

Dear Chair, Members of the Committee,

I, Lisa Huesers, am presenting in opposition to SB389.

In 2015, the Kansas Legislature passed the Student Data Privacy Act. At the time of its passing, it was heralded – by those who passed it – as a great day for Kansas children protecting their data and their privacy, hence its title. The reality is, it did very little. As a parent with kids in Kansas public schools for over 20 years, the only visible change occurred in relation to the Kansas Communities that Care Survey. An email was actually sent out to parents indicating a tiny ability to opt out. I refer to it that way because the email was mainly multiple sentences of praises for the survey and the administration’s perceived importance of all kids taking it, misrepresenting and failing to disclose the Kansas government department actually receiving the survey data, and its false anonymity (per the principal’s email, “It is completely anonymous.”). But the actual survey or a link to it was not provided and it was cursorily mentioned that a parent could opt their child out of taking it (after emphasizing the data being “extremely helpful”). It was innocuous enough, that parents really weren’t given adequate information to be able to make that decision.

The administration’s opinion/perspective on the importance of the kids taking the survey was not respectful or supportive of parents’ rights regarding their children. Based on the administration’s communication: (1) parents had no idea that each survey contained school district, building, county and region codes, and that the first 14 questions were about the demographics – NOT so anonymous, especially in all the small communities across Kansas, (2) parents had no idea how much their child would be probed about how their family, friends, teachers, etc. make them FEEL, and (3) the wording of questions “suggesting” the positive occurrence of events, including cheating, stealing, smoking, drinking, gambling, etc.

Apparently, this survey is so highly regarded that it is used as the reason for implementing numerous school and community programs. However, it’s a survey. It’s a survey, that when polled, high school students commented how they didn’t take it seriously and would enter “whatever.” It’s a survey that has never been validated as being accurate. BUT, if my kids had never thought about cheating or drugs or drinking or lying to us – their parents, they would certainly have been introduced to these concepts as a result of this survey.

So, that was the only perceivable change; an additional email from the administration misrepresenting a survey.

The Student Data Privacy Act is long on data and very short on privacy.

This statute, along with others, supports the wholesale data mining of kids in school.

The state of Kansas assigns a unique id number to each and every student. Therefore, wherever that student goes and does, he can be tracked and data mined.

The state of Kansas collects name, address, phone, family member names, sports/activity participation, weight/height, degrees, honors, awards, school demographics, teacher demographics, classes taken, grades, teacher comments, administrator comments, counselor comments, psychologist and social worker comments, assessment testing results, date of birth, grade level, graduation date, degrees, credentials, drop-outs, attendance/tardies, reasons for absences, visits to the nurse, diagnosed illnesses, physical fitness numbers, any actions deemed to be special education, disciplinary actions, behavior issues, remediation, program participation,

program achievements, personality characteristics, determinations of getting along with others, being a team player, obeying teachers, and ANY OTHER INFORMATION in a student's educational record.

A "student's record" today is far beyond what it used to be, and is frankly, practically unknown by the general public or a child's parents. School districts across the state of Kansas, especially the large ones, have implemented robust learning management systems (LMS). Not only do they collect everything mentioned, thus far, they can also be set up to collect data on students' life outside of school. The systems are capable of analyzing how the student, teachers, parents, etc. "use" the software. These robust systems constantly perform analytics on student performance – one boasting the ability to parse and aggregate more than 280 million rows of usage data generated daily. Based on the design of the system, the LMS can be set up to "identify" gaps, categorize students in various groups, and "predict" a student's future outcome. Students (and teachers) are constantly monitored and their progress measured against pedagogical goals and achievement of "desired" outcomes. "Mastery" and "achievement" can be compiled for practically anything.

All this data collected on a child is virtually unknown or explicitly agreed to by the parents. Parents are given NO CHOICE as to having these paradigms imposed upon their child. It AUTOMATICALLY occurs. A parent must take matters into their own hands to change any of this. The schools are NOT set up to ASK for permission of parents for their kids to use technology or participate in any programs and initiatives.

And, the data maintained in the Kansas statewide longitudinal database is voluminous. Nearly 500 page documents define the hundreds (at a minimum) of data points schools and programs like Parents as Teachers collect on children to populate the state data systems. Here are just a few of the categories of data collected, each being comprised of hundreds of individual data points: Foundations for School Success, KIDS, Migrant, Pathways, Success in School. ALL of these compile and store data at the student level. Are you comfortable with the government having this information on citizens, especially minors? Are you comfortable that these databases are safe from hacking when even the FBI gets hacked?

Student data – which was acquired via mandate – can be disclosed to educational agencies, state boards, service providers of state agencies, educational agencies or schools. This is allowed for the broadly defined purposes of "performing a function of instruction, assessment or longitudinal reporting." PRACTICALLY ANYTHING can be determined to fall under these parameters.

And, as the school districts have now assumed OWNERSHIP of all the students' data, the agreements for data sharing are executed between educational agencies, state agencies, or service providers. The parent/student DOES NOT OWN OR CONTROL THEIR OWN DATA.

So, back to the proposed bill. Whomever is asking for these changes wants to re-define access to individual student information. They purport to only want DE-IDENTIFIED data, but – and here's the but, they will be able to assign a unique identifier to the individual student records. By definition, a unique identifier is used to uniquely identify something. "Unique identifiers" are intended to identify a specific item or event. It may not be a person's actual name, but it will be in place of the name and be connected to everything associated with that individual, in this case, a child. The associated data won't prevent or preclude the identification of individuals. This is especially true for educational records of smaller communities. At the end of the day, included in the title

of this bill is “allowing the disclosure of de-identified student data.” But, nothing prohibits the assignment of a “unique identifier.” The devil is always in the details.

When the Student Data Privacy Act was passed nearly three years ago, state lawmakers once again heralded its protections. If you didn’t know before, you now have a teeny understanding of the pervasiveness of state data collection of minor children.

The language of the bill is an exercise in mental gymnastics. It appears to prevent data being collected (except for a special carve out for counseling services) on students’ and/or their families’ beliefs on sex, family life, morality or religion, without parent/guardian permission. As has occurred before, “anonymous” and “not accumulating any PII” doesn’t actually happen. The language allowing the use of a “unique identifier” for individual records undoubtedly opens the door wide open for data to be held at the unique individual level.

As parents, we do not find that state education supports parent authority by obtaining explicit parent permission for their child to participate in school district technology systems, data generation, and any programs, partnerships, reporting, and initiatives of the schools. Parents are not allowed to protect their child from the theft of their personal property, the very essence of who they are.

You should be asking yourself, “Why is the automatic collection and use by the government of personal data on citizens ok with me?”

Just imagine being a child trying to go through a school day with the teachers, counselors, principles, janitors, etc. all constantly looking at you through the lens of some type of program or initiative outcome or a possible type of psychosis. They don’t see you as a human. There are posters all over the school – classrooms, lunch room, bathrooms, gym, library, school entrance – with “messaging” about being an inclusive person, following the rules, being a good person, etc. Your mind is constantly barraged with it all day and every day. In addition, you are constantly interacting with a computer in the classroom (which is logging your every action and non-action), and frustrated by poor math curriculums, depressing required reading, and at a minimum agenda driven “history.” The most predictable outcome, over time, is frustration—and ultimately, low achievement and behavior problems. ANYBODY subjected to that kind of environment the majority of their waking hours five days a week would be lucky to escape feelings of sadness, anxiousness, over-whelming pressures, etc. What we are seeing in our schools should not be a surprise. I am more surprised that kids can escape with any semblance of happiness or sanity.

I would like to leave you with the following excerpts from a paper, “Education, Technology, and Individual Privacy” (ECTJ, Vol. 28, No. 3, pp. 195-208) by Lawrence P. Grayson of the National Institute of Education, U.S. Department of Education, in 1976:

The right to privacy is based on a belief in the essential dignity and worth of the individual. Modern technological devices, along with advances in the behavioral sciences, can threaten the privacy of students. Fortunately, invasions of privacy in education have not been widespread. However, sufficient violations have been noted to warrant specific legislation and to promote a sharp increase in attention to procedures that will ensure protection of individual privacy. Technology that can reveal innermost thoughts and motives or can change basic values and behaviors, must be used judiciously and only by

qualified professionals under strictly controlled conditions. Education includes individuals and educational experimentation is human experimentation. The educator must safeguard the privacy of students and their families....

Privacy has been defined as “the right to be let alone” (Cooley, 1888) and as the “right to the immunity of the person—the right to one’s personality” (Warren and Brandeis, 1890). Individuals have the right to determine when, how, and to what extent they will share themselves with others. It is their right to be free from unwarranted or undesired revelation of personal information to others, to participate or withdraw as they see fit, and to be free of unwarranted surveillance through physical, psychological, or technological means.

Justice William O. Douglas expressed the concerns of many people when he stated:

We are rapidly entering the age of no privacy; when everyone is open to surveillance at all times; when there are no secrets from the government.... [There is] an alarming trend whereby the privacy and dignity of our citizens is being whittled away by sometimes imperceptible steps. Taken individually, each step may be of little consequence. But when viewed as a whole, there begins to emerge a society quite unlike any we have seen—a society in which government may intrude into the secret regions of a man’s life at will. (Osborn v. U.S., 1966, pp. 341–343)

Behavioral science, which is assuming an increasing role in educational technology, promises to make educational techniques more effective by recognizing individual differences among students and by patterning instruction to meet individual needs. However, behavioral science is more than an unbiased means to an end. It has a basic value position (Skinner, 1971) based on the premise that such “values as freedom and democracy, which imply that the individual ultimately has free will and is responsible for his own actions, are not only cultural inventions, but illusions” (Harman, 1970). This position is contradictory to the basic premise of freedom and is demeaning to the dignity of the individual. Behavioral science inappropriately applied can impinge on individual values without allowing for personal differences and in education can violate the privacy of the student....

Reflecting on the ethical values of our civilization in 1958, Pope Pius XII commented:

There is a large portion of his inner world which the person discloses to a few confidential friends and shields against the intrusion of others. Certain [other] matters are kept secret at any price and in regard to anyone. Finally, there are other matters which the person is unable to consider.... And just as it is illicit to appropriate another’s goods or to make an attempt on his bodily integrity without his consent, so it is not permissible to enter into his inner domain against his will, whatever is the technique or method used....

Whatever the motivations of the teacher or researcher, an individual’s privacy must take precedence over effective teaching, unless good cause can be shown to do otherwise. Good cause, however, does not relieve the teacher or school administrator from the responsibility of safeguarding the privacy of the student and the family. Yet, many teachers and administrators remain insensitive to the privacy implications of behavioral science and modern technology in education....

Intent on improving education, educators, scientists, and others concerned with the development and application of technology are often insensitive to the issues of privacy raised by the use of their techniques. For example, many psychological and behavioral practices have been introduced on the ground that they will make education more efficient or effective. However, improvements in efficiency through technological applications can reinforce these practices without regard to their effects. What is now being done in education could be wrong, especially if carried out on a massive scale. As the use of technology becomes more widespread, we may reach the point where errors cannot be detected or corrected. This is especially important because technology interacts with society and culture to change established goals and virtues. Propagating an error on a national level could change the original goals to fit the erroneous situation. The error then becomes acceptable by default.

In developing and applying technology to education, potential effects must be analyzed, so that negative possibilities can be identified and overcome before major resources are committed to projects that could produce undesirable long-term social consequences.

In matters affecting privacy it is better to err on the side of the individual, than on that of research or improved educational practice. Violations of privacy can never be fully redressed.

Ftnt. No. 14. Privacy is a constitutionally protected right; education is not. The Supreme Court ruled in *Griswold v. Connecticut* (decided in 1965) that the right of privacy is guaranteed by the Constitution. In *Rodriguez v. San Antonio Independent School District* (decided in 1973), the Court ruled that education is not a protected right under the Constitution.