

Student Privacy and Ed Tech

Introductory Remarks

Kristin Cohen

Federal Trade Commission



Opening Remarks

Thomas B. Pahl

Acting Director, Bureau of Consumer Protection
Federal Trade Commission



Panel 1: Setting the Stage





OFFICE OF
Educational Technology

Education Technology and Student Privacy Workshop

December 1, 2017

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Office of Educational Technology • US Department of Education

 @OfficeOfEdTech | tech.ed.gov

“Technology can be a powerful tool for transforming learning. It can reinvent our approaches to learning and collaboration, shrink long-standing equity and accessibility gaps, and adapt learning experiences to **meet the needs of all learners.**”

— *2017 National Education Technology Plan*

Technology Advancement Timeline



Ipod
Oct. 2001



Ipad
Apr. 2010



Apple Watch
Sept. 2014

Hoverboards
May. 2015



Echo Dot
June. 2015



Driverless
Car
2016/17

Google.com
Sept. 1997



Search the web using Google!

Google Search I'm feeling lucky

Iphone
June 2007



Google Glasses
Apr. 2012



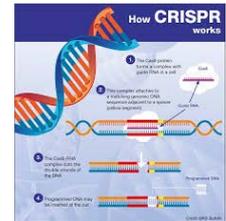
Virtual Reality
2014



Touchable 3D
Holograms
June 2015

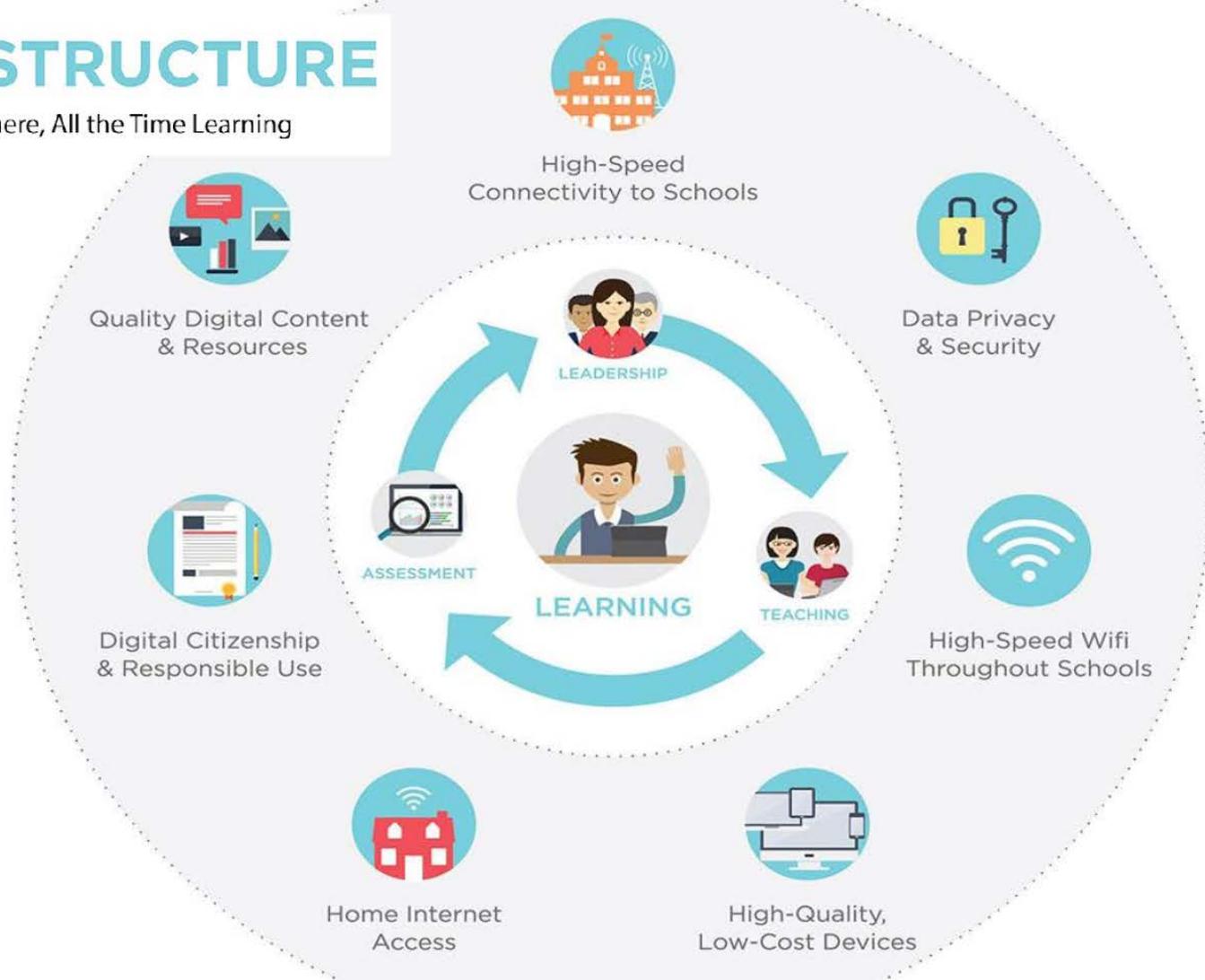


Gene editing
2016



INFRASTRUCTURE

To Support Everywhere, All the Time Learning



94%

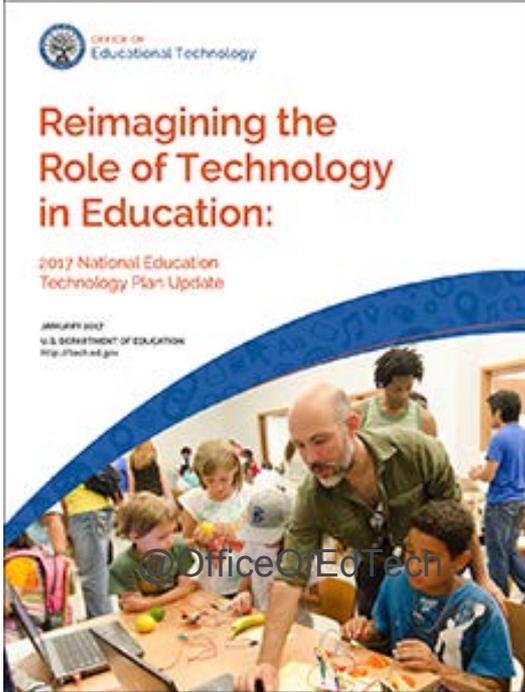
of schools meeting 100kbps per student goal

6.5 million

students left to connect



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Educational Technology



National Education Technology Plan

January 2017

tech.ed.gov/netp

- » **Adaptive learning:** technology used to assign human or digital resources to learners based on their unique needs.
- » **Individualized learning:** the pace of learning is adjusted to meet the needs of individual students¹
- » **Differentiated learning:** the approach to learning is adjusted to meet the needs of individual students
- » **Competency-based learning:** learners advance through a learning pathway based on their ability to demonstrate competency, including the application and creation of knowledge along with skills and dispositions

Personalized learning

refers to instruction in which the **pace of learning** and the **instructional approach** are optimized for the needs of each learner. Learning objectives, instructional approaches, and instructional content (and its sequencing) may all vary based on learner needs. In addition, learning activities are made available that are **meaningful and relevant to learners**, driven by their interests and often self-initiated.

PERSONALIZED LEARNING

Anywhere, anytime learning

Students needs

Student ownership

Close learning gaps



Student centered learning

Mastery Learning

Environment for learning

Immediate feedback

Pace



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The Children's Online Privacy Protection Act

Peder Magee
Federal Trade Commission

COPPA BACKGROUND

- Statute enacted in 1998
- FTC's Rule in 1999 (amended in 2012)
- Goals
 - Allow parents to make informed choices about when and how children's personal information is collected, used, and disclosed online.
 - Enable parents to monitor their children's interactions and help protect them from risks of inappropriate online disclosures.



BASIC REQUIREMENT

- Operators of commercial websites and online services must provide **NOTICE** and obtain parents' **CONSENT** before collecting personal information from children < 13.



COPPA applies to Online Collection

- Websites – content accessed through Browser
- Online Services – any service available over the Internet, or that connects to the Internet or a wide area network.
 - Mobile apps
 - Internet-enable gaming platforms
 - Voice-over-Internet protocol services
 - Connected toys



Who must comply?

- Operators of **child-directed** websites and online services collecting personal information.
 - Assume everyone coming to site or using service is a child.
- Operators with **actual knowledge** they are collecting personal information from kids under 13.
 - Can include general audience sites and service collecting on their own or through another child-directed site or service.



“Personal Information”

- Full name
- Physical address
- Online contact info
- Screen or user name (functions like online contact)
- Telephone
- Social Security #
- Persistent ID
- Photo, video, audio of child’s image or voice
- Geolocation (street and town)
- Info combined with above



If covered, you must ...

■ Provide Notice

- Post a **privacy policy** and links to the policy wherever personal information collected.
- Give parents **direct notice** of information practices.

■ Obtain Consent

- With certain exception, obtain **verifiable parental consent** before collecting personal information.

■ Other Data Responsibilities

- Access, security, collection and retention limits.



COPPA and Schools

- COPPA applies to operators of commercial websites and online services, **not to:**
 - Nonprofits
 - **Public Schools**



School Consent

- Operators can get consent from schools instead of parents to collect personal information from students.
 - As long as for use and benefit of the school and **no other commercial purpose**.
 - Best practice is go through school or district.
 - Provide notice to school.



Questions

- How should schools provide COPPA consent?
- What process should the Ed Tech provider use to obtain consent?
- What are the appropriate limits on the use of data when school provides consent?
- How should requirements concerning notice, deletion, and retention of records be handled and by whom and when?



FERPA 101 for Ed Tech

Michael B. Hawes
U.S. Department of Education



Family Educational Rights and Privacy Act (FERPA)

- Gives parents (and eligible students) the right to access and seek to amend their children's education records
- Protects personally identifiable information (PII) from education records from unauthorized disclosure
- Requirement for written consent before sharing PII – unless an exception applies

(20 U.S.C. §1232g & 34 CFR Part 99)



Personally Identifiable Information (PII) under FERPA

- Direct Identifiers (e.g., name or id number)
- Indirect Identifiers (e.g., date or place of birth)
- *“Other information that, alone or in combination, is linked or linkable to a specific student...”* (§ 99.3)



Education Records under FERPA

“Education Records” are records:

- Directly related to the student; and
- Maintained by (or on behalf of) an educational agency or institution.



Is student information used in online educational services protected by FERPA?

It depends!

Some data used in online educational services are protected by FERPA.

Other data may not be.

Schools and Districts will typically need to evaluate the use of online educational services on a case by case basis to determine if FERPA-protected information is implicated.



FERPA Exceptions to Consent

Two of FERPA's exceptions to the parental consent requirement are most relevant when using education technology:

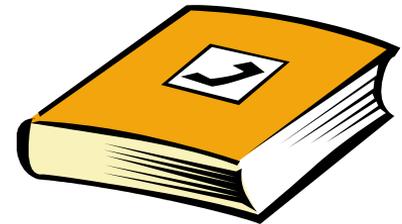
- Directory information exception
- School official exception

See §99.31 for information on other FERPA exceptions and their requirements.



Directory Information Exception

- Allows schools to release certain information without consent.
- Schools/Districts must designate the data elements they consider to be Directory Information.
- Parents have a right to opt-out of disclosures under the Directory Information exception!



School Official Exception

Schools or districts can use the School Official exception to disclose education records without consent if the recipient:

- Performs a service/function for the school/district for which the school/district would otherwise use its own employees
- Is under the direct control of the school/district with regard to the use/maintenance of the education records
- Uses education data in a manner consistent with the definition of the “school official with a legitimate educational interest,” specified in the school/district’s annual notification of rights under FERPA
- Does not re-disclose or use education data for unauthorized purposes



3 Ways to Provide Student Information to Service Providers

- Consent
- Directory Information
- School Official Exception

Each method has its own limitations and requirements!



Are providers limited in what they can do with the student information they collect or receive?

If PII is disclosed using Written Consent:

- Limited by the provisions of the consent statement

If PII is disclosed under the Directory Information exception:

- Typically, no limitations

If PII is disclosed under the School Official exception:

- PII from education records may only be used for the specific purpose for which it was disclosed
- Providers may not sell or share the PII, or use it for any other purpose except as directed by the school/district and as permitted by FERPA



For More Information:

Protecting Student Privacy while Using Online
Education Services: Requirements and Best Practices

Available at <https://studentprivacy.ed.gov>



Privacy Technical Assistance Center

<http://studentprivacy.ed.gov/>

Help Desk (privacyTA@ed.gov)

Guidance and Best Practice Documents

- Data Sharing under FERPA
- Data Security
- ...and much, much more.

Videos

- FERPA for Parents and Students
- Designing a Privacy Program
- ...and many others.



State Student Privacy Laws

Amelia Vance, Education Policy Counsel
Future of Privacy Forum



Landscape of Privacy Concerns

- The “cloud” and other amorphous terminology
- The scope and type of student data schools collect
- Who is collecting and accessing student data/education records
 - Federal/State
 - Third parties
- How student data is being used
- Privacy beyond data



State Laws Passed Since 2013

<https://ferpasherpa.org/state-laws/>

FERPA SHERPA | The Education Privacy Resource Center

for STUDENTS for PARENTS for EDUCATORS for LEAS for SEAS for HIGHER ED for ED TECH for POLICYMAKERS BLOG RESOURCES

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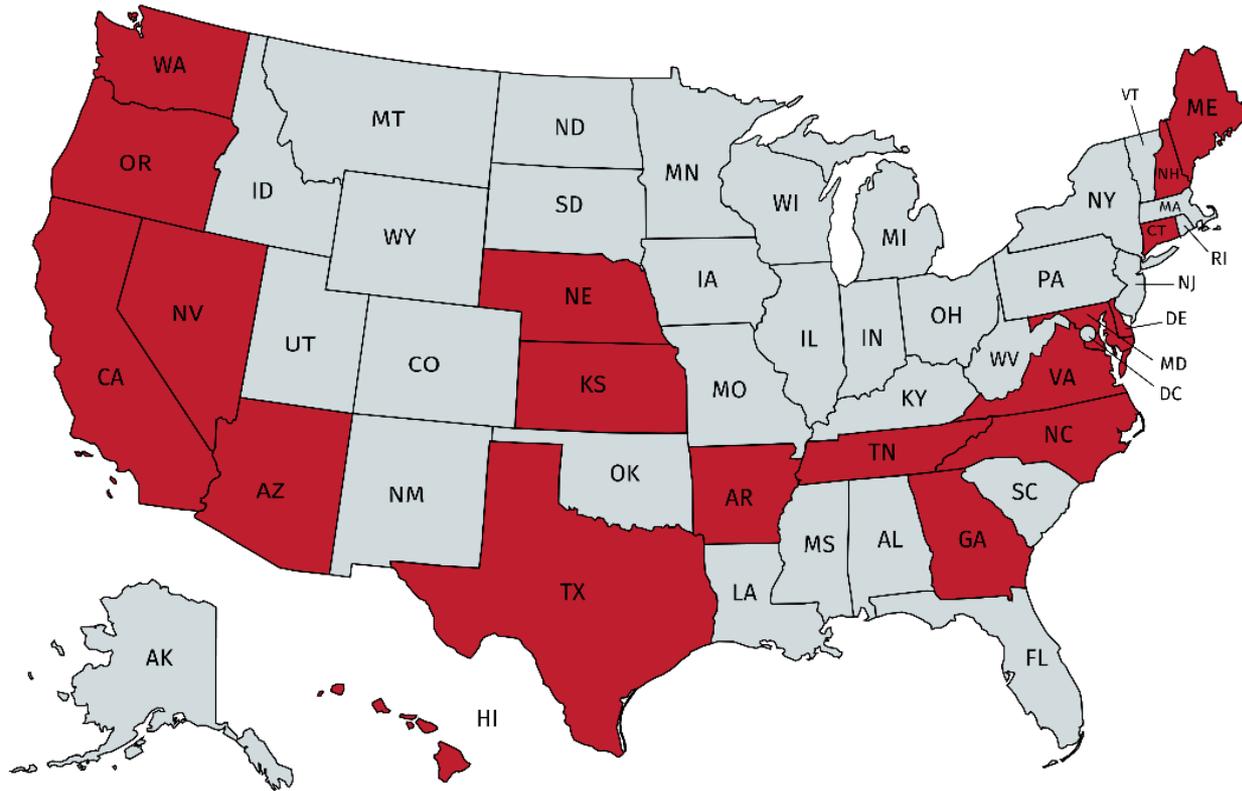
State Student Privacy Laws

Passed 2013-2017

Year Passed	State	BILL NUMBER	High Level Summary	Early Ed (Y/N)	K-12 (Y/N)	Higher Ed (Y/N)	Legislating Vendors (Y/N)	Legislating SEAs (Y/N)	Legislating LEAs (Y/N)
2013	Arizona	SB 1450	For school districts that release directory information to educational and occupational/military recruiters, they must provide students with the opportunity to opt-out of that release. Student transcripts can't be released unless the student consents in writing.	N	Y	N	N	Y	Y
2016	Arizona	SB1430	An Act Relating to School Accountability: Requires the Department to compile an annual achievement profile – any disclosure of educational records compiled by the department of education must comply with FERPA.	N	Y	N	N	Y	N
2016	Arizona	HB2088	HB 2088 prohibits public schools from administering specified assessments or surveys to students without notifying and obtaining written informed consent from parents and prescribes penalties for	Y	Y	N	N	N	Y

r.cdn.syndication.twimg.com...

10 States Have Passed Laws Based on SODIPA



SOPIPA

- Applies to operators of a website, online service, or online or mobile application when their product is for K-12 school purposes and was also designed and marketed for K-12 purposes



SOPIPA

- SOPIPA protects personally identifiable information or materials, in any media or format, that:
 - is provided to the operator by a student or parent for K-12 school purposes;
 - is created or provided to the operator by the school, district, or other LEA; or
 - is gathered by the operator through the operation of their service and is descriptive of a student or otherwise identifies a student.



SOPIPA

- An operator must not:
 - Target advertising
 - Create a profile (except for K-12 school purposes)
 - Sell a student's information
 - Disclose covered information



SOPIPA

- An operator must:
 - Implement and maintain reasonable security procedures and practices
 - Delete information when asked by the LEA



General State Law Trends



Louisiana schools struggle with strict privacy law

In Louisiana, a new law bars school districts from sharing personally identifiable information without parental consent too far.

EDUCATION

State Withholds High School Graduation Rates

By Nate Robson July 29, 2015

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New State Law Complicates Classroom Recording For N.H. School Districts

By RICK GANLEY & MICHAEL BRINDLEY · NOV 11, 2015

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CREDIT WWW.AUDIO-LUCI-STORE.IT ON FLICKR CREATIVE COMMONS

school districts.

A new state law limiting when schools can record in classrooms is having unintended consequences for some New Hampshire

Interesting Trends

- Governance
- Training
- Audits
- Opt-In or Out Requirements
- Device and social media privacy
- Penalties



Panel 2: School Perspective

Panelists

Allen Miedema, Technology Director, Northshore School District, Washington

Chris Paschke, Executive Director of Data Security, Jeffco Public Schools, Colorado

Jim Siegl, Technology Architect, Fairfax County Public Schools, Virginia

Rachael Stickland, Co-Chair, Parent Coalition for Student Privacy

Moderator

Michael Hawes, Director of Student Privacy Policy, Department of Education



Panel 3: Student Privacy Issues and Challenges

Panelists

Linnette Attai, President, Playwell LLC

Dan Crowley, Trust & Safety Manager, Quizlet

Bill Fitzgerald, Technologist, Common Sense Media

Priscilla M. Regan, Professor, Schar School of Policy and Government, George Mason University

Melissa Tebbenkamp, Director of Instructional Technology, Raytown Quality Schools, Missouri

Moderators

Michael Hawes, Director of Student Privacy Policy, Department of Education

Peder Magee, Senior Attorney, Federal Trade Commission

Panel 4: Where do we go from here?

Panelists

David LeDuc, Senior Director, Public Policy, Software & Information Industry Association

David Monahan, Campaign Manager, Campaign for a Commercial-Free Childhood

Francisco Negrón, Chief Legal Officer, National School Boards Association

Steve Smith, Chief Information Officer, Cambridge Public Schools, Massachusetts

Rachael Stickland, Co-Chair, Parent Coalition for Student Privacy

Amelia Vance, Education Policy Counsel, Future of Privacy Forum

Moderators

Kristin Cohen, Senior Attorney, Federal Trade Commission

Kathleen Styles, Chief Privacy Officer, Department of Education



Closing Remarks

Kathleen Styles

Chief Privacy Officer

U.S. Department of Education

