exist, it should be accompanied not only by the legitimized subject for the implementation of the aforementioned legal basis fraudster, but would have to respect the principles and guarantees of the law that establish the RGPD and the LOPDGDD

III

The RGPD, in force at the time of the events, states in its article

5.2: "The controller will be responsible for compliance with the provisions of the section 1 (principles of treatment, among which is the way in which they must be processed the data, "in a lawful, loyal and transparent manner") capable of demonstrating it ("proactive responsibility"). This implies that the aforementioned person in charge is the one who assumes own responsibility directing and coordinating the matter, including that of the personnel who provides services.

In compliance with said precept, and without containing a specific list of specific activities to be carried out on the tasks to certify compliance, under the principle of proactivity must deploy appropriate technical and organizational measures in order to comply with said principle (article 24 of the RGPD), being within the same in addition and among others, that of being able to demonstrate compliance. Among the tasks that may cite, may be understood to include, without exhaustiveness:

- Document the legitimizing basis of data processing in order to demonstrate what is the that is being applied in particular. In this case, before starting the app, should have rated:

Whether it is necessary or not, in the sense that there is no other more moderate measure to

☐

the achievement of such purpose with equal efficiency by being able to carry out manually the activity, The term need should not be confused with useful but if the treatment is objectively necessary for the purpose.

If it is suitable or appropriate in the sense that the measure is likely to achieve

☐

the proposed goal, and

If its implementation is weighted or balanced by deriving from it more

☐

benefits or advantages for the interest that damages on other goods or values in conflicts,

All this considering the location of data in the cloud, on servers in \*\*\*COUNTRY.1

and the transfer of data abroad, who are minors within the scope of a application whose terms of information are very extensive and complex.

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Also, it should have been clear from the beginning the voluntariness of the application, and as such alternatives have been developed, or it should have been analyzed if the versatility and automatism in the counting of the awarded points surpassed the inconveniences, as well as its use without a name and surname was feasible, and clear and expresses to the parents in this sense. These elements were absent at the beginning of his use in the 2018-2019 academic year, and should have been explicitly documented as well as analyzed the probable risks derived from the use of the application.

-Have a robust organization that coordinates and structures the obligations of the responsible for the treatment, including communication to the persons or entities that They must execute the treatment operations that report in both directions, information to the personnel to whom it provides services and unifies the guidelines on data processing

What do the applications mean?

-Establish training in the field of data protection and new technologies, to the education professionals.

-Risk evaluation and assessment procedures, and adoption of technical measures and organizational measures that allow to eliminate or mitigate the damages that could be derived for the rights and freedoms of people.

-Procedures for monitoring the implementation of treatments, especially educational applications.

Therefore, a proactive development on data protection and save evidence of the steps taken to comply with the GDPR next to the circulation and life of data.

In addition, the principle of proactivity must be developed within the framework of

"Data protection by design and by default" determined by article 25 of the RGPD:

"1. Taking into account the state of the art, the cost of the application and the nature, scope, context and purposes of the treatment, as well as the risks of different probability and seriousness that the treatment entails for the rights and freedoms of natural persons, the data controller will apply, both at the time of determining the means of treatment as at the time of the treatment itself, technical and organizational measures appropriate, such as pseudonymization, designed to effectively enforce the data protection principles, such as data minimization, and integrate guarantees necessary in the treatment, in order to comply with the requirements of this Regulation and protect the rights of data subjects."

#### IV

Educational centers collect and process an enormous volume of data that is subject to of treatment, to which must be added the typology of some data that are special data protected, especially health data, and computer tools were beginning come to use the educational sector, allowing, among other things, to obtain information about bre learning profiles.

In certain cases, educational centers to fulfill their functions need have the collaboration of other people or entities that are not part of your organization. tion. By way of examples, for the canteen service, medical service, transportation, for

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carrying out extracurricular activities or sometimes also related to the purposes of education, such as the use or development of computer applications and/or platforms

more educational that are related to the implementation and development of learning through of new technologies and digital skills. Its establishment must take place within a framework respectful of the rights of those affected.

The use of computer resources both for the management of educational centers as for learning has meant the appearance in the market of the PLATFORMS OF EDUCATIONAL MANAGEMENT and LEARNING PLATFORMS.

The EDUCATIONAL MANAGEMENT PLATFORMS make available to the Centers educational functionalities of management and communication among its members, collecting large amount of data.

The LEARNING PLATFORMS, for their part, make available to teachers and students different functionalities that favor learning. functionality- that vary from the use of the simplest digital whiteboard, which consists of an or- computer with video projector to display presentations and access web pages up to called Virtual Learning Environment (EVA) or Virtual Learning Environment (VLE), system software theme designed to make it easy for teachers to manage virtual courses for their students, especially collaborating in the administration and development of the courses.

The EDUCATIONAL MANAGEMENT platforms carry out treatments of some or all two of the following data, by way of example,

- storage of identification data of all the members of the educational system  
tive students parents tutors teachers.
- Complementary treatments such as those related to dining room transport  
absentee behaviors.
- Storage of medical and psychopedagogical data.
- Connectivity data communications between the educational center and the students or families by providing such tools.
- Academic management monitoring of the student from the pre-registration process and



registration class lists and evaluation (notes).

The LEARNING PLATFORMS were born under the concept of "management of contents", computer applications that are mainly used to facilitate the management of web pages and their contents, learning management systems that through applications web cations allow implementing communications and monitoring of learning, achieving greater interaction between teachers and students. They aim to create a collaborative work environment between teachers and students to facilitate the management of virtual courses. It allows to follow the progress of the students and can be managed by cents and by the students themselves. Learning platforms are usually composed tas of different computer applications for virtual learning environments such as example, virtual classrooms, electronic books, or a media library that offers teachers and their students space to manage multimedia productions.

In the present case, in addition, the information of the APP \*\*\*APPLICATION.1 store- stored their data in the "cloud", a model called "Cloud Computing" or "Computación en

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cloud", form of provision of services that is defined as a model that enables the access from any computer, anywhere to a shared pool of resources, such as such as processing or data storage capabilities, applications, etc. allowing- helping those who choose to use this model reduce the cost associated with implementation of information systems. In "Cloud Computing" the data is found in the provider of the cloud service and is accessed through the internet from any device (telephone). mobile phone, personal computer, tablet...), the service provider may be in

anywhere in the world.

Teaching is in a stage of substantial change in which new technologies

gies emerge and evolve very quickly, integrating themselves into the classroom. If to this is added the

special vulnerability of minors, the large amount of personal data that is handled

jan in this sector and the suitability of the use of "Cloud Computing" in platforms of

Easily downloadable applications Data protection regulations pay special attention to

attention to this scenario, considering relevant to anticipate and verify the guarantees adopted

das regarding the data processed in these systems. In particular, the risks arising

two of the treatment, security measures implemented by each of the agents, avoiding

considering its alteration, loss, treatment or unauthorized access, as well as the content of the

information on treatment and purposes, or exercise of rights and control of the data, in order to

in order to guarantee the security and integrity of the data.

Regarding the intervening subjects related to data processing, there are

to go to the concept of responsible and in charge of the processing of personal data in

Article 4.7 and 8 of the GDPR:

“7) responsible for the treatment” or “responsible”: the natural or legal person, authori-

public entity, service or other body that, alone or jointly with others, determines the ends and

treatment god; if the Law of the Union or of the Member States determines the fi-

purposes and means of the treatment, the person in charge of the treatment or the specific criteria for

their appointment may be established by the Law of the Union or of the Member States;”

8) “in charge of the treatment” or “in charge”: the natural or legal person, authorized

public entity, service or other body that processes personal data on behalf of the controller.

ble of the treatment”

The persons and entities that, in order to provide the aforementioned services, process the data of

personal character of the students, be they those of some course or class, with the common de-

nominator that they can belong to an educational center, or to all educational centers

vos of the Autonomous Community in which the computer application that treats your

data, they do so with the data owned by the data controller. this responsible

is characterized, in accordance with article 4.7 of the RGPD because:

-It is the one that establishes the purpose or result of the treatment, purposes of the same and of the means of treatment.

-Establish on which individuals the data is processed, in this case the students of the center, but they can cover other areas, a class or a course, as you decide.

Decisions are made as part or as a result of treatment.

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The companies that perform this type of services (Cloud Computing, platforms educational, data hosting) offer educational centers computer applications

structured as accessible "learning platforms" (this is how it is described in the

\*\*\*APPLICATION.1) through the Internet, they are fed, as in the present case, by data from

the students. Therefore, in this case, the essence of using the application \*\*\*APPLICATION.1

is that of consideration of treatment manager.

v

It is considered that the claimed party has infringed article 5.1.a of the RGPD that indicates:

"1. The personal data will be:

processed in a lawful, loyal and transparent manner in relation to the interested party

a)

(«lawfulness, loyalty and transparency»)"

As data that is processed by the owner of a computer application, the claim-should have implemented, as data controller, the necessary mechanisms aries in terms of data protection so that when data is processed by third parties for the provision of an educational platform service through a computer application, complies with the regulations that indicate its obligations contained in article 28 of the RGPD, which for the specific case are listed:

"1. When a treatment is going to be carried out on behalf of a person in charge of the treatment, this will only choose a person in charge that offers sufficient guarantees to apply appropriate technical and organizational measures, so that the treatment is in accordance with the requirements of this Regulation and guarantee the protection of rights of the interested party.

2. The person in charge of the treatment will not resort to another person in charge without the prior authorization by written, specific or general, of the person in charge. In the latter case, the person in charge will inform to the person responsible for any change foreseen in the incorporation or substitution of other managers, thus giving the controller the opportunity to oppose such changes.

3. The treatment by the person in charge will be governed by a contract or other legal act in accordance to the Law of the Union or of the Member States, which binds the person in charge with respect to the responsible and establishes the object, duration, nature and purpose of the treatment, the type of personal data and categories of interested parties, and the obligations and rights of the responsible. Said contract or legal act shall stipulate, in particular, that the person in charge:

a) will process personal data only following documented instructions of the responsible, including with respect to transfers of personal data to a third party country or an international organization, unless required to do so under the law of the Union or of the Member States that applies to the person in charge; in such a case, the

The person in charge will inform the person in charge of this legal requirement prior to the treatment, unless such Law prohibits it for important reasons of public interest;

b) will guarantee that the persons authorized to process personal data have

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committed to respecting confidentiality or are subject to an obligation of confidentiality of a statutory nature;

c) take all necessary measures in accordance with article 32;

d) will respect the conditions indicated in sections 2 and 4 to resort to another treatment manager;

e) will assist the person in charge, taking into account the nature of the treatment, through appropriate technical and organizational measures, whenever possible, so that it can comply with its obligation to respond to requests whose purpose is the exercise of the rights of the interested parties established in chapter III;

f) will help the person in charge to guarantee the fulfillment of the obligations established in Articles 32 to 36, taking into account the nature of the treatment and the information to disposal of the manager;

g) at the choice of the person in charge, will delete or return all personal data once ends the provision of treatment services, and will delete the existing copies to unless the conservation of personal data is required under the Law of the Union or of the Member States;

h) will make available to the person in charge all the information necessary to demonstrate the fulfillment of the obligations established in this article, as well as to allow and contribute to the performance of audits, including inspections, by the person in charge or another auditor authorized by said person in charge.

In relation to the provisions of letter h) of the first paragraph, the person in charge will inform immediately to the controller if, in his opinion, an instruction violates this Regulation or other provisions on data protection of the Union or of the Member states.

9. The contract or other legal act referred to in sections 3 and 4 shall be in writing, including in electronic format.

Adding in the "treatment under the authority of the person in charge or the person in charge of treatment-lie" (article 29):

"The person in charge of the treatment and any person acting under the authority of the responsible or of the person in charge and has access to personal data may only treat said data following the instructions of the person in charge, unless they are obliged to do so by virtue of of the Law of the Union or of the Member States."

It follows that legal persons are not considered data processors.

individuals who have access to personal data in their capacity as employees of the center education (teachers) framed in the educational Administration, responsible for treating I lie.

In front of the writing of general clauses of acceptance of the service, these do not may release the data controller from his obligations, with the data controller owing assess the terms based on what is stated in this resolution and the associated risks.

Therefore, the allegation of the respondent that "she does not have the competence to advise against

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expressly the use of "CD", since the use of this application as well as that of others available to

the educational centers of the Community of Madrid is always subordinated, and thus transmits, to the current regulations of Data Protection” is not sustained in the present regulations and under the principle of management of the data controller, which must provide that the treatment complies with the applicable regulations, as well as coordinate and direct policy regarding the use of educational applications and processing orders.

Thus, the commission of the infringement of article 5.1.a) of the RGPD is accredited.

The infringement of article 5.1a) of the RGPD refers to article 83.5.a) of the RGPD that indicates:

SAW

“The infractions of the following dispositions will be sanctioned, in accordance with the 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 turnover annual global of the previous financial year, opting for the highest amount:

the basic principles for the treatment, including the conditions for the

a)

consent under articles 5, 6, 7 and 9;”

Links with it the article 83.7 of the RGPD that 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 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.

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

data 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 managers, and

proves the existence of technical reports or recommendations for treatment that are not

had been duly attended to, in the resolution in which the sanction is imposed,

will include a reprimand with the name of the responsible position and order the

publication in the corresponding Official State or Autonomous Gazette.

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 28.1 of Law 40/2015, of 1/10 of the legal regime of the public sector, establishes;

"1. They may only be sanctioned for acts constituting an administrative infraction natural and legal persons, as well as, when a Law recognizes them capacity to act, affected groups, unions and entities without legal personality and estates independent or autonomous, who are responsible for them by way of fraud or fault."

From the material point of view, culpability consists in the capacity of the obligated subject to act differently and, therefore, in accordance with the legal system legal. Therefore, the concurrence of a deliberate intention to infringe the norm is not required, with awareness and willingness to do so. Therefore, what is relevant is the diligence displayed in the action by the subject, which excludes the imposition of a sanction, solely based on the mere result, that is to say to the principle of strict liability. the field of simple

Failure to comply is the classic of imprudence or negligence, in its different degrees. In this

Of course, a lack of diligence is appreciated, not demanding impossible behavior or great difficulty

The distinction between data controller and employee or position is derived from the GDPR

directive of this, for example when referring to the Delegate of Data Protection, in his Recital 97: "... Such data protection officers, whether or not they are employees of the responsible for the treatment", and its functions in article 39 of the RGD "a) inform and advise the person in charge or the person in charge of the treatment and the employees who deal with of the treatment of the obligations incumbent on them under this Regulation and of other data protection provisions of the Union or of the Member States;" .

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By this, it is meant that the positions or employees of the data controller, when carrying out personal data processing in the performance of their duties. functions, are in the circle of the data controller, who is the one who must establishing guidelines and disseminating information so that an application is achieved uniform in its field. Even so, although there are always people who carry out the data processing on behalf of their managers, employees, and management positions should consider before proceeding with data processing, especially if it is different than usual, or novel, due to a specific situation that entails, as in this case, consider the opinion and instruction to be followed by the data controller before carrying out out the same. The contrary may suppose a unilateral action with consequences in the rights of those affected as in the present case. The data controller should first of all, have issued rules or instructions to its employees and centers managers to coordinate basic aspects of data processing. should have Keep in mind that the use of most applications in the cloud, especially in applications located outside the European Union space, such as this one, based in

\*\*\*COUNTRY.1 has given rise to international transfer of children's data. Must ensure that transfers of personal data to a third country outside the EU, are only carried out when an adequate level of protection is guaranteed and prior weighting "on the basis of an objective assessment by which it is determined whether data processing operations pose a risk or if the risk is high."

(considering 76 of the RGPD), taking into account "the vulnerability of the data of the children" (considering 75), as well as the successive petitions of the claimant.

The summary of the measures taken by the respondent would be:

7th

1)

In previous actions, it reports the approval on the internet dated 06/04/2019 of decalogue of good practices in the use of educational applications with the following al-cancel:

-The only digital platform that the Ministry recommends is yours: EDUCAMADRID.

-When the Center makes use of applications and tools external to the institutional ones of the Ministry of Education:

☐

The Center must have approved and included in the GENERAL PROGRAM ANNUAL of the course, the justified use of platforms or external applications prior verification that they comply with the privacy policy required by Regulation (EU) 2016/679 on Data Protection and which can be consulted by families or students over 14 years of age, through the corresponding links incorporated in the page center website.

☐

In the use of educational applications or platforms, it will be anonymized or the necessary personal data of the students will be pseudonymized and the minimum

those strictly necessary.

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-On 05/29/2019, together with the instructions for the beginning of the course from the General Directorate then competent, sent the decalogue to the Territorial Area Directorates and it was disseminated between their respective educational centers so that all teachers were aware of these recommendations. They also add that of the great diversity of tools available digital platforms and educational platforms that teachers should know, "if their use is used in curricular issues it has been ruled that the data must always be anonymized and the beginning of the course instructions include more specific information about the different three types of treatments to educational centers."

2) Already in a situation declared a global pandemic by COVID-19, (the initial agreement is signed on 02/21/2020) the General Directorate of Bilingualism and Quality of Teaching, signed the 05/12/2020 a resolution with instructions and recommendations to educational centers in relation to the use of digital platforms for educational purposes

It refers to the implementation in the Community of Madrid of the digital platform EDUCAMADRID and its characteristics. It is indicated that before using other tools for learning and teaching in alternative educational applications, you must carry out a risk analysis in which the privacy policies of said applications, the use of robust anonymization techniques and the regulations in force in matter of Data Protection, and its use must be validated by that General Directorate, contain references to the minimization of data in the use by educational centers and that this complementary programming that is included within the programming is used

annual general report prepared by the educational center in a specific field dedicated to ICT, also specifically indicating the educational purpose pursued. He also alludes to the relations with students and families through the institutional accounts of the center education and those of the teaching staff provided by EDUCAMADRID and ends by indicating the promotion of training in Data Protection for professionals in the teaching.

States that these instructions were disseminated to the Territorial Area Directorates and to the educational centers themselves

1)

In evidence, the respondent stated that with the advice of the Delegation of Data Protection, are homogenizing and evaluating the risk assessment of the projects of the different platforms or applications are proposed from the educational centers captives. They have created a protocol for the control of tools handled by the centers and in what specific activities they need them, establishing measures that avoid treatment of confidential data on said platforms and that limits their use and are elaborated Creating a special Data Protection training plan with a general scope.

The corrections indicated together with the verification of framework and coordination measures in the educational digital competences that are made in the modification of the Law of Education suppose adequate tools to implement that for the specific case are considered reasonable so that an infraction such as the one declared is not repeated. All this, without prejudice to the disciplinary powers that the Ministry deems appropriate to exercise of Education to the teachers and the person in charge of the center, within the framework of the facts tested in this resolution.

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Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE THE MINISTRY OF EDUCATION AND INNOVATION OF THE COMMUNITY OF MADRID, with NIF S7800001E, for an infringement of article 5.1.a) of the RGPD, as indicated in article 83.5 a) of the RGPD, a penalty of warning.

SECOND: NOTIFY this resolution to the MINISTRY OF EDUCATION AND INNOVATION OF THE COMMUNITY OF MADRID.

THIRD: COMMUNICATE this resolution to the OMBUDSMAN, of in accordance with the provisions of article 77.5 of the LOPDGDD.

FOURTH

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

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

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, it may be precautionary suspension of the firm decision in administrative proceedings if the interested party expresses

its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the

remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1/10. Also

must transfer to the Agency the documentation that accredits the effective filing of the

Sponsored links. If the Agency was not aware of the filing

contentious-administrative appeal within two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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