

# REGULATION **MONTGOMERY COUNTY PUBLIC SCHOOLS**

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**Related Entries:** COG-RA, EEA-RA, JFA-RA, JGB-RA, JOA-RA, KBA

**Responsible Office(s):** Chief of Finance and Operations; Chief of Teaching, Learning, and Schools

## Retention and Disclosure of MCPS Video Records

### I. PURPOSE

To provide guidance regarding the retention and disclosure of video footage from Montgomery County Public Schools (MCPS) security cameras

### II. BACKGROUND

Video footage recorded by MCPS security cameras may depict misconduct, a serious incident, and/or criminal conduct on MCPS property, including a school bus. As a general matter, no student, staff member, or visitor has a right or reasonable expectation of privacy when being recorded or photographed in those areas where MCPS security cameras are located, such as hallways, cafeterias, gymnasiums, auditoriums, and exterior school grounds, as well as the interior and exterior of MCPS school buses. Classrooms are not considered public spaces, and as such, MCPS does not have video surveillance in classrooms.

Any student or staff member may be disciplined based on evidence gathered through such audio or video surveillance. Members of the public on school property before, during, or after the school day are also subject to video surveillance, which may be provided to law enforcement.

### III. DEFINITIONS

A. *Authorized user* means MCPS staff members responsible for management and oversight of video recordings from MCPS surveillance cameras for legitimate safety and security reasons. These individuals include the following:

1. MCPS chief safety officer and Department of Systemwide Emergency Management (DSEM) staff designated by the chief safety officer
2. MCPS general counsel/designee

3. MCPS Department of Transportation (DOT) director and DOT staff members authorized by the DOT director to access and export footage of bus cameras
4. School principals and school-based staff authorized by the principal to access and export MCPS video footage from school security cameras

School-based staff with authorized access shall include up to two additional administrators and two DSEM school security staff (SSE) for schools allocated such additional staff. After consultation with DSEM, the school principal may authorize additional SSEs to have viewing permission only.

B. *Authorized viewer* means an individual who has been granted permission to view specified videos, as set forth in MCPS Form 236-12, *Request to View MCPS Security Camera Video*.

1. Form 236-12 must be completed by the principal/designee or the DOT director at the request of the following individuals who seek to view security camera footage:
  - a) Eligible students or parents/guardians, as appropriate.
  - b) Law enforcement.
  - c) Other individuals who are not MCPS administrators.
2. Review and approval of Form 236-12 is the joint responsibility of the Office of the General Counsel (OGC), DSEM, and the Office of Teaching, Learning, and Schools/School Support and Improvement.

C. *Chain of custody* means a written record of the date and time an authorized user exports footage from an MCPS security camera and the manner in which possession of the exported video file transfers from the original source to any subsequent locations and viewers.

D. *Video server folder* means the location on a school or DOT electronic file server to which security camera footage is exported in response to a request to view security camera footage of an alleged incident.

#### IV. PROCEDURES

A. General Provisions

1. Recordings from MCPS security cameras are subject to legal protections. MCPS complies fully with its legal requirements to protect individual privacy and disclose information, as required. For security reasons, and to

comply with its legal obligations to protect individual privacy, MCPS imposes strict limits on access to MCPS security camera videos.

2. Students, staff, and parents/guardians are notified of MCPS security camera surveillance on MCPS property through annual publications that are available on the MCPS web and/or distributed, as appropriate, to students' families and MCPS staff members, including MCPS Regulation JFA-RA, *Student Rights and Responsibilities*, and *A Student's Guide to Rights and Responsibilities*.
  3. Videos on portable mobile devices belonging to students and staff members are addressed in MCPS Regulation COG-RA, *Personal Mobile Devices*, and MCPS Regulation JGB-RA, *Search and Seizure*. MCPS Regulation JGB-RA defines individuals authorized to search a personal mobile device, based on a reasonable belief that it is or was being used inappropriately, in violation of Maryland laws, Board of Education policies, or MCPS regulations or rules. Regulation JGB-RA further establishes procedures that must be followed before turning over such a device to law enforcement.
- B. Storage and documentation of access to video footage from MCPS security cameras
1. DSEM provides and periodically updates guidance specific to storage of videos, access authorization and documentation procedures, and export procedures.
  2. Authorized users must establish and maintain a video access log that documents each time a video file is accessed, viewed, and/or exported from the video server folder. The access log must contain data elements established by DSEM. The access log will be audited regularly by DSEM.
  3. Videos may not be stored on any computer or storage device other than the school or DOT video server folder or DSEM central office video server.
- C. Preservation of MCPS video recordings
1. When MCPS receives a report that an incident occurred in the school building or on school grounds, an appropriate administrator shall contact the principal/designee regarding any available video from school security cameras.
  2. If the incident occurred on or near a school bus, an appropriate administrator shall contact the DOT director/designee regarding any available video from school bus security cameras.
  3. The principal or DOT director should take steps immediately to determine if relevant footage was recorded of the location, individuals involved,

and/or time proximate to the incident; then the principal or DOT director should export and preserve a copy of the recorded incident(s). The content exported should be of sufficient length and scope, as established in consultation with DSEM and/or OGC, to inform the investigation of the incident, as appropriate, and entered into the video server log.

- D. Video recordings as evidence in student disciplinary proceedings
  - 1. Any MCPS security camera video footage accessed, viewed, or considered as evidence in a student disciplinary proceeding must be exported.
  - 2. If the school administration is recommending expulsion, or when a suspension or other disciplinary consequence is appealed, the school must include a copy of any relevant video among the information provided as part of the appeals review process.
  
- E. Exporting a video to the DSEM central video server folder
  - 1. If a video is the subject of a subpoena or if a video is viewed by law enforcement under exigent or other conditions, MCPS will maintain only one copy. DSEM will export the video from the school or DOT video server folder to a DSEM central administration video server folder.
  - 2. At that time, no copies of the video may be retained by the school or DOT.
  - 3. DSEM must document the removal of the video from the school or DOT video server folder and establish a chain of custody of any subsequent access or transfer of the file.
  
- F. Retention of exported video records
  - 1. Security camera footage in a school or DOT video server folder must be retained for a period of 180 days, unless the footage is exported or a copy is produced for any reason set forth in this regulation.
  - 2. Timetables for retention of exported files shall be developed by DSEM, OGC, and the Office of the Chief of Human Resources and Development/Employee Engagement, Compliance and Investigations (EECI), based on the following principles:
    - a) A video reviewed or otherwise considered as evidence in a student disciplinary proceeding or reviewed by law enforcement will be retained for a period no shorter than 180 days.
    - b) A video that is the subject of a subpoena will be retained for a period of five years.

- c) A video reviewed or otherwise considered as evidence in an employee disciplinary proceeding will be retained according to timelines established by EECI.

## V. FERPA PROVISIONS

- A. The Family Educational Rights and Privacy Act (FERPA) applies to MCPS security camera videos that are *directly related* to a student and/or maintained by MCPS as part of a student's record.
  - 1. Whether a visual representation of a student is *directly related* to a student (rather than just incidentally related to the student) is context-specific.
  - 2. MCPS security camera videos should not be considered *directly related* to a student if the student's image is incidental or captured only as part of the background, or if a student is shown participating in school activities open to the public (e.g., an athletic event or a school drama performance) and without a specific focus on any individual.
  - 3. Circumstances under which videos may be *directly related* to a student include, but are not limited to, the following:
    - a) Videos utilized for student disciplinary proceedings, as well as videos of incidents that reasonably could result in student disciplinary proceedings (even if the incident is still under investigation, disciplinary action has not yet been taken, or the school administration decides to pursue restorative practices or other consequences in lieu of disciplinary action)
    - b) Videos that show a student in violation of local, state, or federal law
    - c) Videos that show a student getting injured, attacked, victimized, ill, or having a health emergency
    - d) Videos that intentionally focus on a specific student (e.g., recordings of a student presentation)
    - e) Videos that otherwise contain personally identifiable information from a student's education record
- B. Once a video recording is preserved for use in a student disciplinary matter or maintained as part of a student's school file for some other purpose, it becomes a student record of the student who is the subject of the video. The eligible student or student's parent/guardian may view the video.

**VI. COPIES OF VIDEO FILES**

- A. A subpoena is typically required for MCPS to provide a copy of a video to any individuals who are not MCPS administrators, and all such subpoenas for videos should be forwarded to the OGC to ensure timely review and processing.
- B. No copies may be provided without OGC review and approval.

**VII. VIEWING/ACCESSING VIDEOS**

- A. Eligible Students and Parents/Guardians
  - 1. An eligible student or a student's parent/guardian, as appropriate, may view video footage that is part of the student's educational record or is directly related to the student, but neither the eligible student nor the parent/guardian, as appropriate, have a right to obtain a copy.
  - 2. However, before showing any video to an eligible student or parents/guardians, as appropriate, school staff must ensure that MCPS Form 236-12 is completed and the required authorization has been obtained to designate them as an authorized viewer, as defined in section III.B.
  - 3. In order for an authorized viewer to view a video, a school staff member must be present, and the staff member must ensure that an authorized viewer does not make any recordings with their own cell phones or other devices. Staff from other MCPS offices and departments also may be present to assist in video viewings by authorized viewers, but they should always make sure that any requests for viewing are handled by the school administration in the first instance.
  - 4. Videos that are part of a student's educational record cannot be disclosed to individuals outside MCPS without written permission from the eligible student or parent/guardian, as appropriate. Certain limited exceptions to this consent requirement include, but are not limited to, the following:
    - a) MCPS may, under certain circumstances, disclose a video in response to a lawfully issued subpoena, after reasonable notice to the eligible student or the student's parents/guardians, as appropriate, in accordance with established procedures.
    - b) MCPS may disclose a video to protect the health or safety of students and others in an emergency.

c) MCPS may disclose a video to Child Protective Services for an investigation of suspected child abuse or neglect.

5. If one of the above-referenced exceptions is applicable, school staff must ensure that MCPS Form 236-12 is completed before permitting anyone outside MCPS to view any video that is directly related to a student without written permission from the eligible student or the student's parent/guardian, as appropriate.

#### B. Multiple Students

When an MCPS security camera video is part of the education records of multiple students, the U.S. Department of Education has clarified that the eligible student or parents/guardians, as appropriate, of each of those students may view the video individually.

1. Before allowing the eligible students or parents/guardians of any one of those students to view the video, however, MCPS must redact the portions directly related to other students, if staff can reasonably do so without destroying the meaning of the record.
2. If redaction cannot reasonably be accomplished, or if doing so would destroy the meaning of the record, then the eligible student or parents/guardians of each student to whom the video directly relates may access the entire record, even though it also relates directly to other students.
3. Due to these complexities, school staff must ensure that MCPS Form 236-12 is completed, and appropriate signatures obtained, before providing any eligible students/parents/guardians with access to view MCPS security camera videos directly related to multiple students.

#### C. Law Enforcement

1. When an MCPS security camera video has been preserved for use in a disciplinary proceeding or maintained by MCPS as part of a student record, a law enforcement officer may not view the video or obtain a copy without written permission of the eligible student/parent/guardian or a subpoena, except under certain limited circumstances.
2. MCPS staff may inform a law enforcement officer of the existence of the video without permission of the eligible student/parent/guardian or a subpoena, and staff may share generic information about the subject matter (e.g., the video shows four students in a fight).

3. In all circumstances, MCPS Form 236-12 must be completed in advance of any viewing of an MCPS security camera video by law enforcement.
4. In addition, school staff must retain a log detailing any viewing of a video by law enforcement; and a copy of the video that was viewed should be exported and preserved, as directed by DSEM.
5. Approval of Form 236-12 may be given for law enforcement to view videos from MCPS security cameras without subpoena or permission of the individuals involved under the following circumstances:
  - a) The video has not been preserved for use in a disciplinary proceeding or otherwise maintained.
  - b) The school administration determines that there is an emergency and significant threat to the health or safety of a student or other individuals, and release of the information is necessary to protect the health or safety of the student or other individuals.
  - c) Under exigent conditions, emergency authorization may be provided by the general counsel/designee verbally; but it must be documented immediately thereafter by email, and Form 236-12 must be completed as soon as possible.

**VIII. ACCESS TO SCHOOL VIDEO RECORDINGS THAT ARE PART OF AN EMPLOYEE PERSONNEL RECORD**

- A. OEECI must be consulted prior to action on any request to view personnel-related videos from MCPS security camera videos.
- B. Once a video is preserved for use in an employee disciplinary matter, it is considered part of that employee's personnel file.
- C. Personnel files are confidential, except in certain limited circumstances: employees may review material contained in their own personnel files, and staff who have responsibility for supervision of that employee may do so as well.

**IX. PUBLIC INFORMATION ACT REQUESTS**

- A. School personnel may be asked by media organizations or members of the public for a copy of an MCPS security camera video, based on the Maryland Public Information Act (MPIA). School staff should ask that the specific request be provided in writing and immediately forward the request to the Office of Communications.

- B. In general, MCPS security camera videos are not made available to media or the public under the MPIA, unless certain limited exceptions apply, and shall be addressed by the Office of Communications and OGC.

**Related Sources:** U.S. Department of Education, *FAQs on Photos and Videos under FERPA*; In a publication titled *FAQs on Photos and Videos under FERPA* (available at <https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa>)

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