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HANDLE WITH CARE: RESPONDING TO REQUESTS FOR STUDENT AND OTHER JUVENILE RECORDS



OBJECTIVES

- Exemptions Refresher and Student Records Exemptions – PRA, FERPA and Others
- Juvenile Justice and Care Records
- Hot Issues in Student Records Requests

EXEMPTIONS REFRESHER

- Records are presumed public
- An exemption must exist to withhold
- Entity asserting an exemption bears the burden to justify the exemption
- Exemptions are narrowly construed
- No “silent withholding” – agency must cite exemption and provide brief explanation
- This applies to redactions and complete withholding

LOCATE EXEMPTIONS

- RCW 42.56.210 – .475 (exemptions listed in PRA)
- RCW 42.56.070 – other statute/law exemption (i.e., FERPA, Ch. 13.50 RCW)
- RCW 42.56.070 (8) – list of individuals cannot be requested for commercial purposes
- List of Exemptions can be found at:

<https://www.atg.wa.gov/sunshine-committee>

Currently 32-pages, current as of 2022, “new” 2022 changes highlighted

STUDENT RECORDS – EXEMPTIONS

- Who made the request?
 - Parent of minor student
 - Attorney – who for? – is there a release?
 - Agency – statutory authority to obtain records?
 - Is student over 18?
 - Is student emancipated?
 - Other
- What is being requested?
 - Educational records?
 - Other records?

STUDENT RECORDS – EXEMPTIONS

- RCW 42.56.230
 - Personal information in “any files maintained for” students in public schools;
 - *New* RCW 42.56.230(2)(a)(iii) clarifies that for a student enrolled or previously enrolled in a local education agency, personal information in “any records pertaining to the student, including correspondence”
- RCW 42.56.315 (conviction info/sex offender info)

STUDENT RECORDS – EXEMPTIONS

- Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g
 - "Education records" are records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for or on behalf of the agency or institution. These records include but are not limited to grades, transcripts, class lists, student course schedules, health records (at the K-12 level), student financial information (at the postsecondary level), and student discipline files. The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail.
 - School counseling, nursing, medical records – constitute education records

STUDENT RECORDS – EXEMPTIONS

- HIPAA not applicable
 - HIPAA only applies to agencies covered by HIPAA; rarely applies to schools
- No general right to privacy
 - Specific right is in certain employment, RCW 42.56.230(3), and law enforcement records, RCW 42.56.240(1)
 - Even then, to be exempt, disclosure must be:
 - Highly offensive to a reasonable person; and
 - Not of legitimate concern to the public.

Questions about PRA and FERPA exemptions?

JUVENILE JUSTICE AND CARE RECORDS

CH. 13.50 RCW

- Records Relating to the Commission of a Juvenile Offense
- Records Not Relating to the Commission of a Juvenile Offense

REMINDER: Schools meet the definition of a “juvenile justice or care agency”

RCW 13.50.010(1)(b)

RCW 13.50.050: RECORDS RELATING TO COMMISSION OF JUVENILE OFFENSES

All records other than the official juvenile court file **are confidential** and **may** be released only as provided in this chapter, RCW [13.40.215](#) (*notification re: juveniles found to have committed violent or sex offense or stalking*) and [4.24.550](#) (*release of information re: sex offenders and kidnapping offenders*). [RCW 13.50.050](#)(3).

WHY WOULD A SCHOOL HAVE SUCH A RECORD?

RCW 13.50.050

- School Investigation:
 - Records retained or produced by any juvenile justice or care agency may be released to other participants in the system **only when an investigation or case involving the juvenile in question is being pursued by the other participant** (4)
- Law Enforcement Information Sharing:
 - Upon the decision to arrest or the arrest, law enforcement and prosecuting attorneys **may** cooperate with schools in releasing information to a school pertaining to a juvenile attending the school, including the incident report (7)

TO WHOM MAY SUCH A RECORD BE RELEASED?

RCW 13.50.050

- **To the public:** Community notification for certain offenses (3) or when information could not reasonably be expected to identify the juvenile or the juvenile's family (5).
- **To other participants in the juvenile justice system:** Only when the other participant is pursuing an investigation involving the juvenile (4).
- **To the juvenile or their attorney:** Only pursuant to the rules of discovery (6).
 - Note does not include parent, BUT student and parent may have rights to these records under other statutes
- **To the victim or victim's immediate family:** but only the identity of juvenile offender and the circumstance of the crime (7).
 - Consistent with entitlement under FERPA

REMEMBER: Unlike the PRA, Ch. 13.50 RCW does not compel disclosure. Records are confidential and **may** be released. Consider third party notice.

FAQ – JUVENILE IS NOW AN ADULT

RCW 13.50.050

What if the juvenile who is the subject of the record is now an adult?

The records may not be disclosed even after the accused reaches 18 years old, since RCW 13.50.050 concerns “records relating to the commission of a juvenile offense.”

RCW 13.50.100: RECORDS NOT RELATING TO COMMISSION OF JUVENILE OFFENSES

Records covered by this section shall be **confidential** and shall be released **only** pursuant to this section and RCW 13.50.010. [RCW 13.50.100](#)(2).

Applies to records not covered by RCW 13.50.050: mostly child welfare records, truancy

Cannot be sued for a PRA violation by juvenile or juvenile's parent if records are withheld under this section.

TO WHOM MAY SUCH A RECORD BE RELEASED?

RCW 13.50.100

- **To the public:** No.
- **To other participants in the juvenile justice system:** Only when the other participant is pursuing an investigation involving the juvenile (3).
- **To the juvenile, their parents, or attorneys:** Entitled to access to all records and information which pertain to the juvenile except (7):
 - (a) If it is determined that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents; or
 - (b) If the information or record has been obtained by in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, when the services have been sought voluntarily by the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency

FAQ – WHO IS THE PARENT?

RCW 13.50.100

Who counts as the “parent” for purposes of (7)?

- For the relevant purposes of Title 13, it means who has the right of legal custody of the child. RCW 13.04.011(7)

How do you verify?

- Consider signed declaration
- Consider other known facts

Questions before move on to Hot Topics?

Hot Topics

- Parents' request for CPS reports
- Law enforcement and DCYF requests for student records
- Videos of students
- Targeted requests



Parents' Requests for CPS Reports



- Scenario:
 - One of your staff members has made multiple CPS reports about a student who frequently comes to school with fresh bruises. The student's parent requests a copy of all CPS reports filed about the student.
 - What do you do?



Parents' Requests for CPS Reports



- Duty to disclose:
 - FERPA
 - Chapter 13.50 RCW, the exclusive means (under state law) of obtaining juvenile justice or care records
 - Applies to “juvenile justice or care agencies,” which includes “schools”
- RCW 13.50.100(7) default rule: A juvenile’s parents “shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile”



Parents' Requests for CPS Reports



- **Exception:** “If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court.” RCW 13.50.100(7)(a)
 - It’s the District’s decision, but can seek input from CPS caseworker, who may be in better position to provide information about likelihood of harm



Parents' Requests for CPS Reports



- Can we redact reporters' names?
 - “The department of children, youth, and families or the department of social and health services may delete the name and identifying information regarding persons or organizations who have reported alleged child abuse or neglect.” RCW 13.50.100(7)(c)
 - “Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section.” RCW 26.44.030(11)



Requests for Student Records by DCYF or Law Enforcement

- Scenario 1
 - Inspector Clouseau tells you that student Holden Ehgun is suspected of robbing a bank last Friday at 9:00 am, and they need Holden's attendance records for that day. Can you provide the records?



Requests for Student Records by DCYF or Law Enforcement

- FERPA only allows nonconsensual disclosures under limited circumstances listed in 34 C.F.R. 99.31.
- Exceptions relevant to law enforcement investigations:
 - (9) To comply with a subpoena, court order, or warrant
 - (10) In connection with a health or safety emergency
 - (11) Directory information



Requests for Student Records by DCYF or Law Enforcement

- Scenario 2
 - You receive a letter from a CPS investigator explaining that they are investigating Pat Parent for neglect, and need Pat's son's IEP and last 4 report cards as part of the investigation. Can you provide the records?



Requests for Student Records by DCYF or Law Enforcement

- “In conducting an investigation or family assessment of alleged abuse or neglect, the department or law enforcement agency: . . . Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.”
 - RCW 26.44.030(15)
- Intersection with FERPA?
 - “Nonconsensual disclosure allowed to officials or authorities to whom this information is specifically . . . Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of § 99.38.”
 - 34 C.F.R. 99.31(a)(5)(i)(B)
 - Can disclose if authorized by State statute concerning juvenile justice system’s ability to serve student, if the receiving official “certify[ies] in writing that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent”
 - 34 C.F.R. 99.38(b)
 - Here, relevant statute is RCW 26.44.030(15)



FERPA



- Drop everything and search!
- FERPA issues:
 - Directly related to a student?
 - Directly related to multiple students?
 - Bystanders
- Nonbinding guidance from Dept. of Education
 - FAQs on Photos and Videos under FERPA





Requests for Videos: “Directly Related?”

- The photo or video contains a depiction of an activity:
 - that resulted in an educational agency or institution’s **use of the photo or 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 photo or 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 person or entity taking the photo or video **intends to make a specific student the focus** of the photo or video (e.g., ID photos, or a recording of a student presentation); or
- The audio or visual content of the photo or video otherwise contains **personally identifiable information** contained in a student’s education record.





Requests for Videos: “Directly Related?”

- Examples of situations that may cause a video to be an education record:
 - A school surveillance **video showing two students fighting** in a hallway, used as part of a disciplinary action, is directly related to the students fighting.
 - A classroom **video that shows a student having a seizure** is directly related to that student because the depicted health emergency becomes the focus of the video.
 - If a school maintains a **close-up photo of two or three students playing basketball** with a general view of student spectators in the background, the photo is directly related to the basketball players because they are the focus of the photo, but it is **not directly related to the students pictured in the background**. Schools often designate photos or videos of students participating in public events (e.g., sporting events, concerts, theater performances, etc.) as **directory information** and/or obtain consent from the parents or eligible students to publicly disclose photos or videos from these events.
 - A video recording of a faculty meeting during which **a specific student's grades are being discussed** is directly related to that student because the discussion contains PII from the student's education record.





Requests for Videos: Directly Related to Multiple Students

- 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 would have a right under FERPA to inspect video even though it also directly relates to other students.



FERPA



- Starr Quarterback assaults Victor Victim in the hallway, leaving Victor with a broken jaw, while classmates watch. Ronnie Revenge then sucker punches Starr.
 - Scenario 1: Ms. Quarterback requests a copy of the hallway surveillance video
 - Scenario 2: Ms. Victim requests a copy



FERPA:
Targeted Requests



- Where a school district reasonably believes that a requestor knows the identity of the student to whom a requested education record relates after taking into account reasonably available information, the District may not release the record.
 - 34 C.F.R. 99.3; 34 C.F.R. 99.31(b)(1)
- Examples:
 - Everyone in the community knows that Starr Quarterback brought a gun to school last week. A requestor asks for “all disciplinary records from last week regarding a student bringing a gun to school.”
 - Harry Hatfield intentionally tripped Monty McCoy during a track race. Monty’s great-uncle requests “all disciplinary records relating to a student tripping another student during a track race.”



THANK YOU!

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We invite your follow up questions!

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