

Secretary Miguel Cardona  
U.S. Education Department  
400 Maryland Avenue S.W.  
Washington, D.C. 20202

Chairwoman Lina Khan  
Federal Trade Commission  
600 Pennsylvania Avenue N.W.  
Washington, DC 20580

RE: FTC Settlement with Edmodo

June 16, 2023

Dear Secretary Cardona and Chairwoman Khan,

On behalf of the undersigned organizations, representing school superintendents, educational service agencies, school boards, school principals, teachers and rural educators, we write today to request a fix to the significant problem raised by the [proposed settlement order](#) with Edmodo that will make it more difficult for school districts to adequately provide education technology to students and vet that technology to protect student privacy.

Earlier this spring, the Federal Trade Commission (FTC) finalized a settlement with Edmodo. In this settlement, the FTC declared the education technology provider unlawfully used children's personal information for advertising and outsourced compliance to school districts.

We are concerned with a specific provision in the settlement, one we think that is unintentional but will bring significant disruption to the nation's schools: the settlement may lead companies to believe that they can no longer contract with local or state educational agencies for educational technology in schools without obtaining verifiable parental consent (VPC).

The primary problem centers around the settlement's new definitions of "School" and "School Representative," which limit the parties that an operator can contract with for educational technology use in a school without obtaining VPC. As currently drafted, "school" and "school representative" are defined as "an institutional day or residential school, including a public school, charter school, or private school, that provides elementary or secondary education, as determined by State law," and "...a School employee," respectively.

These terms are new and seemingly outside of and incongruent with long-established federal definitions for school and district. These new definitions will likely result in edtech companies incorrectly assuming that only individual schools—not the local or state education agency—can provide school authorization. This represents a significant and likely very disruptive departure from the current interpretation of COPPA, since the [COPPA FAQs](#) reference school districts.

The term "local educational agency" (LEA) is defined in the Elementary and Secondary Education Act, and LEA is broadly recognized as interchangeable with school district. LEAs/school districts frequently serve as the primary administrators for all the individual schools in their jurisdiction and, as such, tend to

be the primary entities responsible for contracting with edtech companies. Similarly, there are two additional levels of educational governance (educational service agencies, or ESAs, and state educational agencies, or SEAs) with long-established federal definitions that frequently contract on behalf of multiple schools and multiple LEAs/districts. The new definitions ignore current practice and terminology, and in doing so exponentially complicate the work of schools and districts to efficiently engage with education technology.

The US public education system is composed of approximately 99,000 schools, 13,000 LEAs, 500 ESAs, and 56 SEAs in the U.S.. Left unchanged, this settlement and its new definitions set up a scenario where edtech companies may have to contract with 99,000 schools—instead of 13,000 districts—for school authorization. The new definitions also mean that LEAs, ESAs, and SEAs can no longer provide School Authorization under the narrow definitions of “School” and “School Representative” in the settlement.

The new terms eliminate the bargaining power of LEAs, ESAs, and SEAs, all of which are higher than that of individual schools. LEAs and SEAs will no longer be able to negotiate privacy and security-protective contractual provisions with edtech providers. Prohibiting LEAs from providing School Authorization to enter contracts with edtech companies disadvantages schools by requiring individual schools to take on the administrative burden of negotiating and contracting with edtech companies on their own, without the additional experience and resources of their LEAs. Excluding LEAs from being entities who can provide School Authorization is not ideal for edtech companies either - it could significantly increase the number of contracts they must negotiate and execute to be able to have their products used in classrooms with children under 13.

We request that the FTC address this issue, perhaps by mutually agreeing with Edmodo to change the proposed settlement order before it is approved or amend the order to expand the definition of “School” to include LEAs and SEAs as defined by the Elementary and Secondary Education Act.

Sincerely,

AASA, The School Superintendents Association  
Association of Educational Service Agencies  
National Association of Elementary School Principals  
National Association of Secondary School Principals  
National Education Association  
National Rural Education Advocacy Consortium  
National Rural Education Association  
National School Boards Association