



Getting FERPA-Smart in the Virtual Learning World

As many Texas schools are being rapidly compelled into the virtual learning world, school districts should consider providing professional development to teachers on how to protect student privacy in the video or virtual world.

FERPA is the federal law that protects the privacy of personally identifiable information in students' educational records. Current technology and telecommunication have expanded the opportunity for distance learning to virtually any student with internet and through pre-recorded video or telephone conference to student's without reliable internet access. Many earlier technologies did not naturally lend themselves to concerns over student privacy because the nature of the technology did not automatically disclose names, photos, locations, or real-time video of students. Times have changed. Prudence suggests that school districts must equip their teachers with an understanding of how to protect the privacy of all students in the virtual world. We offer video professional development on FERPA in the Virtual Learning Environment, and we are available to assist in the planning and development of your virtual learning processes.

When planning to develop distance learning programs and provide professional development on FERPA in a virtual world, consider the following:

1. Review your board policy on classroom observations. This seems illogical since the brick and mortar classrooms are closed, but the United States Department of Education Student Privacy Office has opined that who can observe a virtual classroom requires a similar investigation as to who can observe an in-person classroom. Classroom observation policy is a local decision generally identified in school board policy. Your

policy is likely silent on student privacy in the virtual world and may need to be updated to reflect who can observe a virtual classroom and what the school district expects of those individuals who are present or observing during the instruction. (This is not the time for a non-student observer to start interacting with other students in the classroom or interfering with the instruction.)

2. Provide clear guidance to teachers on what FERPA requires and the definition of a student record.
3. Discuss the different types of technology that the school district will use and if the nature of the technologies will create a student record.
4. Develop procedures for teachers to seek pre-approval of all technology-based distance learning.
5. Discuss strategies for teachers to interact in the virtual setting with students in real-time without compromising a student's privacy.
6. School districts must provide FAPE during school closure, and teachers must have a way to work on the goals, accommodation, modifications, and other elements of the IEP in a private manner that does not disclose the student's IEP provisions, does not disclose that the student receives special education, and does not exclude the student from access to the instruction in an equivalent manner as the other students.
7. School districts must document the provision of FAPE during school closure. Provide teachers with tools to document that a student worked on goals, received accommodations, were provided services, and received instructional minutes.
8. When providing technology or internet access to students, review and, as necessary, revise the school district's Acceptable Use Policy and Agreement. The policy may need to be revised to prohibit students from disseminating audio, still frames, or video from the instruction. Consider a scenario in which a student posts a video or recording of a classmate with a derogatory comment or a still frame of a teacher in an unflattering position. Although this may not be a FERPA violation, this example is still highly problematic and may constitute online bullying. We recommend that your Acceptable Use Policy and Agreement consider all concerns that may arise during the distance learning and should include language indicating that the policy is not intended to discriminate against any individual's constitutional right to free speech, but rather to protect the safety, security, and privacy of students. We are available if you need assistance updating your policy and agreement.
9. Investigate whether the web-based, application-based, or other online program manufacturers maintain, distribute, or have any rights to the audio, video, or still frames of students.
10. Investigate whether the web-based, application-based, or other online program manufacturers will collect, maintain, use, or sell any information pertaining to the student including login information, location/GPS, telephone numbers, or emails.
11. Investigate whether the web-based, application-based, or other online program manufacturers will advertise or market to students or their parents during the instruction, such as pop-up or running adds, or use their data for later marketing.
12. Whenever possible, enter an MOU with technology providers and platforms which include legally binding terms on privacy, advertisements, and use of student information. Please contact us if you need assistance reviewing or drafting an MOU.

On a personal note, we recognize the extraordinary pressure this constantly changing situation has been on you, your school family, community, and personally. It is our mission to stand with you shoulder-to-shoulder as we navigate this crisis with a focus on the best interest of our students, community, and families. As the years have passed, we have shared good days and bad. But most importantly, we found the blessing of your friendship. God willing, together we will have an abundance of good days and few bad days yet to come. You have our support and friendship and know that you are in our thoughts and prayers. You have our mobile numbers, but just in case we are manning our office numbers 24/7 during this crisis. We are here if you need anything.

We are making every effort to disseminate the best guidance we can based on what we know at the time based on the limited federal and state guidance available, state and federal law, and our years of experience and expertise. Bear in mind that every situation and every day are different. The guidance we share today may change as state and federal agencies consider options, develop plans, and provide guidance. As this crisis evolves, we will continue to keep you updated on developments and guidance.