

# Sounding Board

*A publication of Osprey Wilds Environmental Learning Center Charter School Division*

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## ***Cameras in the Classroom***

June 2023

### **Introduction**

Once reserved solely for cafeterias, halls, and gyms, cameras are now being used in classrooms, especially since the COVID-19 pandemic required remote video instruction. Cameras in the classroom may be used for security, student behavior monitoring, staff evaluation, or to provide footage to students learning remotely. When making decisions about cameras in the classroom, schools have important policy and legal ramifications to consider, and schools using cameras should implement a comprehensive policy regarding classroom cameras.

*This paper is not intended to be legal advice. Please check with your school's legal counsel and/or the full text of the statute for additional information.*

### **Legal Considerations**

Taking and maintaining video footage of students and staff raises important privacy concerns. Both federal and state law regulate student privacy regarding video surveillance.

#### Federal Law

The federal Family Education Rights and Privacy Act (FERPA), gives parents (and students or former students who reach age 18 and attend school) certain rights regarding their children's education records. FERPA limits a school's ability to disclose records without a parent's consent, and provides parents and eligible students access to their own education records. Under FERPA, a video of a student is an "education record" when the video is: (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. (20 U.S.C. 1232g(a)(4)(A); 34 CFR § 99.3 "Education Record"). Under FERPA, students and parents have the right to inspect the video footage that is an education record, and schools would need a signed consent before releasing any footage that would be considered an education record.

Determining if a video of a student is directly related to a student (rather than just incidentally related to the student) is often context-specific, and schools should examine videos on a case by case basis to determine if they directly relate to any of the students depicted therein. Among the factors that may help determine if a video should be considered "directly related" to a student are the following:

- The school uses the video for disciplinary action (or other official purposes) involving the student (including the victim of any such disciplinary incident);

- The video contains a depiction of an activity:
  - that resulted in a school's use of the video for disciplinary action (or other official purposes) involving a student (or, if disciplinary action is pending or has not yet been taken, that would reasonably result in use of the video for disciplinary action involving a student);
  - that shows a student in violation of local, state, or federal law;
  - that shows a student getting injured, attacked, victimized, ill, or having a health emergency;
- The school taking the video intends to make a specific student the focus of the video (e.g., a recording of a student presentation); or
- The content of the video otherwise contains personally identifiable information contained in a student's education record.

A video should not be considered directly related to a student in the absence of these factors and if the student's image is incidental or captured only as part of the background, or if a student is shown participating in school activities that are open to the public and without a specific focus on any individual. Remember that the same recording can be the education record of more than one student under FERPA.

To be considered an education record under FERPA, a school, or a party acting for the school, also must maintain the record. The U.S. Department of Education offers additional guidance on FERPA regarding videos, which can be found at <https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa>.

### Minnesota State Law

Videos maintained by schools are government data that is regulated by the Minnesota Government Data Practices Act. Pursuant to Minnesota Statutes, government data are public unless otherwise classified. Minnesota Statutes, section 13.32, classifies most data relating to students as private and incorporates by reference much of the federal FERPA. Under Minnesota law, data subjects, including parents of minor children, have the right to access public and private data about themselves. Providing access to video data becomes difficult because videos often contain footage of more than one person.



The Minnesota Supreme Court has held that students and their guardians have a right to access videos in which they are a subject, even if the video also contains private data about a different person. If a video contains private data about a person other than the requester, the school must make every reasonable effort to redact the personally identifiable information on other students from the recording. Thus, if schools are going to maintain video footage, they must also have the capability to redact portions of footage. The Minnesota Department of Administration Advisory Opinion 19-004 provides more discussion on this topic and can be accessed here. <https://mn.gov/admin/data-practices/opinions/library/?id=36-377565>

If school staff members are the subjects of a video or portions of a video, those images are personnel data (Minnesota Statutes, section 13.43) and may be public or private, depending on what the images show. Most personnel data are private, but the following types of data, if captured on video, would be public data:

- The terms and conditions of the employment relationship.
- The status of any complaints or charges against the employee even if the complaint or charge does not result in discipline.

- The final disposition of discipline together with the specific reasons for the discipline and data that document the basis of the discipline.
- Videotapes of public events, even if they contain private data, because the data subjects have given consent to their release by participating in the events.

Some of the above factors are very broad, especially the terms and conditions of the employment relationship. Schools should carefully consider the implications of maintaining video footage before deciding to do so.

## **Policies for Cameras in the Classroom**

Because of the numerous state and federal privacy concerns regarding video footage maintained by schools, schools that use cameras in the classroom should consider a number of factors to create a policy that covers how and why the school uses video footage from classrooms.

Schools should consider the following factors before maintaining cameras in the school:

- Data privacy considerations, especially for students who might have an IEP or 504 plan.
- The purpose for the recording and how it will be used (e.g. security, discipline, etc.).
- How long the recording(s) should be kept.
  - Minnesota State law requires every school to have a record retention schedule approved by the State Records Disposition Panel.
  - State and federal law dictate how long certain records must be kept. For example:
    - Most security footage must only be retained until re-looped.
    - Curriculum development data must be retained for 6 years.
    - Data that relate to sexual harassment/discrimination, or violation of other laws may need to be maintained until the case or lawsuit closes.
    - Videos that may be part of a personnel file must be maintained during the employee's employment and 6 years after termination.
- The process if a parent or student wants access to their / their child's educational data.
  - Schools should designate who is responsible for responding to requests for data and outline the process in policy.
- Who can and will review classroom footage.
  - Will all footage be reviewed by security or school administrative personnel? If so, how will this achieve the school's goals? Will footage only be reviewed by specific school administrators for specific purposes? Staff that review footage should be subject to employee confidentiality agreements or provisions.
- How the school will ensure the active monitors / feeds are not visible to the public or other students.
  - Since much of the footage recorded will be private data, a school must ensure the video footage is kept in a secure area and that only people specifically authorized to view recordings may do so.

## **Conclusion**

Using cameras in the classroom involves important privacy considerations under state and federal law. Schools should understand their specific reasons for using cameras in the classroom, and should weigh the benefits and risks of taking and maintaining video recordings. A school that uses video cameras should create a comprehensive policy for how it will use, store, and maintain video recordings. The policy should outline who will have access to recordings, and when, as well as outlining a process for how it will respond to data requests from parents or students.