

CLIENT NEWS BRIEF

School Surveillance Video May be a Student Record, Triggering FERPA Obligations

School surveillance video can be considered a student record under certain circumstances, triggering a school district's obligation under the federal Family Educational Rights and Privacy Act (FERPA) to allow parents to view it.

In an informal guidance letter, the director of student privacy policy with the U.S. Department of Education's Family Policy Compliance Office (FPCO) concluded that a school surveillance video depicting eight students who were involved in a hazing incident is a student record under FERPA. (U.S. Dept. of Ed., [Letter to Wachter](#) (Dec. 17, 2017).) The guidance states that FERPA does not generally require school districts to provide parents or eligible students requesting student records with copies of the records. However, it does not address any obligations a school district may have under state public records law.

Background

The Wattsburg Area School District in Erie County, Penn. requested the guidance after a parent of one of the students who was disciplined for their participation in a hazing incident requested a copy of the surveillance video depicting it under the Pennsylvania Right to Know Act.

The district asked FPCO whether the video is an education record of each of the students disciplined for their involvement in the incident, if it is an education record of all the students involved, and whether the district is permitted to release it to an individual parent of an involved student without first obtaining consent from the parents of each student involved in the incident.

The district additionally noted that it could not afford software that would blur the faces of the other students in the video.

FERPA protects the privacy of students' education records and specifically, the personally identifiable information they contain. "Education records" are those records that are both directly related to a student and maintained by an educational agency or institution or a by party acting on behalf of an educational agency or institution.

FERPA provides parents and eligible students the right to access their educational records, and provides them some control over disclosure of the personally identifiable information in their records. Under FERPA, schools are prohibited from disclosing student records or the personally identifiable information they contain without prior, written consent from the parent or eligible student unless the disclosure meets an exception to the consent requirement.

FPCO agreed that the surveillance video was an educational record because it was (1) maintained by the school administration in the offending students' disciplinary files and not the school or district's law enforcement unit, (2) was

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directly related to the hazing incident and the group of students involved in it, and (3) was used to discipline the students who perpetrated the hazing.

The guidance also concludes that the parent of an individual student disciplined for the incident should be allowed to view the video despite the fact that other students were depicted in it because it did not appear that the video could be segregated or redacted without destroying its meaning. If it is possible to disclose only a portion of the video in a way that would fully depict the student of the requesting parent's involvement in the hazing incident, however, the guidance letter says that such segregation of the information of other students would be required.

The guidance letter confirms that FERPA generally does not require schools to provide copies of educational records unless circumstances prevent a parent or eligible student from exercising their right to inspect and review the records—for example, if the student does not live within commuting distance of the school—and the school does not make other arrangements that would allow the parent to do so. In these situations, the guidance recommends that the district obtain the written consent of the parents of other students depicted in the video before disclosing a copy.

While different facts will result in different outcomes under the guidance, the FPCO's position is generally consistent with FERPA, which provides:

If any material or document in the education record of a student includes information on more than one student, the parents of one such student shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material.

(20 U.S.C. § 1232g, subd. (a)(1)(A); 34 C.F.R. § 99.12, subd. (a).)

This said, the conclusion that relevant parents be allowed to inspect and review joint records (1) despite the fact that other students are depicted, and (2) where the video is incapable of segregation or redaction without destroying its meaning, appears to constitute a different approach than previously advised by the FPCO in 2003, where guidance at that time provided: "In cases where joint records cannot be easily redacted or the information segregated out, the school district may satisfy a request for access by informing the parent about the contents of the record[.]" presumably through an oral or written summary of the record's contents. (See [Letter to Attorney for School District](#) (Oct. 31, 2003).)

Takeaways

School districts should be reminded that the FPCO guidance is only informal. If a school district receives a request to provide access to any video surveillance, legal counsel should be contacted for further guidance.

For more information regarding *Letter to Wachter* or FERPA in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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