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24-ORD-241

November 18, 2024

In re: Alan S. Rubin/Jefferson County Public Schools

**Summary:** Jefferson County Public Schools (“JCPS”) did not violate the Open Records Act (“the Act”) when it denied a request for a copy of school surveillance video and an incident report under KRS 61.878(1)(k) and 20 U.S.C. § 1232g.

***Open Records Decision***

Alan S. Rubin (“Appellant”) submitted a request for records to JCPS for three categories of records related to an incident that occurred on October 11, 2023. First, the Appellant requested the identity of certain employees involved in the incident. Second, the Appellant requested an incident report related to the incident. Third, the Appellant requested a copy of any video recordings that JCPS possesses related to the incident. JCPS denied the Appellant’s request, citing KRS 61.878(1)(k), KyFERPA, and FERPA. This appeal followed.<sup>1</sup>

The Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, is incorporated into the Act under KRS 61.878(1)(k). Under 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 other than directory information . . .) of students without the written consent of their parents to any individual, agency, or organization,” excepting certain individuals not relevant here. Thus, FERPA precludes the disclosure of education records containing

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<sup>1</sup> On appeal, JCPS states it provided the identity of all the employees related to the incident that is the subject of this appeal to the Appellant. Accordingly, any issues related to these records are now moot. *See* 40 KAR 1:030 § 6 (“If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.”).

*personally identifiable student information* to third parties without prior parental written consent.<sup>2</sup>

FERPA regulates access to “education records,” which 20 U.S.C. § 1232g(a)(4)(A) defines 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.” “[C]ourts have generally defined education records as documents with information about academic performance, financial aid, or *disciplinary matters*.” *Univ. of Ky. v. Kernel Press, Inc.*, 620 S.W.3d 43, 57 (Ky. 2021) (emphasis added). Video footage of students is an education record containing such information. *See, e.g., Medley v. Bd. of Educ. of Shelby Cnty.*, 168 S.W.3d 398, 404 (Ky. App. 2004); 24-ORD-239; 22-ORD-073; 99-ORD-217 (finding FERPA prevents even the parent of a student recorded on video from inspecting such recording when the video also captured other students).

Here, the Appellant requested an incident report and video footage related to an incident involving a student at a JCPS school. JCPS explains that the incident report and video footage contain information that would make the student identifiable. Moreover, JCPS asserts that the student’s identity is known to the Appellant. Under 34 C.F.R. § 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.” Thus, even if JCPS were to redact the student’s identifying information from the records, it would not alter the status of the video as an education record containing personally identifiable information of the students under FERPA. *See, e.g., 24-ORD-196; 22-ORD-073*. Accordingly, JCPS did not violate the Act when it denied the Appellant’s access to records in their entirety that were prohibited from disclosure under FERPA.<sup>3</sup>

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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

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<sup>2</sup> JCPS states that it has informed the Appellant the records will be made available if he provides the “appropriate release from the student’s parent or guardian,” but the Appellant has not provided such materials.

<sup>3</sup> Because FERPA is dispositive of the issues on appeal, it is not necessary to address JCPS’s alternative argument under KyFERPA.

any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to [OAGAppeals@ky.gov](mailto:OAGAppeals@ky.gov).

**Russell Coleman**  
**Attorney General**

/s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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Distributed to:

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