

# U.S. Department of Education Clarifies That Video Recording Virtual Lessons and Making Them Available to Students Does Not Violate FERPA and Provides Other Advice on FERPA Compliance in the Age of Virtual Learning

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## Education Law Notes

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The U.S. Department of Education Student Privacy Policy Office recently provided more in-depth information regarding FERPA and virtual education in light of COVID-19 through a webinar. Much of what they discussed has already been covered in our prior posts on the issue: ([here](#)), ([here](#)) and ([here](#)). Here are some clarifying answers given by the U.S. Department of Education.

**Can teachers video record virtual classes and share the recording to students who were unable to attend the class?**

The DOE has now answered the \$100,000 question: yes, it is permissible under FERPA to record classes and share the recording of the virtual class to students who were unable to attend. As we discussed previously, the teacher must take care not to disclose personally identifiable information (“PII”) from student education records during a virtual lesson unless written permission has been provided to do so.

Video recordings of virtual classroom lessons only qualify as “education records” under FERPA if they directly relate to a student and are maintained by an educational agency or institution or by a party acting on their behalf. A recording of a whole class lesson should not generally be considered an education record for a specific student and should not be maintained in a specific student’s records. If, however, the recording is maintained in a specific student’s record (perhaps, for example, as a record of misconduct engaged by the student during the virtual class) then it would become a protected education record.

When video recording, the record should only be shared through a system that is accessible to the class members. For example, the recording could be saved through Google Classroom to a specific class. The recording should not be made public.

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### **Can public school teachers conduct parent/student conferences from home?**

The answer to this one should be obvious – yes, as long as the teacher does not reveal PII from the student’s education record within hearing of other members of the teacher’s household. Teachers working from home must stay mindful of taking precautions to minimize the likelihood of other individuals in the home overhearing confidential student information.

### **What if a parent requests to review their child’s education records?**

Under FERPA, a district has 45 days from date of request to provide an opportunity to inspect and review his or her child’s education records. Nothing within FERPA provides an extension to that time limit. Schools, therefore, must determine other ways to allow the requested access if the buildings are all closed. Ideally, parents and schools should work together to reach a mutually agreeable option. For example, records may be provided electronically if the school has the ability to provide that access.

If you have any questions about this or other things that arise in the provision of virtual learning, feel free to contact any one of our School Law Attorneys.

**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.**

**Posted in** COVID-19

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