

May 23, 2024

U.S. Senate Committee on Commerce, Science, and Transportation
Dirksen Senate Office Building 512
Washington, DC, 20510

Re: Kids Online Safety Act

Dear Senators,

The undersigned education and parent associations, members of the Federal Education Privacy Coalition, write today to provide feedback on the [revised text](#) of the Kids Online Safety Act (KOSA) that was released on February 15, 2024. We appreciate your continued leadership on the important work of increasing online privacy and data security protections for our nation's children and students, and we look forward to continuing to work with you as this legislation progresses.

Our organizations prioritize the privacy and safety of student data, and we strongly support updates and revisions to child privacy protections. Minors are uniquely vulnerable to harms online and deserve heightened protections to keep them safe. We commend your work on KOSA to implement additional safeguards to protect children online. We also appreciate how KOSA will expand society's current understanding of how social media is impacting minors, both through conducting crucial research and by creating the expert Kids Online Safety Council. While we commend KOSA's goals and intentions, we are deeply concerned that KOSA may limit schools' ability to effectively incorporate edtech and establish privacy-protective safeguards for its use and that left unaddressed, we will have to oppose the bill.

KOSA's definition of "Covered Platform" includes an "online video game," and its definition of "Online Video Game" includes "an *educational* video game" (emphasis added). This will likely lead to confusion about how KOSA's requirements apply to edtech vendors, particularly the requirement in the "Parental Tools" section which provides that parents shall have the ability to manage a minor's account settings. This requirement, while sensible on its face, may limit schools' ability to enforce privacy-protective contracts with edtech vendors under the Family Educational Rights and Privacy Act (FERPA) and the Children's Online Privacy Protection Act (COPPA). Account settings typically include a wide variety of controls, including: the ability to expand data collection, delete data, and close an account. Giving parents the ability to manage account settings on edtech may allow parents to disable privacy safeguards the school has put in place or even delete their child's account. **To address this issue, we recommend amending KOSA to require Covered Platforms to provide the required Parental Tools to schools, rather than to parents directly, when the Covered Platform is providing a service pursuant to a written contract with the school that complies with the requirements of COPPA and FERPA.**

We are also concerned that provisions in sections 103 ("personalized recommendation systems") and 202 ("opaque algorithms) would unintentionally permit students to opt out of adaptive or personalized learning platforms and assessments that the school has determined to be beneficial to and necessary for its students. Allowing students to circumvent adaptive learning functionalities on products used in school would interfere with school's technology procurement decisions and limit the quality of education that schools are able to provide their students. If a school chooses to allow student use of an edtech product that has been vetted for privacy and security safeguards and executes a contract with the edtech vendor pursuant to FERPA and COPPA, students should not be permitted to independently switch to a different version of that product. To address this issue, we recommend amending KOSA to require operators to provide required notices and the opportunity to switch between different versions of algorithms to schools, rather than to the users directly, when the operators are providing a service pursuant to a written contract with the school that complies with the requirements of COPPA and FERPA.

We would like to emphasize that we strongly support that KOSA would regulate covered platforms that provide “educational” services outside of the school context, many of which proliferated during the pandemic, where parents may understandably not realize that state and federal student privacy laws do not apply despite the label of “educational.” But we must ensure efforts to regulate such services do not upend basic functions of school districts or hinder their ability to use edtech in privacy-protective ways with their students. To find an appropriate balance on this issue, both of the changes recommended in this letter are limited to when there is a privacy-protective written contract pursuant to FERPA and COPPA in place between the school and technology provider.

Thank you for considering our views and it is our hope that we can address these issues of great importance to school district leaders. Two of the undersigned groups, AASA and the Public Interest Privacy Center, have previously shared potential draft revisions to address these issues in the legislative language and can share that language again if helpful.

We look forward to continuing to work with you to fine-tune the provisions in KOSA to ensure the bill’s enhanced privacy protections for children online do not have unintended consequences for our nation’s schools. If you have questions, please reach out to our coalition co-chairs, Noelle Ellerson Ng (nellerson@aasa.org) or Amelia Vance (amelia@publicinterestprivacy.org).

Sincerely,

AASA, The School Superintendents Association
Association of Educational Service Agencies
Association of School Business Officials International
National Association for Pupil Transportation
National Association of Elementary School Principals
National Association of Federally Impacted Schools
National Association of Secondary School Principals
National Rural Education Association
National School Board Association
Public Interest Privacy Center