



**Texas Association of School Boards**

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*Serving Texas Schools Since 1949*

## **Educational Technology in the Classroom: A Legal Overview**

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The proliferation of educational technology options for the classroom, including hardware, software, websites, applications, and educational games, has offered many benefits and opportunities to educate students in meaningful and innovative ways. However, new technologies also raise legal questions. This article reviews basic issues that schools should consider when adding web-based tools or technology provided by third-party educational technology (“ed-tech”) providers.

For more on remote instruction, see TASB Legal Services’ [Frequently Asked Questions about Remote Instruction](#).

### **Student Privacy**

#### *Laws Applicable to Districts*

Texas school districts are subject to various state and federal laws that govern access to student information, including the following:

- **Family Educational Rights and Privacy Act (FERPA)**, 20 U.S.C. § 1232g. FERPA is a federal law that generally protects the privacy of student records against disclosure without consent and gives parents certain rights with respect to their children’s education records. FERPA provides limited circumstances under which districts may disclose data to third parties, including ed-tech providers. See TASB Policy FL(LEGAL) and (LOCAL). Furthermore, the rights provided under FERPA may not be waived. In one complaint, the U.S. Department of Education’s Student Privacy Protection Office (SPPO) determined that a virtual school could not require a parent to waive her FERPA rights by denying her student enrollment when the parent refused to accept the virtual school vendor’s terms and conditions, which required users to waive certain rights otherwise protected by FERPA. Sample procedures and consent forms can be found in TASB Policy Service’s Regulation Resource Manual at FL. For more information, see FERPA Guidance at the [U.S. Department of Education SPPO website](#).

In order to allow a website, ed-tech platform, or other application to access student information, a district must seek to ensure that the transfer, use, maintenance, and redisclosure of data comply with FERPA requirements.

- **Protection of Pupil Rights Amendment (PPRA)**, 20 U.S.C. § 1232h. The PPRA is a federal law that generally 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 sensitive subjects, including sexual behaviors, political affiliations, religious practices, and income. 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 annual notice of PPRA policies, notice of certain activities subject to the PPRA, and an opportunity to opt out of those activities. See TASB Policy EF(LEGAL) and (LOCAL). Sample notices have been provided in the TASB Model Student Handbook.

- **Children’s Internet Protection Act (CIPA)**, 18 U.S.C. App. III §§ 1-16. CIPA is a federal law that 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(h)(5)(B). Similar requirements apply to 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’s CIPA Consumer Guide](#) and [E-Rate Central’s CIPA Primer](#).

It is important for districts to ensure that ed-tech providers customize products and services to align with these protection measures.

- **Copyright Act**, 17 U. S. C. §§ 101-1332. The U.S. Copyright Act is a federal law that generally protects the rights of authors, artists, and other content creators against the unauthorized use or reproduction of their works. The “fair use” doctrine, 17 U.S.C. §107, allows unlicensed use under certain circumstances, including for educational purposes if other factors are satisfied. Additionally, the classroom exception, extended by the TEACH Act to distance learning, provides for more protection against infringement claims if certain conditions are met. See 17 U.S.C. §§ 110(2), 112(f). For more information, see [U.S. Copyright Office Information on Fair Use](#) and [Frequently Asked Questions about Copyright](#).

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 procedures and forms can be found in TASB Policy Service’s Regulation Resource

Manual at CY. The TASB Model Employee Handbook states an expectation that employees comply with provisions of federal copyright law. The TASB Model Student Handbook requires consent from parents or students 18 years or older prior to publishing a student's original artwork or class work.

- **Individuals with Disabilities Education Act (IDEA).** The IDEA, 20 U.S.C. § 1400, 34 CFR parts 300 and 303, is a federal law that not only governs special education services but also includes protection for the privacy of information of students who are receiving services under the IDEA. While there is some overlap of confidentiality requirements between the IDEA and FERPA, the IDEA has unique provisions specifically related to infants, toddlers and children with disabilities receiving services under IDEA. Therefore, it is critical to examine additional privacy and confidentiality requirements under the IDEA when planning for technology resources that support services for children with disabilities and for programs for younger children, including prekindergarten, daycare, and before- and after-school care. See U.S. Dep't. of Education, [IDEA and FERPA Confidentiality](#) (June 2014), and [Provisions Understanding the Confidentiality Requirements Applicable to IDEA Early Childhood Programs Frequently Asked Questions](#) (FAQs) (Oct. 2016).
- **Texas Public Information Act (PIA).** Texas Government Code chapter 552, or the PIA, is a state law that generally provides for the public's access to governmental information. The PIA also requires governmental bodies to protect from public disclosure any information that is made confidential by law. When student information is not otherwise protected by FERPA, such as for enrollment application records, the PIA provides additional protection against disclosure. In many instances, districts may be in possession of non-education records of students that are protected by other state laws, such as juvenile law enforcement records or certain financial information. For more information, see the [Texas Attorney General's website](#) and [TASB Legal Services' Public Information webpage](#).

When a school district and an ed-tech provider exchange information that does not appear to be protected by FERPA or the IDEA, consider how the PIA may apply to the information.

### *Laws Applicable to Operators Servicing School Districts*

Understanding the legal obligations that apply to ed-tech providers can help a district properly negotiate any potential indirect costs and burdens on the district's use of staff and resources, such as when parental notification and consent must be provided and obtained. Below are two laws that apply directly to service providers using student information but may have indirect consequences for districts:

- **Texas Education Code, Chapter 32, Subchapter D.** Also known as the Texas Student Privacy Act, Chapter 32, Subchapter D, of the Texas Education Code protects student privacy by regulating how operators of online services may use student information.

Under this state law, a covered operator may not knowingly use student information for targeted advertising, to create student profiles, or to sell or rent student information. Tex. Educ. Code § 32.152(a). However, a covered operator may use or disclose covered information under certain specified circumstances and must implement and maintain reasonable security procedures to protect covered information from unauthorized access, deletion, use, modification, or disclosure. Tex. Educ. Code §§ 32.153, .155. Furthermore, this law prescribes the procedures for an operator to delete student information when requested by a district. Tex. Educ. Code § 32.156.

- **Children’s Online Privacy Protection Act (COPPA).** COPPA, 15 U.S.C. §§ 6501-6506, and implementing Federal Trade Commission (FTC) rules, 16 C.F.R. Part 312, is a federal law that prohibits covered operators from collecting personal information from a child under the age of 13 in a manner that violates the rules. COPPA covers any operator of a website or online service directed to children or who have actual knowledge they are collecting or maintaining personal information from children. The FTC 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, although questions remain as to when and whether schools may provide this consent. For more information, see FTC’s [Complying with COPPA: Frequently Asked Questions](#), 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.

Finally, districts may wish to consider doing business with a technology service provider that has signed the [Student Privacy Pledge](#), 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.

## Authorization

Authorization to acquire and use a particular technology in the classroom involves procurement, a teacher’s authority to make decisions regarding use of technology in the classroom, and parental consent.

- **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. Legal waivers and limitations of damages can be buried in the fine print of a legal agreement and bind the district to disadvantageous terms and conditions. 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. For general information on purchasing, see TASB Legal Services' [\*School Board Member's Guide to Purchasing\*](#).

- **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. Many districts vet common online educational tools to pre-approve a list of certain resources that have undergone prior legal and technology reviews. 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 ed-tech programs or software applications in the classroom. To avoid complaints, educators may wish to seek parental permission for students to use technology that has not been pre-approved by the district. If a parent does not give permission for use of technology or programs that are required by the curriculum, consider providing a meaningful and equally effective alternative in accordance with board policy.
- **Student Acceptable Use:** It may be appropriate or necessary for students to use their personal devices for educational purposes. Use of both personal and district technology resources 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, districts should require students 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.

## **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, 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. 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.

See U.S. Dep't of Justice, Office for Civil Rights, [Dear Colleague Letter](#) (May 26, 2011) (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) (answering common questions about emerging technologies); U.S. Dep't of Educ., Office for Civil Rights, [Joint "Dear Colleague" Letter: Electronic Book Readers](#) (June 29, 2010), (opining on the use of electronic book readers that are not accessible to students who are blind or have low vision).

For more information, see TASB Legal Services' [Frequently Asked Questions about School District Website Accessibility](#).

### **Cost of Providing Technology to Students**

Texas law prohibits charging students for instructional materials, which may include access to online educational resources. Districts may only charge for damaged technological equipment in very limited circumstances and, even then, the decision to charge comes with legal and practical challenges. Districts incorporating use of technological equipment for the purpose of instruction will need to consider operational costs and insurance protection for inevitable wear and tear, loss, and damage. For more information, see TASB Legal Services' [Theft, Loss or Damage to Technology Devices at School](#) and [Charging Students for Instructional Technology](#).

### **Considerations for "Free" or "No Cost" Products**

Finally, service providers often offer ed-tech options to schools for "free" or offer "free" services to initiate pilot programs. It is important to be aware that a tangible value rests in the voluminous data that is collected from each user of their technology product. Some technology products are designed to continuously mine data for use by advertisers and others that may or may not benefit students, and that may continue well past the expiration of a contractual agreement. Unfettered or unregulated access or use to student information may not only violate the law but leave students vulnerable in many ways. A district should work with its school attorney to ensure that all engagements and partnerships, even when presented as "free" or "no cost," are carefully reviewed.

If you have further questions regarding the legal issues surrounding the use of educational 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/instruction/documents/educational-technology-in-the-classroom-a-legal-overview.pdf](https://tasb.org/services/legal-services/tasb-school-law-esource/instruction/documents/educational-technology-in-the-classroom-a-legal-overview.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schollawesource.tasb.org](https://schollawesource.tasb.org).

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