



March 11, 2024

Ms. April Tabor,
Secretary
Federal Trade Commission,
Office of the Secretary
600 Pennsylvania Avenue NW,
Washington, D.C. 20580.

In re Proposed COPPA Rule Review, Project No. P195404

Dear Commissioners:

The Data Quality Campaign and other undersigned organizations welcome this opportunity to respond to the Federal Trade Commission's (Commission) proposed revisions to the Children's Online Privacy Protection Rule (COPPA Rule).¹ Our organizations support the development and adoption of policies and practices designed to help educators, administrators, and policymakers use data to improve student academic and life outcomes while strenuously protecting students' privacy and well-being.

Education data systems and their use greatly benefit children and other learners. Data helps classroom educators make effective instructional choices, enables researchers and practitioners to evaluate program outcomes, and provide timely insights for administrators, policymakers, educators, and families.² These systems require strong public-private partnerships that combine the public sector's educational know-how with cutting edge private sector technology. They also depend on clear and comprehensive data protection rules aimed at ensuring children's privacy, health, and safety, such as those provided by the Family Educational Rights and Privacy Act (FERPA), the Children's Online Privacy Protection Act (COPPA), and related state laws.³ As such, our organizations support the COPPA Rule's education technology provisions, and we welcome the Commission's effort to ensure the new rule effectively addresses current technologies and aligns better with FERPA.

School Authorized Data Collection

The Commission should adopt its proposed codification of the longstanding COPPA Rule guidance permitting schools to authorize the collection of students' personal information for limited educational purposes. We support your proposal to codify the guidance in regulation to permit schools, local educational agencies, and state educational agencies to authorize the collection of students' personal information for school-authorized education purposes. The proposed regulation, consistent with current agency guidance, would provide state and local

¹ 16 C.F.R. Part 312 - Children's Online Privacy Protection Rule

² Institute of Education Sciences. (2023). Biennial Report Fiscal Years 2021-2022. Retrieved from <https://ies.ed.gov/director/pdf/biennial-report-2021-22.pdf>

³ Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g et seq.; Children's Online Privacy Protection Act 15 U.S.C. § 6501 et seq.

education systems with a practical and administratively manageable way to use data infrastructure and related technology to support student success and systemwide improvements—such as through early warning systems designed to keep students on track for graduation. Importantly, the exception will support implementation of vitally important state and federal education laws and policies, including the Elementary and Secondary Education Act’s assessment, accountability, and school improvement requirements.⁴

Definitions of “School Authorized Education Purpose,” “School,” and “Personal Information”

The Commission should adopt the agency’s proposed definition of “school-authorized education purpose.” The proposed definition would provide helpful clarity for schools and operators, and appropriately limit data collection in the limited instances when schools may consent in place of parents. Specifically, our organizations support the Commission’s proposal to define “school-authorized education purpose” as “any school-authorized use related to a child’s education” and that “authorized education purpose does not include commercial purposes unrelated to a child’s education, such as advertising.”⁵ This construction appropriately balances facilitating authorized educational uses like federally required school accountability and instructional support while avoiding unintended commercial purposes that are inconsistent with furthering children’s learning. It also aligns, appropriately, with FERPA. As the U.S. Department of Education’s Institute of Education Sciences (IES) notes, when describing FERPA’s related concept of “legitimate educational interests,” “the information is to be used within the context of official agency or school business and not for purposes extraneous to the official’s areas of responsibility or to the agency of school.” IES adds, “[t]he information is to be used consistently with the purposes for which the data are maintained.”⁶

The Commission should also adopt its proposed definition of “school” which it proposes to define as “a State educational agency or local educational agency as defined under Federal law, as well as an institutional day or residential school, including a public school, charter school, or private school that provides elementary or secondary education, as determined under State law.”⁷ Our organizations appreciate the Commission’s recognition that the education system involves multiple structures and decisionmakers. Data collection and use policies and practices, like education governance generally, involve many decisionmakers at different levels of government and the models often vary by jurisdiction. For example, the Education Commission of the States notes that “...effective [education] governance often depends on the collaboration of individuals and entities across the P–20 continuum and different structures to create, evaluate, and reform education policies to meet state goals.”⁸ Thus, we agree with the Commission’s proposal to adopt a broad definition of “school” that recognizes the different educational roles of states, school

⁴ Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6311.

⁵ Children’s Online Privacy Protection Rule, 89 Fed. Reg. 2072 (proposed Jan. 11, 2024) (to be codified at 16 C.F.R. pt. 312).

⁶ U.S. Dep’t of Educ., Forum Guide to Protecting the Privacy of Student Information: State and Local Education Agencies - 4.B. Defining “Legitimate Educational Interests” (2004), https://nces.ed.gov/pubs2004/privacy/section_4b.asp (last visited Feb. 26, 2024).

⁷ Children’s Online Privacy Protection Rule, 89 Fed. Reg. at 2072.

⁸ Jennifer Wilkins, Education Governance Dashboard (Educ. Comm’n of the States, Jan. 26, 2022), <https://www.ecs.org/education-governance-dashboard/> (last visited Feb. 26, 2024).

districts, and varied types of public and private schools—including their diverse roles and responsibilities within the education data ecosystem.

Further, the Commission should include biometric identifiers such as fingerprints, iris scans, DNA, and facial recognition (but not voice data) within the COPPA Rule’s definition of “personal information.” As the Center for Democracy and Technology notes, biometric data is highly sensitive and permanent, carrying exceptional privacy risks if compromised or repurposed.⁹ Once collected, biometrics cannot be changed like a password. The immutable nature of biometrics means improper access or use can permanently expose children to unwanted risks. By including biometrics as personal information, the COPPA Rule would appropriately recognize the need for heightened stewardship protections fitting this data’s sensitivity. Further, this approach aligns with FERPA’s definition of “personally identifiable information” offering regulatory consistency for schools.¹⁰ We believe this balanced and aligned approach would provide needed safeguards without hampering authorized educational activities.

Written Agreements, Right to Review, and Data Retention

The Commission should adopt its proposal to require a written agreement between the operator and the school laying out the requirements and limitations when an operator uses the school authorization exception. The Commission’s proposed approach would appropriately bind the parties to best practices and provide vitally important transparency for parents and guardians when schools authorize collections in lieu of their direct verifiable consent. This approach also aligns with FERPA’s writing requirement when educational agencies or institutions disclose personally identifiable information, without consent, for “studies” or the “audit or evaluation of state or federal programs.”¹¹ The Commission’s proposed writing requirement appropriately mirrors FERPA by proposing that operators detail the authorized education purpose, require school oversight of data use, mandate secure destruction when no longer needed, and set data retention limits. By adapting key provisions from FERPA and related Department of Education guidance into the COPPA Rule operator contract requirements, the Commission better aligns privacy protections that must be delivered by schools and operators.

The Commission also should provide schools the right to review student information and request that a child’s data be deleted. This proposed requirement is appropriate when data is collected for school-authorized education purposes. Granting the schools the right to review the student information in this narrow situation is practical and appropriately positions the school as the primary educational decisionmaker—subject to the oversight of the families and communities they serve. Consistent with this proposed change, we also agree that operators should be required to provide schools with notice of data collection and use practices. This obligation will ensure schools are able to make informed decisions before authorizing access to students’ data for the limited educational purposes permitted by the COPPA Rule. Likewise, we endorse the proposed requirement for an additional online notice to parents when operators rely on the school

⁹ ‘Public Agencies’ Use of Biometrics to Prevent Fraud and Abuse: Risks and Alternatives’ (Center for Democracy and Technology 7 June 2022) <https://cdt.org/insights/public-agencies-use-of-biometrics-to-prevent-fraud-and-abuse-risks-and-alternatives/> accessed 26 February 2024

¹⁰ 34 C.F.R. 99.3.

¹¹ 34 C.F.R. 99.31.

authorization exception. This will promote transparency for students and families about how student data is being used for educational purposes.

Further, the Commission should adopt the proposed rule’s recommended changes on data retention and deletion. We agree that operators should retain personal information for only as long as is reasonably necessary for the specific purpose for which it was collected, and not for any secondary purpose. We also agree that operators should delete the information when such information is no longer reasonably necessary for the purpose for which it was collected. The proposed changes strike the right balance by adding structure while retaining flexibility to accommodate different data types. Too often, data destruction has been left to individual discretion and the rule would remove that uncertainty. While we appreciate that change, we also believe it important that the rule’s deletion provisions both recognize and defer to state education record keeping laws and not inhibit authorized educational purposes. For example, the proposed rule’s retention and deletion proposed changes must still enable and allow, among other things, longitudinal research, school accountability, systemic school improvements, and other school-authorized education purposes.

Our organizations particularly appreciate that the proposed requirements align with key FERPA principals emphasized by the Department of Education, including removing personally identifiable information when it is no longer needed for an authorized purpose. FERPA guidance and requirements recognize proper data destruction as integral to reasonable data security without interfering with legitimate educational uses.¹² For example, although FERPA does not have an overarching data deletion requirement, exercising the law’s “studies” exception requires destroying all personally identifiable information from education records when the information is no longer needed for the purposes for which the study was conducted, and specify the time period in which the information must be destroyed.¹³ We are happy to see such an approach adopted in the proposed rule as well.

User Attention and Engagement

The Commission should adopt the proposed prohibition on using children's data to maximize user attention and engagement. Our organizations recognize the dangers associated with using children’s personal information to maximize their time spent online. Prohibiting the use of data to optimize children’s attention provides an essential safeguard against digital addiction and other documented challenges.¹⁴ Our organizations believe this practical limit on data use strikes the right balance between facilitating beneficial online experiences and preventing foreseeable harms.

¹² U.S. Dep’t of Educ., Statewide Longitudinal Data Systems Grant Program SLDS Record Retention and Data Destruction SLDS Guide (2021), <https://slds.ed.gov/services/PDCService.svc/GetPDCDocumentFile?fileId=41274>.

¹³ 34 CFR 99.31(a)(6)(iii)

¹⁴ U.S. Surgeon Gen. Advisory, Social Media and Youth Mental Health (2023), <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf>

Conclusion

Thank you for providing this opportunity to comment on the Commission's proposed update to the COPPA Rule. We respectfully encourage you to codify the school authorization exception, update the rule's definitions consistent with this authorization, require written agreements, and the other vitally important policy changes described above. If you would like to discuss our recommendations, or if you need further information from our organizations, please let us know.

Sincerely,

Data Foundation
Data Quality Campaign
National Center for Learning Disabilities
National Urban League
Knowledge Alliance
Results for America