Educational Technology, Data, and Student Privacy

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What I’ll Cover Today

• Education Technology: the changing landscape and the challenge
• U.S. Department of Education’s role in protecting student privacy
  • Family Educational Rights Privacy Act (FERPA)
  • Protection of Pupil Rights Amendment (PPRA)
• Privacy best practices when using education technology
An Informal Survey ..... 

- Who in the audience has worked with FERPA before?
- How about the PPRA?

Tell the truth!
The Challenge

- Schools and districts are increasingly contracting out school functions
- We have new types of data and more of it
- The challenge is to use that data appropriately, to reap the benefit of it, and still to protect privacy
- Increasing need to separate fact from fiction in the public debate
Education Services and Technology in Schools

A few of the more common sources of data in schools:

- Basic productivity apps (Think Google and Microsoft 365)
- Learning and educational apps (Think Kahn Academy or ....)
- Fundamental school services (Think cafeteria and transportation services)
A New Concern: Marketing Student Data

- Center for Law and Information Policy
- Common Sense Media
- Senator Markey
Student Privacy – The Role of the U.S. Department of Education

- Administering and enforcing federal law governing the privacy of student data
  - Family Educational Rights and Privacy Act (FERPA)
  - Protection of Pupil Rights Amendment (PPRA)
- Raising awareness of privacy challenges
- Providing technical assistance to schools, districts, and states
- Promoting best practices
What is 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
Our Favorite FERPA Quote

“You know how sometimes FERPA can tie your brain in a knot trying to think through it all?”

Received in an email to PTAC
But wait! There are exceptions!

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

- Directory information exception
- School official exception

There are many other FERPA exceptions.
Directory Information Exception

- Students don’t attend school anonymously.
- Allows schools to release certain information without consent. A few examples:
  - name, address, telephone listing, electronic mail address;
  - date and place of birth;
  - photographs;
  - weight and height of athletes;
  - degrees & awards received.
Directory Information Exception

- Common uses:
  - Yearbooks
  - Concert programs
  - Telephone directories

- Students have a right to opt-out!
School Official Exception

- Schools or LEAs can use the School Official exception to disclose education records to a third party provider (TPP) if the TPP:
  - Performs a service/function for the school/district for which the educational organization would otherwise use its own employees
  - Is under the direct control of the organization 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/LEA’s annual notification of rights under FERPA
  - Does not re-disclose or use education data for unauthorized purposes
New ED Guidance

- “Protecting Student Privacy While Using Online Education Services: Requirements and Best Practices”
- Webinar on March 13 about the new guidance
- Prior ED guidance “FAQ on Cloud Computing” available on the same website
- Remember: FERPA and PPRA aren’t the only statues that can apply.
FERPA and Online Services

- Contracting for IT services usually accomplished using the school official exception
- Question: Are “education records” involved?
- The vendor can only use the data for the “legitimate educational interest” for which it was supplied.
PPRA and Online Services

- Passed in 2001 with No Child Left Behind
- Mostly known for its provisions dealing with surveys in K-12
- Notification and opportunity to opt out
- Development of policies in conjunction with parents
- However … a significant exception for “educational products or services”
Example: Food Services Data

- Sunshine County School District contracts with Happy Valley Food Services Company to manage its online cafeteria account services.
- Sunshine uses education records to open an account for each student.
- Happy Valley Co. collects data about what students eat and about parental access history.
- Happy Valley cannot sell this information to a third party, nor can it provide targeted advertising to students.
Best Practices

Our guidance recommends best practices beyond legal compliance, including the following:

- Other laws
- Know what online services you are using
- Policies and procedures
- Use a written agreement
- Be cautious of “click wrap” agreements
Beyond FERPA

- FERPA won’t give you all the answers
- ED looks to the schools and districts to make responsible decisions
- Remember: It’s your data and they are your students
- Recommendation: Transparency
- What is the role for industry?
- Remember: efficiency and innovation
Thank you!

Who has questions?