



# FERPA & VIRTUAL LEARNING

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## WHAT IS FERPA?

**FERPA** (Family Educational Rights and Privacy Act, as amended), also known as the Buckley Amendment, was passed by Congress in 1974. It grants three specific rights to a post-secondary student:

- To inspect and review the education records that the institution is keeping on the student within 45 days of a request.
- To seek amendment to the student's education records and in certain cases append a statement to the record.
- To control the disclosure of a student's educational records to others except when the student provides consent, or as required or permitted by CSCU BOR policy or by law.

Unlike at the primary and secondary level, these rights belong to the post-secondary student, and not to the student's parents or legal guardians, regardless of the student's age. Moreover, the rights continue to exist after the student's graduation and expire only upon either the destruction of the relevant records or the student's death. If students feel their rights have been violated, they have the right to file a complaint with the Family Policy Compliance Office of the U.S. Department of Education, however, FERPA does not create personal rights that an individual may enforce.

## FERPA & VIRTUAL LEARNING - FAQs

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### What constitutes an "education record" under FERPA?

Under FERPA, "**education records**" are, with certain exceptions, those records, files, documents and other materials that are:

- Directly related to a student; and
- Maintained by an educational agency or institution or by a party acting on behalf of the educational agency or institution, and are not specifically excluded under the six categories of exceptions set out in 20 USC 1232g(a)(4)(B).

## What is “Personally Identifiable Information” under FERPA?

“**Personally identifiable information**” or “**PII**” refers to any data element contained in an education record that, if disclosed alone or together with another data element, would allow a reasonable person to reasonably identify the eligible student who is the education record’s subject. FERPA prohibits disclosure without prior consent of education records and PII from an education record. PII includes, but is not limited to:

- a) The student’s name;
- b) The name of the student’s parent or other family members;
- (c) The address of the student or student’s family;
- (d) A personal identifier, such as the student’s social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the institution’s community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

**Note:** CSCU institutions have increasingly been collecting contextual or transactional data as part of their operations, often referred to as “metadata” or “aggregated data.” Metadata or aggregated data refer to information that provides meaning and context to other data being collected; for example, information about how long a particular student took to perform an online task has more meaning if the user knows the date and time when the student completed the activity, how many attempts the student made, and how long the student’s mouse hovered over an item (potentially indicating indecision). Metadata or aggregated data that have been stripped of all direct and indirect identifiers are not considered protected information under FERPA because they are not PII.

## Do classroom recordings constitute FERPA education records?

- Maybe. Video, photo or audio recordings of virtual classes qualify as “education records” **only** if they directly relate to a student **and** are maintained by an educational agency or institution or by a party acting on their behalf. FERPA’s non-disclosure provisions may still apply to class recordings even if they do not qualify as “education records,” if the recording contains PII from student education records:
  - If the video recording made by the institution directly relates to a student or contains student PII, disclosure of the recording outside the class requires written consent from all affected students, or a de-identification or redaction of all relevant student PII prior to disclosure. If the video or audio recording only identifies the faculty member, and

does not directly relate to any student or contain student PII, the recording is not a FERPA education record, but is the intellectual property of CSCU or (insert institution).

- A recording of a virtual class should not generally be considered an education record for a specific student and should not be maintained in a specific student's records. If, however, the recording is maintained in a specific student's record (perhaps, for example, as a record of misconduct engaged by the student during the virtual class), then it must be treated as a FERPA education record.

For more information regarding recordings under FERPA, see [U.S. Department of Education's FAQs](#).

## I'm a faculty member working from home and would like to have a conference with a student and my spouse is at home in the same room. Is it alright if I conduct the conference?

Yes, as long as the faculty:

- Does not disclose PII from the student's education record in hearing of the faculty's spouse during the conversation; or
- Moves away from the spouse to discuss PII from the student's education records so that the spouse does not overhear the discussion; or
- Obtains prior consent in writing (electronic) from the parent or eligible student for the potential disclosure of PII from the student's education records to the faculty's spouse.

## What is "Directory Information" and how does it apply in a virtual classroom?

FERPA identifies a limited number of data elements contained in students' education records that may be designated as "directory information," which is the sort of information that would not generally be considered harmful or an invasion of privacy if disclosed. Educational agencies or institutions may disclose directory information after publishing a FERPA policy detailing what information constitutes directory information. See [BOR FERPA Notice and Directory Information Policy](#) for the types of information CSCU BOR has designated as directory information.

The directory information exception permits certain PII from education records which an educational agency or institution has designated as directory information to be disclosed during classroom instruction to students who are enrolled in and attending a class, including a virtual class.

- The directory information exception may not be used by the student to opt out of disclosures of a student's name, identifier, or institutional email address in a class in which the student is enrolled. 34 CFR §99.37(c).

## Can non-students observe or participate in a virtual class?

- Just like on-ground classes, non-students should not attend virtual classes. As a best practice, CSCU institutions should discourage non-students from observing virtual classrooms in the event that PII from a student's education record is, in fact, disclosed in such virtual classrooms.
- However, there are scenarios where it is important to have a non-student participate or observe the class. The two most common examples are guest speakers who are experts in a topic or prospective students that would like to experience the classroom environment. When a non-student will be present in the virtual classroom, please give the following guidance to that guest:
  - Do not ask anyone for any personally identifiable information (PII) during the virtual class; and
  - The guest is not allowed to record or disseminate the class content, including to other platforms or websites such as YouTube, Course Hero, Facebook, Twitter, etc.

## Who owns the intellectual property rights of the class recordings?

- Generally, faculty and students retain ownership rights in their scholarly work, unless an exception or a contractual agreement applies. So although CSCU made the recordings and thereby owns the recordings, it generally does not own the faculty member's scholarly work content contained within the recording, unless an exception applies.

## If I am recording my LRON classes, what should I put in my syllabi?

- Please insert the following language in the class syllabi:

“Class sessions may be recorded and uploaded to Blackboard and shall be used for the purpose of completing course assignments only. Unless prior permission is obtained or reasonable accommodation granted, students are not permitted to record classes. Students participating in the virtual classroom should refrain from sharing personally identifiable information from education records. Additionally, U.S. Copyright Law, Connecticut State law, or relevant collective bargaining agreements protect the intellectual property of the faculty member, CSCU or (insert name of institution), which may include, but is not limited to: lectures, demonstrations, or performances. Any redistribution of recordings without the faculty's or the institution's prior approval constitutes academic misconduct and may result in disciplinary sanctions. CSCU or (insert name of institution) reserves the right to delete the

class recordings pursuant to CT State law retention requirements after the period of instruction is over.”

- Also announce at the beginning of each recording that the class session will be recorded and uploaded to Blackboard.

### Can faculty record classes and post the recording of the virtual classes on Blackboard for students enrolled in the class who are unable to attend?

- Yes, as long as the faculty member is careful not to disclose student PII (unless the faculty obtained prior student consent) from student education records, FERPA does not prohibit faculty or the institution from making a recording of the virtual class available to students enrolled in the class. The recording should only be shared through a platform that is accessible to the student class members.

### Can the faculty show or share recordings from last year’s class in the current class?

- If the recording contains information directly related to specific students or contains student PII, this situation must be treated as if the video or audio recordings were being shown to or shared with a third-party audience, which requires the affected students to sign FERPA consents, or if the students’ consent is not feasible or granted, to de-identify or redact any student PII prior to disclosure.
- Additionally, if recorded lectures or lessons are disseminated to a third party audience, faculty intending to disseminate the recording(s) need to ensure appropriate copyright permissions or licenses are secured.

### May students record virtual classes?

- No, not without the consent of the faculty member or the institution’s Provost, Dean of Students, or designee. Students who would like to record classes as a reasonable accommodation should be referred to the institution’s Office of Student Accessibility/Disability Services.

### May students share the class recordings outside of the student’s course instruction?

- No, a student has no right to use the institution's recordings outside of the purpose of completing the course requirements. Generally, CSCU owns class recordings and the student needs prior written permission from the faculty or the Provost, Dean of Students, or designee to share the class recording outside of the student's course instruction. Faculty are encouraged to put students on notice in their syllabi that classroom recordings are owned by the institution and course content is owned by the faculty.

## Does FERPA require institutions to maintain or store video or audio recordings of classes?

- No, FERPA does not obligate educational agencies or institutions to maintain or store these types of records, and CSCU or (insert institution) may delete the video or audio recordings after the period of instruction is over. Likewise, FERPA does not require educational agencies or institutions to notify a student prior to destruction of the students' education records. However, CT State record retention regulations for higher education institutions may apply. There is no video or audio recording category for higher education institutions within the CT State record retention regulations, but for other CT State agencies, the video recording retention requirements are recording date + 30 days. Faculty may state in the course syllabi that CSCU or (insert institution) reserves the right to delete class video or audio recordings pursuant to CT State law retention requirements after the period of instruction is over.

## What if a student objects to being recorded?

- If a student objects to being recorded in a virtual classroom, an acceptable compromise is for the faculty member to de-identify or redact the student's image or portion of the student's class participation.

## What if a student declines to sign a FERPA consent?

- Students cannot be compelled to give consent, but faculty may redact the student out of the recording or de-identify the student even if the student refuses to consent.

## If I require students to show their face during a LRON course so I can make sure they are participating or not cheating during an exam, what do I do if a student refuses to turn on their camera?

- If it is for a legitimate academic purpose, faculty can ask students to have their cameras turned on. However, there may be scenarios where a student may receive an

accommodation from this requirement. For example, the student is a domestic abuse survivor, under the care of Department of Children and Families (DCF), has severe anxiety, or other circumstances warranting a reasonable accommodation or exception. If a student wishes to receive an accommodation from having their camera turned on, refer them to the College's Office of Student Accessibility/Disability Services. If a student cannot afford a webcam, refer to the College's point of contact for the Student Emergency Fund.