Learning in Afterschool & Summer — Preparing Youth for the 21st Century
A project of Temescal Associates and The Partnership for Children and Youth

TEMESCAL Associates
Building the capacity of leaders and organizations in education and youth development

CENTER FOR DIGITAL BADGES
Recognizing Learning Where It Happens

Briefing Paper: Legal Issues in Awarding Digital Badges in Expanded Learning Youth Programs

By Sam Piha

Acknowledgements

The use of digital badges within youth programs, particularly those that are publicly funded and school-based, is very new. What we know about the legal ethical issues surrounding the awarding of badges is also new and changing as we write this. We want to acknowledge those pioneers that have entered this area and thank them for the time they spent talking with our team about what they have learned. Below is a list of individuals we wish to thank:

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It is important to note that each of the above people added to our knowledge. However, the recommendations cited in this paper are those from Temescal Associates and will be revised as we learn more.

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We now know that children learn around the clock, not just 8 to 3; across the year, not just the school year. We also know that young people have meaningful and valuable learning experiences in multiple settings, formal and informal, school and community based. However, the learners are often not credited with the acquisition of new knowledge and skills in informal settings, such as afterschool programs, summer programs, museums, and camps.

There is now a growing movement called *digital badges* where learners are awarded digital badges to represent their completion of a course or demonstration of a new skill. However, there are federal and state laws that govern how this is done. Federal laws include the Family Educational Rights and Privacy Act (FERPA) and the Children's Online Privacy Protection Act (COPPA).

The purpose of this paper is to introduce leaders of youth programs to the legal issues surrounding the awarding of digital badges and offer advice based on our research. Note: the awarding of digital badges is new and created after these laws were established. The interpretation of these issues is shifting as we release this paper. Thus, it is important that interested programs work with their schools, school districts, and funders to gather the latest information.

Family Educational Rights and Privacy Act (FERPA)
This law was created to protect the privacy rights of families and their children by making it unlawful to divulge information contained in school records. (See the entire FERPA language in the appendix).

According to FERPA, this does not include the simple listing of the school roster containing the names of students. The FERPA law states:

> *"Schools may disclose, without consent, 'directory' information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about*

directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school."

A portion of the California Education Code, sections 49073-49079.7, also articulates requirements to protect pupil records. The full text of this law can be found at: http://www.leginfo.ca.gov/cgi-bin/displaycode?section=edc&group=49001-50000&file=49073-49079.7.

Note: The youth participants of community-based programs that are not operated by or with the school district are not considered pupils. Thus, their information is not protected by FERPA or the California Ed Code.

How to Comply with the Family Educational Rights and Privacy Act (FERPA) and California Ed Code

Most programs awarding digital badges issue, manage, and distribute the badges using a web-based system. Below are some strategies that are in compliance with FERPA and the California Ed Code.

- We have been advised by the Privacy Technical Assistance Center (PTAC) that every program awarding digital badges and utilizing a web-based system should have on record a signed parent letter giving permission for agency staff to enroll their child in the digital badge project sponsored by the agency, and to issue badges to her/him through their website. This is the approach when used by LAUSD in their City of Learning Initiative. (You can find a sample of a full letter provided by PTAC in the appendix).

- A school district, Norco-Corona in southern California, developed a digital badge program whereby the badges are earned within the high school day. They, in partnership with ForAllSystems, Inc., developed a web-based system that displays and describes the badges but does not list the names of students who have earned the badges. To steer clear of FERPA requirements, each student who has earned a badge is given a password that allows them to access the website and retrieve a badge by transferring it electronically to their own private "backpack" via an email account. Only students who have earned a particular badge can transfer it to their email.

Children's Online Privacy Protection Act (COPPA)

"The primary goal of COPPA is to place parents in control over what information is collected from their young children online. The Rule was designed to protect children under age 13 while accounting for the dynamic nature of the Internet. The Rule applies to operators of commercial websites and online services (including mobile apps) directed to children under 13 that collect, use, or disclose personal information from children, and operators of general audience websites or online

services with actual knowledge that they are collecting, using, or disclosing personal information from children under 13. The Rule also applies to websites or online services that have actual knowledge that they are collecting personal information directly from users of another website or online service directed to children".[1]

"What is Personal Information? The amended Rule defines personal information to include:

- First and last name;
- A home or other physical address including street name and name of a city or town;
- Online contact information;
- A screen or user name that functions as online contact information;
- A telephone number;
- A social security number;
- A persistent identifier that can be used to recognize a user over time and across different websites or online services;
- A photograph, video, or audio file, where such file contains a child's image or voice;
- Geolocation information sufficient to identify street name and name of a city or town; or
- Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described above."[2]

How to Comply with the Children's Online Privacy Protection Act (COPPA)
Many programs avoid distributing digital badges to participants under the age of 13 due to the complexity of the COPPA law. For programs, school or community based, interested in issuing and managing badges using a web-based system, should:

- Collect the birth dates of all participants so they can remain aware of which participants are under the age of 13;
- Ensure that parents or guardians understand the COPPA law and require a signed permission for children under 13 to participate in the badge program;
- It is unlawful to give children under the age of 13 their own email accounts, however, awarded badges can be "pushed" to the recipients by sending them to the email account of their parent or guardian. Parents or guardians who do not have an email account, the youth program can help create one for them. If the family does not have access to a computer or the internet, the

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[1] "Complying with COPPA: FAQ"; Bureau of Consumer Protection Business Center; [http://www.business.ftc.gov/documents/0493-Complying-with-COPPA-Frequently-Asked-Questions]; September 2014

[2] Ibid

youth program will hold the digital badge until it can be retrieved by the guardian or parent.

To read the entire COPPA law, visit http://www.coppa.org/#.

Student Online Personal Information Protection Act (SOPIPA)
A new California bill, SB1177, signed by Governor Brown also concerns the privacy of students' educational data. It is described below.

"Existing law, on and after January 1, 2015, prohibits an operator of an Internet Web site or online service from knowingly using, disclosing, compiling, or allowing a 3rd party to use, disclose, or compile the personal information of a minor for the purpose of marketing or advertising specified types of products or services. Existing law also makes this prohibition applicable to an advertising service that is notified by an operator of an Internet Web site, online service, online application, or mobile application that the site, service, or application is directed to a minor.

This bill would prohibit an operator of an Internet Web site, online service, online application, or mobile application from knowingly engaging in targeted advertising to students or their parents or legal guardians, using covered information to amass a profile about a K–12 student, selling a student's information, or disclosing covered information, as provided. The bill would require an operator to implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information, to protect the information from unauthorized access, destruction, use, modification, or disclosure, and to delete a student's covered information if the school or district requests deletion of data under the control of the school or district. The bill would authorize the disclosure of covered information of a student under specified circumstances. The bill's provisions would become operative January 1, 2016."[3]

[3] California Legislative Information;
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1177]; September 2014

About the Learning in Afterschool & Summer (LIAS) Project
The Learning in Afterschool & Summer Project (LIAS) is an effort by afterschool advocates and leaders to unify the field of expanded learning programs (ELPs) and focus the movement on promoting young people's learning.

The idea of promoting young people's learning and broader development after the classroom day is not new. What is new is the vast number of children who are now able to access ELPs. We believe that afterschool programming is a unique institution that must offer more than safe havens or homework help after school. If ELPs are to achieve their true potential, they must become known as important places of learning – learning that complements, but is distinguished from, the learning that happens at school or home.

The goal of the Learning in Afterschool & Summer project is to position ELPs as places for learning. The project will draw upon an extensive and growing body of research and be informed by the national discussions on education reform and youth development. Achieving this goal will require that we assist programs in improving their practices that promote learning among young people. This includes the incorporation of specific learning principles, the intentional design of learning objectives for its clubs, and approaches in program delivery.

About Temescal Associates
Temescal Associates is a private consulting firm and will serve as the primary consultant for this project. Temescal is dedicated to building the capacity of leaders and organizations in education and youth development who are serious about improving the lives of young people. We serve our clients by offering gifted and highly experienced consultants who excel at eliciting the internal knowledge and wisdom of those they work with while introducing new knowledge and strategies that can transform the day-to-day practices that lead to improved youth outcomes.

Appendix A:

Family Educational Rights and Privacy Act (FERPA)

http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html

Family Policy Compliance Office (FPCO) Home

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

- Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.
- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
    - School officials with legitimate educational interest;
    - Other schools to which a student is transferring;
    - Specified officials for audit or evaluation purposes;
    - Appropriate parties in connection with financial aid to a student;
    - Organizations conducting certain studies for or on behalf of the school;
    - Accrediting organizations;
    - To comply with a judicial order or lawfully issued subpoena;
    - Appropriate officials in cases of health and safety emergencies; and
    - State and local authorities, within a juvenile justice system, pursuant to specific State law.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

For additional information, you may call 1-800-USA-LEARN (1-800-872-5327) (voice). Individuals who use TDD may use the Federal Relay Service.

Or you may contact us at the following address:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-8520

Appendix B: Draft Parent Permission for Digital Badges

For parents of children under the age of 13

I give permission for [agency] staff and/or volunteers to enroll my child in the digital badge project sponsored by [agency]. Badges will be issued to her/him through the _____ website. If my child earns a digital badge with [agency], she/he and I will be notified. I will be given a password to the _____ website that will enable me to retrieve the badge using my email address. The _____ website will display my child's name, as well as the badges she/he earned through [agency]. If I do not have an email address, one can be provided by [program].*

Staff and volunteers with [agency] and other children involved in the badge project will be able to see my child's name and the badges she/he has earned on the _____ website. My contact information, or that of my child's, will not be shared with anyone else, nor used for commercial purposes.

☐ **I have the option of having my child opt out of this digital badge program by checking this box.**

_____
Child's Name (Printed)

_____
Guardian Signature

_____
Guardian Name (Printed)

_____
Date

_____
Best way to contact me (phone, cell phone, or email address)

*Please indicate here if you require an email address.

_____ YES (please contact me to set it up)

_____ NO (I have an email address)

Appendix C: Draft Parent Permission for Digital Badges

For parents of children ages 13 and older

I give permission for [agency] staff and/or volunteers to enroll my child in the digital badge project sponsored by [agency], and to issue badges to her/him through the _____ website. To issue digital badges, staff at [agency] will access my child's name and email address, as well as information about her/his activities in [program].

If my child earns a digital badge with [agency], she/he will be notified and given a password for the website. His/her guardian will also be given the website address and password. Using the password, my child will be able to retrieve the badge by logging into the _____ website using their email address. The _____ website will display my child's name, as well as the badges she/he earned through [agency]. If my child does not have an email address, one can be given by [program].*

Staff and/or volunteer with [agency] and other children involved in the badge project will be able to see my child's name and the badges she/he has earned on the _____ website. My child's contact information will not be shared with anyone else, nor used for commercial purposes.

My child may choose to post his/her badges on public sites such as Twitter, Facebook, Google+, and Wordpress. Posting badges on these public sites is not required to participate in the [agency] badge project.

☐ **I have the option of having my child opt out of this digital badge program by checking this box**

_____
Child's Name (Printed)

_____
Guardian Signature

_____
Guardian Name (Printed)

_____
Date

_____
Best way to contact me (phone, cell phone, or email address)

*Please indicate here if you require an email address.

_____ YES (please contact me to set it up)

_____ NO (I have an email address