

Dispelling the Myth: Yes Virginia, You Can Use Interactive Videoconferencing with Students as Part of Distance Learning

Education Law Notes

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Despite the protestations of some teachers and their unions, there is nothing illegal about directly teaching students through videoconferencing. This neither violates the Family Educational Rights and Privacy Act (FERPA) nor state law regarding data privacy.

Pursuant to Governor Lamont's Executive Order 7I, the Commissioner of Education has suspended the provision of the Data Privacy Act that requires individual contacts with technology providers. Vendors must sign the Connecticut Student Data Privacy Pledge by visiting the Connecticut

Educational Software Hub.

So, is it legal for teachers to videoconference with their classes even if they are doing so from their own homes? In a word, "yes." Despite arguments to the contrary, it is not a violation of any state or federal law for a teacher to videoconference with a class of students even though everyone may be accessing the videoconference from their own homes. That being said, the district will need to educate families and teachers on acceptable conduct. And, to the extent anyone is concerned about providing too much information about what is going on in their homes, it is suggested that participants set up their computers so the only thing that can be seen is the individual and a blank wall.

To dispel another myth, as recently discussed in detail by my colleague Michael McKeon, FERPA does not prohibit the use of videoconferencing. The fact that a parent may view something going on in the video-classroom is legally no different than a parent visiting a brick and mortar classroom. This is not the sharing of confidential personally identifiable information. That being said, it is recommended that teachers do not use the recording function on any videoconferencing program or they may inadvertently be creating a protected educational record if the recording is directly related to a specific student such as when the video contains a student presentation.

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Districts should create a policy or procedures regarding videoconferencing to be provided to teachers and students. The policies should include things such as appropriate manner of dress and use of appropriate language. Schools may want to address how student discipline will be handled during a videoconference. For example, can a student be removed from a videoconference for engaging in inappropriate conduct? It is recommended that districts use a videoconferencing program that allows the teacher to control turning on and off audio and video for all participants. That way the teacher can temporarily mute or turn off the video of a student engaging in inappropriate or disruptive conduct while still allowing the student to access the class. Similarly, it is recommended that the school use a program that allows the teacher to see all individuals logged into the conference and have the ability to remove participants on the outside chance that an unapproved individual attempts to join a conference.

As a reminder, any videoconferencing being used must be accessible to students with disabilities within the classroom. Deaf or blind students or students with other disabilities must be able to access the information being provided via the videoconference classroom.

Also, please note that the current situation does not alter the fact that teachers are mandated reporters of child abuse under state law. Thus, if a teacher were to gain information during a videoconference (or for that matter during any communication with a student whether or not through videoconferencing) that a student was being abused and/or neglected, the teacher would still be obligated to follow the mandated reporter procedures.

Ultimately, common sense rules. The videoconference should be treated as a regular classroom with appropriate rules and regulations in place. If you need additional information regarding videoconferencing in the classroom, feel free to reach out to any of the attorneys in our School Law Practice Group.

Pullman & Comley attorneys have been closely monitoring the many developing implications of the COVID-19 pandemic for businesses and for professionals, including law firms. We have been responding, and will continue to respond, to a wide range of risk management questions. The firm's FOCUS page for the latest COVID-19 advisories may be found here.

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