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March 6, 2023

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20202

Dear Secretary Cardona:

I write to urge the Department of Education to provide strong, comprehensive model contracts to help school districts across the country protect the privacy of students using educational technology. Model contracts are essential in lowering the burden for schools by providing a pre-negotiated contract that schools can enter into with educational technology providers that has the privacy of students and schools in mind. Educators shouldn't need to choose between students' learning and their privacy – model contracts could help level the playing field between big tech companies and the under-resourced school administrators who must negotiate with them.

Technology designed for use in education, or “edtech,” has proliferated in the past decade and accelerated as the Covid-19 pandemic necessitated a switch to remote schooling. While the Family Education Rights and Privacy Act (FERPA) affords some federal protections to student “education records,” the bill’s authors, in 1974, could not have foreseen the high volume and new types of data generated by the digital tools used in schools today. Many edtech companies are taking advantage of these lagging standards. Investigative reports by the Markup and other publications have shown how edtech companies have abused vague terms of service and hidden features to harvest and repurpose troves of sensitive student data.

The risks to students’ privacy are acute. The Markup found edtech companies collecting data points including students’ citizenship status, religious affiliation, school disciplinary records, medical diagnoses, and whether they’ve used drugs, been the victim of a crime, or expressed interest in LGBTQ+ groups. Human Rights Watch reviewed 163 edtech tools commonly used domestically and worldwide and found that 89% were sending student data to third parties, primarily advertising companies. Even privacy-minded parents have struggled to get clear answers from edtech companies about how their child’s data is collected and used. In addition, millions of student records have fallen into the hands of hackers after data breaches at edtech companies.

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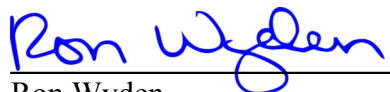
Millions of American children and their families are relying on school administrators to protect their privacy when it comes to selecting required classroom technology. But school districts rarely have the expertise, resources, or leverage to negotiate privacy terms and conditions with large, sophisticated technology companies. To its credit, the Department has recognized this mounting privacy crisis and published a Privacy Technical Assistance Center for educators – but the repeated news of privacy violations by edtech companies clearly show that school districts need more help.

The Department can provide that help by developing and publishing model contracts and terms of service which school districts can use when negotiating with edtech companies. These contracts can include terms to protect student privacy, require data security, and prevent edtech companies from enriching themselves using student data. This approach has worked in my home state of Oregon: the Beaverton school district successfully used model contracts to standardize and raise the level of privacy protections throughout the district. Likewise, the Oregon Student Privacy Alliance (OSPA) has created a standardized agreement for school districts to use when negotiating contracts with edtech companies. While this has been essential for protecting the privacy of students in several Oregon school districts, larger companies like Google have refused to negotiate with OSPA.

A nationwide, Department-endorsed approach would give schools greater leverage when negotiating with the largest edtech players. These companies have little incentive to negotiate and instead exploit their market power by telling school districts to “take it or leave it” when it comes to invasions of their students’ privacy. To that end, I urge the Department to help schools to protect students’ privacy from unscrupulous edtech vendors. The classroom should be a safe space for children to learn – not an opportunity for tech companies to extract and monetize students’ most sensitive data.

If you have any questions about this letter, please reach out to Breanna Irish at breanna_irish@wyden.senate.gov.

Sincerely,



Ron Wyden
United States Senator