

From: <[ferpa@ed.gov](mailto:ferpa@ed.gov)>

Date: Fri, May 25, 2018 at 8:45 AM

Subject: Your FERPA Inquiry Response: Law Enforcement Video Streaming ID:[m2uk4c/139665/22379]

To: [REDACTED]

This is in response to your email below regarding the Family Educational Rights and Privacy Act (FERPA). The Student Privacy Help Desk FERPA email box is intended to provide school officials, parents, students and others with brief, informal responses to routine questions about FERPA. You may find helpful information on our website <https://studentprivacy.ed.gov/>. This informal response is based on the information provided in, and obtained as a result of, your inquiry.

*In your inquiry you stated: "I am the Director of Safety for the [REDACTED] County School System in Alabama. All of our schools are equipped with security cameras, and our school system would like to share with the [REDACTED] County Sheriff's Office a continuous live feed of those cameras. We are wanting to do our due diligence and verify that this is permissible under FERPA?" In a follow-up email, you explained the following: "The principal of each school is in charge of the cameras and viewer in their school. Our IT department controls the ability to view the cameras on our network."*

As explained more fully below, if the video system were controlled by the school district's law enforcement unit, which we assume is your office, there would be no problem with sharing a live feed of the videos with the local sheriff's office. Please note that we have not issued formal guidance on a non-law enforcement unit official, such as a principal, sharing a continuous live feed with local law enforcement. To avoid any potential problems, it would be best for the law enforcement unit to control and maintain the video surveillance system.

Here is the link to FAQs about surveillance videos on our website: <https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa>. Also, in December, we issued the following letter: [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/Letter%20to%20Wachter%20%28S%20urveillance%20Video%20of%20Multiple%20Students%29%20.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Letter%20to%20Wachter%20%28S%20urveillance%20Video%20of%20Multiple%20Students%29%20.pdf)

Additionally, shortly after the shooting at Virginia Tech in 2007, the Department issued this brochure (<https://www2.ed.gov/policy/gen/guid/fpco/brochures/elsec.pdf>), which stated in part:

"Schools are increasingly using security cameras as a tool to monitor and improve student safety. Images of students captured on security videotapes that are maintained by the school's law enforcement unit are not considered education records under FERPA. Accordingly, these videotapes may be shared with parents of students whose images are on the video and with outside law enforcement authorities, as appropriate. Schools that do not have a designated law enforcement unit might consider designating an employee to serve as the 'law enforcement unit' in order to maintain the security camera and determine the appropriate circumstances in which the school would disclose recorded images."

As noted, the question is who maintains (operates, not just receives a copy afterwards) the video system at the school. In many cases we've encountered, the school assistant principal or some other school official besides a school security office ("law enforcement unit") operates the system. However, if the school's law enforcement unit does operate/maintain the video system, then those videos are not protected by FERPA and can be shared with anyone, notwithstanding FERPA. We provide you general information below that explains FERPA with regard to disclosing personally identifiable information (PII) from students' education records to

outside law enforcement authorities, including portions of videos that are “education records” and maintained by a school official other than the law enforcement unit, such as the principal or vice-principal.

Briefly, 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 PII 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. Here is a link to the FERPA regulations on our website:

<https://studentprivacy.ed.gov/resources/family-educational-rights-and-privacy-act-regulations-ferpa>.

#### Law Enforcement Unit Records (Exclusion to “Education Records”)

Among the exclusions from the definition of “education records” – and thus from the privacy requirements of FERPA – are records of a law enforcement unit of an educational agency or institution. These records must be: (1) created by a law enforcement unit; (2) created for a law enforcement purpose; and (3) maintained by the law enforcement unit. See 34 CFR § 99.8(b)(1). Excluded records do not include: (1) records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit (such as a principal or dean); or (2) records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution. See 34 CFR § 99.8(b)(2).

Under FERPA, “law enforcement unit” means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or noncommissioned security guards, that is officially authorized or designated by that agency or institution to (1) enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or (2) maintain the physical security and safety of the agency or institution. See 34 CFR § 99.8(a)(1). Accordingly, schools may disclose information from law enforcement unit records to anyone, subject to State law, including outside law enforcement authorities, without consent from parents or eligible students. See also the Q&As on our website: <https://studentprivacy.ed.gov/search/node/SROs>

#### Judicial Order/Lawfully Issued Subpoena (Exception to Consent)

Please note that there is no exception in FERPA that specifically permits a school to disclose PII from a student’s education records to local law enforcement authorities, such as the local police or the district attorney, without consent. There is an exception to the consent requirement that permits disclosure of education records in order to comply with a lawfully issued subpoena or court order. In general, a school must make a reasonable effort to notify the parent or eligible student of the subpoena or judicial order before complying with it in order to allow the parent or eligible student the opportunity to seek protective action, unless certain exceptions apply. 34 CFR § 99.31(a)(9). There are certain types of subpoenas or judicial orders with which school officials may need to comply that *may not* require that the parent or eligible student be notified, such as certain law enforcement. This guidance on our website explains this and other exceptions typically related to emergencies: <https://studentprivacy.ed.gov/resources/addressing-emergencies-campus>.

## Health or Safety Emergency Exception (Exception to Consent)

An exception to FERPA's general consent requirement permits educational agencies and institutions to disclose PII from students' education records, to appropriate parties, in connection with a health or safety emergency. School officials are responsible for making the determination whether a health or safety emergency exists. See section 99.36(c): "... **If the educational agency or institution determines** that there is an articulable and significant threat to the health or safety of the student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals." (Emphasis added.)

The phrase "articulable and significant threat" means that if a school official can explain why, based on all the information then available, the official reasonably believes that a student poses a significant threat, such as a threat of substantial bodily harm, to any person, including the student, the school official may disclose education records to any person whose knowledge of information from those records will assist in protecting a person from that threat.

To be "in connection with an emergency" means to be related to the threat of an actual, impending, or imminent emergency, such as a terrorist attack, a natural disaster, a campus shooting, or the outbreak of an epidemic. An emergency could also be a situation in which a student gives sufficient, cumulative warning signs that lead an educational agency or institution to believe the student may harm himself or others at any moment. It does not mean the threat of a possible or eventual emergency for which the likelihood of occurrence is unknown, such as would be addressed in emergency preparedness activities.

We have also noted that the "health or safety emergency" exception does not permit a local school district to routinely disclose, without consent, PII from students' education records to the local police department, unless there was a health or safety emergency and the disclosure of the information was necessary to protect the health or safety of students or other individuals, or unless the police department issued a subpoena for the information. However, this does not prevent schools from having working relationships with local police authorities and to use local police officers in maintaining the safety of their campuses.

We trust this is helpful to you.

Tracy Koumaré  
Education Privacy Policy Analyst  
Office of the Chief Privacy Officer  
U.S. Department of Education

As referenced above and from the

### **Does FERPA distinguish between School Resource Officers (SROs) and other local police officers who work in a school?**

**No.** An SRO typically serves as an on-site law enforcement officer and as a liaison with the local police or sheriff's department. An SRO also works with teachers and school administrators to promote school safety and to help ensure physical security. **An SRO may be designated by the school as a "law enforcement unit" official under FERPA (§ 99.8).** However, in order for a school to disclose personally identifiable information (PII) from education records to an SRO, the SRO must be considered a "school official" under FERPA in accordance with § 99.31(a)(1)(i)(B) concerning outsourcing. A school may only non-consensually disclose PII from students' education records to its law enforcement unit if those individuals in the law enforcement unit

meet the requirements set forth in FERPA's school official exception or if some other FERPA exception to the general consent rule applies.

A school must have direct control over an SRO's maintenance and use of education records in providing SRO services in order for the SRO to be considered a school official. Further, under the school official exception (as well as any FERPA exception to consent), SROs may only use the PII from education records for the purposes for which the disclosure was made, e.g., to promote school safety and the physical security of the students. See §§ 99.31(a)(1)(i)(B)(3) and 99.33(a)(2). In addition, SROs are subject to the redisclosure requirements of § 99.33(a). This means that an SRO who is serving as a "school official" under FERPA may not disclose PII from education records to others, including other employees of his or her local police department who are not acting as school officials, without consent unless the redisclosure fits within one of the exceptions to FERPA's consent requirement.

**Audience:**

K-12 School Officials

Postsecondary School Officials

**Topics:**

Exceptions - School Official

FERPA

Law Enforcement Units/School Resource Officers