

Does Providing A Parent With The Surveillance Video Of A School Incident And/Or Student Statements About The Incident That Involved Multiple Students Violate FERPA?

Education Law Notes

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The United States Department of Education's Office of the Chief Privacy Officer recently issued a guidance letter to a school district indicating that while surveillance video of a hazing incident that involved numerous perpetrators, victims and bystanders was considered an educational record of all students on the video, the school district must provide the parents of a disciplined student with the opportunity to inspect and review the entire video if the video cannot be segregated or redacted without destroying its meaning. The guidance further indicated that the school district was required to provide the parent access to the other students' written statements about the incident but that any portion of the statements, such as the names of the witnesses, that could be redacted without destroying their meaning should be redacted prior to producing them. The entire guidance letter can be accessed [here](#). This letter contradicts formal guidance previously provided in *Letter re: Berkeley County School District* (Family Policy Compliance Office Feb. 10, 2004), yet does not mention or expressly overturn it. It similarly does not mention or expressly repeal the prior *Letter to School District* issued on October 31, 2003 which advised that a school district was prohibited from providing records to the parents of one student that contained information about other students unless they could be redacted to remove the ability to identify the other students.

The issue in *Letter to Wachter* (Dec. 7, 2017) involved a hazing incident with the football team in which there were six students who received discipline. The video in question included images of the six students who were disciplined, the two victims and numerous bystanders. At the school, the video surveillance was maintained by the school administration, not the district's or school's law enforcement unit. The video feed was used to discipline the students and copies of it were placed in the students' disciplinary files. There also were several witness statements that were used in the disciplinary proceedings for the perpetrators and are maintained in the perpetrators' disciplinary files.

Under the Family Educational Rights and Privacy Act ("FERPA"), a school district is prohibited from disclosing education records or personally identifiable information contained in those records without prior, written consent from the parent or eligible student, unless the disclosure meets one of the exceptions contained in the statute. FERPA, however, also requires that parents (and eligible students) have the right to inspect and

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review their child's education records. These two requirements sometimes collide when the records of one student contain personally identifiable information and/or education records of another student.

FERPA provides that when an educational record contains information on more than one student, the parent may inspect and review or "be informed of" only the specific information about his or her own child. Prior guidance from the U.S. Department of Education directed that if the information on other students could not be redacted to mask the identity of the other students then the information could not be shared with the parent of another student. The current letter reverses that approach.

In *Wachter*, the Chief Privacy Officer found that under the facts described, the video and witness statements would be educational records of the perpetrators and of the victims based on the fact that the video and statements were maintained by the school administration in the students' disciplinary files and are directly related to the incident in question and that the records were used to discipline the perpetrators.

The Letter instructs that "the parents of the alleged perpetrators to whom the video and witness statements are directly related ... would have the right under FERPA to inspect and review information in the video and witness statements that are about the alleged perpetrator, even though they also contain information that is also directly related to other students, so long as the information in these records cannot be segregated and redacted without destroying its meaning." In making this determination, the district should determine whether it is feasible to show only a portion of the video in a way that would fully depict the student's involvement in the disciplinary incident. If such a redaction is possible, then it should be made.

Similarly, the Letter indicated that as to the witness statements, if it is possible to redact the statements to protect other student's information without destroying the meaning of the records, then those redaction should be made. At a minimum, the names of the authors of the witness statements should be redacted as should any information that is not directly related to the student whose parent has requested access.

FERPA, except in limited situations, only requires access to educational records. It does not require a school district to provide copies of records to students. Thus, unless the records fall under the Connecticut statute regarding the provision of copies of special education records, there is no obligation to provide the parent with a copy of either the video or witness statements.

Furthermore, this guidance only speaks to the right of access as to the parent or eligible student who appears in the surveillance video or about whom the witness statements are written. It does not create a blanket obligation to provide access to the general public (or even other parents of students not in the video) to surveillance videos of school incidents. Finally, it remains unclear if this guidance will be adopted by the courts or Connecticut's Freedom of Information Commission ("FOIC"); indeed, prior court and FOIC decision have expressly recognized that school districts may be prohibited from providing access to records to the

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parents of one student that contain information about other students unless they can be redacted to remove the ability to identify the other students.

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If you have further questions about the release of student records or the effect of this latest guidance, please contact one of the attorneys in School Law group.

Posted in The Freedom of Information Act (FOIA)

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