

The Law

The ASTI is mindful that there must be appropriate protections in place for teachers and students in the context of online interactions.

In looking at the area of remote teaching and learning, the general principles of data protection, child protection and employment law must be applied. Ultimately, the key considerations regarding the conduct of remote learning will be based on what is fair, reasonable and proportionate so as to ensure an appropriate and adequate education for students while protecting the privacy rights of both teachers and students.

Schools must develop policies that provide appropriately for this provision and should include the following:

1. RECORDINGS

The ASTI is advised that School Policies should not permit recording of virtual lessons where students participate or are in attendance. The School is the data controller of both student and teacher data in such a scenario.

The lawful basis of consent as the basis for processing such recordings.

Consent is a lawful basis under Article 6(1) (a) of the GDPR. However, the GDPR also states that consent should not be relied upon where there is an imbalance of power between the data subject and the data controller, such as the relationship between the School and the teacher as an employee. If a teacher/student/parent feels compelled to give consent then this consent may not be a valid lawful basis for the purpose of GDPR.

Consent must be freely given, informed and unambiguous. The ASTI has been further advised that, having regard to the risks of online abuse to students and teachers and the risks of such recordings being maintained and shared inappropriately, such recordings would not appear to be necessary or proportionate from a data protection perspective especially taking account of the child protection issues that may arise.

2. ACCESS TO LIVE LESSONS

The ASTI is aware that there is a concern about who may have access to live streamed classes. In normal circumstances, third parties cannot sit in on lessons and observe interactions between children and the teacher. It is appropriate that the school policies and the guidelines should address this issue by explicitly providing that parents and others may not sit in on live lessons. There are child protection concerns that arise if others are observing interactions between students and the teacher. The School should provide clear guidance for teachers to follow if the teacher becomes aware that a third party is present during a live lesson with students. In this respect teachers should always exercise caution. Should any infringement arise in a school, management should act decisively.

3. ACCESS TO SCHOOL SYSTEMS

School policies should state that it is not permitted for parents/guardians/family members to access platform/systems and digital resources using an assigned personal pupil user account. To ensure clarity for parents in relation to their use of the platforms/systems, it would be appropriate for necessary meetings with parents to be processed through an alternative recognised acceptable online platform.

4. SCREEN TIME

In the context of remote learning the School (as the employer) will need to take account of its obligations towards employees under the Safety, Health and Welfare at Work Act 2005, the Safety, Health and Welfare at Work (General Application) Regulations 2007 and the guide issued by the Health and Safety Authority in respect of display screen equipment. The Regulations oblige the employer to “plan the activities of the employer’s employees in such a way that daily work on display screen equipment is periodically interrupted by breaks or changes of activity which reduce workload at the display screen”.

5. PRIVACY

Remote learning gives rise to an increased risk to privacy of teachers as students have access to images of teachers on a regular basis. School policies should forbid the recording or using of such images. It should also make clear that the school will take action if a student was to post a teacher’s image and/or defamatory content about a teacher on social media.