

## STREAMING OR RECORDING LIVE CLASSROOM INSTRUCTION FREQUENTLY ASKED QUESTIONS

Prepared by PSEA Education Services Division  
and PSEA Legal Division  
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A number of questions have been raised related to remote learning, particularly with regard to the streaming and/or recording of live classroom instruction for viewing by students at another location in the school or at home. This FAQ is intended to serve as a reference guide for PSEA local leaders.

**Can a school district require staff to engage in hybrid instruction which includes both in-person instruction to students in a classroom and streaming or recording of the live instruction for viewing by students at another location in school or at home?**

Yes. School districts can determine what form instruction will take this year, including whether that instruction will be in-person, online, or hybrid; as well as whether any online or hybrid instruction will be synchronous or asynchronous.<sup>1</sup> School districts can also determine whether instruction will be recorded. Although the decision to provide hybrid instruction is not a mandatory subject of bargaining under Act 195, many issues can be addressed with collaboration between local associations and school districts. Local associations can demand to bargain the impact of the district's plan to implement livestreaming or recorded classroom instruction, regardless of whether those are included as components of a district's hybrid or online education plan.

**Is there a distinction between recording online synchronous instruction that occurs via Zoom or a similar platform with students participating from their homes, and livestreaming or recording classroom instruction that may be viewed by students at another location in school or at their home?**

Yes. The recording of online synchronous instruction that occurs via Zoom, or a similar platform, generally records students in their home environment. Districts that require recording of this type of instruction should secure written permission from parents or guardians prior to directing educators to

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<sup>1</sup> For the purpose of this FAQ, "synchronous" instruction refers to instruction and learning that occurs at the same time but does not necessarily occur in-person or at the same place. Synchronous instruction can take different forms. It includes instruction occurring in real time via Zoom or a similar platform when the instructor and all participants are in different locations yet able to interact through technology. Synchronous instruction can also occur when the teacher is in one location and the instruction is streamed to another location (or locations) for viewing by students in real time. In a hybrid instruction environment, the teacher is providing face-to-face instruction to some students in a classroom setting, which is livestreamed to other students in another location (or locations) as a form of synchronous instruction. "Asynchronous" instruction refers to instruction that does not occur in real time, such as recorded lectures or instruction that is viewed by students at a later time, or instruction that occurs through modules on an online platform that does not involve real time instruction by the teacher.

record these sessions that capture footage of students in their home environment. Livestreaming or recording of instruction occurring in a classroom session is a different matter. In these sessions, we expect that the focus of the recording is the instruction. Although students attending face-to-face instruction may appear in the livestreaming or recording because they are attending the session, there is generally no expectation of privacy in a classroom setting. It is unlikely that students who view the sessions from another location, either at school or at their home, will appear on camera.

### **What guidance and support should a district provide prior to streaming or recording live instruction?**

As with any form of online instruction, districts bear the responsibility for ensuring that instructional methods and use of technology meet all requirements of federal and state law and should be providing appropriate direction and guidance to employees as to how that instruction will occur, including with regard to the following:

- Determining whether the classroom instruction will be asynchronous, synchronous, or some combination thereof, and whether instruction will be recorded.
- Determining the training needs of educators who will be teaching with the technology and providing training resources and support to meet those needs.
- Providing adequate planning time for educators to ensure their lesson plans are appropriate for livestreaming or recording.
- Designating learning management platforms, educational tools, and any videoconferencing platforms that will be used.
- Limiting the livestreaming or recording to classroom instruction, so that students, and their conversations, are not captured while they are entering or leaving the classroom.
- Determining the appropriate placement of cameras so that they do not capture student work products, but only record the educator and any white boards or other needed visuals.
- Ensuring that the educator is able to easily pause the livestreaming or recording for any unforeseen classroom event.
- Providing accounts for videoconferencing, and instruction as to privacy and security settings and guidelines for students who access livestreaming or recorded instruction.
- Revising and updating district policies as necessary, including but not limited to those relating to acceptable use, social media, electronic communications, and data security.
- Updating or creating a student code of conduct that will prohibit students from sharing or posting videos, pictures, or copies of either student-generated or teacher work on social media, gaming networks, or elsewhere online.
- Ensuring that students and their families are aware of their responsibilities and district policies regarding the use of technology and virtual learning.
- Providing instructions as to how student work should be saved and graded.
- Providing district contacts to assist educators with technology and other distance education issues.

**Does the streaming or recording of live classroom instruction for viewing by students at another location in school or at home violate the Pennsylvania Wiretap Act?**

No. There is no expectation of privacy in a classroom that would trigger protection of oral communications under the Wiretapping and Electronic Surveillance Control Act. Even if the student is at home, there is no violation if there is no recording of the student in his or her home environment.

**Does the streaming or recording of live classroom sessions violate FERPA?**

It is unlikely that either arrangement will violate FERPA. Educators teaching under these arrangements should follow their district policies with regard to FERPA, classroom observation, and the recording and storage of recorded instruction. As long as an educator is not disclosing personally identifiable information (PII) from a student's education record during instruction or making a specific student the focus of the video and maintaining a record, FERPA will not be implicated. See the PSEA Legal Division Alert regarding FERPA and Online Learning at [https://www.psea.org/globalassets/issues--action/key-issues/files/covid/alert\\_ferpa\\_online-learning-dm-225217.pdf](https://www.psea.org/globalassets/issues--action/key-issues/files/covid/alert_ferpa_online-learning-dm-225217.pdf) for additional information regarding FERPA.

**Should a district adopt a policy if it intends to stream or record live classroom instruction?**

We would recommend that a district adopt a policy which addresses many of the points above. At a minimum, the policy should:

- Prohibit the sharing or posting of livestreams or recordings by students.
- Prohibit students from accessing the livestream for any class they are not scheduled to attend.
- Limit access by students to recorded instruction when appropriate to ensure that the recordings are not viewed in a location accessible to the public.
- Ensure that recordings of livestream instruction are only accessible in a password protected manner.
- Incorporate a student code of conduct as well as all other district policies, including those related to acceptable use and use of mobile devices, and incorporate state and federal law.
- Require that students in the classroom are notified prior to the streaming or recording of instruction.
- Provide that no teacher or administrator shall be required to stream or record instruction for a student's routine illness or absence.

While the decision to livestream or record classroom instruction is not a mandatory subject of bargaining under Act 195, some districts may nevertheless be willing to engage in bargaining over issues that would normally be addressed in policy. Local associations and districts may enter into agreements that address permissive subjects of bargaining. Local leaders can contact their UniServs for assistance with bargaining and/or impact bargaining around these issues.

## **What issues should a local association consider for impact bargaining?**

Under Act 195, local associations can insist that districts bargain over the impact of livestreaming or recording classroom instruction of members of their bargaining units. Impact issues could include how evaluations will be conducted, the steps school entities will take to remove any unauthorized posting or sharing of livestreaming or recordings of instruction, and the method and duration for storage of recordings.

## **What guidance should local associations provide to members preparing to engage in livestreaming or recorded instruction?**

Educators engaging in any form of online instruction should conduct themselves professionally, just as they would in face-to-face instruction, including:

- Not leaving a virtual session/classroom while it is in session.
- Using professional language and conduct in virtual classrooms, face-to-face instruction that is streamed or recorded, and in email and other online communications.
- Wearing appropriate attire.
- Ensuring the background and surroundings that can be viewed online or in a recording contain nothing inappropriate or personal that could be viewed by others.
- Conducting themselves as if a classroom observer is present.
- Following district policies and directions, paying particular attention to those related to the use of online educational tools and resources, acceptable use, social media, and FERPA.
- Following any district policies that are developed related to distance learning and/or livestreaming.
- Utilizing only district approved electronic platforms and tools.
- Using good data security practices, including the use of strong passwords and a protected internet connection, and following district directions with regard to saving student work and/or records.

Remote and hybrid learning have become a necessary reality as school districts determine how to best continue providing education and meeting the needs of students in the COVID-19 environment. Employers can direct how instruction will occur, including whether it will occur with face-to-face learning, remote learning, or through a hybrid model, and can determine whether such instruction will be recorded. Generally, there are no wiretap violations with any of these modes of instruction because there is not an expectation of privacy in the classroom. There are unlikely to be FERPA violations, provided educators are not disclosing personally identifying information from education records during instruction or making individual students the focus of recorded instruction. Employers should adopt policies determining how instruction will work, and local associations can demand to bargain over impact issues.

Members who have questions about district policies, platforms, and directives should contact the administration for additional guidance. The local association can assist with these inquiries and ensure that members have the information and resources needed to implement livestream instruction.