

Global Regulatory Enforcement Alert

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A Crash Course on Education Privacy

Data privacy is often most associated with industries, like finance and health care. But did you know that one in four data breaches involve schools? Schools have become a target for cyber criminals because of the wealth of personal information that they possess. In addition to the cyber security concerns, educational institutions have some unique and wide-ranging privacy concerns.

Cyber Security & Educational Data Breaches

Data breaches are dominating the headlines, and educational institutions are not immune. Data breaches in the education context have involved student medical records and student loan data, to name a few. Schools, just like companies, should weigh the risks and benefits of collecting, using, and retaining personal information. They should also dispose of personal information in a secure manner. The accompanying risks of lawsuits and government investigations must be considered by educational institutions.

Data Management in Education

Schools also face a number of unique data management issues:

SOCIAL MEDIA: Education privacy issues have come up repeatedly in the social networking context. Back in 2009, a group of Mississippi high school students brought suit against their school after a teacher had allegedly demanded their Facebook user names and passwords to see if any of them were engaging in drinking or drugs. In another instance, from March 2011, a high school principal from Georgia reportedly ordered a 13-year-old girl to log onto Facebook so she could read offensive wall posts about a teacher. Additionally, last year, after a high school student created a MySpace group where group members ridiculed their fellow students, the Fourth Circuit held that the student had “used the Internet to orchestrate a targeted attack on a classmate” and did so in a manner that was “sufficiently connected to the school environment as to implicate the School District’s recognized authority to discipline” the student, despite the fact that the creation of the webpage occurred off of school property and outside of school hours. See *Kowalski v. Berkeley County Sch.*, No. 10-1098 (4th Cir. 2011). Various medical students have also reportedly engaged in questionable social networking practices with regard to patient privacy; for example, by blogging or posting pictures of patients on the Internet.

SEARCH & SEIZURE: The legality of searches and seizures by school officials is another recurring issue in education privacy. In a 2006 case, a high school student argued the school district violated Pennsylvania’s Stored Communications Act (“SCA”) by accessing his text messages, phone numbers and call records. The district court held that a call log and phone number directory are not “communications” under the statute so searching them did not violate Pennsylvania’s SCA. *Klump v. Nazareth Area Sch. Dist.*, 425 F.Supp.2d 622 (E.D. Pa. 2006). And in November 2010, the Virginia attorney general released an official advisory opinion that searches and seizures of students’ cell phones and laptops should be permitted when a reasonable suspicion exists that the student violated the law or school rules. Other privacy issues have come up in the context of schools using webcam surveillance.

CYBERBULLYING: Education privacy concerns have also been linked to cyberbullying, a problem with increasing notoriety. Most people are familiar with the well-publicized case of Rutgers University student Tyler Clementi, who committed suicide after his college roommate posted a video of Clementi, without his knowledge, engaging in homosexual activity.

TEACHER DISCIPLINE: Last year, an Iowa Appeals Court upheld the district court’s ruling that a public school’s records with respect to teacher discipline were confidential. In that case, the teachers were disciplined after improperly strip-searching students for an apparent theft of \$100. The Iowa Supreme Court has recently agreed to hear an appeal of the case.

CLOUD COMPUTING: Many schools and higher educational institutions are considering out-sourced cloud computing solutions in an attempt to reduce IT infrastructure costs. However, it is difficult for many educational institutions to reconcile cloud computing contract warranties with the privacy and security requirements of the Family Educational Rights and Privacy Act of 1974 (“FERPA”).

The government is taking note of the substantial privacy and security concerns in education. Back in April 2011, the Department of Education hired its first chief privacy officer. That same month, several proposed changes under FERPA were also published in the *Federal Register*. The Federal Trade Commission is also currently considering amendments to the longstanding privacy protections of the Children’s Online Privacy Protection Act, and reviewing privacy and data handling practices for mobile applications directed to kids.

Reed Smith’s Education Law and Data Security, Privacy & Management teams are well-equipped to provide its clients in the education field with advice on this growing area of privacy.

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