

# LEGAL MAILBAG – APRIL 4, 2024



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*The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: [legalmailbag@casciac.org](mailto:legalmailbag@casciac.org).*

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Dear Legal Mailbag,

As a new and enthusiastic administrator, I greatly appreciate how technology helps us do our jobs better in so many different ways. Nowadays, we resolve many credibility disputes over student conduct by simply reviewing the surveillance videos. However, as soon as we tell parents that their child was “caught on tape,” they immediately demand to see the video recording.

Just last week, I faced the following conundrum. Students reported to us that two boys had been fighting in the hallway leading to the gymnasium, but by the time we got there, the hallway was empty. When we checked the camera in that hallway, however, we hit pay dirt. We saw two students whaling away at each other, and we saw ten students standing around watching, with a few of them cheering. We suspended both boys for fighting, and that is when the trouble started.

The father of one of the boys is a criminal defense attorney, or at least he tried to play the part when he met with us to challenge the disciplinary action we took. He started talking about hearsay, but we told him that we had a video recording of the whole incident. At that point, he demanded to see a copy of the tape. I know all about FERPA, however, and I told him that he couldn’t see the tape because other students were visible in the video, and I was not going to try to get a release from eleven other families just to satisfy his curiosity.

He didn’t take it well, and he left in a huff, muttering “we will see about that” under his breath. Did I do the right thing by protecting the privacy of the other students in the video?

Signed,  
*Privacy Please*

Dear Privacy:

While Legal Mailbag applauds your concern for student privacy, the parent making the request has the right to view the recording, subject to conditions as described below.

As a threshold matter, we should back up and consider a basic question under FERPA – what is an “education record” subject to its protections? 20 U.S.C. § 1232g(a)(4)(A) defines an “education record” as:

those records, files, documents, and other materials which— (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Thus, a surveillance video, even one that shows students, is not an education record unless it is maintained for information “directly related to a student.” Accordingly, the recording in question is not a FERPA-protected record as to the students watching the fight, because the record is not maintained as to them (unless of course you plan to discipline the students who were cheering the protagonists on, in which case you would be maintaining the record as to those students as well).

As to the two students fighting, you are correct in considering the recording a FERPA-protected “education record” because you are maintaining it as a record of the two students’ misconduct. The challenge is that the recording is an education record as to both students, and each has a privacy interest in the recording.

The Office of the Chief Privacy Officer is the federal agency that administers FERPA, and it issued guidance on this subject in 2017. When a videotape relates directly to two students, either parent (or both) can view the recording because it is an education record related to each parent’s child. However, because the recording is also a FERPA-protected record as to the other student, neither parent can have a copy. [Letter to Wachter dated December 7, 2017](#) (OCPO 2017). This guidance makes good sense because otherwise one parent could post a FERPA-protected record as to the other student on social media.