



## So, you want to record your lessons. What should you consider?

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As a result of the COVID-19 pandemic, school districts find themselves engaging in virtual education at unprecedented levels, and with this comes many questions that may not have been considered in the past, including whether they should record synchronous in-person or virtual teaching sessions. Such recordings allow students who cannot participate in a class in real time the opportunity to view it at a later date. What issues should school districts consider if they decide to take this approach?

### FERPA

Both the Family Educational Rights and Privacy Act (FERPA) and ORC § 3319.321 protect personally identifiable information concerning students from release. Under FERPA, protection only applies to education records. In many instances, recorded lessons would not seem to fall within the definition of an education record. In particular instances, however, there may be portions of the recording or whole lessons that could be considered education records because they relate to a student and are being maintained by the district. In those cases, there are a couple of methods school districts may be able to use to share the recordings with students in the class.

The first method is to obtain the consent of the parents or eligible students to share the information. Under FERPA's regulations, a proper consent has to be signed and dated with a description of the records at issue, the class of individuals who can access the records, and the purpose for which the education records can be used. The second method is to consider adding the recordings to the district's list of limited purpose directory information. Remember that FERPA regulations permit school districts to limit the designation of directory information for a particular purpose and/or a particular class of recipients.

## **Records retention**

If a school district decides to record lessons, it would be wise to review the district's records retention schedule to determine which, if any, of the current records series the recorded lessons would fall into. If the current schedule does not include recorded lessons, the district may wish to amend it in order to avoid the possibility of civil forfeitures and attorney fees for the wrongful destruction of the district's records when the records are inevitably disposed of.

## **Public records**

Compliance with FERPA permits school districts to avoid the release of education records in response to public records requests. To the extent that the district creates recordings that are not education records, in whole or in part, it will have to find other exceptions to the Public Records Act in order to withhold particular recordings from release for as long as the district keeps the recordings. Such determinations will need to be made on a case-by-case basis and therefore, when responding to public records requests, consultation with legal counsel is recommended.

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