OREGON ATTORNEY GENERAL ELLEN ROSENBLUM &
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STUDENT PRIVACY
IN THE
DIGITAL AGE
Big Data: What is it?
Privacy Laws: What are They?

- COPPA Children’s Online Privacy Protection Act
- FERPA Family Education Right and Privacy Act
- State contracting restrictions
Current Laws Governing Collection of Data
FERPA

Family Educational Rights and Privacy Act
Passed in 1974

- Under FERPA Students have the right to:
  - Inspect & review educational record
  - Prevent disclosure of educational record
  - Seek amendment to educational records if inaccurate
  - Be notified of their privacy rights
FERPA: Student Information That Can Be Shared

• Schools can disclose without consent Directory Information

• Directory Information may contain:
  • Student’s name
  • Address
  • Telephone number
  • Date & place of birth*
  • Honors & awards
  • Dates of attendance

• Schools must tell students & parents what they include in directory information

• Students & parents may request that student directory information not be disclosed

* Some states’ privacy laws restrict publication of birth place
FERPA: Disclosure Rules

• **Support of individual students and schools including:**
  • Other school to which a student is transferring
  • Appropriate officials for health and safety emergencies
  • Appropriate parties in connection with financial aid to the student
  • To comply with a judicial order or subpoena
  • Accrediting organizations

• **Support of education across the state**
  • Organizations conducting certain studies on behalf or for the school or the Department of Education
  • Specified officials for the purpose of audit or evaluation of an educational program
COPPA

- Children’s Online Privacy Protection Act 1998
- Applies to children under 13
- Applies to web site operators and details:
  - What a website operator must include in a privacy policy,
  - When and how to seek verifiable consent from a parent or guardian,
  - What responsibilities an operator has to protect children's privacy and safety online
  - Restrictions on marketing to those under 13
- Websites may only retain personal information of children as long as it is necessary to fulfill the purpose for which the information was collected
HIPAA

• Health Insurance Portability and Accountability Act of 1996
  • Regulates the protection and disclosure of protected health information

• Protected health information
  • Any information about health status, provision of health care, or payment for health care that can be linked to a specific individual.

• May be disclosed to:
  • Facilitate treatment, payment or health care operations
  • Law enforcement officials for law enforcement purposes
Oregon Identity Theft Protection Act

• Senate Bill 583 passed in 2007
• Requires the protection of personally identifiable information (PII) to preserve consumers from identity theft
• Defines PII in Oregon as a consumer’s first name or initial and last name in combination with:
  • Social security number
  • Driver’s license number
  • Passport number (or other US ID number)
  • Financial account number (bank account, credit card, debit card) plus security information allowing access to the account
USDA Free & Reduced Lunch Program

- All data submitted to the National School Lunch program is governed by USDA Confidential Information Disclosure Guidelines
- Eligibility information is confidential
- May only be disclosed to:
  - Federal education program
  - State health or state education programs
  - Nutrition programs (eg. Food stamp programs & Food distribution Programs) with comparable standards
  - Persons connected with the administration or enforcement of federal nutrition programs.
Student Data – Why does it need protection?
OSIPA – What is it?
OSIPA – What’s a School to do?
OSIPA – How is it enforced?

Consumer Hotline: 1-877-877-9392
http://www.doj.state.or.us/consumer/pages/index.aspx
Questions
for further study

- Portland Tribune: *Educational technology apps have powers to use student data.*
- FTC: http://www.onguardonline.gov/
- Academics to watch: Dan Solove, Paul Ohm, Woody Hartzog
- Fordham http://law.fordham.edu/center-on-law-and-information-policy/clip.htm
- Stanford http://cyberlaw.stanford.edu/focus-areas/privacy
- *Big Data: Seizing Opportunities, Preserving Values* (White House, 2014)
- *Data Brokers: A Call for Transparency and Accountability* (FTC, 2014)
- https://www.owasp.org/index.php/OWASP_Top_10_Privacy_Risks_Project#tab=Main
- Security blogger: http://krebsonsecurity.com/
- Electronic Frontier Foundation
- Privacy Rights Clearinghouse
- Common Sense Media
Possible contract language. This is not legal advice, this is just an example of what could be appropriate. Each entity should consult an attorney for legal advice.

**Oregon Student Information Protection Act.** Contractor certifies that it is in full compliance with the Oregon Student Information Protection Act of 2015 and any implementing regulations (“OSIPA”). Contractor shall further ensure that all Work under this Contract complies with the requirements OSIPA. Although Contractor is not expected to provide any legal advice or interpretation of any state or federal laws or regulations, including OSIPA, in the performance of the Work, the parties recognize that performance of Contractor's duties under the Contract may necessarily involve some interpretation, rather than mere application, of those laws and regulations. Contractor is solely responsible to conduct the necessary research and gather all information needed to complete the Work in accordance with the requirements of the OSIPA, as well as any other applicable state or federal law.