

Aug. 20, 2024, 11:14 AM EDT

EdTech Arbitration Outside Kids' Privacy Law Scope, FTC Says



Tonya Riley 

- FTC says edtech firm argument is “mischaracterization”
- The agency is in the process of updating its rule

Federal children’s privacy law doesn’t bind parents and children to every part of an education company’s terms of service agreement just because school districts agreed to them, the Federal Trade Commission said in an amicus brief.

The agency filed the brief Monday in a class action from a group of parents against educational technology provider IXL Learning Inc. in the US District Court for the Northern District of California.

The parents sued the edtech firm in May, accusing it of violating federal wiretapping laws by collecting and selling student’s personal information without parental consent. The families also accused IXL of violating the California Invasion of Privacy Act.

IXL filed a motion to compel arbitration in the case, arguing that under the federal Children’s Online Privacy Protection Act the parents agreed to the website’s terms—which included forced arbitration—because school districts acted as agents giving consent for the parents and children.

The company relies on a “mischaracterization” of COPPA guidance, the FTC said in the filing, including failing to acknowledge the agency has said schools can only consent on behalf of parents if information is used for a “school-authorized educational purpose and for no other commercial use.”

Parents said IXL uses student data to develop and market commercial products, including predictions concerning a “wide range of a child’s attributes and behaviors, such as her future academic performance, skill mastery, learning comprehension, interests, risks, behavior, college and job readiness, and more.”

“Nothing in COPPA’s text, purpose, or legislative history, or the interpretation thereof by the Commission and its staff, addresses the arbitration issue in this case,” the filing states.

IXL didn’t immediately respond to a request for comment.

“IXL’s argument does not pass the smell test,” Commissioner Andrew Ferguson wrote in a concurring statement. He expressed “substantial reservations” about the FTC’s interpretation that schools can provide consent on behalf of parents in some circumstances.

The FTC in December 2023 initiated a rulemaking process to update the law to further protect children’s data. The agency has brought a number of enforcement actions since it began enforcing the rule in 2020, including collecting civil penalties from kids’ weight loss app Kurbo Inc.

The plaintiffs are represented by Morgan & Morgan PA and the EdTech Law Center. Counsel for IXL Learning is Orrick, Herrington &

Documents

[Amicus Brief](#)

[Docket](#)

Related Stories

[FTC Proposes Further Limits to Collection of Children's Data \(1\)](#)

December 20, 2023, 12:54 PM EST

Search by Law Firm

[Orrick Herrington & Sutcliffe](#)

[Morgan & Morgan](#)

Search by Topic

[Commercial Items Acquisition](#)

[Class Actions](#)

[Statutory Interpretation](#)

[Mandatory Arbitration Provisions](#)

[Wiretapping](#)

[Consumer Privacy](#)

[Invasion Of Privacy](#)

Sutcliffe LLP. FTC attorneys represented the agency.

A hearing for the case is set for Oct. 22.

The case is Shanahan et al v. IXL Learning, Inc. , N.D. Cal., No. 3:24-cv-02724, amicus brief filed 8/19/24

To contact the reporter on this story: Tonya Riley in Washington at triley@bloombergindustry.com

To contact the editor responsible for this story: James Arkin at jarkin@bloombergindustry.com