



# STATE OF INDIANA

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December 5, 2014

Ms. Brandy M. Sylvia  
529 N. Jefferson St.  
Martinsville, IN 46151

*Re: Formal Complaint 14-FC-272; Alleged Violation(s) of the Indiana Access to Public Records Act by the Metropolitan School District of Martinsville*

Dear Ms. Sylvia,

This advisory opinion is in response to your formal complaint alleging the Metropolitan School District of Martinsville ("School"), violated the Indiana Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The School has responded via Ms. Susan Traynor Chaistain, Esq. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on November 17, 2014.

## BACKGROUND

Your formal complaint dated November 7, 2014, alleges the School violated the APRA by denying you access to inspect video footage depicting altercations between your son and other students. The School Corporation denied your request on each of the following dates: August 14, 2014; October 3, 2014; October 6, 2014; and November 7, 2014. It should be noted each of these requests involve separate and distinct incidents or altercations involving your son and other students. The School Corporation's reason for denying the requests centered around the School Corporation's obligation to maintain the confidentiality of educational records as required by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a)(4)(A); 34 C.F.R. §§99.3, and the state equivalent Ind. Code 20-33-7-1.

In your complaint you indicated your desire to review the video footage because your child has been disciplined in some of these incidents after being reviewed by School Corporation officials. You also wanted to review video footage from September 2014 because you allege your son was being harassed on the bus.

On November 18, 2014, the School Corporation responded to your formal complaint. The School Corporation claims it did not violate APRA when it denied your request to review the video footage maintained by the School Corporation. The School Corporation contends three of the alleged violations are time-barred because your formal complaint was not filed within thirty (30) days of the alleged violations pursuant to Ind. Code 5-14-5-7, and thus should not be considered here.

Additionally, the School Corporation claims it is prohibited from releasing the video footage you requested under Ind. Code 5-15-3-4(a)(1) and (3), because Federal and State law require the confidentiality of all “education records” under FERPA.

### **ANALYSIS**

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Metropolitan School District of Martinsville is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the School’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

An agency is prohibited from granting access to inspect and copy a public record that is declared confidential pursuant to either state or federal law. See Ind. Code § 5-14-3-4(a)(1) and (3). The School has provided that FERPA and its state law analog, Ind. Code § 20-33-7, prohibit the School from disclosing the videotapes.

The Family Policy Compliance Office (“FPCO”) of the branch of the Department of Justice has been tasked with interpreting FERPA. The FPCO has stated once school video surveillance becomes relevant to a particular student for a particular purpose (i.e. discipline) and it is maintained by the school for that purpose, it becomes a protected “education record” of that student. Initial guidance from the FPCO in *Letter re: Berkeley School District* (October 31, 2003) states that a parent may only inspect a school videotape showing his or her child engaged in misbehavior if no other students are pictured.

However, consider the following from the U.S. Department of Education’s website:

Schools are increasingly using security cameras as a tool to monitor and improve student safety. Images of students captured on security videotapes that are maintained by the school’s law enforcement unit are not considered education records under *FERPA*. Accordingly, these videotapes may be shared with parents of students whose images are on the video and with outside law enforcement authorities, as appropriate.

<http://www2.ed.gov/policy/gen/guid/fpc/brochures/elsec.html>

The guidance clearly differentiates between video footage captured by a school's 'law enforcement unit' and general school safety video surveillance. The U.S. Department of Education is seemingly recognizing the rights of parents to view this kind of footage if their child is depicted on the video.

But with the FPCO issuing seemingly contradictory guidance, it is difficult to ascertain the intent of FERPA as it relates to school bus video footage. Other jurisdictions have issued rulings on the matter, however, Indiana has yet to do so.<sup>1</sup> FERPA essentially acts as an incentive program. One of the elements is if a school protects student education records, the U. S. Department of Education will continue to provide Federal funding to the school. Naturally, this consideration will motivate a school to be particularly mindful of releasing *any* record identifying a student. And while I am not aware of an instance where a school has been denied funding for disclosing bus video footage, I understand the stance the School has taken in the immediate case.

I have indeed advised schools that I believe there is a worthy interpretation of FERPA to allow video footage to be viewed by parents. As such, some School corporations choose to allow inspection of such footage. I issue this guidance because the APRA mandates access laws are to be interpreted liberally and its exceptions to disclosure construed conservatively. However, the School's arguments are sound and well-reasoned. They are rooted in law and not unreasonable. Thus, I also find there is a legitimate argument for withholding school bus surveillance video.

Therefore, I make the recommendation the School allow you to inspect, but not copy the video. But this inspection is at the discretion of the School. It is advisory only and I cannot compel them to do so. I do not believe the School will run afoul of FERPA privacy considerations if they choose to allow you access.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Metropolitan School District of Martinsville did not violate the Access to Public Records Act.

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<sup>1</sup> *Rome City School Dist. v. Grifasi*, 806 N.Y.S.2d 381 (N.Y. Sup. Ct. 2005) (Video surveillance tape not an education record under FERPA, and therefore subject to disclosure); *Lindeyan v. Kelso School Dist.*, 172 P.3d 329 (Wash. 2007) (Video subject to disclosure under state law)

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Susan Traynor Chastain, Esq.