

# LEGAL CONSIDERATIONS FOR ONLINE LEARNING

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## FOUNDATIONAL ITEMS



Data Awareness



Data Privacy



Data Transparency

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# DATA SECURITY

Significant threats to public school districts:

- Cyber Ransom
- Social Engineering Fraud
- Data Breach



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# MITIGATION STRATEGIES

- Cyber Insurance – essential for data breach response scenarios
- E-mail Training Software
- Annual Cyber Security Reviews with IT Department
- Third-Party Network Pen Testing



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## COPPA

- Children's Online Privacy Protection Act
  - Federal act enforced by Federal Trade Commission
  - Intended to give parents more control over information collected about kids under 13
  - Is parent required to consent?
  - Is the District required to get parental consent?



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## FERPA @ HOME

Family  
Educational  
Rights and  
Privacy Act

# FERPA

- ✦ Regulates disclosure of student records
- ✦ Offers students the ability to review and challenge records
- ✦ Covers records containing information that identifies students

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## FERPA @ HOME

- School officials are allowed to bring/have student PII home as long as they have a legitimate educational interest in the records.
- School officials must take reasonable care to not further disclose student PII.

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## FERPA @ HOME

- Sharing student PII with online apps/platforms?
  - Okay to do!
  - Depends on the platform/app
  - FERPA itself does not provide specifics on what platforms to use or security standards

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## FERPA @ HOME

- What if a non-student is present in the room with a student during a lesson?
  - If no student PII is shared, then okay but not encouraged
  - Directory Information exception may apply (opt out?)
  - Instruction on recording/sharing lessons?

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## FERPA @ HOME

- Education records?
  - Directly related to student?
  - Maintained by the school district?
  - If it is an education record, how will school district preserve it where parents/eligible students can access?

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## FERPA @ HOME

- What if my family member is within earshot?
  - Move to a different location, if possible.
  - If not possible, obtain written consent from parent before disclosing student PII from records (email is fine!)

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## STUDENT COMMUNICATIONS

- Consider age of students
- Consider ability to access apps / websites
- Consider:
  - IDEA?
  - Section 504?
  - Title II of the ADA?



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# COPYRIGHT FOR ONLINE CLASSROOMS

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## COPYRIGHT BASICS

- Copyright owners are granted 6 exclusive rights:
  1. Right to reproduce or copy the work
  2. Right to make derivative work
  3. Right to distribute copies of the work
  4. Right to publicly perform the work
  5. Right to public display the work
  6. For sound recordings, the right to perform publicly through digital transmission
  - Also effectively provides the right to **exclude** others from exercising any of the exclusive rights!

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## FAIR USE EXEMPTION

- “Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as **criticism, comment, news reporting, teaching** (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright.”

17 U.S.C. § 107  
(emphasis added)



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## FAIR USE EXEMPTION

- **FACTORS:**

1. The purpose and character of the use, including commercial v. nonprofit educational purpose
2. The nature of the copyrighted work
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. The effect of the use upon the potential market for or value of the copyrighted work

17 U.S.C. § 107



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## CLASSROOM USE EXEMPTION

- “Notwithstanding the provisions of section 106, the following are not infringement of copyright:
  - 1) Performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, [it’s a pirated copy and you know it]....

17 U.S.C. § 110(1)



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## CLASSROOM USE EXEMPTION

- TEACH Act added 17 U.S.C. § 110(2), which allows some digital transmission of certain amounts of copyrighted works in an online classroom platform.
- **RESTRICTIONS:**
  - Amount of work should be reasonable (not entire work);
  - Performance must be made “by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session...” and the performance must be “directly related and of material assistance to the teaching content of the transmission...”



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## CLASSROOM USE EXEMPTION

- TEACH Act added 17 U.S.C. § 110(2), which allows some digital transmission of certain amounts of copyrighted works in an online classroom platform.
- **RESTRICTIONS:**
  - Transmission is limited to students official enrolled in the class and restricts ability to retain or further disseminate the work; AND
  - The school district has a copyright policy that promotes compliance with the Copyright Act and notifies students that content may be subject to copyright protection.

## SOCIAL MEDIA POSTS?

- What about teachers posting videos of themselves reading books on Facebook? Facebook Live?
- Use would not be covered by TEACH Act.
- Publishers are being sympathetic, but that will end when it starts affecting them financially.
- Limit videos to online classroom portals.
- Ask for permission before posting or sharing videos (or really anything else) publicly.

## DynaStudy, Inc. v. HISD

### **DynaStudy, Inc. v. Houston Ind. Sch. Dist., 325 F.Supp.3d 767 (S.D. Tex. 2017)**

- DynaStudy creates student study aids for various subjects and grade levels
  - End of Course Review Guides, DynaNotes
- Sells study aids in print and electronic formats
- Prohibits reproduction and distribution of materials



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## DynaStudy, Inc. v. HISD

### **DynaStudy, Inc. v. Houston Ind. Sch. Dist., 325 F.Supp.3d 767 (S.D. Tex. 2017)**

- DynaStudy alleged that HISD teachers/administrators were sharing materials without permission.
- DynaStudy alleged that HISD teachers continued to rampantly infringe on their copyright even after being asked to stop.



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## DynaStudy, Inc. v. HISD

- HISD was able to dismiss the claim of contributory copyright infringement and dismiss one claim for damages as time barred.
- Following a 7-day trial, a federal jury awarded DynaStudy a **\$9.2-million** verdict
- HISD filed post-trial motions, and the parties eventually settled the matter.

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## LESSONS LEARNED

- School districts can be held liable for the infringing behavior of their employees.
- School employees must carefully read materials to determine if there is a prohibition against the action they would like to take (e.g., copying, public display)
- If copyrighted materials are uploaded to teacher's classroom webpages, they should not be public or available to download.

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## BEST PRACTICES

- Teachers should carefully plan which resources will be used, when, and if they need to purchase copies
- Teachers should limit access to classroom webpages, password protect documents, and restrict others from the ability to save or redistribute
- Districts should consider purchasing umbrella licenses for use by employees and volunteers

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## QUESTIONS??

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