



STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION



TO: Superintendents of Schools

FROM: Ajit Gopalakrishnan, Chief Performance Officer

DATE: April 7, 2020

SUBJECT: Federal Family Educational Rights and Privacy Act (FERPA) and other Student Privacy Considerations during the COVID-19 Pandemic

This is a working document, which may be updated frequently due to the rapidly changing response to this pandemic emergency and ongoing Federal guidance updates.

Introduction

All schools in Connecticut have canceled in-person classes to address public health and safety concerns, and to promote social distancing, and school districts are expected to provide continued educational opportunities given the extended length of the closure. Virtual learning experiences for students during the COVID-19 pandemic raise various questions about privacy and FERPA compliance, and the State Department of Education (CSDE) provides this guidance framework for those schools delivering these opportunities electronically.

Continued Educational Opportunities During COVID-19

FERPA protects the privacy of personally identifiable information (PII) in students' education records. "Education records" are those records that are directly related to a student and are maintained by an educational agency. Under FERPA, an educational agency may not disclose PII from students' education records without parental consent unless the disclosure meets an exception under FERPA.

The Student Privacy Policy Office (SPPO) of the US Department of Education recently issued a memorandum concerning its resources that are applicable to virtual learning as well as providing a webinar on the topic. These resources are available at:

- https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20%20Virtual%20Learning%20032020_FINAL.pdf
- https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPAandVirtual_Learning.pdf

The SPPO has drawn parallels between virtual learning, where students appear on a screen in a virtual classroom, to appearing in a physical classroom. Therefore, the SPPO recommends that districts consider similar precautions as they do when permitting a visitor in the classroom. Under federal guidance, the determination of who can observe a virtual classroom, similar to an in-person classroom, is a local school decision since teachers generally do not disclose personally identifiable information from a student's education record during classroom instruction. FERPA neither requires nor prohibits individuals from observing a classroom.

The SPPO has indicated that its Letter to Mamas, December 8, 2003 on classroom observation is also applicable to virtual classrooms. In this letter, the SPPO (formerly the FPCO) stated:

With regard to your specific question, FERPA does not specifically prohibit a parent or professional working with the parent from observing the parent's child in the classroom. This is because FERPA would generally prohibit a teacher from disclosing information from a child's education records to other students in the classroom, as well as prohibit a teacher from disclosing information from a child's education records to the parents of another child who might be observing the classroom. Further, FERPA does not protect the confidentiality of information in general; rather, FERPA applies to the disclosure of tangible records and of information derived from tangible records.

Moreover, the SPPO has indicated that FERPA does not prohibit teachers from recording online classes and sharing the recording with students who were unable to attend, as long as the teacher does not disclose personally identifiable information ("PII") from specific student education records during the virtual lesson. A recording of a whole class lesson would generally not be considered an education record for a specific student.

In light of this guidance, school districts, in consultation with their own legal counsel, should determine the appropriate measures that they must take in order to safeguard student privacy while at the same time provide meaningful distance learning opportunities.

Considerations to Address Privacy Interests

We recommend that districts take into consideration the following:

- Follow the same practices that you would for parents observing their child in the classroom setting;
- Ensure that everyone utilizing platforms, including staff, parents, and guardians, and to the extent appropriate, students, are aware of the unique privacy issues that might arise with virtual learning, and suggest families consider risks with online communications;
- Avoid use of private, individually identifiable information in group virtual settings;
- Limit the use of individually identifiable information in one-on-one virtual settings to absolutely necessary situations, and only within district-approved, secure communication channels;
- Encourage that parents provide a quiet space with reasonable adult supervision as necessary (not adult participation);
- To respect the privacy rights of all students, instruct parents to refrain from recording the virtual class session, unless necessary related to access or special education, in which case the district may wish to request a case-by-case conversation with the family;
- Allow each user/student to prevent their picture from being broadcast to the entire group;
- Consider whether parents should be permitted to opt-out of synchronous educational opportunities; however, conditioning a students' access to continued educational opportunities on the parent signing certain legal waivers is inappropriate;

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- If the district has declared name and video/photographs to be directory information, identify those families who have opted out of having their directory information shared and discuss with the parents the possibility of allowing their child to participate in this activity and that such participation shall not waive their “opt-out” with respect to other instances of sharing directory information.
- Lastly, to reiterate, the Commissioner has waived certain requirements of Connecticut’s data privacy statutes with respect to individual district contracting with providers of online services. Therefore, if a district seeks to use a provider who would be subject to these data privacy statutes, but with whom the district does not have a contract, it can do so only if that provider has digitally pledged to comply with state statutory requirements through the Connecticut Educational Software Hub at <https://connecticut.learnplatform.com/>. Additional information about the Hub and privacy considerations is available from the Connecticut Commission for Educational Technology at <http://www.ct.gov/edtech>

If you have any questions about this guidance, please contact me at ajit.gopalakrishnan@ct.gov. For questions regarding the Connecticut Educational Software Hub, please contact Doug Casey at the Commission for Educational Technology at Doug.Casey@ct.gov.

Thank you.