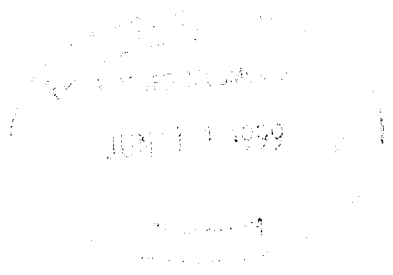


June 11, 1999

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580



*Excellence and Equity
in Public Education
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Leadership*

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**RE: Children's Online Privacy Protection Rule—Comment P994504
Comments of the National School Boards Association**

The National School Boards Association (NSBA) and the National School Boards Association's Council of School Attorneys submits the following comments on the Children's Online Privacy Protection Act (COPPA) as requested by the Federal Trade Commission in the Notice of Proposed Rulemaking. Local school board members are committed to ensuring the privacy rights of students. That commitment to student privacy extends to the privacy issues raised around the Internet. In 1999, NSBA's Council of School Attorneys released a new publication, *Legal Issues and Education Technology: A School Leader's Guide*, that includes in-depth information to assist local schools in establishing policies that address students privacy and to ensure understanding of the application of current laws such as the Family Education Rights and Privacy Act in an online setting. However, we are equally concerned that a laudable desire to protect children online not have the unintended consequence of creating roadblocks for schools to use the rich information and education resources available through technology. In that light, NSBA raises the following concerns:

1. The FTC Should Explicitly Clarify That the Rule Does Not Apply to Public Schools

NSBA asks the FTC to clarify that the Rule does not apply to public schools. The text of the Act and the Rule limit the definition of "operator" to those web sites or online services "operated for commercial purposes, including any person offering products or services for sale through that web site or online service . . ." This language appears to exclude most public schools that have web sites. NSBA is concerned, however, that as school web sites evolve, schools may engage in some incidental commercial activity. Such activity might materialize in the form of allowing students groups to raise funds via the Internet, such as by selling food or other products—products that are ordinarily sold door-to-door—through the school web site. Despite the possibility of such incidental commercial activity, NSBA believes schools should be explicitly exempt from the coverage of the Rule for two reasons.

First, there is little or no data to support a conclusion that public school web sites are improperly gathering information about children on the Internet. The apparent focus of the Children's Online Privacy Protection Act was commercial web sites that targeted children as potential customers or sources of data about American households.

Second, many public schools struggle to find the money, time, and expertise to improve students' educational experiences through technology. If the Rule applied to schools, they would be required to direct these limited resources toward creating the procedures and hiring the staff necessary to comply with the Rule, thus diverting funds from the educational mission of the schools.

National School Boards Association

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For these reasons, NSBA requests that the FTC add language to the definition of "operator" to explicitly exclude public schools from the coverage of the Rule as follows:

"The definition does not include an public school or any nonprofit entity that would otherwise be exempt from coverage under section 5 of the Federal Trade Commission Act (15 U.S.C. 45)."

If such a change to the language of the definition is not possible, then NSBA urges the FTC to amend its discussion of the definition to state that it is the FTC's position that public schools are explicitly outside the scope of the Rule's coverage.

2. The FTC Should Carefully Examine the Impact of the Proposed Rules on Student Access to the Internet in the School Setting

Assuming that schools are indeed exempted from the consent and notice requirements, NSBA has a remaining concern about the practical applications of those requirements in a school setting. The Rule may prove overly burdensome and interfere with teacher-guided classwork. Moreover, it may have a disproportionately negative impact on disadvantaged students or students whose families do not have access to technology or understand the proposed consent requirements. We strongly urge the FTC to hold a workshop, and if necessary a further proceeding to fully explore these school-related issues.

We appreciate your attention to these important issues.

Respectfully submitted,



Michael A. Resnick

Associate Executive Director