



**Office of the New York State  
Attorney General**

**Letitia James  
Attorney General**

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# New York Child Data Protection Act Implementation Guidance

The Office of the Attorney General (OAG) issues this guidance in advance of the June 20, 2025, effective date of New York's Child Data Protection Act (NYCDPA or Act), codified at New York General Business Law (N.Y. Gen. Bus. Law) §§ 899-ee *et seq.*

This guidance provides clarification on key questions raised to OAG through the Advanced Notice of Proposed Rulemaking and through OAG's outreach to industry participants. The Act also confers authority on OAG to promulgate rules, and OAG intends to issue rules to provide further detail and clarification for some of the terms addressed later based on engagement with stakeholders through the initial compliance period. Until such rules are proposed and finalized, OAG advises that it will exercise discretion in pursuing enforcement actions, and will take into account an operator's good-faith efforts to comply with NYCDPA consistent with the plain language of the statute and this guidance.

The OAG provides guidance regarding:

- » the application of the Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501 *et seq.*, and its implementing regulations and related Federal Trade Commission guidance (collectively, COPPA) to minors under 13 years of age consistent with NYCDPA restrictions on processing (N.Y. Gen. Bus. Law § 899-ff(1)(a)).
- » operator responsibilities with respect to user-provided age flags under N.Y. Gen. Bus. Law § 899-ii(1).
- » "primarily directed to minors" under N.Y. Gen. Bus. Law § 899-ee(6).
- » "strictly necessary . . . permissible purposes" under N.Y. Gen. Bus. Law §§ 899-ff(2).
- » requirements for schools, school districts, and their third-party contractors under NYCDPA.
- » parental requests for products and services.

This guidance refers to "website, online service, online application, mobile application, or connected device" as used in NYCDPA<sup>1</sup> collectively as "online device or service."

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<sup>1</sup> *E.g.*, N.Y. Gen. Bus. Law § 899-ff(1).

## Processing under NYCDPA and COPPA

For children under age 13, N.Y. Gen. Bus. Law § 899-ff(1)(a) permits processing that is permitted by COPPA. In other words, NYCDPA adopts COPPA as the applicable standard for data processing for covered users who are actually known by the operator to be 12 years of age or younger or are using an online device or service primarily directed to covered users 12 years of age or younger.<sup>2</sup> Thus, under NYCDPA, COPPA governs for these users when data processing can occur without parental consent, when it is prohibited without parental consent, and how parental consent can be obtained.

### Age flags: N.Y. Gen. Bus. § 899-ii(1)

The OAG recognizes potential nuances related to when and how an operator can rely on a communication or signal from a user's device about a user's status as a covered user (an "age flag"). In the future, OAG will promulgate rules on relevant factors or characteristics that can make an age flag one that an operator must respect under N.Y. Gen. Bus. Law § 899-ii(1). Until such rules are finalized and in effect, OAG advises that it will exercise discretion in pursuing enforcement action on this provision, so long as operators otherwise exhibit good-faith efforts to comply with all other provisions of NYCDPA consistent with this guidance.

Notably, a covered user under NYCDPA is a user who is "actually known by the operator . . . to be a minor"<sup>3</sup> and this requirement is independent of N.Y. Gen. Bus. Law § 899-ii(1) addressing age flags. For example, an operator may obtain or learn a user's age and associate it with that user's account. If the user is a minor, the operator has actual knowledge that the user is a covered user anywhere the operator can recognize the user's account, including when the user logs into the same service or product using different devices or accesses different services or products using the same log-in credentials, and must comply with the law accordingly.

### Primarily directed to minors

In N.Y. Gen. Bus. Law § 899-ee(1), a covered user is defined as, *inter alia*, a user who is "using a website, online service, online application, mobile application, or connected device primarily directed to minors." N.Y. Gen. Bus. Law § 899-ee(6) defines "primarily directed to minors" as an online device or service, "or a portion thereof, that is targeted to minors."

OAG has received inquiries regarding the scope of "primarily directed to minors" under NYCDPA, with some inquiries referencing the "directed to children" standard under COPPA.<sup>4</sup> For minors aged 12 and under, N.Y. Gen. Bus. Law § 899-ff(1)(a) explicitly permits data processing that is permitted by COPPA. Thus, any online devices or services covered by NYCDPA's "primarily directed to minors" also fall within the COPPA "directed to children" standard, and as set forth above, their operators may satisfy compliance obligations under NYCDPA by complying with COPPA.

For minors aged 13 to 17, OAG recognizes that many online devices or services of general interest may be visited by minors aged 13 to 17 or may consider minors aged 13 to 17 to be a component of—but not primarily—the audience. Accordingly, the "primarily directed" standard set forth by NYCDPA provides some additional flexibility to operators as compared to the standard under COPPA for younger children. The requirements of NYCDPA apply only to online devices or services, or portions of the same, that can be delineated as "primarily directed" or "targeted" to minors.

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2. See, *infra*, at 2 ("Primarily Directed to Minors") and N.Y. Gen. Bus. Law § 899-ll(3) ("Nothing in this Article shall be construed to impose liability for commercial activities or actions by operators subject to 15 U.S.C. § 6501 that is inconsistent with the treatment of such activities or actions under 15 U.S.C. § 6502.").

3. N.Y. Gen. Bus. Law § 899-ee(1)(a).

4. 16 C.F.R. § 312.2

## Strictly necessary

NYCDPA generally requires that a covered user grant valid consent before the covered user's personal data may be processed. When the covered user is aged 13 to 17, processing without the user's consent is permitted only if the processing is "strictly necessary" for an express purpose listed in N.Y. Gen. Bus. Law § 899-ff(2) of NYCDPA.<sup>5</sup> To facilitate compliance, this guidance responds to inquiries related to some of these express purposes.

### Providing or maintaining a specific product or service requested by the covered user

Under N.Y. Gen. Bus. Law § 899-ff(2)(a), processing "strictly necessary" for the purpose of "providing or maintaining a specific product or service requested by the covered user" is permitted without consent. To rely on this exception, the processing must be related to a "specific" product or service "requested by the covered user," which means within the expectations of a reasonable covered user for a given product or service. For example, users of most products or services would reasonably expect processing of personal data to provide customer support for a product or service to be included. Processing a covered user's personal data for this purpose generally would not require separate consent from the user.

On the other hand, most reasonable users do not expect operators to track more of their online activities than are necessary for the specific product or service they are using, or to use the collected personal data for purposes outside of the provision of that product or service. Under NYCDPA, operators must obtain user consent to such non-necessary processing. If an operator clearly and conspicuously markets its core service as one that tracks specific user activities to provide a record of the activities (e.g., a budgeting platform tracking spending activities in order to offer a monthly spending statement), then processing that type of user activity data for that specific purpose would be within the expectations of a reasonable user of such a service. Thus, the operator is not required to obtain consent for this processing.

An operator may not, however, circumvent N.Y. Gen. Bus. Law § 899-ff(1) simply by marketing its core service as one that includes tracking a covered user's personal data to support personalization such as behavioral advertising or creating a profile on a specific individual to display or prioritize certain media. Moreover, any data the operator collects and processes under this exception may only be used for the expected purpose (e.g., a budgeting platform collecting personal data unrelated to monthly spending, such as a device's real-time GPS coordinates, cannot rely on this exception to process the unrelated personal data) or in a manner otherwise consistent with N.Y. Gen. Bus. Law § 899-ff(2). The personal data may not be used by the operator, its processors, or any third-party operator whom the operator allows to collect the personal data, for any other purpose.

### Conducting internal business operations

Additionally, N.Y. Gen. Bus. Law § 899-ff(2)(b) allows operators to process personal data "strictly necessary for . . . conducting internal business operations." OAG advises that many of the activities permitted under COPPA for the purpose of "support for the internal operations of the Web site or online service" are also permitted under this section.<sup>6</sup> OAG also advises, however, that unlike COPPA, N.Y. Gen. Bus. Law § 899-ff(2) includes the proviso, "internal business operations shall not include any activities related to marketing, advertising, research and development, [or] providing products or services to third parties."

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5. As stated above, for users who are 12 and younger, the CDPA applies COPPA's standards for determining whether data processing is permissible, including under what circumstances the processing may be done without the consent of the parent.

6. 16 C.F.R. § 312.2; see also 16 C.F.R. § 312.5(c)(7)-(8). See, generally, Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions – A Guide for Business and Parents and Small Entity Compliance Guide*, <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions> (last visited May 5, 2025), and especially, *id.* at Section J. Exceptions to Prior Parental Consent.

## Protecting against malicious, fraudulent, or illegal activity

N.Y. Gen. Bus. Law § 899-ff(2)(d), addressing “malicious, fraudulent, or illegal activity,” allows the processing of personal data to protect against fraud, such as frequency capping of advertising.

## Vital interests of a natural person

Finally, N.Y. Gen. Bus. Law § 899-ff(2)(b), addressing “internal business operations,” together with N.Y. Gen. Bus. Law § 899-ff(2)(i), addressing “vital interests of a natural person,” allows personal data processing associated with an online device or service’s user trust, health, and safety policies without consent.

## Conclusion for permitted purposes

As discussed earlier, OAG will consider good-faith efforts to comply with the law in exercising its discretion to enforce N.Y. Gen. Bus. Law § 899-ff(2), under which an operator may process personal data that is “strictly necessary” for enumerated purposes without consent.

## Requirements for schools, school districts, and their third-party contractors

NYCDPA does not disrupt the framework in place for personally identifiable information covered by New York Education Law (N.Y. Educ. Law) § 2-d and its implementing regulations, or the federal Family Educational Rights Privacy Act (FERPA), 20 U.S.C. § 1232g, and its implementing regulations. These laws generally permit schools and school districts to collect and use “personally identifiable information” (PII) in “education records,” as defined by N.Y. Educ. Law § 2-d(1)(d) and FERPA’s implementing regulation, 34 C.F.R. § 99.3,<sup>7</sup> from students for educational purposes.<sup>8</sup> Both laws generally prohibit commercial use of PII and include other protections as well.<sup>9</sup> Third parties with which schools and school districts contract to process such PII are subject to the same prohibitions.<sup>10</sup> COPPA provides an overlay for these laws, with specific protections for children under age 13. Under COPPA, schools can consent to their students’ data collection and processing by third parties, if and only if, the collection and processing is for educational purposes.<sup>11</sup> However, under COPPA, operators must obtain parental consent for data collection and processing, whether in or outside of schools, that is not for educational purposes.<sup>12</sup>

As discussed earlier, for children under 13, NYCDPA, N.Y. Gen. Bus. Law § 899-ff(1)(a), explicitly permits data processing that is permitted under COPPA. NYCDPA applies the same standard as COPPA for when data can be collected and processed pursuant to school authorization, when data processing is prohibited without parental consent, and how parental consent can be obtained. Thus, for children under 13, data processing by schools, school districts, and the third parties with which they contract is permitted under NYCDPA to the extent permitted under COPPA in the status quo, including

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7. This is generally information linked to a specific student. N.Y. Comp. Codes R. & Regs. tit. 8, § 121.1(f),(m) (referencing provisions of FERPA and its implementing regulations).

8. N.Y. Comp. Codes R. & Regs. tit. 8, § 121.5(c) (the use must “benefit students and the educational agency (e.g., improve academic achievement, empower parents and students with information, and/or advance efficient and effective school operations).”); see also N.Y. Educ. Law § 2-d(5)(b)(1); 20 U.S.C. § 1232g(a)(4)(A).

9. N.Y. Educ. Law § 2-d(3)(b)(1); New York State Education Department, *Commercial and Marketing Memorandum*, <https://www.nysed.gov/sites/default/files/programs/data-privacy-security/c-m-june-2023-guidance-final.pdf> (last visited May 5, 2025) at 2 (covered data cannot be used “for advertising or to develop, improve or market products or services to students”). See 34 C.F.R. § 99.30 (requiring parental or student consent to disclose PII except as expressly permitted by other FERPA provisions) and 20 U.S.C. § 1232g(b) (requiring parental or student consent to disclose PII except as expressly permitted by other FERPA provisions).

10. N.Y. Educ. Law 2-d § 5(f).

11. Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions – A Guide for Business and Parents and Small Entity Compliance Guide*, <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions> (last visited May 5, 2025).

12. Federal Trade Commission, *Press Release: FTC Says Ed Tech Provider Edmodo Unlawfully Used Children’s Personal Information for Advertising and Outsourced Compliance to School Districts*, <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ed-tech-provider-edmodo-unlawfully-used-childrens-personal-information-advertising> (last visited May 5, 2025).

under specific guidance regarding schools.<sup>13</sup> Again, in this context, operators must still comply with N.Y. Educ. Law § 2-d, and are prohibited from using such information for any commercial purpose, including marketing, advertising, or other commercial purposes unrelated to the provision of the school-requested online device or service.

For children aged 13 through 17, NYCDPA's privacy protection requirements provide an overlay to N.Y. Educ. Law § 2-d similar to that provided by COPPA for children under age 13. Student PII may be collected and processed pursuant to the requirements set forth in N.Y. Educ. Law § 2-d and its implementing regulations for educational purposes without triggering separate informed consent under NYCDPA. On the other hand, for data that falls under NYCDPA's definition of "personal data"[14] but that is not subject to N.Y. Educ. Law § 2-d, either because it is not PII or because it is not being collected for an educational purpose, an operator must comply with NYCDPA.

## **Parental requests for products or services for minors aged 13 to 17<sup>15</sup>**

N.Y. Gen. Bus. Law § 899-ff protects the privacy of covered users aged 13 to 17 by prohibiting any processing of their "personal data" without user consent unless such processing is "strictly necessary" for a permissible enumerated purpose. This includes processing of personal data strictly necessary "for complying with federal, state, or local laws, rules, or regulations."<sup>16</sup>

NYCDPA thus does not disturb existing legal frameworks under which parents may legally agree to or enter into agreements for particular products or services on behalf of their children. Where parents may lawfully agree to a product or service on behalf of or jointly with their child, such as healthcare services or certain financial services, data processing strictly necessary for a permitted purpose under N.Y. Gen. Bus. Law § 899-ff(2), including to provide or maintain that product or service, is permitted under NYCDPA without additional consent. As stated herein, the extent of permitted processing depends in part on the covered user's expectations regarding the specific product or service in question.

Where the parent agrees to a product or service on behalf of a child, an operator may consider the parent's expectations regarding the processing of personal data strictly necessary for permissible purposes. NYCDPA does not require an operator to obtain the child's consent before processing data strictly necessary to fulfill the parent's agreement to the product or service, including any personal data of the child provided by the parent.<sup>17</sup> However, the operator must only process the child's personal data for the purpose of providing the specific product or service agreed-upon with the parent. If the operator wishes to process the child's personal data for purposes not strictly necessary for that specific product or service, the operator will first need to obtain the child's consent pursuant to NYCDPA.

The OAG recognizes that many laws allow parents to exercise rights on behalf of their children and will exercise discretion in pursuing enforcement action against operators that make good-faith efforts to comply with all applicable laws. However, OAG cautions that operators must comply with NYCDPA, and that the rights NYCDPA grants to minors aged 13 to 17 to control the processing of their personal data cannot be lightly disregarded.

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13. See Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions – A Guide for Business and Parents and Small Entity Compliance Guide*, <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions> (last visited May 5, 2025); Federal Trade Commission, *Policy Statement of the Federal Trade Commission on Education Technology and the Children's Online Privacy Protection Act*, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Policy%20Statement%20of%20the%20Federal%20Trade%20Commission%20on%20Education%20Technology.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Policy%20Statement%20of%20the%20Federal%20Trade%20Commission%20on%20Education%20Technology.pdf) (last visited May 5, 2025).

14. N.Y. Gen. Bus. Law § 899-ee(4) (defined as "data that identifies or could reasonably be linked, directly or indirectly, with a natural person or device").

15. As stated *infra*, for minors under age 13, the standard outlined in COPPA applies.

16. N.Y. Gen. Bus. Law § 899-ff(2)(f).

17. The applicable federal or state law may impose its own requirements on how the operator handles the parent's request, and such requirements continue to apply. NYCDPA compliance is not a defense to violating other laws. For example, OAG expects any third parties contracted to an educational agency within the meaning of N.Y. Educ. Law § 2-d to continue to comply with the provisions of N.Y. Educ. Law § 2-d and its implementing regulations regarding parental rights and notices.