

FAA Releases Guidelines For Local Regulation Of Drones

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In the past few years unmanned aircraft systems, commonly known as drones, have grown in popularity and availability. With the proliferation of drones comes some difficult privacy and public safety questions for school districts. For example, how can a school district respond to a student or community member who is using a drone to photograph public school students? Can a school district restrict residents from flying drones over sensitive structures, such as school buildings or athletic fields? The Federal Aviation Administration (FAA) has taken the position that its regulations pre-empt local regulation and that it has the exclusive authority to regulate “navigable airspace,” which extends to ground level. In December, 2015 the FAA released a set of guidelines directed to state and local authorities. While the FAA continues to contend that it has the exclusive right to regulate drone use in United States airspace, it does acknowledge that local bodies retain some authority to regulate drone use.

The FAA’s guidelines list examples of the types of regulations that local authorities are free to enact. These examples include local laws involving “land use, zoning, privacy, trespass and law enforcement operations.”

Consequently, the FAA acknowledges that it is within a local authority’s police power to enact regulations prohibiting the use of drones in ways that raise public safety or privacy concerns. Section 510 of the Pennsylvania School Code gives school districts broad authority to adopt these types of policies in order to manage school affairs. Accordingly, a school district may rely on its existing policies, such as its student code of conduct, and apply those policies to drone use where appropriate. A school district also may consider new policies that specifically address the use of drones in ways that threaten the privacy or safety of students, staff and visitors on school grounds. While a school district does not have the power to criminalize this type of conduct, school districts may want to work with local law enforcement or municipal authorities to assist in the enforcement of such restrictions as unlawful trespass.

On the other hand, the FAA guidelines list examples of local regulations which are not authorized, but “for which Consultation with the FAA is Recommended.” These include “Operational [drone] restrictions on flight altitude, flight paths; operational bans; any regulation of the navigable airspace. For example – a city ordinance banning anyone from operating [drones] within the city limits, within the airspace of the city, or within certain distances of landmarks.” Consequently, a complete ban on drones above school district property will be subject to possible challenge, unless it has been pre-approved by the FAA. It should be noted that while the FAA asserts that it pre-empts any local regulation of drone operation (including flight paths, flight operation, etc.), there are no federal regulations in this area that apply to recreational drones under 55 pounds. The FAA also does not regulate model aircraft use. This puts school districts in a difficult position because the FAA asserts that local authorities cannot regulate in this area, but the FAA does not have its own regulations to fill the gap. In light of this regulatory gap, some local authorities have enacted regulations restricting drone operation over public property, and sensitive areas such as schools and athletic stadiums. It is unclear at this point whether the FAA will take an active role in challenging these types of local regulations, or to what extent the FAA will approve specific types of local operational regulations.

These guidelines represent the position of the FAA in this area, but are not binding law. The law surrounding drones is an evolving and emerging area and the FAA’s exclusive power to regulate drones may be challenged in the courts. For example, some have argued that the FAA’s power extends only to a certain altitude, and does not impact local ordinances regulating low-altitude drone use. Therefore, the FAA’s guidelines may become outdated as the law develops. However, these guidelines do represent the current boundaries under which the federal government will allow local regulation of

drones. Before enacting drone regulations, we suggest that a school district consult with its solicitor in light of the FAA's recent guidelines.

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