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TESTIMONY

To the Senate Standing Committee on Education On The Regents Reform Agenda: Assessing our “Progress” The threat to student privacy and safety represented by inBloom, Inc.

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Thank you, Senator Flanagan for holding these important hearings and allowing me to speak today. Class Size Matters is a non-profit parent organization, devoted to providing information about the benefits of smaller classes and giving public school parents a voice in how their children’s schools are run. I am here to say that from the start, I differ somewhat with the title of these hearings, as I do not think the Regents agenda has led to progress, but in many ways has led to the further undermining of our public schools.

There are many educators, parents and experts who will speak today about the various ways that the defective implementation of the Common Core, the poor quality of the state tests, and the ratcheting up of high stakes attached to these exams has led to worsening learning conditions in our schools. As the person who first reported on the Pineapple passage on the 2012 ELA exam, and has heard from hundreds of teachers and parents on last year’s exam, I can safely conclude that even if one believed that high stakes testing is a reliable means of assessing teachers, children and schools, the quality of the exams that the New York State Education Department and Pearson have created has been abysmal. Moreover, there is not a testing expert or statistician in the nation who would agree that basing teacher ratings on one year’s worth of change in student test scores is a valid or reliable methodology – and yet this is what the New York State Education Department has mandated.

But today I am here primarily to focus on privacy, as I have for the past year and more, ever since I learned about the state’s plans to share the personally identifiable information of public school students with the Shared Learning Collaborative, a Gates-funded LLC that has now morphed into inBloom Inc. It has been very hard to track these plans, however, as the state has stonewalled us at every possible turn.

Just as the federal government has been extremely secretive about its surveillance and data-mining of ordinary Americans, education officials in New York have been remarkably furtive about their plans to

share substantial amounts of students' personal information with inBloom Inc., and through inBloom, with for-profit vendors.

History and Background of inBloom Inc. and NYSED's participation

InBloom Inc. is a non-profit corporation, funded by the Gates and Carnegie Foundations with \$100 million, created to collect, store, and share personally identifiable student and teacher data with vendors, who will use it to create software products. The data is being stored on a cloud run by Amazon.com, and all this is being done without parental notification or consent.

First, a little history: On, May 5, 2011: NYSED sent a letter to the State Comptroller, asking him to approve a \$27 million no-bid contract with Wireless Generation, to build state's longitudinal student data system.¹ In August, NY State Comptroller Thomas DiNapoli rejected the contract *"in light of the significant ongoing investigations and continuing revelations with respect to News Corporation, we are returning the contract with Wireless Generation unapproved."*

Then in December, the Board of Regents approved the state's plan to share student and teacher personal data with Shared Learning Collaborative LLC, even though the operating system was also to be built by Wireless with \$44 million from Gates Foundation. The contract bypasses registration and approval by the State & City Comptrollers because no funds initially change hands. In February 2013, inBloom Inc. launched, and claims that nine states are "partners" in its data-sharing plans. The company is headquartered in Atlanta, Georgia, though much of the work is being done here in New York, by Wireless Generation, located in Brooklyn.

Even earlier, in October 2012, Class Size Matters and our attorneys urged the New York State Education Department to hold hearings about their participation in this data-sharing project, to inform parents and hear their concerns.² The state replied that this was unnecessary because they had *"made significant efforts to inform the public ...and to provide details about what the system would do and how it works."*³

At the time, however, few if any individuals in the state knew about their plans, and even now, many parents throughout the state are not aware of NYSED's intention to share their children's most sensitive personal data with third parties. Moreover, the state has refused to answer many questions or respond to any parental requests to opt out.

¹ New York State Education Department, Letter to New York State Comptroller's Office, May 5, 2011, <http://www.classsizematters.org/wp-content/uploads/2011/07/sed-letter-re-wireless-5.5.11.pdf>.

² Class Size Matters and Siegel, Teitelbaum and Evans, Letter to New York State Education Department, October 10, 2012, <http://www.classsizematters.org/wp-content/uploads/2012/10/AG+letter-wletterhead.pdf>.

³ New York State Education Department, Letter to Class Size Matters and Siegel, Teitelbaum, and Evans, October 24, 2012, <http://www.classsizematters.org/wp-content/uploads/2013/02/SED-response-letter-10.24.12.pdf>.

Six of the states that originally planned to participate in inBloom have now officially or put their plans on hold, after protests from parents and privacy experts: Louisiana, Kentucky, Delaware, Georgia, North Carolina and Massachusetts. In Illinois, two school districts are currently participating and state officials say they intend to expand the program next year--though unlike New York, they are allowing districts to decide whether they want to participate. In Jefferson County, Colorado, parents are being allowed to opt out of sharing their children's data with inBloom. Thus, New York is the only inBloom participant that intends to disclose the personal data of the entire state's public school student population, and the only one that is allowing neither districts nor parents to opt out.

By October 31, according to NYSED, all districts that are receiving funding through Race to the Top are supposed to sign up for an "Education Data Portal", or a dashboard accessible to teachers and school administrators that will pull data from the inBloom cloud. Even those districts, however, that are not RTTT districts will have their student data uploaded anyway. The three companies that districts must choose from are ConnectEDU (subcontractor Datacation), eScholar and NCS Pearson/Schoolnet. The NYSED fact sheet reports that these dashboards will be available for the school year 2013-2014.⁴ A more recent update from NYC DOE suggests that these dashboards and additional software "tools" will be ready "over the next year or so"⁵ -- and DOE has recently extended their contract with ARIS, their current dashboard provider, through December 2014.

What data is being shared?

New York State officials have said they are sharing with inBloom student names, test scores, home addresses, grades, disciplinary and attendance data, ethnic and disability status, and disciplinary data, including in-school and out-of-school suspensions. They are also encouraging districts to share even more personally identifiable data, including whether the student is an immigrant or pregnant teen, and whether the parent is a "displaced homemaker," though whether this information is mandatory or optional is unclear from the data dictionary supplied by the state.⁶ State officials are also encouraging districts to sign up with even more vendors, who will access this data in order to help them develop "interoperable" and "personalized" learning tools.

According to Tom Dunn, a spokesman for the NY State Education Department, parents have no right to opt out or consent of this data sharing plan, because "**when parents register a child for school. They give up**" the right to keep their children's information private.⁷ NYSED often defends its position by saying that its plan is compliant with FERPA, or the Family Educational Rights and Privacy Act, the federal

⁴ Ken Wagner, New York State Education Data Portal and Common Core Implementation Document, March 2013, <http://usny.nysed.gov/rttt/data/edp-memo.pdf>.

⁵ New York City Department of Education, Supplemental Information Regarding Privacy and Security of Student Data in inBloom, 2013, <http://schools.nyc.gov/NR/rdonlyres/20C87CC4-0C95-4DBE-A5BE-12219A5015F8/0/supplementalinformationregardingprivacyandsecurityinbloom.pdf>.

⁶ New York State Education Department, EngageNY Portal Data Dictionary, August 5, 2013, <http://usny.nysed.gov/rttt/data/engageny-portal-data-dictionary.pdf>.

⁷ Jason Lewis, "Who is stockpiling and sharing private information about New York students?" *The Village Voice*, March 22, 2013, <http://blogs.villagevoice.com/runninscared/2013/03/data-sharing.php>.

law that governs student privacy. Yet FERPA's regulations have been extensively rewritten and considerably weakened in 2009 and again in 2012, to facilitate the sharing of confidential student data with third parties without parental consent.⁸

In addition, through its stimulus grants and Race to the Top program, the federal government has urged the creation of state longitudinal data systems that are "cradle to the grave" and are intended to gather children's information from many different governmental agencies. The agreements between the US Department of Education and the testing consortia it funded to develop the Common Core exams, known as PARCC (which New York State belongs to) and Smarter Balanced, contained a clause that required "The Grantee must provide timely and complete access to any and all data collected at the State level to ED [the US Department of Education] or its designated program monitors, technical assistance providers, or researcher partners, and to GAO..."⁹

All these developments are highly troubling and will likely erode student privacy. Yet inBloom Inc. is the most egregious result of the change in policies towards personal data sharing, because it was designed to aggregate as much personal data as possible, put it in a uniform and easily digestible form, and lure as many vendors as possible to build their software products around it.

IS the data safe?

There are huge risks associate with this data sharing project. The first is data breaches. Though NYSED claims that the cloud storage used in this project "***exceed the security measures in place currently in most states and school districts,***" this is highly debatable. Most districts and states keep personal student data on site, either in paper files or on localized systems, and do not upload it onto offsite clouds where it can be more easily hacked into. A recent survey found that 86 percent of technology professionals do not trust data clouds to store their more sensitive information.¹⁰

Moreover, the more personalized data that is aggregated on a cloud, the more attractive it is to hackers; and the more it is transmitted to vendors the more likely it is that it will breach or be used in an unauthorized manner. In fact, inBloom Inc. has itself warned that it "*cannot guarantee the security of the information stored...or that the information will not be intercepted when it is being transmitted.*"¹¹ Recently, the personal information of fifty million customers of Living Social, a discount company, was breached, after a cyber-attack on the Amazon.com cloud on which it was stored.

⁸ Wendy Lecker, "Private data on children must stay that way," *Stamford Advocate*, May 31, 2013, <http://www.stamfordadvocate.com/news/article/Wendy-Lecker-Private-data-on-children-must-stay-4566834.php>.

⁹ See for example, US Dept of Education, "Cooperative Agreement Between the U.S. Department of Education and the Partnership For Assessment Of Readiness Of College And Careers, January 7, 2011, <http://www2.ed.gov/programs/racetothetop-assessment/parcc-cooperative-agreement.pdf>.

¹⁰ "Fear of government snooping hinders cloud adoption," *Help Net Security*, February 6, 2013, <http://www.net-security.org/secworld.php?id=14360>.

¹¹ inBloom, inc., Privacy and Security Policy, 2013, <https://www.inbloom.org/privacy-security-policy>.

Is it true that the practice of sharing personal student data is widespread already?

Officials from the State Education Department when questioned about inBloom often claim that parents are confused, and there is misunderstanding about how districts already share personal information widely with vendors. It is true that many districts may be engaged in risky practices already when it comes to the use and sharing of personal student data. Yet every superintendent, principal, and data specialist I have spoken to throughout the state is very troubled by the state's intention to share data with inBloom, and they insist that these plans are fundamentally different from what is done currently. Indeed, two administrators who testified before this committee, Mark D. Beehler and Dr. Tom Rogers, both expressed serious concerns about this plan.

Mr. Beehler, Chief Information Officer for the West Seneca School Central District, President of the Western New York Administrators Association and Vice President of the Empire State School Administrators Association, testified at your last hearings in Syracuse that inBloom is *"aggregating student information on a massive scale without the consent of school districts...More importantly, parents have never been asked for consent nor have they been formally informed of the disclosure practices for their own children's information."*¹²

He also pointed out the negative fiscal implications of this plan, and how starting in 2015, schools will have to *"buy back the data they provided at their own expense from InBloom at a cost of between \$2.00 and \$5.00 per student."* There is no need for inBloom, he pointed out, even to produce the data dashboards, as one vendor told him:

"...they do not need inBloom to produce a data dashboard product. Why must RTTT funding be expended on data that is already present in our RICs [Regional Informational Centers]?...Why must between \$5.2 million and \$13.5 million dollars be paid to inBloom every year for something that can be done already by our existing structure? For data that we already have?"

See also the testimony of Dr. Tom Rogers, the Chief Executive Officer (CEO) of Nassau BOCES, who testified at your first hearing on Long Island, about how inBloom is creating a private monopoly, outside the governance of any publically elected official, and how the state has refused to answer even his most basic questions about their plans:

"...my concern is that the monopoly inBloom creates sits outside the oversight of a publicly elected body...privately selected, controlled and funded. My early questioning of the state staff involved in this project has yet to yield satisfactory answers to questions about how long the data will be retained, whether it will be stripped of identifiable information after a certain period (after a student graduates

¹² Mark D. Beehler, Testimony to the Senate Standing Committee on Education, "The Regents Reform Agenda: "Assessing" Our Progress," October 16, 2013, <http://www.nysenate.gov/files/Mark%20Beehler.pdf>.

say), whether disciplinary or disability information will be deleted upon graduation, what data will be forwarded to colleges...I'm concerned about who advocates for privacy in those discussions.¹³

Data specialists have told me that currently, student disability and disciplinary data is very closely held and never shared without parental consent, even when a student transfers to another school. If the same disability information were contained in a child's health records, it could not be shared with third parties without parental consent, according to HIPAA rules. It also cannot be disclosed to the federal government for the purposes of Medicaid reimbursements, without parents signing a consent form. And yet the state plans to share this same information with inBloom Inc. and for-profit vendors, without any parental consent? This is a mind-boggling and major shift in current practice.

Moreover, even in the case of those districts that currently have data dashboards designed by the same companies with whom the state has now contracted, their vendors have very limited access to personal data, under strict district control, and only under rare circumstances, i.e. if there is a virus or software glitch. The companies are then given a temporary password to go into the database, fix the problem, and get out right away.

What is the real purpose of inBloom?

So what is the real purpose of inBloom, if not to populate data dashboards? The real goal, I believe, is to facilitate the development and sale of software tools that will mine students' personal data.

Education technology software for prekindergarten to 12th grade is an \$8 billion market, according to the Software and Information Industry Association, and growing fast, due to pressure on districts desperate to achieve the higher standards associated with the Common Core.¹⁴ InBloom sells itself as helping to achieve that goal: "*states, districts and educators implementing the Common Core State Standards have set new goals for student learning, and they need effective tools and resources to ensure students meet those goals.*"¹⁵

inBloom Inc. and the Gates Foundation have pledged \$70 million in grants to companies to induce them to develop commercial products that will access and mine personal data via the inBloom cloud.¹⁶ According to inBloom's CEO, Iwan Streichenberger, "**We are not creating commercial apps. Our role is to sit in the middle, to facilitate that innovation...*There are tools that come in, mine and analyze the data and make recommendations.***"¹⁷

¹³ Dr. Thomas Rogers, Testimony to the Senate Standing Committee on Education, "The Regents Reform Agenda: "Assessing" Our Progress," October 16, 2013, <http://www.nysenate.gov/files/Dr.%20Thomas%20Rogers.pdf>

¹⁴ Software and Information Industry Association, "SIIA Estimates \$7.76 Billion US Market for Educational Software and Digital Content, Dec. 19, 2012, http://siii.net/index.php?option=com_content&view=article&id=1171:sii-estimates-776-billion-us-market-for-educational-software-and-digital-content&catid=62:press-room-overview&Itemid=1222

¹⁵ See inBloom Inc., "Our Vision" undated at <https://www.inbloom.org/our-vision>.

¹⁶ Stephanie Simon, "K-12 student database jizzes tech startups, spooks parents," *Reuters*, March 3, 2013, <http://www.reuters.com/article/2013/03/03/us-education-database-idUSBRE92204W20130303>.

¹⁷ Natasha Singer, "Deciding who sees students' data," *The New York Times*, October 6, 2013, <http://www.nytimes.com/2013/10/06/business/deciding-who-sees-students-data.html?pagewanted=2&ref=education>.

InBloom and the state promise that these software tools “will allow educators and families to use data to understand student needs and target instruction.” However, whether this will actually benefit students is unproven; as of yet, **no online system of instruction or data analysis has been shown to improve student outcomes.** DOE spent \$100 million building the ARIS data dashboards, and ARIS was supposed to produce many of the same benefits to teachers and students that are now being claimed for inBloom.¹⁸ In fact, Sharren Bates, the Chief Product Officer of inBloom, was formerly in charge of the ARIS project for NYC DOE. Yet ARIS is now widely considered a failure, and according to several independent studies and audits, is rarely used by teachers or parents.¹⁹ In any event, there are multiple ways in which student data could be formatted in a uniform manner to make it easier for schools to acquire software tools, without allowing any data-mining to take place.

Are the data being sold and what are the risks?

Currently, New York State is providing this very valuable personalized data to inBloom for free, and they insist that the data will never be “sold.” However, inBloom’s board members and funders have said that inBloom is “**exploring cost recovery partnerships with select vendors for the services that it provides.**”²⁰ If not selling the data, this could be likened to renting it out. And, as mentioned before, starting in 2015, the state will have to “buy back” its own student data from inBloom, at a cost of \$2-\$5 per student. All these costs are minor, however, compared to the huge financial risks the state will face if there are breaches, especially since inBloom has stated in its security policy that it will not be legally responsible if the data leaks out either in storage or transmission.

Moreover, there are considerable risks to students, even if no breaches or data mining takes place. Minor incidents will now enter into a student’s permanent record and will be easily accessible to teachers through the data dashboards. Much research shows that if teachers have prior, second hand knowledge that a child has had disciplinary problems, or struggles academically, this can become a self-fulfilling prophecy.²¹ If these dashboards reveal to teachers negative details in a student’s academic or disciplinary history, long before they have even met, this is likely to create negative expectations that could seriously impair a child’s future prospects and likelihood of success.

¹⁸ New York City Department of Education, “Educational Technology,” <http://schools.nyc.gov/Accountability/resources/technology/default.htm>.

¹⁹ See for example, Office of the Comptroller John C. Liu, Audit Report on the Performance of the NYC Department of Education’s Achievement Reporting and Innovation System, January 23, 2012, http://comptrollernyc.com/bureaus/audit/PDF_FILES_2012/7I11_118A.pdf.

²⁰ Valerie Strauss, “An exchange on controversial \$100 million student database,” *The Washington Post*, June 12, 2013, <http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/06/12/an-exchange-on-controversial-100-million-student-database/>.

²¹ See the much-cited research by Robert Rosenthal, for example, in: “Pygmalion in the Classroom: Teacher Expectation and Pupils' Intellectual Development,” 1992. A recent interview with Rosenthal exploring his findings was done by NPR, “Teachers' Expectations Can Influence How Students Perform,” September 17, 2012, <http://www.npr.org/blogs/health/2012/09/18/161159263/teachers-expectations-can-influence-how-students-perform>.

Two bills to protect student privacy passed the State Assembly in the last session. A.6059A would have blocked re-disclosures without parental consent, and A.7872A would have allowed parents the right to opt out of the state or district sharing their child's data with third parties. Identical versions to these bills have been introduced in the State Senate, by Senator Martins, [S.5930](#),²² and Senator Robach, [S.5932](#).²³ ***We urge the Senate to approve these bills as soon as possible, to give parents the right to protect their children's most private and sensitive data from being breached and abused.***

²² New York State, Senate, An act to amend the education law, in relation to personally identifiable student information, S.5930-2013, September 4, 2013, <http://open.nysenate.gov/legislation/bill/S5930-2013>.

²³ New York State, Senate, An act to amend the education law, in relation to personally identifiable student information, S.5932-2013, September 11, 2013, <http://open.nysenate.gov/legislation/bill/S5930-2013>.