



Texas Association of School Boards

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Serving Texas Schools Since 1949

Technology in the Classroom

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In recent years, we have seen a proliferation of educational technology options for the classroom, including hardware, software, websites, applications, and educational games. While these options offer many benefits and opportunities to educate students in meaningful and innovative ways, they also present myriad concerns about issues such as privacy; suitability for use in a particular setting or by particular students; authorization for acquisition or use, both by teachers and by students; accessibility to users with disabilities; and applicability of state and federal laws. This article addresses a few of these issues and provides additional resources. For additional information and guidance on technology issues generally, see TASB Policy CQ(LEGAL) and (LOCAL). Sample regulations and forms can be found in TASB Regulation Resource Manual at CQ.

Privacy

Many of these educational technology options are available cost-free, but almost nothing valuable is truly free. This technology often is designed to mine data that advertisers and others can use to target users of the technology. This, of course, raises concerns about the privacy of personally identifiable information about students using the technology.

In 2017, the Texas Legislature addressed these privacy concerns in House Bill 2087, which added Texas Education Code chapter 32, subchapter D, *Student Information*. Under Texas Education Code section 32.152(a), as added by the bill, an operator¹ may not knowingly (1) engage in targeted advertising² if the target is based on personally identifiable student information, including unique identifiers, the operator acquired through use of the operator's website, online service, or online or mobile application for a school purpose; (2) use information created or gathered by such website, service, or application to create a student profile unless the profile is created for a school purpose; or (3) sell or rent any student's covered information. Tex. Educ. Code § 32.152. An operator may use or disclose covered information under certain specified circumstances, such as to improve operability or functionality of the website, service, or application; to ensure legal and regulatory compliance; to protect against liability; to protect the security of the website, service, or application, or the safety or integrity of users; for research; or for a request from TEA or the district. Tex. Educ. Code § 32.153. An operator must implement and maintain reasonable security procedures to protect covered information from unauthorized

¹ *Operator* means "the operator of a website, online service, online application, or mobile application who has actual knowledge that the website, online service, online application, or mobile application is used primarily for a school purpose and was designed and marketed for a school purpose." Texas Educ. Code § 32.151(3). Section 32.151(5) defines *school purpose*.

² *Targeted advertising* means "presenting an advertisement to a student in which the advertisement is selected for the student based on information obtained or inferred over time from the student's online behavior, usage of applications, or covered information." Tex. Educ. Code § 32.151(6).

access, deletion, use, modification, or disclosure. Tex. Educ. Code § 32.155. If a district requests deletion of a student’s covered information, the operator must delete the information no later than 60 days after the request unless the student or the student’s parent consents to the operator’s maintenance of the information. Tex. Educ. Code § 32.156. This new subchapter is specifically not intended to alter the rights or duties of the operator, school, parent, or student under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g) or other federal law. Tex. Educ. Code § 32.157(9).

In addition to the protections of this Texas law, many technology service providers have signed the Student Privacy Pledge,³ committing “to carry out responsible stewardship and appropriate use of student personal information” in accordance with the commitments listed in the pledge and all applicable laws.

For additional information, see National School Boards Association, *Data in the Cloud: A Legal and Policy Guide for School Boards on Student Data Privacy in the Cloud Computing Era*,⁴ and U.S. Department of Education, Privacy Technical Assistance Center (PTAC) tools for reviewing app privacy terms: *Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices*, 2014,⁵ and *Protecting Student Privacy While Using Online Educational Services: Model Terms of Service*, 2016.⁶

Accessibility

The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) are federal civil rights laws that prohibit discrimination on the basis of disability. Title II of the ADA requires public entities, including school districts, to provide people with disabilities equal access to programs, services, and activities unless doing so would impose an undue financial burden or fundamentally alter the program, service, or activity. Section 504 protects people with disabilities from discrimination in programs and activities that receive federal funding. Neither statute specifically addresses websites or classroom technology, but it is clear from the language of the statutes and their implementing regulations,⁷ along with the interpretations of the Department of Justice (DOJ), Civil Rights Division and the Department of Education, Office for Civil Rights (OCR), that websites and classroom technology are covered by these statutes.⁸

³ studentprivacypledge.org/.

⁴ cdn-files.nsba.org/s3fs-public/Data_In_The_Cloud_Guide_NSBA_COSA_02-09-15.pdf?RQkKRotGvL6gD6tmH_iHZTHelMfxdlUA.

⁵ tech.ed.gov/wp-content/uploads/2014/09/Student-Privacy-and-Online-Educational-Services-February-2014.pdf.

⁶ studentprivacy.ed.gov/sites/default/files/resource_document/file/TOS_Guidance_Mar2016.pdf.

⁷ Title II of the ADA, 42 U.S.C. § 12131, et seq., and its implementing regulation at 28 C.F.R. pt. 35; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. pt. 104.

⁸ See U.S. Dep’t of Justice, Office for Civil Rights, *Dear Colleague Letter* (May 26, 2011), ed.gov/about/offices/list/ocr/letters/colleague-201105-ese.html (regarding the use of emerging technologies in the classroom); U.S. Dep’t of Educ., Office for Civil Rights, *Frequently Asked Questions About the June 29, 2010, Dear Colleague Letter* (May 26, 2011), ed.gov/about/offices/list/ocr/docs/dcl-ebook-faq-201105.pdf; U.S. Dep’t of Educ., Office for Civil Rights, *Joint “Dear Colleague” Letter: Electronic Book Readers* (June 29, 2010), ed.gov/about/offices/list/ocr/letters/colleague-20100629.html.

For more information, see TASB Legal Services' *Frequently Asked Questions about School District Website Accessibility*.⁹

Authorization

Authorization to acquire and use a particular technology in the classroom is a multi-faceted issue that involves procurement, authority of a teacher to make decisions regarding use of technology in the classroom, and permission of a parent for a student to use technology.

- **Procurement:** It is important that procurement documents, including contracts or other agreements, include provisions that address issues of data privacy and accessibility, discussed above, and the applicable laws listed below. A district should work with its school attorney to ensure that these issues are adequately addressed in all procurement documents. In some cases, a district may be able to negotiate these terms; in others, a district, along with its counsel, must decide if the provider's standard agreement adequately addresses these issues.
- **Teacher Authorization:** Because so many educational technology options are readily available, a district should ensure that the selection and use of technology by teachers in the classroom complies with district policy and regulations. See TASB Policy EF(LEGAL) and (LOCAL).

Sample regulations can be found in TASB Regulation Resource Manual at CQ and EF. Sample documents, including Staff Request for Approval of Technology Resources, can be found in TASB Regulation Resource Manual at CQ.

- **Parental Permission:** For a variety of reasons, some parents may not want their students to use certain technology in the classroom. To avoid complaints, a district should seek parental permission for students to use technology in the classroom. If a parent does not give permission, a teacher should provide a meaningful and equally effective alternative.

In addition, it may be appropriate or necessary for students to use their personal telecommunications or electronic devices for instructional purposes. This use should be addressed in a district's Student Handbook. Sample language can be found in TASB Model Student Handbook and in TASB Policy FNCE(LOCAL). In addition, students should be required to sign a user agreement with rules for acceptable use. Sample regulations and sample documents can be found in TASB Regulations Resource Manual at CQ, including Letter to Parents Regarding Use of Online Technology Resources and Student Agreement for Acceptable Use of the District's Technology Resources.

⁹ tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/sch_district_website_accessibility.aspx.

Applicable Laws

Several federal statutes may be implicated when teachers and students use technology in the classroom:

- Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. section 1232g, protects the privacy of student records and gives parents certain rights with respect to their children's education records. See TASB Policy FL(LEGAL) and (LOCAL). Sample regulations and forms can be found in TASB Regulation Resource Manual at FL. For more information, see U.S. Department of Education, Family Policy Compliance Office (FPCO) FERPA Guidance.¹⁰
- Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. section 1232h, requires schools and contractors to make instructional materials available for inspection by parents and to obtain written consent before requiring minor students to participate in surveys and other activities that reveal information regarding certain subjects. Districts must also work with parents to develop policies on, among other things, the collection, disclosure, and use of personal information collected from students for the purpose of marketing or selling that information; however, there is an exception for information collected for the purpose of developing, evaluating, or providing education products or services for or to students. A district must give parents at least annual notice of PPRA policies, notice of certain activities, and an opportunity to opt out of those activities. See TASB Policy EF(LEGAL) and (LOCAL).
- Children's Online Privacy Protection Act (COPPA), 15 U.S.C. sections 6501-6506, and Federal Trade Commission rules, 16 C.F.R. Part 312, prohibit the operator of a website or online service directed at children under 13 from collecting personal information from a child in a manner that violates the rules. The rules require a covered operator to post a privacy policy that clearly and comprehensively describes how it handles any information collected. The rules also contain parental notice and consent requirements. Questions arise as to when and whether schools may provide this consent. For more information, see FTC Complying with COPPA: Frequently Asked Questions¹¹ at *COPPA and Schools*. Districts should consult their school attorneys regarding issues raised by COPPA, particularly with regard to any language in contracts with electronic service providers.
- Children's Internet Protection Act (CIPA), Pub. L. 106-554, requires districts, as a prerequisite to receiving E-rate discounts, to certify that they have an internet safety policy that includes technology protection measures that block or filter Internet access to pictures that are obscene, child pornography, or harmful to minors. The policy must also satisfy other requirements. 47 U.S.C. § 254(b)(5). Similar requirements apply to

¹⁰ ed.gov/policy/gen/guid/fpco/ferpa/index.html.

¹¹ ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions#Schools.

districts receiving funds under the Elementary and Secondary Education Act (ESEA). 20 U.S.C. § 7131. See TASB Policy CQ(LEGAL) and (LOCAL). For more information, see FCC CIPA Consumer Guide¹² and E-Rate Central's CIPA Primer.¹³

- Copyright Act, 17 U. S. C. sections 101-1332, protects the rights of authors and artists against the unauthorized use or reproduction of their works. The Fair Use doctrine, 17 U. S. C. section 107, allows unlicensed use under certain circumstances, including for educational purposes if other factors are satisfied. For more information, see U.S. Copyright Office Information on Fair Use.¹⁴ Districts should educate and train employees and students about avoiding the use of material protected by copyright, seeking permission to use protected materials, or working within the boundaries of *fair use*. See TASB Policy CY(LEGAL) and (LOCAL). Sample regulations and forms can be found in TASB Regulation Resource Manual at CY. TASB Model Employee Handbook states an expectation that employees comply with provisions of federal copyright law.

Conclusion

Educational technology can greatly enhance a student's learning experience, but the use raises numerous issues. A district, in consultation with its school attorney, should carefully consider these issues when deciding how and to what extent to incorporate educational technology in its educational programs. If you have further questions regarding the legal issues surrounding the use of technology in the classroom, please contact TASB Legal Services at 800.580.5345.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/technology_in_the_classroom.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the district's own attorney in order to apply these legal principles to specific fact situations.

¹² fcc.gov/consumers/guides/childrens-internet-protection-act.

¹³ e-ratecentral.com/CIPA/cipa_policy_primer.pdf.

¹⁴ copyright.gov/fair-use/more-info.html.