

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON EDUCATION

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September 30, 2013
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HELD AT: 250 Broadway - Committee Rm,
14th Fl.

B E F O R E:
ROBERT JACKSON
Chairperson

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Fernando Cabrera
Margaret S. Chin
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Lewis A. Fidler
Daniel R. Garodnick
David G. Greenfield
Vincent M. Ignizio
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Eric A. Ulrich
James Vacca
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COUNCIL MEMBERS (CONTINUED)
Ruben Wills

A P P E A R A N C E S (CONTINUED)

Ken Wagner
Deputy Commissioner for Curriculum
Assessment and Educational Technology,
New York State Education Department

Nicolas Storelli-Castro
Director of Governmental Relations
New York State Education Department

John Liu
New York City Comptroller

Leonie Haimson
Class Size Matters

Catherine McVay Hughes,
Chair
Manhattan Community Board 1

Karen Sprowal
Parent
Public School 75, District 3

Santos Crespo, Jr.
President
Local 372 of District Council 37

Lisa Shore
Parent
Districts 3 and 6

Enrique Lopez
Representative of
Senator Brad Hoylman

Joseph Mugivan
Teacher

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2 FEMALE VOICE: We're askin' everyone to
3 please turn off the cell phone; no conversations
4 durin' the hearing; if you have any conversation,
5 take it in the hallway. Thank you.

6 CHAIRPERSON JACKSON: Good morning and
7 welcome to today's Education Committee hearing to
8 consider proposed Resolution Number 1768-A co-
9 sponsored by Gale Brewer, myself and Brad Lander.
10 Proposed Resolution 1768-A calls on the New York
11 State Legislature to pass and the Governor to sign
12 bills A.6059-A and S.5932, legislation that would
13 protect student privacy by prohibiting the release of
14 personally identifiable student information without
15 consent.

16 I just wanna take a... make a few opening
17 remarks and then I'll turn to my colleagues that are
18 co-sponsors. But let me introduce my colleagues that
19 are present this morning. All the way over to my
20 left is Margaret Chin of Manhattan and my colleague
21 Jessica Lappin of Manhattan; we will be joined by
22 other colleagues; I apologize for bein' late this
23 morning; I was over at City Hall, part of the Zoning
24 and Franchise Subcommittee and we needed a quorum to
25 begin and I had to stay there for that particular

1
2 quorum, so you'll be seein' members come in and out
3 of this particular meeting.

4 But according to the information on the
5 DOE's website, currently New York City educators and
6 families access student data through the New York
7 City Department of Education's Achievement Reporting
8 and Innovation System, commonly known as ARIS. As
9 part of its Race to the Top grant, the State
10 Education Department is building a similar tool
11 called the EngageNY Portal. Unlike ARIS, which pulls
12 data from its own unique database, the EngageNY New
13 York Portal will pull data from inBloom, a non-profit
14 organization that is producing data infrastructure
15 according to a set of data standards.

16 When EngageNY Portal tools are ready over
17 the next year or so, the New York State Education
18 Department will make them available to educators and
19 families in place of ARIS. I'm told that the ARIS
20 data system, which cost in excess of \$80 million, was
21 paid for with capital funds so the City is going to
22 have to be paying off the debt for those for many
23 years to come; some say 30 years.

24 We are going to hear more details about
25 the student data system from a representative of the

1 New York State Education Department in a few minutes.

2 I'd like to point out that we did invite the
3 Department of Education to testify, but they
4 declined, citing their policy on not commenting on
5 resolutions.
6

7 We also invited inBloom to testify, but
8 they declined too. And in essence, dealing with
9 information that parents are concerned with, both
10 inBloom and the Department of Education, for whatever
11 reason, is not willing to come and give testimony.

12 As I stated, this resolution supports
13 State legislation that would protect student privacy
14 by prohibiting the release of personally identifiable
15 student information without the consent of parents or
16 of students themselves if they are over 18 years of
17 age.

18 This is a huge concern to parents in New
19 York City and throughout the State who are worried
20 that sensitive and private data about students and
21 their families will be loaded into a database, stored
22 in a cloud hosted by Amazon.com and owned by a
23 private entity, inBloom, Inc. to be shared with other
24 outside vendors.
25

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2 Parents are concerned that in this day
3 and age of computer hackers, when the news is full of
4 stories of sensitive data leaks; that their
5 children's data could wind up in the wrong hands,
6 potentially endangering them and damaging their
7 future prospects.

8 And New York parents are not alone;
9 following public outcry five out of nine states that
10 were originally slated to participate in the inBloom
11 data collection system have withdrawn completely,
12 while others, except New York, have scaled back plans
13 to participate or will allow some type of parent opt-
14 out.

15 What kind of data is included in this new
16 system? According to the Department of Education and
17 the State Education Department, the information that
18 is included in inBloom database includes student
19 demographic information, parent contact information,
20 necessary for data security and authorization
21 purposes, student enrollment, program participation,
22 dates of absences of the students, out-of-school
23 suspensions, and of course, outcome, necessary for
24 early warning determinations and State assessment
25 scores.

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2 A look at the State's data dictionary
3 shows that data will also be collected on students'
4 disabilities and characteristics, which are described
5 as important characteristics of the student's home
6 situation, such as displaced homemaker, immigrant,
7 migratory, militant parent, pregnant teen, single
8 mom, unaccompanied youth, etc.

9 Information will also be collected about
10 parents, including their home address, telephone
11 number and home and work e-mail addresses. I for one
12 would like to know what all this information is
13 needed for; how will it be used; how it will be
14 safeguarded and why the State will not consider
15 parent consent or opt out for this sensitive student
16 data as other states are willing to do.

17 And today we would like to get feedback
18 on proposed Resolution 1768-A. The Committee usually
19 hears testimony from the Department of Education at
20 the beginning of each hearing, but as I mentioned
21 earlier, they're not coming, so will go directly to
22 testimony from invited witnesses and members of the
23 public. Everyone who wishes to testify today must
24 fill out a witness slip, which is located at the desk
25 of the Sergeant at Arms near the entrance to the

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2 room. Please indicate on the witness slip whether
3 you're here to testify in favor or in opposition to
4 the resolution. And please note that all witnesses
5 will be sworn in before testifying. I want to point
6 out that we will not be voting on this resolution
7 today, as this is just the first hearing. To allow
8 as many people as possible to testify we will be
9 limited to three minutes per person, so if you have
10 written testimony, please do not read the testimony,
11 just summarize the contents.

12 And now I'd like to turn the floor over
13 to my colleague, co-sponsor, Gale Brewer for her
14 remarks regarding proposed Resolution 1768-A...
15 [interpose]

16 COUNCIL MEMBER BREWER: Thank...

17 CHAIRPERSON JACKSON: Council Member
18 Brewer.

19 COUNCIL MEMBER BREWER: Thank you very
20 much Chair Jackson. I am Gale Brewer; I'm one of the
21 prime sponsors of the resolution and I certainly
22 wanna thank Education Chair Jackson for this hearing
23 and all of the speaker staff.

24 I think... as you've heard, the New York
25 State Education Department has partnered with

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2 inBloom, Inc., as Robert indicated; it's a company
3 that allows states and public school districts to
4 integrate student data with third-party applications.
5 And as you know, this resolution is in support of
6 some bills in Albany sponsored by Assembly Member
7 Danny O'Donnell and sponsored by State Senator Joseph
8 Robach.

9 There have been... as... I think we know just
10 even before inBloom there have been serious privacy
11 concerns raised about inBloom's plans as the data
12 they collect may be sold to third parties for
13 commercial purposes and it contains sensitive
14 personal information, as the Chair indicated.

15 The legislation would prohibit the
16 release of personally identifiable student
17 information without parent consent or the consent of
18 a student who's 18 or older unless certain exemptions
19 apply, and I'm sure we'll hear about them.

20 While inBloom and the State Department of
21 Education may have the best intentions of pursuing
22 innovative ways to help our children learn, and I
23 have friends who work in companies that feel that
24 there's a reason for this data so they can do general
25 analysis. I strongly disagree in the sense that we

1 cannot and should not give students' personal
2 information to commercial entities without parental
3 consent.
4

5 I have long been, as I think some of you
6 know, an advocate for technological innovation,
7 including in the educational field. However,
8 innovation and privacy are not mutually exclusive;
9 parents have a right to choose whether their
10 children's information is sold to a third-party and
11 the State Department of Education needs to present a
12 clear plan for how that data will be protected before
13 any personal information is given out.

14 Nationwide, as the Chair indicated, there
15 has been significant opposition to partnerships with
16 inBloom. Nine states originally signed up to
17 participate in the program, but five have withdrawn;
18 Louisiana, Kentucky, Delaware, Georgia and North
19 Carolina. And according to reports, New York is
20 currently the only state uploading student data from
21 the entire state, regardless of parental knowledge.

22 Numerous parent groups, and I wanna thank
23 them, are opposed to this plan as well as many
24 educational organizations, including Class Size
25 Matters, The Learning Disability Association of New

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2 York, AQE, Alliance for Quality Education, The New
3 York State Allies for Education, The Coalition for
4 Educational Justice, Citizens for Public Schools, and
5 I'm sure there are many more.

6 So we continue to have serious questions
7 about this sharing of information; at the very least,
8 all school parents in New York deserve the right to
9 decide for themselves whether or not to participate
10 in the program and I just wanna add that for anybody
11 who thinks that this information is good in terms of
12 improving the learning of young people, think of
13 another way that doesn't include private information.
14 Thank you very much.

15 CHAIRPERSON JACKSON: Thank you Council
16 Member Brewer. We've also been joined by our
17 colleague, Council Member Debi Rose of Staten Island.
18 And with that we'd like to call the first witnesses,
19 representatives from the New York State Education
20 Department, Ken Wagner and Nicolas Storelli-Castro.
21 Please come forward and if you have any testimony...
22 Sergeant of Arms, could you please... You'll be doin' a
23 PowerPoint presentation? No? Okay; very good, thank
24 you. 'Kay. So before we begin, can you please
25 identify yourself, your name and your title with the

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2 State Education Department New York State Education
3 Department, both of you, and then we'll administer
4 the oath of office with regards to being witnessed.
5 'Kay.

6 Ken, can you do me a favor; just press
7 the button; I think it may be on the back of the
8 base. See it there... do you see it there? Sergeant
9 of Arms, can you help him, please? There you go,
10 it's on now. Yeah.

11 KEN WAGNER: My name is Ken Wagner and
12 I'm Deputy Commissioner for Curriculum Assessment and
13 Educational Technology at the New York State
14 Education Department.

15 CHAIRPERSON JACKSON: Okay. Down near
16 the base of... there you go, it's on now; move it...
17 [crosstalk]

18 NICOLAS STORELLI-CASTRO: Nicolas
19 Storelli-Castro, Director of Governmental Relations.

20 CHAIRPERSON JACKSON: Governmental
21 Relations. Okay. 'Kay. Would you both please raise
22 your right hand, if you don't mind? Do you swear or
23 affirm to tell the truth, the whole truth and nothing
24 but the truth in your testimony before this Committee
25

1
2 and to respond honestly to Council Members questions
3 thereabout?

4 KEN WAGNER: I do.

5 NICOLAS STORELLI-CASTRO: Yes.

6 CHAIRPERSON JACKSON: Thank you.

7 KEN WAGNER: Good morning and thank you
8 Chairman Jackson and Council Members for this
9 opportunity to talk with you and with members of the
10 public about the EngageNY New York Portal project.

11 These are extremely important questions
12 that have been raised in the opening statements, as
13 well as have been raised by various advocacy groups
14 over the past couple of months and we welcome the
15 opportunity to help people understand what this
16 project is about, what it's not about and why we
17 think it is important.

18 One of the ways that we start these kinds
19 of conversations is to put it into context in terms
20 of what we across the State are trying to accomplish
21 with education right now. And one of the ways that
22 we talk about that is the notion of a college
23 graduate and whether or not our graduates are
24 graduating from high school ready for college and
25 their careers. And when we look at New York State

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2 data, what we find is that there is a big difference
3 between the percentage of students who graduate high
4 school and the percentage of students who graduate
5 high school ready for their college and careers.

6 CHAIRPERSON JACKSON: Do you mind holding
7 on one second? So do we have enough copies to
8 distribute to members of the public of this
9 PowerPoint? If not... [interpose]

10 KEN WAGNER: I brought... I brought 20
11 copies.

12 CHAIRPERSON JACKSON: Okay. Can... staff,
13 can you take it across 16th floor and make another 30
14 copies so that members of the public will have that
15 to follow along... [interpose]

16 KEN WAGNER: Would you prefer... I could
17 put it up on a PowerPoint?

18 CHAIRPERSON JACKSON: Yeah, put it up on
19 a PowerPoint, if you don't mind. Thank you; I
20 appreciate it very much. I just wanna make sure that
21 everyone is following the presentation. Is that
22 okay? Good. So let's take... pause for a minute and
23 Ken will set it up. Thank you, Ken.

24 [pause]

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2 CHAIRPERSON JACKSON: Okay. Okay, so now
3 we have it up where members of the public can view it
4 and some of you may have the actual hard copy, so
5 it's easier for everyone to follow the presentation.
6 And I thank you very much, Mr. Wagner for putting his
7 up and now you can continue please.

8 KEN WAGNER: So... so as... as we were
9 saying, there is a big difference between the
10 percentage of students who graduate high school
11 versus the percentage of students who graduate high
12 school ready for college and careers and this is
13 something we have been talking about in public space
14 for a very long period of time and there's
15 consequences of that. As students have education... as
16 they have more education the impact on earnings and
17 the impact on unemployment changes dramatically. And
18 there's also an impact for students, students who are
19 not ready for college and their careers, when they
20 enroll in college, huge percentage of students have
21 to pay for remediation in college; these are services
22 that should've been provided to them for free when
23 they were in high school and the Board of Regents has
24 a comprehensive approach to address these issues, and
25 this is listed on this slide here; this is slide

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2 number five, which includes the implementation of
3 more rigorous college and career-ready standards as
4 well as things like instructional data systems to
5 help put the right information in the hands of
6 educators, parents and students to help not only
7 personalize learning opportunities for students, but
8 also to help teachers have access to integrated
9 information so they can spend fewer time doing road
10 aggregation tasks and more time focusing on teaching.

11 We have worked through a site called
12 engageny.org for the past two years; that site
13 launched in August 2011, and since August 2011 we
14 have had over 29 million page views of that site and
15 that site currently includes curriculum and
16 instructional resources, things like lessons, things
17 like the standards; things like practice assessment
18 activities, and then also, equally important,
19 resources for parents, to help them understand some
20 of these initiative that are underway. They also
21 include videos, short video... resources that teachers
22 or parents can log into... can access through the
23 website and help them understand what this initiative
24 is about. And then finally, there's information
25 that's specifically intended to be helpful for a

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2 parent or people in school districts that are trying
3 to engage with parents through this work. So things
4 like a toolkit for parents or how to set up a helpful
5 parent night so parents can understand what the
6 standards are about and what they're not about, what
7 the assessments are and what they're not and
8 similarly for the instructional data system.

9 Educational technology is just a portion
10 of this approach; we do not pretend that you can
11 suddenly put a piece of software in someone's hands
12 or a computer device in someone's hands and suddenly,
13 poof, you will have good instruction. But we do
14 believe that educational technology is a portion of
15 our strategy and if teachers and students and parents
16 are going to do this incredibly difficult work, they
17 need to have all of the tools at their disposal and
18 the best of tools at their disposal. And in this era
19 of scarce fiscal resources, we need to put systems in
20 place to make those tools available at the lowest
21 possible cost.

22 One of the things that I've learned in
23 working through this initiative is there is just a
24 dramatic level of misunderstanding about the way
25 things work currently in school districts not only

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2 across New York, but school districts across the
3 country and this has to do with the Federal FERPA,
4 Family Education Rights and Privacy Act.

5 The idea is that if you have systems or
6 operations or activities that are central to your
7 core purpose, providing high quality educational
8 services or keeping the schools open and running,
9 FERPA has a certain set of notification requirements
10 versus if you have more tangential operations that
11 are not part of your core mission, FERPA has a
12 different set of notification requirements.

13 New York has been operating a statewide
14 student database since 2004 that includes the
15 providing of confidential student data to third-party
16 for-profit vendors completely consistent with FERPA;
17 New York has been doing that since 2004, so close to
18 a decade. Similarly, in New York State and all
19 across the State virtually every school district in
20 this state has been doing similar things, providing
21 confidential student data to for-profit third-party
22 vendors, consistent with FERPA, for the purposes of
23 doing either their core school district operations or
24 to help improve student instruction.

1
2 So on this slide I list some activities.
3 For example, you cannot open your school unless you
4 have systems that capture student enrollment and
5 student attendance and school schedules. Virtually
6 all of those systems that are in place across the
7 State are systems that are run by for-profit third-
8 party organizations. School districts literally need
9 to have those systems in place in order to open
10 schools. Similarly, special education service
11 coordinations, those systems exist and those systems
12 are run by for-profit third-party organizations, your
13 school lunch and transportation systems, your report
14 card transcript systems; any online learning systems
15 that are in place and more recently school districts
16 have started to implement emergency parent contact
17 systems. Again, virtually all of those systems in
18 place across 700 school districts around the State
19 are run by for-profit, third-party vendors.

20 But when school districts do this right
21 now, and completely consistent with FERPA and
22 consistent with legally executed contracts, but when
23 they do this right now, there's a number of negative
24 things that are happening and that's what we're
25 trying to address.

1
2 The first is that they're paying too much
3 for those services, because they're paying for two
4 things. The first thing they're paying for is the
5 product, whether it be the scheduling system or the
6 special education system or the school lunch system,
7 they're paying for the product, but because this
8 product has most likely been produced for a national
9 audience or a statewide audience, they're also paying
10 for the overhead to make sure that that product works
11 with their local system.

12 I was a school principal, I was a school
13 assistant principal and I also coordinated technology
14 in a local district and I've been through these
15 procurement processes where you make an agreement
16 with a vendor to provide a mission-critical system
17 and you have to get the vendor's product to work with
18 your local data.

19 Because of that dynamic of paying that
20 overhead, and anecdotally we've gotten feedback that
21 that overhead can be anywhere between 10 to 40
22 percent of an increase in the cost of the product in
23 order to meet those overhead requirements. Because
24 of that teachers, students and parents have access to
25 fewer tools than they need to implement this

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2 complicated work that we're asking everybody to
3 grapple with and they're also paying more money for
4 those services.

5 Equally important, when they want to work
6 with student data, teachers for example are working
7 across multiple different systems; they're working
8 across curriculum systems, learning management
9 systems, online learning systems, assessment systems,
10 student enrollment systems. So they're spending more
11 time integrating data, which means that they have
12 less time teaching.

13 And then finally, when this happens in
14 695 school districts across the State, each
15 superintendent, or in New York City's case,
16 chancellor, they're all doing their best to implement
17 data security and privacy requirements in a
18 consistent way, but because they're all doing it in
19 their own way it's that much more challenging to
20 implement these rigorous data security and privacy
21 controls that we all believe are necessary.

22 The biggest risks to data security and
23 privacy are occurring in schools across the State
24 every day, including today and they have nothing to
25 do with the EngageNY Portal project. They have to do

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2 with student paper records left unattended,
3 workstations left unattended, people using weak
4 passwords, the same password for all other sites or
5 they're posting their password on a Post-it note on a
6 computer, lists of passwords that are left
7 unattended, student information exchanged through
8 unencrypted e-mail and then finally, computers
9 connected to the internet without the latest patches.
10 Those truly are the biggest risks to data security
11 and privacy right now, today, tomorrow; yesterday in
12 schools all across the State.

13 When we proceed with a project like this,
14 we have legally executed contracts that have state of
15 the art data security and privacy protections as
16 guarantees as part of those contracts and most of the
17 protections that are listed in the bill under
18 consideration are actually included in our project as
19 well, for as data security and privacy is a primary
20 goal. Data will only be shared with third parties
21 when it's for a legitimate educational purpose and
22 consistent with all state and federal privacy
23 protections, including FERPA. Data can only be used
24 for contract purposes, which means they cannot be
25 used for other purposes, which means they cannot be

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2 sold and they cannot be used for other commercial
3 purposes, such as marketing services. Third parties
4 must maintain rigorous and continuous data security
5 and privacy protections; again, part of our executed
6 contracts, and data must be destroyed upon
7 termination of the contract.

8 The data elements that were mentioned
9 before are posted on EngageNY, as was mentioned
10 before, the basic information; biographic,
11 enrollment, program service, which does include
12 educational records around whether or not students
13 are receiving special education services, attendance
14 and suspension information. All of that is posted on
15 our website; that is different than the broader data
16 dictionary that was referenced before, what's called
17 the Student Information Repository, or SIRS manual;
18 that's a broader document that includes things like
19 homeless status and so on that have no business being
20 included in a classroom-based system like the
21 EngageNY Portal, but rather those additional data
22 elements that don't seem to make sense; you're
23 absolutely correct, they do not make sense for this
24 project; they're not included in this project, but
25 rather we have Federal requirements to collect those

1 information for Federal reporting purposes. Schools
2 may elect to provide additional data and the State
3 does not and will not collect Social Security Number.

4
5 There's been some questions about opting
6 out and whether or not parents should have the
7 ability to opt out of the system and again, FERPA has
8 different rules around parental notification,
9 depending on whether a system is determined to be
10 part of a core educational mission, such as improving
11 programs and improving instruction or whether or not
12 a system is not part of a core educational mission.
13 And school districts are required to have
14 notification requirements in place for things that
15 are not core and we see those things all of the time.
16 For example, when vendors want data about school
17 rings or about yearbooks or so on, obviously those
18 things are not part of core mission systems and
19 school districts have to have annual notification
20 processes in place for those kinds of systems.

21 There's two reasons that I list here why
22 we need a statewide database and why parents opting
23 out would undermine that statewide purpose.

24 The first that I list is, one of the
25 things that we know school districts want and need is

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2 they need to be able to compare their achievement
3 results to other people's results. For example, if
4 I'm a principal, when I was a principal, it's not
5 enough to know that x percentage of my students are
6 proficient on a certain assessment; I need to know
7 how students are doing in other schools within my
8 district, how students are doing in other districts
9 and other schools in my community, at the regional
10 level, at the county level and at the statewide
11 level. That kind of comparison which is critical for
12 educators to gauge their progress in relation to
13 their colleagues and peers can only be had with the
14 access to statewide data.

15 The second is, a significant number of
16 our students move from school to school every single
17 year and the receiving school, when a student moves
18 from school A to school B, the receiving school,
19 school B, has a legitimate educational interest to
20 that student's records. And I've worked as a school
21 psychologist, an assistant principal; a principal,
22 and I've seen that students have enrolled in my
23 school and I know that they need services, whether
24 they need extra help services or special education
25 services or just general instructional services or

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2 English language learner services and those students
3 literally sit for days, weeks or longer until those
4 paper records transfer.

5 What has to happen is school B has to
6 submit a request, school A has to process the request
7 and it has to be sent back to school B. One of the
8 things that we're trying to do with this project is
9 to enable the electronic transfer of those records to
10 people with legitimate educational needs. If a
11 student has been opted out of the system in either
12 school A or school B it would undermine one of those
13 key goals of the system.

14 Finally, if districts elect to provide
15 supplemental data to the system they would need to do
16 that consistent with their own local policies that
17 are in place.

18 So what are we trying to do? We're
19 trying to make some strategic investments in the
20 system to address some of the concerns that I
21 mentioned before. The first is this notion of
22 standards, and I'm gonna start talking about inBloom
23 now, because inBloom is our current provider to help
24 us meet these challenges.

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2 So the first is the notion of systems; I
3 mentioned before, anywhere between a 10 and a 40
4 percent overhead to make a vendor product work in a
5 local context. We can address that problem by having
6 tools be built to a set of open, transparent, non-
7 propriety standards, so each vendor doesn't kind of
8 build their own secret sauce, their own little system
9 that needs a big integration effort and costs a lot
10 of money, but rather the vendors can build their
11 systems to an open standard and then when school
12 districts, if school districts elect to spend their
13 scarce fixed fiscal resources on these kinds of
14 tools, every dollar will count for the value of the
15 tool and not the overhead to make the tool work.

16 We hope that this system will help
17 schools have more options and teachers and parents as
18 well, as well as integrated access, again, so
19 teachers have more time to teach and they don't have
20 to spend as much time integrating data from multiple
21 systems.

22 Finally, we do not have statewide
23 security protocols and processes in place. I
24 mentioned the individual school superintendents that
25 are each navigating these waters on their own and in

1
2 their own school district, interpreting what FERPA
3 requires or does not require and executing that in
4 terms of their own local contracting process. This
5 system will help to standardize those data security
6 and privacy protocols so school district
7 superintendents have their own additional supports to
8 meet their needs.

9 InBloom... inBloom, as was mentioned, a
10 non-profit organization that provides standardized
11 services. Nobody owns these services; inBloom is
12 just a provider; if inBloom does a bad job but we
13 think that it was the right task, then we could go
14 for another provider to provide a similar service,
15 just another provider; those providers could be non-
16 profits, it could be a consortium of states that
17 could provide these services. Right now inBloom is
18 the provider that's providing these services, but
19 because the standards are open, anybody could provide
20 these services.

21 InBloom provides two levels of
22 protection; they provide, and as was mentioned in the
23 bill under consideration, they provide intrusion
24 protection, which is basically a firewall to keep the
25 bad guys out. Everybody has to have firewalls, which

1
2 is intrusion protection or hackers. The second level
3 of protection which was mentioned in the bill and
4 most districts do not have in place is data
5 encryption, data to be encrypted both at rest and in
6 motion, which means even if the data are hacked, even
7 if the bad guys get through the firewall, the data
8 are useless because they're encrypted. And that
9 means that if somebody got the data they would not be
10 able to do anything with it unless they also hacked
11 to a different place and got the de-encryption key.
12 I do not know of a single school district in the
13 State right now that has that level of protection in
14 place.

15 InBloom did not create the sharing of
16 data with private for-profit third-party vendors. As
17 I mentioned earlier, that has been happening in New
18 York and all over the country for at least a decade.
19 So anyone who says that we are suddenly creating and
20 sending data to third-party vendors is just not
21 understanding the way things have been happening for
22 the past 10 years and I wanna help people understand
23 that.

24 InBloom, again, provides non-proprietary
25 services to help districts have more security, have

1
2 more tools at a lower cost when they're doing what
3 they're already doing; they're already electing to
4 buy these products; we wanna help them do it better
5 and as I mentioned, inBloom could be replaced in the
6 future with any third-party that could meet inBloom's
7 open standards.

8 If we do not have a service like inBloom
9 or a similar service; again, it does not have to be
10 this particular party; what that would mean is
11 security protocols and policies will continue to
12 vary, schools will continue to pay more for ed-tech
13 services and schools will continue to have fewer
14 options, including parents; parents have very, very
15 few options right now in terms of integrated
16 educational technology tools and we know that this is
17 something that could help with that home-school
18 collaboration. And similarly, without a service like
19 inBloom's teachers will lose even more crucial
20 instructional time as they try to integrate
21 information from multiple systems.

22 There's been questions about cloud
23 storage. All cloud storage means is that data is
24 stored on a computer that's connected to the internet
25 and specifically with clouds you have multiple

1 computers that are coordinated with each other.
2
3 Cloud storage is no different than a school district
4 storing data on a server that's connected to the
5 internet, cloud storage is no different than a
6 teacher at home or at work having data on a computer
7 that's connected to the internet; it all relies on
8 the firewall, so as long as you're connected to the
9 internet you're vulnerable, even if you're not
10 connected to the internet you're vulnerable. As long
11 as you're connected to the internet you're
12 vulnerable; you need to have firewalls in place and
13 you need to have the state of the art protections in
14 place.

15 It's an arguable case that when school
16 districts are pressed in these tight fiscal times,
17 where do they make cuts; they often made cuts in the
18 areas of technology, so maintaining state of the art
19 data security and privacy protections in these tight
20 fiscal times is even more difficult for school
21 districts right now, so things like cloud storage can
22 actually improve data security and privacy.

23 All of our EngageNY Portal requirements
24 are built around a federal standard, which is called
25 FedRAMP, which is based on national standards around

1
2 cloud security and privacy and protection and all of
3 our vendors, as part of the EngageNY Portal project
4 have to meet those FedRAMP standards.

5 With cloud storage, districts and
6 schools, basically whoever sent the data retains all
7 ownership over the data and there is no merging of
8 data; all of the local data are kept separate and all
9 of the State data are kept separate.

10 So to bring us back to the questions;
11 what are we trying to accomplish? We have to ask
12 ourselves some questions.

13 The first question is; do we believe that
14 educational technology is part of helping to improve
15 student learning and instruction? Now we can
16 disagree on the answer to that question, we can say
17 that computers and the internet and personalized
18 learning opportunities have nothing to do with
19 improving instruction. I personally believe they're
20 not the be-all end-all, but they're part of our
21 toolkit and we need to have access to them.

22 The second is; if we do agree that
23 educational technology tools are important to improve
24 instruction, can we make some strategic investments

1
2 to make that process easier, more cost-effective and
3 more secure?

4 And then finally; how can we invest in a
5 system where it's easier for other people to improve
6 the system? There was mention of the New York City
7 ARIS system and one of the things that ARIS was
8 criticized for is it didn't do enough and people
9 wanted to supplement what ARIS provided and people
10 went to their own tools, locally around the City and
11 they got their own tools for a lower cost and they
12 said see, we can do better for less. We learned from
13 that experience and we designed this system so it can
14 be improved by local school districts. If people do
15 not like the tools that the State provided in the
16 system, because of these open and secure standards
17 school districts can add new tools according to those
18 standards to improve it so people don't feel that the
19 system does not go far enough.

20 Finally, the EngageNY Portal project is
21 an extension of the EngageNY website right now where
22 people will be able to log in and then they'll have
23 access to extra stuff; the people being educators and
24 students and parents, they'll have access to
25 initially data tools, so things like data dashboards,

1
2 which are classroom-based tools to help people have
3 easier access to educational data, they'll also have
4 access to additional curriculum and instructional
5 resources and then access to... teachers will have
6 access to online communities for collaboration
7 purposes. And then finally, as I mentioned, the
8 system is being built so that if people don't think
9 the State did a good job or the State did not go far
10 enough, that they could improve the system moving
11 forward.

12 To bring this back to the beginning, we
13 do not pretend that data systems are a panacea for
14 improving instruction or student learning, we have
15 our eyes open; we do not know that that is a
16 solution, but we do believe that this is part of the
17 solution and we know that school districts without
18 the State being involved are spending resources on
19 ed-tech tools right now, so we just wanna help
20 support those efforts.

21 Thank you again for your time and I'd be
22 happy to take questions.

23 CHAIRPERSON JACKSON: Well thank you,
24 Deputy Commission; we appreciate your explanation and
25 the PowerPoint; we've been joined by additional

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2 colleagues of ours; over to my left is Steve Levin of
3 Brooklyn and our colleague Danny Dromm of Queens and
4 in front, Oliver Koppell of the Bronx and also we
5 were joined earlier by Jimmy Vacca of the Bronx.
6 Yeah, I... I know, I indicated that members would be
7 coming in and out.

8 So I'm gonna ask one or two questions;
9 then I'm gonna turn it over to my colleague Gale
10 Brewer and then additional colleagues, yeah.

11 So I'm just curious as to, if this is so...
12 such a good program, why has five of nine states or
13 other municipalities withdrawn from it and others
14 have cut back on the access and only New York seems
15 to be moving forward with all... full speed ahead and
16 adopting everything that's out there? I'm asking
17 'cause I don't know; I wanna hear from you, as
18 someone that's been involved with that and especially
19 as a deputy chancellor for curriculum and
20 instruction.

21 KEN WAGNER: Sir, thank you for the
22 question. This question has gotten more complicated
23 because inBloom has changed the way that they
24 describe states and districts that are participating.
25 When this project started two-plus years ago there

1
2 was a distinction that was made between Phase I
3 states and Phase II states and inBloom has taken that
4 off of their website, which in my opinion has made it
5 more complicated to try to explain. Pha... [interpose]

6 CHAIRPERSON JACKSON: Okay, but can you...
7 can you just... for our purposes... [interpose]

8 KEN WAGNER: Yeah.

9 CHAIRPERSON JACKSON: just... if you can
10 briefly describe Phase I and Phase II... [interpose]

11 KEN WAGNER: Yeah.

12 CHAIRPERSON JACKSON: so we can follow
13 you, if you don't mind?

14 KEN WAGNER: So the initial Phase I
15 states were New York, North Carolina, Massachusetts,
16 Illinois and Colorado. The initial Phase II states
17 were Delaware, Kentucky, Louisiana and Georgia...
18 Georgia; I'm sorry, Georgia was... yeah. So I'll... I'll
19 say those again if anyone's taking notes. The
20 initial Phase I were New York, North Carolina,
21 Massachusetts, Illinois and Colorado. The initial
22 Phase II were Delaware, Kentucky, Louisiana and
23 Georgia.

24 CHAIRPERSON JACKSON: That makes up the
25 nine.

1
2 KEN WAGNER: That makes up the nine. And
3 the way it started was that there was an
4 understanding that we're in what's called the pilot
5 phase, which lasts through December 2014 and the
6 commitment was that Phase I states would do something
7 with inBloom during that pilot phase, which is
8 through the end of December 2014. The initial
9 commitment was that the Phase II states would not
10 commit to doing anything with inBloom through
11 December 2014, but they would sit at the table and
12 they would help us learn from their experience and
13 they would be part of calls and meetings and those
14 kinds of things.

15 So there was never the understanding that
16 Delaware, Kentucky, Louisiana or Georgia would do
17 anything with inBloom prior to December 2014. Now
18 Louisiana got a little confusing because they were a
19 Phase II state, but then they had a change in
20 leadership. Their new leader had some experience in
21 New York, so he went down to Louisiana and I... I don't
22 know, but it seemed like he decided that he wanted to
23 be part... he wanted to escalate his involvement and
24 become a Phase I state, or he wanted to do something
25 with inBloom sooner rather than later, when Louisiana

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2 was never committed to that. You'd have to talk to
3 Louisiana, but it seems that he got a bit ahead of
4 himself; we've been talking about this in public
5 space for over two years now, but it seems like he
6 got a little bit ahead of himself, so Louisiana
7 actually went back to their former Phase II status.

8 Of the Phase I states, the five that had
9 committed to doing something with inBloom through
10 December 2014, New York remains committed and you're
11 absolutely correct, New York's participation is more
12 advanced than other districts; we've been planning
13 for this type of work for quite some time. But
14 Illinois and Colorado both plan on using inBloom
15 services for both data services and content services.

16 InBloom offers services both on the data
17 side and on the curriculum and instructional resource
18 side. Colorado and Illinois plan on using both data
19 and content services, although not as widespread as
20 New York is planning on doing. Massachusetts, my
21 understanding is they still plan on using inBloom
22 services, but on the content side, not on the data
23 side. And then North Carolina, my understanding is
24 just recently they decided that they're putting a
25 pause, so you're right.

1
2 So to my knowledge, the only Phase I
3 state that previously had a commitment to do
4 something with inBloom prior to December 2014 that is
5 now no longer committing to doing something with
6 inBloom is North Carolina.

7 CHAIRPERSON JACKSON: You talked about
8 the content or curriculum part versus the data and
9 the data, I make the assumption and I'm asking you
10 for clarification, the date you're referring to is
11 like the... that as I indicated in my opening
12 statement, you know, looking at the data dictionary
13 so that data will also be collected on like student
14 disability characteristics, immigration, migratory,
15 military parent, pregnant teen, single parent,
16 unaccompanied youth and other data like that?

17 KEN WAGNER: So all those ones at the
18 end, where you started saying military and teen pre...
19 [interpose]

20 CHAIRPERSON JACKSON: Yeah.

21 KEN WAGNER: None of those are part of
22 this project. We do collect that information...
23 [interpose]

24 CHAIRPERSON JACKSON: Okay.
25

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2 KEN WAGNER: but in... we collect that
3 information not as part of EngageNY Portal project,
4 but rather as part of our Federal requirements to
5 report accountability data. And we receive what's
6 called Title Services, Title I, II, III, XI...

7 CHAIRPERSON JACKSON: Right.

8 KEN WAGNER: and we have to make reports
9 of some of the data elements that you mentioned for
10 Federal purposes. In the EngageNY Portal project
11 we're only including things that we believe are
12 educationally relevant to classroom teachers. Where
13 we typically get the most disagreement is around, do
14 teachers need to see things like student with
15 disability status, for example; that was one that you
16 mentioned. And actually, the way the Federal law and
17 the State laws work is that anyone who works with a
18 student with a disability has to have knowledge of
19 that student's needs to help support that student and
20 that includes people who sit with them on the buses,
21 students who are in the halls and so on. So student
22 with disability information is included, as was
23 mentioned, attendance and suspension information is
24 included as part of what's called early warning
25 indicators to help people understand when a student

1
2 might be at risk of dropping out, and then the things
3 that seem more routine, like what school are they
4 enrolled in.

5 One of the things that was mentioned
6 previously is; inBloom has a much wider list of data
7 elements than we intend to use and there's a couple
8 of reasons for that. InBloom was trying not to
9 invent these things from scratch, so they took
10 advantage of some existing projects. For example,
11 the Federal Government has a project called Common
12 Education Data Standards, or CEDS, C E D S, and
13 that's been a Federal project that's been going on
14 for the past six or seven years to define common data
15 elements. So inBloom did not start from scratch;
16 they started from the Federal definition, C E D S,
17 which has a lot of things that we don't need.
18 Similarly there's been some other states like Texas
19 that have worked with an initiative called Ed-Fi,
20 which has been done with some work from the Michael
21 and Susan Dell Foundation; it's a different type of
22 project, but it also has data elements that we don't
23 need.

24 CHAIRPERSON JACKSON: So you were saying
25 that some information is required under Federal

1
2 Government that New York State must collect in order
3 to provide that information based on the grants and
4 Title I, III, IV, V that you're receiving, but is all
5 that information going to inBloom? So for example,
6 the issue of whether or not someone is a displaced
7 homemaker, someone is an immigrant, someone is a
8 military parent or pregnant teen or a single mom; do
9 you collect all that data?

10 KEN WAGNER: Again, we collect that, but
11 that's not included in what's going to inBloom. We
12 have posted on our website and... [interpose]

13 CHAIRPERSON JACKSON: Okay.

14 KEN WAGNER: there's a link that lists
15 exactly what we have in our broader data system for
16 Federal purposes versus what's going to inBloom for
17 EngageNY Portal.

18 CHAIRPERSON JACKSON: Okay. So now let
19 me ask a question, and I'm sorry; I don't have the
20 depth of knowledge like many people here, so I may be
21 asking some questions which seem like elementary and
22 I should know, but where do you get the information
23 that someone is a displaced homemaker or someone is a
24 single parent; where are you ascertaining that; are
25

1
2 you asking a parent or guardians about that
3 information or how are you obtaining that?

4 KEN WAGNER: So any data that we need to
5 collect, for example, for Federal purposes, we put
6 out documentation about what school districts need to
7 report and school districts collect those data a
8 local level. Interestingly, when school districts
9 collect those data at a local level, they use third-
10 party for-profit vendor systems to collect those
11 data... [interpose]

12 CHAIRPERSON JACKSON: Yeah.

13 KEN WAGNER: So even though the State is
14 not sending some of the data elements that you
15 mentioned to inBloom, those data are already being
16 stored at a local level in for-profit third-party
17 vendor systems.

18 CHAIRPERSON JACKSON: So from somewhere...
19 [interpose]

20 KEN WAGNER: From somewhere.

21 CHAIRPERSON JACKSON: they're gathered
22 from various sources?

23 KEN WAGNER: Completely independent of
24 this... [crosstalk]

25

1
2 CHAIRPERSON JACKSON: And some of it may
3 be incorrect too, right, some of it?

4 KEN WAGNER: But all of it... and to be
5 fair to school districts, they're doing it consistent
6 with FERPA and they're doing it consistent with legal
7 contracts with data security and privacy protections...
8 [interpose]

9 CHAIRPERSON JACKSON: 'Kay.

10 KEN WAGNER: but inBloom is not creating
11 that dynamic; these data are already being stored in
12 local systems that are virtually always being run by
13 third-party systems. Now uh... third-party vendors.
14 Now New York City is a bit different; New York City
15 has a lot of legacy systems that are homegrown
16 systems; I don't have as much knowledge about New
17 York City systems as I do the other 695 school
18 districts.

19 CHAIRPERSON JACKSON: So my
20 understanding, and correct me if I'm wrong, the
21 State... the Federal Education Department changed some
22 standards a year or two or three years ago about
23 confidentiality or somethin' like that; can you... can
24 you... huh?

25 KEN WAGNER: FERPA.

1
2 CHAIRPERSON JACKSON: The FERPA law. Can
3 you explain what the change was, if you don't mind,
4 and why... how does that impact the current situation
5 that we're addressing?

6 KEN WAGNER: So I... I will respond to that
7 question with the caveat that I'm not an attorney,
8 but I'll explain... [interpose]

9 CHAIRPERSON JACKSON: Sure, sure; without
10 a doubt.

11 KEN WAGNER: So in 2011 the Feds, through
12 Administrative Regulation, changed FERPA to be more
13 consistent with the requirements that they were
14 making of states around what's called Longitudinal
15 Data Systems and specifically what they changed is
16 they made it easier for states to meet what they were
17 being asked to do, which is to provide... prior to 2011
18 you were allowed to provide data forward, which is if
19 a student moved from an elementary school to a middle
20 school, the middle school had a right to those
21 educational records 'cause they had the educational
22 history. And a student in a middle school to a high
23 school, the high school had a right to those records.

24 In 2011 the Feds changed the rules to
25 allow for data to be pushed backwards, because what

1
2 was happening is... and I'll just give an example... high
3 school principals had their students going to
4 college, but they didn't have a good understanding of
5 which students were going to college, what percentage
6 of their cohort was going to college, so they might
7 think... and again, I worked in school districts... we
8 thought that 80 percent of our kids were going to
9 college, but in reality it was only about 40 percent
10 of our kids.

11 Similarly you have lots of early
12 childhood providers that are trying very hard to
13 provide rich learning opportunities for kids early in
14 their school career and then they go onto elementary
15 school and those early childhood providers have no
16 idea how their kids are doing. So the Feds modified
17 FERPA to allow for data to be shared backwards to
18 legitimate educational providers so they could see
19 how their students did after they left those
20 programs. So in a way they relaxed the rules to
21 allow data to be pushed backwards; in another way
22 they also tightened the monitoring requirements and
23 the penalties for failure to follow the rules.
24 That's my understanding how FERPA changed in 2011.

1
2 CHAIRPERSON JACKSON: One more question;
3 then I'm gonna turn to my colleague, Gale Brewer. Is
4 the State Education Department in favor or in
5 opposition to the proposed legislation at the State
6 level regarding the issue of privacy, and if so, why?
7 And I know that you gave your explanations about, you
8 know, protection of information, so forth and so on,
9 but I wanna know whether or not the State Education
10 Department is in favor in supporting the legislation
11 that's pending in the State Assembly and the State
12 Senate.

13 NICOLAS STORELLI-CASTRO: Chairman, I'll
14 take that question.

15 CHAIRPERSON JACKSON: Just identify
16 yourself again.

17 NICOLAS STORELLI-CASTRO: Nicolas
18 Storelli-Castro, Director of Governmental Relations.

19 CHAIRPERSON JACKSON: Okay.

20 NICOLAS STORELLI-CASTRO: We don't
21 believe legislation in this area is necessary;
22 believe that certain aspects of the legislation would
23 be devastating to some of the work that Ken described
24 earlier, so we would be happy to work with the
25

1
2 sponsors, but we don't believe that legislating is
3 necessary in this arena.

4 KEN WAGNER: Specifically, even separate
5 from this project that I'm describing, there are
6 concerns that all of those current practices that I
7 mentioned before that school districts are engaged in
8 to keep the schools open and running could be
9 negatively affected by the pending legislation.

10 CHAIRPERSON JACKSON: So you know, while
11 you were giving your presentation, Deputy
12 Commissioner, I was wondering... Commissioner... Deputy
13 Commissioner, right; is that correct?

14 KEN WAGNER: Yes, correct.

15 CHAIRPERSON JACKSON: 'Kay. I was
16 wondering while you were giving your presentation, so
17 I was saying New York City could've done all of this
18 themselves without going into the State and other
19 things like that. I mean we have an expense budge in
20 education of \$24 billion and I would think that we
21 could build our own system; I think they did build
22 ARIS, but you know, was not totally meeting the needs
23 of the educators and others.

24 KEN WAGNER: Yes. So absolutely, New
25 York City or any school district could engage in a

1
2 problem similar to what we're trying to do. New York
3 City is only about 30 to 35 percent of the State; so
4 of course, I represent the interests of the rest of
5 the State.

6 And then also, one of the things about
7 standards, if you want to have tools be built to
8 standards you need as wide an audience using those
9 standards as possible; if New York City went on its
10 own, down a certain road, they're a big entity, so of
11 course they would have... they would command attention,
12 but not as much attention as if all of New York State
13 participates or the other four Phase I states or
14 whatnot.

15 CHAIRPERSON JACKSON: Now New York City
16 has 1.1 million students in its district; what's the
17 total number of students in the State's total
18 districts?

19 KEN WAGNER: Yeah. So it depends on what
20 number, but we have roughly... depending on whether you
21 included non-public students and public students... we
22 have roughly 2.7 million students; New York City,
23 depending on the count, has either 900,000 or 1.1
24 million.

1
2 CHAIRPERSON JACKSON: Okay. So takin'
3 the New York City public school system, including
4 charter schools, including parochial schools and
5 private schools; is all that data with all of these
6 private schools or parochial schools, charter
7 schools, public schools; is all that data gonna be in
8 the State Education Department, inBloom cloud?

9 KEN WAGNER: So as far as inBloom, it
10 would only include public schools, which is public
11 schools and charter schools; it does not include non-
12 public schools; it does not include home-schooled
13 students.

14 CHAIRPERSON JACKSON: So I guess they
15 will analyze their own information for whatever
16 purposes that they need be; is that correct?

17 KEN WAGNER: That would be an open
18 question whether or not... if... if... and I don't want...
19 there was mention before ARIS and anytime you build
20 new technology tools you wanna... in my opinion you
21 wanna stay very humble about what you're trying to
22 accomplish, because there's a lot of things that you
23 could build it to and somebody's gonna say that's not
24 useful. So if people find these tools useful, then
25 we could have that non-public schools, for example,

1
2 say they want to start using this. But given that
3 this was funded through Race to the Top, we had a
4 commitment to use this for public schools, charter
5 schools and other public schools.

6 CHAIRPERSON JACKSON: So if I was a
7 parent of children that were in private school and
8 all of a sudden I no longer can afford to send them
9 to private school and they're in the 7th and 10th
10 grade and one entering the 3rd grade and they come
11 into the system, would you try to backdate the data
12 and put it in the system or how would you... how would
13 the system then get their information so that it
14 could be accessible for the needs of curriculum and
15 other things that the children may need, services and
16 the like?

17 KEN WAGNER: Yeah. So upon enrollment
18 into a public school, the students would be added to
19 the system.

20 CHAIRPERSON JACKSON: How would you get
21 all of that back information though, as far as...
22 [interpose]

23 KEN WAGNER: I...

24 CHAIRPERSON JACKSON: you know, because
25 you talked about that the Federal law... [interpose]

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KEN WAGNER: Yeah.

CHAIRPERSON JACKSON: allowed you to go back to ascertain information?

KEN WAGNER: I don't believe... with the exception of State Assessment scores...

CHAIRPERSON JACKSON: Uh-huh.

KEN WAGNER: where, for example, if a student is in 7th grade they have grade 3, 4 and 5 and 6; with the exception of assessment scores, most of our collection is an annual collection, so we would not go back, for example, for a new incoming student to their 2nd grade records, other than as I mentioned, assessment scores.

CHAIRPERSON JACKSON: 'Kay. So let me turn to my colleague Gale Brewer; then we'll hear from our colleague Danny Dromm, but we've been joined by additional colleagues, Fernando Cabrera of the Bronx and also to my left, Lew Fidler of Brooklyn. Colleague Gale Brewer, followed by Danny Dromm.

COUNCIL MEMBER BREWER: Thank you. You know a lot of stuff, I have to... I think you're more honest maybe than others talking about this topic, so I appreciate it, but I just have... I have a lot of questions. First of all, have you ever had any

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2 hearings or engaged parents to figure out what they
3 want to do with this information and how they feel
4 about this data and the same question about our
5 teachers union or the principals union, and then just
6 following along those lines... I know this is not... I
7 mean could you not put something online that
8 indicates if parents or districts want to opt out?
9 You know, in other words, could you do something that
10 would be more engaging? Because I think parents
11 really don't know this is happening, to be honest
12 with you; my parents don't know, and I wanna know,
13 you know, is there some social media way in which
14 people could have questions and they could...
15 obviously, in our dream world we would like people to
16 be able to opt out, but how are you doing all of
17 these parental involvement opportunities, if at all?

18 KEN WAGNER: So the most honest thing to
19 say is we obviously have not done as good a job as we
20 could and should or we would have more dialogues at
21 this private... [interpose]

22 COUNCIL MEMBER BREWER: You wouldn't have
23 all upset people.

24 KEN WAGNER: prior to this hearing. So
25 we have not done as good a job as we need to do. I

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2 did have the opportunity to engage with a group of
3 parents in Queens about six months ago; we have a
4 series of parent forums scheduled over the next month
5 around the State where this will be one of the topics
6 that we will be talking about; we have a dialogue
7 with our New York-wide parent-teacher organizations
8 that we're talking with as well, so we're trying to
9 catch up to do a better job with parent outreach and
10 I take responsibility for not having done a good
11 enough job up to this point.

12 We have been talking with... when I say
13 teachers union I probably mean a different
14 organization... [interpose]

15 COUNCIL MEMBER BREWER: I know, but we
16 have one here... [interpose]

17 KEN WAGNER: Yeah.

18 COUNCIL MEMBER BREWER: and you have one
19 upstate.

20 KEN WAGNER: Yeah, we have one statewide.
21 So we have been talking with teachers unions for a
22 period of time now... [interpose]

23 COUNCIL MEMBER BREWER: What do they say?

24 KEN WAGNER: You'd have to ask the
25 teachers union, but I think that we can all likely

1
2 agree that the desire to put more tools in the hands
3 of teachers is something that we all share, but I
4 would not feel comfortable answering on behalf of the
5 teachers union.

6 We have also been speaking with statewide
7 groups of superintendents and principals and so on.
8 We've done our least amount of engagement exactly
9 around this issue, which is around parents.

10 COUNCIL MEMBER BREWER: Okay, but what
11 have you done to create some way for users or other
12 schools or districts to ask parents for consent or
13 are you so opposed to it that you're not even gonna
14 consider using social media for something like that?

15 KEN WAGNER: It's not that we're opposed
16 to parents understanding how their students' data are
17 being used; I would actually say it's the opposite.
18 The first step to protecting confidential student
19 data is for a parent to understand what on earth we
20 have. So unless we build a system where parents can
21 access their student data, they have no idea what we
22 have, 'cause we have data in this longitudinal data
23 system that goes back a ways. So I would say that
24 it's actually in a parent's interest to be able to
25 access and see their student's data and to request

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2 clarification or corrections if the data are in
3 error. But FERPA was written in a very different
4 way, which is that if you've got these core needs,
5 it's not just about opt out of the inBloom system;
6 school districts literally could not run their
7 schools if parents could opt out of all of the
8 different systems that I mentioned before; it has
9 nothing to do with the EngageNY system.

10 COUNCIL MEMBER BREWER: But the third
11 party is of concern; I think that's where the problem
12 is. And let tell you; I know people who have all
13 this data from New York in their iPhone, okay. I
14 have friends who work in educational for-profit and
15 they have it now. So they have it aggregated, I
16 understand that; they don't have Gale Brewer, three
17 kids and so on, but they have it all aggregated. And
18 this is... and then so I wanna... who's inBloom; we all
19 think, just so you know, it's Murdoch, Wireless
20 Generation and Joel Klein; can you describe who they
21 are?

22 KEN WAGNER: Sure. So inBloom was
23 started about two years ago with initial funding from
24 the Gates Foundation and Carnegie Corporation; it
25 came out of an initiative through the Council of

1
2 Chief State School Officers, CCSSO, to try to address
3 some of the challenges that I mentioned before;
4 primarily putting tools in the hands of teachers.

5 Since then inBloom has established itself
6 as an independent 503(c)(3), I believe, a non-profit
7 organization with its own board of directors; its own
8 chief executive and it's operating that way. All of
9 the vendors, and inBloom has had relationships to
10 build its systems with a number of different vendors,
11 Wireless Generation was one of them; I don't believe
12 they currently have a contract with Wireless
13 Generation; I believe that their work was done, but
14 any of the vendors that did work for inBloom did work
15 as part of a contract, work-for-hire, non-
16 proprietary, so they produced their deliverables and
17 they walked away from it; nobody has ownership stake
18 on any of the inBloom resources other than inBloom as
19 a non-profit.

20 COUNCIL MEMBER BREWER: Okay, you
21 mentioned that inBloom... if another contractor came
22 along they would be able to get the contract; inBloom
23 is not the only non-profit in town; you sort of
24 indicated that.

1
2 KEN WAGNER: Currently they're the only
3 provider of services... [interpose]

4 COUNCIL MEMBER BREWER: I understand, but
5 you said if somebo... this is what I'm concerned about...
6 with all due respect, I used to chair the Technology
7 Committee; I spent hours and hours and hours in the
8 tech world and City government, we just to hire, as
9 an example, and the Chairman of Technology now knows
10 that, sitting right here, Chairman Cabrera, that we
11 just had to hire 20 people at our technology agency
12 to monitor our own technology efforts and I think
13 they're doin' a good job; without them it was running
14 amuck. So my question is; cutbacks state, cutbacks
15 national, cutbacks locally, empty desk, etc.; who
16 monitors all this? InBloom goes away, my friend who
17 has this third-party info... I'm getting e-mail from
18 him right now, so I know exactly what he has; he's in
19 California; he... how... who's gonna monitor; inBloom
20 goes away, you are under-staffed; who monitors all
21 this?

22 KEN WAGNER: So... [interpose]

23 COUNCIL MEMBER BREWER: I just don't
24 trust government to be able to monitor.

1
2 KEN WAGNER: Understood. So in the bill
3 that was mentioned, they make a distinction between
4 outsourcing and the conditions under which you can
5 outsource versus redisclosure of data and I want... I...
6 something I didn't mention up until this point; those
7 two things are different, so because we provide data
8 to a third party, for example the student management
9 system at a school district level or inBloom, that's
10 not the same as redisclosing after that initial
11 providing to the third party. Redisclosure is
12 controlled... in this project is controlled by the
13 local school district.

14 COUNCIL MEMBER BREWER: So the Department
15 of Education has to monitor the redisclosure?

16 KEN WAGNER: No... so when we provide the
17 data... [interpose]

18 COUNCIL MEMBER BREWER: Who's the
19 monitor?

20 KEN WAGNER: to inBloom, before... in our
21 project we have three vendors who can potentially
22 provide data dashboard services. There's a vendor
23 eScholar, there's a vendor, ConnectEDU DataCation and
24 then there's Pearson Schoolnet.

25

1
2 COUNCIL MEMBER BREWER: Oh God, I hate
3 Pearson.

4 KEN WAGNER: Before any of those vendors
5 can access any of the data a school district person
6 has to give authorization for that redisclosure, so
7 that's just something... so it's not that the data's in
8 inBloom and anybody can access it, including your
9 friend in California; the data can only be accessed
10 with school district authorization and that's called
11 redisclosure. If inBloom goes away, the contract
12 terminates, all of the data have to be destroyed if
13 inBloom goes away.

14 COUNCIL MEMBER BREWER: And who... who's
15 gonna monitor all that?

16 KEN WAGNER: It's part of our contract
17 that they have to provide evidence that the data's
18 been destroyed.

19 COUNCIL MEMBER BREWER: I don't mean to
20 be difficult, but we... like I just said, we just had
21 to hire 20 people to monitor the contracts that we
22 currently have in the City of New York because they
23 weren't being monitored, so those 20 people hopefully
24 will do that. I just... the technology world, to the...
25 you may know it... but the technology world to

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2 government is changing so fast government cannot keep
3 up with it. I just think that... I mean you have been
4 phenomenally articulate about what you're discussing,
5 I just don't think that this huge data opportunity to
6 hopefully improve learning is gonna be able to be
7 monitored and making sure that it's secure; I don't
8 care how many firewalls you have. What do the
9 parents get out of it in Brookline and maybe upstate;
10 my brother goes to the Brookline public school
11 system, he's got five kids, he knows exactly what
12 homework they did, what they had for lunch, blah,
13 blah, blah; what do the parents get out of this; when
14 are we gonna get this in New York City; does this
15 help us do that?

16 KEN WAGNER: So the first... [interpose]

17 COUNCIL MEMBER BREWER: We've all been
18 waiting; it's like waiting for the dough.

19 KEN WAGNER: Yeah. And those are exactly
20 the kinds of expectations that I try to be very
21 careful about because we know that in about 45
22 percent of our districts statewide; they already have
23 a parent portal...

24 COUNCIL MEMBER BREWER: We don't.

25

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2 KEN WAGNER: Okay. But when they have
3 parent portals outside of New York City what happens
4 is, they have a student management system which is
5 required for storing their data and then the vendors
6 of the student management systems, they keep building
7 more features and more features and more features and
8 parent portals and student portals become features of
9 that underlying student management system, so they
10 end up having something that wasn't what they
11 originally signed up for. Now they may love their
12 parent portal and their student portal and their
13 student management system all bundled together; what
14 we're trying to do is unbundle those products so they
15 stay with each of those functionalities, not because
16 it's too painful to switch, but rather because they
17 like it the most. So I do not wanna pretend that our
18 parent dashboard will be better than other parent
19 portals that are out there; it may be... I hope it is,
20 but it may not be. But one of the things that our
21 system will be able to do that nobody else can do is,
22 as I mentioned before, there is not a single system
23 out there that if you have a parent who has moved
24 from district to district, there's not a single
25 system out there that will help that parent see what

1
2 exists in the State system. So at a minimum, at a
3 minimum this system will help parents see what the
4 State has.

5 COUNCIL MEMBER BREWER: Okay, but I mean
6 I ask... as an example, when one goes to the Island
7 Academy 'cause one's at Rikers, it is possible now to
8 get those records after... only took us 20 years, but
9 it is possible to get those records to your local
10 high school; that's done locally, so I don't know why
11 you need inBloom to help you do that, right; I mean...
12 I'm just saying, you are very articulate; it's
13 really... it's frightening for us because I don't trust
14 the monitoring; I've had a lot of experience with
15 technology and I don't trust that these data... this
16 data is gonna stay locked up and I think parents
17 aren't getting anything out of it, even if it is
18 locked up. So I just think you're not seeing it from
19 the parental. I understand the need for the sharing,
20 I got that, we... it did take us 20 years to get the
21 information from Island Academy to the DOE; we got it
22 finally, you can... but so I don't think the sharing of
23 data... homeless kids move around; you need to have the
24 data move around with them; I do believe that goes on
25 now; the part that I'm concerned about is this third

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2 party; I don't trust them. You leave... you finish...
3 graduate, you go to college; what happens to that
4 data for the student; does that stay in the system?

5 KEN WAGNER: The inBloom system is just a
6 K-12 system, it's not a higher ed system.

7 COUNCIL MEMBER BREWER: I know, but when
8 you leave... I don't want it to be a higher ed system;
9 I don't want Pearson anywhere near it. But what do
10 you do... does the system... does that student... do data
11 get destroyed when you graduate? I'm just saying;
12 where does all that data go?

13 KEN WAGNER: So if students are no longer
14 being served by the system... [interpose]

15 COUNCIL MEMBER BREWER: Correct.

16 KEN WAGNER: they would be... those data
17 would be destroyed.

18 COUNCIL MEMBER BREWER: How does it get
19 destroyed though, just out of curiosity, how...
20 [interpose]

21 KEN WAGNER: Well there's... there's
22 processes in place that you'd go through, for
23 example... [interpose]

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2 COUNCIL MEMBER BREWER: So that's part of
3 the FERPA that you have to do it or it's just part of
4 the contract?

5 KEN WAGNER: My understanding of FERPA...
6 I'm not sure if... if... the destroying of data, I'm just
7 not sure if it's part of FERPA or part of our
8 contract; I just don't recall.

9 COUNCIL MEMBER BREWER: Okay. Okay. I
10 mean I'm... I just think that... all I can say is, I have
11 tremendous concerns; I think other states are
12 thinking about it and I think that in a perfect
13 system the data needs to stay internally and you need
14 it for much more... it doesn't have enough controls, in
15 my opinion, to be able to warrant this large
16 opportunity and I think the risks outweigh the
17 assets; that would be my feeling. But I do think
18 that having some of those third-part... are those
19 third-party people, companies mentioned on your
20 website so the public knows that those are the three
21 companies that you're working with?

22 KEN WAGNER: The partners in this
23 project, yes are posted... [interpose]

24 COUNCIL MEMBER BREWER: Yes? Okay.
25 Okay. And why did inBloom no wanna testify today;

1
2 did you tell them not to or did they make that
3 decision on their own?

4 KEN WAGNER: There were two things; one
5 is, as is typical for our third-party partner
6 relationships, whether it be any of our vendor
7 partners, if someone had question about our project
8 we would ask the vendor to refer them to us for those
9 questions. I did ask inBloom whether they were able
10 to talk about their services in general, not the New
11 York project; I would be the person to ask about the
12 New York project... [interpose]

13 COUNCIL MEMBER BREWER: Okay.

14 KEN WAGNER: but their services in
15 general, but I believe they had scheduling issues.

16 COUNCIL MEMBER BREWER: That is not true,
17 but that's okay; that's called something else. Thank
18 you very, very much.

19 COUNCIL MEMBER DROMM: Okay, thank you
20 and well, Chairman Jackson's out; he did give me
21 permission to proceed with my questions. I'm Daniel
22 Dromm; I am a member of the Council from Jackson
23 Heights in Queens and I'm the Chairperson of the
24 Immigration Committee at the City Council as well and
25

1
2 I was a teacher for 25 years before being elected to
3 the Council.

4 So I'm curious to know and I wanted to
5 follow up a little bit on what Chair Jackson had
6 touched upon; the categories for which you're
7 collecting information; in particular, the category
8 about immigrant and migrant... migratory information.
9 What information exactly is it that you're collecting
10 regarding immigrants?

11 KEN WAGNER: Okay. Again, this is not
12 part of inBloom, but I can answer the question about
13 the Federal... [interpose]

14 COUNCIL MEMBER DROMM: That's... you're
15 doing it on a State level though, right?

16 KEN WAGNER: Yes.

17 COUNCIL MEMBER DROMM: Yeah.

18 KEN WAGNER: Yes, because of the...

19 [crosstalk]

20 COUNCIL MEMBER DROMM: Including
21 immigrants?

22 KEN WAGNER: because of the Federal
23 requirement.

24 COUNCIL MEMBER DROMM: 'Kay.
25

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2 KEN WAGNER: And I'm gonna be doing this
3 from the top of my head, so it may not be precise,
4 but our rules are posted online. But for immigrant
5 status we have a Federal requirement to collect
6 information about when their date of first entry is,
7 so are they newly arrived, and then how many years
8 they've been in the country and the purpose is to
9 evaluate the efficacy of services for students; are
10 they making achievement advances quickly, as you'd
11 hope, or have they been in the country for many years
12 and they're still receiving, for example, English
13 language learner services. So that's for immigrant
14 data categories.

15 For migrant services there's a separate
16 Federal requirement to collect information about who
17 are your... there's a very precise definition of what a
18 migrant student is and who are your migrant students,
19 and the same purpose is to track whether or not
20 they're getting the services they're supposed to get
21 and whether or not... well for migrants, whether or not
22 they're getting the services.

23 We have different program offices within
24 the State Education Department that addresses
25

1
2 concerns for immigrants and migrant students; that's
3 not my area of expertise.

4 COUNCIL MEMBER DROMM: So the information
5 that you're getting on the State level from the local
6 le... it's coming from the local level, the collecting;
7 that's a local level... [crosstalk]

8 KEN WAGNER: Correct. Any data that we
9 get is reported to us from the local school districts
10 and they have their own systems to manage those data.

11 COUNCIL MEMBER DROMM: Is there a
12 standard across the State in terms of the information
13 that they're collecting about the immigrant
14 communities?

15 KEN WAGNER: We post public documentation
16 about what they need to report to us and how. So
17 yes, there are definitions that are standard and they
18 come from... [crosstalk]

19 COUNCIL MEMBER DROMM: So are those the
20 same things that you told me before, the category
21 that you're collecting, the standards... what are those
22 standards that they need to meet to report to you;
23 what are the things that they... [interpose]

24 KEN WAGNER: Oh you mean like quality
25 stan... [interpose]

1
2 COUNCIL MEMBER DROMM: Well I'm... what I'm
3 trying to get at is; are you collecting data about
4 the country of origin, number one; number two, about
5 their legal status; are they here legally or not?
6 And I'm wondering if that is across the board a
7 standard or... and then I'll follow up with questions...
8 [interpose]

9 KEN WAGNER: Yeah...

10 COUNCIL MEMBER DROMM: about that as
11 well.

12 KEN WAGNER: So my recollection is we do
13 have to collect country of origin and we are
14 prohibited from collecting legal status or not, to my
15 recollection... [interpose]

16 COUNCIL MEMBER DROMM: 'Kay. Now
17 regardless of whether or not you're prohibited from
18 collecting that legal status information; is any of
19 the information you're collecting shared with the
20 Department of Homeland Security?

21 KEN WAGNER: Uh... [crosstalk]

22 COUNCIL MEMBER DROMM: Or is there a
23 guarantee that it's not shared with the Department of
24 Homeland Security?

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2 KEN WAGNER: My understanding is we
3 provide aggregate counts to the U.S. Education
4 Department; we don't provide anything to the
5 Department of Homeland Security.

6 COUNCIL MEMBER DROMM: So there's no
7 guarantee that this information will never be shared
8 with another Federal agency outside of the Department
9 of Education?

10 KEN WAGNER: I... I'm not trying to be
11 evasive; this is just outside of my area. My... I have
12 no knowledge of us providing any data to the
13 Department of Homeland Security... [interpose]

14 COUNCIL MEMBER DROMM: Okay; it's an
15 issue of major concern to us in the immigrant
16 communities in particular because of the secure
17 community situation that we find ourselves in, where
18 we have, you know, correction systems and other
19 systems feeding into that and as Council Member
20 Brewer alluded to as well, there's already mistrust
21 amongst many about how this information's being
22 collected; what it's being used for, but I would
23 imagine even greater mistrust of government from
24 immigrant communities as well and without any
25 guarantee that this information will never be shared

1
2 with the Federal Government's... Homeland Security, for
3 example, or other agencies, actually, I think it puts
4 immigrants in a lot of danger and that is a very deep
5 concern that we have here in the New York City area;
6 actually I would think that many people would share
7 that concern with me. So is there anything we can do
8 moving forward to guarantee that?

9 KEN WAGNER: Yeah, so if you just send a
10 follow-up inquiry I'll get it to the right people and
11 we'll get you a very precise and accurate response.

12 COUNCIL MEMBER BREWER: Okay. So then in
13 another category here you have displaced homemaker;
14 how do you quality that?

15 KEN WAGNER: Again, I'm not trying to be
16 evasive; I don't have recollection of that data
17 element, so I can't... I just can't res... I don't know
18 what that data element refers to; the others are
19 familiar to me.

20 COUNCIL MEMBER DROMM: And that
21 information's being collected by the New York City
22 Department of Education now, displaced homeowners?

23 KEN WAGNER: Again, displaced homemaker
24 is not familiar to me, so I'd have to check my
25 records to see if we even collect that and if we

1
2 collect it, then school districts are expected to
3 report it, but I don't have a recollection of that
4 data... [crosstalk]

5 COUNCIL MEMBER DROMM: What about
6 pregnant teen?

7 KEN WAGNER: Pregnant teens is a data
8 element that is required by the Federal Government
9 and yes, it is something that all school districts
10 have to report for Federal purposes; not this
11 project... [interpose]

12 COUNCIL MEMBER DROMM: So when you ask
13 about pregnant teen; what is it that you're looking
14 for?

15 KEN WAGNER: I believe it has to do with...
16 it's a funding source that we have to justify... we get
17 funds for... as one of the Title services, we get funds
18 for various categories of students who have specific
19 needs and we have to justify the funds with aggregate
20 counts. But again, there's a separate program office
21 that could respond more specifically.

22 COUNCIL MEMBER DROMM: So the purpose of
23 collecting information on pregnant teens is to use it
24 for what?

1
2 KEN WAGNER: Again, it's required for
3 Federal purposes that I... I'm not the person who can
4 answer this... [crosstalk]

5 NICOLAS STORELLI-CASTRO: Council Member...
6 and if I could just interject... Ken's not trying to be
7 evasive; we're not trying to evasive; this hearing is
8 specific to inBloom; we're prepared to answer any
9 questions you have about inBloom and the data fields
10 about that, but some of these data fields, as Ken
11 mentioned, are simply not relevant to inBloom, so.

12 COUNCIL MEMBER DROMM: Well as you can
13 see, you know, this is a major concern across the
14 board with all of this data collection, whether it's
15 specific to inBloom or not and I find the categories
16 that I'm talking about here to be offensive actually...
17 [crosstalk]

18 NICOLAS STORELLI-CASTRO: Well and...

19 COUNCIL MEMBER DROMM: that they're
20 included in any data collection and you know...
21 [crosstalk]

22 NICOLAS STORELLI-CASTRO: And... and
23 that's... [crosstalk]

24

25

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2 COUNCIL MEMBER DROMM: we do appreciate
3 that you've come out here and I do and I... I concur
4 with... [crosstalk]

5 NICOLAS STORELLI-CASTRO: No... and that's
6 fair and I... I... I... I... [interpose]

7 COUNCIL MEMBER DROMM: I concur with
8 Council Member Brewer as well, but... you know and I...
9 and I... and I really wish that New York State
10 Education Department had come in and I... and I was
11 surprised not to see them here, but I figured let me
12 just try to get as much information as I can on this
13 because, you know, especially immigrant status is of
14 deep concern to me.

15 NICOLAS STORELLI-CASTRO: We... we... I
16 think... it... it... we share some of those concerns; I
17 just wanna you know clarify that... that some of these
18 questions are better directed to the Federal
19 Government that requires this data collection and
20 we're a state educational agency that relates mostly
21 to our Federal education counterpart, so I'm just
22 tryin' to... I'm just saying that there's some of these
23 questions that we just don't have the answers for
24 because they're not our jurisdiction, frankly.

1
2 COUNCIL MEMBER DROMM: Okay. So let me
3 go to my colleague then, Margaret Chin.

4 NICOLAS STORELLI-CASTRO: 'Kay.

5 COUNCIL MEMBER CHIN: Thank you. Deputy
6 Commission, in your presentation I have not heard
7 about the costs; how much is this costing the
8 taxpayer? I mean we've heard that inBloom plans to
9 start charging their service in 2015, an amount
10 between \$2-5 per student and I just wanna find out
11 what are... is that true and what's the long-term
12 maintenance and operation costs of the system and
13 will school districts be required to pay for them?

14 KEN WAGNER: Gotcha. So if you were to
15 ask a school district right now what it's spending
16 for its student management system you would get
17 answers that would vary between \$10-15 a student per
18 year forever. In that context if the inBloom service
19 works the way we intend it to work, which is that it
20 makes it more efficient for more tools at a lower
21 cost, that would make the most sense to a school
22 district if it participates in more than one data
23 tool within the system. So the \$2-5 number that you
24 mentioned is our current estimate for when inBloom's
25 funding goes away beginning in January of 2015; if a

1 school district wished to continue to use the inBloom
2 service, which it would be under no requirement to
3 do; if a school district wished to continue to use
4 that service the best estimate right now is \$2-5 per
5 student. Those numbers could be lower if more states
6 and districts participated in inBloom, but that's the
7 current estimate. That would likely not be cost-
8 effective if the school district only used one or two
9 data tools using the inBloom system. But if they
10 start to use three or more data tools, and we have
11 lots of information that school districts use upwards
12 of five, six or seven tools, so three is about at the
13 break even point; if they use three or more data
14 tools, things that they would use anyway; it's got
15 nothing to do with... we're not asking people to spend
16 more money, but if they use these three tools, then
17 that \$2-5 is at about the break even point and if
18 they use more than three tools, then you're actually
19 saving funds. So that \$2-5 is the best estimate
20 right now; it could get lower if more states and
21 districts participate and whether or not that's a
22 good value depends on how many data tools school
23 districts are using.
24

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2 COUNCIL MEMBER CHIN: Can you just
3 identify some of the data tools that you're talking
4 about?

5 KEN WAGNER: Sure. So when I had
6 mentioned in the category of systems that people are
7 using right now, so they're using data tools to
8 capture student enrollments, to build student
9 schedules, to manage all of those things; I think it
10 was like four or five, online learning is a big thing
11 that school districts are starting to participate in,
12 offering virtual learning opportunities to students
13 that can be more convenient, for example for older
14 students. Also another thing is personalized
15 instruction, so a student who's struggling in math
16 and can benefit tremendously from individual
17 attention from the teacher, but could also benefit
18 from some supplemental practice exercises and so, so
19 personalized learning opportunities are things that
20 school districts are doing; things to organize
21 curriculum and instructional resources, 'cause
22 inBloom is not just about data, it's also about
23 curriculum and instruction. So there's at least
24 seven or eight categories of tools that people are
25 currently using and spending money on and if you go

1
2 to any individual school district I'm virtually
3 certain that you'll find that school districts can
4 name at least three to five of those categories. So
5 that's what we're trying to do; given that these
6 funds are being spent on these categories of tools
7 might this underlying system... right now it's inBloom;
8 it doesn't have to be inBloom in the future; might
9 this underlying system help to make those existing
10 practices more secure and more efficient.

11 COUNCIL MEMBER CHIN: So right now the
12 schools that are... are any of the schools in the State
13 using the system right now?

14 KEN WAGNER: The EngageNY Portal system?

15 COUNCIL MEMBER CHIN: Yeah.

16 KEN WAGNER: No; it has not been rolled
17 out yet.

18 COUNCIL MEMBER CHIN: So what's the
19 upfront cost for the inBloom to be developing the
20 system; what's the cost right now to the State?

21 KEN WAGNER: Yeah. So there's no cost to
22 school districts right now; we have... the State,
23 through Race to the Top funding, has funds for two
24 more years, the 13-14 school year, and assuming that
25 we get a Race to the Top amendment, which we

1
2 anticipate getting, the 14-15 school year. So we
3 have funds to pay all of the costs for this year and
4 next year, then in our vendor contracts, with those
5 three data dashboards, we negotiated three additional
6 years of Statewide pricing and those prices are about
7 \$1-3 per student; two of the vendors is about \$1 a
8 student; one of the vendors is about \$3 a student.
9 So if school districts like the Statewide system they
10 could elect to continue to purchase those services by
11 leveraging the State contracts; if they don't like
12 the Statewide system they can stop using it
13 completely or if they like the Statewide system but
14 they don't like the State's vendors they could use
15 their own vendors and authorize those vendors to
16 access the data.

17 COUNCIL MEMBER CHIN: So right now
18 nothing is being used, so this is just a... [interpose]

19 KEN WAGNER: Right now we're doing...

20 COUNCIL MEMBER CHIN: a system that's
21 being built... [interpose]

22 KEN WAGNER: we're... we're in the phase
23 where we're doing testing; we have been using
24 anonymized student data so far for testing and we

25

1
2 plan to launch the system this coming fall into
3 winter.

4 COUNCIL MEMBER CHIN: But there is some
5 upfront cost, isn't there?

6 KEN WAGNER: Yes, but State... [interpose]

7 COUNCIL MEMBER CHIN: What... what is that
8 cost?

9 KEN WAGNER: State dollars... So our... We
10 have two... we have three sets of contracts to support
11 this work; one is called what we call content
12 management and systems services, so it's building the
13 underlying system, including the supports to connect
14 with inBloom and that vendor is a company called
15 Public Consulting Group or PCG and that is a \$30
16 million contract. Then we have contracts with three
17 different data dashboard providers, as was mentioned,
18 eScholar, ConnectEDU DataCation and Pearson
19 Schoolnet; those contracts combined total about \$20
20 million; the State had received about \$60 million in
21 Race to the Top funds for this purpose.

22 Then we have a third category of contract
23 with an independent party who's charged with
24 providing what's called Independent Verification and
25 Validation Services, which is kind of like a

1
2 watchdog, so to speak, to monitor the project on
3 behalf of the State to make sure everything is going
4 the way it's supposed to be going and that's a third
5 category of contract; I believe that contract, it's
6 with a company, a non-profit called Nice Tech and I
7 believe that contract is about \$3 million.

8 COUNCIL MEMBER CHIN: Okay. So in New
9 York City we have the ARIS system, so what happens if
10 New York City opts into use the inBloom, let's say
11 for example; does that mean the ARIS system, it's not
12 gonna be in use anymore?

13 KEN WAGNER: So that would be a decision
14 for New York City; the key question I would think for
15 New York City is whether or not the State's system is
16 good enough for New York City use and if they
17 determine that it is good enough, then they could
18 make a decision... I... I don't know... to start to phase
19 in the State system in replacement for some of the
20 features of the ARIS system.

21 We are not requiring New York City to
22 stop using ARIS, no more than we required them to
23 start using ARIS; that would be New York City's
24 decision.

1
2 COUNCIL MEMBER CHIN: Okay. Thank you,
3 Chair.

4 CHAIRPERSON JACKSON: Thank you Council
5 Member. Deputy Commissioner and Director of
6 Government Affairs, we're gonna take a pause for a
7 few minutes, for about seven minutes; we've had... our
8 City Comptroller, John Liu has been waiting for about
9 20 minutes to 25 minutes to give his short testimony,
10 so we'd like to pause for five; seven minutes and
11 then come back to you; is that okay? Thank you very
12 much; appreciate it. You could sit here or you can
13 go outside or go to the restroom; whatever you wanna
14 do; make a phone call, it's up to you, okay?

15 NICOLAS STORELLI-CASTRO: Thank you,
16 Chairman.

17 CHAIRPERSON JACKSON: Thank you very
18 much. You can leave the PowerPoint there and what
19 have you, okay? Thank you.

20 So we'd like to now call our City
21 Comptroller, John Liu to give testimony. You're
22 welcome. You're welcome.

23 I'm sorry; I've been corrected, the
24 Comptroller said he's been here since 10:45, not 20...
25 [interpose]

[background comments and laughter]

CHAIRPERSON JACKSON: It's... I know he's
been here a while, but...

So Mr. Comptroller; are you or other of
your colleagues gonna give testimony; if so, we swear
in all witnesses coming in front of us? So if... who's
gonna give testimony, I ask you to please raise your
right hand. And do you swear or affirm to tell the
truth, the whole truth and nothing but the truth in
your testimony before this Committee and to respond
honestly to Council Members questions?

JOHN LIU: Yes.

CHAIRPERSON JACKSON: Thank you. And you
may begin your testimony.

JOHN LIU: Alright. Well first let me
thank our State colleagues for their indulgence in
this and I appreciate you wanting me to present this
testimony in person; I thank you Chairman Jackson and
also members of the Education Committee for holding
this important hearing on protecting the privacy of
New York City public school students. I submit this
testimony in strong support of proposed New York
State Legislation A.6059-A and S.5932 and also in

1
2 strong support of City Council Resolution Number
3 1768-2013.

4 A growing number of New Yorkers are
5 deeply concerned about the New York State Education
6 Department's and also the City Department of
7 Education's decision to release personally
8 identifiable student and teacher data without
9 parental consent to inBloom, Inc., a corporation
10 funded by the Bill and Melinda Gates Foundation. I
11 share these concerns as both a New York City public
12 school parent and as Comptroller.

13 The initial service agreement between
14 inBloom and the State Education Department involve no
15 fee for service or any costs at all and therefore
16 bypass State and City Comptroller review and
17 registration, though now we have been told that
18 starting in 2015 the State and/or the City will have
19 to pay a per student fee for inBloom services. The
20 troubling lack of transparency with regard to what
21 seems to be an unprecedented disclosure of personally
22 identifiable information raises grave concerns about
23 the risks, safeguards, liability and the long-term
24 financial planning associated with this agreement.

1
2 Last May I submitted a letter to State
3 Education Department Commissioner King and the Board
4 of Regents urging them to withdraw New York State
5 from this project; however, the State is moving ahead
6 with the plan, so it seems, as one of nine states to
7 participate in the inBloom project. New York State
8 students are guinea pigs for an operation that is
9 driven as much by profit potential as it is for any
10 educational benefit.

11 Louisiana, Kentucky, Georgia, North
12 Carolina and Delaware have all since withdrawn from
13 the project due to privacy concerns and there are
14 strong indications that others will follow suit.

15 Just last week Jefferson County in
16 Colorado, that state's one pilot district, agreed to
17 allow parents the right to opt out of having their
18 children's data shared with inBloom.

19 While it appears that the State Education
20 Department and inBloom have satisfied the bear
21 minimum legal standard of the Family Education Rights
22 and Privacy Act, I'm deeply disappointed that the
23 State Education Department has not chosen to adhere
24 to a higher standard of protection for the personally
25 identifiable information of the people it is meant to

1
2 serve. By inBloom's own admission it cannot
3 guarantee the security of the information stored in
4 inBloom or that the information will not be
5 intercepted while it's transmitted.

6 Additionally, save for an immaterial \$1
7 million to \$5million that inBloom will set aside, the
8 State and City have accepted near total liability.
9 In the agreement inBloom and its third-party
10 partners, whoever they may be, reject just about any
11 liability. Despite the fact that the goal of this
12 project is for inBloom to create a data store where
13 third-party providers will use student data to
14 develop products, the New York State Education
15 Department and inBloom officials have stated that
16 there is no necessity for parental consent; in fact,
17 the State has already uploaded or is in the process
18 of uploading personal data from all the public school
19 students in the State, even though hundreds of
20 parents have already asked to opt out.

21 The State Education Department is also
22 requiring that nearly every school district,
23 including New York City's, sign up with one of three
24 companies that will produce data dashboards that will
25 be populated with personal data from the inBloom

1
2 cloud. A few districts that refused Race to the Top
3 funds are exempted from signing contracts with these
4 companies, but their student data is being shared
5 with inBloom anyway. Why must districts that do not
6 want to participate still be required to upload the
7 data?

8 Moreover, starting in 2015 districts will
9 have to pay fees for the use of these dashboards in
10 addition to the fees charged by inBloom. The State
11 Education Department is also encouraging districts to
12 share even more personal student information and sign
13 up for even more software tools from vendors who will
14 be provided with this data through the inBloom cloud,
15 all without parental consent.

16 Indeed, the State Education Department
17 has told districts that there's no necessity to opt
18 out or seek consent before student data is shared
19 with any vendor, but they have not absolutely barred
20 districts from doing so.

21 Now sadly, the City's Department of
22 Education has chosen not to allow either parental
23 opt-out or consent; all this is being done despite
24 the fact that the so-called educational benefits of
25 these dashboards and the other software tools that

1
2 inBloom is supposed to facilitate are entirely
3 theoretical; we've seen this before.

4 In 2007 the DOE announced that the data
5 management portal, ARIS, would revolutionize the
6 system, but a 2012 audit by my office demonstrated
7 that the system is rarely if ever used and appears on
8 the brink of becoming obsolete. And Council Member
9 Chin's questions just a few minutes ago seem to
10 suggest that there are many, many questions.

11 As for inBloom, even with the potential
12 of educational benefits, the data store would have
13 more immediate commercial benefits for third-party
14 for-profit providers.

15 Others concerned with this plan have
16 adroitly pointed out that in light of the heavily
17 commercial elements of the agreement inBloom and the
18 New York State Education Department have failed to
19 conform to child protection standards for personally
20 identifiable information set forth by the Federal
21 Trade Commission; this is worthy of a deeper look.

22 All of this is to say that the State
23 Education Department's legal argument could put the
24 State and the City in risk of substantial liability.
25 Also disconcerting is the fact that the service

1
2 agreement clearly states that inBloom cannot
3 guarantee the security of information stored in
4 inBloom or that the information will not be
5 intercepted when it is transmitted.

6 The agreement further states that inBloom
7 will take all reasonable and appropriate measures to
8 protect the data. This is hardly reassuring
9 language, especially when breaches of security and
10 loss of privacy happen with increasing regularity,
11 even in the most secure domains.

12 Currently inBloom is a lean operation and
13 has subcontracted with Wireless Generation, now
14 called Amplify, to help with the management and
15 protection of the data. Wireless Generation/Amplify
16 will or currently has access to student and teacher
17 personally identifiable information without having to
18 obtain informed consent. Wireless
19 Generation/Amplify's parent company, the News
20 Corporation, is in the midst of several high-profile
21 criminal trials in the United Kingdom for egregious
22 privacy violations and seems likely to undergo a
23 full-scale United States Senate investigation once
24 those trials in the UK are finished. This raises
25

1
2 further questions about the integrity of this inBloom
3 agreement.

4 Additionally, settlements and liability
5 claims for data breach are on the rise. A recent
6 report about data security threats in the health
7 sector finds that settlements have the potential to
8 reach \$7 billion annually. Many data breaches are
9 not typically malicious or criminal in nature and are
10 often accidental; lost computers, employee error,
11 etc.

12 The simply reality is that technologies
13 that promise greater productivity and convenience,
14 especially through the file-sharing applications and
15 cloud-based services are extremely difficult to
16 secure. As you know, these are the exact services
17 that inBloom and its third-party affiliates are
18 promising to New York.

19 Another concern has to do with the long-
20 term financial plan for inBloom. As stated, inBloom
21 intends to be financially independent from the Gates
22 Foundation by 2016. Right now it seems that the
23 Gates in premature is the glue that holds this
24 agreement together, but what happens when Gates is no
25 longer involved; how does inBloom guarantee that it

1
2 will be sustainable and financial solvent, especially
3 as most of the states that originally planned to
4 participate have now pulled out of any data sharing
5 agreement.

6 People ought to have the confidence in
7 the State and City's ability to effectively safeguard
8 personal information, yet there is a troubling lack
9 of transparency in what seems to be an unprecedented
10 disclosure of personally identifiable information.

11 I would like to reiterate what I asked
12 the State Education Department and the Regents to do
13 last may.

14 Number one, hold public hearings
15 throughout the State to explain why this agreement
16 should be pursued, answer questions and obtain
17 informed comment; engage public reaction.

18 Number two, notify all parents of the
19 data disclosure and provide them with a right to
20 consent.

21 Number three, define what right families
22 or individuals will have to obtain relief if harmed
23 by breach, improper use or release of their private
24 information, including how claims can be made.

1
2 And four, ensure that the privacy
3 interests of public school children and their
4 families are put above the commercial interests of
5 inBloom, Wireless Generation and all other third-
6 party affiliates.

7 I'd like to add to this list my support
8 for the legislation being considered by the State,
9 A.6059-A/S.5932; that would block redisclosures with
10 any third parties without parental consent and would
11 require vendors to indemnify the City and the State
12 for any breaches of data.

13 Finally, in today's technological age
14 people regularly broadcast personal information on
15 social networking sites and provide information to
16 internet vendors, but they do so willingly; no one
17 wants to learn that their personal information,
18 especially information about their children, has been
19 handed over to an anonymous marketplace without their
20 prior consent or even knowledge. Thanks very much
21 and I'd be happy to answer any questions you might
22 have.

23 CHAIRPERSON JACKSON: Well thank you,
24 Comptroller Liu; we appreciate you coming in and
25 personally giving your testimony in this important, I

1
2 guess... we've agreed to pause in the testimony of the
3 State Education Department officials to your
4 testimony, which then raises some, I guess some
5 questions that we have been asking and maybe some
6 additional issues and concerns that we have and
7 hopefully when we all leave here today we will get a
8 better understanding about the systems and even hear
9 from parents and advocates why they are requesting
10 consent and/or opt-out provisions in the legislation.

11 So I wanna thank you for coming in and I
12 appreciate it very much. And now this is officially
13 upon the record and we will be in contact with you in
14 the future.

15 JOHN LIU: Mr. Chairman, thanks for the
16 opportunity to share our thoughts; I do wanna point
17 out that Tomas Hunt and Chris Owens from my office
18 are here with me and though I cannot stay for the
19 rest of the testimony by the State Education
20 colleagues, Tomas and Chris will be here and to the
21 extent that we may hear more information from them
22 that might address some of the questions that we've
23 raised in the testimony, we certainly will be in
24 touch with you as well as with them in the upcoming
25 days. Thank you very much... [crosstalk]

1

CHAIRPERSON JACKSON: Thank you so much.

2

Thank you.

3

4

JOHN LIU: Thank you.

5

6

CHAIRPERSON JACKSON: So now we are going

7

to resume back to the State Education Department

8

officials, the Deputy Commissioner, Ken Wagner and

9

Nicolas Storelli-Castro, the Director of Government

10

Affairs. We have been joined by additional

11

colleagues; to my right, Council Member Al Vann of

12

Brooklyn and Council Member Ruben Wills to my left

13

from Queens.

14

15

And I believe next was Council Member

16

Wills; you're up for questioning regarding the

17

testimony of the Deputy Commissioner and Director of

18

Government Affairs.

19

20

COUNCIL MEMBER WILLS: I'm sorry; I'm

21

gonna yield my time; I thought... I mean do we... Class

22

Size Matters is going to testify also? Are they on

23

the list to testify?

24

25

CHAIRPERSON JACKSON: Leonie Haimson will

testify on behalf of Class Size Matters.

26

27

COUNCIL MEMBER WILLS: Oh; I... I yield my

time.

28

29

1
2 CHAIRPERSON JACKSON: Okay, good. So... So
3 I guess one of the questions that people have that if
4 districts do not sign on to inBloom after 2015,
5 'cause 2015 is when, you know the... I guess the... the
6 pilot project ends; is that correct?

7 KEN WAGNER: It's when the period of
8 initial funding for... [interpose]

9 CHAIRPERSON JACKSON: Initial funding.
10 So if they do not sign on where the districts have to
11 pay for services, is the student data destroyed or
12 pulled out or what happens, if you know, based on
13 whatever agreements have been discussed?

14 KEN WAGNER: So there would be two parts
15 to that. If the school district had elected one of
16 the three dashboard vendors at redisclosure, at the
17 point that the district elects to no longer
18 participate, then the data from that dashboard vendor
19 would have to be destroyed. So if they had elected
20 to provide data to eScholar or ConnectEDU or Pearson,
21 when they are done that dashboard vendor has to
22 destroy those data.

23 The data would remain however in the
24 underlying inBloom system as long as New York is
25 participating in that underlying system, but it would

1
2 not be redisclosed to anyone unless the school
3 district elects to redisclose it to someone.

4 CHAIRPERSON JACKSON: So the three
5 contractors that have been agreed to by the State
6 Education Department, and you indicated their names,
7 so if... for example, if the City was using one of
8 those and the City decided not to participate in 15
9 or 16 or whatever, then that data with that has to be
10 destroyed; is that correct?

11 KEN WAGNER: With that dashboard vendor.

12 CHAIRPERSON JACKSON: That dashboard
13 vendor.

14 KEN WAGNER: Correct.

15 CHAIRPERSON JACKSON: But not with
16 inBloom because inBloom still has a contract or an
17 agreement with the State Education Department.

18 KEN WAGNER: Now if the State Education
19 Department terminated its agreement with inBloom,
20 then all of the data would be destroyed.

21 CHAIRPERSON JACKSON: 'Kay. So I've
22 heard and I've read in preparation for this
23 particular hearing that inBloom cannot guarantee that
24 in the transmission it may not be grabbed by someone,
25 in essence, and I'm using these words, grabbed,

1
2 because that's basically what they're doin'; they're
3 basically stealing the information. How long, for
4 example, does it take time-wise, as a layperson, I'm
5 not a technician, the information about New York
6 City's 1.1 million students; how long would that take
7 to transmit electronically through the... you know,
8 through the cloud to get to New York City or to a
9 private vendor; would it take one minute; would it
10 take an hour; would it take two days, considering
11 that we have so much information?

12 KEN WAGNER: So when we move data we try
13 wherever possible to work only with changes to the
14 information, so you don't resend everything every
15 time, you just send the changes, but with an
16 organization as large as New York City you're looking
17 at a minimum of a few hours.

18 CHAIRPERSON JACKSON: A few hours.

19 KEN WAGNER: Now any individual data
20 point is moving in a second... [interpose]

21 CHAIRPERSON JACKSON: Right.

22 KEN WAGNER: but the whole process will
23 take... [interpose]

24

25

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2 CHAIRPERSON JACKSON: And that's what I
3 was talkin' about, the whole process. I was just
4 curious, you know.

5 KEN WAGNER: Yeah.

6 CHAIRPERSON JACKSON: Okay. Because you
7 did say that all of the information is encrypted and
8 so even if someone grabbed the information, it's
9 encrypted; unless they have the code or key to
10 decipher it it's no good; is that correct?

11 KEN WAGNER: For inBloom's portion of the
12 project it's encrypted at both rest and in motion, so
13 yes, if it were intercepted and it's un... I know that
14 the lack of a guarantee keeps getting mentioned; I
15 would say much more relevant than a guarantee,
16 because we all know, is the protections that you're
17 putting into place. So in this case, with the
18 encryption, yes, that is a feature of inBloom
19 services, so even if something were intercepted it
20 would be encrypted.

21 CHAIRPERSON JACKSON: Now, did you
22 respond to a question, Deputy Commissioner that; has
23 the personal data of New York City students already
24 been uploaded to inBloom cloud and if so, when and by

1
2 whom, whether it was SED or DOE; has that information
3 already part of the pilot been uploaded already?

4 KEN WAGNER: So I had mentioned
5 previously that we're in what's called a test phase
6 and we have... yes, we have sent Statewide what we call
7 de-identify data, so the names are not attached,
8 'cause we don't need names right now, but yes, we
9 have some Statewide data.

10 CHAIRPERSON JACKSON: So in essence the
11 names will be put later, so for example, when schools
12 or the teacher needs to look at data or to analyze
13 the type of assistance a child may need from a
14 curriculum point of view or from a social services
15 point of view or something like that, that will be
16 added later?

17 KEN WAGNER: One of the questions that
18 came up in Queens, for example, was; couldn't you
19 build the system so you don't need names? And our
20 response to that would be that it's not... we're trying
21 to provide information that's useful, so if a teacher
22 is looking at a list of numbers and then he or she
23 has to go and cross-reference the numbers, that's
24 just not going to be very useful. So for that reason
25 we do need to include names, but we don't yet need to

1
2 include them until we get to a later phase of testing
3 and then once we launch.

4 CHAIRPERSON JACKSON: And in preparation
5 for this hearing I read one of those questions and
6 the response, I guess from SED, either in some
7 response, the question may have been asked and I just
8 thought in my head, you know, like for example,
9 sometimes when you buy raffle tickets, right, the
10 first five numbers are the same numbers that everyone
11 has, but the last three numbers are really the
12 numbers, like you know, 345, after you said four
13 numbers already, 'cause people are lookin' at those
14 last few numbers; couldn't you for example have
15 identifying number let's say of the school, let's say
16 27 would be for A B's to lower school 15 and then a
17 class maybe let's say five and then list, for example
18 if there's 23 students in that class, have one, two,
19 three, four, five within all of those categories as
20 far as school, you know; I mean, you know school,
21 class and then identify the students by one, two,
22 three, four, five within each class and so... and I
23 know it's a little bit more difficult, but it's not
24 like goin' through the whole thing; if I have a key
25 here and I have 23 students and I know that I'm in my

1
2 code of my school and my class in one to 23, it's
3 just a simple match-up.

4 KEN WAGNER: Yeah, so that question had
5 come up at the Queens forum... [interpose]

6 CHAIRPERSON JACKSON: Okay.

7 KEN WAGNER: couldn't you exclude the
8 student names, because have unique identifiers, so we
9 know who the student is independent of the name, so
10 couldn't you exclude it and then add the name back at
11 the local level so the name doesn't have to be stored
12 for example through the service provider, just gets
13 added back?

14 I'm not aware of a single system that
15 works that way; it's logically possible what you're
16 describing, but what that would require is for each
17 of our 695 school districts; we have 4500 school
18 buildings, to set up a server locally that would work
19 with the State system and add the names back in; it
20 would have to be a local process, which... things don't
21 work that way because it would be a cumbersome
22 process that would put an additional burden on the
23 local school districts.

24 CHAIRPERSON JACKSON: 'Kay. So you know,
25 I've read I believe in your response to, I think our

1
2 Speaker, Christine Quinn... when I say your response I
3 mean State Edu... not necessarily your response
4 directly, but State Ed's Department on behalf... I
5 think it was penned by Commissioner King, about...
6 that's there's no regulation or process in place at
7 the State level for a parent to opt out or opt out of
8 the system; why isn't that the ca... I think you
9 explained that overall, in your opinion and State
10 Ed's opinion why the information is necessary because
11 of A, B, C, but why can... why do you not agree to
12 allow a parent to opt out if they don't want their
13 child's confidential, identifiable information in the
14 system? I mean the... my understanding is that the
15 bills that are currently pending will give the
16 parents that option; is that correct?

17 KEN WAGNER: That's not my understanding
18 of the bill that's pending... [interpose]

19 CHAIRPERSON JACKSON: The bill...

20 KEN WAGNER: The bill that's pending has
21 an outsourcing provision, which in my opinion is
22 consistent with this project.

23 CHAIRPERSON JACKSON: Okay; can you just...
24 for me as a layperson, you're saying that your
25

1
2 understanding that the opt-out provision is not in
3 there, but what about the consent?

4 KEN WAGNER: No; it is... it is in the
5 bill, but it has an exception... [interpose]

6 CHAIRPERSON JACKSON: Go ahead.

7 KEN WAGNER: it has an outsourcing
8 exception and it says that you may... in the bill it's
9 referred to as outsourcing... you may outsource under
10 these conditions, as long as you meet these
11 conditions and I believe that this EngageNY Portal
12 project is pretty close to what the bill envisions;
13 I'm not a lawyer, so I'm not close enough...

14 [crosstalk]

15 CHAIRPERSON JACKSON: Right. Right.
16 Right.

17 KEN WAGNER: but even the bill under
18 consideration does allow for outsourcing to for-
19 profit third-party vendors, according to my
20 understanding, without parental consent, because
21 that's the way these systems work; if you did not
22 allow that, I'm not exaggerating, schools would not
23 be able to run their operations or offer their
24 services.

1
2 CHAIRPERSON JACKSON: So I've heard that
3 more than a 100, maybe a couple 100 parents have
4 already requested in writing, or by e-mail or
5 otherwise, that they do not consent to their
6 children's information being uploaded; I'm calling it
7 uploaded, okay. How have you... you, when I say this;
8 how has the State Education Department responded to
9 those parents in writing as to their request not to
10 have their child's information, they do not consent
11 to have their child's information or their children's
12 information in the system? And I don't know, Nicolas
13 or... or... [interpose]

14 NICOLAS STORELLI-CASTRO: We... and I'll
15 let Ken... [interpose]

16 CHAIRPERSON JACKSON: Go ahead.

17 NICOLAS STORELLI-CASTRO: answer as well,
18 but I do... the Commissioner received an e-mail
19 campaign and he provided a response to people who
20 wrote e-mails to his Commissioner e-mail address...
21 [interpose]

22 CHAIRPERSON JACKSON: Okay.

23 NICOLAS STORELLI-CASTRO: I can provide
24 you a copy of that response if that would be helpful.

25

1
2 CHAIRPERSON JACKSON: And that... I would
3 appreciate it. Can you, Mr. Storelli-Castro, the
4 Deputy for Government Affairs, can you tell me
5 basically what the Commissioner's response has been
6 to parents who have requested not to have their
7 children's data entered into the system?

8 NICOLAS STORELLI-CASTRO: And I'll
9 paraphrase it; I don't have the response... [interpose]

10 CHAIRPERSON JACKSON: Yeah, paraphrase
11 it, of course.

12 NICOLAS STORELLI-CASTRO: I think
13 generally speaking the response was that, we
14 appreciate the concerns; we... student privacy is as
15 important to us as it is to the parents; we have many
16 parents who work at the State Education Department
17 and we value the privacy of our children the same
18 way, you know, our constituents do and we explained
19 some of the privacy protections, I believe, but Ken
20 can sort of go into detail about how the services we
21 are providing are more safe than what districts
22 throughout the State have because it's a patchwork
23 right now. And finally, we explained that for
24 mission-critical activities... the activities that are
25 critical to running a school district on a day-to-day

1
2 basis and providing for the educational services
3 which requires instructional data systems, that
4 consent is not required consistent with FERPA.

5 I will provide Mr. Chairman with a copy
6 of the response for your records.

7 CHAIRPERSON JACKSON: Sure, sure; I...
8 Okay, so basically, even though you basically
9 summarized the Commissioner's response and the letter
10 will detail it more specifically... [interpose]

11 NICOLAS STORELLI-CASTRO: Absolutely.

12 CHAIRPERSON JACKSON: what I'm hearing is
13 that the bottom line is, concerning parents' request
14 not to consent to the information being uploaded,
15 basically no, no to their... [interpose]

16 NICOLAS STORELLI-CASTRO: Right.

17 CHAIRPERSON JACKSON: to their request;
18 is that correct... [interpose]

19 NICOLAS STORELLI-CASTRO: Basically the
20 Federa... the Family Education Rights and Privacy Act
21 allows school districts to perform these functions
22 without parental consent...

23 CHAIRPERSON JACKSON: 'Kay.

24 NICOLAS STORELLI-CASTRO: and that's what
25 school districts are able to do and as Ken has

1
2 explained, without this ability they wouldn't be able
3 to function.

4 CHAIRPERSON JACKSON: And, either one of
5 you, do you know whether or not any parents, by
6 copying the Commissioner or have filed an appeal of
7 that determination to any higher authority, be it the
8 Federal Education Department or anyone else? Because
9 the Commissioner reports to the Board; is that
10 correct?

11 NICOLAS STORELLI-CASTRO: Yes, the Board
12 of Regents; correct.

13 CHAIRPERSON JACKSON: Do you know whether
14 or not any parents have filed an appeal with the
15 State Board of Regents regarding the Commissioner's
16 decision?

17 NICOLAS STORELLI-CASTRO: Not that I'm
18 aware of.

19 CHAIRPERSON JACKSON: Okay. And I think...
20 [interpose]

21 NICOLAS STORELLI-CASTRO: And... and Mr.
22 Chairman, I... I'm sorry... [interpose]

23 CHAIRPERSON JACKSON: Go... go ahead.

24 NICOLAS STORELLI-CASTRO: if I could just
25 clarify.

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CHAIRPERSON JACKSON: Sure; go ahead.

NICOLAS STORELLI-CASTRO: There wasn't...
you know, it wasn't like a Commissioner's
determination; the Commissioner basically responded...
[crosstalk]

CHAIRPERSON JACKSON: Responded.

NICOLAS STORELLI-CASTRO: Yeah, it
wasn't, you know a directive; it was a statement of
fact that the Commissioner made... [interpose]

CHAIRPERSON JACKSON: Okay. So... Okay.
So in... and in essence, whenever a determination by...
made by the Commissioner... because basically he said
to parents, under the law, Federal law... [interpose]

NICOLAS STORELLI-CASTRO: Correct.

CHAIRPERSON JACKSON: we have a right to
give this information... I'm just summarizing now...

NICOLAS STORELLI-CASTRO: Uhm-hm.

CHAIRPERSON JACKSON: and that in
response to their letters to him, he's basically
saying that; no, we're not gonna allow you to consent
to have your child out of the system.

KEN WAGNER: But if I... 'cause this has
been one of the... the most hard... this has been one of
the hardest things for me; that there's such a

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2 disconnect between what we think that we're trying to
3 do to help and parents' reactions. And I acknowledge
4 that disconnect and that's been hard, but one of the
5 things that's just so confusing is the only reason
6 why we have the data in the first place to send to
7 inBloom is because it was reported to us through
8 third-party vendor relationships. So there's not a
9 thing that we have that didn't come to us by way of a
10 school district sending it to us through a third-
11 party relationship.

12 CHAIRPERSON JACKSON: And the third
13 party... most of you, what you indicated... [interpose]

14 KEN WAGNER: At the local... [crosstalk]

15 CHAIRPERSON JACKSON: I'm sorry, you fin...
16 [crosstalk]

17 KEN WAGNER: I'm sorry.

18 CHAIRPERSON JACKSON: Go ahead; no,
19 finish your... [interpose]

20 KEN WAGNER: At the local school
21 district... data got reported to us by route of a
22 third-party. So what this has surfaced for me is
23 that there is a, just a lack of understanding about
24 what's been happening for the past decade with
25 student information. And in some ways, whether you

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2 agree with this project or not, this project has done
3 a good thing, which is it has surfaced things that
4 people did not real... apparently did not realize were
5 happening anyway. But again, we don't have anything
6 that wasn't reported to us by a school district and
7 the vast majority of school districts reported to us
8 by way of third-party products.

9 What this has also surfaced is a larger
10 issue... and we've spent a lot of time with some people
11 who have come back to us and said you know what, we
12 still disagree with what you're doing, but we realize
13 that our disagreement is really not with you per se,
14 but we don't agree with the underlying Federal law,
15 so that's a valid place of departure.

16 CHAIRPERSON JACKSON: I appreciate... so
17 for example, New York City, since it had developed
18 its own system, ARIS, but you said earlier in your
19 testimony that many of the third-party vendors are
20 private, for-profit contractors; is that correct?

21 KEN WAGNER: That's correct.

22 CHAIRPERSON JACKSON: Okay. But did... so
23 New York City, for example, had developed its own
24 system; I would assume now information comes directly
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2 from New York City, the ARIS system to the State
3 Education Department; am I right in that assumption?

4 KEN WAGNER: Yes. New York City is doing
5 their own data integration and then they use ARIS to
6 display the information.

7 CHAIRPERSON JACKSON: Okay. Alright. I
8 think that Comptroller John Liu has indicated some, I
9 guess reiterations of what he had submitted to the
10 Commissioner and I'm gonna ask it in another... have
11 you, meaning the State Education Department, held any
12 hearings or engaged parents in any way regarding your
13 plans for the sharing and use of this data? I know
14 you indicated, and I think that the Deputy for... the
15 Director for Government Affairs indicated some Queens
16 meetings; is that correct?

17 KEN WAGNER: It was just a single meeting
18 in Queens... [interpose]

19 CHAIRPERSON JACKSON: Okay.

20 KEN WAGNER: we have discussed this in
21 public session with our State Board on several
22 occasions over the past two years and as I mentioned,
23 we have Statewide meetings that are scheduled over
24 the next few weeks throughout the State and I
25

1
2 anticipate that data security and privacy will be one
3 of the topics of discussion.

4 CHAIRPERSON JACKSON: So you're gonna
5 have meetings around the State engaging... who are the
6 meetings with, with parents; are they open meetings
7 or what?

8 KEN WAGNER: This is... these are organized
9 through the State PTA and...

10 CHAIRPERSON JACKSON: State PTA?

11 KEN WAGNER: State PTA; I believe there's
12 like six or so... [interpose]

13 NICOLAS STORELLI-CASTRO: Yeah, they're
14 regional; they're still in development, but yes.

15 CHAIRPERSON JACKSON: Okay. I would
16 assume that one is gonna be in New York City...
17 [interpose]

18 NICOLAS STORELLI-CASTRO: Absolutely.

19 CHAIRPERSON JACKSON: Yeah... [interpose]

20 [background comment]

21 CHAIRPERSON JACKSON: I'm sorry; please
22 no yelling out. I assume one is gonna be in New York
23 City... [interpose]

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2 NICOLAS STORELLI-CASTRO: They will be
3 regional. I don't have the schedule in front'a me,
4 but... [interpose]

5 CHAIRPERSON JACKSON: 'Kay.

6 NICOLAS STORELLI-CASTRO: but they will
7 be... [crosstalk]

8 CHAIRPERSON JACKSON: And... and... and...

9 NICOLAS STORELLI-CASTRO: throughout the
10 regions of the State.

11 CHAIRPERSON JACKSON: and who is... who is...
12 who is heading these regional meetings? So for
13 example, is the State Education Department gonna hold
14 these regional meetings or is it gonna be the State
15 Parents Association of New York State? Who is gonna
16 hold these regional meetings?

17 KEN WAGNER: These are being organized by
18 the New York State PTA; I don't know whether New York
19 State PTA is affiliated with New York City or they
20 have their own separate organization... [interpose]

21 CHAIRPERSON JACKSON: Okay. Okay. No, I
22 hear you and I appreciate that. So since this is
23 such an important issue, does the State Education
24 Department plan on hosting these meetings around the
25 State? And as you indicated, the State PTA, if New

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2 York City parents or Parent Teachers Association is
3 not a member, they may not even hold one in New York
4 City; they could hold one in Long Island and
5 realistically... it's not realistic for people in New
6 York City to go to Long Island to hear what's being
7 said and I don't even know if there's gonna be
8 testimony; do you know what I mean?

9 NICOLAS STORELLI-CASTRO: Right. No and...
10 and these... these events are under development; I...
11 like I said, we don't have the schedule in front of
12 us, but they're... you know we... we have a... since we're
13 a State agency we have a certain separation from the
14 local level and we depend on organizations like the
15 PTA to help connect us to parents; we... So these are
16 under development and what I can tell you is that
17 they'll be in the various regions of the State and I
18 will share the schedule when it's finalized.

19 CHAIRPERSON JACKSON: So... but I'm sort of
20 hearing that the State Education Department does not
21 plan on holding or engaging parents themselves in
22 this process... [crosstalk]

23 NICOLAS STORELLI-CASTRO: Well this is a...
24 this is an opportunity to engage parents; we... you
25 know, we don't... you know, we don't have this... the

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2 opportunity to hold a hearing like you have, but we
3 do have an opportunity to go to regions and listen
4 and we depend on organizations like the Parent
5 Teacher Associations to help connect us with parents,
6 they help do that; we don't have as great a presence
7 on the local level as we can; we have regional
8 offices, obviously; we're based in Albany, but
9 organizations like the Parent Teacher Association
10 help connect us.

11 CHAIRPERSON JACKSON: So for example,
12 this could be taken as one of the hearings in New
13 York City, since we are a body that can hold
14 hearings, we're hearing from you, we heard from the
15 City Comptroller, we're gonna hear from advocates and
16 parents; I just... it just... it sort of like baffles me
17 that the Commissioner cannot hold hearings, regional
18 hearings around the State on a very important matter.

19 If you know; does the State Education
20 Department feel that this is a very important issue
21 that has widespread interest from parents around the
22 State or is it miniscule as far as the number of
23 people that are raising this issue and it's only
24 regional, for example, maybe New York City and maybe
25 Long Island, if you have an opinion on that?

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2 NICOLAS STORELLI-CASTRO: I think we
3 understand that there's unnecessary... we believe
4 there's unnecessary fears about this issue, we hear
5 them, believe me, we got an e-mail campaign; we
6 received letters from the Comptroller, we have
7 received letters from your colleagues; obviously
8 there's legislation; we're not blind to that. I
9 think what we're here to do is to allay some of those
10 unnecessary fears; I think there's been many factual
11 inaccuracies that have been stated about what we are
12 doing and inBloom and we're here to allay those
13 fears.

14 CHAIRPERSON JACKSON: I know that some
15 people raised the issue and Comptroller John Liu
16 indicated that... [interpose]

17 [background comment]

18 CHAIRPERSON JACKSON: Sorry... Sergeant; is
19 there other meetings taking place in here? Okay.

20 [background comment]

21 CHAIRPERSON JACKSON: So, I... the issue of
22 breach of security I've heard raised about possible
23 litigation and with possible lawsuits; who will be
24 responsible legally and financially if the data leaks
25 out of the storage or during the transmission, if

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2 that has been discussed with inBloom, since we're
3 still in the, I guess stage of the trial ar... trial
4 stage?

5 KEN WAGNER: So each of our contracts,
6 contracts with the vendors that I described before,
7 as well as our contract with inBloom, talks about
8 data security and privacy protections and then what
9 happens if there is a breach. FERPA also has
10 provisions for what happens if these things happen,
11 if data security and privacy is not protected
12 adequately, which includes both actions that have to
13 be taken to correct the breach and to move forward
14 from that point, as well as potential for punitive...
15 as well as the potential for punitive actions.

16 CHAIRPERSON JACKSON: 'Kay, we're gonna
17 turn to my colleague, Ruben Wills and I... let me thank
18 you for your cooperation and communicating to the
19 extent you can in responding to our questions and
20 concerns about this very important matter. Council
21 Member Wills.

22 COUNCIL MEMBER WILLIS: Thank you; I just
23 have a few questions. The first question; you just
24 testified that you believe that these fears are
25 unnecessary, but then you also said that there is

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2 legislation to deal with the issue of letters from
3 electives... testimony from the Comptroller John Liu,
4 as well as the e-mail campaign?

5 NICOLAS STORELLI-CASTRO: Yeah.

6 COUNCIL MEMBER WILLIS: Comptroller John
7 Liu testified that Louisiana, Kentucky, Georgia,
8 North Carolina; Delaware have all since withdrawn
9 from the project due to privacy concerns; do you
10 dispute that?

11 NICOLAS STORELLI-CASTRO: Ken can... he
12 addressed that at the beginning of the hearing and...
13 [interpose]

14 COUNCIL MEMBER WILLIS: But is that true?

15 NICOLAS STORELLI-CASTRO: Ken would...

16 [background comment]

17 COUNCIL MEMBER WILLIS: It's either yes or
18 no. Is it true?

19 KEN WAGNER: It's not an accurate
20 portrayal of the situation.

21 COUNCIL MEMBER WILLIS: So they have not
22 withdrawn?

23 KEN WAGNER: As I explained, four out of
24 the five states were only sitting at the table
25 through the end of December 2014; of the five states

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2 that were committed to doing something through
3 December 2014, to my knowledge, only one of those
4 five is currently on pass.

5 COUNCIL MEMBER WILLS: So the other four
6 have not done anything, whether they withdrew or they
7 just decided not to go forward, they're not involved
8 anymore; is that correct... [interpose]

9 KEN WAGNER: The other... the Louisiana,
10 the Georgia, the Delaware and the Kentucky?

11 COUNCIL MEMBER WILLS: Yes.

12 KEN WAGNER: They were never expected to
13 do anything through December 2014.

14 COUNCIL MEMBER WILLS: Jefferson County
15 in Colorado agreed to allow parents the right to opt
16 out; is that correct?

17 KEN WAGNER: You're... you're telling me
18 it's correct.

19 COUNCIL MEMBER WILLS: No, I'm asking you
20 is it correct?

21 KEN WAGNER: I don't... I do not know if
22 that's correct.

23 COUNCIL MEMBER WILLS: Okay. By
24 inBloom's own admission it cannot guarantee...
25 [crosstalk]

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2 CHAIRPERSON JACKSON: And... and... one
3 second please. Ken... One second please. So Ken... I
4 hope you don't mind if I call you Ken...

5 KEN WAGNER: Please.

6 CHAIRPERSON JACKSON: Ken, so... I would
7 think that you would have some knowledge about that;
8 you have heard that they opted out; you may not can
9 guarantee for a fact they have; is that correct,
10 when... or you have no knowledge whatsoever?

11 KEN WAGNER: My knowledge of... [interpose]

12 CHAIRPERSON JACKSON: You know what I
13 mean and...

14 KEN WAGNER: Colorado... [interpose]

15 CHAIRPERSON JACKSON: Yes; go ahead.

16 KEN WAGNER: is that they have been
17 participating in this project from the beginning;
18 there's a particular school district, Jefferson
19 County, that's been a very enthusiastic participant;
20 the last I saw in Colorado is I believe the President
21 of their Teacher's Union wrote a public letter
22 endorsing the project, but the assembly... the Council
23 Member is mentioning that they may have allowed an
24 opt-out; I don't know if that's something that
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2 happened recently, but I'm being genuine, I don't
3 know if that's correct.

4 CHAIRPERSON JACKSON: Okay. Okay, that's
5 fine and that's... that's what I wanna know. [laugh]

6 COUNCIL MEMBER WILLS: By inBloom's own
7 admission they cannot guarantee the security of the
8 information stored in inBloom or that information
9 would not be intercepted with it being transmitted;
10 is that true?

11 KEN WAGNER: That's... it's not an
12 admission; it is a statement of... [interpose]

13 COUNCIL MEMBER WILLS: Of fact.

14 KEN WAGNER: fact that no... [interpose]

15 COUNCIL MEMBER WILLS: By inBloom?

16 KEN WAGNER: No, by any vendor who
17 provides data security and privacy protections...

18 [crosstalk]

19 COUNCIL MEMBER WILLS: I'm not asking... I
20 just wanna know if inBloom made that statement of
21 fact, not any other vendor, we're talking about
22 inBloom; did they make the statement of fact?

23 KEN WAGNER: Did they make which
24 statement of fact?

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2 COUNCIL MEMBER WILLIS: The statement of
3 fact that they cannot guarantee the security of
4 information stored?

5 KEN WAGNER: I believe that text is
6 posted on their website.

7 COUNCIL MEMBER WILLIS: Okay. Wireless
8 Generation/Amplify's parent company, News Corporation
9 is in the midst of several high-profile criminal
10 trials in the UK for egregious privacy violations and
11 seems likely to undergo... well egregious privacy
12 violations; is that true?

13 KEN WAGNER: Is what true?

14 COUNCIL MEMBER WILLIS: The statement I
15 just made; is that true?

16 KEN WAGNER: Could you please...
17 [interpose]

18 COUNCIL MEMBER WILLIS: from the
19 testimony... Compt...

20 KEN WAGNER: Could you please repeat the
21 question?

22 COUNCIL MEMBER WILLIS: Comptroller John
23 Liu's testimony stated that Wireless
24 Generation/Amplify's parent company, News Corporation
25 is in the midst of several high-profile criminal

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2 trials in the United Kingdom for egregious privacy
3 violations.

4 KEN WAGNER: So I'm aware of a voicemail
5 hacking incident from over a decade ago; that's what
6 I'm aware of.

7 COUNCIL MEMBER WILLIS: Okay, so then if
8 that... if any of those things are true... A recent
9 report... also he said the data security threats in the
10 health sector finds that settlements have the
11 potential to reach \$7 billion annually. If any of
12 these are true, even one out of the seven things I
13 stated, then how can you say that these fears are
14 unnecessary... these things are unnecessarily believed
15 to be fears?

16 NICOLAS STORELLI-CASTRO: Well Council
17 Member, we can provide some of the testimony that we
18 opened the hearing with, which... where we described
19 that... [interpose]

20 COUNCIL MEMBER WILLIS: And I do
21 apologize for being late; I... [crosstalk]

22 NICOLAS STORELLI-CASTRO: Yes, I... I... I
23 understand, I understand. But I think that would've
24 helped to allay some of your fears about the system.
25 Right now Ken can speak about this more eloquently

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2 than I can; I'll try to summarize. We have a
3 patchwork of 700, you know, districts in the State
4 that use data systems; what we're trying to do
5 through the EngageNY Portal is to provide an
6 efficient tool that has top of the line security for
7 school districts throughout the State; right now
8 those security issues are handled locally; we'd like
9 to... what we can do at the State level is provide a
10 uniform encrypted data system that can help improve
11 instruction for college and career readiness; I...
12 [interpose]

13 COUNCIL MEMBER WILLIS: But I don't
14 understand how the State would presume that they can
15 provide such a database for all the local school
16 districts, includin' New York City when you just
17 testified that you weren't going to be able to or you
18 may not be able to guarantee there will be hearings
19 in every one of those local school districts.
20 Shouldn't those local school districts have a stake
21 in what you're doing and have participation in it?

22 KEN WAGNER: School districts have been
23 part of this process since the beginning... [crosstalk]

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2 COUNCIL MEMBER WILLIS: No, but I'm asking
3 about the hearings that the Chairman just asked about
4 less than 10 minutes... [crosstalk]

5 KEN WAGNER: So... so...

6 COUNCIL MEMBER WILLIS: Do not... do not...
7 [crosstalk]

8 CHAIRPERSON JACKSON: And hold on one
9 second please. Audience, hold your comments to
10 yourself; if you're gonna speak at a hearing you can...
11 you can express your disagreement; do not yell out in
12 the hearing please.

13 KEN WAGNER: So the suggestion that there
14 be more local engagement is well taken and noted.
15 Thank you.

16 COUNCIL MEMBER WILLIS: Okay. inBloom,
17 you testified that the information would be destroyed
18 if a school district opted out of it from that
19 particular vendor, the dashboard vendor; am I
20 understanding that correctly?

21 KEN WAGNER: No... [crosstalk]

22 COUNCIL MEMBER WILLIS: No...

23 KEN WAGNER: So there's two different...
24 there's two different places where the data could be
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2 stored; one is in the underlying inBloom system and
3 the other is... [interpose]

4 COUNCIL MEMBER WILLIS: Oh...

5 KEN WAGNER: in the underlying inBloom
6 system and the other would be for the vendor that the
7 school district gave authorization to display those
8 data. If a school district elected to no longer
9 continue the services of the data dashboard vendor
10 for display purposes, that data dashboard vendor
11 would need to destroy the information. If the school
12 district sent... and this didn't come up before... if the
13 school district sent supplemental data, beyond what
14 the State provided to the underlying inBloom system
15 consistent with their own local policies, then at the
16 time that they withdraw from the inBloom system,
17 those data would need to be destroyed. The only time
18 the underlying data provided by the State would be
19 destroyed is if the State terminated its relationship
20 with inBloom.

21 COUNCIL MEMBER WILLIS: But in the
22 meantime, if inBloom sold that data to a private...
23 [crosstalk]

24 KEN WAGNER: inBloom is not permitted to
25 sell the data or use it... [crosstalk]

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COUNCIL MEMBER WILLIS: Who sells...

KEN WAGNER: for any other commercial purposes.

COUNCIL MEMBER WILLIS: How do... who gets... how does the data get to the private companies that may wanna use the products... [crosstalk]

KEN WAGNER: Yeah, so consistent with local school district processes now, where local school districts engage in individual contractual relationships with for-profit vendors for the purpose of displaying data, similarly the State engaged in a procurement process where we've awarded contracts to vendors for these purposes and these purposes only.

COUNCIL MEMBER WILLIS: So the information that's gathered by inBloom, would that information then later be sold to for-profit companies that have contracts through procurement for the State?

KEN WAGNER: Data can only be used for its contract purposes. So... [interpose]

COUNCIL MEMBER WILLIS: But the information could... would be sold... [crosstalk]

KEN WAGNER: Data o...

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2 COUNCIL MEMBER WILLIS: I'm sorry; I'm
3 just tryin' to get my question out while you're
4 answering it.

5 KEN WAGNER: Sure.

6 COUNCIL MEMBER WILLIS: So my question is;
7 will there be any other place besides inBloom, and
8 I'm calling it the cloud; correct me if I'm wrong, in
9 their cloud that this information would exist?
10 Because what I'm not understanding is; if the
11 information goes out to someone who is a for-profit
12 company and the State discontinues its contract with
13 inBloom, is there ever going to be an instance where
14 that information is now with another company because...
15 [interpose]

16 KEN WAGNER: Gotcha.

17 COUNCIL MEMBER WILLIS: they purchased it
18 and if that's true, how do you tell the company that
19 purchased the information that they have to now
20 destroy it?

21 KEN WAGNER: So companies do not purchase
22 the student data. School districts are not allowed
23 to sell their data to companies. What happens is,
24 companies contract with school districts for contract
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2 services which may involve storing and displaying
3 data.

4 The only way that a data would go to
5 another provider outside of the State's contracts
6 would be if a school district used inBloom as a
7 provider to contract with another vendor for display
8 purposes.

9 So for example, we're not providing an
10 extra help math software tool. Maybe a school
11 district wanted to contact with a vendor for an extra
12 help math tool and as part of that contract they
13 provided data to that vendor so the vendor could
14 provide their services. That would happen as part of
15 a local contract and that local contract should
16 include provisions that when that contract is over
17 those data need to be destroyed as well. So no data
18 are sold, but rather data are exchanged if they're
19 consistent with contracts by which data will be
20 displayed for contract purposes. If the contract is
21 correct, then it would have a provision for those
22 data to be destroyed upon termination.

23 COUNCIL MEMBER WILLIS: So...

24 CHAIRPERSON JACKSON: 'Kay.
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2 COUNCIL MEMBER WILLS: are there any
3 additional pieces of information that are not given
4 now as part of the ARIS system or any other system
5 that the State has that will be now extracted or
6 data-mined to go in with this new inBloom procedure?
7 Like let's say single mothers, things that we've
8 read, information on single mothers, information on
9 the child's behavior or their behavior records and
10 things like that; are there anything else that has
11 not been typically given that will now be extracted
12 or data-mined for this new project... new project?

13 CHAIRPERSON JACKSON: This project does
14 not involve data mining, this project involves the
15 contractual transfer of data for specific contracted
16 purposes; none of our contracted purposes are for
17 data mining services. So if the question is whether
18 or not as part of this project data will be exchanged
19 outside of any legally executed contract, then the
20 answer to that question is no.

21 COUNCIL MEMBER WILLS: So the information
22 that we received that they'll be getting information
23 on immigrant and migratory... where did [crosstalk]

24 NICOLAS STORELLI-CASTRO: Council Member...
25 [crosstalk]

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CHAIRPERSON JACKSON: Alright...

NICOLAS STORELLI-CASTRO: this is another question that I addressed earlier... [crosstalk]

CHAIRPERSON JACKSON: 'Kay, Council Member, uh...

NICOLAS STORELLI-CASTRO: which was that... I'm sorry... [interpose]

CHAIRPERSON JACKSON: Council Member... Council Member, many of these questions have been asked and answered already and I apologize to you, but pressure's bein'... [crosstalk]

COUNCIL MEMBER WILLIS: Alright, I yield my time; no problem.

CHAIRPERSON JACKSON: put on because of our time restraints.

COUNCIL MEMBER WILLIS: Okay.

CHAIRPERSON JACKSON: Thank you, Councilman. So we'd like to thank you for comin' in and responding to our questions and concerns; let me just express to you; this is a very important issue for us overall in the City Council of New York, understanding this is the largest school system in the State of New York and we look forward to working

1
2 with you in attempting to resolve the issues and
3 concerns that have been expressed here today.

4 KEN WAGNER: Thank you.

5 NICOLAS STORELLI-CASTRO: Thank you
6 Chairman.

7 CHAIRPERSON JACKSON: Thank you. Thank
8 you.

9 FEMALE VOICE: Can you by chance
10 requestion... [interpose]

11 CHAIRPERSON JACKSON: Sure.

12 FEMALE VOICE: to be held or town hall be
13 held... [interpose]

14 CHAIRPERSON JACKSON: So...

15 FEMALE VOICE: this what you probably
16 missed... [interpose]

17 CHAIRPERSON JACKSON: we can... yeah, we...
18 of course we can.

19 NICOLAS STORELLI-CASTRO: You can write
20 me any letter. Yes.

21 CHAIRPERSON JACKSON: Our next panel... and
22 we're scheduled to be into this hearing room till
23 1:00 and I've been asked what our timeframe is and
24 lookin' at the witness list hopefully we'll be able
25 to finish within half-an-hour.

1
2 Leonie Haimson, Class Size Matters,
3 Catherine McVay Hughes, CB 1... thank you... thank you...
4 Karen Sprowal, PS 75, District 3. Please come
5 forward.

6 'Kay, so the three of you, would you
7 please raise your right hand? And do you swear or
8 affirm to tell the truth, the whole truth and nothing
9 but the truth in your testimony before this Committee
10 and to respond honestly to Council Members questions?

11 LEONIE HAIMSON: We do.

12 CATHERINE MCVAY HUGHES: I do.

13 CHAIRPERSON JACKSON: Okay, good. You
14 may begin; just state your name and your position and
15 you may begin.

16 LEONIE HAIMSON: Well I'd like to start;
17 I've been asked to do a quick PowerPoint and I'm
18 going to do that, but I wanna start to respond to
19 some of the claims that the State Education
20 Department has made.

21 First of all, they have stonewalled any
22 requests for information about this from parents from
23 the beginning; we asked for hearings a year ago and
24 they told us it was unnecessary 'cause all this
25 information was in the public record. We went and

1
2 spoke to staff at this Committee, we spoke to the
3 Public Advocate's Office, we spoke to the City
4 Council Speaker, we spoke to the City Comptroller;
5 there was not one public official in New York City
6 who knew anything. And speaking with parents around
7 the country there was no parent in any of the inBloom
8 districts or states that knew anything about this.

9 Since then we have reached out to other
10 superintendents in New York State, principals in New
11 York State, elected school board members in New York
12 State, data specialists in New York State, none of
13 whom had been told that their information was going
14 to be shared; we're shocked and dismayed and oppose
15 this vociferously. A couple weeks ago Dr. Tom
16 Rogers, who's head of BOCES for Nassau County, who is
17 the top New York State Education Department appointee
18 said he was really opposed to inBloom; he thought
19 this was completely unnecessary; he couldn't get his
20 questions answered by the State Education Department;
21 this is a very top level appointee and the entire
22 governance and oversight of the use of this data is
23 completely different from anything that is done
24 currently and it needs more public oversight because
25 inBloom is a private corporation with a private

1 board. And he also... one thing we've learned from
2 speaking to superintendents and principals and data
3 specialists around the State is they do not do this
4 currently, they do have contracts with specific
5 vendors to provide some of the same data dashboard
6 tools that are being used now; however, they input
7 the data, the data dashboard company provides the
8 software and it is very rare and very unusual for the
9 data dashboard company to ever get access to the
10 actual personalized data and when it happens it's
11 because there's a software glitch or a virus, they
12 are given a temporary password to go in and fix and
13 then they leave.

14
15 So I have yet to find and speak to a
16 single district administrator or principal around the
17 State who is in agreement with this; I've spoken to
18 districts where they say that even though they're
19 being required by the State to sign up for these data
20 dashboards they are going to refuse to do it, because
21 they are so unalterably opposed to this.

22 By the way, they say the need for all
23 this data is to compare outcome data across districts
24 or to transfer the data from school to school when a
25 student transfers. None of this requires giving over

1
2 any data to inBloom; they can do their own
3 comparisons of outcome data, as they do now, they can
4 transfer the data across school districts when
5 students go across.

6 By... [chime] the... I just wanna finish... the
7 displaced homemaker, pregnant, immigrant data, it's
8 not required to be uploaded into inBloom, but it is
9 optional, according to the State's own data
10 dictionary, so they are actually recommending that
11 school districts do upload that and that information,
12 my understanding, when it's provided to the Feds now
13 for funding, there are no names attached. All this
14 is having names attached. None of the names attached
15 is necessary for anything that the State says they
16 want to do and the schedules have been already made
17 for the New York State PTA meetings and New York City
18 is not represented among those hearings; they were
19 scheduled and announced last week.

20 So now I'm gonna go to... [interpose]

21 CHAIRPERSON JACKSON: No... none of those
22 scheduled meetings are in New York City?

23 LEONIE HAIMSON: Not as of yet. I have
24 recommended that CPAC invite them and the District 2
25 CEC invite them, but so far there is no scheduled

1
2 meeting. And as I said, we ask... we've been asking
3 for the State to hold hearings for the last year...
4 [crosstalk]

5 CHAIRPERSON JACKSON: And how have you
6 asked; you've asked... have you asked in writing and
7 have you gotten... [interpose]

8 LEONIE HAIMSON: Yes, our attorneys asked
9 in writing, we asked for writing, parents e-mailed,
10 asked for writing; we invited them to come to our
11 town hall meeting in Brooklyn last spring; they came,
12 but they refused to answer questions, inBloom refused
13 to come at all; the only one answering questions was
14 DOE and they told us stuff by the way which is
15 contrary to what the State Education Department says
16 now, so I don't actually even know what's true, but
17 it's been a huge struggle to get information out from
18 them and they have actually stonewalled anything that
19 we have wanted in terms of information.

20 So now I'm having trouble with my Next
21 and I'm wondering if someone can help me with the
22 PowerPoint. All I can see is... is there any person
23 here who can help me with this? I can't... I can't go
24 to the Next. Alright, here it is.

1
2 So what is inBloom; some of this you
3 already know; it's a \$100 million company funded by
4 the Gates Foundation, the State has said districts
5 have to sign up for these data dashboards from three
6 companies that is going to be populated with data
7 from the inBloom cloud... [interpose]

8 CHAIRPERSON JACKSON: Sure.

9 LEONIE HAIMSON: All this data is going
10 to be shared with vendors to help them market their
11 learning products and the major contractor for the
12 inBloom cloud is Wireless Generation that I believe
13 got \$40 million to create the system.

14 This a little bit clumsy because I have
15 to point to each one; there's no slide show, so I'm
16 sorry about this.

17 CHAIRPERSON JACKSON: Okay. Just uh go
18 to... [interpose]

19 LEONIE HAIMSON: Alright. So the highly
20 sensitive data; we've been asking for that for over a
21 year; they did post their data dictionary in August
22 finally; we know the mandatory elements include
23 student names, addresses, phone numbers, e-mails,
24 grades, test scores and proficiency levels,
25 ethnicity, disability status, attendance and

1
2 disciplinary records. The information will include
3 records for students from the day they enroll in
4 public school through high school; that means up to
5 12 years of data and Tom Rogers, who's the BOCES guy
6 said one of the questions he couldn't get answered
7 is; will the data be destroyed when a student
8 graduates? And I think we can tell from the
9 testimony today that the data will never be
10 destroyed, no matter what unless the State ends their
11 contract with inBloom and the districts will have no
12 right over that data.

13 As I said, the State Education Department
14 is urging districts to share even more detailed
15 information, including health, 504, pregnancy
16 information, economic status, family structure and
17 immigration records... [interpose]

18 CHAIRPERSON JACKSON: What about their
19 race?

20 LEONIE HAIMSON: Yes, their race. Here
21 it goes... [interpose]

22 CHAIRPERSON JACKSON: And economic
23 status, so like the family earnings... [interpose]

24 LEONIE HAIMSON: The race is one of the...
25 first they said it was going to be required, now they

1
2 say it's recommended. I also got a call from a
3 school district on Long Island on Friday; I couldn't
4 talk to the guy, but the guy left a message, said
5 they're asking for parole status for students; that
6 is not verified, but that's what the data guy out on
7 Long Island said, who... from a district that
8 absolutely is up in arms about this data collection
9 and sharing.

10 If this information is leaked or is used
11 inappropriately could harm a student's future for
12 their entire lives.

13 Now of course inBloom says and the State
14 says it's gonna create this vibrant market in
15 personalized learning tools; Ken Wagner, who you saw
16 here this morning was quoted as saying it's going to
17 provide a magic mix that hasn't come together before.
18 Of course we've heard the same claims from ARIS and
19 it was a boondoggle, as the State Comptroller says;
20 the dashboards are also gonna include warning flags
21 and behavioral incidents. Here's a sample dashboard
22 from the inBloom video up on the screen; you can see
23 how character strengths and other personality issues
24 supposedly are gonna be on these data dashboards.
25 Eighty-six percent of technology experts say they do

1
2 not trust clouds to hold their organization's more
3 sensitive data. The security policy of inBloom says
4 they will not be responsible if the information leaks
5 out in storage or transmission. In April the
6 personal information of 50 million customers of
7 LivingSocial was hacked into; it was stored on an
8 Amazon.com cloud, just like this one; the company was
9 partly owned by Amazon.com and all this is being done
10 without parental consent or even notification.

11 Now FERPA was rewritten twice to
12 encourage and allow for sharing with contractors and
13 authorized agents without parental consent; they said
14 today that this is a critical issue, a core issue
15 that they need to share with this; then why are we
16 the only state in the country that's sharing all this
17 data with inBloom if it's really a core instructional
18 issue?

19 The U.S. Department of Education has been
20 sued in Federal Court for rewriting FERPA in ways
21 that violate the original intent of the law; if the
22 same exact data was stored in your child's health
23 care files, health care records or was obtained
24 through online usage it would be illegal to share
25 with any third parties without parental consent,

1
2 according to the HIPAA law and the COPPA law that
3 were recently passed. COPPA was... the regs were
4 recently written, HIPAA was passed a number of years
5 ago and we know the history and the record of News
6 Corp is totally scandalous.

7 So I wanted to talk briefly about issues
8 with the dashboards, even if there are no breaches,
9 because I think this is an area which has not been
10 significantly explored.

11 Minor incidents are going to be put in a
12 kid's permanent record and made easily accessible to
13 teachers now through the dashboards. There is a huge
14 amount of research that shows that teachers know
15 negative things about their students, either
16 academically or in terms of behavior; before they've
17 met them they tend to stereotype those students and
18 those issues become self-fulfilling prophecy and if
19 you tell a teach beforehand that a student is a low
20 achiever or who's tested low on a test... they've done
21 these random exercises, experiments; those kids will
22 end up doing worse on tests and worse on grades
23 because the teacher has it in its mind that that
24 child is a low performer. And so these expectations
25

1
2 tend to become reality, so even the dashboards in
3 themselves is a very dicey issue.

4 Five out of nine original inBloom states
5 have pulled out; say they are not gonna share any
6 data; what their original agreements were with
7 inBloom we don't know, but on the inBloom website
8 they did say over and over that these data sharing
9 agreements were made with nine states.

10 Jefferson County did announce last week
11 or the week before that they... because of protests
12 they're gonna allow parents to opt out, not just out
13 of the dashboards, but opt out of the entire inBloom
14 system. Massachusetts has told parents that they do
15 not plan to share the data any time soon with its one
16 small pilot district, ever and it was never planning
17 to do this statewide. Illinois does say it's going
18 to expand, but in my reading of the contract they're
19 allowing districts to decide whether they wanna
20 participate in this or not. And as you've heard,
21 they are not allow... the State is not allowing
22 districts to decide, they are not even allowing the
23 information to be pulled out, even if they do not
24 sign with any dashboard companies, which makes no
25 sense to me whatsoever.

1
2 And so we're the only state in the
3 country that's doing this statewide for all public
4 school students whether parents like it or not and
5 whether districts like it or not.

6 inBloom does say it's gonna start
7 charging for its services, \$2 to \$5 per year in 2015,
8 an additional \$1 to \$3 per year for the data
9 dashboard tools, additional fees are going to be
10 charged if districts sign up for these interoperable
11 software tools which is supposed to be the whole
12 point of this project. And then the liability for
13 the state or district if there are breaches is huge.

14 And now for the issue of selling student
15 data, because I have never said that they are selling
16 student data; however, they recently announced,
17 inBloom, that they are exploring charging vendors
18 access to the data. So if that's not selling data
19 it's something very similar, it's like renting it
20 out; they desperately looking for funds to become
21 self-sustainable in 2015. More and more states, as
22 I've said, are pulling out; right now they are
23 looking to charge vendors for access to the data; in
24 my mind that is very similar to selling or renting
25 out our children's data for profit.

1
2 So here's just a sample of the racial...
3 this is from the inBloom website; you can see what
4 they're collecting, racial categories and economic
5 disadvantaged, foster care, student characteristics,
6 limited English proficiency; this is some of the
7 disability information and medical information that
8 they're collecting, developmental delay, what
9 athletics [chime], military, medical condition, even
10 learning styles.

11 And two bills were passed unanimously by
12 the State Assembly last session, they are slightly
13 different, they are slightly complicated; one would
14 bar redisclosures of personal student data without
15 consent, the other would bar any sharing with vendors
16 without allowing parental opt-out; the same bills
17 have been introduced in the Senate; we hope that they
18 will pass and we hope for the New York City Council's
19 support in pushing these bills forward. Thank you
20 very much for holding these hearings.

21 CHAIRPERSON JACKSON: You identified
22 yourself when you gave [crosstalk]

23 LEONIE HAIMSON: Yeah, sorry; I'm Leonie
24 Haimson from Class Size Matters. I always forget to
25 do that.

CHAIRPERSON JACKSON: Okay. Next please.

CHAIRPERSON JACKSON: Good afternoon

Chairperson Jackson, Council Member Brewer and Council Member Wills. My name is Catherine McVay Hughes; I'm Chair of Manhattan Community Board 1. We thank you for the opportunity to comment on this very important topic involving the protection of student privacy.

At our Community Board meeting on April 23rd, 2013 CB 1 passed unanimously a resolution expressing our very strong concerns about the agreement of the New York State and New York City Department of Education to share confidential student and teacher data with a corporation funded by the Gates Foundation called inBloom, Inc.

Our understanding is that this confidential data would include children's personal information, some of which is very sensitive. We're particularly concerned that the data store is being built by Wireless Generation, a subsidiary of Rupert Murdoch's News Corporation, which has been found to have illegally violated privacy in Great Britain and the United States.

1
2 In addition we're also concerned that it
3 cannot guarantee the security of the information
4 stored or that the information will not be
5 intercepted when it is being transmitted.

6 All of this is happening without parental
7 notification or consent; we therefore express support
8 in our resolution for A.6059/S, now 5932. Our
9 resolution also called for the New York State
10 Education Department, New York City Department of
11 Education to immediately, 1. notify parent of these
12 impending disclosures and provide them with the right
13 to consent before their children's information is
14 shared, 2. hold public hearings to explain the point
15 of these disclosures and hear the concerns that
16 parents and privacy experts about how this plan risks
17 children's privacy, security and safety, 3. pledge
18 the privacy rights of public school children and
19 their families will be represented of the interests
20 of the Gates Foundation, inBloom, New Corporation or
21 any other company or organizations and 4. remove all
22 health, disability and personal information,
23 including name, gender, social security number and
24 age from the database.

1
2 We hope the members of this City Council
3 Education Committee and all members of the Council
4 will pass Resolution 1768-2013. Thank you very much.

5 CHAIRPERSON JACKSON: Thank you. Next
6 please.

7 KAREN SPROWAL: Yeah. Hi, my name is
8 Karen Sprowal and I know you asked that we summarize
9 and not read, but this is such an emotionally charged
10 subject for me that I'm gonna read so I won't be all
11 over the place and again, thank you so much for
12 holding this hearing and allowing actual parents to
13 speak and testify in testimony.

14 My name is Karen Sprowal; I'm speaking
15 with you today as a public school parent who's
16 absolutely outraged about this backroom data deal
17 with the State Education Department made with inBloom
18 to share my son's confidential student records with
19 private vendors.

20 In this deal our children's identifiable
21 school records have been given to private corporation
22 funded by the Gates Foundation, as you heard earlier
23 today. My son Matthew has special needs and requires
24 a high level of support in and outside of his school.
25 It is imperative that I and his doctors partner

1
2 closely with his teachers, the school nurse,
3 principal, guidance counselor and other school staff
4 in order to ensure that he thrives.

5 Much of the information that I share with
6 the school requires signed medical releases under the
7 medical protection laws of HIPAA. Like most young
8 developing children there's a great deal of sensitive
9 data in his school record dating all the way back
10 from when he was in kindergarten to 5th grade that if
11 the information was misused in any way or made public
12 could cause serious harm for my son.

13 The New York State Education Department
14 has already uploaded these records, stored them in a
15 databank built by Wireless Generation, run by the
16 former School Chancellor, Joel Klein. His
17 identifiable records can now be shared with third
18 parties and for-profit companies without parental
19 consent; any notification of with whom they are
20 sharing this information with. I can tell you this
21 will profoundly change the information that I share
22 with his school.

23 I am his legal guardian; no one but me is
24 supposed to decide what is shared about my child and
25 whom it's shared with; as his mother, I am the one

1
2 who should be accessing the risks and decide what's
3 necessary to disclose to whom and for what purposes;
4 these personalized learning technologies are only
5 experimented with public school education children,
6 there are no private schools that are signing up for
7 this crap and so one needs to seriously ask why.

8 My son's school has met the criteria to
9 qualify for Title I funding for years now; however,
10 due to parent's mistrust of the DOE many qualifying
11 parents refuse to complete these annual lunch forms.
12 Me and a group of PTA parents were able to manage to
13 persuade them to fill out the forms only after a huge
14 outreach initiative led by the PTA. We reassured
15 them that their sensitive financial information would
16 only be used for the school's Title I assessment;
17 that is now a lie. The data will be now on a data
18 cloud that's run by Amazon.com who's also in this
19 deal. This year will be our school's first year of
20 qualifying for the much needed Title I funds and as
21 more parents become aware of this inBloom deal they
22 will not come forth and disclose this personal
23 information. This will 'cause many of the neediest
24 school districts like mine millions lost in Federal
25 funds.

1
2 The same problem applies to Medicaid
3 funding; the City has lost hundreds of millions of
4 dollars in recent years because they haven't gotten
5 reimbursements for special education services through
6 Medicaid, now parents will also be far more reluctant
7 to sign these forms; I have one in my bag right now
8 that I haven't filled out, [chime] knowing that the
9 information will be shared widely... I'm almost
10 finished; I'm about to wrap up; bear with me... perhaps
11 knowing that the information could be widely shared
12 and perhaps breached.

13 The New York State Education Department
14 has completely once again marginalized the roll of
15 parent and has trampled on the rights of our children
16 with this deal. There has been no prior parental
17 opt-out provisions, notifications, consent forms or
18 no public hearings held. Commissioner King's
19 response to my letter has been that there's no need
20 for parental consent; it's not... and this is not
21 acceptable. Recent FERPA laws has changed, have
22 changed... has created loopholes used to hatch this
23 scheme, hopefully, not for the intent to sell our
24 kids' confidential information or records to for-

1
2 profit corporations, because our children's records
3 are not a commodity and they're not for sale.

4 I'm not gonna go into the States that
5 have pulled out, but New York State is the only state
6 still moving forward and sharing all of the data
7 despite parent outrage and the serious security risks
8 involved in the data cloud. I urge you to pass this
9 resolution and urge legislation to pass the bills
10 that are currently on about redisclosure and parents'
11 right to opt out.

12 There have been identical versions of the
13 bills that have been introduced in the State Senate;
14 this is an awful deal that has nothing to do with
15 personalized education, but yet another very
16 lucrative payday for-profit companies that would
17 benefit people like Joel Klein, the Gates Foundation,
18 Murdoch and many other companies. Thank you very
19 much.

20 CHAIRPERSON JACKSON: Thank you and we
21 thank all three of you for coming in. So what I
22 gather from the testimony is that, that there's a
23 lot'a opposition from this particular matter, privacy
24 information being shared, unnecessary information
25 bein' uploaded and that you haven't really gotten

1
2 appropriate answers from the Department of Education,
3 the State Education Department, in Bloom's refusal to
4 attend any type of meetings or hearings to shed light
5 on it so that, for example, to answer your questions
6 or concerns and maybe you may say oh, I now
7 understand, but they have not even been willing to
8 come to a meeting; is that my... [interpose]

9 KAREN SPROWAL: No.

10 CHAIRPERSON JACKSON: am I right, a
11 hearing?

12 LEONIE HAIMSON: So... yeah. So last
13 October we held a press conference and we then asked
14 for hearings and they said no, it was in the public
15 record; then we generated over 3,000 signatures to
16 the Governor in two weeks; we met with the Governor's
17 guy after a lot of prod and he said he would get us a
18 meeting with the State Education Department; then he
19 came back and he said, "I'll get you a meeting with
20 the State Education Department if you promise not to
21 bring your attorney," I said, fine. He said, "They
22 won't meet with you, but they'll answer your
23 questions within five business days." I said, fine;
24 I sent them the questions; they said... he came back;

1
2 he said, "John King's not gonna answer your
3 questions."

4 CHAIRPERSON JACKSON: In my opinion
5 that's totally unacceptable to not only you, but to
6 me as a Chair of the Education Committee and I would
7 assume to every member of the City Council. I think
8 that legitimate questions deserve appropriate
9 answers, especially when they're storing all of our
10 children's information into a system that they say is
11 only gonna be shared with the... the school... State of
12 New York through the State Education Department and
13 through one of the three vendors for the dashboard.

14 But as you indicated, Miss Haimson, that
15 inBloom is looking at trying to either sell or give
16 part of that information to outside vendors and we
17 don't even know who, when, where; how much they're
18 gonna charge and it's basically our kids' information
19 that has been given to them by the State Education
20 Department.

21 LEONIE HAIMSON: So the whole purpose of
22 inBloom was to commercialize this data and to create
23 a market in software tools that... from companies who
24 would get access to the most personalized information
25 and that they would be interoperable with the

1 dashboard. So far we've only heard about the
2 dashboards, we haven't heard about all the other
3 software tools that are supposed to be signed onto
4 and will be developed with money from the Gates
5 Foundation and inBloom by for-profit vendors.

6
7 And I just wanted to make... just...
8 something just slipped through my mind I was gonna
9 say about all this; they... we... you know we tried to
10 get information from the State; we ended up crashing
11 an inBloom learning camp, which was then called the
12 Shared Learning Collaborative... [interpose]

13 CHAIRPERSON JACKSON: And...

14 LEONIE HAIMSON: and they kept on... we got
15 more information from the Gates Foundation; they were
16 running it at the time, and the woman who is now the
17 Chief Operator Officer for inBloom, Inc. worked for
18 DOE and ran the ARIS project; her name is Sharon
19 Bates and she lives in Brooklyn.

20 So I was explaining to... first she said,
21 "You don't have to worry, because the customer's
22 gonna make all the decisions about who gets the
23 data." And we said, "Well who's the customers?" And
24 she said, "The District." And we said, "Who is the
25 District?" And she said, "The Chancellor." And so

1
2 we said to her, well you know, parents don't
3 necessarily trust the Chancellor to make these
4 decisions about the use of our children's most
5 private data and we don't think he really has the
6 right to make those decisions. And then I explained
7 to her at great length how many of the same promises
8 were made for this \$100 million ARIS project, which
9 has turned out to be a complete boondoggle, so we
10 don't really believe in the benefits of these
11 dashboards and all these interoperable learning
12 tools. And she shook her head like this, you know,
13 and lit... and I thought she really wasn't aware of New
14 York City at all and what our... you know, very
15 difficult relationship has been with the Department
16 of Education and the Chancellor and the lack of trust
17 and the lack of respect that's given to parents'
18 rights under this Administration. And then when I
19 went back and looked up her name, I realized that she
20 worked for DOE for years and actually ran the ARIS
21 project, but over and over they say two things in the
22 materials of SED and also inBloom, which is this is
23 compliant with FERPA... [interpose]

24 CHAIRPERSON JACKSON: Uhm-hm.
25

1
2 LEONIE HAIMSON: which for most people
3 makes you think that there are real privacy
4 protections and parental consent, which there isn't,
5 and then they say, oh well, the vendors are not gonna
6 do anything that the customers don't allow. And then
7 they are very imprecise about who the customers are.
8 And the point is that parents are completely written
9 out of this equation. And what's even more
10 interesting, in other parts of the State where they
11 have elected school boards and parents actually think
12 that they have rights to determine these things,
13 they're gonna find out now that all their kids' data
14 is being shared with inBloom as well whether or not
15 their data is signed up for the dashboards or not and
16 they have no rights either. And I can tell you that
17 it's a huge statewide issue; it is an issue for both
18 parties, Democrats and Republicans; since we've
19 started talking about it the Tea Party has taken it
20 on and actually there's a platform in the Republican
21 National Committee saying that student data should
22 not be shared without parental consent. So it's
23 really important that progressive people from the
24 left, when no matter what your political stripe is,
25 no matter what your political opinions are, this is a

1
2 horrifying prospect to parents; inBloom is only the
3 tip of the iceberg; it is the worst example and the
4 truth is, there's a lot'a data sharing that's going
5 on without parental consent that is very dangerous;
6 inBloom happens to be the worse example of this.

7 CATHERINE MCVAY HUGHES: Can I also just
8 add is, what is an... [interpose]

9 CHAIRPERSON JACKSON: Please say your
10 name again.

11 CATHERINE MCVAY HUGHES: Oh, Catherine
12 McVay Hughes, Chair of Manhattan Community Board 1.

13 What is in place if some of the data is
14 even inaccurate about your child? How can that get
15 corrected? Because time and time again it takes
16 forever in other big databases to correct
17 information.

18 KAREN SPROWAL: Karen Sprowal, public
19 school parent. I just wanted to add that over this
20 summer CNN... my son and I were the focus of an inBloom
21 interview that was aired on CNN during the summer and
22 the initial interview was supposed to be an interview
23 that included Bill Gates and we were supposed to be
24 opposite of that and somehow or another that didn't
25 happen and it wound up just being a separate

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2 interview with Bill Gates and then an interview with
3 my son and I. And in it they... once again, it was a
4 spin, just as I saw here today, that parents don't
5 understand; if they understood the benefits of it
6 they would get that this is a good thing, and I'm
7 telling you, I followed this very closely for... since
8 we became aware of it and I do get it and I do
9 understand and I still say, I want my child opted
10 out; I don't want any part of this, because like... you
11 know, the more and more and more that we have read
12 about this and discovered research facts that are on
13 the inBloom site itself, it's not worth the benefits
14 that they claim that we're supposed to be getting.
15 Thank you.

16 CHAIRPERSON JACKSON: I've asked a
17 question for the State representatives and I ask you
18 the question, if you... if any one of you know the
19 answer; does the Assembly and Senate Bill have a
20 provision to either opt out or to... or you must have
21 consent of the parent before the information goes in,
22 one or the other?

23 LEONIE HAIMSON: Yeah, one of the bills,
24 the bill that is mentioned in the resolution allows
25 for parental consent before any redisclosures, as

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2 inBloom intends to do and full indemnification for
3 breaches and we believe that this would stop inBloom
4 in its tracks.

5 The other bill requires parental opt-out
6 with... before this personalized data is shared with
7 any vendor. Both bills, in my mind, would stop this;
8 they both have positive and negative aspects, but I
9 think that either bill would stop this deal and would
10 be very, very important to pass.

11 CHAIRPERSON JACKSON: And you indicated
12 that one bill has redisclosure, so meaning...
13 [interpose]

14 LEONIE HAIMSON: Right.

15 CHAIRPERSON JACKSON: that information
16 that's already been given, that they subsequently, as
17 far as... cannot after it's already given give anymore?

18 LEONIE HAIMSON: So inBloom was designed
19 to redisclose to vendors from the inBloom cloud and
20 so we worked with some privacy experts around the
21 country who thought it might be too difficult to
22 outlaw any disclosures, because some of these school
23 districts do have contracts and so the bill was
24 written to block any redisclosures, as inBloom does
25 without parental consent, so the disclosures of the

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2 information from the inBloom cloud to the data
3 dashboards or any other private companies would
4 require full parental consent and they would have to
5 indemnify for any liability of breaches or abuse of
6 data. So both those things together we thing would
7 stop inBloom.

8 CHAIRPERSON JACKSON: Let me thank all
9 three of you for coming in and this is a continuing,
10 ongoing, seems to be, battle.

11 LEONIE HAIMSON: Thank you very much.

12 CATHERINE MCVAY HUGHES: Thank you.

13 CHAIRPERSON JACKSON: Thank you. Our
14 next, Santos Crespo, Jr... Santos; I didn't even know
15 you were here, my brother. Huh?

16 SANTOS CRESPO, JR.: At the beam...

17 CHAIRPERSON JACKSON: I'm sorry;
18 President of Local 372, New York City Board of
19 Education of DC 37, Lisa Shore; what's this say, a
20 parent of an IEP student, Enrique Lopez on behalf of
21 Senator Brad Hoylman, Enrique; are you here? And
22 Ellen McHugh, for parent advocate. Excuse me; I'm...
23 allergy is kicking my butt this morning; I'm sorry.

24 Mr. President, please you may introduce
25 yourself... first of all, all three of, would you

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2 please raise your right hand to be sworn in? Do you
3 swear or affirm to tell the truth, the whole truth
4 and nothing but the truth in your testimony before
5 this Committee and to respond honestly to Council
6 Members questions?

7 SANTOS CRESPO, JR.: I do.

8 CHAIRPERSON JACKSON: 'Kay.

9 SANTOS CRESPO, JR.: Well, thank you
10 Chairman Jackson and the Education Committee; my name
11 is Santos Crespo, Jr. and I am the President of Local
12 372 of District Council 37 and I do represent over
13 25,000, support... members in the support service for
14 the Board of Education.

15 Before I do summarize my comment, I just...
16 I found this very interesting and I just kinda like
17 wanna do this quote by one of the most brilliant
18 minds of our time, Albert Einstein, who said, "I feel
19 that the day we surpass human interaction with
20 technology the world will produce idiots." And I
21 start there only because of what so far has
22 transpired in terms of testimony; how this can
23 possibly even, you know, have a life.

24 My members, who are entrusted to protect
25 our children and have dedicated their lives to doing

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2 so will not stand by idly and permit New York State
3 Education Department to partner with an outside
4 vendor to create a student data and third-party
5 application that compromises their privacy and in
6 fact has the possibility, the potential of
7 irreparable damage down the road, as some of the
8 members of the prior speakers alluded to.

9 Now... and given the fact that we are, you
10 know, and this so-called technology and everyday the
11 Federal Government has agents out there in rooms
12 similar to this trying to track down hackers because
13 they're going into our private information, to the
14 point that people have to... you know, on a regular
15 basis check to make sure that their identity remains
16 intact and yet we will consider exposing our children
17 and their family to such events and frankly, you know
18 our State and local governments do not have the best
19 track records you know when it comes to contracts
20 with third-party vendors. Examples of that was the
21 issue with the City Times fiasco, all the way up to
22 the Sudusko [phonetic] siphoning of cash from kids
23 and selling items to taxpayer on scrupulous vendors;
24 I mean we can go on and on and on.

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2 But also, Local 372 supports the
3 resolution that urges the legislators and government
4 to act and prevent the continuation of even going
5 into this avenue. You do have my... this is just my
6 summary; you do have the... my comments or my testimony
7 and I'll be more than happy to [chime] answer
8 questions.

9 CHAIRPERSON JACKSON: Well thank you; I
10 didn't even see you sitting there, so did you hear
11 any of the State Education Department officials'
12 testimony?

13 SANTOS CRESPO, JR.: Unfortunately not; I
14 was at a prior meeting before I did get here; I don't
15 even wanna guess as to what their responses would be...
16 [interpose]

17 CHAIRPERSON JACKSON: But you heard
18 Leonie Haimson?

19 SANTOS CRESPO, JR.: Oh absolutely and
20 you know what... [interpose]

21 CHAIRPERSON JACKSON: Okay.

22 SANTOS CRESPO, JR.: and I think she's
23 right on, you know, right on target. There are
24 parents you know that are... have called us wanting to
25 know where we're standing on this issue and

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2 obviously, I as a parent, who had children that went
3 through the system, I'm appalled that they would even
4 think to do that with private vendors. As it is,
5 I've got members that get... the data gets, you know,
6 caught up in the cyberspace and you know they buy
7 cars; they don't even know they bought a car, right,
8 'cause their identities have been stolen or
9 information has been given out, so I think, you know,
10 when it comes to children, I mean we need to really,
11 really backtrack very, very quickly and to us this is
12 again another money-making, you know, corporate
13 initiative that has no concern for human life in
14 terms of their privacy; it's again about the so-
15 called mighty dollar.

16 CHAIRPERSON JACKSON: 'Kay. Lisa Shore,
17 parent of an IEP student who... [interpose]

18 LISA SHORE: Hello Council... yes, I'm a
19 parent of four children in District 3 and District 6.
20 Shame on John King and the DOE for selling out all
21 the students of New York; smaller classes will
22 support children, not the data mining and dashboards.
23 As a parent of four students I'm overwhelmed with
24 disgust that the DOE is giving away my children's
25 private, personal information without my consent to

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2 be hosted on Amazon cloud to be shared with any
3 vendor.

4 It is a parent's intuition to protect
5 their children from the unspeakable, which is
6 inBloom. Why should everything a school knows about
7 my child be on a cloud, then sold to companies who
8 will profit off the data by marketing materials to
9 schools and probably parents. It claims to be safe,
10 but is anything safe on a cloud anymore? In fact
11 inBloom denies any responsibility whatsoever.
12 Private and essentially sensitive information that
13 could specifically identify and prove potentially
14 injurious to my children should not be disclosed
15 without my consent. Despite the weakening of privacy
16 laws, this is in fact criminal. Do parents have to
17 change their children's names and Social Security
18 Numbers to escape the long claws of inBloom dicing up
19 a child's life into 400 data points for the prying
20 eyes of any vendor? You're creating schools of
21 enemies who gather and enter the data, so my family
22 refuses to complete or sign any school forms that;
23 that includes the school lunch. I have e-mailed
24 Chancellor Walcott, Bloomberg; I have told them that
25 I deny my signature; I resend it for all Medicaid for

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2 related services for my children. I do not fill out
3 school forms for personal or private information; my
4 children also deny anything personal or private,
5 whether it's storytelling, whether it's writing in
6 the school.

7 Why should a child's IEP classification
8 follow them to their career when many children can
9 grow out of disabilities or classifications. Also,
10 there is no checks and balances to confirm the data
11 is correct by parents in inBloom. Unchecked private
12 information, especially which could unfairly
13 prejudice educational institutions and potential
14 employers against a student is unethical. I'm
15 worried for children who have Imps or who are in
16 foster care, English language learners and others;
17 who are speaking for those children? Parents are
18 frustrated by the non-consensual use of their
19 students' data. Rediscovery of data to unlimited
20 parties bypasses parental rights; these are my
21 children, not the ward of the State or the Federal
22 Government. Small class sizes will increase
23 students' knowledge, not expensive data mining that
24 will line the pockets of Gates, Murdoch or Pearson.

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2 I just wanna know; where is the parent's
3 view in all of this? I have e-mailed and have
4 contacted everybody, from Ken Wagner, who basically
5 never replied to me over and over, [chime] Walcott,
6 Bloomberg, ACLU, the Federal Department of Education;
7 telling them that I decline consent for my children
8 to be in this and I have never received answers to my
9 question; I've been to the CEC's three meetings
10 asking them questions, I went to the town hall
11 meeting with Walcott and I asked him personally; he
12 had no answer for me. So they're stonewalling and
13 not giving parents any input. I asked Walcott, "Why
14 haven't you backpacked home a letter to parents,
15 telling them about all this personal information
16 that's gonna be hosted in a cloud?" and he refused to
17 answer me.

18 So I'm very frustrated, I cannot sleep at
19 night; I'm desperately trying to find a private
20 school to avoid the data mining; I'm looking at
21 pulling my children out of New York City, out of New
22 York State and thinking about continuing education
23 even overseas, because I wanna avoid classifying my
24 children by their IEPs when they're 4 or 6 or 7 years
25 old and this information, as Wagner said, once it is

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2 in inBloom and with the Federal Government, it will
3 never be taken back. So it's frightening to me and
4 other parents.

5 CHAIRPERSON JACKSON: Thank you. Next
6 please.

7 ENRIQUE LOPEZ: Good afternoon, my name
8 is Enrique Lopez and I'll be reading testimony on
9 behalf of State Senator Brad Hoylman.

10 "Thank you, Chair Jackson, Council Member
11 Wills of the Committee on Education; I represent New
12 York State's 27th Senate District, which includes the
13 neighborhoods of Clinton, Hell's Kitchen, Chelsea,
14 Greenwich Village, the Upper West Side, Midtown, East
15 Midtown, the East Village and Lower East Side, as
16 well as 21 public elementary schools, five public
17 middle schools and 39 public high schools. I greatly
18 appreciate your holding this hearing on student
19 privacy, an issue extremely important to me and the
20 families in my District. I'd also like to thank my
21 colleagues in the State Legislature, Assembly Member
22 O'Donnell and Senator Grisanti for introducing State
23 Legislation of which I am a co-sponsor that would
24 generally prohibit the release of students'

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2 personally identifiable information to third parties
3 without parental consent.

4 I share the serious concerns I have heard
5 from constituents who were very disturbed to learn
6 earlier this year that the New York State Education
7 Department planned to share confidential student data
8 with the non-profit corporation, inBloom, Inc., with
9 which State Ed. Contracted to provided a K-12 student
10 database. New reports suggested that for-profit
11 companies and other commercial vendors could have
12 access to this data and that inBloom cannot guarantee
13 the security of the information stored.

14 This risk with inBloom or any other
15 outside entity is unacceptable. I recognize the
16 potential benefits of integrating technology in
17 education; that said, I strongly believe that our
18 state must not proceed with any initiatives, however
19 well-intentioned, that could compromise the privacy
20 of our public school students without giving parents
21 an opportunity to make informed decisions about their
22 children's participation. In fact, five of nine
23 states that originally planned to participate in the
24 student information sharing plan with inBloom have
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2 officially withdrawn the proposals amid privacy
3 concerns; New York should do the same.

4 Frankly, as a father of a young child who
5 will soon enter the public school system in the
6 coming years, I do not believe that any educational
7 value derived from the sharing of students'
8 personally identifiable information is worth the risk
9 of its potential misuse or leakage.

10 Further, I believe there are ways school
11 systems can harness technology for curriculum
12 tracking, overall student progress assessment and for
13 the application or qualification for Federal funds
14 without the disclosure of students' personally
15 identifying information.

16 In order to adequately protect students'
17 privacy rights I believe it is vital that the State
18 Legislature and the Governor pass Assembly Bill 6059,
19 Senate Bill 4284; I am proud to be a co-sponsor of
20 this important bill and thank the Council for
21 considering this resolution. Thank you for allowing
22 me to present testimony and for your consideration of
23 my remarks."

24 CHAIRPERSON JACKSON: I wanna thank all
25 three of you for coming in and I know many of you

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2 have listened to all of the information and I
3 appreciate that and obviously this is a serious issue
4 that is being considered by the State Assembly and
5 State Senate and now in front of a hearing in front
6 of the City Council and thank you all for coming in
7 and giving testimony. Thank you.

8 Our final hearing panel is Gloria
9 Corsino, I think, CD, School District 75 Council and
10 Joseph Mugivan, a teacher and kids. Is there anybody
11 else who wishes to testify this afternoon? Okay.
12 For the record, we received testimony from Dean
13 Parker, a CEC member from District 10. For the
14 record, we received testimony from Miss Michelle
15 Lipkin, Co-Chair of the Chancellor's Parent Advisory
16 Council. For the record, we received testimony from
17 President of District 75, Community Education
18 Council; she did not mention her name; is that
19 Gloria... is that... is that Gloria's testimony? Yeah.
20 It's Gloria; is that correct? Yeah, that's Gloria
21 Corsino. Janelle... Jan, what's her last name? 'Kay.
22 So that was her testimony. Excuse me; we have that
23 part of the record.

24 Joe, last but not least. My pleasure.
25 Do you swear to... affirm to tell the truth, the whole

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2 truth and nothing but the truth in your testimony
3 before this Committee and to respond honestly to
4 Council Members questions?

5 JOSEPH MUGIVAN: I do, Chairman Jackson;
6 it's so nice to see you again... [interpose]

7 CHAIRPERSON JACKSON: Thank you; my
8 pleasure.

9 JOSEPH MUGIVAN: It's been a long time
10 since I've testified. I was an advocate school
11 indoor quality for about 10 years and I worked with a
12 lot of City Council Members on concerns they had
13 where their schools were and whether the ground was
14 safe underneath them; I served on the Mayor's
15 Commission in opposition to Intro 0650, when they
16 wanted to limit the ability to do air quality testing
17 in schools and I was a signator to a letter to the
18 EPA Director, Lisa Jackson, which eventually labeled
19 TCE as a carcinogen and I was one of the signators on
20 that.

21 I am totally in support of the privacy
22 for children; as a former teacher I appreciate that.
23 I did wanna come from another direction, which was
24 that I'm concerned that your issue about student
25 information may be just a little too broad and that

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2 the issues relating to children's health record,
3 particularly in schools be excluded from that and
4 just to be labeled under the HIPAA Law.

5 Now the HIPAA Law we all know guarantees
6 our protection, but also there are exceptions to the
7 HIPAA Law which allow us to go in for... to do research
8 or for police action, where we can go in and get
9 those children's records without their permission so
10 in case there's an event in a school, such as a virus
11 or a vapor intrusion from a toxic site, we can go in
12 there... because I know from personal experience in my
13 school; I had become sick and I had medical records
14 from children who I believe were sick too and I told
15 the Department of Education I would not go back in
16 that school until there was an air quality test done
17 and the school immediately spent \$8 million to change
18 all of the ventilation system there and they sealed
19 up the basement so no vapors would come in and
20 subsequently I learned that there was a vapor
21 intrusion system under the school and it had been
22 turned off without any testing being done there.

23 So Bill de Blasio, he was furious when he
24 heard I was fired for awaiting an air quality test
25 and he wrote a letter calling for an investigation,

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2 which Miss Quinn immediately responded to and sent to
3 the City, but there were some legal actions there, so
4 that may have been delayed for that reason.

5 But in any event, I'm coming back and
6 it's been a long legacy of work I've done and I feel
7 that coming back here today and focusing on this
8 issue that we don't overstate what we want protected.
9 We want all our children's records protected, but
10 their health records, particularly in the schools, we
11 want the HIPAA Law to apply to them and be specific
12 about that so we can go in... and when we had the H1N1
13 virus, the symptoms of that virus were exactly the
14 same symptoms of toxic exposure to children and it
15 was a very unusual virus; I thought... I had my own
16 questions about it. But in any event, I really... I
17 feel good being here today and seeing you; I remember
18 seeing you at the Irish Festival for Miss Quinn and
19 you gave me a warm handshake and it was so great to
20 see you again, but in any event [chime], keep that in
21 mind and don't go overboard about what records you
22 wanna protect; children's health we can put under
23 HIPAA and then all the others we can ask the Governor
24 to sign off on.

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2 CHAIRPERSON JACKSON: Thank you Joe, it's
3 always good to see you... [interpose]

4 JOSEPH MUGIVAN: Thank you.

5 CHAIRPERSON JACKSON: and obviously this
6 is a very important issue and obviously, for myself,
7 listening to the testimony of the State Education
8 Department officials, but more specifically and more
9 importantly, from the advocates in the field and
10 parents that have basically educated and enlightened
11 myself and other members of the City Council and
12 obviously this is an issue that is not over, it's
13 just beginning and only being united will we win as
14 parent activists in trying to ensure the privacy of
15 our children's information. And as Leonie Haimson
16 said, when many teachers, most of them, they will see
17 that a child has difficulty in learning and has
18 achieved low in their scores, then they take the
19 position that their low achievement is a normal
20 factor instead of expecting high results from
21 children and then working so hard in order to make
22 sure that they achieve their potential.

23 So thank you for coming in and I thank
24 everyone for coming to this hearing this afternoon
25 and we have a lot more to follow up on collectively.

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2 But overall, proposed Resolution Number 1768-A has
3 had a flushing out of the hearing today in asking and
4 calling upon the State Legislature to pass and the
5 Governor to sign into law Assembly Bill 6059-A and
6 Senate Bill 5932; I believe Senate Bill 5930 is also
7 up there also. So hopefully we will be voting on
8 this within the near future, sending a message loud
9 and clear that this body, the City Council of New
10 York, wants these bills to be passed into law.

11 So I thank you, Joe and thank everyone
12 who testified for coming in; it is now... [interpose]

13 JOSEPH MUGIVAN: Thank you.

14 CHAIRPERSON JACKSON: 1:30 p.m. and this
15 hearing is hereby adjourned.

16 [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date _____ October 16, 2013 _____