

26 FAB 5

122 LRP 14768

**Letter to Anonymous
Student Privacy Policy Office**

N/A

September 29, 2021

Judge / Administrative Officer

Frank E. Miller Jr., Deputy Director

Ruling

A district was not required to allow the parent of a student who was involved in an altercation at school to review a video of the event. Observing that the video featured other students and that the district could not edit other students out of the video, SPPO determined that the district met its obligations by verbally explaining the video's contents to the parent and providing the parent still images from the video.

Meaning

Districts should train their staff concerning how FERPA rules apply to videos that involve multiple students. Specifically, they should inform staff that parents don't have the right to review a video where other students appear in the video and those students cannot be segregated or redacted without destroying the meaning of the video. This district apparently trained its staff well. Instead of allowing a parent to review a video of a fight between multiple students, the district provided the parent a verbal explanation of the video, along with still images of the student taken from the video.

Case Summary

Because it provided a parent specific information about a parent's daughter contained in a video of a physical altercation, a district did not violate FERPA. Noting that the parts of the video showing other students could not have been redacted or segregated from the information about the parent's child, SPPO found that the parent was not entitled to review the video itself. The parent alleged that the district violated FERPA by not allowing the parent to review

a video that was, according to the parent, the basis for the district taking disciplinary action against the child. SPPO explained that when education records contain information on more than one student, the parent may inspect and review or "be informed of" only the specific information about her own child. An exception applies where the information about the other student or students cannot be segregated and redacted without destroying its meaning. Here, SPPO remarked, it appeared that the information in the video that concerned other students could not be redacted or segregated. The district lacked the software capability to edit the video, SPPO noted. Further, SPPO stated, the district provided the parent a verbal explanation of the contents of the video that related to the child and provided the parent the opportunity to review still, close-up images from the video that showed the child. SPPO added that FERPA does not require schools to create or recreate education records. "This means that FERPA would not require the District to create a written summary detailing the information in the video that directly relates to your daughter at your request," SPPO Deputy Director Frank E. Miller Jr. wrote. Finding no reasonable basis for the parent's claim that the district violated FERPA, SPPO closed the parent's complaint.

Full Text

Dear []

This letter is in response to your May 16, 2021, complaint filed with Student Privacy Policy Office (Office or SPPO), formerly the Family Policy Compliance Office, in which you allege that [] District) violated your rights under the Family Educational Rights and Privacy Act (FERPA) regarding the education records of your child, []. Due to the volume of correspondence received by this Office and limited resources, we are currently not able to respond to all complaints in as timely a manner as we would prefer. We recognize the delay in our responding to you regarding your complaint and apologize for any inconvenience this may have caused you.

FERPA is a federal law that protects the privacy of students' education records. The term "education records" is defined under FERPA, with certain exclusions, as those records that are directly related to a student and which are maintained by an educational agency or institution (e.g., a school or postsecondary institution), or by a party acting for the agency or institution, to which funds have been made available under any program administered by the Secretary of Education. FERPA affords parents certain rights with regard to their child's education records. When a child reaches 18 years of age or begins attending a postsecondary institution at any age, he or she becomes an "eligible student," and all of the rights under FERPA once afforded the parent transfer to the student. These rights include your right to inspect and review your child's education records, the right to seek to have the education records amended, the right to have some control over the disclosure of personally identifiable information from the education records, and the right to file a written complaint with SPPO regarding an alleged violation of FERPA. Under FERPA, a school is prohibited from disclosing personally identifiable information from your child's education records, without consent, unless the disclosure meets an exception to FERPA's general consent requirement.

SPPO reviews and processes written complaints of alleged violations of FERPA. This Office investigates written complaints filed by a parent alleging a violation of FERPA only if the complaint:

- Is filed by a parent who maintains FERPA rights over the education records which are the subject of the complaint;
- Is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation; and,
- Contains specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred.

Under FERPA's enforcement provisions, this

Office investigates timely complaints containing sufficient allegation of fact that would lead us to believe that a violation of FERPA may have occurred. In reaching this determination, SPPO reviews the information provided by the parent, and considers all relevant statutory and regulatory requirements and the Department's interpretation of those requirements, when reaching a decision as to whether there are sufficient facts of a potential violation of FERPA that supports our conducting a formal investigation of a complaint.

In your complaint, you alleged that the District violated the rights afforded you under FERPA when it failed to provide you with access to your child's education records, as requested. In your complaint and in subsequent conversations with this Office, you specifically alleged that the District denied you the opportunity to inspect and review a video recording of your daughter interacting with other students that the District used in its determination to take disciplinary actions against your daughter.

In response to your complaint, this Office contacted the District in order to determine if it would be possible for SPPO to act as an intermediary between you and the District to facilitate your access to this video recording. The District informed this Office that the video recording to which you requested to inspect and review was also the education record of other students depicted in the video. The District stated that it could not allow you to view the video without also disclosing personally identifiable information from other students' education records. The District stated that it does not have the ability to edit the video in order to redact and segregate the other students' personally identifiable information. The District stated that they explained this to you in response to your requests to access the video. The District also stated that it provided you with an explanation of the video's contents that related to your daughter. These explanations also included the District offering you the opportunity to inspect and review still, zoomed-in images of the video that only showed your daughter. After speaking

with the District, this Office contacted you to verify the District's claims. You confirmed that the District did provide you with an explanation of the videos contents that related to your daughter and the opportunity view the still, zoomed-in images of the video that the District had printed out. You claim that the District's explanation was only verbal, that it conflicted with accounts from other students, and that the District refused your request to create and provide you with a written summary of what was contained in the video.

FERPA's access provisions require that educational agencies and institutions provide parents and eligible students with the opportunity to inspect and review education records within 45 days of receipt of a request. While FERPA requires schools to provide a requesting parent or eligible student with the opportunity to inspect and review his or her child's, or his or her, education records, it does not require schools to provide parents or eligible students with copies of education records unless circumstances effectively prevent a parent or eligible student from exercising his or her right to inspect and review the education records and the school does not make other arrangements that would allow for the parent or eligible student to inspect and view the requested records. For example, a school could be required to provide copies if the parent or eligible student did not live within commuting distance of the school and the school did not make other arrangements for inspection and review. Thus, FERPA's access provisions generally would not require a school to provide copies of videotapes to parents of a disciplined student who requested copies of these records.

FERPA provides that when education records contain 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. (If an eligible student, he or she may only have access to the information that relate to him or her.) Thus, when an education 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, unless the information about the other student or students cannot be segregated and redacted without destroying its meaning.

With regard to videos, if the video contains information on more than one student and concern an altercation, the parents of a student involved in the altercation could have the right under FERPA to inspect and review the video, even though the video also contains 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 cases where there are multiple altercations or incidents that do not relate to a parent's child, the parent would not have the right to view the video, but should be told by the school what the video shows about their child. The school is often in the best position to make this determination.

While we believe that the District is in the best position to make this determination, based on the information you provided, it does not appear to us that the information in the video can be segregated or redacted without destroying its meaning. The District stated that it did not have the software capabilities to edit out the other students depicted in the video. In conversations with this Office, you confirmed that the District provided you with a verbal explanation of the contents of the video that related to your daughter and provided you the opportunity review still, zoomed-in images from the video that showed your daughter. Also, please note that FERPA does not require schools to create or maintain education records, or to re-create lost or destroyed education records. This means that FERPA would not require the District to create a written summary detailing the information in the video that directly relates to your daughter at your request.

Based on the facts you provided, it appears that you were not denied access to your child's education records because the District informed you of the specific information about your daughter from the video. Therefore, you have not provided specific

allegations of fact to give us reasonable cause to believe that there has been a violation of FERPA. Accordingly, this Office is dismissing your complaint. This letter constitutes notice of a final agency action regarding this matter.

For more information regarding your rights under FERPA please review the Guidance for Parents at https://studentprivacy.ed.gov/sites/defaultfiles/resource_document/file/for#parents.pdf. You also will find more information regarding FERPA on our website at: <https://studentprivacy.ed.gov/>. We regret that we are unable to assist you with your concerns. Again, please accept our sincerest apology for the delay in our response.