



Fagen Friedman & Fulfroft LLP

Policy and Procedure Updates After Distance Learning



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Parental Consent

- When is it required before collecting or sharing student data?
- What are some of the pros and cons of requiring parental consent?



Directory Information

- Rule: School districts can share student directory information without parental consent so long as the district has given
 - Notice of what is directory information; and
 - Parents the opportunity to opt out of such data sharing. (FERPA)



Annual Notice to Parents

- Must define what is “directory information”
- Model notices include examples of outside organizations with which student information will be shared. (Consider updating to include District social media.)
- Guidance on how a parent can opt out.



Opt-Out Form: Directory Info

- Some districts give opt out rights for different types of media.
- Consider whether that is practical to implement for your schools.
- Opt-in is not recommended.
- Liability risks if opt-out procedure not followed by school site.



Educational Records

- Rule: Student educational records cannot be shared without parent consent unless there is an exemption that applies. (FERPA)
- “School business official” exemption is commonly applied, including with educational software companies.



Educational Records

- Exemption: School districts can share student educational records without parent consent with “school business officials” that have a “legitimate educational interest” in the records. (FERPA)
- What is a “school business official” is interpreted broadly to include any third-party entity that performs an administrative service, such as educational software.



Medical Data

- Exemption: School districts can share student medical information when there is a “health and safety emergency”
- How does this impact a school districts ability to share data about student Covid testing with testing providers, labs, etc?



Consent for Medical Testing

- Sharing student medical information is distinguishable from the testing itself.
- Rule: school districts cannot conduct “invasive” medical tests without parental consent. (PPRA)
- Nasal swabs are considered to be “invasive”.



Software Companies Requiring Consent

- Rule: Software companies are required to obtain consent from parents when collecting information from children under the age of 13. (COPPA)
- For educational software, software companies can presume school districts obtain consent on behalf of student body.
- Recommend districts provide notice of these companies' "terms and conditions."



Recording / Sharing Virtual Instruction

- Penal Code Violation
- FERPA violation
- Update AUP or Parent Notice to include:

'There may be instances when a school may need to record virtual instruction for school-related purposes. However, students and parents shall refrain from making their own recordings of virtual instruction and/or sharing any such recordings in order to avoid a potential violation of student educational rights.'



Zoom Bombing

- Underscores importance of password protection
- When is it a data breach?
- Data Breach Protocol



Virtual Board Meetings

- Participation Requirements
- Public Comment
- Closed Captioning
- Archiving Meetings



Student Social Media Policy

“F— — school, f— — softball, f— — cheer,
f— — everything.” (Mahanoy Area School
District v. B.L.)



Staff Responsible Use Technology Policy

- Guidelines regarding Professional Conduct
- Managing Negative Comments:
 - District Social Media Page
 - Suppression of free speech?
 - Community Social Media Page
 - Threats and harassment, civil injunction
 - Defamation, cease and desist
 - Report and remove post



Questions?

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