

Advisory Concerning Unauthorized Student Recording in Classrooms

The ability to record audio and visually presents a new problem for classroom management. Teachers are being audio or video recorded without their knowledge or consent. This has become an issue in our UniServ (Conejo, Las Virgenes, Moorpark, and Simi). The bottom line is it is illegal for anybody to record you in your classroom without your consent.

This is what California's Ed Code says:

The Legislature finds that the use by any person, including a pupil, of any electronic Ed Code 51512 listening or recording device in any classroom of the elementary and secondary schools without the prior consent of the teacher and the principal of the school given to promote an educational purpose disrupts and impairs the teaching process and discipline in the elementary and secondary schools, and such use is prohibited. Any person, other than a pupil, who willfully violates this section shall be guilty of a misdemeanor.

Any pupil violating this section shall be subject to appropriate disciplinary action.

This section shall not be construed as affecting the powers, rights, and liabilities arising from the use of electronic listening or recording devices as provided for by any other provision of law (Education Code 51512).

MEA is working with District leadership to include Ed Code 51512 included in Parent/Student Handbooks and to create consistent disciplinary responses to unauthorized student recordings. Meanwhile, MEA recommends the following progressive disciplinary steps regarding unlawful recording in your classroom:

1. Add clearly stated rules regarding the use of recording devices in your classroom and in your management plan
2. Explain that there are three main reasons why recording without the consent of the classroom instructor is unlawful:
 - A. Individual students are a "captive audience," which means that are legally required to be in the class while retaining their 4th Amendment privacy rights
 - B. The audience, with few exceptions, is under the age of 18. One of the intentions of the law is to promote the safety of the underage students
 - C. As the statute states, unauthorized filming "disrupts and impairs the teaching" (and I will add learning) "process."
3. Consistently enforce your school or classroom cell phone and other devices rules
4. Place Ed Code language in your management plans and clearly articulate that unauthorized recordings will result in punishment that includes, but is not limited to, defiance (recall that in middle and high school you can suspend a student from your class for two days for defiance)
5. Review your school and classroom rules with your students quarterly
6. Progressively document cell phone violations and include instances of defiance related to cell phone use in your notes and/or referrals

7. Remind administrators that recording without prior consent is illegal and refer them to Ed Code 51512, e.g., that “*Any pupil violating this section shall be subject to appropriate disciplinary action*” on each referral you send relating to unauthorized recordings

8. If you have an issue with cell phones, administrative follow-through, and need some assistance, please feel free to reach out to MEA leadership on your campus

Complications

There are two major issues that complicate the unauthorized student recordings. The first is possession of the recording. Presently, even an “unlawful” classroom recording is the property of the phone’s owner. Administrators do not have the power to subpoena a device’s content unless there is reasonable suspicion that a crime has been documented on it. They can temporarily seize the device; however, if a parent wants it returned, the District, unless they want to get the police involved, must return it. The parent and student can then post the recording on social media, if they so choose.

Next, and even more perplexing and frustrating, is a 1999 California State Court ruling that states, despite the illegality of a non-consensual recording, administrators *can use* the recording against a teacher in disciplinary scenarios. MEA leadership conferred with CTA Legal on this matter. CTA Legal offered that as long as District’s rely on this court’s interpretation of the law, MUSD can continue to use unauthorized recordings as evidence.

These two complications are why it is so important to preemptively strike against the unauthorized use of recording devices in your classroom by clearly detailing its impermissibility. In this era of positive behavioral interventions and progressive discipline, you need to document, document, document!

Conclusions

There is no need to blow this issue out of proportion, but unauthorized recording has to be addressed. MEA is working with the District on the policy end. Teachers must continue to model and facilitate responsible and ethical use of technology for our students. If you allow cell phone use in your classroom, for example, for purposes of research, or let student’s take screenshots of PowerPoint slides, please do not change what you do. As the saying goes, don’t throw the baby out with the bathwater, and let’s not let the few with a lack of decency get in the way of our excellent teaching and the use of tools that have the potential to enhance it.

Brian