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February 5, 2018

PRIVILEGED & CONFIDENTIAL

Andrea Bennett
Executive Director
CETPA
980 9th Street, Floor 16, Suite 21
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Re: Creation of Google Accounts for Students Under Age 13

Dear Ms. Bennett:

We write in response to your inquiry regarding the requirements of the Children's Online Privacy Protection Act ("COPPA"). Specifically, you inquired whether LEAs can create Google accounts for students under 13 without parental opt-in consent. Please find our analysis and recommendations regarding this inquiry summarized below.

COPPA applies to website operators that collect information from students under the age of 13. (See 16 C.F.R. §§ 312.1-312.2.) It prohibits unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet. (16 C.F.R. § 312.1.) The Federal Trade Commission ("FTC"), which is vested with authority to enforce COPPA, has issued extensive guidance interpreting the provisions of COPPA and, specifically, the obligations of LEAs under COPPA.

The FTC has noted that, when school districts contract with third-party website operators to offer online programs solely for the benefit of their students and for the school system, the school may act as the parent's agent and may consent to the collection of student information on behalf of parents. (See FTC's Frequently Asked Questions About COPPA, Section M, "COPPA and Schools.") However, the school's ability to consent on behalf of the parent is limited to the educational context, where an operator collects personal information from students for the use and benefit of the school, and for no other commercial purpose. (Id.) In order for the operator to obtain consent from the school, the operator must provide the school with all notices required under COPPA. Further, upon request from the school, the operator must provide the school with the following:

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1. a description of the types of personal information collected;
2. an opportunity to review the child's personal information and/or have the information deleted; and
3. the opportunity to prevent further use or online collection of a child's personal information. (Id.)

So long as the operator limits use of student information to the educational context authorized by the school, the operator can presume that the school's authorization is based on the school's having obtained the parent's consent. However, as a best practice, the FTC recommends that schools consider making such notices available to parents, and consider the feasibility of allowing parents to review the personal information collected. (Id.)

In light of the foregoing authority, it appears that LEAs may create accounts for students under the age of 13 via platforms such as Google without first obtaining parental "opt-in" consent, so long as the creation of such accounts is solely for the benefit of their students and for the school system. However, in light of the sensitivity of personally identifiable information of students under the age of 13, we recommend that, prior to doing so, LEAs share with parents, on at least an annual basis, each website or application's required notices described above. This could be done via any or all of the following methods: (1) via the annual parental notice that LEAs disseminate to parents; (2) via the LEA's Internet website; and/or (3) via specific classroom websites. We also recommend that, when LEAs share such information with parents, LEAs also inform parents that, in order to ensure student access to necessary curriculum, instructional, and educational materials, the LEA provides consent to such websites/applications on behalf of parents solely for educational purposes, and offer the opportunity for parents to opt-out of that process. Finally, we recommend that LEAs develop specific parental opt-out forms for this purpose, and when applicable, direct website operators to obtain consent directly from parents who have chosen to opt-out.

We hope this information is helpful to CETPA and its members. If you have any questions or would like to further strategize regarding this inquiry, please do not hesitate to contact us.

Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP


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