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**The threat to student privacy and safety represented by inBloom, Inc.**  
**In support of resolution No. 1768**

Testimony before the NYC Council Education Committee  
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Just as the federal government has been extremely secretive about its surveillance and data-mining of ordinary Americans, education officials in New York and elsewhere have been remarkably furtive about their plans to share substantial amounts of students' personal information with a corporation called inBloom Inc., and through inBloom, with for-profit vendors.

Though Class Size Matters and our attorneys [urged](#) the New York State Education Department to hold hearings about their participation in this data-sharing project in October 2012, then called the **Shared Learning Collaborative**, 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.*"

At the time, however, few if any parents or elected officials knew about their plans, and even now, many parents are not aware of the state's intention to share their children's most sensitive data with third parties. Moreover, the state has refused to answer many of our questions or respond to the concerns of parents.

Indeed, to this day much confusion persists. Chancellor Walcott has repeatedly claimed at town hall meetings that "student information will remain confidential" and that "[We will never, ever pierce student privacy.](#)" Yet over the course of the last six months, contrary information has slowly leaked out via public documents, the media and the efforts of parent activists throughout the nation.

inBloom Inc. is a non-profit corporation, funded by the Gates and Carnegie Foundations with \$100 million, created to collect personally identifiable student and teacher data from states and districts and share it with vendors. The data is being stored on a cloud run by Amazon.com, with an operating system created by Wireless/Amplify, a subsidiary of News Corporation, owned by Rupert Murdoch. inBloom is planning to commercialize this data, with the agreement of states and districts, by offering it up to for-profit companies. All this is being done without parental notification or consent.

According to its website, at least nine states originally planned to participate in inBloom. After protests, five states have now officially withdrawn: Louisiana, Kentucky, Delaware, and Georgia and North Carolina. In Illinois, Bloomington and Normal schools are now sharing student data, and state officials say they intend to expand the program to 35 districts in 2014, including Chicago – though they are allowing districts to decide whether they want to participate.

The Superintendent in Jefferson County, Colorado has decided to allow parents to opt their child's data out from being sharing data with inBloom, because of fierce resistance. Massachusetts officials, originally planning to upload student data for schools in Everett, are reconsidering. New York is currently the only inBloom client that is uploading student data from the entire state at this point, whether parents and districts want this information shared or not.

By October 31, according to NYSED, all districts 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. The three companies that the state has chosen to produce these dashboards 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. A more [recent update](#) from NYC DOE says that these dashboards and additional software "tools" will be ready "over the next year or so" -- though DOE has recently extended their contract with ARIS, their current dashboard provider, through December 2014. eScholar's CEO [recently revealed](#) in *Information Week* that he has "so far ...seen only test data from InBloom."

inBloom Inc. is planning to collect about 400 student and teacher data points, going back as far as 2006. Many of these data points are highly sensitive and controversial. New York State officials have said they are sharing student names, test scores, home addresses, grades, disciplinary and attendance data, ethnic and disability status, and disciplinary data. At the same time, the state is also encouraging districts to upload even more personal student data into the inBloom cloud, and to sign up with more vendors who will provide "interoperable" learning products and be able to access this information directly.

Though originally Stacy Childress of the Gates foundation wrote on the SLC website that "*Under federal law, school districts must manage and honor parent requests to opt out of programs that require the use of student data*", inBloom later reversed its position and said it would be up to states and districts to decide what their parental notification and opt out policies will be.

According to a [spokesman](#) for the NY State Education Department, parents have no right to opt out or consent, because "**when parents register a child for school. They give up**" the right to keep their children's information private. In their latest FAQ, the state says there is no requirement for districts to allow parents to opt out of their children's data being shared with vendors, but does not claim that districts cannot choose to provide that right.

NYSED often defends its position by saying that its plan to share data with inBloom is compliant with FERPA, or the Family Educational Rights and Privacy Act, the federal law that governs student privacy. Yet FERPA's regulations have been extensively [rewritten and considerably weakened in 2009 and again](#)

[in 2012 by the US Department of Education](#), to facilitate the sharing of confidential student data without parental consent. The Electronic Privacy Information Center (EPIC) has [filed suit](#) in court against the US Department of Education, on the grounds that the federal government has rewritten and weakened FERPA's regulations in a way that violates the language and original intent of the law.

[According to the DOE](#), inBloom, along with the software tools it will provide to vendors, "will allow educators and families to use data to understand student needs and target instruction." Having access to this data will supposedly make it easier for vendors to create and market their "personalized learning tools". 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. 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 and operate software programs, without providing personal data to inBloom or any third party vendor.

Occasionally, officials at the NY State Education Department have remarked that they are required to share data with inBloom by Race to the Top, and it is true that states received points in their Race to the Top applications if they agreed to create "data systems to support instruction." This appears to explain why NYSED is now requiring that any district that received RTTT funds to sign onto one of the "data portals" of the vendors that will have data from the inBloom cloud.

***Yet ten out of the 12 states that won RTTT funds are not participating in inBloom, and Massachusetts, the only other RTTT state that did, now says it is reconsidering its plan to share data from its one pilot district, Everett.*** RTTT certainly did not require any state to outsource their entire student data system to a private company, as it appears New York has done. In any case, whether or not a NY district received RTTT funds, its student data is being uploaded by the state into inBloom anyway.

Many schools already have contracts with companies to produce data dashboards, separate from inBloom. Yet school administrators we have spoken to in NYC and the rest of the state insist that the current contracts they have do NOT allow vendors unfettered access to any personalized student data. Instead, these companies provide them with the software and the schools populate the data themselves. They also say the only time a vendor might gain access to the data is if there is a technical glitch or virus, and then the vendor would have to be given a temporary password to go in and fix the problem, under strict security conditions. Presumably, once the inBloom plan is fully implemented and new contracts with vendors are signed, access to the data will no longer be under the strict control of individual districts or schools.

Some schools view the list of three companies provided by the state as unnecessarily restrictive, limiting their autonomy and squeezing out other companies that might have a better product. Other districts do not currently use data dashboards and see no need for them. But **none of the district or school officials** that we have spoken to believe there is any need for the sort of unfettered data sharing that is occurring with inBloom, under such unrestricted conditions, and believe that this represents a serious threat to the privacy and security of their students.

DOE spent \$100 million building the ARIS data system that was supposed to produce [many of the same benefits](#) to teachers and students that are now being claimed that inBloom will provide. 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 independent studies, is rarely used by teachers or parents. In any event, the fact that DOE has said it will allow ARIS to lapse as soon as the new data dashboards are operable, “alone says a lot about their mismanagement”, according to a NYC principal, who added: ***“Ideally, had ARIS been built properly we would not be paying any vendor fees and schools could use that money in other ways to support students.”***

Starting in 2015, inBloom says it will charge states and districts two to five dollars per student per year for storing the data and making it accessible to vendors. These fees do not count the additional costs charged by vendors for the data dashboards, or any other software tool that will receive data from the inBloom cloud. As of now, it is uncertain whether New York state or individual districts will be obligated to pay these fees; or if a district will be able to pull out of inBloom if it chooses not to cover the costs.

Currently, New York State and New York City are 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.](#)”*** If not selling the data, this could be likened to renting it out.

Though inBloom and NYSED claim 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. 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.”***

Recently, the personal information of 50 million customers of Living Social, a discount company, was breached, after a cyber-attack on the Amazon.com cloud on which it was stored. A survey of technology professionals found that [86% do not trust clouds](#) to store their more sensitive information. 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. Disability and health data is considered particularly sensitive, and cannot be shared with third parties without parental consent if this information is contained in a child’s medical records rather than their educational files.

DOE has [cited two examples](#) in which NYC currently provides personal student information with vendors without consent: First, busing companies ***“receive a limited subset of data for special education students who require to be picked up from their home....the student’s name, home address, and other information about the student that is needed to provide the required services (e.g., knowing that a non-ambulatory student would require a wheelchair) in a smooth manner.”***

Yet busing information is on a student's IEP, or individualized education plan, which requires a parent's signature, so it's not clear this is provided without implied consent. In any event, it would be relatively simple for parents of children with disabilities to sign a separate consent form, giving their permission for this information to be shared with busing companies for the purpose of allowing them to transport their children to school.

The other example that DOE has offered is their disclose an array of personal data to CTB McGraw Hill, including "*student ID, student first name, student last name, school location code, school name and network, grade level, class, date of birth, demographic information, and indicators of Individualized Education Plan and English Language Learner status.*" According to DOE, this is done "so that the company can upload it into the online tools teachers use to view and analyze students' results on formative assessments. "

Unlike the busing example, there is no need for the company to be provided with this level of sensitive detail for any student, and it should cease. Teachers can view and analyze individual student test scores without this company receiving any personalized information about their students. In any case, the inBloom operation goes far beyond these two examples, and is unprecedented in scope, as it will aggregate a huge amount of highly sensitive data, store it on a vulnerable cloud, with the explicit purpose of commercializing the data and making it available to as many vendors as possible, while insulating itself from any liability for breaches.

Moreover, there are considerable risks to data sharing and dashboards, even if there are no breaches outside the school community that the state has not apparently considered. Minor incidents will now enter into a student's permanent record and be easily accessible to teachers through the dashboards. Much research shows that teachers tend to stereotype students based on prior knowledge and that this can often become a self-fulfilling prophecy. If dashboards reveal to teachers details in a student's academic or disciplinary history before they even meet, studies show this can create negative expectations that seriously impair a child's prospects.

Parents, teachers, advocacy groups and privacy experts throughout the country have protested this unprecedented plan to commercialize their children's most sensitive information and share it with private corporations and for-profit vendors without parental consent.

Organizations opposing this data-mining include Class Size Matters, the Learning Disability Association of New York, Alliance for Quality Education, New York State Allies for Education, the Coalition for Educational Justice, the Massachusetts branch of the American Civil Liberties Union, the Center for Commercial Free Childhood, and Citizens for Public Schools. These groups have pointed out that any breach of this highly sensitive information, or its inappropriate use, could put children's safety at risk, and/or mar their prospects for life.

In NYC, the City Comptroller, Assembly Speaker Sheldon Silver, Cathy Nolan, the chair of the Assembly Education Committee, and Public Advocate Bill de Blasio, the Democratic front-runner for NYC mayor, as well as many other elected officials have gone on record against the state and city disclosing this data

without providing parental notification or consent. Many Assemblymembers and State Senators of both parties oppose this plan.

Many unanswered questions remain about the state's plan to share data with inBloom. We don't know if data of students in preK programs is also being shared, either those run by districts or in CBO's, or students at state-funded, non-public special education schools. They have not told us whether they are also sharing teacher data, and/or who will have to pay for inBloom's "services" starting in 2015. SED officials haven't explained who will be financially or legally responsible if the data breaches. *Most importantly, they haven't said whether districts can choose to pull their student data out of inBloom in 2015, when it will start charging for its services, or at any other point, and what happens to the data after students graduate.*

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 being able to share their child's data with third parties. Now identical versions to these bill have been introduced in the State Senate, by Senator Martins, [S.5930](#), and Senator Robach, [S.5932](#).

**We urge the City Council to approve Resolution No. 1768 and give parents the right to protect their children's most private and sensitive data from being shared with vendors.**

### **Selected reading list**

(For more articles, check out [inBloom/privacy newsclips on the Class Size Matters website](#))

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