AASA
THE SCHOOL SUPERINTENDENTS ASSOCIATION

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March 11, 2024

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

RE: COPPA Rule Review, Project No. P195404

AASA, The School Superintendents Association, representing 13,000 school district leaders across the United States, writes in response to the January 11, 2024 Notice of Proposed Rulemaking (NPRM) from the Federal Trade Commission (Commission) to amend the Children's Online Privacy Protection Rule (COPPA). We would like to thank the Commission for explicitly codifying schools' authority to consent to the use of educational data under the "school authorization exception."

Our members are committed to leveraging privacy-protective technologies and data practices to promote better outcomes for students. We strongly support updates and revisions to child privacy protections in COPPA. At the same time, we also recognize that protections for children must reflect the realities of technology and its use in schools across the nation. We applaud the Commission's proposed codification of the "school authorization exception" and believe that this is an appropriate solution to bolstering online privacy protections for children while maintaining schools' ability to effectively incorporate educational technologies (edtech) into the classroom.

We have included our responses to several of the Commission's questions below. Specifically, AASA recommends that the Commission:

1. Retain the proposed language codifying the school authorization exception in the final version of the rule, preserving the ability of schools to consent to edtech use and ensuring children continue to experience the benefits and opportunities of technology-enhanced educational services at school.
2. Clarify that schools can exercise all COPPA rights provided by the Rule in lieu of parents when schools are acting pursuant to the school authorization exception to ensure that schools are able to exert control over operators' redisclosure of education data.
3. Include the language prohibiting operators from using the information they collect under the school authorization exception to develop or improve different services.

4. Not further limit the current scope of services considered to be “school authorized education purposes.”

5. Require operators to state which disclosures are integral to the nature of a website or online service, and clarify what types of disclosures may be considered integral to edtech.

6. Specify what personal information is reasonably necessary for students to disclose to create an account on edtech platforms, and prohibit operators from requesting additional information at the account creation stage.

7. Expand the definition of “personal information” to include other government-issued identifiers.

8. Protect children’s screen or user names as personal information and as online contact information.

We greatly appreciate your dedication to strengthening privacy protections for children online while ensuring that schools can continue to provide students with technology-enhanced educational services. If you have any questions, please feel free to reach out to us at avance@aasa.org.

Sincerely,

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1. **Retain the proposed language codifying the school authorization exception in the final version of the rule, preserving the ability of schools to consent to edtech use and ensuring children continue to experience the benefits and opportunities of technology-enhanced educational services at school. (Question 1)**

School districts have consistently relied on the Commission's COPPA FAQs and the Statement of Basis and Purpose to the 1999 COPPA Rule for authority to consent to data collection and use on behalf of parents in educational contexts if the technology services are solely for the use and benefit of the school and for no other commercial purpose. We strongly support the Commission's explicit codification of this long-standing administrative policy, which has become fundamental to the basic administrative and educational functions of school districts. There has been a push by some stakeholders to change current practices to prohibit school consent and require parental opt-in or opt-out of edtech use and subsequent data collection, which would create a massive administrative and educational burden for schools. It can be a very difficult process for schools to obtain parental consent, often resulting in low response rates. If parental consent were required to use edtech in the classroom, teachers may choose to forgo using edtech with their students altogether. Additionally, parents may lack the necessary expertise to evaluate potential advantages and risks of collecting and using student data. This burden should not fall on parents; rather, schools should retain the responsibility of thoroughly vetting the edtech used in their classrooms. For this reason, codifying the "school authorization exception" is crucial to both preserving the ability of schools to consent to edtech use and to ensuring children continue to experience the benefits and opportunities of technology-enhanced educational services at school.

Furthermore, we greatly appreciate that the proposed rule defines the term "school" more broadly than how the term was defined in the Commission's 2023 settlement with Edmodo. The Edmodo settlement's narrow definitions of "school" and "school authorization" may not have covered local education agencies (LEAs)–like districts or education service agencies–that often contract with edtech companies, thus potentially prohibiting them from consenting to edtech use in classrooms. This interpretation would have significantly disadvantaged schools, possibly requiring individual schools to negotiate and contract with edtech companies on their own, without the additional experience and resources of their LEAs. The NPRM accounts for and resolves this problem by explicitly including "State educational agency or local educational agency as defined under Federal law" in the definition of "school." We strongly applaud and appreciate this addition, as it both adds clarity and preserves the current interpretation of COPPA that allows school districts to enter contracts with edtech companies.

2. Clarify that schools can exercise all COPPA rights provided by the Rule in lieu of parents when schools are acting pursuant to the school authorization exception to ensure that schools are able to exert control over operators' redisclosure of education data. (Questions 14 and 15)

COPPA gives certain rights to parents when they consent to operators collecting information from their children. Specifically, COPPA requires operators to provide parents the ability to review the categories of personal information collected from their child, to refuse further collection of information from their child, and to direct the operator to delete information collected from their child. We greatly appreciate how the proposed rule clearly states that operators must provide these rights to schools, rather than to parents, when schools consent to data collection under the school authorization exception. However, we are concerned that the proposed rule may be interpreted to limit the rights of schools when schools consent under the school authorization exception. Notably, we are concerned that there is ambiguity about whether additional parental rights described in the NPRM—like the right to authorize disclosures to third parties–will also transfer to schools when schools consent to data collection. This stems from uncertainty about how the Commission characterizes the school's role in providing consent to educational data collection. As written, the school's role in providing consent to educational data collection under the school authorization exception may be characterized in two distinct ways:

1. The school is acting in lieu of parents; or
2. The school is exercising an exception to verifiable parental consent.

If the school's role in consenting to data collection under the school authorization exception is characterized as the school acting in lieu of parents in the narrow context of the school authorization exception, the school would be better equipped to exert control over operators' redisclosure of education data. In this case, *all* parental rights under COPPA would transfer to schools–including the ability to authorize operators to make disclosures to third parties for educational purposes.

On the other hand, if the school's role in providing consent to educational data collection is characterized as the school exercising an exception to verifiable parental consent, the school would *only* receive the specific rights discussed in the proposed rule's school authorization exception—review, refusal, and deletion. This would mean that parents retain the sole ability to authorize third party disclosures and schools may be prohibited from providing such consent. Not only would this interpretation limit school's ability to partner with third party community organizations, but this may also inadvertently restrict schools' ability to unilaterally share student information with third party community partners under various exceptions to FERPA.

To resolve this ambiguity and ensure schools have the ability to authorize educational data uses, we recommend that the Commission explicitly clarify that where personal information is collected from children pursuant to § 312.5(c)(10), the school is acting in lieu of parents. As

such, the operator is required to provide schools with *all* rights otherwise provided to parents under the proposed rule. It is crucial that this include the right to consent to disclosure of children's personal information to third parties under § 312.5(a)(2). This would clarify schools' rights to control educational data use while retaining the restriction on using or sharing data for non-educational purposes. Additionally, it would also align with FERPA by enabling operators to fulfill schools' requests to share student information with third parties under an exception to parental consent in FERPA.

We also support the proposed rule's approach to prohibiting operators from using the internal operations exception to encourage or prompt children to use their service without first obtaining consent. This tailored restriction furthers the goals of COPPA by providing parents and schools with more information and control over how children's personal information is used. This may be a useful tool to combat concerns around mental health that schools constantly face. Therefore, we support restricting the ability of operators to utilize engagement techniques on their platforms to the detriment of children's mental health and wellbeing. We appreciate that the proposed rule does not ban all nudges in edtech products, but rather provides additional controls to parents–and, as discussed below, optimally also to schools–more control over which nudges students are exposed to. Nudges in the educational context can benefit students when appropriate guardrails are in place. When positive nudging is incorporated into edtech, students may be encouraged to stay engaged with healthy, productive, and learning-based content. Nudging can also be used to encourage children to engage in healthy activities, such as sharing information that supports their health and wellbeing with appropriate parties that can act on that information. That being said, all nudging techniques should not be widely embraced in edtech or by society as a whole–nudging algorithms can obscure or manipulate children's ability to exercise their rights, encourage children to reveal sensitive information about themselves, or push children to engage in unhealthy behaviors. The Commission should protect children from the potential harms of design techniques, but should not include a blanket prohibition of nudging that would prohibit edtech companies from incorporating positive nudges into their platforms that encourage students to continue learning.

However, this is another area where it is necessary to also clarify that schools are able to act in lieu of parents in regards to other rights provided to parents in COPPA outside of the school authorization exception context. Schools should be able to provide consent to the limited use of nudges to promote pedagogical engagement on edtech platforms.

3. Include the language prohibiting operators from using the information they collect under the school authorization exception to develop or improve different services. (Question 1)

We strongly support the Commission's clarification that "An operator may not use the information it collected from one educational service to develop or improve a different service." Schools carefully vet the privacy and security settings in edtech products when choosing what technologies to procure and often negotiate additional contract provisions with the operator to

further protect student data. Once schools have completed the technology procurement process, operators should not then be permitted to use student data for secondary purposes that the school did not authorize. For example, a school may consent to an operator of a geometry app collecting student data through the app and then using that information to further improve the geometry app, such as personalizing the app with the geometry games most likely to improve a specific student's learning. This type of use benefits the school because it improves the *specific service* that the school is using with its students and enhances student experiences and outcomes. However, the operator should not automatically be permitted to use student information collected through the geometry app to develop *other products*, such as to create a separate algebra app that they can then market to the school or to parents.

Education leaders want to ensure that student data is protected while enabling the development of innovative products that support student learning and well-being. However, we also share the Commission's concern about opening up pathways for operators to use student data for product development purposes. While some product development is beneficial to schools and students, operators should not be permitted to use student data in ways that differ from the schools' reasonable expectations. For instance, if a school uses an operator's product to filter network activity, the operator should not then be able to use collected student data to create a personalized learning app because such use would be substantially outside the schools' reasonable expectations.

This issue is especially important in light of the increasing use of algorithms in edtech. When identifiable student data is used to build or to train an algorithm, operators should be prohibited from using that algorithm for any purpose outside of the specific purpose the school has consented to. If operators wish to develop an algorithm for use beyond the scope of what the school has consented to, operators must properly de-identify all student data prior to using it to build or train that algorithm.

Therefore, we support the Commission's proposal to "include product improvement and development (as well as other uses related to the operation of the product, including maintaining, supporting, or diagnosing the service)" as school-authorized education purposes under COPPA, "provided the use is directly related to the service the school authorized." This strikes an appropriate balance by "permit[ting] operators to improve the service, for example by fixing bugs or adding new features, or develop a new version of the service" that the school is using, without allowing operators to use student information in ways that the school did not agree to.

4. Not further limit the current scope of services considered to be "school authorized education purposes." (Question 16)

We thank the Commission for explicitly codifying schools' authority to consent to the use of educational data under the "school authorization exception" and appreciate the Commission's careful consideration of how to appropriately limit the definition of "school-authorized education

purpose." However, we caution that overly stringent tailoring of this definition may hinder schools' ability to provide opportunities and resources for students. Nearly all schools rely on technologies that play a crucial role in supporting students and school administration despite not being “directly related” to teaching. For example, learning management systems and technology used to support school counseling, though vitally important to school operations, would fall under this category. These technologies are critical to school administration and have positive impacts on students’ overall experience, but are not directly related to teaching. Therefore, we ask the Commission to maintain the current scope of the data collection schools may consent to under COPPA–when operators collect personal information from students under 13 for the use and benefit of the school, and for no other commercial purpose. Due to the vast differences in how different schools utilize technology, it is more appropriate to reserve decisions about how to further tailor or limit how schools may consent to technology uses to school districts’ local control.

5. Require operators to state which disclosures are integral to the nature of a website or online service, and clarify what types of disclosures may be considered integral to edtech. (Question 14)

We support the Commission’s proposal requiring operators to obtain separate verifiable consent before disclosing children’s personal information to non-integral third parties. We also support providing schools with more clarity about what disclosures are integral to the nature of an edtech platform. The Commission should clarify what types of disclosures may be considered integral, specifically addressing what disclosures are integral to edtech. Requiring this type of transparency would help schools better evaluate the privacy protections in edtech products.

6. Specify what personal information is reasonably necessary for students to disclose to create an account on edtech platforms, and prohibit operators from requesting additional information at the account creation stage. (Question 17)

The Commission should specify what personal information is reasonably necessary for students to disclose for account creation purposes when asked by their teacher to use a specific edtech platform. We understand that some operators may need to collect information such as a student’s name, email address, birthday, and more when creating an account to use an edtech product, but this is not true for all edtech. The Commission should specify that when students under 13 are creating an account to use an edtech product at the direction of their school, operators are not permitted to require that students disclose more personal information than is reasonably necessary to create the account. For example, if an operator is legally required to offer different privacy settings based on what state a user lives in, it may be reasonably necessary for the operator to require users to disclose what state they live in upon account creation. However, in this circumstance, it would not be reasonably necessary in this

circumstance for the operator to condition account creation on users entering additional, more precise geolocation information (such as ZIP Code or home address).

Relatedly, the account creation process becomes increasingly difficult when operators provide an opportunity for students to disclose more information beyond what is reasonably necessary for them to collect at the account creation stage. In many cases, there is not a clear distinction between which information the operator requires users to disclose and which information fields are optional. Not clearly delineating which information is mandatory and what is optional may lead to students unintentionally disclosing more information than is reasonably necessary to create an account, thus violating their privacy rights. The Commission should either prohibit operators of edtech platforms from collecting information that is not necessary at the account creation stage, or require that operators clearly differentiate between what information is required from what fields are optional.

7. Expand the definition of "personal information" to include other government-issued identifiers. (Question 7)

A variety of different government-issued identifiers are collected when children register for school. The Commission should revise the definition of "personal information" to include other government-issued identifiers because they are unique personal identifying codes that relate specifically to an individual and can be used to identify that individual. This would help to ensure vendors protect this information in a privacy protective manner.

8. Protect children's screen or user names as personal information and as online contact information. (Question 4)

Screen or user names should be protected as personal information under COPPA. This is especially true if students are using educational identifiers, such as their student ID number or school email address, as their screen or user name or in their account information. Additionally, since it is increasingly common for children to use the same screen or user name across multiple different platforms, screen or user names should also be regarded as online contact information. We share the Commission's concern that a child's repeated use of a screen or user name across platforms, including platforms used at the direction of their school, may permit others to contact the child on another online service. We are also concerned that a child's repeated use of a screen or user name across platforms, including platforms used at the direction of their school, may impermissibly enable others to link information collected across various platforms with FERPA-protected PII.