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## **The threat to student privacy and safety from the plan of the NYS Education Department to share personal student data with inBloom**

Testimony to the NY Assembly Education Committee

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November 20, 2013

Thank you, Assemblymember Nolan for holding these important hearings 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.

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. New York State is now the worst state in the nation when it comes to student privacy.

Sadly, while being eager to disclose our children's private data with inBloom, and via inBloom with for-profit vendors, the state education department has been incredibly private about their plan to do so, and has stonewalled us at every possible turn. They have refused to hold hearings or even inform parents about their plan. They have also refused to respond to requests by parents to keep their children's highly sensitive information out of the inBloom cloud. We believe that this plan is not only highly risky and unethical, but that it is illegal as well. Last week, and a lawsuit was filed a week ago on behalf of a dozen New York City parents, saying this data sharing plan without parental consent violates the Personal Privacy Protection law, passed by the State Legislature in 1984.<sup>1</sup>

### **History and Background of inBloom Inc. and NYSED's involvement**

Despite the state's repeated claims that there is nothing new or different about their data-sharing plans, and that the state and districts have shared this sort of information with vendors for years, this is completely untrue. First of all, InBloom Inc. is a non-profit corporation, funded by the Gates and

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<sup>1</sup> Department of State, Committee on Open Government, "FAQ – Personal Privacy Protection Law (PPPL)," <http://www.dos.ny.gov/coog/ppplfaq.html>.

Carnegie Foundations with \$100 million. inBloom was designed to aggregate as many data points from as many states as possible, put this highly valuable and sensitive data on a cloud to create a “data store” and commercialize the information by providing it to as many vendors as possible. In turn, these vendors would data-mine and develop their software products to be marketed back to schools and districts – all without parental notification or consent.

The data is being stored on an Amazon.com cloud, and the operating system built by Wireless Generation, part of Amplify, the education subsidiary of Rupert Murdoch’s News Corporation, run by former NYC Chancellor Joel Klein.

Let’s backtrack a moment to trace NYSED’s involvement in this project. On, May 5, 2011, a NYSED official sent a letter to the State Comptroller, asking him to approve a \$27 million no-bid contract with Wireless Generation, so that it could build the state’s longitudinal student data system.<sup>2</sup> Protests erupted, citing conflicts of interest given Joel Klein’s involvement, but focusing primarily on the fact that News Corporation was immersed in a huge scandal in Great Britain, with allegations of phone-hacking and other egregious violations of privacy. Class Size Matters and other groups including NYSUT, New York State United Teachers, protested to the State Comptroller, urging him to reject the contract.

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.”*<sup>3</sup>

Then less than six months later, in December 2011, the Board of Regents approved the state’s plan to share student and teacher personal data with Shared Learning Collaborative LLC, so they could construct a similar system, even though the operating system was also to be built by Wireless, paid \$44 million from the Gates Foundation.<sup>4</sup> The contract bypassed registration and approval by the State & City Comptrollers because no funds initially changed hands.

As soon as I learned about this plan, I became alarmed, and began asking NYSED officials for their contract with the SLC, but got no response. In October 2012, Class Size Matters and our attorneys wrote a letter to SED and held a press conference, demanding to see the contract and urging NYSED to hold hearings about their participation in this data-sharing project, to inform parents and hear their concerns.<sup>5</sup> The state replied in a letter that any hearings or parent notification was unnecessary

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<sup>2</sup> 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>.

<sup>3</sup> Ian Quillen, “N.Y. Rejects Deal With Murdoch’s Wireless Generation,” *Education Week*, August 29, 2011, [blogs.edweek.org/edweek/DigitalEducation/2011/08/blow\\_to\\_wireless\\_generation.html](http://blogs.edweek.org/edweek/DigitalEducation/2011/08/blow_to_wireless_generation.html).

<sup>4</sup> Sharon Otterman, “Subsidiary of News Corp. Loses Deal With State,” *The New York Times*, August 29, 2011, <http://www.nytimes.com/2011/08/30/education/30wireless.html>.

<sup>5</sup> 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>.

because they had “made significant efforts to inform the public ...and to provide details about what the system would do and how it works.”<sup>6</sup>

And yet when I spoke to parents and even public officials in NYC and elsewhere in the state, no one knew anything about this plan and they were shocked. Many responded with disbelief that this could even be contemplated. Even school board members and Superintendents had been told nothing by the State Education Department concerning their plans.

In February 2013, the SLC became inBloom Inc., and during its launch boasted that nine states were intent on participating in their data-sharing project. Yet after Stephanie Simon of Reuters wrote about inBloom, and Diane Ravitch featured some of my writings on her blog, the news spread fast and the public outrage grew.

Protests from parents and privacy advocates erupted throughout the country, especially in the inBloom states. As a result, over the last seven months, seven out of the nine states that originally planned to “partner” with inBloom have pulled out or have put their plans on hold: Louisiana, Kentucky, Delaware, Georgia, North Carolina, Massachusetts and Colorado.

- April 19, 2013: After protests, Louisiana State Superintendent John White agrees to pull all student data out of inBloom.<sup>7</sup>
- May 4, 2013: Georgia schools superintendent, Dr. John Barge, announces that he will not share data with inBloom.<sup>8</sup>
- May 29, 2013: Reuters confirms that Delaware and Kentucky have no plans to share students’ data with inBloom either, as previously implied.<sup>9</sup>
- August 1, 2013: Guilford County, the one pilot district in North Carolina, cancels its data-sharing agreement with inBloom.<sup>10</sup>

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<sup>6</sup> 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>.

<sup>7</sup> Barbara Leader, “Superintendent John White recalls student data stored with nonprofit inBloom,” *The News Star*, April 19, 2013, <http://www.thenewsstar.com/article/20130419/NEWS01/130419017/Superintendent-John-White-recalls-student-data-stored-nonprofit-inBloom-?gcheck=1>.

<sup>8</sup> John Gilooly, “Ga. schools superintendent addresses concerns about a federal curriculum,” *Cherokee Tribune*, May 4, 2013, [http://www.cherokeetribune.com/view/full\\_story/22473153/article-Ga--schools-superintendent-addresses-concerns-about-a-federal-curriculum?instance=home\\_viewed](http://www.cherokeetribune.com/view/full_story/22473153/article-Ga--schools-superintendent-addresses-concerns-about-a-federal-curriculum?instance=home_viewed).

<sup>9</sup> Stephanie Simon, “School database loses backers as parents balk over privacy,” *Reuters*, May 29, 2013, <http://www.reuters.com/article/2013/05/29/us-usa-education-database-idUSBRE94S0YU20130529>.

<sup>10</sup> Libby A. Nelson, “inBloom off the Rose?” *Politico*, August 1, 2013, <http://www.politico.com/morningeducation/0813/morningeducation11303.html>.

- November 7, 2013: After an anti-inBloom slate of school board candidates is elected in Jefferson Co., Colorado, the Superintendent resigns, and the existing school board votes unanimously to withdraw from the project.<sup>11</sup> One week later, November 13, 2013: The Commissioner of Education in Colorado, Robert Hammond, announces the state will sever all ties with inBloom.<sup>12</sup>

Even before that, however, Jefferson County Superintendent announced that parents would be allowed to opt out of the database, and no disciplinary data would be shared.

**Now only two out of the original nine inBloom states remain: New York and Illinois.** Illinois intends to start providing inBloom data from two school districts, Bloomington and Normal sometime this winter. According to Illinois officials, they intend to expand this data-sharing to 35 districts, including Chicago, over the next two years.<sup>13</sup>

Yet the Illinois State Board of Education appears to be allowing districts to decide whether they want to participate in inBloom, and is banning the disclosure of any student disciplinary or health data, unlike New York.<sup>14</sup>

Thus, the New York State Education Department is the only inBloom “partner” intending to disclose the personal information of the entire state’s public and charter school student population, whether parents or districts like it or not. Unlike the education officials in seven other states, NYSED has completely ignored the protests of parents, school board officials, Superintendents and other members of the public about their data-sharing plan.

### **What data is being shared?**

New York State officials have said they are sharing student and parent names, home addresses, emails, phone numbers, their grades, test scores, race, ethnicity, economic status, including whether the family is on public assistance or eligible for free lunch, detailed suspension and attendance records, disability diagnosis and any special services the students may receive, and even their health conditions as revealed by their 504 status.<sup>15</sup> For high school students, the data store will include up to 12 years of

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<sup>11</sup>Daniel Laverty, “School board votes to scrap inBloom pilot,” *Columbine Courier*, November 7, 2013, <http://www.columbinecourier.com/content/school-board-votes-scrap-inbloom-pilot>.

<sup>12</sup> Todd Engdahl, “CDE cuts its ties with inBloom data project,” *EdNews Colorado*, November 13, 2013, [http://www.ednewscolorado.org/brief\\_text/cde-cuts-its-ties-with-inbloom-data-project](http://www.ednewscolorado.org/brief_text/cde-cuts-its-ties-with-inbloom-data-project).

<sup>13</sup> Stephanie Simon, “School database loses backers as parents balk over student privacy,” *Reuters*, May 29, 2013, <http://www.reuters.com/article/2013/05/29/us-usa-education-database-idUSBRE94S0YU20130529>.

<sup>14</sup> Peter Godard, Chief Performance Officer, Illinois State Board of Education, “Letter to Julie Woestehoff of PURE,” November 13, 2013; posted at: <http://www.classsizematters.org/wp-content/uploads/2013/11/ISLE11-13-13.pdf>

<sup>15</sup> See the NYSED data dictionary here: <http://usny.nysed.gov/rttt/data/engageny-portal-data-dictionary.pdf>, November 3, 2013; See also: Leonie Haimson, “NYSED’s New Scary Data Dictionary, with 400 elements to be

data, and NYSED officials have refused to answer questions about when, if ever, the data will be destroyed.

In fact, NYSED has placed no limits on the type and amount of student data that can be disclosed, and indeed is encouraging districts to share even more data with inBloom and private vendors. Instead, officials write:

“In order to obtain maximum value from ENYP services, NYSED encourages school districts to consider providing additional data to the ENYP to meet specific district needs or goals, including additional local achievement data ..... Although school districts have annual privacy notification requirements under FERPA, NYSED is not aware of additional disclosure, notification, or opt out requirements for districts supplying data for tools that directly support instruction and program improvement like those currently provided in school districts and those provided in the ENYP.”<sup>16</sup>

By November 15, according to NYSED, all districts receiving funding through “Race to the Top” were supposed to sign up for an “Education Data Portal”, or a data dashboard accessible to teachers and school administrators that will pull data from the inBloom cloud.

The three companies selected by the state to provide the dashboards are ConnectEDU (subcontractor Datacation), eScholar and NCS Pearson/Schoolnet. The NYSED fact sheet reports that these portals “will be available to educators in fall 2013” though at this point, this seems unlikely to occur.<sup>17</sup> The NYC DOE suggested that these dashboards and additional software “tools” will be ready “over the next year or so”<sup>18</sup> -- and DOE extended their contract with ARIS, their current dashboard provider, through December 2014.<sup>19</sup> State officials are 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.

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uploaded to inBloom cloud and shared with vendors without parental consent,” NYC Public School Parents, November 4, 2013, <http://nycpublicschoolparents.blogspot.com/2013/11/nyseds-new-scary-data-dictionary-with.html>.

<sup>16</sup> New York State Education Department, “Engage NY Portal FAQ,” updated October 30, 2013, <http://www.engageny.org/resource/engageny-portal-faq>.

<sup>17</sup> New York State Education Department, “Engage NY Portal FAQ,” updated October 30, 2013, <http://www.engageny.org/resource/engageny-portal-faq>.

<sup>18</sup> 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>.

<sup>19</sup> NYC DOE, “Panel for Educational Policy Contract Agenda,” August 21, 2013 at [http://schools.nyc.gov/NR/rdonlyres/EAB02911-086E-4C5C-B950-9998FA2E90F7/148909/FinalRApackageforAugust212013\\_COMPo.pdf](http://schools.nyc.gov/NR/rdonlyres/EAB02911-086E-4C5C-B950-9998FA2E90F7/148909/FinalRApackageforAugust212013_COMPo.pdf) See also: Patrick Sullivan, “Mayor's PEP Members, Rogovin & Lewis, Press for Crony Contract,” NYC Public School Parent blog, September 1, 2013; <http://nycpublicschoolparents.blogspot.com/2013/09/mayors-pep-members-rogovin-lewis-press.html>

Even those districts, however, that are not receiving RTTT funds, will have their student data uploaded against their wishes, sparking a rebellion among many school boards and Superintendents. More than thirty Superintendents have now returned their district RTTT funds, in hope of protecting student privacy.<sup>20</sup> Several have written to inBloom, demanding their student data be deleted, citing a clause in the state contract specifying that districts can opt out – despite the fact that the state refuses to recognize this right.<sup>21</sup>

According to Tom Dunn, a spokesman for the NY State Education Department, parents cannot opt out 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.<sup>22</sup> NYSED often defends its position by saying that its plan 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, to facilitate the sharing of confidential student data with third parties without parental consent.<sup>23</sup>

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 has funded to produce the exams aligned with the Common Core, known as PARCC (which New York State belongs to) and Smarter Balanced, contains a clause that says the following: "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..."<sup>24</sup>

All these developments are highly troubling and will likely erode student privacy. Yet inBloom Inc. is the most dangerous and egregious development enabled by this change in federal policies, because it was

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<sup>20</sup> Gary Stern, "More Lower Hudson school districts forfeit Race to the Top funds," *lohud.com*, November 14, 2013, <http://www.lohud.com/article/20131114/NEWS/311140068/>. See also for a regularly updated list of districts that have returned Race to the Top funds: <http://tinyurl.com/m44k3ql>

<sup>21</sup> Gary Stern, "Local school officials fearful of student records database," *The Journal News*, November 12, 2013, <http://www.lohud.com/article/20131108/NEWS/311080063/>; See also: Jennifer Gustavson, "Southold super calls on private firm to remove student data," *Suffolk Times*, November 1, 2013, <http://suffolktimes.timesreview.com/2013/11/43117/southold-supe-calls-on-private-firm-to-remove-student-data/>.

<sup>22</sup> 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>.

<sup>23</sup> 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>.

<sup>24</sup> 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>.

designed to aggregate as much personal data as possible, put it in private hands, store it on a vulnerable data cloud in an easily digestible form, and lure as many vendors as possible to build their software around it.

### **Has the data already been shared?**

There have been conflicting accounts as to whether the data has yet to be shared with inBloom. Last April, at our Town Hall meeting in Brooklyn, Adina Lopatin of the NYC DOE said the data had already been shared.<sup>25</sup> Yet more recently, on Sept. 30, Ken Wagner of NYSED testified under oath before the NYC Council that the state had disclosed only “*de-identify data [sic], so the names are not attached*” to inBloom so far.<sup>26</sup>

In October, the New York Times reported that “New York State has already uploaded data on 90 percent of 2.7 million public school and charter students — data stripped of identifiers like students’ names — into inBloom; state education officials plan to upload a complete set soon, including names.”<sup>27</sup>

According to Wikipedia, de-identified means data “*stripped of information which would allow the identification of the source of the data. ... Common strategies for de-identifying datasets are deleting or masking personal identifiers, such as name and social security number, and suppressing or generalizing quasi-identifiers, such as date of birth and zip code.*”

However, NYSED attorneys admitted in court recently that aside from student names, personally identifiable data had already been uploaded to inBloom last December, and had been “refreshed” several times since then, though they did not specify what identifiers were included. To add insult to injury, these attorneys said that this had been done to help with inBloom’s “infrastructure development” – implying that they had released this sensitive and precious personal data to help Wireless Generation, News Corp and inBloom construct their system.

### **IS the data safe?**

There are huge risks associate with this data sharing project. The first is data breaches. Although 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

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<sup>25</sup> Mary Frost, “Parents outraged over NYC schools data sharing program,” *Brooklyn Daily Eagle*, November 19, 2013, <http://www.brooklyneagle.com/articles/parents-outraged-over-nyc-schools-data-sharing-program-2013-04-30-220000>.

<sup>26</sup> City Council of the City of New York, Transcript of the Minutes of the Committee on Education, September 29, 2013, [legistar.council.nyc.gov/View.ashx?M=F&ID=2656540&GUID=7F781C1D-0696-4792-B7FC-E73503CD13F8,101](http://legistar.council.nyc.gov/View.ashx?M=F&ID=2656540&GUID=7F781C1D-0696-4792-B7FC-E73503CD13F8,101)

<sup>27</sup> 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>.

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.<sup>28</sup>

Moreover, the more 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.**”<sup>29</sup> 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.<sup>30</sup>

Moreover, there are considerable risks to students, even if no breaches or inappropriate use of data take place. Minor incidents will now enter into a student’s permanent record and will be easily accessible to teachers through the data dashboards. There are many studies showing that if teachers have prior knowledge that a child has had disciplinary problems, or struggles academically, this can become a self-fulfilling prophecy.<sup>31</sup> 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.

### **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 misunderstand about how districts already share this personal data widely with vendors. This is an increasingly difficult argument to make when Superintendents themselves are protesting inBloom and demanding to be able to keep their data from being shared.

It may be true that some districts are 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 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.

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<sup>28</sup> “Fear of government snooping hinders cloud adoption,” *Help Net Security*, February 6, 2013, <http://www.net-security.org/secworld.php?id=14360>.

<sup>29</sup> inBloom, inc., Privacy and Security Policy, 2013, <https://www.inbloom.org/privacy-security-policy>.

<sup>30</sup> Iain Thomason, “LivingSocial admits major hacking attack on customer database,” *The Register*, April 26, 2013, [http://www.theregister.co.uk/2013/04/26/livingsocial\\_hacking\\_attack/](http://www.theregister.co.uk/2013/04/26/livingsocial_hacking_attack/)

<sup>31</sup> 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>.

Indeed, two administrators who testified before State Senate, Mark D. Beehler and Dr. Tom Rogers, expressed serious concerns about this plan. Mr. Beehler, Chief Information Officer for the West Seneca School Central District, and President of the Western New York Administrators Association, testified at 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.*”<sup>32</sup>

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.*” 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 a Senate hearing on Long Island, about how inBloom is creating a private monopoly, outside the governance of any publically elected body, 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 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.”<sup>33</sup>*

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 reimbursement, 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 consent or opt out provisions? This **is a major shift** in current practice.

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<sup>32</sup> 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>.

<sup>33</sup> 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>

Moreover, even in the case of districts that currently have data dashboards designed by the same companies with which the state has now contracted, these 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 – which is completely different from the sort of unfettered data-mining that inBloom was designed to facilitate.

### **What is the potential cost of inBloom?**

According to NYSED, inBloom will begin charging for their services \$2 to \$5 per student in 2015. At that point, as Mark Beehler, Chief Information Officer for the West Seneca pointed out, the state will be spending *up to \$13.5 million* a year or more just to buy back the data it provided to inBloom for free.

This does not cover the costs of the data dashboards, which will cost an additional \$1-\$3 per student, plus the cost of any other “Interoperable” software tools produced by the for-profit vendors working in tandem with inBloom.

Though inBloom has said costs may be reduced as more states and districts join their data-sharing project, as nearly all states but two have pulled out it is probable that costs are likely to be at the upper level or even rise above this estimate. As Comptroller Liu pointed out in testimony to the NYC Council, *“How does inBloom guarantee that it will be sustainable and financially solvent—especially as most of the states that originally planned to participate have now pulled out of any data-sharing agreement?”*<sup>34</sup>

Currently, NYSED insists that the personal student data provided to inBloom will never be sold. However, inBloom’s board members and funders, including Stacey Childress of the Gates foundation have admitted that the company is *“exploring cost recovery partnerships with select vendors for the services that it provides.”*<sup>35</sup>

If not selling the data, this could be likened to renting it out. As inBloom becomes increasingly expensive for the Gates Foundation to subsidize, it is quite possible that they will use their ability to control access to this immensely valuable data to keep inBloom afloat.

All these costs are minor, however, compared to the huge financial risks the state will face if there are breaches, as Comptroller Liu testified:

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<sup>34</sup> See more at: Office of the City Comptroller, “Liu testifies to City Council in support in protecting student privacy,” September 29, 2013, <http://comptroller.nyc.gov/newsroom/liu-testifies-to-city-council-in-support-of-protecting-student-privacy/>.

<sup>35</sup> 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/>.

*“A recent report about data security threats in the health sector finds that settlements have the potential to reach \$7 billion annually. Many data breaches are not typically malicious or criminal in nature and are often accidental—lost computers, employee error, etc. The simple reality is that technologies that promise greater productivity and convenience especially through the use of file-sharing applications and cloud-based services are extremely difficult to secure. As you know, these are the exact services that inBloom and its third-party party affiliates are promising to New York.”*

The potential costs of lawsuits against the state if there are breaches are immense, 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.

### **What is the real purpose of inBloom?**

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.<sup>36</sup> 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.”*<sup>37</sup>

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.<sup>38</sup> 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.***”<sup>39</sup>

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.**

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<sup>36</sup> Software and Information Industry Association, “SIIA Estimates \$7.76 Billion US Market for Educational Software and Digital Content, Dec. 19, 2012, [http://sii.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](http://sii.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)

<sup>37</sup> See inBloom Inc., “Our Vision” undated at <https://www.inbloom.org/our-vision>.

<sup>38</sup> 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>.

<sup>39</sup> 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?\\_r=0](http://www.nytimes.com/2013/10/06/business/deciding-who-sees-students-data.html?_r=0).

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.<sup>40</sup> 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.<sup>41</sup>

Again, we turn to the testimony of Comptroller Liu, who said “All this is being done despite the fact that, the “educational benefits” of these dashboards and the other software tools that inBloom is supposed to facilitate are entirely theoretical. We’ve seen this before. In 2007, the DOE announced that the data-management portal ARIS would “revolutionize” the school system, but a 2012 audit by my office demonstrated that the system is rarely if ever used and appears on the brink of becoming obsolete.”

In any event, there are multiple ways in which educational software can be developed and employed without allowing any disclosure of personal data or data-mining to take place.

## **Conclusion**

Two bills to protect student privacy passed the State Assembly in the last session. A.6059A, introduced by AM O’Donnell, would block re-disclosures of personal student data without parental consent, as inBloom is designed to do, and would require full indemnification for any breaches. A.7872A, introduced by AM Nolan, would allow parents the right to opt out of the state or district sharing their child’s data with third parties. Though neither bill passed the State Senate last session, identical versions to these bills have been introduced in the Senate, S.5930 and S.5932.

We thank Education Chair Nolan, AM O’Donnell and the members of the Assembly for their leadership on this issue, and urge you to re-introduce and approve both bills, so that parents can protect their children’s most sensitive data from being breached and abused, and NY State will no longer be the worst state in the country when it comes to student privacy.

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<sup>40</sup> New York City Department of Education, “Educational Technology,” <http://schools.nyc.gov/Accountability/resources/technology/default.htm>.

<sup>41</sup> 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\\_2012/7111\\_118A.pdf](http://comptrollernyc.com/bureaus/audit/PDF_FILES_2012/7111_118A.pdf).