

FTC and the Department of Education to Host Workshop on Student Privacy and Ed Tech; Seeking Public Comments

Workshop to be held December 1, 2017

The use of “Ed Tech” has exploded over the past several years. More than half of K-12 students have access to a school-issued personal computing device, and in many school districts, online curriculum is becoming the norm. While these technologies have tremendous potential, this transformation in Ed Tech has raised questions about how the Rule implementing the Children’s Online Privacy Protection Act (“COPPA Rule”) applies in the school context, and how it intersects with the Family Educational Rights and Privacy Act (“FERPA”).

In light of these questions, the Federal Trade Commission (“FTC”) and the Department of Education (“ED”) will hold a Student Privacy and Ed Tech workshop on December 1, 2017 in Washington, D.C. The workshop is intended to gather information to help clarify how the FTC and ED can ensure that student privacy is properly protected without interfering with the promise of Ed Tech.

The workshop, which is free and open to the public, will be at the FTC’s Constitution Center, 400 7th St., SW, Washington, DC. It will be webcast live on the FTC’s website. An agenda, directions to the FTC’s Constitution Center building, and a list of speakers will be available in the near future on the event webpage.

Issued in 2000, the COPPA Rule requires operators of Websites and online services to obtain parental consent before collecting, using, or disclosing personal information from children under 13. The Statement of Basis and Purpose that accompanied the COPPA Rule addressed the concerns of some commenters that requiring parental consent for technology used in schools could interfere with classroom activities. In response, the FTC explained that schools could act as intermediaries between Ed Tech providers and parents in the notice and consent process, or act as the parents’ agent for purposes of providing consent to providers.

Passed in 1974, FERPA is a Federal law that protects the privacy of student education records. FERPA generally prohibits educational agencies and institutions from disclosing student education records without prior, written consent from a parent. ED issued [guidance](#) in 2014 explaining generally that this prohibition on disclosure does not preclude the use of Ed Tech in the classroom, provided the school follows the requirements of the “School Official Exception” to FERPA’s written consent requirement.

With schools’ increasing reliance on Ed Tech, however, a number of questions have arisen about the application of COPPA and FERPA. While the FTC and ED, through its Privacy Technical Assistance Center, have been providing guidance on these issues for several years, with the proliferation of new Ed Tech products, new use cases, and new questions about the intersection of COPPA with FERPA, the agencies believe further public discussion of this topic would be beneficial.

To aid our analysis of these issues, the FTC and ED staff seek input on the following topics, among others:

- Are the joint requirements of FERPA and COPPA sufficiently understood when Ed Tech providers collect personal information from students? Are providers and schools adhering to the requirements in practice?
- What practical challenges do stakeholders face in simultaneously complying with both COPPA and FERPA?
- Under what circumstances is it appropriate for a school to provide COPPA consent, and what process should the Ed Tech provider use to obtain consent? Who has the authority to provide and revoke consent and how?
- COPPA and FERPA both limit the use of personal information collected from students by Ed Tech vendors. What are the appropriate limits on the use of this data?
- How should requirements concerning notice, deletion, and retention of records be handled and by whom and when?
- Schools often use the “School Official Exception” to FERPA’s written consent requirement when disclosing personally identifiable information from education records to Ed Tech providers. In your experience, what are some of the ways in which schools maintain “direct control” over Ed Tech providers under FERPA’s “School Official Exception”? Should there be alignment between the “School Official Exception” and schools’ ability to provide consent for purposes of COPPA?

The FTC and ED staff welcome comment on these and related questions and issues. The FTC will accept submissions through November 17, 2017. Interested parties may file a comment online or on paper. Write “Student Privacy and Ed Tech and P175412” on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/studentprivacyedtechworkshop> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “Student Privacy and Ed Tech and P175412” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex A), Washington, DC 20580. The FTC requests that any paper submissions be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the Commission Website, at <https://www.ftc.gov/policy/public-comments>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR § 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales, statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names. If you

want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

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