



To: OEA Members
From: Adam Arms, OEA General Counsel
Date: April 6, 2020
Subject: Distance Learning; Legal Issues, and Avoiding Allegations of Misconduct

This memorandum identifies certain legal issues that may arise with K-12 distance learning, and it highlights some best practices around how students should be contacted, under what circumstances, and what to do in the event a student shares information that is of concern. The aim of the memorandum is to help educators comply with general professional and TSPC standards, and to avoid situations that could lead to allegations of misconduct.

Disclaimer: This publication is for general informational purposes only and is not intended as a substitute for specific legal advice concerning any particular situation. If you have specific questions about your legal or contractual rights, please contact your OEA UniServ Consultant or Local Association.

Please note that this document will almost certainly be updated as circumstances change, and as member experiences continue to be incorporated.

How should students be contacted?

- Best practice is to contact students using pre-existing district communication methods – school provided email addresses, web sites, etc.
- It is best to not to use text messaging, Twitter, or Face Time for distance learning purposes.
- When possible, refrain from regularly engaging in one-on-one phone calls with students. It is preferable to have another adult on the call. If you do engage in one-on-one phone conversations, write contemporaneous notes of the call, and save the notes in a secure place. Maintain the confidentiality of the notes.
- If districts expect direct communication with students via their private email addresses or text messaging (or other non-district messaging systems), it is advisable to copy parents/guardians on all communications or consider group messaging to all students at the same time.
- It is advisable to not record and post a Zoom meeting (or other video-platform meetings) on your web presence for students who may have missed it unless: 1) district administration has determined it to be appropriate, given the circumstances; and 2) you have received appropriate, comprehensive guidance from district administration on FERPA and confidentiality issues, public-records issues, and other considerations that may come into play with recorded sessions. *Note: many applications such as ZOOM may automatically record your session unless you specifically tell it not to record.*

CAUTION – A participant in a Zoom meeting, and in some other distance-learning platforms, can record the meeting without others being aware.

ADVICE – If you learn that a student or parent has recorded a virtual meeting without your permission, take screenshots or document the unauthorized sharing of this content as soon as possible and provide it to your administrator. You may also 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. Notify your Association if the issue is not resolved or becomes an ongoing problem

Under what circumstances should students be contacted?

- Students should only be contacted in accordance with direction and expectations set by school district administrators. It is advisable not to contact students “just to check in” without first receiving guidance from the district. If you feel the need to inquire about a student's health or well-being, contact the administration beforehand for advice on the best way to do that. It is also advisable to ask all students the same check-in questions. The counselor(s) at your school may have specific advice from their supervisor that may be helpful.
- In general, be sure your communication is related to schoolwork and is not overly personal. Licensed educators should keep in mind TSPC's rules regarding maintaining a professional educator-student relationship.
- Be sure the district provides clarity on the purpose of any suggested communications to prevent allegations of inappropriate contact.

What are the reporting mechanisms if problems are discovered, and how to track communications?

- Be sure the district provides clarity on how communications with students should be tracked, to whom they should be reported, and how records of communications should be saved.
- Be aware of the district's process for handling situations where one becomes aware of a problem with a student or when a student shares information that is concerning. In the absence of direction by the district, the information should be shared with a counselor and the principal in writing.
- MANDATORY CHILD ABUSE REPORTING – *If you have reasonable cause to believe that child abuse has occurred, you must immediately report the matter to law enforcement or the Department of Human Services. In addition to reporting to law enforcement or DHS, you must also report to the designated administrator any suspected sexual abuse. The child abuse reporting obligation extends to distance-learning situations. In fact, mandatory reporters must report any suspected abuse, as defined by statute, during work and non-work hours.*

What if you use your personally owned device for work purposes?

- If possible, avoid using your personal cell phone, tablet, or computer for work related purposes. If you do use personal devices, any records that are created for work may be subject to disclosure under public records law. Your employer has the obligation to ask you to review your personal devices for any records that may be responsive to a public records request.
- If you are expected to use your personal devices for work, make sure you segregate your work-related documents to specific file folders so that you can quickly locate and produce work-related documents in the event there is a public records request.
- Many members, understandably, prefer to keep their personal telephone number private. If you need to call a parent, you can set up a call from your personal phone in ways to protect your number. Google Voice, Talkatone and Remind.com are web-based platforms that allow you to make phone calls via the internet while allowing your phone number to remain private. You should talk to your district about the various privacy-providing call platforms that are available, and discuss with your Association any unresolved privacy concerns that you have.

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

The general guidance to “teach as though you are always being recorded” is even more necessary in this period of distance learning.

At the same time, school districts can and should support educators’ legitimate privacy concerns by adopting policies prohibiting the unauthorized recording and/or dissemination of videos, images, or other data captured in the course of distance learning. Ask your district if they have such a policy. If they don’t, you may want to work with your Association leadership and/or OEA UniServ Consultant to propose that the district adopt one.

Also, you may want to work with your district to create a written agreement for students (and/or parents/guardians, depending on age) to sign or click, containing the language below 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.

While such agreements may not be legally required, school districts do have an obligation to take reasonable measures to protect the privacy of students and staff. As with school district policies prohibiting recordings in the classroom, this type of notice will make it easier for the district to justify disciplinary action or other consequences for a student or parent/guardian who records or inappropriately shares distance learning content without an educator’s permission.

What should I do if I accidentally shared data/content with a person who should not have received it?

Given that distance learning and the associated technology is new for many educators, the possibility of accidentally sharing the wrong data or content with students or parents is high. Before sending any communication to students or parents electronically, make sure that you confirm:

- You are sending what you intend to send (the right document and/or content).
- You are sending to the person you intend to receive the information.
- The intended recipient is authorized to receive the information.
- You are using a secure and/or encrypted method of communication when appropriate

If in doubt about whether to share data/content, ask your supervisor. School districts may need to consult their own legal counsel to determine whether sharing specific content is legally permissible.

If you have accidentally shared something you did not intend to share, or sent something to an unintended recipient or recipients, promptly attempt to recall the message or send a follow-up message asking the recipients to please disregard and delete. Next, consider consulting with your supervisor, an Association representative, and/or OEA UniServ Consultant, regarding the accidental sharing, depending on the circumstances.

General guidelines for distance learning

Know your employer’s rules for online engagement and follow them at all times. Most employers have policies in place to define what is allowable on work computers and networks. In addition, employers many have policies that describe appropriate and inappropriate online interactions with students and families. Re-familiarize yourself with these policies and follow them at all times. If you are concerned that your employer does not have policies to provide you with sufficient guidance to work with technology under these evolving circumstances, please inform your OEA UniServ Consultant.

Be aware of the professional online presence you project. Whichever online learning platform you are using, give yourself time to learn it, be present at all times when you're on it, and minimize distractions and personal interruptions. Being professional in an online learning platform means not eating, drinking, or multitasking; placing yourself in a neutral, professional space; dressing in professional clothing; minimizing all personal interruptions; and always speaking, typing and posting with the same professionalism you have in all of your interactions with students, families, and other members of the school community.

Ensure student privacy. This includes making sure that you are engaged in online instruction in a private space and also (as noted above in *How students should be contacted*), making sure that no application you use is set to 'record' unless certain conditions are met. ***Follow your employer's technology-use guidelines if you send your students to websites or social media apps, as some websites may gather personally identifiable information about students.*** Check with your employer if you have questions about maintaining student privacy or if they have a list of preferred Apps and websites that meet confidentiality guidelines. If you have additional concerns, contact your OEA UniServ Consultant.

Maintain your own online privacy in your interactions with students. Make all of your private accounts private and establish professional accounts on all platforms and applications that you need for work. While ensuring that your students are not being recorded in online formats, seek the same for yourself. If your employer expects your online interactions to be recorded in ways that you believe may violate your collective bargaining agreement, contact your OEA UniServ Consultant. Recognize that when using an employer-provided network or computer an employee generally does *not* have a strong right to privacy.

When selecting materials to use in online instruction, adhere to all copyright laws. Members should consider copyright issues in online instruction just as they would in face-to-face instruction. While a 'fair use exception' allows copyrighted materials to be used without permission in many educational circumstances, this allowance is not absolute.

Commit to creating a positive community online. It is important for your students to feel connected to you and each other during this time. Stay positive about all your students and be patient with their progress. They're learning as they go, just as you are.

Communicate patience and encouragement. Be encouraging of colleagues who have had to learn online options quickly, sometimes without a lot of tutorials. Be patient with parents who are dealing with stressors professionally and personally as well as with the added pressure of helping their students with online assignments.

Finally, please keep in mind:

- This is a stressful time. Students may be anxious, vulnerable, or find themselves in unescapable, unsafe situations.
- Communication, by any method, should take place within clear professional boundaries.
- You are likely working in unfamiliar, uncomfortable territory. Use good professional judgment as your guide, follow the directives of your employer, consult with your supervisor when necessary, and know that OEA and your Local Association are here to help in any way we can.