



Sample
Checklist
Inside

Contracting with IT to Provide Remote Learning? Don't Forget Student Privacy Laws!

Is your School District unwittingly putting students at risk by not protecting their online personal data?

COVID-19 has changed every aspect of our lives, and has especially impacted public schools' mission to educate our nation's children. In-classroom learning has either been suspended or greatly minimized. As a result, many districts have scrambled to find ways to connect with their students remotely. To aid in this new era of online learning, many districts have utilized IT vendors to facilitate teachers' use of educational technologies (EdTech) in this digital era.

When engaging IT vendors, districts need to be cognizant of their students' privacy rights, as embodied in laws, including but not limited to the federal laws, such as Family Educational Rights and Privacy Act (FERPA) and Children's Online Privacy Protection Act (COPPA). Because children as young as Kindergarten are using EdTech, massive amounts of personal data are potentially being collected concerning students in primary and secondary education. This data must be protected.

On April 20, 2020, the Federal Trade Commission (FTC) provided guidance to schools regarding compliance with COPPA.¹ According to the FTC, “many school districts contract with third-party website operators to offer online programs solely for the benefit of their students and for the school system—for example, homework help lines, individualized education modules, online research and organizational tools, or web-based testing services.” With the plethora of educational apps available, districts must carefully vet apps and review their terms of service to ensure compliance with COPPA.

So what exactly does this mean for school districts? To start, districts should have policies in place that include the following: processes to submit prospective IT vendors for review; guidance on selection of IT vendors; identification of individuals responsible for ensuring compliance, and appropriate sanctions to promote accountability. Furthermore, “whitelists” of pre-approved IT vendors and apps should be available to district personnel and updated as needed. Optimally, districts should create a template vendor agreement to streamline contracting compliance.

Additionally, districts need to analyze specific requirements that comply with the law of their respective jurisdictions in developing IT vendor contracts, including, but not limited to whether a vendor is a “school official,” as that term is defined in FERPA. Furthermore, please note that if personal information (PI) from students under the age of 13 is collected, COPPA imposes restrictions regarding those younger students’ PI. The IT vendor will need parental consent to collect, use or share students’ PI. The FTC has declared that schools may give consent on behalf of parents if certain conditions are met.

Undoubtedly, navigating the ever-changing waters of complex state and federal privacy law can be challenging. As children’s safety is at stake, districts must take steps to comply with these laws. To assist school districts with these privacy issues as they relate to IT vendors, we have prepared the following checklist, “Engaging IT Vendors in the Era of Remote Learning; Best Practices for Schools & Districts.” As your partner in risk management, SLRMA hopes this checklist provides you with a valuable tool in protecting your students’ data. This checklist should further serve to promote compliance with privacy laws to avoid school board legal liability claims. Please note that this checklist is not intended to constitute legal advice.



¹. <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-o#N.%20COPPA%20AND%20SCHOOLS>

Recent Updates from the Newsroom Available on SLRMA.org

New Federal Cases

Court Refuses to Delay New Title IX Regulations

Commonwealth of Pennsylvania v. DeVos

August 2020

States' Attorneys General sought an injunction enjoining the implementation of the Department of Education's Final Rule regarding new Title IX regulations effective August 14, 2020. Though the U.S. District Court for the District of Columbia sympathized with the States' argument that the COVID-19 pandemic made the deadline difficult to meet, it held that the effective date was enforceable, especially since schools have had almost two years to understand the requirements. You can read the summary of the case and the court's opinion at www.slrma.org

For more information on your district's compliance with new Title IX regulations, please download our Checklist from June 2020, "[Responding to Sexual Harassment Allegations: Revised Self-Audit Checklist and Best Practices for School Districts.](#)"

Federal Appellate Court Finds School Violated the First Amendment by Suspending Student from Cheerleading for Vulgar Snapchat Posted Over the Weekend; Away from School

B.L. v. Mahanoy Area School District

August 2020

The United States Court of Appeals for the Third Circuit held that a school violated a student's First Amendment right to free speech. The student, a cheerleader, was upset that she did not make the varsity squad. Over the weekend and off campus, she posted a snapchat which pictured her raising her middle finger with the caption "F&*# Cheer." In response, the cheer coaches suspended her from the JV team, asserting that the student violated both team and school rules. The Court found that the school impermissibly disciplined the student for engaging in non-violent, off-campus speech in violation of the First Amendment.

Learn more about this case and its implications for school administrators by reading our discussion and downloading the opinion at www.SLRMA.org.

SLRMA Board of Directors



Mr. John Spatz
Chair
Executive Director
Nebraska Association of
School Boards



Dr. Wade Pogany
Vice Chair
Executive Director Associated
School Boards of South Dakota



Dr. John Heim
Treasurer
Executive Director
Kansas Association of
School Boards



Dr. Shawn Hime
Secretary
Executive Director
Oklahoma State School
Boards Association



Dr. Thomas Bertrand
Executive Director Illinois
Association of School Boards



Andrea Messina
Executive Director
Florida School Boards
Association

Content provided by:



Maree F. Sneed
Partner
Hogan Lovells US,
LLP
(Washington, D.C.)



Dr. Gillian Chapman
Superintendent Teton
County School District
(Jackson, WY)



Dr. Jerry D. Weast
CEO
Partnership for
Deliberate Excellence,
LLC
(Lebanon, TN)



Dr. Troy Loeffelholz
Superintendent
Columbus Public
Schools
(Columbus, NE)



Cheryl L. Sandner
President and CEO
Brokers' Risk
(Chicago, IL)



Theodore C. Hadley
SLRMA
Chief Content Editor
Counsel, Brokers' Risk
(Chicago, IL)

2020 SLRMA Give-Away Win a Pivo Silver Starter Pack



Contest started October 1 and ends December 31. Drawings will be held in January 2021. Each time you login to www.SLRMA.org, it can increase your chance to win. Up to 3 entries per district (one per month)

SLRMA UPDATE | October 2020

The Mission of the School Leaders Risk Management Association (SLRMA) is to assist public school districts (K-12) with supplemental risk management support. We help you accomplish your own mission of risk avoidance in a number of ways.

- We keep members informed of the current legal issues that will likely affect your school district through our work with the Federal Legislation Insurance Committee (FLIC).
- We provide pro-active, timely tools to help prevent unwanted and unwarranted school board legal liability claims.
- We give members access to special reports featured in our Newsroom. The topics are specific to the School Board Legal Liability school boards face today and will in the future.

Members are equipped with an array of self-audits and checklists to help ensure you are in compliance with the latest requirements and guidelines which govern school boards and school districts. We are a not-for-profit and are governed by a Board of Directors. The Board consists of current Executive Directors of State School Boards Associations.

Best Practices to Help Districts Select and Contract with IT Vendors

<p><u>I. Take Stock of Data and Identify Applicable Privacy Laws.</u></p>
<ul style="list-style-type: none">◆ Before engaging a vendor that will collect or receive PI, it's important to understand the federal, state, and local laws and regulations that apply. In addition to federal laws like the Family Educational Rights and Privacy Act (FERPA), Children's Online Privacy Protection Act (COPPA), and Protection of Pupil Rights Amendment Act (PPRA), many states and localities have additional rules that may require or prohibit certain contractual provisions.¹
<p><u>II. Develop a Policy for Engaging Vendors.</u></p>
<ul style="list-style-type: none">◆ As new apps and tools become available to assist in the classrooms, it's helpful to have a clear policy in place that contemplates compliance obligations.
<p><u>III. Create a Whitelist</u></p>
<ul style="list-style-type: none">◆ Consider creating a "whitelist" of pre-approved IT services, tools, and vendors;
<p><u>IV. Create a Template Vendor Agreement and Contracting Checklist.</u></p>
<ul style="list-style-type: none">◆ Consider creating a template vendor agreement that includes all required and recommended provisions.² Some vendors may insist on using their standard terms, so schools should also consider creating a checklist for reviewing contracts that identifies all required provisions and any prohibited language under applicable federal, state, and local rules.

¹ For reference, the Future of Privacy Forum's Student Privacy Compass website has compiled a growing list of state student privacy laws, available [here](#).

² Schools may consider developing their own templates or using standardized contracts such as the National Data Privacy Agreement proposed by the Student Data Privacy Consortium, available [here](#).

V. Considerations for Choosing and Vetting Vendors.

- ◆ Assess whether and how a prospective vendor can comply with applicable privacy obligations. This may involve reviewing public materials or conducting a deeper review (e.g., using a diligence questionnaire), depending on the particular risks.

VI. Contracting Considerations.

- ◆ Specific requirements will vary by jurisdiction and depending on the nature of the vendor and its services, but the following are general recommendations:

VII. Consider Whether the Vendor is a “School Official” under FERPA.

If the vendor is a “school official,” as that term is defined, it is important that the contract with the vendor limit use of students’ PI to the provision of the requested services, and that the PI remain under the direct control of the District.³ Note further that if that school official will share PI with subcontractors, include language requiring that any subcontractors receiving student PI are bound by the same contractual restrictions as the “school official.”

VIII. If Information will be Collected from Students Under 13 (i.e., where COPPA may apply).

³The Department of Education’s Privacy Technical Assistance Center has provided [guidance](#) and [model terms of service](#) for use with online educational service providers, available [here](#).