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Ohio School Boards Association

CYBERLAW 2017: Technology and the Law Seminar

Educational Apps and Other Online Content: “We Need Extreme Vetting....Believe Me!”

Presented by:

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- Roger Saffle, Technology Coordinator, Highland Local Schools

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Agenda/Goals

- To shed some light on the privacy issues raised by the proliferation of “digital learning services” and the marketing of those apps directly to teachers.
- To discuss best practices for vetting of online software and apps PRIOR to their use in the classroom.
- To strategize on how we can maximize the benefits of bona fide digital learning tools while avoiding data breaches, FERPA violations, identity theft and unauthorized student profiling.

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Online Educational Services in the Classroom


- **Our focus is on:**
 - Computer software, mobile applications (“apps”) and/or web-based tools;
 - Which connect the district with a third-party;
 - Accessed via the internet by students/parents;
 - That are utilized in our schools for educational programming.
- **Our concerns are:**
 - The growing trend in “farming out” many educational functions;
 - The commercialization of personal information and “behavioral marketing;”
 - The non-traditional business models and contracts used by these providers; and
 - The difficulty presented in protecting the privacy of students;

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Online Educational Services in the Classroom

- **To begin with the end in mind**, we believe that the fundamental take-away from these changing dynamics are these:
 - Districts must raise the awareness of **all staff** regarding the connection between online educational apps/services (no matter how neat) and **student privacy**;
 - A high functioning **evaluation process**, using a well supported technology committee with authority and ready access to necessary resources (tech, curriculum, legal, etc.) should be in place for (extreme) **vetting** of appropriate educational choices;
 - Vigilance in monitoring all online educational services being used in the district; an
 - Transparency, transparency, transparency!




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Online Educational Services in the Classroom

- Classroom teachers are being **targeted** by companies selling educational apps.
- In 2014, the market for educational software aimed at pre-k through 12th grade was \$8.4 billion dollars (up from \$7.5 billion in 2010). These numbers are rising.
- There is considerable reason for enthusiasm here since **adaptive learning products** can tailor lessons to meet the individual abilities of each student.
- However, serious issues arise when these new technologies are adopted by individual teachers **without reference to district policies and procedures for reviewing data security and privacy.**



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Online Educational Services in the Classroom

- Classroom teachers are typically not adequately equipped/trained to properly vet the data-handling practices of educational apps (which are often “free”) and which routinely collect details such as:
 - Student names
 - Birth dates
 - Voice recordings
 - Homework assignments
 - Quiz scores and grades
 - Profile photos.
- *“Companies are soliciting teachers to breach the obligations of schools.”*
 - Joel R. Reidenberg, Professor of Law, Fordham University.

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Alphabet Soup: PII, FERPA and PPRA

- Privacy of individual student records/information is protected under FERPA .
- Students' data must be adequately protected at all times.
- Sharing student data with external entities increases the likelihood of unauthorized disclosure.
- Consequently, schools must actively engage in "disclosure avoidance."

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Alphabet Soup: PII, FERPA and PPRA

- The two major exceptions to the "parental consent" requirement under FERPA are:
 - Directory Information
 - "School Official" exception
- Parents can "opt out" of the Directory Information exception and districts are obligated to provide annual notification.
- The School Official exception is a little more complicated:

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Alphabet Soup: PII, FERPA and PPRA

- Since parents can opt out of directory information and because only directory information can be released under that exception, districts are more likely to disclose PII from student education records to a “provider” using the “school official” exception, as long as the provider:
 - Performs an institutional service or function for which the school would otherwise use its own employees;
 - Meets the criteria set forth in the district’s annual FERPA notification (for being a school official with a **legitimate educational interest** in the records as defined in annual notification);
 - Is under the **direct control** of the school district with regard to the use and maintenance of education records; and
 - Uses education records only for authorized purposes and may not re-disclose PII to other parties (without express authorization).

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Alphabet Soup: PII, FERPA and PPRA

- To establish “**direct control**,” districts should utilize express contracts and/or the “Terms of Service” (**TOS**) with the company to set forth the necessary legal provisions governing access, use and protection of data.
- In addition, districts must be mindful that there is a continuing obligation to provide parents (and eligible students) **access** to the student’s education records – and this must be a part of the contract with the provider.
- If the school shares information under the school official exception, the provider may **not** use, share (or sell) the FERPA-protected information for any other purpose, except as directed by the school and permitted by FERPA.

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- Marketing of student information is also restricted by the **Protection of Pupil Rights Amendment (PPRA)**:
 - PPRA requires that subject to certain exceptions, schools must directly notify parents of kids who are scheduled to participate in activities involving the collection, disclosure, or use of personal information obtained from students for marketing purposes and provide them with the opportunity to “opt out.”
 - An **important exception** exists, and neither parent notification, the ability to “opt out” or mandated policies are required for districts to use personal information for the exclusive purpose of **developing, evaluating, or providing educational products or services for students or schools.**

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Alphabet Soup: PII, FERPA and PPRA

- **Don't forget COPPA** – the Children's Online Privacy and Protection Act – before using online educational services for children under the age of 13. With limited exceptions, COPPA requires online services and sites to obtain verifiable parental consent prior to collecting information from children.

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PTAC and “Model Terms of Service”

- The U.S. Department of Education (still in existence as of this date) has established a very useable resource to gain assistance on data privacy, confidentiality and security practices.
- USE IT!!!!
- <http://ptac.ed.gov>
- Handout: **Protecting Student Privacy While Using Online Educational Services: Model Terms of Service** – has helpful guidance on assuring your contractual relationships with providers meet the privacy needs of our students.

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BEST PRACTICES

- This might actually be an appropriate place to use the phrase “**extreme vetting.**”
- **Survey** your district and find out who is using what, how and why.
- Keep a master list of all online apps and services and use it to regularly **assess the effectiveness** of these services.
- Assure that the district is **up to date on its policies** in this area.
- Tighten up your “Terms of Service” and **contracts** with providers (understand the issues around “Click-Wrap” agreements).

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BEST PRACTICES

- “Freemiums” – free online services should go through the **same vetting** as those with a cost.
- Assure that **all teachers** are aware that it is unacceptable to bypass the internal controls in your acquisition process when choosing online educational services – even if they are free!
- Be **transparent** in telling students and parents about how you collect, share, protect and utilize student data – beyond just the FERPA and PPRA notifications: consider using district website to explain this and post copies of privacy and security provisions of third party provider contracts, etc.

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BEST PRACTICES

- Make sure **all employees are trained** on data security, but recognize that not everyone needs the same training – it should be tailored to reflect the user’s job responsibilities.
- Create a **culture** of “data security.”
- Expect changes in law and technology and be prepared to update policies and procedures to adjust to these changes.

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TRUSTED LEARNING ENVIRONMENT (TLE)

- The Trusted Learning Environment (TLE) “Seal Program” is an initiative of the Consortium for School Networking (CoSN), in partnership with AASA, ASBO, and ASCD.
- The program requires schools to have implemented student data privacy protections that meet a set of high standards around 5 core practice areas:
 - Leadership
 - Classroom
 - Data Security
 - Business
 - Professional Development

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TRUSTED LEARNING ENVIRONMENT (TLE)

- Districts that demonstrate that they meet the program requirements will be able to display the TLE Seal, signifying their commitment to student data privacy.
- Currently, the TLE Seal is the only privacy seal for school systems, focused on building a culture of trust and transparency.
- <http://trustedlearning.org>

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THANKS FOR ALL YOU DO FOR KIDS!

The information in this handout and presentation was prepared by Ennis Britton Co., L.P.A. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, please consult an attorney.



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