



**WHAT WE SHOULD  
NOT SAY:  
Privacy and Confidentiality  
in a Crisis**

**CaISPRA**

**November 5, 2018**

Presenter:  
Edward J. Sklar


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**Presenter Information**



**Edward J. Sklar**  
*Partner*  
esklar@lozanosmith.com

Edward J. Sklar is the Managing Partner of Lozano Smith's Walnut Creek office. Mr. Sklar advises school districts on managing California's charter school landscape, serving as co-chair of the firm's Charter School Practice Group. Mr. Sklar also advises school districts on all legal issues that arise in the routine course of educating students. This includes matters of student discipline, residency, student records, civil rights, and compliance with state and federal education reform measures. He has extensive experience advising clients on compliance with the Brown Act and the Public Records Act. Mr. Sklar has provided training and conducted seminars on a number of topics for multiple organizations, including the California School Boards Association (CSBA), National School Boards Association (NSBA), Coalition for Adequate School Housing (CASH) and Association of California School Administrators (ACSA).




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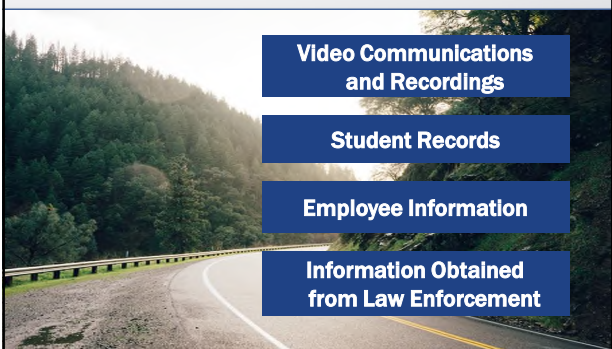
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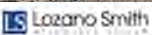
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**Today's Roadmap**



- Video Communications and Recordings**
- Student Records**
- Employee Information**
- Information Obtained from Law Enforcement**




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**True or False**



I can release an employee's letter of reprimand upon request to a member of the public.

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**True or False**

I can release an incident report about a fight resulting in student injuries upon request to a member of the public.



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**FERPA: Video Surveillance**

*Letter to Wachter*

- Hazing incident with multiple students caught on school video surveillance
- The video is considered student record
- Opinion: Allow parent of involved student to view video when video cannot be segregated or redacted.



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### Tips for Video Surveillance

- Do not archive or save unnecessary video footage.
- Do not actively monitor.
- Only use footage to confirm student or personnel incident you were otherwise informed about.
- Provide adequate notice to employees, parents, and students of security camera use on campus.
  - Annual notice
  - Signs on campus
  - School-site handbooks
- Avoid recording audio.

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### What are “Student Records”?

- Grades
- Assignments
- Schedules
- Discipline



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### “Personally Identifiable Information”

- Student’s name.
- Parent’s (or other family members’) name and address.
- Social security or student numbers.
- Biometric records.
- Other indirect identifiers.



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**“Other Indirect Identifiers”**

Can someone in the school community identify the student, even if they do not have knowledge of the relevant circumstances?



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**Former Student Records**



Former student records are still considered “education records,” unless the records are not directly related to the individual’s attendance as a student.

They are subject to the same confidentiality requirements as records of current students.

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**Exceptions to Definition of Student Records**

- Documents maintained for other purposes (personnel investigations)
- Records kept in the sole possession of the maker.
- Records maintained by a law enforcement unit of a district.



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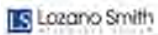
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**Disclosure to Third Parties**



- School districts may not disclose student records to any third party unless:
  - Parents provide written consent.
  - An exception applies to the rule.



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**Health and Safety Emergencies**

- Student record information may be disclosed without parental consent “in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.”



- 34 CFR § 99.36



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**Disclosure to Law Enforcement**



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**Example**

- One of your District's 13 year old students recently committed suicide. Her family is alleging she was bullied by several students at the District. The community, including the media, has an idea of who the students are. You are receiving questions regarding the student who committed suicide and the students who bullied her.

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**Employee Information**

- California Constitution provides every citizen with a right to privacy, including public employees
- Certain information is exempt from disclosure under the California Public Records Act (CPRA)



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**"Personnel Records" Exemption**

- "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."
- Exempt from disclosure under the California Public Records Act (CPRA)
- Right of privacy is not absolute

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### “Reverse CPRA”

- Public employees can file a lawsuit against employer before their private information is disclosed under the CPRA



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### Public vs. Private Personnel Records

Public	Private
<ul style="list-style-type: none"><li>• Name</li><li>• Salary and benefit information</li><li>• Dates of employment</li></ul>	<ul style="list-style-type: none"><li>• Home addresses, home and cell phone numbers, and birthdates</li><li>• Medical information</li><li>• Teachers' evaluations scores</li><li>• Attorney-client privilege and/or attorney work-product</li></ul>

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### Grey Areas

- Discipline, depends on . . .
  - Status of employee in question
  - Charges



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### Information Learned from Law Enforcement



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### Questions



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