

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

## Student Data Privacy and Security

**Jackie Gharapour Wernz**  
**Franczek Radelet**  
312-786-6137  
[jgw@franczek.com](mailto:jgw@franczek.com)  
[www.edlawinsights.com](http://www.edlawinsights.com)  
[@edlawinsights](https://twitter.com/edlawinsights)

Copyright ©2014, Franczek Radelet P.C. All Rights Reserved. Disclaimer: Attorney Advertising. This presentation is a publication of Franczek Radelet P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.

---

---

---

---

---

---

---

---

## Student Data – It’s Everywhere

- Student Information Systems
- Productivity Tools/Suites
- Online Blackboards
- Assessment Systems (macro and micro)
- Computer Software
- Educational Applications
- Web-Based Tools

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

## #EDTECH – It’s Everywhere

- Google Apps for Ed
- Google Classroom
- Blackboard
- Edmoto
- Prezi
- Pinterest
- Discovery Education
- Khan Academy
- Club Penguin
- Canva
- Plickers
- Animoto
- Scootpad
- Kahoot
- Kaiku Deck
- Evernote
- Weebly
- Erase All Kittens

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

The New York Times | http://nyti.ms/1Ma033e

TECHNOLOGY

### Privacy Pitfalls as Education Apps Spread Haphazardly

By NATASHA SINGER | MARCH 11, 2014

At school districts across the country, the chief technology officers responsible for safeguarding student data are tearing their hair out.

Scores of education technology start-ups, their pockets full from a rush of venture capital, are marketing new digital learning tools directly to teachers — many are even offering them free to get a foothold in schools. That has enabled educators nationwide to experiment with a host of novel “adaptive learning” products, like math and foreign language apps that record and analyze students’ online activities to personalize their lessons.

But the new digital tools have also left school district technology directors scrambling to keep track of which companies are collecting students’ information — and how they are using it.

“A teacher can sign up for anything, without the knowledge of anyone else in the district,” said Steve Young, the chief technology officer of the Judson Independent School District, a school system with some 23,500 students in San Antonio.

Already, some districts have experienced data breaches with software they purchased from vendors; in a few cases, student records have been publicly

www.franczek.com

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

### Student Data Buckets

- Operational
- Assessments
- Curricular
- Classroom

www.franczek.com

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

### Student Data Buckets

- Operational
  - Student Information Systems
  - Assessment Systems
- Curricular
  - Productivity Suites (Google Apps)
  - District-, School-, and Grade-Wide Programs
- Classroom
  - Teacher Driven

www.franczek.com

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---



---

---

---

---

---

---

---

---

**Student Data Alphabet Soup**

- FERPA & ISSRA
  - PII in Education/Student Records
  - Nondisclosure (Unless Consent, Exception)
  - Parent/Student Access
- PPRA
  - No Personal Information For Marketing
- CPPPEA
  - Selling Personal Information
- COPPA
  - Consent For Personal Information If Under 13
- No current state law

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

**What's the Risk?**

- FERPA & PPRA
  - No private right of action
  - Department of Education
- ISSRA
  - Injunctive relief
  - Damages (willful or negligent violation)
  - Costs, attorneys' fees
  - Petty offense

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

What's the Risk?

- COPPA
  - No private right of action
  - FTC enforcement against companies
  - Indemnification by companies?

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---



---

---

---

---

---

---

---

---

FERPA: Directory Information

- Basic information
- No limitations on how data is used
- The Catch: Notification and Opt Out

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

### FERPA: Audit/Evaluation & Studies

- Disclosure to authorized representative
- To audit or evaluate the education program or for compliance activity
- Written agreement required to share PII
  - Required elements
  - Recommended elements

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

### FERPA: School Officials

- Performs service/function of school in lieu of employees
- Under direct control of school with respect to student data/records
- Uses data consistent with FERPA and the school's annual notification of rights
- Does not improperly redisclose or use data (can use de-identified data)
- Parent right to access data

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

### FERPA: School Officials

- A district contracts with a provider to manage its cafeteria account services.
- Gives the provider student names and other information – not just directory information.
- The provider cannot sell the student roster to a third party or use PII from the records to target students for advertising for foods they often purchase.
- If the provider de-identifies metadata it can use that information to improve services.

- ED, Protecting Student Privacy While Using Online Education Services: Requirements and Best Practices

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

**PPRA**

- Collection, disclosure, or use of personal information collected from students
- Exclusive purpose of developing, evaluating, or providing educational products or services
- No parental consent required

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

**PPRA**

- A district contracts with productivity application provider.
- District sets up accounts using information from student records.
- The provider may not use data about individual student preferences to target ads to the students with express consent from parents (FERPA).
- The provider may not target ads unless parents are notified and given the opportunity to opt out (PPRA).
- May use data (including PII) to improve delivery
- Nothing prohibits generalized, non-targeted ads

- ED, Protecting Student Privacy While Using Online Education Services: Requirements and Best Practices

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

**COPPA**

- Online programs offered solely for the benefit of the school district
- No other commercial purpose permitted
- Notice and access requirements for district
- Note some FTC guidance ambiguity

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

### Key Takeaways: Alphabet Soup

- Negotiate all new contracts with FERPA, PPRA, COPPA, etc. in mind
  - No non-educational use of (and especially no targeted marketing or advertising based on) student specific data
  - FERPA notification (and the more transparency the better)
- Audit to consider older contracts

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

### Contract Keys

- Identify FERPA exception that enables disclosure
- Limit sharing/use of data
- Address ownership of data, including rights to access and audit
- Specify data storage and destruction requirements
- Address responsibility for/training of staff, subcontractors
- Include breach provisions
- Do not count on the vendor to know the law

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

### Contract Keys

- Understand the product
- Don't rely on generalizations about compliance
- Beware of incorporation of other policies of the company and unilateral changes to the terms
- Consider access for FOIA or other requests and location for disputes
- Remember your traditional contract skills
- Beware limitations of liability

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

### Contract Keys From the FTC

- What student personal information is collected?
- How is the information used?
  - Is the information shared?
  - Is the information used for any purpose other than the school/school district's purpose?
- Can the school review and delete the personal information?
- How does the provider protect the security, confidentiality, and integrity of the personal information that it collects?
- What are the operator's data retention and deletion policies for personal information?

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

### Resources for Contracts

- ED Privacy Technical Assistance Center (PTAC) ([ptac.ed.gov](http://ptac.ed.gov))
- NSBA "Data in the Cloud" and "Cloud Computing and Student Privacy: A Guide for School Attorneys" ([nsba.org](http://nsba.org))
- Data Quality Campaign ([dataqualitycampaign.org](http://dataqualitycampaign.org))
- COSN "Protecting Privacy in Connected Learning Toolkit"

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

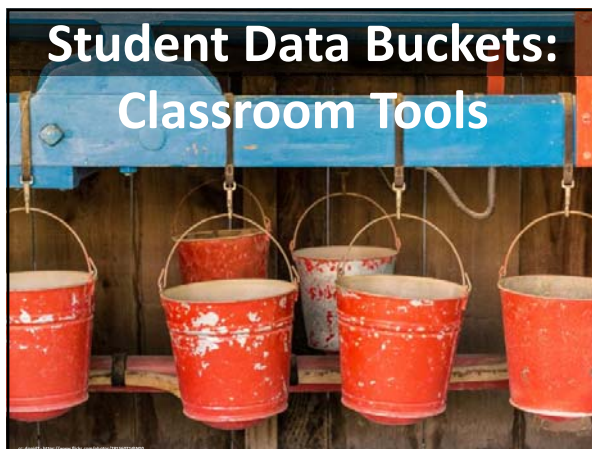
---

---

---

---

---



---

---

---

---

---

---

---

---



### “Click Wrap” Contracts

www.franczek.com 25

- A teacher wants students to be able to share photographs and videos online.
- He creates user accounts for students without checking for directory info opt outs.
- He agrees to the TOS for all students in creating accounts.
- The TOS allow the provider to use data for non-educational purposes, including marketing.

- ED, Protecting Student Privacy While Using Online Education Services: Requirements and Best Practices

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

### “Click Wrap” Contracts

www.franczek.com 26

A.V. v. iParadigms Liab. Co., 544 F. Supp. 2d 473, 480 (E.D. Va. 2008)

aff'd in part, rev'd in part sub nom. A.V. ex rel. Vanderhye v. iParadigms, LLC, 562 F.3d 630 (4th Cir. 2009)

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

### “Click Wrap” Contracts

www.franczek.com 27

- Does the service/app involve
  - sharing of student identifying information (FERPA, ISSRA, PPRA)
  - collecting of “personal information” for students under the age 13 (COPPA)
- Many services/apps do not!

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

# Cyberinsurance

www.franczek.com

## Education Law Insights

Legal Insights for School Leaders

### Report on Student Data Privacy Highlights Two Key Issues For School Leaders

Posted by Jackie Wertz on November 2, 2015

#### Cyberinsurance

The first is the growing trend toward obtaining cyberinsurance. Cyberinsurance policies focus on protecting a school district in case of a data breach or network security failure. As the Education Week report points out, these policies were born to serve the private sector, but have evolved to help schools who fear that they may be the next to deal with costly breaches like those that rocked companies like Home Depot and Target. We are seeing more and more of our clients looking into the policies. As always, we advise that you talk with your insurance representative to understand if such a policy is a good fit for your school district.

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---

# Protection Through Direction

www.franczek.com

- KNOW the apps and services being used
- DIRECT policy/procedures/guidance on what can or cannot be used
- TRAIN administrators, then staff
- NEGOTIATE contracts that work for the school district, and if not, don't use it
- PROTECT with cyberinsurance
- MINIMIZE data shared
- SHARE with parents to the extent practicable

FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---


---

---

---

# Q&A

www.franczek.com



FRANCZEKRADELET  
ATTORNEYS & COUNSELORS

---

---

---

---

---

---

---

---