



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

July 29, 2015

To: Superintendents, Member School Districts (K-12)

From: Jennifer E. Nix *JEN*
Schools Legal Counsel

Subject: Video Surveillance of Students
Memo No. 15-2015

Our office recently has received several questions regarding video surveillance by schools. This Legal Update summarizes the current law and relevant guidance in this area.

1. When can schools video record a student without parental permission?

Any video surveillance of students is subject to limitations based on the students' constitutional privacy rights.¹ Accordingly, schools should limit use of video surveillance to situations when videotaping is justified and necessary. Video surveillance should be limited to public areas like hallways, offices, classrooms, playgrounds, and school buses. Video surveillance should not be utilized in locker rooms or bathrooms, where students have a reasonable expectation of privacy.² Any video surveillance must be justified at its inception, for example, a video camera installed in a hallway to protect the safety of students, staff, and others. Furthermore, video surveillance should be limited in scope to the circumstances justifying the videotaping. For example, limiting the time of the videotaping to only when necessary and/or videotaping only relevant students if possible.

Schools can use video surveillance to:

- Document a student's behavior, including special education students;
- Protect the safety of students, staff, and others;
- Document serious verbal threats to school personnel; or

¹ *Brannum v. Overton Cnty. Sch. Bd.*, 516 F.3d 489, 494-96 (6th Cir. 2008). The Fourth Amendment to the U.S. Constitution protects students from unconstitutional searches conducted by school officials. *New Jersey v. T.L.O.*, 469 U.S. 325, 224 (1985).

² *Brannum v. Overton Cnty. Sch. Bd.*, 516 F.3d 489, 498 (6th Cir. 2008).



- Document the physical containment and/or restraint measures used by staff in order to document staff conduct and protect the safety of all concerned.

Keep in mind that any recording inside a classroom must be to promote an educational purpose and must have the prior consent of both the school administrator and the classroom teacher.³

2. *When does a video recording of a student become a part of a student's education record?*

As you are aware, each student in your school has an "education record," which is defined by the Family Educational Rights and Privacy Act of 1974 (FERPA) to include records that are:

(1) directly related to a student; and (2) maintained by an educational agency or a party acting for the educational agency.⁴

Video recordings record everything. Accordingly, a video generally will not be an education record because typically it is not directly related to a student. However, a video recording will be an education record if the school uses the video for a specific student for a particular reason and the school maintains the record for that purpose.

For example, the following videos, if maintained by the school, would be an education record:

- A video taken to determine IEP compliance;
- A video used in relation to discipline of a student; or
- A video depicting a student committing an act in violation of school rules, even if the violation occurs at a school event such as a basketball game.

Such a video recording is an education record only as to the student who is the focus or subject of the portion of the video at issue. For example, a video taken to determine IEP compliance would be an education record only as to the special education student, although other students might be depicted. Similarly, a video depicting a student committing an act in violation of school rules is only a part of the education record for the student who committed the act in question, not any other students who might be depicted. If a video depicts more than one student violating a school rule, that portion is an education record for each student who committed the act in question. If a school uses a video recording to identify a student as a witness to an act and then subsequently asks that student to be a witness, the video will be an education record for the witness as well.

³ Cal. Educ. Code section 51512. Additionally, California Education Code section 44034 provides that a classroom teacher may use, without administrator approval, an *audio* recording device to record his or her classroom instruction presentations in the interest of improving his or her personal teaching techniques. This exception would not apply to video recordings or in cases in which the classroom teacher's intent is to record student behaviors.

⁴ 34 C.F.R. section 99.3; *see also* Cal. Educ. Code section 49063(a). When determining whether you have "maintained" a video recording, the relevant question is whether it is kept somewhere secure, like a filing cabinet or a secure database. If it will be deleted, it is likely not "maintained" as an education record.

Video surveillance of students captured on security cameras that are maintained by the school's "law enforcement unit"⁵ are not considered education records under FERPA.⁶

When video surveillance becomes an education record by virtue of being directly related to a student and being maintained by the school, only that portion of the video that is directly related to the student is a part of the student's education record.

3. *Under what circumstances can a school share a video record of a student without prior permission of the parent or guardian of the student(s) depicted in the video?*

The privacy of students' education records are protected by both FERPA and state law.⁷ A student's parent or legal guardian always has the right to access his or her student's education records.⁸

Generally, a school cannot disclose an education record, including a video recording, to a third party without the written consent of the student's parent or guardian.⁹ However, a school can disclose an education record, including a video recording, when the disclosure is made in compliance with a lawfully issued subpoena or court order if the school makes a "reasonable effort to notify" the parent or guardian of the subpoena prior to compliance.¹⁰ School districts should call our office if there is a concern regarding whether a subpoena has been lawfully issued.

School districts can also disclose a video recording in the event of an emergency.¹¹

Because video surveillance maintained by a school's "law enforcement unit" is not an education record, those video recordings may be shared with parents of students whose images are on the video and with outside law enforcement authorities as necessary if knowledge of the information is necessary to protect the health or safety of a student or other person.¹²

If a video recording is an education record of more than one student, the parent or guardian of each student involved may view or be informed of the video recording without the consent of the

⁵ A "law enforcement unit" is defined as any individual, office, department, division, or other component of an educational agency that is officially authorized to maintain the physical security and safety of the agency. 34 C.F.R. section 99.8(a)(1).

⁶ 20 U.S.C. section 1232g(a)(4)(ii). Schools that do not have a designated "law enforcement unit" might consider designating an employee to serve as the "law enforcement unit." The "law enforcement unit" would maintain security cameras and determine the appropriate circumstances in which the school would disclose recorded images.

⁷ 20 U.S.C. section 1232(g); 34; Cal. Educ. Code section 49076(a).

⁸ 20 U.S.C. section 1232(g); Cal. Educ. Code section 49069.

⁹ 34 C.F.R. section 99.30(a); Cal. Educ. Code section 49076(a).

¹⁰ 34 C.F.R. section 99.31(a)(9); Cal. Educ. Code section 49076.5.

¹¹ Cal. Educ. Code section 49076(a)(2)(A).

¹² 34 C.F.R. section 99.8(d); Cal. Educ. Code section 49076.5.



other parents.¹³ However, no parent or guardian may have a copy of the video recording without the consent of the parents or guardians of all students depicted in the video recording. A parent or guardian could have a copy of a video recording in which the other students have been redacted. However, the cost for that redaction should be borne by the parent or guardian.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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¹³ 20 U.S.C. section 1232g(a)(1)(A); 34 C.F.R. section 99.12(a).