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**22-ORD-073**

April 26, 2022

In re: Jerry Davis/Spencer County Board of Education

**Summary:** The Spencer County Board of Education (“the Board”) did not violate the Open Records Act (“the Act”) when it denied a parent’s request for a copy of school surveillance video under KRS 61.878(1)(k) and 20 U.S.C. § 1232g (FERPA) when the video recorded multiple students.

***Open Records Decision***

On February 8, 2022,<sup>1</sup> Jerry Davis (“Appellant”), on behalf of his son, a student, requested that the Board provide a copy of school surveillance video that “documented a school altercation [or] fight” occurring on January 15, 2022, at Spencer County High School. In a timely response, the Board stated that one camera had captured video relating to the incident, “but only after an employee intervened and the employee and both [the Appellant’s son] and the other student can very briefly be seen moving across the bottom of the screen.” The Board denied the request for this footage under the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, and the Kentucky Family Educational Rights and Privacy Act (“KFERPA”), KRS 160.700 *et seq.*, which are incorporated into the Act under KRS 61.878(1)(k) and (l). This appeal followed.

Under the relevant subsection of FERPA, 20 U.S.C. § 1232g(b)(1), “[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein

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<sup>1</sup> Although the Appellant’s request was dated February 1, 2022, the record indicates that the Board received it by e-mail on February 8, 2022.

other than directory information . . .) of students without the written consent of their parents to any individual, agency, or organization, other than to” specified individuals under conditions listed at (b)(1)(A)-(J). Both FERPA and KFERPA preclude the disclosure of education records containing personally identifiable student information to third parties without prior parental written consent. Video footage of students is an education record containing such information. *See, e.g., Medley v. Bd. of Education of Shelby County*, 168 S.W.3d 398, 404 (Ky. App. 2004); 99-ORD-217 (finding that FERPA prevents even the parent of a student recorded on video from inspecting such recording when the video also captured other students).

The applicability of FERPA to particular records must be determined on a case-by-case basis. Here, the Board states that it cannot provide a copy of the footage to the Appellant because it constitutes an education record of the other student seen in the video. The Appellant argues that the record could be redacted by electronically blurring the other student’s face. However, the Appellant admits that he knows the identity of the other student. Under 34 CFR § 99.3, “personally identifiable information” includes “information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.” Therefore, the blurring suggested by the Appellant would not alter the status of the video as an education record containing personally identifiable information of the other student under FERPA. The Appellant has not obtained written consent from a parent of the other student for the release of the footage. Accordingly, the Board did not violate the Act when it denied the Appellant’s request for a copy of the video.<sup>2</sup>

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

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<sup>2</sup> Because FERPA is dispositive of the issues in this appeal, it is not necessary to consider the Board’s alternative arguments in support of the denial.

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/s/ James M. Herrick

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Distributed to:

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