



THE SCHOOL DISTRICT OF  
PALM BEACH COUNTY, FLORIDA

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**Re: Agency/Docket Number:**  
Docket ID: ED-2017-OS-0074

**Document Number:**  
2017-13157

These public comments to the Federal Register are submitted on behalf of the Office of General Counsel of the Palm Beach County School Board in West Palm Beach, Florida. This office over the years has faced these issues and would prefer clarification in the FERPA regulations—34 CFR part 99-- on these matters.

The issues are:

- 1) handling of student videos when parents want to view
- 2) sending student information by email securely, and
- 3) with emerging technologies, the types of records that are considered student education records such as emails.
- 4) due process rights of an employee facing discipline to view student witness statements,

These are the comments:

- 1) The first issue to address in the regulations would be related to a parent's request to view a video of their student taken at the school or on the school bus and in the possession of the school (not merely school police). We have seen emails from FPCO employees addressing some but not all of these issues and it would be helpful to be in the regulations. Below is a typical question and a proposed response for the regulation to address:

Question:

A student is involved in some incident at school or on the school bus. The incident is captured on a District video. The parent requests to view the video of his/her student. Other students are shown on the video as either being involved in the incident (such as a fight) or are in the background. How should the school respond to the parent's request?

Answer:

- 1) The school must first determine **who is maintaining the District's video and its purpose**. If it is **solely maintained by school police because criminal charges occurred as a result of the fight or there is an ongoing criminal investigation into the fight**, it is considered a **law enforcement record** and not a student record. The video is not to be shown or provided to the parent.
- 2) If the **video has also been provided to the school for the purposes of school discipline or to support an accident/incident report** or to another District department (other than school police), it is considered a **student education record but only for those students who are the focus or subject of the video**. That would be those students involved in the incident or student witnesses if the District uses the video to find witnesses of the event and that student is named or used as a witness.
  - a) **When it is a student education record** and the parent of the student wants to view the video that is a student education record, the **parent is entitled to view that portion of the video relating to his/her student**. [Note, if the student is an eligible student (18 years or older), then the right to inspect and review the video would belong to the eligible student, although if that student is a dependent on a parent for IRS purposes, the parents would also have a right to see the video]. This inspection should be done at the school or at another District location if the video is located there. The inspection must occur under the monitoring of an administrator.
  - b) **Absent written parental consent** of all parents whose students are shown in the video **or redaction** of all personally identifiable information **of the other students** (particularly their faces) shown in the video, the **parent or eligible student is not to be provided a copy of the video** in response to his/her request. **Redactions, if possible, shall be at the expense of the parent/eligible student**.
  - c) **Parents of students who are not the focus of the video are not to be shown or provided a copy of the video as it is a student education record of the students involved in the incident subject to the state's public records laws**.

2) With today's technology, student information may be sent by or to school districts through email or text messages. Keeping that information secure should be addressed in a regulation. This would include use of a secure, encrypted system by the school district when the emails are internal. Particularly if sent to an outside person or organization, such as the parent or parent's attorney, use a secure file transfer protocol and send in an attached protected file. Also limit the information to that which is requested or needed and send encrypted. Also, make sure the email reflects the correct recipient.

3) With emerging electronic technology containing student information, what types of these records would be considered student education records? This includes the Tulare decision issue relating to emails concerning students as well as other electronic records such as text messages, assessment reports, parent links to their students, and other records not maintained in a student's cumulative, discipline, special education, or other file for that particular student of the school or District.

Records relating to the student could be located in other multiple locations and emails may not include a student's name but initials. Owasso Independent School District v. Falvo would also be relevant as to student assignments done electronically that are still in the school's database. Thus, a parent request for educational records could be very difficult beyond the files maintained for that student.

There is also an issue relating to **redactions** as information on other students may appear in the student's records. 34 CFR 99.11(not the FERPA statute) provides: "An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student." If, however, **extensive** other students' information appears in the education record of the student, the regulation should state that the parent may be charged for the time to conduct or costs of the redaction (such as for the videos) -which is not a charge for a search or retrieval.

4) An issue to be addressed in the regulations would be for school employees facing disciplinary action. There could be a regulation that reflects the due process analysis in the Director's Letter dated October 17, 1997 regarding a professor's right to inspect and review the statements of students making allegations of sexual harassment. This could be, for example, an exception added to 34 C.F.R. s. 99.31 allowing disclosure of personally identifiable information from an education record to a school employee facing discipline as a matter of due process under the law of the jurisdiction.

The letter is attached with the pertinent provisions highlighted.