



**FAQ:
DISTANCE
LEARNING,
DATA,
PRIVACY,
AND
CONTRACTUAL
ISSUES
FOR
EDUCATION**

FREQUENTLY ASKED QUESTIONS

Disclaimer: This publication is for informational purposes only and is not intended as a substitute for specific legal or other professional advice. If you have specific questions about your legal or contractual rights, contact your local association or UniServ director.

1. Which laws govern the privacy of student data that may be captured or shared in the course of distance learning?

The federal Family Educational Rights and Privacy Act (FERPA) protects the privacy of student education records. Similarly, §4-313 of the General Provisions Article of the Annotated Code of Maryland protects the privacy of student records, including “home address, home telephone number, biography, family, physiology, religion, academic achievement, or physical or mental ability of a student.” Both laws prohibit the disclosure of student education records/education data to third parties without the written consent of a minor student’s parent or guardian.

Every effort should be made to keep student information confidential and out of the hands of other members of an educator’s household. Student records in an educator’s home should be stored in such a manner as to limit access to them by your family.

2. Is it a FERPA violation if parents view or listen to real-time instruction of students in my class?

Not necessarily. Neither federal nor state law necessarily prohibits a parent from accessing a classroom to observe their child because this information is not considered an education record or educational data. Therefore, parents may similarly observe a classroom setting that is occurring via distance learning.

3. Are the data privacy requirements different for students with IEPs or special needs? What additional steps should be taken for these students?

Allowing parents to have access to real-time video or audio of students receiving special education services will not violate FERPA, but the names of students who receive these services are considered private student education records/education data. For this reason, schools and educators should take precautions to ensure that these names are not available to other students or parents without the prior consent of parents or guardians.

If the video platform utilized to provide services could contain or reveal personally identifiable information of students, then the school system should evaluate the platform to ensure that it incorporates security measures to encrypt private data so that it may not be accessed by individuals who do not have authority to access the data. Alternatively, the schools may address privacy concerns by informing parents about the proposed services and the platform for delivery and seek parental consent.

As always, educators, especially special educators, should incorporate any additional requirements recommended by administration.

4. Can my school system require me to use security protocols that are not legally required?

Yes. School systems have the right to create and require educators to follow security protocols greater than what state or federal law requires. However, these protocols should be clearly established, consistently enforced, and available electronically for staff to review. The benefits of these additional requirements should also be balanced against ease of access for students, parents, and educators.

5. My school system requires that all lessons for distance learning be recorded so students may access them later. Can they do this? Does this raise any legal concerns?

School systems vary on this point, and we recommend following all applicable board of education policies and administrator directives you receive. Some school systems require recording so students with limited access to internet or technology may access them at a later time. Other school systems are discouraging or prohibiting educators from maintaining any recordings of their classes whatsoever. School systems have the authority to make these decisions, but the expectations should be clearly communicated and fairly enforced.

While real-time video of an entire classroom or group of students is not automatically subject to FERPA, video or audio recordings may be considered private student education records/education data if they are “directly related to a student,” meaning they are focused on one particular student giving a presentation. For these reasons, any pre-recorded lessons should not contain students or personally identifiable information of students to avoid having it classified as a record protected by FERPA.

6. What distance learning platform should I use? What if I do not have the technology I need to perform distance learning effectively?

We strongly recommend that educators not make the decision regarding which platform to utilize independently, but rather in collaboration with their department, grade-level team, and/or their administration.

Most school systems have already purchased or are in the process of purchasing a specific platform for educators to use. Educators who have concerns

about glitches or other inadequacies with a required technology, or who lack the technology necessary to effectively perform distance learning, can be assisted by contacting your local association or UniServ director.

7. Do I need to be concerned about copyright laws?

The sudden shift to online teaching has raised a host of copyright questions for educators. Elementary school teachers are unsure about whether it is okay to read books to students online. Using music or photographs as part of online classes has also triggered similar concerns. Generally, copyright law has an exemption for face-to-face teaching that does not always apply to the distance learning that schools are now attempting to implement during this pandemic.

Amidst all the uncertainty, a number of publishers have given educators permission to use their content. Some publishers, including [Macmillan Children's Publishing Group](#) and [HarperCollins Children's Books](#), have said that teachers may post videos reading books to their students under certain conditions. Harry Potter author J.K. Rowling also gave permission for her books to be read aloud.

Ultimately, however, making course materials available to students during the pandemic will “almost always be a fair use” according to a [statement published](#) as guidance by a group of copyright specialists from colleges, universities, and other organizations. [Click here for the public statement from library copyrite specialists](#). This group also put together a list of video and other content that publishers have made available for free during the pandemic, called “Vendor Love in the Time of COVID,” which is [available here](#).

8. I am concerned about videos of my classes being shared on the internet or social media without my permission, or being seen by people who are not my students or their parents/guardians. What can I do to prevent this?

As is the case in your classroom, your school system may not be able to completely safeguard you from having your image or your instructional materials shared beyond their intended audience. At the same time, school systems can and should support educators' legitimate privacy concerns by prohibiting the unauthorized recording and/or dissemination of videos, images, or other data captured in the course of distance learning.

We recommend that boards of education create a written agreement for students (and/or parents/guardians, depending on age) to sign or click, containing the following language or something similar:

The following content is for educational purposes only. By accessing this material, I agree not to share this content with anyone not enrolled in the class or assisting an enrolled student. Unauthorized distribution of any distance learning content, including sharing video recordings or screenshots on the internet or social media, is strictly prohibited and could result in disciplinary action and/or the suspension of a student's access to certain distance learning materials.

School systems have an obligation to take reasonable measures to protect the privacy of students and staff. As with board of education policies prohibiting recordings in the classroom, this type of notice will make it easier for the administration to justify disciplinary action or other consequences for a student or parent/guardian who records or shares distance learning content without an educator's permission.

9. What should I do if I learn that my lessons or image have been shared without my permission?

If possible, take screenshots or document the unauthorized sharing of this content as soon as possible and provide it to your administrator. Once you have done this, contact the company where the content has been shared. Social media platforms like Facebook, Twitter, and Instagram all have ways of reporting inappropriate or abusive content so that it can be investigated and removed if it violates the company's terms of use.

School systems vary in how they respond to these incidents based on the severity of the conduct and the policies they have in place. If you believe your administration has not responded to unauthorized use of your content appropriately, contact your local association or the UniServ director for assistance.

10. Can I sell lessons or materials that I develop for distance learning if I create them outside my duty day?

Educators are spending significant time and effort developing distance learning content, including video tutorials and lesson plans. You are right to be proud of your work, and you have the right to share it with others, providing that what you share does not include any private student data.

However, under federal copyright law, any materials or content you develop for distance learning classes are considered the property of the board of education, even if you create these materials outside of your duty day or go above and beyond what is required for your job. Any lessons created and utilized in this way are considered a "work for hire." Consequently, if you attempt to sell these materials to others, the school system may have a legal claim on any profits you receive and you will likely be subjected to disciplinary action.

11. Can my administrator require that I teach in "real

time" instead of having pre-recorded lessons available for students to download?

Yes. While there is no particular guidance that has been issued by MSDE regarding the format for distance learning, the local board of education continues to possess the statutory authority to determine the method, the format, and the daily schedule of its employees so long as it complies with the work hours provided in the collective bargaining agreement.

Educators will likely not be able to provide the same type of interaction with and between students through distance learning that they can provide in a classroom, but school systems can expect educators to have ongoing interactions that include opportunities for students to ask questions and receive real-time feedback.

12. I am struggling to teach certain content or grade level standards in a distance learning format. What should I do?

Some activities or units that you have traditionally taught or planned to teach will need to be modified, postponed, or eliminated due to distance learning. Educators should use their professional judgment in making these decisions, in collaboration with their colleagues, content offices, and administration.

If you are not able to find the resources you need for your particular content area, we recommend discussing these challenges with a trusted colleague or with your administration. It is far better to raise and document these concerns early on instead of being questioned later about not providing the type of instruction your administration expected you to provide.

13. Can my administrator require a distance learning schedule that denies me preparation time or a duty-free lunch or that extends my duty day beyond what is provided in the contract be-

tween my board of education and my union? What should I do if this is happening?

No. While some modifications in the instructional schedule are appropriate to accommodate distance learning, the board of education cannot require you to teach beyond the duty day defined in your collective bargaining agreement, nor can it deny you a duty-free lunch or preparation time without the agreement of your local union. Some school systems have entered a memorandum of understanding (MOU) with your local association that modify certain provisions of the contract during the distance learning period.

If you have been given a teaching schedule that conflicts with your negotiated agreement and there is no MOU in place modifying or suspending provisions of the contract, contact your local association or UniServ director to discuss the possibility of filing a grievance.

14. If I am asked to teach a colleague's class or classes, am I entitled to additional compensation?

This will depend on your local collective bargaining agreement or negotiated MOU. If you are asked to assist with another teacher's class or classes and you believe you should be receiving additional compensation, discuss the matter with your UniServ director.

15. Are there paraprofessionals or education support professionals (ESP) available to help with distance instruction or to communicate with students and parents?

Generally, paraprofessional support will be determined by administration and in some cases by the IEPs of the students. If you have ideas for ways that paraprofessionals or other ESP in your school can support instruction and students in distance learning, we encourage you to request this support from your administration. Teacher suggestions and ideas can help to ensure that school systems

are assigning work to ESP that is meaningful and reflects their critical role and support for improving student learning.

16. Can my school system require that I be available by phone or email to students and/or parents?

While your school system may require you to communicate with students or parents in some capacity, this could take a variety of forms. Educators should not be required to provide students or families with their personal telephone number or to be available to communicate with students or parents at all hours of the day.

We strongly recommend not providing your personal telephone number to students or parents, nor do we recommend communicating with them through messaging platforms on your personal social media accounts. Doing so could make all of your communications on these platforms subject to review by the school system in the course of an investigation or in response to a data practices request. If you do not have another means of communicating with students besides your personal device, there are many messaging apps for educators to communicate with students and parents, many of which are free and do not reveal your personal phone number or comingle student data with your personal communications. Examples of these apps include [Google Voice](#), [Talkatone](#), and [Remind.com](#).

17. Should I use my personal device(s) for distance learning instruction?

We strongly recommend against using your personal cellphone, tablet, or computer for work-related purposes. If you do, any records that are created or stored on these devices may be subject to disclosure. As is the case with your communications with students on social media platforms, placing educational data on your personal devices

may allow or require your school system to review your devices in response to an investigation or data request. Therefore, it is best practice not to use any personal devices for work-related purposes.

If you have no other option than to use your personal device(s) for distance instruction, make sure you segregate your work-related documents and communications to specific file folders so that you can quickly locate and produce work-related documents in the event there is a records request.

18. Are any notes or records that I create in the course of distance learning off limits to parents? What should I do with these records when I am done with them?

Yes. Records that you independently keep on students, which you do not share with anyone else, are considered “desk drawer notes” rather than government data and not accessible as part of a data request under the Public Information Act.

19. If we are delivering or receiving physical materials from students during the distance learning period, what safety protocols should we follow?

There have been many questions about the viability of COVID-19 on surfaces. A recent study found that the virus can survive up to four hours on copper, up to 24 hours on cardboard, and up to two to three days on plastic and stainless steel. It is important to remember that those results are based on ideal conditions in a lab. There are many variables that affect the ability of the virus to survive and then transmit, including temperature, humidity, and amount of virus present.

School systems may wish to consider methods where staff pick up papers on Mondays to ensure they have been in the building for at least 24 hours

without contact. They may also wish to allow a 24-hour period between when staff return paperwork prior to a family picking up the paperwork.

When working with student papers, staff should:

- Wash their hands before and after working with papers from student homes.
- Avoid touching their faces while working with papers.
- Avoid working with papers that will be returned to students if they have a cough, shortness of breath, or fever.
- Clean up papers and their work spaces when done.
- Avoid working with papers on family eating spaces.

20. If I witness behavior in a student’s home that raises a reasonable suspicion of child abuse or neglect, am I required to report this?

Yes. All educators continue to have the legal responsibility of being mandated reporters during the distance learning period. This means reporting suspected child abuse or neglect by a person responsible for a child’s care (parent or legal guardian) to the appropriate department of social services or police. Mandatory reporters are required to make an oral report as soon as possible, followed by a written report. You should follow up any report to social services with notification to your administrator. Additionally, if you, as the teacher, have students under your direction who continuously fail to engage in distance learning and can’t be located, you should report this information to your administrator.

April 7, 2020

