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Transcript of testimony on inBloom and student privacy 11/20/13

Video is here: [http://nystateassembly.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=769](http://nystateassembly.granicus.com/MediaPlayer.php?view_id=2&clip_id=769)

Because of our association representing 5,000 locally elected volunteer officials, in this particular instance they have two goals, the first is obviously to protect the interests of students and the second is to run an efficient & effective operational system for betterment of those students for their education.

This makes it incumbent on the rest of us that they have good information and good guidance so they're able to make good local decisions. We have millions of students, we have thousands of schools, hundreds of school districts and yet the incidence of misused data & student information intended to be kept private is so small, is evidence they that they are vigilant in a rapidly changing technological environment. I got great piece of advice when I worked in this building from a fellow Senate staff member, Chris Grimaldi looked at me, with his head cocked, "Do the right thing and then do it right." I really think that can guide us on this particular issue.

School districts always attempt to comply with the federal privacy statutes that exist. They have their own policies; I've brought a copy of our sample policy that we as an association provide to districts to make sure they have available information that can inform those decisions, it's about 30 pages long. There are volumes out there on how to deal with this, but it is a rapidly changing environment.

They also take great care in their existing contracts with 3<sup>rd</sup> party vendors & many of those 3<sup>rd</sup> party student identifying pieces of information are necessary for the efficient operation of a school district, not the least of which is this emergency information sent out when there needs to be a school lockdown or another emergency.

If you don't have student information and contact information out to parents, schools don't have enough phone lines to make the calls immediately so they contract with somebody who can provide that service...but they are always vigilant about making sure there are appropriate limits of the use of that information for that specific purpose.

The reason we need to get this right is we need data and data information systems; and whether or not they are operated locally or whether they're operated at a larger conglomerate level, I think that schools have already put great trust in those who manage data systems, specifically the BOCES, the Regional Information Centers, and other private providers just to make sure that they've done this efficiently and appropriately so far.

I think that the bills that have been advanced to date would be operationally problematic for a school district. Trying to get affirmative consent to use student information for very basic things would be problematic from an operational standpoint, but we do have other suggestions for what might be appropriate for you as you go forward.

The first would be, and he Commissioner mentioned this, the first would be for you to require there be a method for obtaining and distributing information about best practices and the sound

way of using this type of information for districts, so they can base their decisions about that. The second would be civil or criminal penalties for inappropriate release of this information by third party providers. Rather than restrain school districts which have already evidenced good intent and practice we should focus on what we're afraid of: 3<sup>rd</sup> party vendors which would use this inappropriately.

And then, I would suggest that we require those 3<sup>rd</sup> party providers to tell districts if there's been a breach of information to minimize the injuries to students. And fourth, there should be an oversight and review board, either a state board from this body, to form some appropriate body that would have the ability to form oversight. I would require SED transparency by requiring them to post the data being provided to inBloom or whatever other provider is selected; Oklahoma has recently passed legislation to require this.

I don't have as many personal concerns as others have expressed here to today as to whether there are inappropriate motivations involved in this or if there is potential inappropriate use of that student data. But I know what we create today is what we will use tomorrow. No one would have predicted before 9/11 that we would have given up our privacy rights under the Patriot Act. But we had an intervening event. I'm sure there are people that would have never predicted giving up their 2<sup>nd</sup> amendment rights in NYS until Newtown happened. And that was immediate.

So events that happen in the future may very well color how we deal with this. And I can tell you that especially w/ Assemblymember Abinante's suggestion about a lawyerly approach, if I were a lawyer with a client who had been injured by a former student, and I had the idea that it could have been prevented if the appropriate people had been informed about the propensity of this individual, the first thing I would do is go back to a database to try to prove that they should have known that was the propensity of that student. I would expect that in the future we might have issues about whether this might be subject to subpoena and further court action.

The final thing that I would envision is how this would be used in the future. If I were post-secondary education institution, one of the most efficient ways of evaluating a student in addition to grades and SAT scores would be if I had a numeric score based on their entire history of discipline and individual grades and individual scores over the years, and I could numerically assess that, and say they got this on the ACT, this is their grade point average and this is their inBloom score. That would be tremendously efficient for these people. So I think as we go forward, I think it is incumbent on all of us to make sure that we take the time and energy to make sure that we are not only doing the right thing but we are also doing it right.