



October 23, 2019

Via Online Submission October 23, 2019: <https://www.regulations.gov/>

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Re: COPPA Rule Review, 16 CFR part 312, Project No. P195404

The National School Boards Association (NSBA) represents through our state association members approximately 13,800 school boards nationwide.

NSBA is pleased to comment on this rule review, which has the potential to affect significantly K-12 public schools' interactions with educational technology (EdTech) providers and families of students who use online educational products and platforms. Given the broad applicability of this rule, NSBA urges the Federal Trade Commission (FTC) to remain committed to the administrative process to obtain stakeholder input prior to the publication of the final regulations.

NSBA shares the FTC's dedication to ensuring that the promise of EdTech can be realized while protecting student data privacy. To this end, NSBA seeks a federal framework that not only vigorously protects student data privacy, but also provides flexibility to local school districts to fashion policy consistent with local priorities and existing data systems. By working with all stakeholders, the FTC can address areas of overlap between the Family Educational Rights and Privacy Act (FERPA) and the Children's Online Privacy Protection Act (COPPA), outline clear and objective criteria for schools, create language extending a safe harbor when such criteria are followed, and institute a workable rule regarding parent consent for the use of EdTech in schools.

As the national voice for school boards, NSBA offers the following comments to the COPPA Rule Review, 16 CFR part 312, Project No. P195404.

A. General Questions for Comment, Question 5.

NSBA urges the FTC to simplify the COPPA frs a29W*nQm7s a290 0 256.01 ls .01 l0 0 1 340.87 376.37 Tm0 g



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Questions” (FAQs). In its FAQs, the FTC essentially authorizes schools to provide verifiable parental consent to a website or app’s collection, use, or disclosure of personal information from students for purposes of COPPA. Notwithstanding this notice to school districts, there is no basis in the statute or regulations permitting such an authorization. Thus, the burden of obtaining consent is effectively transferred to schools. While this process may facilitate consent issues for operators and schools, it creates potential liability for districts.

To address this issue, NSBA suggests that both the FTC and the Department of on

For these reasons, NSBA urges the FTC to reconsider the presumption of parental consent in the COPPA FAQs, and to consider a presumption of parental notification. The language in the FAQ would better serve the educational community if online service providers were able to presume that the school districts provided notice to parents of the online educational applications it allows students to use, and if such presumed notice sufficed for purposes of FERPA and COPPA. A presumption of parental notice, consistent with the “school official” exception with which schools are familiar, would provide schools needed flexibility to adopt policies based on local priorities and state law.

E. Exceptions to Verifiable Parental Consent, Question 23. a. f.

As noted above, NSBA urges the FTC to consider an exception to parental consent for the use of EdTech in schools. More specifically, we urge the FTC to consider an exception for use by school districts of EdTech when a district contracts with a platform or service for use by students. Rather than schools acting as agents for parents, and providing “verifiable consent,” the operator would be viewed as a “school official” under the FERPA exception, and the district would provide notice to parents that the site/operator has been so designated in its FERPA yearly notice. Schools would, as now, need FERPA-compliant parent notices.

A simple notice, appearing prominently before terms of service can be accepted, would remind educators that state and local law and policy may affect their authority to use online educational services, and that accepting terms of service may have legal consequences.

The Department's Privacy Technical Assistance Center has indicated that, as a best practice, parent access to student records information held by providers on behalf of a school or district should be "seamless, with providers giving the requested records to the school or district, who can confirm the parents' identity and provide them access to the records."⁶ It would be helpful to schools if the FTC provided operators similar guidance so that parents can be assured that both the school and the operator understand their obligation to provide parent access to student education records.

F. Right of a Parent to Review or Have Personal Information Deleted, Question 26. g.

Parents should not be able to request operators to delete, access or change data that is being used by school districts in educational applications. Allowing parents to do so could create confusion regarding the interplay of COPPA and FERPA. The FTC should implement an amendment process similarly to the one outlined in FERPA. FERPA grants parents the right to seek to amend student records that are inaccurate, misleading, or otherwise violate student privacy. Schools must follow a fair amendment process by:⁷

- 1) Responding to requests to amend within a reasonable time;
- 2) If denying the request, notifying the parents of their right to a hearing; and
- 3) Allowing the parents to insert into the record a statement explaining their views, if, after the hearing, a school decides not to amend the records. Schools must keep this statement with the record for as long as they maintain the record.

⁶ U.S. Dep't of Educ. Privacy Technical Assistance Ctr., Responsibilities of Third-Party Service Providers under FERPA (August 2015), available at https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Vendor%20FAQ.pdf.

⁷ 34 CFR § 99.20-99.22; U.S. Dep't of Educ. Protecting Student Privacy, Model Notification of Rights under FERPA for Elementary and Secondary Schools (March 2017), available at <https://studentprivacy.ed.gov/node/490>.

NSBA urges the FTC to consider a model by which school districts, through designated employees authorized to have access to and to oversee student data privacy, shepherd the process of parent access to data similarly to the FERPA structure. This model would militate against individual data-related requests by parents or students and the commensurate confusion and administrative challenges that would result.

Safe Harbor for School Districts

Additionally, NSBA urges the Department and FTC to work with school boards, their attorneys, and other stakeholders to develop a safe harbor provision for school districts, as well as resources for schools and operators regarding COPPA consent procedures, especially with respect to curriculum acquisition. Ideally, this process would yield a FERPA/COPPA checklist of objective criteria that, if followed, would provide schools with safe harbor from a finding of FERPA violations when districts consent for, or notify, parents as described above. This checklist could include sample notices to parents of district-approved apps and websites and include a uniform FERPA “rider” to providers’ terms of service when an application or web site is used.

There should be specific language that clarifies that schools cannot be held responsible for failures of operators to adhere to the requirements of COPPA, or for data breach risks. NSBA believes schools should only receive consent requests from operators who are compliant with C

- c) How school districts can operationalize the data privacy function for purposes of COPPA consent at the district level.

By simplifying the framework of two important statutes – FERPA, designed to protect student education records, and COPPA, designed to provide parent control over what information is collected from their young children online – the Department and the FTC have an opportunity to smooth the way for more efficient and effective use of EdTech tools to help students learn. NSBA is pleased to bring the voice of public schools to the conversation. Please reach out to us with any questions. We look forward to further discussion of student data privacy concerns.

Sincerely,



Thomas J. Gentzel
Executive Director & CEO



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