

December 9, 2019

Kristin Cohen
Division of Privacy and Identity Protection
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

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

Dear Ms. Cohen:

On behalf of National PTA and our three million PTA members, we appreciate the opportunity to comment on the Federal Trade Commission's (FTC) Request for Public Comment on implementation of the Children's Online Privacy Protection Rule ("COPPA Rule"). Protecting the safety of children and their school records online, while ensuring access to high quality digital educational opportunities, is critical in the 21st century. National PTA supports policies that ensure children's privacy is protected online, give parents reasonable control over the collection, storage and use of personal information, and allow schools to provide appropriate educational benefits to students from the judicious use of technology.

Technology places an important role in schools today. Online textbooks and other applications enhance instruction and provide opportunities for interactive learning. Education data can provide positive benefits to students' academic outcomes and assist teachers and families in creating more personalized learning plans to meet the needs of every child. However, the laws and regulations governing education technology and the use of student data have not kept up with a rapidly changing technical landscape. Current federal laws do not contemplate electronic records, online service provider rights and responsibilities or individual electronic student profiles. Therefore, federal laws such as the Family Educational Rights and Privacy Act (FERPA) and COPPA must be modernized to better protect student's educational records and the collection of information gathered online to address the growing use of technology and data in education and throughout society. The challenge lies in finding a way to maximize the promise of education technology while protecting student privacy as well as parents' rights to decide what is best for their children.

While there are no simple answers, transparency and accountability on the part of schools, school districts and education technology companies are essential and can help address parents' legitimate concerns on the use and protection of their child's personal information. However, to assist schools in their efforts to be as transparent and accountable as possible, we ask the FTC to clarify schools' COPPA obligations regarding the collection, use, retention, and disposal of student data by education technology providers.

Schools' Rights and Responsibilities under COPPA

Schools frequently express confusion regarding their rights and responsibilities required by COPPA. They question when they must obtain consent from parents and when they are able to consent on parents' behalf to the use of specific technology. The current guidance provided by the FTC is ambiguous on this question.

Specifically, current guidance does not clarify whether the school must actively seek parental consent (as the parents' "agent"), or whether this requirement should be interpreted in line with the FERPA "school official" exception, which allows the schools to share this information without parental consent.¹ Notably, a "presumption" that a school district has obtained parent consent for the collection of student data creates a more stringent requirement than FERPA imposes upon school districts – one that can be problematic for schools.

National PTA supports the ability of families and students to have reasonable control over the collection, warehousing and use of electronic student data. However, the Commission should consider a specific exception to parental consent for the use of education technology in schools. Not allowing this exception – an exception that is already aligned with the FTC's own FAQs and is how most schools interpret COPPA – would have unintended negative consequences in an educational setting. First, the requirement would create a substantial administrative burden on schools and parents. Schools commonly use multiple web-based or online tools for instruction and assessment of students. To cite just one example, Virginia Beach City Public Schools lists on its website literally dozens of websites and apps that teachers may use in their classrooms.² It is not reasonable to expect parents to review and provide consent to any possible education technology that may be used in their child's class. Nor is it realistic for teachers to keep track of which student's parents have consented to which online app or website. Imposing this requirement would hamper teachers' ability to use the tools and resources they deem best to help their students achieve and potentially deprive many students of valuable educational supports.

COPPA provides a number of rights to parents in connection with the data collected from their children who are under the age of 13. These include the right to receive direct notice prior to the collection of such data, the right to review the personal information collected from their child, the right to revoke their consent and refuse the further use or collection of personal information from their child, and the right to delete their child's personal information.

Allowing parents to delete personal information about their child collected by schools could have a negative impact on a child's access to resources. It is easy to imagine, for example, that

¹ Under FERPA, the "school official" exception allows schools to share student data with entities – called "service providers" – without parental consent. FERPA is fairly clear on the four elements required for this exception to be applicable. These requirements include that service providers perform institutional functions, that they remain under the direct control of the school, that they use student data only for a legitimate educational interest, and that their use of the student data to which they receive access remain limited to the designated purposes explicitly authorized by the school. The district must include in its annual FERPA notice to parents its criteria for determining who constitutes a "school official" and what constitutes a "legitimate educational interest". The United States Department of Education has interpreted this exception to cover Ed Tech providers, presuming the exception's requirements are met.

² <https://www.vbschools.com/parents/COPPA>

some parents might wish to delete their child's standardized test or homework scores, undermining schools' ability to assess student performance and provide them needed support in the classroom.

Additionally, allowing (or requiring) parents to opt-into essential school functions does not provide any additional privacy benefits as FERPA already disallows schools from sharing students' personally identifiable information with entities that they do not have direct control over. Direct control must cover the use, redisclosure, and deletion of all personally identifiable information. The direct control model allows for more robust privacy protections than parents reviewing the privacy policies of the different applications, websites, and systems a school may use as part of its educational mission.

When student data is collected in support of core curricular functions, National PTA believes that schools should be able to act as parents' agents and consent on parents' behalf. However, not all student data collection meets that standard. Schools use education technology for a broad range of extracurricular, non-essential or optional activities. One example we frequently hear is the use of wireless heart rate monitors in physical education classes. In those instances, when declining to participate would not impact instruction or essential administrative functions, parents should retain their right to consent to data collection – much like parents must consent to field trips or other extracurricular activities. We ask that the FTC clarify when schools may act on behalf of parents, differentiating between technology used in support of schools' essential academic and administrative needs and other, optional uses.

Transparency and Accountability

It is important to emphasize that parental consent is not a substitute for due diligence on the part of schools and school districts. Schools must not assume that parents who are asked to consent to the collection of their child's student data will fully understand how that data will be used; indeed, parents may understandably believe that a product, platform or service suggested by their child's school has been fully vetted. It is incumbent upon schools, when entering into contracts with educational technology vendors, to ensure that student data will be used for authorized educational purposes only and prohibit the sale of student data and/or its use to target non-education related advertising to students and families.

Transparency is also critical. States, school districts and schools must be transparent and engaged with families on the development and implementation of policies and procedures related to privacy and the protection of student data. Schools and districts must also ensure that parents and families understand how technology will be used, what student data will be collected and for what purpose by clearly communicating their policies in terminology parents and families can understand. Information about education technology companies that districts have contracted with and the services they provide should be readily available and easily



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understood. National PTA commends districts that have created registries or databases listing the education technology companies with whom they have contracted.³

We thank the FTC to for the opportunity to comment before any rulemaking takes place. As the rulemaking process progresses, we would be more than happy to provide further comments as needed. Please contact Eileen Huck, Senior Manager of Government Affairs, at ehuck@pta.org or (703) 518-1225 to answer any questions or provide further input as needed.

Sincerely,

Leslie Carrell Boggs
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National PTA

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³ As an example, see the databases maintained by the [Utah State Board of Education](#) and the [Cambridge School District](#).