



1. Is virtual learning “legal” under state and federal law?

- Yes - nothing in state or federal law specifically prohibits virtual learning. Although it is generally unlawful to record someone’s communications without their consent, Nebraska is among the “one-party consent” states which permit the recording of a communication without consent so long as the one making the recording is a party to the communication. Therefore, virtual learning does not violate state law if there is a recording of communications among students and a staff member.
- The Family Educational Rights and Privacy Act (“FERPA”) may also apply to virtual learning. FERPA is the federal law which protects the privacy of student educational records. Under FERPA, a parent must give written consent before a school may disclose “personally identifiable information” (“PII”) from student records, unless an exception to this general consent requirement applies (a student may consent if they are 18 or older).

2. When does FERPA apply to virtual learning?

- FERPA only applies to virtual learning if PII in educational records is disclosed without consent. PII includes, but is not limited to, a student’s name; the names of a student’s parents or other family members; a student’s address, social security number, date of birth, student ID number or other information that would allow a reasonable person in the school community to identify the student with reasonable certainty.
- If PII is not disclosed during virtual learning or the recording is not maintained as a student record, then it is unlikely that FERPA would even apply. For example, a recorded lesson which does not mention student names or include student images would not raise FERPA issues.

3. How can I avoid liability under FERPA?

- FERPA does not permit a student’s parent to sue a teacher personally in the event of a FERPA violation. FERPA violations can only lead to action taken against a school, which can include the loss of federal funding.

4. Does a FERPA violation occur if a student’s name is used during virtual learning or the recording of a class captures images of students’ faces?

- Probably not. Assuming the recording contains PII and is maintained as a student record, exceptions under FERPA allow teachers to disclose a student’s name, photograph and other directory information during the class in which the student is enrolled without parental consent.

5. Can non-students observe a virtual lesson?

- FERPA does not prohibit a non-student from observing a lesson assuming that PII is not disclosed during the lesson.

6. Which apps or virtual learning resources should I use?

- All virtual learning apps and online sources should be approved by your administration. FERPA sets forth requirements which must be met before utilizing a third-party source for virtual learning.

7. What are the best ways to avoid issues with virtual learning?

- Secure written administrative approval of discretionary virtual learning plans, such as plans for recording or streaming of lessons and security protocols. Follow administrative directives and school policies specific to virtual learning and confirm concerns or questions in writing with school administration.
- Do not share student information that you would not otherwise disclose during regular classroom instruction. Avoid discussions about specific students (e.g. grades) during any virtual learning session involving your entire class.

**If you have additional questions,
contact your Organizational Specialist
at (800) 742-0047.**