

Education Alert
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ARE SURVEILLANCE VIDEOS STUDENT/EDUCATION RECORDS?

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With the proliferation of surveillance cameras in schools and on school buses, video footage is increasingly being used by school districts in support of investigations into student disciplinary matters. In that context, school districts occasionally receive requests for a copy of surveillance tapes. According to the Family Policy Compliance Office (“FPCO”), which has jurisdiction over the Family Education Rights Privacy Act (“FERPA”), surveillance tapes are not typically education records because they record an entire scene and are not intended to focus on any particular student. As a result, they are generally not protected from disclosure as student records. Depending on the circumstances, they may be protected from disclosure for other reasons under the Public Records Law.

However, if the video becomes relevant to a particular student or students for some specific reason, such as a disciplinary investigation or to monitor compliance with an IEP, the portion of the video relating to a student’s particular circumstances is an education record of the student(s) who are the focal point of the video. If multiple students are the focal point, the video is an education record of each of the students involved. Consequently, because videos often cannot easily be redacted, the FPCO had previously stated that parents whose children were involved in the video could view the video, but the parents could not receive a copy, without written consent from the parents of all the students involved.

In December 2017, FPCO issued Letter to Wachter, on surveillance tapes, which clarified slightly its position. The FPCO stated that a school district may release copies of the videos to parents of an involved student, without consent from the other parents, even when there are multiple students who are the focal point of the video. The letter explains that although a school district may provide a copy, FERPA does not require the district to provide a copy.

In Massachusetts, there has been no published court decision on whether surveillance videos are student records. Nonetheless, given the precedent that exists for other documents, such as homework and classwork in Com. v. Buccella, 434 Mass. 473, 479 (2001), it seems unlikely that surveillance videos would be considered student records. In Com v. Buccella, 434 Mass. 473, 481 (2001), the Supreme Judicial Court (“SJC”) held that a student’s classwork and homework were not “student records” given the “absurd consequences” of such an interpretation. If classwork and homework were student records, teachers would be unable to hand corrected or

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graded assignments back without written consent from each student's parent, or share students' work with the rest of the class for educational purposes without written consent. The SJC added that the regulations require entries whenever an item is added or accessed in the student record and "it would be burdensome in the extreme for each teacher to keep individual logs of access for each homework assignment, test, quiz, and essay for each student." Similarly for surveillance videos, there would be absurd consequences if they were considered to be student records. Districts do not keep the videos in a central file for students. Furthermore, districts are not creating a log of each instance when a student is on the video.

Therefore, in light of the recent guidance from FPCO, school districts in Massachusetts may still take the position that they will allow the parents of an involved student to view the video, but will not provide a copy without the consent from parents of all students for whom the video is an education record.

If you have any questions about this issue, please contact Felicia Vasudevan or the attorney responsible for your account, or call (617) 479-5000.

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