Testimony of Class Size Matters and the Parent Coalition for Student Privacy before the Technology and Education Committees of the NYC Council

Sept. 20, 2023

Thank you to Chair Guttierez and Chair Joseph for holding these important oversight hearings today.

My name is Leonie Haimson; I'm the Executive Director of Class Size and also the co-founder and national co-chair of an organization called the Parent Coalition for Student Privacy. I'll be testifying with my Associate, Michael Rance.

The Parent Coalition for Student Privacy formed in 2014 and has been invited to testify twice before Congress about the need to strengthen federal student data protections. Members of our group were also instrumental in advocating for the passage of NY State's Student Privacy Law in 2014. I am also a member of the NY State Education Department Data Privacy Advisory Committee.

We are very concerned about the decision by the NYC Department of Education to expand online learning. There is strong evidence that virtual education seriously undermines student engagement and the opportunity to learn. After expanding digital learning, Sweden found that it led to a sharp fall in basic skills and has since reversed course. According to Sweden's Karolinska Institute, "There's clear scientific evidence that digital tools impair rather than enhance student learning." [1]

A recent UNESCO report, entitled "An Ed Tech Tragedy", examines how during the pandemic the "unprecedented educational dependence on technology often resulted in unchecked exclusion, staggering inequality, inadvertent harm and the elevation of learning models that place machines and profit before people". The report also found that putting education online undermined engagement and learning outcomes the most for the most disadvantaged students, even when they had full access to the internet and whatever technologies were employed.

Indeed, as we saw, the expanded use of ed tech during the pandemic amplified and worsened the inequities of our educational systems here in NYC, in the United States, and throughout the world. As the authors of the UNESCO report explained:

"*Many of the technology-dependent learning platforms and apps adopted during the crisis made students feel as though they were anonymous and interchangeable units being directed by unprecedented levels of automation. This was especially true for asynchronous apps where learning was guided by algorithms instead of teachers. But even in more human-mediated digital learning spaces, a student's membership in a particular community, family,*

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[1] https://www.theguardian.com/world/2023/sep/11/sweden-says-back-to-basics-schooling-works-on-paper

school and class was often irrelevant. Affiliations that had organized learning in physical spaces, such as age and geography, tended to melt away in the new virtual learning environments that were spaces for everyone and no one and existed everywhere and nowhere." [2]

All students need the close support and personal interaction of human beings, both their teachers and their fellow students, as education is an inherently social activity, but those who need this connection the most are those students who are struggling.

We're especially concerned about the DOE's plan to increase online learning in nearly all high schools in the next few years, which will be used with students who failed their courses and are in need of additional credits to graduate on time. These are the exact students who most need in-person and close feedback from their teachers to stay motivated and involved in the challenges they face. [3]In fact, putting struggling students on remedial ed tech programs may instead reproduce the discredited, low-quality, and rote credit recovery programs that too often have been used to artificially inflate graduation rates in New York City in the past.[4]

Our misgivings were further amplified when the DOE announced that they will be using "AI-powered teacher assistants to offer real-time feedback and answer questions from students." According to Microsoft, this AI bot has already been used in three high school computer science courses.[5] Instead of machine learning bots, our students need and deserve the smaller classes and the emotional and academic support and encouragement of their teachers to succeed. No AI teaching assistant can replace this human contact and feedback.

While delivering education through algorithms is often called "personalized", it is anything but. As the authors of the UNESCO report explained, "*While some ed-tech solutions had appealing user interfaces and carried labels like 'AI-enabled', 'smart', 'adaptable', 'agile' or 'personalized', much of the learning experiences these solutions facilitated were rote: a linear progression through machine-dispensed learning content with limited, if any, possibilities for interaction with peers and teachers*."

My other serious concern about the planned expansion of ed tech in our schools is the serious risk to privacy that this involves. By handing over instruction, assessment, and behavioral management to private companies that collect, process, market and sell student data, NYC schools are playing with fire.

The use of AI carries special dangers, and even the President of Microsoft, Brad Smith, and Sam Altman, the CEO of OpenAI, which makes ChatGPT, have called for more government regulations to better protect the risks, including to user privacy. [6] And yet the DOE is experimenting on our students with these precarious programs.

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[2] UNESCO report here: https://unesdoc.unesco.org/ark:/48223/pf0000386701
NY Times article about the report; https://www.nytimes.com/2023/09/06/technology/unesco-report-remote-learning-inequity.html
[3] https://www.nytimes.com/2018/01/19/business/online-courses-are-harming-the-students-who-need-the-most-help.html
[4]https://www.nydailynews.com/2013/09/24/critics-blast-credit-recovery-as-city-data-reveals-frequent-use-by-public-high-school-students/ https://nypost.com/2018/12/08/some-nyc-schools-using-controversial-credit-recovery-to-boost-grad-rates/
[5] https://news.microsoft.com/source/features/digital-transformation/how-nyc-public-schools-invited-ai-into-its-classrooms/ https://www.cityandstateny.com/policy/2023/09/after-initially-shunning-artificial-intelligence-nyc-schools-partner-microsoft-ai-teaching-assistant/390292/
[6] https://www.nytimes.com/2023/05/25/technology/microsoft-ai-rules-regulation.html

Already there have been too many serious DOE breaches of personal student information over the last few years, ranging from data found on unsecured Google Drives, to the massive Illuminate breach that exposed the personal and sensitive data of nearly one million students, to the recent MoveIt breach, in which hackers were able to access the information about 40,000 students and approximately 170,000 DOE staff and third-party evaluators. [7]

Moreover, a comprehensive analysis of school technology practices by Internet Safety Labs released in June 2023 found that 96 percent of the ed tech apps they analyzed share information with third parties or contain ads.[8]

As the UNESCO report pointed out about the use of ed tech during the pandemic, *"Around the world, students and their families signed away their privacy and submitted to new extremes of surveillance and control in order to pursue education in digital environments. This was an affront to the right to education, a human right intended to expand and reinforce other rights, including the right to privacy and to freedom of opinion and expression."*

As it is, the DOE has failed to comply with the New York State student privacy law, Ed Law 2d, which was passed in 2014.[9] Every single vendor that has access to student data is legally required by this law to have a contract as well as a privacy addendum called the Parent Bill of Rights (PBOR), specifying how the data will be used and protected, and each of the PBORs are supposed to be posted on the DOE website. Yet we have been told that neither GoGuardian, a computer surveillance system used by many schools, nor MoveIt, the program that recently breached, had any contract with DOE.

Of those companies that do have PBORs posted online, those agreements do not bar the sale or commercialization of student data, have extremely weak to nonexistent data minimization and deletion clauses, and many do not even require basic security protections, such as the encryption of personal student data at all times. [10] All of these are requirements of Ed Law 2d. Some examples:

- The DOE has two current contracts with the College Board, one for the administration of the AP and one for the PSAT/SAT, which was only recently posted. Yet the PSAT/SAT doesn't specify any date by when the personal student data will be deleted. The PBOR for the AP says that the data will be deleted only "***when all NYC DOE schools and/or offices cease using College Board's products/services"***. [11]

- Both PBORs also say that the company itself, along with its subcontractors and others with whom it shares data, will NOT encrypt the data "***where data cannot reasonably be encrypted***"; contrary to the law which requires encryption at all times, in rest and in transit, and at a fairly high level as specified by NIST, or the National Institute of Standards and Technology.

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[7] https://www.schools.nyc.gov/about-us/policies/data-privacy-and-security-policies/data-security-incidents

[8] https://internetsafetylabs.org/wp-content/uploads/2023/06/2022-K12-Edtech-Safety-Benchmark-Findings-Report-2.pdf

[9] https://studentprivacymatters.org/wp-content/uploads/2016/06/NYS-student-privacy-law-section-2-D.pdf; the regulations for this law are posted here: https://www.nysed.gov/sites/default/files/programs/data-privacy-security/part-121.pdf

[10] https://www.schools.nyc.gov/about-us/policies/data-privacy-and-security-policies/supplemental-information-for-parents-about-doe-agreements-with-outside-entities

[11] https://www.schools.nyc.gov/about-us/policies/data-privacy-and-security-policies/supplemental-information-for-parents-about-doe-agreements-with-outside-entities/vendors-a-h

- Worst of all, the College Board has been shown to sell student data, including test score ranges, as part of its Student search program, for over $100 million per year.[12] And yet there is no prohibition against this practice in either of the PBORs, posted on the DOE website. While the State Attorney General office has apparently been engaged in negotiations for nearly a year with College Board to urge them to halt this illegal practice, the DOE should have put its foot down and required a halt to the sale of student data in its contracts and PBORs. [13]

- The DOE also recently posted a new PBOR for 17 privacy-invasive programs sold and marketed by PowerSchool, which will have access to a huge range of extremely sensitive personal student and teacher data.[14] One of the programs is Naviance, a college and career counseling program that profits by selling ad space within its student-facing platform to colleges, disguised as objective recommendations. Moreover, it has been shown that Naviance also allows these colleges to target ads to students based on their race, including targeting ads only to white students. [15]

- The just-recently posted PBOR for Naviance and these other data-hungry PowerBook products state that The company will "*Review data security and privacy policy and practices to ensure they are in conformance with all applicable federal, state, and local laws & the terms of this DSPP [Data Security Privacy Plan].… <u>In the event Processor's policy and practices are not in conformance, Processor will implement commercially reasonable efforts to ensure such compliance.</u>"[emphasis added]*

- In other words, PowerSchool will only comply with federal and state privacy laws and their privacy agreement with DOE when they feel it won't unduly affect their bottom line. This is unacceptable.

Other ways in which the DOE fails to comply with Ed Law 2D and continues to allow vendors to put at risk sensitive student data is described in a presentation we delivered to the Community Education Council District 15 last evening. [16] Until the DOE requires all its vendors to fully comply with the state law and ensures that the privacy and security of student data are rigorously protected, no further expansion of the use of ed tech and online learning should be contemplated.

Thank you for the opportunity to testify to you today.

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[12] https://www.wsj.com/articles/for-sale-sat-takers-names-colleges-buy-student-data-and-boost-exclusivity-11572976621
[13] On July 26, 2023, the Panel for Educational Policy approved a five-year DOE contract for $18,152,000 with the College Board for the PSAT/SAT assessments and associated materials. In the Request for Authorization, under Vendor Responsibility it says: "*In October 2022, the NYAG's requested information from College Board to assess its compliance with Education Law section 2-D and information relating to its financial aid products. College Board advised that the matters are on-going and continues to cooperate with NYAG.*" Why the DOE did not ask the NYAG office for their view of the matter under discussions is unknown.
[14] https://www.schools.nyc.gov/about-us/policies/data-privacy-and-security-policies/supplemental-information-for-parents-about-doe-agreements-with-outside-entities/vendors-i-q
[15] https://themarkup.org/machine-learning/2022/01/13/college-prep-software-naviance-is-selling-advertising-access-to-millions-of-students
[16] https://classsizematters.org/wp-content/uploads/2023/09/NYC-privacy-issues-updated-9.19.23-final.pdf