



FERPA and Confidentiality Quick Guide: COVID-19



General Guidance

It is recommended that virtual classrooms not be recorded as such records may constitute education records and pose confidentiality issues. FERPA defines education records as “records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution.” 34 CFR 99.3. FERPA defines personally identifiable information (PII) as direct or indirect identifiers that are linked to a specific student and would allow another individual to identify the student with reasonable certainty.

If video recordings of virtual classroom lessons qualify as education records or contain PII they are protected under FERPA and may not be released without prior written consent of the parent or adult student.

To determine whether instructional recordings are education records or contain PII, schools and districts should evaluate the use of online educational services and the recording of the services on a case-by-case basis to determine if FERPA-protected information is implicated.

Given the nature of Category 2 and Category 3 instruction, many LEAs may consider recording various types of virtual instruction. The following are considerations for potential scenarios.

| Type | Considerations |
|---|---|
| Teacher/provider instruction only | <ul style="list-style-type: none"> Recording instruction may be helpful to students and parents. No FERPA implications exist. |
| Teacher/provider and students | <ul style="list-style-type: none"> FERPA implications may exist. Is it necessary to record students during the instruction? Can the recording function be turned off while students are interacting with each other or the teacher? If recording students performing certain activities, the recording may be an education record of those students in the recording. If the recording is an education record or contains PII, it may not be disclosed without prior written consent. |
| Individual therapy sessions or instruction | <ul style="list-style-type: none"> No FERPA implications exist if a recording by a related service provider for therapy or instruction is made without the involvement of the student. Recording a student in individual therapy sessions or during individual instruction results in the development of an education record and FERPA implications exist. The recording remains an education record for the duration it is maintained. Determine whether there is a need to record the session or instruction. If the recording is necessary for a particular purpose, how long should it be maintained? If the recording is an education record, it may not be disclosed without prior written consent. |
| Recordings maintained for short periods of time | <ul style="list-style-type: none"> Determine how long recordings need to be maintained. FERPA is not implicated when recordings do not include students. FERPA does not set forth any timelines for maintaining education records. All education records regarding a student collected, used or maintained pursuant to the IDEA have additional requirements. |