Published March 31, 2020

PETRARCA, GLEASON, BOYLE & IZZO, LLC
ATTORNEYS AT LAW

U.S. DOE PROVIDES GUIDANCE REGARDING FERPA AND VIRTUAL LEARNING DURING COVID-19 SCHOOL CLOSURE

On March 30, 2020, the Student Privacy Policy Office of the U.S. Department of Education held a webinar to address privacy concerns regarding remote learning. A copy of the Power Point can be accessed here: https://studentprivacy.ed.gov/resources/ferpa-and-virtual-learning-during-covid-19

During the webinar, the U.S. DOE noted that:

- Teachers and related service providers may take home student records, and personally identifiable information

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

from those records, as long as the teachers and related service providers have a legitimate educational interest in the education records, do not redisclose the information without parent consent, and use reasonable methods to protect the information from further disclosure.

- Under the "school official" exception, which also applies to the Illinois School Student Records Act, Districts may disclose students' education records to a virtual or online provider of services who is contracting with the District as long as the contracted provider (a) performs a service or function for which the District would otherwise use its own employees; (b) has been determined by the District to have a legitimate educational interest in the student records; (c) is under the direct control of the District regarding the use and maintenance of the education records; (d) uses the education records only for purposes authorized by the District; and (e) does not redisclose the education records.

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

- The District may use a variety of technological platforms to provide services and, although HIPAA does not generally apply to educational records, HIPAA enforcement for telehealth services has been waived during COVID-19. HIPAA applies to health information, but schools are currently utilizing platforms used for telehealth services to provide remote IEP meetings and virtual learning.

- FERPA does not protect observations of students if personally identifiable information from student records is not disclosed. However, Districts should advise parents that, when group services are provided, an adult in another student's home could view their child, and instruct parents not to record or share any personally identifiable information about other students.

- Teachers and related service providers may record a lesson for students as long as the video does not include student record information, or consent is provided to disclose student record information.

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

- There is no exception to providing access to, or a copy of student records, upon parent request, during the COVID- 19 school closure.

If you have questions, please contact one of our attorneys.

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866