

United States Senate

March 24, 2020

The Honorable Betsy DeVos
Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

The Honorable Joseph Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Noah Phillips
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rohit Chopra
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rebecca Slaughter
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Christine Wilson
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Secretary DeVos, Chairman Simons, Commissioner Phillips, Commissioner Chopra, Commissioner Slaughter, and Commissioner Wilson:

In recent days, officials across the country have made the prudent decision to close schools in order to protect their students, faculty, staff, and broader communities during the COVID-19 pandemic. As a result, millions of students are now engaging in at-home “distance learning,”¹ and many are using software and online tools that can collect their data.² These young education technology (“ed tech”) users must have their privacy protected. We write to urge the Federal

¹ Yoree Ko, *U.S. Schools Deploy Remote Learning on Unprecedented Scale*, Wall St. J., (Mar. 16, 2020), <https://www.wsj.com/articles/u-s-schools-deploy-remote-learning-on-unprecedented-scale-11584393501>.

² Erin Richards, *When Will School Reopen? No Date in Sight, and Schools Struggling to Put Learning Online*, USA Today, (Mar. 17, 2020) <https://www.usatoday.com/story/news/education/2020/03/17/coronavirus-school-closings-online-classes-homeschool-zoom/5063384002/>.

Trade Commission (FTC) and Department of Education (ED) to jointly issue guidance to ed tech companies and parents that will help protect students' privacy both during this pandemic and in the future.

Student privacy must not fall by the wayside as the current pandemic moves learning from the classroom to online offerings at home. Across the globe, school closings have greatly increased students' reliance on platforms and services that facilitate remote learning on laptops and devices.³ These tools hold the promise of facilitating continued learning while students are forced to stay home, and we encourage educators and institutions to continue to implement innovative solutions to meet the current challenges facing our education system.

However, many ed tech offerings collect large amounts of data about students and do not employ adequate privacy or security measures. Experts have found “widespread lack of transparency and inconsistent privacy and security practices in the industry for educational software and other applications used in schools and by children outside the classroom for learning.”⁴ And the Federal Bureau of Investigation has warned that “[m]alicious use of [student] data could result in social engineering, bullying, tracking, identity theft, or other means for targeting children.”⁵ The FTC and ED — the agencies responsible for enforcement of the Children’s Online Privacy Protection Act (COPPA) and the Family Educational Rights and Privacy Act (FERPA), respectively — have themselves acknowledged the need to “ensure that student privacy is properly protected without interfering with the promise of [ed tech].”⁶ The recent dramatic increase in American children’s use of ed tech offerings creates opportunities, and also carries with it serious privacy challenges and risks to children’s wellbeing.

The FTC regularly issues guidance to companies to provide “plain-language guidance to help businesses understand their responsibilities and comply with the law.”⁷ This guidance can serve as an important resource for companies that aim to serve their customers responsibly and follow best practices. Therefore, we encourage the FTC and ED to jointly issue guidance to ed tech companies in order to protect student privacy. In developing this guidance, we encourage you to consider the following proposals:

- Ed tech services should communicate their privacy policies to users conspicuously and in easily accessible fashion;
- Ed tech services’ notice of their data collection and processing practices must be written in plain language so that it is easily understood by students, parents, and educators;
- Ed tech services should not weaken privacy safeguards when users access their tools at home, rather than in classroom settings; and

³ Jenny Anderson, *With 290 Million Kids Out of School, Coronavirus is Putting Online Learning to the Test*, Quartz, (Mar. 5, 2020), <https://qz.com/1812638/millions-of-kids-testing-e-learning-after-coronavirus-school-closures/>.

⁴ Common Sense Media, *The State of Kids' Privacy: Evaluating the Safety and Security of Kids' Tech* (July 31, 2019), <https://www.commonsensemedia.org/research/the-state-of-kids-privacy-evaluating-the-safety-and-security-of-kids-tech>.

⁵ Federal Bureau of Investigation, *Public Service Announcement: Education Technologies: Data Collection and Unsecured Systems Could Pose Risk to Students* (Sep. 13, 2018), <https://www.ic3.gov/media/2018/180913.aspx>.

⁶ Press Release, Federal Trade Commission, Student Privacy and Ed Tech (Dec. 1, 2017) <https://www.ftc.gov/news-events/events-calendar/2017/12/student-privacy-ed-tech>.

⁷ Federal Trade Commission: Guidance, <https://www.ftc.gov/tips-advice/business-center/guidance>, (last visited Mar. 20, 2020).

- Ed tech services that, as a matter of policy or compliance with state or federal law, do not sell or otherwise monetize student data when those services are used in the classroom should apply those same policies when users access their services for at-home learning.

The FTC and ED should also issue guidance to parents of students who use ed tech offerings. Many families have little choice in the ed tech tools they must use during this period of remote learning. While companies following the guidance above should ensure that all families have basic default privacy protections, it is equally imperative that parents are able to make informed decisions to protect their children’s privacy and combat a race-to-the-bottom in student privacy practices. We urge you to issue guidance to parents of students using ed tech services during this period of at-home learning, and we suggest you consider the following recommendations:

- Encourage parents to be aware of ed tech services that may provide different versions of their service and different educational opportunities depending on whether a user grants permission for data collection and sharing;
- Encourage parents to take note of whether ed tech services indicate and demonstrate that they employ strong data security practices;
- Encourage parents to communicate with their child’s school if they perceive that the ed tech service their child is using appears to pose privacy or security risks; and
- Warn parents about the risks that malicious access to student data can pose to their children, including risks of identity theft and invasive tracking.

This guidance is in no way a substitute for congressional action protecting student privacy, and it would in no way preclude the FTC or ED from further investigating the ed tech industry in order to inform future action by either entity. More is certainly needed, but this is a necessary interim step.

Parents across the United States are grappling with the vast complications this pandemic has for their children. Those parents should not have to worry about the misuse or vulnerability of their child’s personal information when they log-on and learn remotely. Issuing guidance is critical to protecting students’ online privacy during the current national emergency.

Thank you in advance for your attention to this important matter.

Sincerely,


Edward J. Markey
United States Senator


Richard J. Durbin
United States Senator


Richard Blumenthal
United States Senator