

HCPSS OFFICE OF GENERAL COUNSEL

Video Records FAQs for Schools

1. When is a video an education record under the Family Educational Rights and Privacy Act (FERPA)?

ANSWER: Like all other “education records”, a video is an education record when the video is: (a) directly related to a student AND (b) maintained by an educational agency or institution or by a party acting for the agency or institution. (20 E.S.C. 1232g(a)(4); 34 CFR § 99.3 “Education Record”).

2. When is a video “directly related” to a student?

ANSWER: Whether a video is directly related to a student is very context specific. Some circumstances where videos may be directly related to a student include, but are not limited to the following –

- a. Videos utilized for student disciplinary proceedings, as well as videos of incidents that reasonably could result in student disciplinary proceedings (even if the incident is still under investigation, disciplinary action has not yet been taken, or the school administration decides to pursue restorative practices or other consequences in lieu of disciplinary action)
- b. Videos that show a student in violation of local, state, or federal law
- c. Videos that show a student getting injured, attacked, victimized, ill, or having a health emergency
- d. Videos that intentionally focus on a specific student (e.g., recordings of a student presentation)
- e. Videos that otherwise contain personally identifiable information from a student’s education record

A video is *not* directly related to a student if the student’s image is incidental or captured only as part of the background, or if the student is shown participating in school activities open to the public (i.e. athletic event or performance) and without specific focus on any individual.

3. When is a video considered to be “maintained by an educational agency or institution”?

ANSWER: Once a video is preserved for use in a student disciplinary matter or maintained as part of a student’s school file for some other purpose, it becomes a student record of the student who is the subject of the video and shall be maintained in a manner like all other education records for the student.

4. What do I do if a parent/guardian requests to view a video or get a copy of a video involving their child(ren)?

ANSWER: Eligible students or the student's parent/guardian have the right to inspect and review the education records of their child(ren) OR be informed of the content of the video. The school administrator should view the video first and inform the parent/guardian of the contents of the video. This can include a description of the events leading up to the incident, the actions of the student, response by staff, and/or the lack of video available that depicts the incident the parent is seeking. If the video is deemed to be part of their child's educational record, an eligible student or the student's parent/guardian may view the video by submitting a request to the principal or school administrator. A school staff member must be present for the entirety of the parent/guardian viewing the video and must ensure that the parent/guardian does not make any recordings of the video on their cell phones or other devices. FERPA does not require schools to provide copies of the videos.

5. Can a video be the education record of more than one student and what do I do if a parent requests to view the video of multiple students?

ANSWER: The video may be an educational record of multiple students if it is directly related to multiple students and must be kept as an educational record in each student's file. If the video shows multiple students, FERPA requires that the school, upon request, be informed of the content of the video. Schools are NOT required to release copies of the videos to the parent/guardian. If the parent/guardian continues to seek access to the video, school administrators should discuss concerns with access due to the presence of multiple students, other contents the parent would not be allowed access to, or the lack of focus on the student who is the subject of the request. Due to these complexities, school administrators may consult the Office of General Counsel regarding modifying the video to maintain the confidentiality of other students prior to allowing any parents to view the video.

6. If law enforcement asks for videos containing students, can I show them?

ANSWER: No, law enforcement requests for videos should be directed to the Office of School Safety and Security unless there is an emergency situation. An emergency situation is defined as when the information is required to protect the immediate and significant health or safety of a student or other person. If student records are shared under the emergency situation exception, school administrators must include a description of the articulable and significant emergency that formed the basis for disclosure and the parties to whom the information was disclosed in the student's file. School administrators must also notify parents if student information is shared with an SRO except in cases of alleged child abuse or neglect.

7. If I receive a subpoena for the video footage, can I produce the video footage?

ANSWER: No, all subpoenas requesting copies of the video should be directed to the Office of School Safety and Security, and a courtesy copy sent to the Office of General Counsel. The Office of School Safety and Security will review the subpoena and will work with the requestor to provide the requestor with copies of the video.

Access Only – Copies of Video Records Not Provided

Under MPIA GP § 4-352 an agency may deny inspection of records prepared to prevent emergency situations, those that reveal surveillance techniques, or where release may endanger the life or physical safety of an individual. HCPSS may allow viewing only of security footage for persons-in-interest, however access will be denied to the extent inspection threatens public security or is contrary to public interest. Copies will be provided in response to a lawful subpoena or court order.

For any other legal questions regarding the release of video records, please contact the Office of General Counsel at OfficeofGeneralCounsel@hcpss.org or 410.313.6604.