

Arlington County Council



Informational Statement for Families Regarding Privacy During Virtual Learning
September 7, 2020

The goal of this document is to raise awareness and inform families about the privacy considerations they should keep in mind as students engage in virtual learning. This document should not be considered legal advice or legal representation. If you are seeking legal assistance on a matter, please speak with a lawyer who is able to provide you with legal assistance regarding your individual issue.

As Arlington students begin a school year like no other, involving the use of video cameras for virtual learning on software platforms, the Arlington County Council of PTAs (CCPTA) applauds both Arlington Public Schools (APS) and families on their flexibility and resourcefulness in working towards providing quality instruction to children under difficult circumstances. Unfortunately, flexibility without foresight may lead to unintended consequences, which could negatively impact the education, welfare, and privacy of students.

The CCPTA has been engaged in discussion and review of how synchronous (live) learning by students inside their homes may raise novel issues that families, students, and APS staff have not yet considered in the rush to assemble a viable virtual learning program. We are all in uncharted territory, on a national scale, and no one has good answers to these issues yet. **The CCPTA hopes to raise these issues for further dialog in our community so that everyone can be informed and on the same page about how we can make virtual learning successful for our students.**

Main Takeaways:

- There are privacy concerns regarding live video and audio feeds into students' homes, in the recording of those video and audio feeds, and in the management of and access to those recordings.
- Teachers are mandatory reporters and there is potential for legal household circumstances or behaviors that are observed on a student's video or audio during virtual learning triggering state or legal action.
- Sensitivity to disparate economic circumstances and living environments (and how these disparities may be captured on video and audio, either live or recorded) must be considered as an equity issue as it relates to the education and well-being of APS students.

First, we are concerned that establishing a baseline expectation that children will broadcast live video of themselves from their homes for hours during each school day may interfere with the purpose of such broadcasts – i.e. educational attainment. Several potential reasons exist for such interference, including:

- self-consciousness about being on camera;
- preoccupation with what the physical backdrop of a student's home environment communicates;
- negative comparisons to what other students are displaying on the camera;
- fear of intentional or unintentional displays from other members of a household that could humiliate a student, over which a child has little control;
- the prospect of retribution if a student accidentally reveals something that is shameful to the family (whether or not it is illegal); and
- the stress of keeping up appearances over time.

Students may not be able to focus on the material for any number of reasons that are outside of the control of APS, but **the decision on whether or not to expect students to live video broadcast themselves as**

the default mode of attending class is within APS's control. We encourage APS and school administrators to clearly communicate to parents and students what options there are to participate in virtual learning without turning on a video camera, and what tradeoffs exist. We are especially mindful that some of the negative impacts described above will fall disproportionately onto households with fewer financial resources – i.e. fewer private rooms and fewer resources to help students feel confident about what is being communicated via the camera. **APS students are not well-served by an instructional delivery method that requires those with the least means to experience the greatest burden of vigilance during virtual learning sessions.**

We are likewise concerned about recording these live student video broadcasts in the home, which APS guidance has encouraged in certain circumstances and permitted more generally. CCPTA understands that there are benefits to recording teachers: the delivery of instruction can be repeated as necessary, and the school has a record of teacher conduct during any one-on-one interactions with a student, for liability reasons.

It is less clear what is to gain by making a recording of students in their home, and there is much to lose. Recordings raise the perceived stakes of any academic mistakes or embarrassing conduct, especially when peers can continue to access the recordings of each other throughout the school year. Additionally, APS has no control over what is captured by recordings inside a student's home, including nudity (of the student, another child, or an adult), personally identifiable information, communications between members of a household who are not attending APS, and many other situations that fall within the scope of a person's general expectation of privacy inside the home.

We are concerned about whether APS has the personnel or the procedures in place to manage these recordings, either as required bylaw, at the request of families, upon FOIA requests related to custody proceedings or other litigation, or upon receiving subpoenas or warrants from law enforcement, including federal immigration enforcement. We would like to understand the rationale for collecting video and audio recordings inside the homes of students, which must then be managed for purposes other than education and turned over to law enforcement in certain situations. During a time of stretched resources, APS should consider whether its activities will tie up personnel for purposes other than student education and welfare.

We would like to hear more about whether APS has disabled the ability for other students to record each other using APS software platforms. We would like APS to communicate to students about how Virginia criminal recording laws might apply to conversations inside the home (where an ordinary person had an expectation of privacy) if neither party to the conversation consented to being recorded. We would like clarification about whether a minor can consent to such recording, including of other members of their household.

Finally, we are concerned that parents may not be prepared for the consequences of having schools be involved with conduct that is legal but that will likely trigger formal proceedings under state law. **Many parents are not accustomed to their disciplinary practices being on display to mandatory reporters who are required to refer suspicions of child abuse or neglect to child protective services.** Even the Virginia Department of Social Services acknowledges that the difference between legal corporal punishment and illegal child abuse can be questionable. Further, there is ample research on implicit bias on matters of race and social class, which makes evaluations of discipline more complicated.

Additionally, state law requires school districts to establish policies on threat assessment teams, in order to evaluate certain warning behaviors, including when a student communicates a wish or intent to injure someone or themselves. Families may be accustomed to communications between siblings in the home that would not be tolerated if such communications were directed to others, or took place outside the

home, because the family knows that the communication does not really involve any intention to carry out harm. However, if siblings threaten or fight each other while at home with a teacher as a witness during virtual learning, the teacher may need to engage a threat assessment team to further evaluate the conduct.

Essentially, many parents may be caught by surprise that the law requires interventions in response to legal behavior -- just in case it could be a sign of illegal behavior or danger -- when witnessed by a teacher. CCPTA encourages parents to better understand how certain legal disciplinary measures or sibling fighting may trigger formal interventions, and to have conversations about triggering conduct with all members of a student's household. CCPTA is again mindful that some abusive behavior will not be seen because the household has the means to purchase privacy, whereas non-abusive behavior will be seen and require formal interrogations because those households can't afford to purchase privacy.

At a time when APS is focused on increasing equity among its students and reducing referrals of students to law enforcement, APS may be effectively compelling families to consent to warrantless searches and recordings of their homes. Those live feeds and recordings could potentially expose not only the students themselves but also other family members and third parties in the home to numerous negative consequences. For those families who can afford a private room for their student such concerns are naturally more limited. But for those families who have children attending school from a shared space where other students or family members may be observed and recorded, the level of intrusion may be very substantial.

Since we are confident home surveillance of APS families is not an intended purpose of the virtual learning program, we strongly encourage APS to both advise families of this potential risk and look for ways to avoid such intrusion.

The CCPTA hopes to further engage the APS community on the implications discussed above and seek further clarification and discussion on how the APS community can address and mitigate any potential negative impacts of virtual learning to student education, welfare, and privacy.

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