

**ATTORNEY CLIENT PRIVILEGED COMMUNICATION
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**NJEA LEGAL SERVICES
CAMERAS IN THE CLASSROOM**

As we approach the 2020-2021 academic year, many districts have begun preparations for hybrid learning, alternating between virtual and on-site school instruction. In many cases, members will return to a setting that includes cameras in the classroom. We do not endorse the surveillance of our members and the intrusion of cameras into the classroom environment; even if it is legally permissible, local associations should organize their opposition to such measures. The following is a general overview of the rights of NJEA members and the rights and protections of parents, guardians and students with regard to hybrid learning and cameras in schools. Please refer specific questions to your local association leadership and your UniServ field representative.

Implementation of cameras in the classroom

School districts in New Jersey have the legal ability to install cameras in public areas in schools, generally without prior negotiation with the local association.

However, key areas of impact may be negotiated. These include, but are not limited to: (1) privacy zones where cameras will not be installed so that union and other sensitive business may be discussed; (2) cameras in faculty lounges; (3) policies for retaining video data or footage; (4) notification protocols if video data is used to support disciplinary charges, in evaluations, or in adverse action against an employee; and (5) notification of significant changes to the cameras or system.

Local associations should demand negotiations on the impact of the installation of cameras and monitor school districts for other potential infringement or violations of the privacy of public employees. Additionally, local associations should support the adoption of board policies that provide that virtual instruction will not be recorded and that observations and evaluations will not be conducted by administrators during or based on recordings of live-streamed instruction.

Privacy rights of students

The Federal Family Educational Rights and Privacy Act (FERPA) protects the privacy of students' education records and the Personally Identifiable Information (PII), such as a student or family member's name, a student's birth date, birth place, or mother's maiden name, contained therein. Under FERPA, an educational agency or institution is prohibited from disclosing student education records or the PII contained therein, without prior, written consent from the parent, guardian, or eligible student, unless the disclosure meets an exception to FERPA's general consent requirement.

Educational records subject to FERPA include photos or videos that are directly related to a student, meaning the student is the focus of the video (for example, it shows them being injured, having a health emergency, contains their PII, or depicts an act they are disciplined for) and does

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not include videos where the student is incidentally captured or shows the student participating in school activities open to the public and without a specific focus on any individual. It is likely that all-day recording of classroom instruction would capture videos directly related to students and at least portions of video would qualify as an educational record, requiring prior, written consent prior to disclosure to others.

Additionally, under the Children’s Online Privacy Protection Act (COPPA), consent of a parent or guardian would be required for children under 13 to use third party platforms, such as Zoom or Google Classrooms, where that platform collects the personal information of those using it.

Another consideration is protecting the confidentiality of students with Individualized Education Programs (IEPs) and 504 plans, as required by the Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act. Prior written consent of a parent or guardian is also required prior to disclosing PII contained in an IEP.

What teaching staff need to know about consent

Teaching staff should not engage in the creation of “education records” which contain any PII via video-recording unless consent has been acquired from every single parent/guardian/eligible student involved. The districts must be responsible for getting all such consent, and unless and until they do they should not expect association members to record their classes, and they should certainly not expect any student to appear on the video.

Valid written consent must (1) specify the records that may be disclosed, (2) state the purpose of the disclosure, and (3) identify the party or class of parties to whom the disclosure may be made. The district must have written consent from any and every parent/guardian/eligible student who will be involved in any such recording, even if such recording is only for the purposes of the remote learning of other students.

There may be districts that fail and/or refuse to secure such authorizations. Although the publication of video showing students being instructed could create FERPA exposure for the school districts, administrators and teaching staff, teaching staff have recourse to indemnification under New Jersey’s civil indemnification statute.

Local association representatives participating in their district’s Restart Committees should raise these student privacy issues and the need for written consent. These concerns should be addressed in the district’s re-opening plan. This is in addition to the local association demanding to negotiate the impact of the installation of cameras.