



January 8, 2016

To Commissioner Elia and the Board of Regents:

It has come to our attention that the Board of Regents recently approved a new grant from the Gates Foundation for the Regents Research Fund, “to support NYS to launch, execute and utilize implementation data collection at the state level.”ⁱ

We have many questions as to the wisdom of accepting this grant and going ahead with this project until there is more transparency concerning what personally identifiable student and teacher data will be collected, why they are needed, with whom the data will be shared, how they will be stored, and what their ultimate disposition will be, as well as why aggregate anonymous student data is not sufficient for the purposes of this study. Our concerns about this issue and student data privacy in general are intensified by the following distressing facts:

1-More than a year and half following the legal deadline, there is still no Chief Privacy Officer with expertise in privacy law, as mandated by the NY student privacy law passed on March 31, 2014. The temporary CPO, Ms. Tina Sciochetti, has no background in privacy as required by the law, refuses to meet with parents or improve the current Parent Bill of Rights that was supposed to be developed with parent input by July 29, 2014. The fact that the deadline was already past was pointed out to the previous Commissioner and the Board of Regents in our letter dated Aug. 25, 2014, as well as the fact that the current Parent Bill of Rights is incomplete and highly flawed, yet no progress has been made on any of this issues since then, more than a year later. ⁱⁱ In fact, Ms. Sciochetti’s lack of expertise in the area of student privacy law was recently revealed when she responded to a parent that she would have to pay to access her child’s data in the state longitudinal database, in violation of the federal law known as FERPA. ⁱⁱⁱ This parent had to contact Robert Freeman of the Committee for Open Government and threaten to file a FERPA complaint before finally receiving her child’s data, many months after the federal requirement that such requests be fulfilled within 45 days. ^{iv}

2- In the letter we sent previously to the Board of Regents mentioned above, we urged the Board to appoint a permanent CPO with a privacy background, who should hold hearings throughout the state and elicit parent input before creating a strengthened Parent Bill of Rights, as the law requires. We also urged the Board to appoint an advisory body of stakeholders to oversee the collection, storage, use and disposition of the personal student data in the State Longitudinal Database. Our letter was not answered. We recently learned that with the help of a \$7.8 million federal grant, NYSED was supposed to have created a data "Stakeholder advisory Council" by 2010, along with a data “Executive Oversight Group and “Activities Oversight Group.”^v When we asked NYSED officials for the membership of these groups, as well as their meeting times, they demanded that we ask for this information through a Freedom of Information Law request. Yet if these oversight boards do exist, full information about their membership, meeting times and places should not be kept from the public, but made freely available on

the NYSED website, along with their contact information.

3- Our concerns about expanded student data collection are also exacerbated by the fact that we have been unable to get any information about why NYSED officials decided that the personal student data collected by the state should be eventually placed into the State Archives, eight years after a student's graduation from high school, with no date certain when it will be destroyed. We have asked what restrictions will be placed on access to that data, when if ever the data will be deleted, and have requested a copy of the memo in which state officials apparently determined that these records have "long-term historical value and should be transferred to the State Archives."^{vi} Neither NYSED nor the State Archives will answer our questions or provide us a copy of this memo, and instead demanded that we FOIL for it.

4- Today, upon reading the Washington Post, we learn of another research project involving the collection of student data by the federal government:

The system will contain personally identifying information on approximately 12,000 students, 500 teachers, and 104 principals from 104 schools in 12 school districts and will include, but will not necessarily be limited to, data on: (1) for students, standardized math and English/Language Arts test scores, age, sex, race/ethnicity, grade, eligibility for free/reduced-price lunches, English Learner status, individualized education plan status, school enrollment dates, attendance records, and discipline records, and (2) for principals and teachers, individual district identifiers, school assignments, grades and subjects taught, and principal and teacher background characteristics, including age, sex, race/ethnicity, certifications, degrees, years of teaching experience, scores on licensure or certification tests.^{vii}

There are many questions that have arisen about this new federal data project, including the safety of the student data that will be collected, given the fact that recent hearings before the US House of Representatives, the US Department of Education was cited for lax data security practices.^{viii} In 2014, the Inspector General found that Education Department "information systems continue to be vulnerable to serious security threats."^{ix} The Electronic Privacy Information Center, a Washington D.C.-based public interest group, has written to the federal government in opposition to this project:

"The proposed database exposes students to privacy risks by collecting and students' personally identifiable information, including but not limited to "individualized education plan status" and "discipline records." Because the Department can still achieve its research goals by collecting aggregate data, the Department should not collect, use, or disclose student personally identifiable information...."

We need to know whether NYSED's new Gates-funded student data collection is related in any way to this larger federal study, and if so, whether its involvement will put the personal data of the state's students and teachers at even more risk of being breached or abused.

5- We also have grave concerns about the continued existence of the Regents Research Fund, in which salaries of Regents Fellows are paid by private donors and most especially the Gates Foundation. In our experience, we have learned that too often, the Regents fellows represent the goals and interests of the Gates Foundation, and not the citizens of New York. We would like to know how much funding is currently being supplied by the Gates Foundation and other private organizations to this Fund, and how

much is planned for the future, who has been appointed to head the Fund, and what oversight state officials are prepared to exert to ensure proper accountability and transparency of its activities.

Until and unless a permanent Chief Privacy Officer is appointed, with real expertise in the area of student privacy law, and a strengthened Parent Bill of Rights is developed with full parent input as the law requires, as well as a robust data Stakeholder Advisory Council is created with representatives from parent groups and privacy experts, this new data project should not go forward. There must also be rigorous restrictions for access to the personal student data in the State Longitudinal database and assurances that this data will never be placed into the State Archives. Until these events occur, we urge the State Education Department to immediately put a hold on this project and any other plan to expand personal student data collection.

The previous Commissioner faced intense opposition from parents, school board members, district superintendents, teachers and elected officials over his plan to share personal student data with the Gates-funded data store called inBloom Inc. Because of strong public opposition and NYSED's refusal to change course, the Legislature was forced to pass a new law to block the participation of the state in the inBloom project. The controversy over inBloom was one of the major issues that contributed to the public's loss of trust in Commissioner King's leadership, as well as his eventual resignation. We do not want to have to engage in such an intense battle over student privacy once again in relation to this new data collection plan.

Yours sincerely,

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CC: Speaker Carl E. Heastie of the NY Assembly
NY Senate Majority Leader John J. Flanagan
Assemblywoman Catherine Nolan, Chair, New York State Assembly Education Committee
Senator Carl Marcellino, Chair, New York State Senate Education Committee
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ⁱ Board of Regents Approval, 12/15/2015: <https://www.regents.nysed.gov/common/regents/files/1215bra9.pdf>

ⁱⁱ NYS Allies for Public Education, Letter to Commissioner King and Members of the New York State Board of Regents, 8/25/2014: <http://www.nysape.org/letter-to-king-and-regents-nysed-failed-to-implement-state-law.html>

ⁱⁱⁱ Allison White, Letter to Interim New York State Chief Privacy Officer Tina Sciochetti, 11/19/2015: <http://nycpublicschoolparents.blogspot.com/2015/11/letter-to-nys-chief-privacy-officer.html>

^{iv} Director of Family Policy Compliance Office Dale King letter on parent’s FERPA complaint, 7/28/2015: <http://familypolicy.ed.gov/sites/fpco.ed.gov/files/Letter%20to%20Erquiaga%20072814.pdf>

^v U.S. Department of Education Grant Applications Under the Statewide Longitudinal Data Systems, 9/25/15: <http://nces.ed.gov/programs/slds/pdf/NewYork2009.pdf>

^{vi} We asked NYSED officials for the appraisal report 13-09, referring to the disposition of student education records in the State Archives, as referenced in a Records Disposition Request Rec-3, signed by Thomas E. Casey and dated 12/20/13, which says the following: *“The data in this system provides a wealth of information on K-12 students throughout New York State, and is a rich source that potentially documents student and school changes over time. Eight years after graduation is only slightly longer than the retention period of non-permanent student records maintained by school districts throughout New York State, and eight years meets the unit’s administrative needs for these records. The State Archives has determined that the records have long-term historical value and should be transferred to the Archives (see appraisal report 13-09.)”*

^{vii} Valerie Strauss, “New student database slammed by privacy experts,” The Washington Post, 1/7/2016: <https://www.washingtonpost.com/news/answer-sheet/wp/2016/01/07/new-student-database-slammed-by-privacy-experts/> and Notice Of A New System Of Records by the Education Department, Federal Register: The Daily Journal of the United States Government, 12/2/2015: <https://www.federalregister.gov/articles/2015/12/02/2015-30526/privacy-act-of-1974-system-of-records-impact-evaluation-of-data-driven-instruction-professional#h-29>

^{viii} House Committee on Oversight and Government Reform, “U.S. Department of Education: Information Security Review,” 11/17/2015: <https://oversight.house.gov/hearing/u-s-department-of-education-information-security-review/>

^{ix} Office of Inspector General, U.S. Department of Education’s Compliance with the Federal Information Security Management Act of 2002 for Fiscal Year 2014: Final Audit Report,” 11/12/2014 : <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2015/a11o0001.pdf>