No. 24-6985

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GRETCHEN SHANAHAN, on behalf of herself and her minor children A.S. and B.S.,
AMY WARREN, on behalf of herself and her minor child B.W.,
KIMBERLY WHITMAN, on behalf of herself and her minor child H.W.,
individually and on behalf of all others similarly situated,
Plaintiffs-Appellees,

v.

IXL LEARNING, INC.,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of California
No. 3:24-cv-2724 (Hon. Rita F. Lin)

BRIEF FOR AMICUS CURIAE FEDERAL TRADE COMMISSION IN SUPPORT OF APPELLEES

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INTRODUCTION

Defendant-appellant IXL Learning, Inc. (IXL) is a provider of educational technology products used by schools. Plaintiffs in this case—parents whose children attend Kansas public schools that use IXL products as part of their curriculum—brought this putative class action claiming that IXL "collected and monetized the data of millions of school-age children who used the IXL platform without parental consent." Op. 1. IXL moved to compel the plaintiff-parents to bring their claims in arbitration, pursuant to the terms of IXL's service agreements with the school districts. IXL contended that the parents were bound by those agreements by virtue of an asserted agency relationship between the parents and the schools, purportedly created by operation of the Children's Online Privacy Protection Act (COPPA), 15 U.S.C. §§ 6501 *et seq*., and its implementing regulations. Op. 1. The district court denied IXL's motion. The court held that neither COPPA nor common-law agency principles supported IXL's contention that school districts acted as agents of the school children's parents whenever those school districts contracted with educational vendors like IXL. *Id*.

The Federal Trade Commission (FTC) submits this amicus brief, pursuant to Federal Rule of Appellate Procedure 29(a)(2) and Circuit Rule 29-2(a), to clarify that nothing in COPPA's text, structure, legislative history, or implementing regulations supports IXL's claim that COPPA creates an agency relationship between parents and schools for purposes of binding parents to the terms of agreements between IXL and those schools. Moreover, the principal goal of that legislation was to ensure parents' involvement and control over the dissemination of their children's personal information. To the extent that COPPA could be deemed to create an agency relationship between schools and parents, the scope of any such agency should be strictly limited to the parental notice-and-consent process addressed by that legislation, and should not be extended to any other contractual terms, including arbitration.

INTEREST OF THE FEDERAL TRADE COMMISSION

The FTC has a strong interest in the proper construction and application of COPPA and its implementing regulations, including in the context of educational technology use by school children. The FTC is a federal agency that protects consumer interests by, among other

things, enforcing federal consumer protection laws and conducting studies of consumer protection issues. One such study prompted the legislative efforts that culminated in COPPA's enactment.[1] *See* FTC, PRIVACY ONLINE: A REPORT TO CONGRESS (June 1998); 144 Cong. Rec. S8482 (July 17, 1998) (Statement of Senator Bryan, co-sponsor of the legislation, referencing the FTC's online privacy study). Indeed, COPPA "drew heavily from the recommendations and findings of the FTC's June [1998] report on Internet privacy." *S. 2326: Children's Online Privacy Protection Act of 1998*, Hearing before Senate Subcomm. on Communications, S. Hrg. 105-1069 (Sept. 23, 1998), at 3 (Statement of Senator Burns).

Congress enacted COPPA to protect the online privacy of children under the age of 13—by ensuring that parents control the collection, use, and disclosure of their children's personal information. The statute generally prohibits the operators of covered websites or other online services from collecting, using, or disclosing the personal information of

[1] COPPA was enacted as Title XIII of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. 105-277, 112 Stat. 2681, 728-735 (Oct. 21, 1998), *reprinted at* 144 Cong. Rec. H11240-42 (Oct. 19, 1998) (codified at 15 U.S.C. §§ 6501-6506).

children under the age of 13 without first providing adequate notice of the type, use, and potential disclosure of the information to be collected, obtaining verifiable consent of the children's parents, and establishing reasonable measures to ensure the security of the collected data. 15 U.S.C. § 6502.

Congress assigned the FTC principal responsibility for COPPA's enforcement and directed the agency to promulgate implementing regulations. *See* 15 U.S.C. §§ 6505(a), 6502(b)(1), 6502(c). The statute declared it "unlawful for [covered entities[2]] to collect personal information from a child in a manner that violates [the implementing] regulations." 15 U.S.C. § 6502(a)(1). The statute also authorized the FTC to enforce those regulations in the same manner as other FTC rules defining unfair or deceptive acts or practices under the FTC Act. *See* 15 U.S.C. § 6502(c).

[2] Covered entities include "an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child." 15 U.S.C. § 6502(a)(1). IXL does not appear to contest for purposes of this appeal that it is an entity covered by COPPA's prohibition.

Pursuant to Congress's mandate, the FTC in 1999 promulgated its Children's Online Privacy Protection Rule (COPPA Rule), 16 C.F.R. Part 312. *See* 64 Fed. Reg. 59888 (Nov. 3, 1999).[3]

Since the COPPA Rule took effect in April 2000, the FTC has brought numerous enforcement actions for violations of the rule. For example, in 2023, the FTC charged Epic Games, maker of the popular video game *Fortnite*, with violating the COPPA Rule by, among other things, collecting personal data from children without parental notice or consent. Following a settlement with the FTC, Epic was ordered to pay $275 million for these violations. *See* Order (ECF No. 15), *United States v. Epic Games, Inc.*, No. 5:22-cv-0518, at 28 (E.D.N.C. Feb. 7, 2023). Other enforcement actions likewise have resulted in consent decrees with, among others, online advertising platforms, video sharing platforms, app and video game developers, and educational technology providers.[4]

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[3] The COPPA Rule has been amended since then, most recently in April 2025. *See* 90 Fed. Reg. 16918 (Apr. 22, 2025); 78 Fed. Reg. 3972 (Jan. 17, 2013); 70 Fed. Reg. 21104 (Apr. 22, 2005); 67 Fed. Reg. 18818 (Apr. 17, 2002).

[4] *See, e.g.*, *United States v. Cognosphere, LLC*, No. 2:25-cv-447 (C.D. Cal. 2025); *FTC v. NGL Labs, LLC*, No. 2:24-cv-5753 (C.D. Cal. 2024);

The FTC also has conducted various studies and workshops and issued a number of reports concerning the impact of COPPA (and its implementing regulations) on businesses and consumers, including in the context of school children's use of educational technology.[5] Indeed, the FTC has issued a policy statement concerning the use of educational technology by school children—because "[c]oncerns about data collection are particularly acute in the school context, where children and parents often have to engage with [educational technology] tools in order to participate in a variety of school-related activities." FTC, *Policy Statement of the Federal Trade Commission on Education Technology and the Children's Online Privacy Protection Act* (2022), at 2. The Policy

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United States v. Edmodo, LLC, No. 3:23-cv-02495 (N.D. Cal. 2023); *United States v. Kurbo, Inc.*, No. 22-cv-946 (N.D. Cal. 2022); *United States v. OpenX Technologies, Inc.*, No. 2:21-cv-9693 (C.D. Cal. 2021); *United States v. Kuuhuub Inc.*, No. 1:21-cv-01758 (D.D.C. 2021); *United States v. HyperBeard, Inc.*, No. 3:20-cv-3683 (N.D. Cal. 2020); *FTC v. Google LLC*, No. 1:19-cv-2642 (D.D.C. 2019).

[5] *See, e.g.*, FTC, *Federal Trade Commission Report to Congress on COPPA Staffing, Enforcement and Remedies* (2022); FTC Workshop, *Student Privacy and Ed Tech* (2017); FTC, *Complying with COPPA: Frequently Asked Questions* (last visited July 7, 2025); FTC Press Release, *FTC Issues Orders to Nine Social Media and Video Streaming Services Seeking Data About How They Collect, Use, and Present Information* (2020) (initiating study of social media and video streaming companies' practices, including impact on children and teens).

Statement emphasized that "responsibility for COPPA compliance is on businesses, not schools or parents—and [educational technology service] agreements must reflect that." *Id.* at 3.

The FTC takes no position on the ultimate merits of this case. Nor does the agency have any views on IXL's argument that California state law could be an alternative source for an agency relationship. *See* Br. 34-37. The agency's views here are limited to addressing the proper interpretation of COPPA and its implementing regulations, and correcting any misimpression that those federal laws can lead to parents being bound by the terms of arbitration agreements between schools and providers of educational technology services.

ARGUMENT

Contrary to IXL's claim (Br. 24-33), neither COPPA nor the COPPA Rule binds parents to the arbitration terms of IXL's service agreements with school districts. Both COPPA and the COPPA Rule seek to ensure that parents receive adequate notice and provide verifiable consent before the collection, use, and/or disclosure of their children's personal data. Nothing in the text of the statute or the rule creates an agency relationship between schools and the parents of

school children. Nor does the FTC's response to rulemaking comments support IXL's argument. Nothing in that response suggests that the statute or the rule creates such an agency relationship, let alone one of potentially unlimited scope, as IXL contends. And even if COPPA and its implementing regulations were misconstrued to create such an agency relationship, the scope of that agency should be strictly limited to the contractual terms concerning COPPA's notice-and consent process, and should not be extended to extraneous provisions such as an arbitration clause.

I. NEITHER COPPA NOR THE COPPA RULE COMPELS PARENTAL ACCEPTANCE OF TERMS OF AGREEMENTS BETWEEN SCHOOLS AND EDUCATIONAL TECHNOLOGY PROVIDERS.

At the outset, neither COPPA nor the FTC's COPPA Rule is concerned with any contractual terms beyond those directly affecting the collection, use, and disclosure of the personal data of children under the age of 13. Neither the statute nor the FTC's COPPA Rule binds the parents of school children to the contractual terms of educational technology service agreements between schools and service providers like IXL.

A. COPPA and Its Implementing Regulations Address Only the Collection, Use, Security, and Disclosure of Children's Personal Information.

Nothing in COPPA or the COPPA Rule addresses whether parents should be bound by a contract between service providers like IXL and a school district. The text, structure, and legislative history of COPPA evidence instead its limited scope: regulating the collection, use, security, and disclosure of the personal data of young children. Responding to the increasingly widespread use of the internet by minors, with its attendant risks to their privacy, Congress enacted COPPA to protect the online privacy of children under the age of 13—by ensuring that parents decide whether to permit the collection, use, and disclosure of their children's personal information.

Thus, COPPA declares it "unlawful" for operators of websites or online services "to collect personal information from a child"—defined as "an individual under the age of 13"—in a manner that violates FTC regulations. 15 U.S.C. §§ 6501(1), 6502(a)(1). The statute directs the FTC to promulgate regulations to govern the online collection, use, security, and disclosure of children's personal data, specifically addressing both parental notice and consent. *See id.* § 6502(b)(1); 64

Fed. Reg. 22750 (Apr. 27, 1999) (Notice of Proposed Rulemaking); 16 C.F.R. Part 312 (the COPPA Rule).

At the heart of COPPA's elaborate regulatory scheme, therefore, are the requirements for providing adequate notice, obtaining verifiable parental consent, and safeguarding any collected data. The COPPA Rule thus requires covered entities, *see supra* note 2, to: (a) provide notice of what data the entity collects from children; (b) obtain verifiable parental consent prior to any collection, use, and/or disclosure of children's personal information; (c) provide a reasonable means for parents to review the collected information; (d) not condition a child's participation in an activity on the disclosure of more personal information than is reasonably necessary for participation in that activity; and (e) establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of the personal information collected from children. 16 C.F.R. § 312.3. The COPPA Rule sets forth detailed provisions concerning the nature and content of the required notice; the methods—and narrow exceptions—for obtaining verifiable parental consent; and the duties of covered entities to ensure the confidentiality, security, and integrity of the collected children's

data. *See id.* §§ 312.4, 312.5, 312.8. Like its authorizing legislation, the COPPA Rule does not include any provisions that could affect contractual terms beyond those pertaining to parental notice-and-consent and the security of any data collected from children.

The provisions of the statute and its implementing regulations faithfully reflect the specific goals that Congress sought to achieve by enacting COPPA. In the words of the legislation's principal sponsor, COPPA was designed

> (1) to enhance parental involvement in a child's online activities in order to protect the privacy of children in the online environment; (2) … to help protect the safety of children in online fora …; (3) to maintain the security of personally identifiable information of children collected online; and (4) to protect children's privacy by limiting the collection of personal information from children without parental consent.

144 Cong. Rec. S11657 (Oct. 7, 1998) (Statement of Senator Bryan). *See also* PRIVACY ONLINE: A REPORT TO CONGRESS, *supra*, at 42 ("[T]he Commission now recommends that Congress develop legislation placing parents in control of the online collection and use of personal information from their children.").

In sum, the text of both COPPA and the COPPA Rule, in line with the legislation's goals, demonstrate beyond doubt that COPPA and its

implementing regulations do not themselves create any agency relationship between schools and parents and do not compel parents to be bound by any agreement between schools and educational technology companies. The statute and regulation address the collection, use, and disclosure of the personal information of children under 13 and have nothing to do with terms of agreements between schools and educational technology companies concerning arbitration.

B. The FTC Rulemaking Discussion on Which IXL Relies Does Not Create an Agency Relationship in This Case.

IXL does not—indeed, cannot—point to any provisions of COPPA or the COPPA Rule to support its claim that the plaintiff-parents in this case assented to—or are bound as a matter of federal law by—the arbitration agreement between IXL and the relevant school districts.[6] IXL claims that it "was legally entitled to presume the schools were

[6] IXL argues in the alternative that the school districts acted as the agents of the school children's parents "under California common law." Br. 34; *see id.* at 34-37. *See also id.* at 29-33 (arguing that an ostensibly COPPA-created agency should be extended under state agency law to cover arbitration). The FTC takes no position as to the interpretation of state law in this case. *Cf.* *Concurring Statement of Commissioner Andrew N. Ferguson Regarding the Commission's Brief Amicus Curiae in Shanahan v. IXL Learning, Inc., No. 3:24-cv-02724 (N.D. Cal.)*, Matter No. 2223135 (F.T.C. Aug. 19, 2024), at 2.

authorized to consent on Plaintiffs' behalf to IXL's data collection." Br. 25. But nothing in the statute or the regulation says anything about such a presumption. Indeed, IXL does not refer to the text of COPPA or the COPPA Rule; instead, it quotes selectively from a passage in the Statement of Basis and Purpose (SBP) accompanying the COPPA Rule when first promulgated. *Compare* 64 Fed. Reg. at 59903, *with* Br. 26-27.

The FTC's discussion of comments received during the rulemaking process concluded with the observation that "the Rule does not preclude schools from acting as intermediaries between operators and parents in the notice and consent process, or from serving as the parents' agent in the process." 64 Fed. Reg. at 59903. That was of course literally true: the Rule said nothing about the topic. But the FTC's discussion nowhere suggested that COPPA or the COPPA Rule can create such an agency relationship by operation of law or otherwise. And the text of the statute and the rule make clear that they have no such effect.

IXL mischaracterizes that discussion as the FTC's "express endorsement of a presumption of agency" in all circumstances. Br. 10. That is wrong under any reading of the SBP discussion, as the context makes clear—context that is notably absent from IXL's argument.

The Rule requires that "operators … obtain verifiable *parental* consent" before collecting, using, or disclosing personal information obtained from children. 16 C.F.R. § 312.5(a) (emphasis added). The FTC's discussion accompanying the final rule reviewed several comments submitted concerning the proposed rule, including those from "commenters [who] raised concerns about how the Rule would apply to the use of the Internet in schools." 64 Fed. Reg. at 59903. Specifically, "[s]ome commenters expressed concern that requiring parental consent for online information collection would interfere with classroom activities, especially if parental consent were not received for only one or two children." *Id.* The Commission responded (as explained above) that

> the Rule does not preclude schools from acting as intermediaries between operators and parents in the notice and consent process, or from serving as the parents' agent in the process. For example, many schools 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.

Id.

IXL quotes selectively from this passage—*i.e.*, only the final, partial sentence following "Thus"—to argue erroneously that the FTC's discussion creates an agency relationship between parents and schools *whenever* an educational technology provider enters into an agreement with a school involving the collection and use of children's personal data. *See* Br. 26-27. And IXL then suggests that the agency relationship extends to all aspects of any agreement between IXL and the school, thereby binding parents to terms such as arbitration that go well beyond the scope of COPPA and the FTC's implementing regulations. *Id.* at 29-33.

Because IXL's selective quotation ignores the context of the quoted sentence, its argument distorts the meaning of the FTC's language. To be sure, the SBP discussion "notes" that the COPPA Rule "does not preclude" schools from acting as agents of the parents, 64 Fed. Reg. at 59903, but this accurate description of the regulation's limited reach does not suggest that the statute or the rule creates an agency relationship—let alone one of potentially unlimited scope. The FTC's discussion of comments merely explained that the potential role of schools as intermediaries or agents of parents was not addressed in the

regulation. Thus, there is no basis in the statute, the regulation, or the FTC's explanation of the COPPA Rule to conclude that an agency relationship between schools and parents could exist automatically or by operation of law, as IXL would have it.

The SBP discussion did not address what other circumstances, if any, might support a presumption that the schools could act as intermediaries or agents of the parents for purposes of compliance with COPPA and the COPPA Rule. The FTC simply noted that the COPPA Rule "does not preclude" such a relationship. 64 Fed. Reg. at 59903. IXL has not identified any such circumstances here that implicate federal law, and the partial text of the discussion on which IXL relies cannot alone carry the weight of creating a federal-law agency relationship.

II. EVEN ASSUMING THAT COPPA CREATES AN AGENCY RELATIONSHIP, THE SCOPE OF THAT AUTHORITY IS LIMITED TO THE NOTICE-AND-CONSENT PROCESS ADDRESSED BY CONGRESS.

As discussed above, neither COPPA nor the COPPA Rule nor the FTC's rulemaking discussion can be read to create an agency relationship between parents and the school districts. But even if the Court were to conclude otherwise, the scope of any such federally created agency should be strictly limited to the parental notice-and-

consent process addressed by COPPA, and it should not be extended to any other contractual terms, including arbitration. The FTC does not take any position on IXL's argument concerning the state common law of agency. *See supra* note 6. But if federal law is deemed the source of an agency relationship, the Court should consider the purpose of COPPA—to ensure parental control over the collection, use and disclosure of their children's personal information—in determining the proper scope of any such agency.

It is hornbook law that, to bind the principal, the agent must be acting on the principal's behalf, *within the scope of authority as agent*. *See, e.g.*, *Scott v. Ross*, 140 F.3d 1275, 1280 (9th Cir. 1998). Thus, even on IXL's own view of the law, any agency ostensibly created under COPPA would necessarily be limited to COPPA's notice-and-consent requirements, as that is the only potentially relevant aspect of IXL's agreement with the schools. *See* Br. 29 ("[T]he purpose of the schools' presumptive agency was to acquire IXL's classroom services by consenting to the data collection they require …."). IXL argues, however, that such an agency should be *extended*, under general agency law principles, to cover IXL's arbitration agreements with the school

districts. *Id.*[7] Such an extension would go well beyond the scope of COPPA's provisions concerning children's online privacy. Both the statute and its implementing regulations endeavor to protect children's privacy rights by ensuring parents' rights to control whether and how their children's personal information is collected and used by third parties. And any agency relationship based on federal law should be limited to the scope and purpose of COPPA and the COPPA Rule.

As discussed above, COPPA codifies parents' control over their children's personal data, and the COPPA Rule provides express detailed requirements for parental notice-and-consent. *See* 15 U.S.C. § 6502(b); 16 C.F.R. §§ 312.4, 312.5. The FTC also has brought numerous actions to enforce this congressional mandate. *See supra* note 4 and accompanying text. Thus, even if COPPA could be understood as the source of an agency relationship between schools and parents, as IXL would have it, there is simply nothing in COPPA, the COPPA Rule, the FTC's SBP discussion of rulemaking comments on which IXL relies, or

[7] IXL invokes state common law for this argument. Br. 29. The FTC takes no position on the meaning of state law, *see supra* note 6, but notes that it would be unusual for state law to dictate the scope of a legal relationship ostensibly created by federal law.

the FTC's enforcement history that would remotely support the proposition that schools—and, by extension, their contracting educational technology providers—can bind parents to contractual terms, including arbitration, that are utterly divorced from the COPPA notice-and-consent process.

CONCLUSION

For the reasons set forth above, the Court should reject IXL's argument that federal law necessarily creates an agency relationship that binds parents to arbitration provisions in the agreements between IXL and schools.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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