



**STUDENT  
PRIVACY  
COMPASS**

**Adopting EdTech: FERPA  
and COPPA for Educators**

# Objectives



Understand how federal student privacy laws FERPA and COPPA apply to edtech adoption.

# Key Definitions



**Educational technology (Edtech):** This refers to the companies that provide learning management systems, education apps, and any other software designed and sold to support students and teachers, whether or not used directly by students..

**Third party:** As used throughout this section, third party refers to any person or organization who is not employed by the school system; usually a commercial company providing the edtech.

**Service provider:** Typically, “service provider” refers to companies who provide a product or service that enables the operations of other companies.

**Product:** A product is a mobile or web-based application, online service, platform, physical device, or other third party-provided tool that is used to support school administration, teacher responsibilities, or student learning.

# Applicable Laws: FERPA



- Protecting student privacy when using edtech isn't just the right thing to do, it's also a legal requirement.
- FERPA requires schools to either get consent before sharing student information or adhere to special privacy requirements. Data can't just be shared with anyone!
- If this law is violated, the school can get in trouble - and penalties can include the school being investigated or even losing all of its federal funding.
- But that's not the biggest problem: breaking the law risks breaking trust with students and parents who rely on schools to protect their data.

# FERPA's School Official Exception



When schools share data with internal staff, like teachers, or external third parties like edtech companies, that data is usually shared through the school official exception.

This exception allows student data to be shared *without consent* if:

- The edtech company is doing something that the school would use internal staff for (if they had unlimited resources to do so, in an ideal world);
- The company has a “legitimate educational interest” - aka the company needs the information from the school (or are collecting information during the use of the product) to provide the educational service;
- The school should try to only give companies access to the information they need to do whatever they’ve asked them to do;
- The data can only be collected, used, and shared by the company for the original purpose it was collected for;
- The company has to be under the “direct control” of the school (we’ll talk about this on the next slide)

# Direct Control



FERPA requires that the edtech company be under the “direct control” of the school when it comes to the use of maintenance of student information. Direct control isn’t defined, but we do have guidance from the Department of Education on some ways that company Terms of Service might not align with FERPA:

**Tip:** Be especially aware when a company’s Terms of Service (ToS) or Privacy Policy would allow the company to sell or share student data.

# Direct Control Likely Does Not Exist If A Third Party...



- Narrowly defines which personal information is protected by the policy, or retains the right to share protected personal information that the user is not knowingly providing to the service, such as metadata that may be personally identifiable;
- May share de-identified information and has a broad definition of what constitutes de-identified information that would easily allow for re-identification;
- May use student data to market or advertise to students or their parents or mine or scan data and user content for the purpose of advertising or marketing to students or their parents;
- May modify the terms of agreement at any time without notice or consent from the school or district;
- May collect data about the student beyond what is needed to fulfill the educational purpose (also a red flag if provider collects data from a third-party source if the student logs into the service through a third-party website, such as a social networking site);

# Direct Control Likely Does Not Exist If A Third Party...



- May use data for any purpose other than the purpose for which the data was originally provided to the service provider without notice to users;
- May use student personally identifiable information after it is no longer needed or after the school or district requires that that information be deleted;
- May not require their subcontractors to adhere to the service provider's terms of service;
- Is claiming ownership over the student data or copyright or an irrevocable license to use student data or uploaded school or student user content;
- May in any way limit the school or district's access to student information when requested; and
- May not mention security protections.



# How Does FERPA Apply to Your Role?



- Every teacher and administrator should be aware that FERPA requires them to protect student data. When in doubt about whether sharing student data is ok, ask! It is much easier to ask ahead of time. It is very difficult, and in some cases impossible, to try to get data back once it is shared online.
- As you can tell from the previous slides, FERPA was made more for schools than teachers. It can be a legally grey area when teachers sign up for edtech products that collect student information without school or parent permission.

# Applicable Laws: COPPA



COPPA does not apply to schools and there are no penalties for school violations of COPPA. However, a school might acquire COPPA parental consent obligations via contract (clickwrap or separate) with a company subject to COPPA.

- If COPPA is implicated, **schools** instead of parents **may provide consent** for the disclosure of PII from children under the age of 13 to a company, if the company uses student information **solely for the benefit of the school**, not for commercial purposes.

**Tip:** Look for practices like whether a tool uses third-party trackers for advertising purposes which would require parental consent.

# How Does COPPA Apply to Your Role?



- If a website or app crosses from educational to commercial, it should raise a COPPA flag for you, and you should check with school administrators and/or get parental consent. But remember - consent isn't optimal!

# Should You Just Get Parental Consent?



- Having parents consent to *every* tool used in the classroom can:
  - Create a scenario where you'd have to know every app and service that an individual student is permitted to use.
  - Create uneven assessment and measurement landscapes.
  - Exacerbate inequities.
- Remember: Parents cannot be required to waive their FERPA rights.

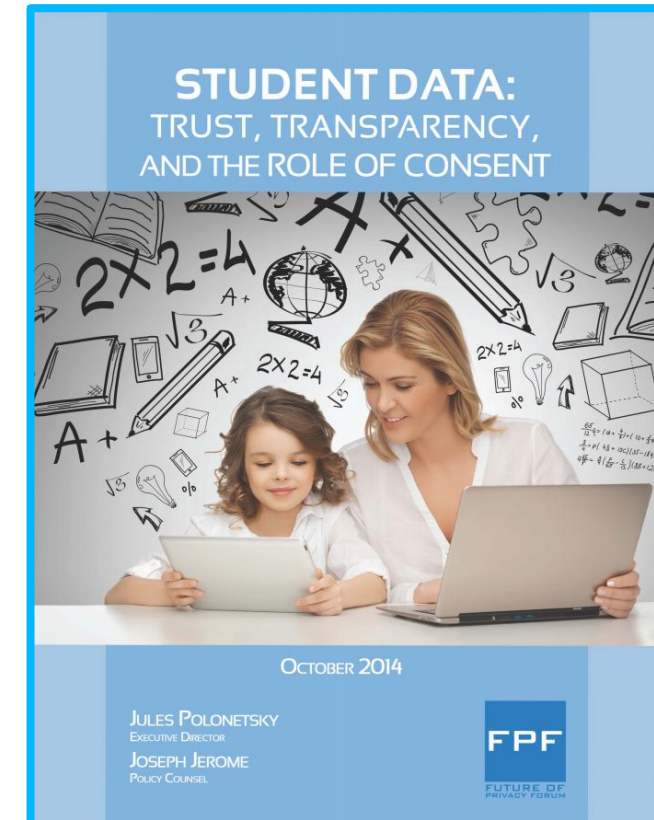
**Suggested Resource:** [Sample](#) consent form developed by CITE

# What is the Purpose of the Technology?



Types of Use	Example
Administrative	Course scheduling, school busing
Instructional	Online homework, learning apps
Assessment and Measurement	Standardized tests, course assessments
Optional and Non-Educational	School yearbooks, PTA fundraising

## Suggested Resource:



# Reflection



## Example: What would you do?

“A teacher wants students to be able to **share photographs and videos online** and identifies an app that will allow this sharing. He creates user accounts for all students (including those who opted out of directory information). **The ToS allow the provider to use the information for a variety of non-educational purposes, including selling merchandise.** The district discovers that this service is being used and determines that the ToS does not align with FERPA’s requirements.

What do you think the district should do?

Example [adapted from](#) the Department of Education