

FERPA & Virtual Learning during COVID-19 Webinar – March 30, 2020

- FERPA does not prohibit professors from taking PII from student records home for use in online education as long as they have a legitimate education interest in having the records at home. Reasonable methods to protect the records from disclosure should be used.
- FERPA allows for video conferencing or other virtual learning software apps to be used under the school official exception to FERPA's general consent requirement, educational agencies and institutions may disclose students' education records, or PII in those records, to a provider of such a service or application as long as the provider:
 - Performs an institutional service or function for which the educational agency or institution would otherwise use its own employees
 - Has been determined to meet the criteria set forth in the educational agency's or institution's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records or PII
 - Is under the direct control of the educational agency or institution regarding the use and maintenance of the education records or PII
 - Uses the education records or PII only for authorized purposes and does not redisclose the education records or PII to other parties (unless the provider has specific authorization from the educational agency or institution to do so and it is otherwise permitted by FERPA). See 34 CFR §99.31(a)(1)(i).
- FERPA does not give specific guidelines on what apps to use for distance education. Schools should work with their information security officers and attorneys to review services.
- As long as PII from student education records is not disclosed, non-students can observe an online class without it being a FERPA violation, but institutions should discourage non-students from viewing the content or observing the classes.
- As long as PII from student education records is not disclosed, classes may be recorded for later viewing by students.
- Professors who would like to have a conference with a student or discuss an assignment can do so from home, but should either try to make sure no one else is in the room with them, they do not disclose PII from student's education records, or that they obtain prior consent to disclose PII in the presence of others in their home.
- Colleges are permitted to receive student transcripts via email and FERPA does not have explicit information security standards. Colleges should use best practices to secure PII that is sent via email.
- Colleges may notify students and parents that a student has been diagnosed with COVID-19 as long as the information is in a non-personally identifiable form.

- Top 5 privacy and security things to consider:
 1. Look at what your school is already using and see if it can be used to support distance learning.
 2. Work with your attorneys and information security specialists to vet prospective solutions against FERPA requirements.
 3. Look for products that apply best practices like encryption, strong identity authentication, and a statement and terms of service explaining vendor's use of PII from students complies with FERPA.
 4. Be transparent with parents, students, and school community.
 5. Consult and ask questions of your attorneys, information security specialists, and peers.