

Policymakers and Parents:

Privacy Bills Proliferate

By Barmak Nassirian

The sudden rise and precipitous fall of inBloom, the stillborn national data warehouse of K-12 education records, can in retrospect be seen as having ushered in a new era of parental activism around educational privacy rights.

When it was launched in 2013 with a powerhouse board of directors and \$100 million in funding from the Gates Foundation, inBloom seemed poised to become the de facto national K-12 student information system that would in quick order house the entire education records of all elementary and secondary students in a robust, state-of-the-art cloud-based data warehouse. The stated goal behind the effort was to bring cutting edge practices to data management, enable schools—using third-party vendors—to create data dashboards and predictive analytics, and to generally “revolutionize” learning through technology.

The educational benefits claimed by inBloom’s advocates, however, came in a distant second to visceral and immediate opposition from parents, who saw the system as a giant national educational surveillance system. Their privacy concerns—alarm about future uses and abuses of their children’s data—were compounded by the barrage of bad news about data breaches and hacking of allegedly impregnable data systems, like those of the Department of Defense and the National Security Agency. (These concerns, coincidentally, proved justified when a few weeks after its official shutdown, inBloom announced that its system suffered the “Heartbleed” security bug because it used OpenSSL cryptography.) The resulting firestorm of national opposition to inBloom resulted in states and districts withdrawing from the initiative, causing it to collapse in early 2014, almost exactly a year after its unveiling at the trendy South by Southwest (SXSW) education conference.

The inBloom fight resulted in ad hoc formations of state and local groups who pondered how it was even possible for their children’s data to be legally transferred to a centralized third-party. As they researched the minutiae of educational privacy laws, these groups quickly discovered that in early 2012, the Department of Education had re-written its regulations implementing the Family Educational Rights and Privacy Act of 1974 (FERPA) to enable far greater sharing of students’ personally identifiable information without their (or their parents’) consent or knowledge.

Reversing the 2012 FERPA regulations—which apply to K-12 and postsecondary education records—has quickly emerged as an urgent legislative priority for parents before Congress and in their respective state houses. In 2014, 36 of the 46 states with legislatures in session introduced student privacy bills, of which 28 became law. That same year, some 110 state bills specifically addressed student or children’s data safeguarding issues. And the trend seems to be picking up steam: So far in 2015, 46

states have had some 182 student data privacy bills introduced, with 12 of them having already adopted 24 pieces of new legislation on the topic. And, as with so many other policy issues, things that start at the grassroots, once they resonate in the state house, quickly pop up in Washington in the form of national legislation. Significant federal educational privacy draft bills have been pending before a deadlocked Congress for months now. Further, it now seems likely that the bill to reauthorize the Higher Education Act will attract one or more educational privacy amendments when it is taken up by the Senate in the coming weeks. The privacy policy changes contained in the known legislative proposals to date ran the gamut with regard to real privacy enhancements as well as practicality of implementation.

In many ways, the excessive zeal (and past successes) of data enthusiasts—the foundations, educational technology entrepreneurs and innovators, and education reformers—may well end up backfiring by pushing Congress and the states, with varying degrees of competence and craftsmanship, to further restrict access to educational data. **P**

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