



DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

December 9, 2019

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

Transmitted Electronically

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

Dear Acting Secretary Tabor:

I, Oregon Attorney General Ellen F. Rosenblum, submit the following Comment in response to the request by the Federal Trade Commission (“the Commission”) for public comment on its implementation of the Children’s Online Privacy Protection Act (“COPPA”), through the Children’s Online Privacy Protection Rule (“COPPA Rule”). Student privacy is one of my top concerns as technology has become a cornerstone in all aspects of education, including guiding instruction in the classrooms. I support the appropriate use of education technology to improve the learning experience, but also believe that the personal information of children should not be exploited for commercial gain. In this Comment, I offer my perspective on whether the Commission should consider a specific exception to parental consent for the use of education technology used in the schools (Question 23).

Question 23: In the Statement of Basis and Purpose to the 1999 COPPA Rule, the Commission noted that the Rule “does not preclude schools from acting as intermediaries between operators and schools in the notice and consent process, or from serving as the parents’ agent in the process.” Since that time, there has been a significant expansion of education technology used in classrooms. Should the Commission consider a specific exception to parental consent for the use of education technology used in the schools? Should this exception have similar requirements to the “school official exception” found in the Family Educational

Rights and Privacy Act (“FERPA”), and as described in Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices?

If the Commission considers a specific exception to parental consent for the use of education technology used in schools, the exception should have particular requirements to protect student privacy while using online educational services.

Unfortunately, it appears many education technology companies continue to use vague privacy policies or include terms that conflict with state and federal privacy laws, raising questions about whether companies are complying with their legal obligations. Parents feel helpless to understand, much less control, what information about their children is being collected, with whom it is being shared, and for what purpose.

The concerns of parents and regulators are growing since the FBI warned last September of an increasing risk that the collected troves of sensitive student information are becoming a target for malicious actors. Recently, one provider announced that accounts at over 13,000 educational institutions, including in Oregon, were breached. In July, over 7 million student records were exposed to the Internet for at least a week by an online school that also operates in Oregon.

I want to ensure that the sensitive information of Oregon schoolchildren—and schoolchildren nationwide—is being adequately protected. Therefore, if schools act as intermediaries between operators and schools in the notice and consent process, and serve as the parents’ agent in the process, there must be requirements to protect student privacy.

Question 23 (cont.): If the Commission were to amend the COPPA Rule to include such an exception:

a. Should the Rule specify who at the school can provide consent?

The COPPA Rule must stay flexible. There is no question that technology is in a constant state of evolution, and schools administer their educational technology through a variety of positions or departments. As needs, funding, and services change over time, schools must adapt technology programs effectively and efficiently. In Oregon, for example, several education service districts joined through an intergovernmental agreement to form a technology alliance that serves constituent school districts, as well as private schools and charter schools. Some schools may contract with educational technology companies via such an alliance; others may do so independently. If the Commission were to amend the COPPA Rule, it should be mindful of the variety of ways schools implement educational technology.

b. Should operators be able to use the personal information collected from children to improve the product? Should operators be able to use the personal information collected from children to improve other educational or non-educational products?

If the Commission permits operators to use the personal information collected from children to improve the product, I strongly urge the Commission to consider whether operators are able to de-identify the personal information, and are able to prevent re-identification of the data.

Furthermore, I also would ask the Commission to consider requirements on operators to disclose whether de-identified student information has been given to any third parties. For example, if operators, give de-identified information to third parties, including subcontractors or vendors, the operators should also be required to ensure that the third parties do not use the information for a prohibited purpose, delete the information when required, and implement reasonable security measures to protect the information.

Operators should not be able to use the personal information collected from children to improve other products, especially non-educational products. Consent is given for the particular product used by the school, and operators should not be able to use the personal information provided to improve any other product.

- d. Should an operator require the school to notify the parent of the operator's information practices and, if so, how should the school provide such notice?**

If the Commission allowed an operator to shift COPPA Rule Section 312.4 notification obligation to schools, that raises concerns about operators potentially shielding themselves from liability. Also, as the Commission knows, unless the school is private, the Commission likely would face jurisdiction issues in enforcing COPPA Rule obligations. Instead, the Commission may wish to consider whether the operator could provide direct notice of the operator's information practices to the school, similar to the notice requirements of Section 312.4(a)-(c). The Commission may also consider whether the operator could be required to provide notice of its information practices in manner that is easily accessible to all parents, consistent with Section 312.4(d), and to inform the school on where parents may find such notice of information practices.

- e. Should such an exception result in a preemption of state laws? If so, would that result negatively affect children's privacy?**

An exception to the COPPA Rule should not result in a preemption of state laws. Preemption of state laws would negatively affect children's privacy. Again, I support the appropriate use of education technology to improve student's learning experience, as long as the personal information of children is protected from exploitation for commercial gain. That is why I fought to pass the Oregon Student Information Protection Act ("OSIPA"), ORS 336.184, which prohibits the misuse of student information, including selling the information to third parties or using it for targeted advertising. OSIPA also requires covered entities to implement reasonable security procedures to protect the sensitive student information they collect. States, particularly in their roles as overseers of the education of students in their public education systems, are in

unique positions to protect children's privacy, and states laws can strengthen federal baseline protections.

- f. Should the scope of the school's authority to consent be limited to defined educational purposes? Should such purposes be defined, and if so, how? Should operators seeking consent in the school setting be prohibited from using information for particular purposes, such as marketing to students or parents?**

If the Commission grants a school authority to consent via the COPPA Rule, the scope of the school's authority to consent should be limited to educational purposes. However, the Commission should consider whether defining those educational purposes in the COPPA rule would permit it to stay flexible in regulating emerging educational technology.

Operators who receive consent in the school setting are in privileged positions. Families likely would not expect personal information collected for educational purposes to then be leveraged to market to students and families.

I thank the Federal Trade Commission for the opportunity to provide a Comment on its implementation of COPPA through the COPPA Rule. I appreciate the consideration of my Comment during the Rule review process, and look forward to working collaboratively with the Commission to protect student privacy.

Respectfully submitted,



Ellen F. Rosenblum
Oregon Attorney General