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**Letter to Hage
Student Privacy Policy Office**

N/A

January 10, 2022

Judge / Administrative Officer

Frank E. Miller Jr., Deputy Director

Ruling

The Student Privacy Policy Office determined that a Florida district complied with FERPA by informing a parent of the contents of video footage depicting her child in an altercation with another student. That satisfied the obligation to provide her access to her child's education record.

Meaning

A district must provide a parent access to her child's education records. When the "education record" is a video that depicts multiple students, the parent must be provided access to, or be informed of, the content of the video relating to her child, assuming it can't be redacted or edited. Here, where a surveillance video was the "education record" of two students, the school informed the parent of what was in the video. It also could have allowed her to view the video since it could not be edited to remove any depiction of the other student.

Case Summary

A Florida school fulfilled its obligation under FERPA by explaining to a parent the contents of a video depicting a physical altercation involving her child and one of her peers. The parent requested access to the video depicting the altercation. In response, the district explained that it would not provide surveillance recordings without a subpoena. The parent contacted SPPO. SPPO explained that FERPA requires schools to provide a requesting parent the opportunity to inspect and review her child's education records. 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, so long as the information about the other student cannot be segregated and redacted without destroying its meaning. Surveillance videos would not generally be considered "education records" subject to FERPA, SPPO explained. However, videos maintained by the school would be considered "education records" if they directly relate to a student. The video is the "education record" of each student disciplined as a result of her involvement in the incident, it noted. Because the altercation captured on the video was between two students, it directly related to both, it explained. It didn't appear that the video could be segregated or redacted without destroying its meaning, SPPO observed. Although the district appeared to believe that it fulfilled its obligation under FERPA when it provided the parent with copies of the student's referral and redacted statements, it could have allowed her to inspect and review the video, SPPO remarked. The timely and transparent manner in which the school responded to the altercation, and the fact that the principal spoke to the parent and conducted restorative practices that same day, indicates that she was made aware of what was on the video, it concluded.

Full Text

Dear Mr. Hage:

This is to inform you of the finding in the complaint filed against Charter Schools USA (District) by [] (Parent) under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232g; 34 CFR Part 99. The Parent alleged that the District violated § 99.10 of the FERPA regulations when it denied her access to a video which captured an altercation involving her child, [] (Student).

On November 2, 2016, the Family Policy Compliance Office, now known as the Student Privacy Policy Office (Office), received a complaint from the Parent alleging that the District violated FERPA when [] principal [] (School), denied her access to the Student's education records.

Specifically, the Parent stated that, on August 22, 2016, she orally requested access to an August 18, 2016, video which captured an altercation with the Student and another student. In response, the Parent stated that [] denied her access to the video, telling her to go to court to get a subpoena. The Parent stated that she again requested access to the video in her September 8, 2016, letter to you and verified receipt via U.S. mail on September 13, 2016. In addition, the Parent stated that she also provided a copy of her September 8 letter to [] the School.

By letter dated March 14, 2018, this Office informed the District of the Parent's allegation and requested it provide us a written response. This Office apologizes for the extended delay in which we informed the District of the allegation and for the delay in issuing this letter of finding. 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 like. We regret any inconvenience this prolonged delay in completing this investigation may have caused you.

By letter dated June 15, 2018, Ms. Stefanie S. Copelow, attorney for the District, responded on behalf of the District stating, in relevant part, the following:

By way of background, this matter arises from an alleged physical altercation between Student and one of her peers that occurred on August 18, 2016. The School's video surveillance system was running at the time and purportedly captured the incident. After the altercation occurred, the School's Dean of Students, [] wrote an Administrative Referral for both students. Student's Administrative Referral reflects that the Student violated Section 2.12 (Response to Physical Attack) of the School Board of Duval County's Code of Student Conduct ("Code"). In accordance with the Code, the School disciplined both students by implementing a restorative practice, parental contact and a behavior contract with progress monitoring. [Footnote 1: "Parent's allegation that Student was suspended is inaccurate as she was never

suspended from the School."]

Specifically, [] spoke to Parent and conducted restorative practices that same day. The restorative practices was a peer mediation between the two students, with [] acting as the mediator. During the mediation, the students apologized to each other and walked away from the table happy. [Footnote 2: "Of note, Student was withdrawn from the School [], enrolled in a home education setting."]

On or about August 24, 2016, Parent sent a letter to [] via email, which, in pertinent part, requested a copy of the School's surveillance regarding the incident. In response, the School provided Parent with each student's redacted statements describing the incident and the Student's Administrative referral. In conformity with its policies, the School also advised Parent that the video recording would not be released unless Parent obtained subpoena. Parent's complaint to the Family Compliance Office followed.

As set forth herein, the School provided Parent with copies of the Student's Administrative Referral and the students' redacted statements regarding the incident. The School's policy not to provide surveillance recordings without a subpoena comports with FERPA's purpose to protect the privacy interests of all students.

Relevant Regulations

FERPA is a federal law that protects the privacy of students' education records. The term "education records" means those records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. See § 99.3 "Education records." FERPA affords parents and eligible students the right to have access to their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. (An "eligible student" is a student who has turned 18 or is attending college at any age.) Under FERPA, an educational agency or institution is prohibited from disclosing personally identifiable information from students' education

records, without consent, unless the disclosure meets an exception to FERPA's general consent requirement. See 34 CFR § 99.30 and § 99.31.

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. 34 CFR § 99.10(d). 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 the District to provide copies of the videotapes to parents of the disciplined students who requested copies of these records.

Additionally, 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.) See 34 CFR § 99.12(a).

In the preamble to the 2008 rulemaking in responding to a comment on the broadened definition of "personally identifiable information" in the context of releasing student witness statements as part of student disciplinary process and the potential impact that redaction of the name of the student witnesses would have on due process rights of the student being disciplined, we stated as follows:

Under th[e] definition [of the term "education records"], a parent (or eligible student) has a right to inspect and review any witness statement that is directly related to the student, even if that statement contains information that is also directly related to

another student, if the information cannot be segregated and redacted without destroying its meaning. For example, parents of both John and Michael would have a right to inspect and review the following information in a witness statement maintained by their school district because it is directly related to both students: "John grabbed Michael's backpack and hit him over the head with it." Further, in this example, before allowing Michael's parents to inspect and review the statement, the district must also redact any information about John (or any other student) that is not directly related to Michael, such as: "John also punched Steven in the stomach and took his gloves."

73 Fed. Reg. 74806, 74832-33 (Dec. 9, 2008). 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.

Surveillance videos created and maintained by an educational agency's or institution's law enforcement unit would not generally be considered "education records" subject to FERPA. However, any copies of videos that are provided to and maintained by the school administration would be considered "education records" if they are directly related to a student or students. For your information, please see the following letter and FAQs that this Office issued in 2017:

<https://studentprivacy.ed.gov/resources/letter-wachter-regarding-surveillance>
and
<https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa>.

Analysis & Finding

In making a determination as to whether a violation of FERPA occurred, this Office considers all documentation acquired through the investigatory process, in conjunction with the relevant statutory and regulatory requirements and the Department's interpretation of those requirements. Accordingly, as

explained more fully below, we find that the District did not violate FERPA as alleged.

Based on the information provided by the Parent and the District, we believe that the video is the education record of each of the students who were disciplined as a result of their involvement in a single incident. We reach this conclusion because the altercation that was captured on the video was between the two students, making it directly related to both students. Additionally, the principal instructed the Parent to "obtain a subpoena first" before the School would turn over a copy of the video, indicating that the video was maintained by the School administration and apparently not by the School's law enforcement unit. Based on this scenario, FERPA requires the District to allow a parent of a student who was disciplined for the incident to inspect and review or be informed of only the specific information about their child so long as the video cannot be segregated and redacted without destroying its meaning. It does not appear to us that the District can segregate and redact the video without destroying its meaning.

In this case, the District appears to believe that it fulfilled its obligation under FERPA when it provided the Parent "with copies of the Student's Administrative Referral and the students' redacted statements regarding the incident." In the District's response, it stated that, in accordance with the School's Code, the School "disciplined both students by implementing a restorative practice, parental contact and a behavior contract with progress monitoring" and that the School's Dean of Students "spoke to Parent and conducted restorative practices that same day." The District explained that the restorative practices was a peer mediation between the two students, with the Dean of Students acting as the mediator. The District concluded its response to the Parent's complaint by stating: "The School's policy not to provide surveillance recordings without a subpoena comports with FERPA's purpose to protect the privacy interests of all students."

While the District could have allowed the Parent to inspect and review the video of the altercation

between her child and another student without violating FERPA, it appears from the information provided by the District in response to the allegations that the School informed the Parent of what was in the video. That is, the timely and transparent manner in which the School responded to the altercation between the two students and the fact that the principal "spoke to the Parent and conducted restorative practices that same day" indicates that the Parent was made aware of what was on the video. Therefore, we are closing the complaint and will so notify the Parent by copy of this letter. This letter constitutes notice of a final agency action. Thank you for your cooperation with regard to this investigation.