

## Privacy for Schools: Key eLearning Considerations

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In the age of COVID-19, schools have had to quickly switch to virtual distance learning, which causes a variety of concerns over student privacy and cybersecurity. Katten's multidisciplinary team of Privacy, Data, Cybersecurity, Health Care and Employment practices can assist schools navigating these trying times by efficiently selecting secure online learning solutions tailored to foster development while protecting students' privacy. We are committed to helping schools assess and employ technology, enabling and enhancing student learning, communication, creativity, collaboration and development. Here are some key considerations for schools to consider.

### Technology Due Diligence

Schools have rushed to online learning, in many cases without adopting appropriate policies and procedures to protect the school. In an effort to prioritize ease of use, critical due diligence on a software or technology with regards to how it protects students' privacy — while also being safe and secure — may have been skipped.

Often schools do not have the resources to vet these technology solutions, or simply do not know that they should. The pandemic has forced schools to go online overnight and this has caused schools that are unfamiliar with educational technology or virtual distance learning to choose technologies that do not appropriately protect students' privacy. Schools should consider whether or not the technologies employed are collecting data on students as they would a normal adult consumer, without providing sufficient disclosures to students, guardians and school staff.

### Access to Mental Health Resources and Professional Obligations

The current state of the country can be overwhelming for children and they need to continue to have access to mental health professionals. Many schools employ licensed counselors and psychologists to assist with the mental health needs of their students. Mental health professionals will need to consider compliance with state and federal laws regarding the collection, maintenance and use of those mental health records. Additionally, there are several state and federal regulatory changes that have been made to accommodate the provision of telehealth, making it a viable solution for students in the virtual environment.

### Higher Education Technology Needs

Many of these same considerations also apply to universities. Privacy issues may arise while taking online classes, including, but not limited to, surveillance and privacy concerns when virtually teaching and proctoring examinations from students' homes and recordkeeping and other privacy issues pertaining to when a student is absent from virtual classes due to illness, quarantine, travel or other circumstances. In addition, issues may arise addressing cybersecurity risks around remote work, learning and support services.

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## Policy Review

Based on the change from in-person to virtual learning, schools should consider drafting and/or revising privacy, data and cybersecurity policies, procedures and notices. This includes acceptable-use policies, student handbooks, media release consent forms, information security policies, mental health records, etc.

## Additional Food for Thought

- International Association of Privacy Professionals, "[Shift to online learning ignites student privacy concerns](#)," April 28, 2020.
- *Washington Post*, "[Mass school closures in the wake of the coronavirus are driving a new wave of student surveillance](#)," April 1, 2020.
- ZDNet, "[Students, university clash over forced installation of remote exam monitoring software on home PCs](#)," April 20, 2020.
- US Department of Education, "[Guidance for interruptions of study related to Coronavirus \(COVID-19\)](#)," March 20, 2020.

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