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Student Privacy and Online Educational Service Providers: New Guidance

The Privacy Technical Assistance Center (PTAC) of the U.S. Department of Education (DOE) serves as a resource for schools and school districts to learn about data privacy, confidentiality, and security practices related to student-level longitudinal data systems. As we discussed at our 2014 Fall Legal Breakfast, in February 2014, PTAC issued guidance entitled *Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices* (<http://ptac.ed.gov/document/protecting-student-privacy-while-using-online-educational-services>). To supplement this Guidance, PTAC recently issued additional resources to help school districts evaluate Terms of Service (TOS) agreements with their online educational service providers and recognize how each provision of the TOS agreement relates to student privacy.

Commonly referred to as “Click-Wrap” agreements, TOS agreements require that, prior to accessing the application or service for the first time,

a user must click “I agree” to accept the terms of the agreement. Once a user accepts the terms, those terms govern what information the educational service provider may collect from or about students, what can be done with the information, and with whom the information can be shared.

The Model Terms of Service document written by PTAC reviews twelve common provisions of TOS agreements and provides examples of contract language that align with best practice recommendations. This Document also lists examples of “Warning” terminology, which poorly protect student privacy and may violate the Family Educational Rights and Privacy Act or other statutes. PTAC further provides an explanation of each provision to assist educators in understanding the rationale behind each component of a TOS agreement. The *Model Terms of Service* document can be found at: <http://ptac.ed.gov/document/protecting-student-privacy-while-using-online-educational-services-model-terms-service>.

PTAC also produced a 9 ½ minute training video which summarizes the student privacy issues and illustrates the process by which school districts can evaluate their TOS agreements. The video can be found at:

<http://ptac.ed.gov/document/protecting-student-privacy-while-using-onlin>

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[e-educational-services-training-video.](#)

If you have questions about this new Privacy Technical Assistance Center document or would like to discuss your school district's Terms of Service agreements, please contact one of our attorneys in Flossmoor (708-799-6766) or Oak Brook (630-928-1200). .

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