



September 26, 2019

KEDC Legal Update

RE: Parental request to view video of multiple students

Issue: A request by a parent to view video of possible student misconduct on a bus involving multiple students.

Below, the U.S. Department of Education (“DOE”) FERPA Office has posted the following guidance which basically states that parents of students **directly involved** in the conduct (or students who are 18 or older – “eligible students” who are **directly involved**) have a right to view the video, but do not have a right to a copy of the video. To receive a copy of the video of multiple students, a parent/eligible student would have to have a subpoena or court order.

The U.S. DOE post suggests that the district redact the video of the other students in the video before allowing a parent/eligible student to view the video, but if the video cannot be redacted, the U.S. DOE states that a parent/eligible student would have a right to view the entire video.

If the video can be redacted, a parent/eligible student can view only their video of their child or the eligible student’s video footage.

If the video cannot be redacted (“blurred”) of other students for lack of technology or the expense of such technology and the video contains nudity or sexual activity by students, I would contact Social Services and inform them of the video and if they get involved, ask them what to do with the parent’s request to review the video. Under KRS 620.040(4), school personnel cannot conduct internal investigations in lieu of official investigations by law enforcement or Social Services.

If Social Services does not get involved and student nudity/sexual activity is involved, I would recommend, prior to allowing a parent to review the video, either asking the parents for a subpoena or court order or, at least, submit a request to KDE or the U.S. DOE for guidance. Under federal law, you have 45 days to respond to the request to view the video.

Below are the U.S. DOE Guidance, the federal regulation and relevant reporting state statutes and, if student nudity/sexual activity is involved, I would contact Social Services regardless.

Let me know if you have any questions or need more information. Thanks. Tim

U. S. Department of Education: If a video is an education record for multiple students, can a parent of one of the students or the eligible student view the video?

When a video is an education record of multiple students, in general, FERPA requires the educational agency or institution to allow, upon request, an individual parent of a student (or the student if the student is an eligible student) to whom the video directly relates to inspect and review the video. FERPA generally does not require the educational agency or institution to release copies of the video to the parent or eligible student.

In providing access to the video, the educational agency or institution must provide the parent of the student (or the student if the student is an eligible student) with the opportunity to inspect and review the video. If the educational agency or institution can reasonably redact or segregate out the portions of the video directly related to other students, without destroying the meaning of the record, then the educational agency or institution would be required to do so prior to providing the parent or eligible student with access. On the other hand, if redaction or segregation of the video cannot reasonably be accomplished, or if doing so would destroy the meaning of the record, then the parents of each student to whom the video directly relates (or the students themselves if they are eligible students) would have a right under FERPA to access the entire record even though it also directly relates to other students.

For a fuller legal analysis and explanation of this issue, please see the [2017 Letter to Wachter](#).

34 CFR § 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under § 99.12, a parent or eligible student must be given the opportunity to inspect and review the student's education records. This provision applies to -

- (1) Any educational agency or institution; and
- (2) Any State educational agency (SEA) and its components.
 - (i) For the purposes of subpart B of this part, an SEA and its components constitute an educational agency or institution.
 - (ii) An SEA and its components are subject to subpart B of this part if the SEA maintains education records on students who are or have been in attendance at any school of an educational agency or institution subject to the Act and this part.

(b) The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request.

KRS 158.154 - Principal's duty to report certain acts to local law enforcement agency.

When the principal has a reasonable belief that an act has occurred on school property or at a school-sponsored function involving assault resulting in serious physical injury, a sexual offense, kidnapping, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a controlled substance in violation of the law, or damage to the property, the principal shall immediately report the act to the appropriate local law enforcement agency. For purposes of this section, "school property" means any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

KRS 158.155 - Reporting of specified incidents of student conduct -- Notation on school records -- Report to law enforcement of certain student conduct -- Immunity.

1. (1) If a student has been adjudicated guilty of an offense specified in this subsection or has been expelled from school for an offense specified in this subsection, prior to a student's admission to any school, the parent, guardian, principal, or other person or agency responsible for a student shall provide to the school a sworn statement or affirmation indicating on a form provided by the Kentucky Board of Education that the student has been adjudicated guilty or expelled from school attendance at a public or private school in this state or another state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs. The sworn statement or affirmation shall be sent to the receiving school within five (5) working days of the time when the student requests enrollment in the new school.
2. (2) If any student who has been expelled from attendance at a public or private school in this state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his records, those records shall reflect the charges and final disposition of the expulsion proceedings.
3. (3) If any student who is subject to an expulsion proceeding at a public or private school in this state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his records to a new school, the records shall not be transferred until that proceeding has been terminated and shall reflect the charges and any final disposition of the expulsion proceedings.
4. (4) A person who is an administrator, teacher, or other employee of a public or private school shall promptly make a report to the local police department, sheriff, or the Department of Kentucky State Police, by telephone or otherwise, if:
 1. (a) The person knows or has reasonable cause to believe that conduct has occurred which constitutes:
 1. A misdemeanor or violation offense under the laws of this Commonwealth and relates to:

1. Carrying, possession, or use of a deadly weapon; or
2. Use, possession, or sale of controlled substances; or
2. Any felony offense under the laws of this Commonwealth; and
2. (b) The conduct occurred on the school premises or within one thousand (1,000) feet of school premises, on a school bus, or at a school-sponsored or sanctioned event.
5. (5) A person who is an administrator, teacher, supervisor, or other employee of a public or private school who receives information from a student or other person of conduct which is required to be reported under subsection (1) of this section shall report the conduct in the same manner as required by that subsection.
6. (6) Neither the husband-wife privilege of KRE 504 nor any professional-client privilege, including those set forth in KRE 506 and 507, shall be a ground for

refusing to make a report required under this section or for excluding evidence in a judicial proceeding of the making of a report and of the conduct giving rise to the making of a report. However, the attorney-client privilege of KRE 503 and the religious privilege of KRE 505 are grounds for refusing to make a report or for excluding evidence as to the report and the underlying conduct.

7. (7) Nothing in this section shall be construed as to require self-incrimination.
8. (8) A person acting upon reasonable cause in the making of a report under this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred or imposed from:
 1. (a) Making the report; and
 2. (b) Participating in any judicial proceeding that resulted from the report.

KRS 620.030 Duty to report dependency, neglect, abuse, or human trafficking -- Husband-wife and professional-client/patient privileges not grounds for refusal to report -- Exceptions -- Penalties.

(1) Any person who knows or has reasonable cause to believe that a child is dependent, neglected, or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or to the Department of Kentucky State Police, the cabinet or its designated representative, the Commonwealth's attorney, or the county attorney by telephone or otherwise. Any supervisor who receives from an employee a report of suspected dependency, neglect, or abuse shall promptly make a report to the proper authorities for investigation. If the cabinet receives a report of abuse or neglect allegedly committed by a person other than a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, or person exercising custodial control or supervision, the cabinet shall refer the matter to the Commonwealth's attorney or the county attorney and the local law enforcement agency or the Department of Kentucky State Police. Nothing in this section shall relieve individuals of their obligations to report.

Any person, including but not limited to a physician, osteopathic physician, nurse, teacher, school personnel, social worker, coroner, medical examiner, child-caring

personnel, resident, intern, chiropractor, dentist, optometrist, emergency medical technician, paramedic, health professional, mental health professional, peace officer, or any organization or agency for any of the above, who knows or has reasonable cause to believe that a child is dependent, neglected, or abused, regardless of whether the person believed to have caused the dependency, neglect, or abuse is a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, person exercising custodial control or supervision, or another person, or who has attended such child as a part of his or her professional duties shall, if requested, in addition to the report required in subsection (1) or (3) of this section, file with the local law enforcement agency or the Department of Kentucky State Police, the cabinet or its designated representative, the Commonwealth's attorney, or county attorney within forty-eight (48) hours of the original report a written report containing:

Nothing in this section shall limit the cabinet's investigatory authority under KRS 620.050 or any other obligation imposed by law.

Any person who intentionally violates the provisions of this section shall be guilty of a:

1. (a) Class B misdemeanor for the first offense;
2. (b) Class A misdemeanor for the second offense; and
3. (c) Class D felony for each subsequent offense.