

In this resolution, the mentions of the affected entity have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected entity, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 352/2021, referring to the School (...).

Background

1. On 09/10/2021, the Catalan Data Protection Authority received a letter in which a person filed a complaint against the Escola concertada (...) (hereafter, School), on the grounds of an alleged breach of the regulations on the protection of personal data, and provided various documentation to prove it.

The person reporting stated that on the occasion of the start of the 2021-2022 school year, the School had published various documentation on its website about the adoption of prevention measures aimed at avoiding the contagion and spread of the covid-19 virus, and for this purpose, it had requested from the mothers and fathers of students aged 12 and over, certain health information regarding these students (vaccination certificate, results of diagnostic tests for covid-19, and information on whether a student had been infected with covid-19 recently), for your contribution on the first day of the school year. Specifically and in essence, the person making the complaint was referring to the document published on the School's website, which was entitled "*Covid regulations for families 2021-2022*", and to a letter he had received from the tutor of his minor child of age, in which he was required on the first day of class to provide "*the certificate generated by the My health application (vaccination completed, COVID in recent months)*" regarding this minor .

The complainant stated that this documentation requirement was based, in turn, on the document *Action plan for the 2021-2022 academic year for schools in the context of the COVID-19 pandemic* , from the Department of Education, which he also considered contrary to data protection regulations. In point 4.5 of this document, entitled "Case management", the following was established (p. 14):

*"The current case management protocol will be applied when a positive case or symptoms likely to be covid-19 are detected in an educational center.
Centers that have students aged 12 or over must ask their families for the vaccination certificate to manage the confinement of the group, if the case arises.
The Department of Education is studying the feasibility of including this information in Traçacovid in an automated way."*

Likewise, he considered the school's access to health data through the Traçacovid application contrary to data protection regulations.

In the last one, he extended his complaint to the collection by the school of this same type of data from the school staff.

2. The Authority opened a preliminary information phase (no. IP 352/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to areas of competence of the Generalitat, and article 55.2 of Law

39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts were susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 09/13/2021, the Authority's Inspection Area made a series of checks via the Internet on the facts subject to the complaint. Thus, it was found that the document entitled "*Regulations for covid families for the 2021-2022 school year*" was published on the school's website, which contained the following information (page 2):

"Certificates of vaccination and COVID passed in recent months

- *Centers that have students aged 12 or over must ask their families for the vaccination certificate to manage the confinement of the group, if the case arises.*
- *Students who want to prove that they have overcome the COVID in the last 6 months must also provide the certificate of overcoming the COVID.*
- *Only certificates (overcoming COVID and Complete Vaccination Policy) that are generated from the My Health application will be accepted.*
- *Families will be responsible for keeping this information up to date.*

The school will inform families of all the regulations relating to required documentation. In order to be able to access the school, it will be necessary to have previously delivered all the documentation and to have agreed to comply with all the school regulations."

From the result obtained, the corresponding due diligence was carried out.

4. On 09/13/2021, the School was required to confirm that the guardians had sent the parents of their students a document requiring the submission of the indicated documentation, and in such a case to report whether these mothers and fathers had already delivered him; also to report if the School's staff (teaching staff, administrative staff, etc.) had also sent the same documentation or information to the School, and it had collected it, and indicated the reason and intended purpose for the collection of this data, and the legal basis that in his opinion would protect it; and lastly, he was required to report whether the School had accessed these students' health data through the Traçacovid computer application.

5. On 16/09/2021, the School responded to the aforementioned request through a letter accompanied by numerous documentation, in which it stated, in essence, the following (the redaction is ours):

- 5.1. That "*The requested documentation has not been collected from any of the students' parents*".
- 5.2. That on 03/09/2021 the Department of Education published four documents on its website, which included the *Action Plan for the 2021-2022 academic year for schools in the context of the pandemic*, updated on 02/08/2021, which provided for the following in section 4.5, relating to the management of covid cases :

"The current case management protocol will be applied when a positive case or symptoms likely to be covid-19 are detected in an educational center. Centers that have students aged 12 or over must ask the families for the vaccination certificate to manage the confinement of the group, if the case arises. The Department of Education is studying the feasibility of including this information in Traçacovid in an automated way. "

5.3. That on 06/09/2021 "a letter is sent with the collection of information to the Parents/Mothers of the students", which would correspond to the tutor's letter provided by the person making the complaint, through which the contribution was required , among others, of your minor child's covid-19 certificate.

5.4. That on 09/10/2021 at 5 p.m., "the Department of Education" informs educational centers electronically of an important modification in the Action Plan for the 2021 - 2022 academic year for educational centers within the framework of the pandemic", referring to an email that the Department of Education sent to schools, with the title "Clarifications on the management of covid cases in schools" , informing about the modification of section 4.5 of the Plan (transcribed in background 5.2). In said email, the following was indicated (the emphasis is ours):

"This Monday, the 13th, we start the course. It is important that you are aware of the latest changes and developments that you need to be aware of in relation to covid-19 case management at the centre.

- *The Protocol for the management of covid-19 cases in educational centers has been updated for the 2021-2022 academic year. A paragraph that we detected that generated doubts on page 5 has been modified and has been written as follows:*

" Nor can people go there without the full vaccination schedule (if they have a dose and have passed covid-19 in the last 6 months, it is considered a full schedule) who present any of the following situations. "

- *In relation to this same Protocol, the three action circuits have already been established when a positive case is detected.*

- *From Monday 20 September, the covid manager of each center will have access, through Traçacovid, to the vaccination data. Until that date, if there is a positive case in the center, Health will report this data by phone. The centers will know who will have to quarantine at home and who will not. Therefore, you should not ask families for any information about their children's vaccination schedule.*

(...) "

5.5. That on 11/09/2021 (Saturday) the School "sent an urgent e-mail to all the families of the School (...) informing them of the changes communicated the previous day at 5:00 p.m. by the Department of Education of the Generalitat of Catalonia in the Action Plan for the 2021 - 2022 academic year for educational centers in the context of the pandemic". This letter reproduced the content sent by the Department of Education, and concluded by noting the following (the redaction is ours):

"For this reason, we inform you that on Monday, September 13, you must bring the signed documentation that we asked of you, but the CERTIFICATES OF COMPLETE VACCINATION GUIDELINES AND/OR OF HAVING OVERCOME COVID IN THE LAST 6 MUST NOT BE ATTACHED MONTHS AND YOU DO NOT NEED TO REPORT THIS SITUATION."

- 5.6. That *"no covid-19 vaccination certificate has been collected from students or teaching staff. There has not been, until now, any access to the Traçacovid computer application and work will be done and acted in accordance with Decree-Law 20/2021, of September 14, amending Decree-Law 41/2020, of November 10, extraordinary measures of a social nature in educational centers and in the field of leisure education and extracurricular activities to deal with the consequences of COVID-19."*
- 5.7. In relation to the school staff, who: *"has never been asked for this type of information and the actions regarding the staff are regulated according to the "Guide for action and collaboration of the occupational risk prevention services for cope with the COVID-19 pandemic"... published by the Department of Education of the Generalitat de Catalunya."*

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Catalan Authority of Data Protection, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the Director of the Authority is competent to issue this resolution Catalan Data Protection Authority.
2. Based on the background story, it is necessary to analyze the reported events that are the subject of this archive resolution.
- 2.1. The person making the complaint complained that the School, through a letter dated 09/06/2021 from the tutor of the class of his/her child under age (12 years or older), had required that the first day of class of the new school year (on 13/09/2021) bring a copy of your child's covid-19 vaccination certificate, issued from the LaMevaSalut platform, from the Department of Health of the Generalitat, indicative, both of the inoculation of the complete vaccination, as, in its case, of the eventual infection by covid in the months prior to the issuance of the certificate [*"certificate generated by the My health application (complete vaccination, COVID in the last months)"]*".

Although the facts reported refer to the processing of personal data, the account of the facts carried out by the School in its written response to the Authority's request for information, together with the documentation provided by this accreditation of the same, they show that the said treatments - although some were announced - were ultimately not carried out, a reason that, it is said, leads to the filing of the complaint.

Indeed, in the letter of complaint, the person making the complaint limited himself to bringing the School's regulations to the attention of the Authority (which followed the action protocol established by the Department of Education to avoid contagion and the spread of the covid-19 virus in educational centers), as well as the letter sent by the guardian of his/her minor child in which he/she was required to provide the covid certificate issued by LaMevaSalut of

the Department of Health , but without stating having sent the covid-19 vaccination certificate of his/her minor child to the School (nor therefore providing supporting documentation of any shipment), and therefore without proving - even if it was circumstantial - having communicated his/her child's health data to the School, and consequently without there being evidence that the School had carried out any treatment of this data.

Between 09/06/2021 - when the complainant received the letter from the guardian requesting the provision of said vaccination certificate - and 09/13/2021 - when the the school year-, the School received an email from the Department of Education (on 09/10/2021 at 5 p.m.) informing them of the modification of the section of the covid-19 case management protocol in schools, which contained the aforementioned covid certificate requirement . As explained in the preceding 5th, in the new wording of this section the obligation of the mothers/fathers of registered minors to provide said certificate had been removed, and it was only stipulated the prohibition of attendance at the educational center for those students who, presenting various symptoms, did not have the complete vaccination schedule, as follows:

" Nor can people go there without the full vaccination schedule (if they have a dose and have had covid-19 in the last 6 months, it is considered a full schedule) who present any of the following situations."

And it was the very next day (11/09/2021, Saturday) that the School sent an email to the parents of the enrolled students, informing them of this last-minute change in the case management protocol covid-19, and specifically pointing out that on 09/13/2021 (beginning of the school year) they did not have to provide the covid vaccination certificate or report whether their children had passed it in the last 6 months , as follows:

"(...) For this reason, we inform you that on Monday, September 13, you must bring the signed documentation that we asked of you, but the CERTIFICATES OF COMPLETE VACCINATION GUIDELINES AND/OR HAVING PASSED THE COVID IN THE PAST 6 MONTHS AND YOU DO NOT NEED TO REPORT THIS SITUATION."

The way things are, the School, as responsible for the treatment, would not have materialized the collection of the covid-19 vaccination certificates (or the information regarding having been infected in the previous 6 months) from minors school of 12 years or older, and therefore, would not have treated the health data of these minors that would have been derived from the collection of that documentation.

With regard to the other reasons for the complaint, the School stated in the written response to the Authority's request that it had not had access to the Traçacovid application, and that it had never asked the School staff for this documentation , referring to the certificate of complete covid-19 vaccination or the information of having overcome covid-19 in the last 6 months).

This statement is plausible in view of the set of information and documentation provided by the School, and given that there is no element to the contrary, it must be concluded that the treatment of health data that is the subject of a complaint is not 'would have materialized. This without prejudice to what will be analyzed in the next section on the legal basis of this data processing.

2.2. Having said that, it is considered illustrative to make some general considerations about the reason for the complaint regarding the treatment of health data of underage students by educational centers due to covid-19.

Article 5.1.a) of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection Regulation (RGPD), establishes that all processing of personal data must be legal, loyal and transparent in relation to the interested party (principle of legality, loyalty and transparency).

Article 6.1 of the RGPD regulates the legal bases on which the processing of personal data can be based, either the consent of the affected person (letter a), or any of the other bases provided for in the same precept, which includes when the *treatment*:

"it is necessary for the fulfillment of a mission made in interest public or in the exercise of powers public given to the person in charge of the treatment" (art. 6.1.e RGPD).

Article 6.3 of the RGPD states that the legal basis of the treatment indicated in article 6.1.e) RGPD must be established by European Union Law or by the law of the Member States that applies to the person in charge of the treatment. As it is a fundamental right, the provision must have the status of law (ex art. 53 EC). Article 8 of Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD) establishes, in the same sense, that in these cases the treatment carried out must derive of a competence attributed by a norm with the rank of law.

This rule with the rank of law is the Organic Law 2/2006, of May 3, of Education (LOE), which provides for additional provision twenty-three - modified by Organic Law 3/2020, of 29 of December - a legal authorization for the processing of the data necessary for the exercise of the teaching and guidance function of the educational centers, as follows:

"1. The centers teachers they can collect the data your personal _ students who are necessary for its exercise _ educational function said data they can make reference to the origin and family and social environment, to personal characteristics or conditions, to their development and results schooling, as well as those others circumstances whose knowledge be necessary for the education and guidance of students.

2. Parents or guardians and their own students they must collaborate in obtaining the information to which this article refers. The incorporation of a student in a teaching center will involve the treatment of sus data and, where applicable, the transfer of data coming from the center in which there was status previously schooled, in the terms established in the legislation on data protection. In any case, the information referred to in this section it will be strictly necessary for the function teacher and guidance counselor, not being able to be treated with purposes other than educational yes consent express."

However, for the processing of health data (art. 4.15 RGPD) to be lawful, it is not enough that there is a legal basis in article 6 of the RGPD, but a circumstance must also exist that lift the ban on processing this special category of data, which is provided for in article 9 of the RGPD, as follows:

"1. They remain data processing prohibited __ personal data that reveal ethnic or racial origin , opinions politics , convictions religious or philosophical , or trade union affiliation , and data processing genetics , data biometrics aimed at uniquely identifying a natural person, data relating to health or data relating to a natural person's sexual life or sexual orientation .

2. Section 1 shall not apply when one of the circumstances occurs following :

(...)

g) the treatment is necessary for reasons of interest public essential , on the basis of the Law of the Union or of the States members , which must be proportional to the objective pursued , essentially respect the right to data protection and establish __ measures adequate and specific to protect interests and rights _ fundamentals of the interested party ;

(...)

i) the treatment is necessary for reasons of interest public in the field of public health , like protection facing threats _ cross-border graves for health , or to guarantee elevated quality and security levels of assistance _ healthcare and medicines or products healthcare , on the basis of Union or States Law members that it establishes measures adequate and specific to protect the rights and freedoms of the interested party , in particular professional secrecy .
(...)."

The aforementioned DA 23a of the LOE would enable the treatment of health data to the extent that its treatment was necessary to adequately carry out the educational and guidance action, and in this sense this Authority pronounced in its opinion CNS 4/2017 (available on the Authority's website, www.apdcat.cat).

In this same line, it is necessary to cite article 21.n) of Law 12/2009, of July 10, on Education (LEC), which expressly provides for the right of students to "enjoy healthy and accessible conditions in the educational field". In the case analyzed, it seems clear that the educational centers had to have the necessary data to be able to guarantee the right of their students to healthy conditions in the educational environment.

With respect to the assumptions transcribed from Article 9 of the RGPD, we cannot fail to note the exceptional moment (2021-2022 school year, still immersed in the midst of a pandemic) in which families were asked to contribute certain information on the vaccination status of their minor children enrolled in an educational center.

In this context, it is appropriate to mention Organic Law 3/1986, of April 14, on special measures in the field of public health, which determines in its article 1 that : *authorities sanitary of the different Public administrations may , within their scope __ powers , adopt the measures provided herein _ Law when that's how they demand it reasons urgent or necessary health services "* .

And article 3 of this same rule makes it clear that: *"In order to control diseases transmissible , the authority sanitaria , in addition to carrying out general preventive actions , may adopt the*

measures appropriate for the control of the sick , of the people who are or have been I was in contact with them and the environment environment immediate , as well as those considered necessary in case of character risk transmissible " .

In similar terms, Law 18/2009, on public health, in its article 55.1.j), provides that:

1. The authority health , through the organs competent , can intervene in the activities public and private to protect the health of the population and prevent disease . To this end , you can :

a) Establish surveillance systems , communications networks and data analysis that allow detection and knowledge , as quickly as possible _ possible , the proximity or presence of situations that may have a negative impact on individual or collective health .

b) Establish the requirement for records , authorizations , communications prior or responsible declarations to facilities , establishments , services and industries , products and activities , subject to the conditions established by article 61 and, in any case, in accordance with the sector regulations. (...)

2. The measures referred to in section 1 must be adopted respecting the rights of the Constitution recognizes the citizens , especially the right to personal privacy , in accordance with what is established by the regulation on the protection of personal data and with the procedures that this regulation and the others applicable rules have established , and having authorizations mandatory ."

Therefore, in matters of risk of disease transmission, epidemics, health crises, etc., the applicable regulations have granted to *"the health authorities of the different Public Administrations "* the powers to adopt the necessary measures to safeguard essential public interests in public health emergency situations .

It is therefore up to the competent health authorities to adopt the necessary measures to safeguard essential public interests, and the various persons responsible for the processing of personal data will have to follow the instructions established for this purpose, even when this involves processing data of Health.

With regard to these instructions, Resolution SLT/2751/2021, of September 9, which extends and modifies public health measures to contain the epidemic outbreak of the COVID-19 pandemic in territory of Catalonia - in force at the beginning of the 2021-2022 school year, and which left without effect, as far as it was opposed, Resolution SLT/1429/2020 of June 18, by which measures are adopted basic protection and organizational measures to prevent the risk of transmission and promote the containment of SARS-CoV-2 infection, determined in section 13 that, among others, teaching activities:

"they must be carried out in accordance with the corresponding sectoral plans approved by the Steering Committee of the PROCICAT Action Plan and related regulations, rigorously applying prevention and health protection measures".

The *"Action Plan for the 2021 - 2022 academic year for schools in the context of the pandemic "*, drawn up by the Department of Education and the Department of Health, approved by the Technical Committee of the PROCICAT Plan for emergencies associated with emerging communicable diseases with high risk potential , determined the following, in terms of case management, in the drafting carried out on 10/09/2021 (and therefore, subsequently with the first version of August 2021, provided by the person complainant):

"4.5. Case management

The current case management protocol will be applied when a positive case or symptoms likely to be covid-19 are detected in an educational center".

In this latest version of September 2021, the following sentences, which were the subject of this complaint, were deleted:

"Centres that have students aged 12 or over must ask their families for the vaccination certificate to manage the confinement of the group, if the case arises. 15 The Department of Education is studying the feasibility of including this information in Traçacovid in an automated way."

On the other hand, the document *"Management of covid-19 cases in educational centers. Course 2021-2022"* drawn up by the Department of Education and the Department of Health, also approved by PROCICAT, determined the following:

"3. Definitions:

(...)

Complete vaccination schedule

A person is considered to have the complete vaccination schedule when:

- 14 days have passed since you received the last dose of vaccine (Pfizer , Moderna, AstraZeneca or Janssen);

*- **you have had covid-19** and subsequently received a dose of vaccine (and 14 days have passed since you received it, the same minimum period established for second doses);*

(...)

11. Main changes compared to the last version of the procedure for the 2020-2021 academic year

(...)

Students or professionals in educational centers with symptoms compatible with covid 19 who have had a confirmed infection with a diagnostic test of SARS-CoV-2 (TAR or PCR) in the previous 90 days should not be considered suspected cases again, unless that there is a high clinical suspicion that they are.

People in the educational field (students or professionals) who are close contacts and who are properly vaccinated or have passed the disease (with a diagnostic test confirmed by TAR or PCR) in the 180 days prior to the last contact with the case, they do not need to quarantine (although they will need to scrupulously follow the security measures)".

From the above it follows that case management depended, in part, on whether the student had received the complete vaccination schedule, and that this could be understood as having been received if the illness had passed and a dose of vaccine

In relation to the collection by educational centers of minors' health data relating to whether or not they had contracted the disease of COVID-19, it should be borne in mind that Decree-Law 20/2021, of September 14, of amendment of Decree-Law 41/2020, of November 10, on extraordinary measures of a social nature in educational centers and in the field of leisure education and extracurricular activities to deal with the consequences of COVID-19, which entered into force on 09/15/2021, modified article 8.5 of Decree-Law 41/2020, which was now worded as follows:

"8.5. Likewise, the Department of Health, within the framework of the functions attributed to it in the aforementioned pandemic situation, must communicate to the director of the educational center, through the established information systems, the health data corresponding to the results of diagnostic tests for COVID-19 and for the vaccination of COVID-19 so that the relevant measures can be adopted in accordance with established protocols. The director of the educational center must maintain the duty of secrecy and confidentiality regarding the information to which he has access, even after the end of the health emergency situation.

This precept empowered the Department of Health to communicate to the management of the educational center the health data corresponding to both the results of the students' covid-19 diagnostic tests and their covid-19 vaccination.

In view of all the above, from the point of view of data protection, the treatment by the educational center (and specifically by the director of the educational centers) of minors' health data relative, in essence, to the covid-19 vaccination certificate, in the terms regulated in the latest version of the *Action Plan for the 2021 - 2022 academic year for schools in the context of the pandemic*, would be considered lawful on the basis of articles 6.1. e) and 9.2.g) ii) of the RGPD, in view of the public health and sectoral regulations examined.

3. In accordance with everything that has been set forth in the 2nd legal basis, and given that during the actions carried out within the framework of the previous information, no fact has been proven that could constitute any of the infringements foreseen in the legislation on data protection, it is necessary to agree on their archive.

Article 89 of the LPAC, in line with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is highlighted in the instruction of the procedure "a) The non-existence of the *facts that could constitute the offence*"; b) *when the facts are not proven*".

Therefore, I resolve:

1. Archive the previous information actions number IP 352/2021, relating to the School (...).
2. Notify this resolution to (...) and communicate it to the person making the complaint.

3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the denounced entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the which provides for article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998 , of July 13, governing the contentious administrative jurisdiction.

Likewise, the reported entity can file any other appeal it deems appropriate to defend its interests.

The director,

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