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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

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9 **Gretchen Shanahan**, on behalf of herself and  
her minor children A.S. and B.S., **Amy**  
10 **Warren**, on behalf of herself and her minor  
child B.W., and **Kimberly Whitman**, on  
11 behalf of herself and her minor child H.W.,  
individually and on behalf of all others  
12 similarly situated,

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Plaintiffs,

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v.

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**IXL Learning, Inc.**,

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Defendant.

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**INTRODUCTION AND INTEREST OF THE FEDERAL TRADE COMMISSION**

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No. 3:24-cv-02724-RFL

**Brief for Amicus Curiae Federal Trade  
Commission**

1 The FTC was a driving force behind the enactment of COPPA and serves as the principal  
2 enforcer of COPPA and its implementing rule, which was promulgated by the Commission. The  
3 FTC therefore has a strong interest in the proper construction and application of COPPA.<sup>1</sup>

4 **BACKGROUND**

5 **I. The Children’s Online Privacy Protection Act (COPPA)**

6 As the internet became more central to the lives of children and their families, concerns  
7 grew about whether kids were too exposed in this new online environment. Congress enacted  
8 COPPA in 1998 to better protect children’s online privacy. An FTC study provided the basis for  
9 the legislative efforts that culminated in COPPA’s enactment. ~~See~~whirs onliivacy(O)2 (P)-4 (P(y)60 (. vi(c

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1 personal information from children online. 15 U.S.C. § 6502(b)(1), 6502(c). Pursuant to  
2 Congress’s instructions, the Commission promulgated the Children’s Online Privacy Protection  
3 Rule (“COPPA Rule”), 16 C.F.R. Part 312; *see* 64 Fed. Reg. 59888 (Nov. 3, 1999) (final rule).  
4 COPPA declares it “unlawful for an operator of a website or online service directed to children,  
5 or any operator that has actual knowledge that it is collecting personal information from a child,  
6 to collect personal information from a child in a manner that violates [those FTC] regulations.”  
7 15 U.S.C. § 6502(a)(1).

8 Congress assigned principal responsibility for COPPA’s enforcement to the Commission,  
9 authorizing the agency to bring enforcement actions for violations of the COPPA Rule in the  
10 same manner as for other Commission rules defining unfair or deceptive acts or practices under  
11 the FTC Act. 15 U.S.C. § 6502(c). Several other federal agencies help enforce the statute in  
12 specified areas. *Id.* § 6505(b). In addition, COPPA authorizes state attorneys general to enforce  
13 compliance with the COPPA Rule by filing actions in federal district courts after serving prior  
14 written notice upon the Commission when feasible. *Id.* § 6504(a). The statute does not include a  
15 private right of action.

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1 **III. This Case**

2 In this case, Plaintiffs allege that IXL unlawfully collected, used, and sold their children's  
3 data in connection with their use of IXL's websites and software in school. Compl. ¶¶ 26-255.  
4 Based on this alleged misconduct, Plaintiffs filed this putative class action for violations of the  
5 Federal Wiretap Act, multiple California statutes and the common law. Compl. ¶¶ 256-329.

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1 the SBP while omitting relevant language that narrowly limits that discussion to the COPPA-  
 2 required notice and consent process. *See* Mot. 4-5. The language IXL quotes (highlighted in  
 3 yellow in the block quote below) comes from a fuller “Response to Comments Requesting an  
 4 Exception for Information Collection in the Educational Setting,” which states:

5 Numerous commenters raised concerns about how the Rule would  
 6 apply to the use of the Internet in schools. Some commenters  
 7 expressed concern that requiring parental consent for online  
 8 information collection would interfere with classroom activities,  
 9 especially if parental consent were not received for only one or two  
 10 children. In response, the Commission notes that the Rule does not  
 11 preclude schools from acting as intermediaries between operators  
 12 and parents in the notice and consent process, or from serving as  
 13 the parents’ agent in the process. For example, many schools  
 14 already seek parental consent for in-school Internet access at the  
 beginning of the school year. Thus, where an operator is authorized  
 by a school to collect personal information from children, after  
 providing notice to the school of the operator’s collection, use, and  
 disclosure practices, the operator can presume that the school’s  
 authorization is based on the school’s having obtained the parent’s  
 consent.

15 64 Fed. Reg. 59888, 59903 (footnotes omitted).

16 Similarly, the FTC staff blog post that IXL cites also does not support IXL’s position. The  
 17 blog post relates, again, to the school’s role in the notice and consent process:

18 COPPA generally requires companies that collect personal  
 19 information online from children under age 13 to provide notice of  
 20 their data collection and use practices and obtain verifiable  
 21 parental consent. In the educational context, however, schools can  
 22 consent on behalf of parents to the collection of student personal  
 information - but only if such information is used for a school-

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schools, State educational agencies, and local educational agencies may authorize the collection of personal information from students younger than 13 in very limited circumstances; specifically, where the data is used for a school-authorized education purpose and no other commercial purpose.

When a child goes to school, schools have the ability to act *in loco parentis* under certain circumstances. This is particularly the case when schools are selecting the means through which the schools and school districts can achieve their educational purposes, such as when deciding which educational technologies to use in their classrooms. The Commission finds compelling the concern that requiring parental consent in the educational context would impose an undue burden on ed tech providers and educators alike. As an initial matter, many ed tech providers have relied upon and structured their consent mechanisms based on the Commission’s existing guidance. Requiring providers to reconfigure their systems to obtain parental consent directly from parents would undoubtedly create logistical problems that could increase costs and potentially dissuade some ed tech providers from offering their services to schools.

The need for parental consent is also

1 requiring parental consent to collect student’s information could interfere with classroom  
2 activities, by noting that the COPPA Rule “*does not preclude* schools from acting as  
3 intermediaries between operators and parents in the notice and consent process, or from serving  
4 as the parents’ agent in the process.” 89 Fed. Reg. 2034, 2053 (emphasis added). The scope of  
5 any agency relationship is not determined by the parental “notice and consent process” required  
6 by COPPA, 89 Fed. Reg. at 2053.

7 **CONCLUSION**

8 The Commission respectfully offers its “unique information or perspective” on COPPA in  
9 hopes that it will “help the court.” *NGV Gaming*, 355 F. Supp. 2d at 1067. Nothing in COPPA’s  
10 text, purpose, or legislative historyPPgi

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