

CLIENT NEWS BRIEF

Staying Well Grounded While Computing in the Clouds

Before leaping into the technology cloud, taking a moment to look for the legal pitfalls really pays off. As cloud computing has grown, school districts have increasingly had to weigh the convenience of the new technologies against the potential challenges that come from sending confidential district information to third parties for cloud storage. Third party vendors often obtain extensive access to the district's technology systems and student and employee information. This raises privacy concerns and issues concerning compliance with the Education Code and the Family Educational Rights and Privacy Act (FERPA) as well as state law. Parents and educators are often unaware of how this information is used, the reasons why such information is being collected or that it is being collected at all, and by whom. These issues are often overlooked in "boilerplate" contracts prepared by the cloud service providers.

Cloud computing is only one of many difficult legal issues that school districts face regarding technology. For example, companies, big and small, are racing to provide school districts with the latest education "apps," tablets, websites, reminder services, virtual classrooms and chat rooms. These innovative tools are being developed for the classroom, district office and board room at a rapid pace, while the law on these questions has not developed as quickly. So how do these technologies fit with existing laws regarding privacy, student records, social media, open meetings, public records, employment issues, litigation and civil liberties? School districts increasingly must consider how these technology issues may create legal problems. Some of the questions that should be asked include:

- 1) Are students and district staff required to "agree" to a user agreement? These agreements are also known as "click-wrap agreements," and often pop-up in a window requiring users to click a box indicating that the user has read, and agreed to be bound by, a lengthy set of terms. Such "click-wrap agreements" are often non-negotiable and difficult to understand for the average user. Do these types of "click-wrap agreements" need board approval?
- 2) Will the school district provide the vendor with access to confidential student or employee information? If so, does the particular arrangement comply with FERPA and state law (Ed. Code § 49073, *et seq.*)?
- 3) How will the district's information be used by the outside vendor or service provider? Will the vendor be allowed to "mine" data about students, parents or employees?
- 4) Do the user agreements allow the company to sell, or share, the district's information with other entities?
- 5) Will the company store the district's information overseas, or out-of-state, which potentially may weaken the district's ability to protect its rights?

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- 6) What happens if a student's confidential information is leaked or there is a breach in security?
- 7) What happens if the technology is used by a district employee, or an employee of the technology company, to inappropriately contact a student, or worse?
- 8) What happens to the data when the contract term ends? What about if the provider goes out of business?

Over the years, Lozano Smith has been on the forefront in advising school districts on how to use emerging technologies legally, while protecting student and employee information. We recognize that preparing students for the 21st century is sometimes hindered by 20th century laws, making it all the more important to give thought to how new technology can be used legally. Our [Technology and Innovation practice area](#) has years of experience in reviewing and drafting technology-related contracts, advising on social media issues, developing email retention and electronic communications policies, and providing counsel to school districts and municipalities on a wide array of technology matters. Lozano Smith continues to assist clients in navigating the legal barriers that impede the use of emerging technologies.

Recognizing these challenges, school attorneys from around the nation are working together to find solutions. Recently, the National School Boards Association's Council of School Attorneys made available a new publication, "Cloud Computing and Student Privacy: A Guide for School Attorneys" (COSA Guide). The COSA Guide is an in-depth resource for school attorneys who advise districts on "how best to protect the privacy of student information while remaining legally compliant and minimizing potential liability in the district's use of cloud-based applications." Lozano Smith attorneys Michael Smith and Manuel Martinez were contributors to the COSA Guide. While the Guide is not generally available to non-COSA members, our attorneys are available to provide similar guidance to our school district and municipal clients.

Issues regarding student privacy and technology will also be addressed by Lozano Smith attorney Manuel Martinez at the upcoming [13th Annual California Association of Latino Superintendents and Administrators \(CALSA\) Summer Institute](#) during his presentation "Head in the Clouds? Addressing Student Electronic Media Issues." This workshop, scheduled for July 15, 2014, in San Jose, will cover the latest technology and legal issues that school districts face in today's world. Later that day, at the same conference, Lozano Smith attorneys Steve Ngo and Manuel Martinez will address how technology impacts the Brown Act and Public Records Act during their presentation "How Do Electronic Communications Fit With Open Government?" These presentations follow similar ones that Lozano Smith attorneys have been proud to make available to the California School Boards Association (CSBA), California Association of School Business Officials (CASBO) and others in recent years. We remain committed to helping public agencies navigate the challenging intersection of law and technology.

If you have any questions regarding technology related matters, or if we can be of assistance in reviewing technology agreements, please contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).