



March 11, 2024

Ms. April Tabor, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**In re Proposed COPPA Rule Review, Project No. P195404**

Dear Ms. Tabor:

The Consortium for School Networking (“CoSN”) welcomes this opportunity to respond to the Federal Trade Commission’s (“Commission”) proposed revisions to the Children’s Online Privacy Protection Rule (“COPPA Rule”).<sup>1</sup> CoSN is a national elementary and secondary education, non-profit, professional association that serves school technology leaders, their teams, and school districts from across the United States, including by providing comprehensive data privacy technical assistance and via the CoSN Trusted Learning Environment student data privacy framework and seal program.<sup>2</sup>

CoSN supports the COPPA Rule’s purpose and goal of protecting children’s privacy while enabling effective and secure digital learning. We agree with the Commission that updating the COPPA Rule to address new technologies and changing data practices is necessary. Today, digital learning requires the collection and use of personally identifiable information from students for classroom instruction, digital learning, school and technology administration, and other necessary educational activities like research and evaluation. Families’ trust in schools’ use of data for education, including schools’ use of private sector technologies and services, depends on policies, like the COPPA Rule and the Family Educational Rights and Privacy Act (FERPA)<sup>3</sup>, that strive to protect students’ privacy by preventing data disclosures for unauthorized purposes.

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<sup>1</sup> Children’s Online Privacy Protection Rule, 89 FR 2034 (Jan. 2024), <https://bit.ly/48J0NvO> (last visited Feb 29, 2024).

<sup>2</sup> *Trusted Learning Environment Seal (TLE Seal) | CoSN*, CoSN (2024), <https://www.cosn.org/edtech-topics/trusted-learning-environment/> (last visited Feb 29, 2024).

<sup>3</sup> Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g et seq.

## **THE COPPA RULE SHOULD PERMIT SCHOOLS TO CONSENT TO DATA COLLECTION FOR “SCHOOL-AUTHORIZED EDUCATION PURPOSES”**

CoSN supports codifying in regulation the agency’s long-standing COPPA guidance that enabled schools to consent to operators’ collection of students’ personal information for appropriate educational uses. Updating the COPPA Rule to permit schools to consent only for “school authorized education purposes”, as proposed by the Commission, will permit schools to make education technology decisions while also shielding students’ confidential data from improper commercial uses and harmful disclosures. Paired with new rules designed to strengthen the COPPA Rules’ privacy protections, such as new security and transparency requirements, the new regulation will ensure that the rule continues a tradition of properly balancing schools’ legitimate educational uses with needed online protections for young learners. In addition, the proposed COPPA Rule’s better alignment with FERPA will also help schools and operators comply with the laws, as applicable. As the Commission works to promote alignment between COPPA and FERPA, we also encourage the agency to work with the U.S. Department of Education to publish joint guidance about the two laws and their related regulations.

## **THE COPPA RULE SHOULD DEFINE “SCHOOL-AUTHORIZED EDUCATION PURPOSE” AND “SCHOOL” CONSISTENT WITH LEGITIMATE EDUCATIONAL PRACTICES AND ALIGNED TO COMMON EDUCATION GOVERNANCE MODELS**

CoSN supports the Commission’s proposed definition of “school-authorized education purpose”. Limiting the term to the “specific educational service that the school authorized” and prohibiting unrelated commercial purposes sets clearer and more understandable boundaries for schools and operators. We encourage the Commission to add a reference to cybersecurity to the list of related administrative functions included in the proposed regulation’s authorized purpose definition, so that the final rule reads, “*securing, maintaining, developing, supporting, improving, or diagnosing the service*”. We also support the Commission’s proposed definition of “school” to include individual schools as well as local educational agencies and State educational agencies, as those terms are defined under federal law. We recommend that the Commission also consider adding “educational service agencies” to the definition, as that term is used in the Elementary and Secondary Education Act<sup>4</sup>, given the role such entities sometimes play in providing technology and other supports to students on behalf of the school districts they serve on a regional basis within the vast majority of states.<sup>5</sup> This inclusive approach aligns with the nation’s multiparty education governance model, including accounting for state and regional technology acquisitions.

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<sup>4</sup> Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27, 20 U.S.C. ch.70.

<sup>5</sup> Educational Service, *Educational Service Agencies: Review of Selected/Related Literature*, Association of Educational Service Agencies | AESA (2021), <https://www.aesa.us/2021/06/02/educational-service-agencies-review-of-selected-related-literature/> (last visited Mar 3, 2024).

We also agree with the Commission that adding biometrics to the definition of protected “personal information” is appropriate given the heightened privacy risks associated with such data. Furthermore, modifying the COPPA Rule’s personally identifiable information definition to include geolocation data, audio files containing a child’s image or voice, and persistent identifiers is appropriate, and will align the law more closely with FERPA’s personally identifiable information definition. We urge the Commission, however, to ensure the new definition does not inadvertently prevent legitimate educational activities or other properly authorized data collection such as the disclosures required for research including longitudinal studies.<sup>6</sup>

### **THE COPPA RULE SHOULD REQUIRE WRITTEN AGREEMENTS THAT HELP FAMILIES UNDERSTAND SCHOOLS’ COPPA AUTHORIZATION PRACTICES AND TO OUTLINE RELATED PRIVACY AND SECURITY REQUIREMENTS**

CoSN supports the Commission’s proposal to require written agreements that describe the parameters of the exception. This change would better align the COPPA Rule with the writing obligations associated with FERPA’s studies exception and audit and evaluation exception. We agree with the Commission that the proposed written agreements should provide transparency for families by identifying “who from the school may provide consent and attesting that such individual has the authority to provide consent; the limitations on the use and disclosure of student data; the school’s control over the use, disclosure, and maintenance of the data; and the operator’s data retention policy.” The Commission should consider adding a disclosure about applicable state data breach notification requirements. Furthermore, we support the Commission’s proposed transparency regarding local data retention and deletion policies so long as the rule does not overstep and conflict with state education record keeping requirements and practices or hinder appropriate education research. We also strongly support the Commission’s proposal to improve communication and transparency with families and students by requiring operators to post agreements for the purpose of providing additional information to parents. The proposed agreements and related public notices will help to reassure families and students about the privacy and security of their personal information.<sup>7</sup>

### **THE COPPA RULE SHOULD STRENGTHEN DATA SECURITY REQUIREMENTS ASSOCIATED WITH SHARING FOR “SCHOOL-AUTHORIZED EDUCATION PURPOSES”.**

CoSN strongly supports the Commission’s proposal to strengthen the COPPA Rule’s data security requirements. CoSN’s *2023 State of EdTech Leadership Support Survey* shows that cybersecurity ranks, as it has for many years, as the number-one concern for education

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<sup>6</sup> U.S. Department of Education, Office of Educational Technology, National Educational Technology Plan, Washington, D.C., 2024, See for e.g., p. 12, Leveraging Technology to Meet the Needs of All Learners.

<sup>7</sup> Consortium for Sch. Networking, CoSN Student Data Privacy Toolkit Student Data Privacy Fundamentals (2023), <https://www.cosn.org/wp-content/uploads/2023/01/CoSN-Student-Data-Privacy-Toolkit-Part-1-2023.pdf> (last visited Feb. 29, 2024).

technology leaders.<sup>8</sup> This concern reflects the serious consequences of the relentless cyberattacks that have targeted schools in recent years. The Government Accountability Office has said, “Cyberattacks can...result in the disclosure and theft of students’ and school employees’ (like teachers’) personal information. Schools and school districts collect and store a lot of personal information about students and employees.”<sup>9</sup> Requiring operators to ensure service providers and third parties maintain the confidentiality, security, and integrity of children's data is a common-sense safeguard. Sometimes student data is disclosed without sufficient prior diligence to provide assurances it will be properly secured. Establishing appropriate security safeguards for this sensitive data is essential.

Thank you again for inviting public comment about the Commission’s proposal for modernizing the COPAA Rule. Enhancing new student privacy protections while continuing to enable schools to fully leverage private sector technology partnerships will ensure that students benefit from high quality digital learning for many years to come. Please contact us if have any questions, or if you require any additional information, about these recommendations.

Sincerely,

/s/ Keith Krueger

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<sup>8</sup> Consortium for Sch. Networking, CoSN 2023 State of EdTech Leadership: Tenth Annual National Survey (2023), <https://www.cosn.org/CoSN-2023-national-survey> (last visited Feb. 29, 2024).

<sup>9</sup> Accountability Office, *As Cyberattacks Increase on K-12 Schools, Here Is What’s Being Done*, Gao.gov (2023), <https://www.gao.gov/blog/cyberattacks-increase-k-12-schools-here-whats-being-done> (last visited Mar 3, 2024).