BY ELECTRONIC MAIL

Honorable Andrew Cuomo   August 14, 2020
Governor of the State of New York
New York State Capitol Building
Albany, NY 12224

RE: Biometric Identifying Technology in New York Schools, A6787/S5140

Dear Governor Cuomo:

NYCLU
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Donna Lieberman
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President

We write today to urge you to sign A6787/S5140, which was passed by the legislature in July with wide margins and bi-partisan support.[1] The bill, supported by more than 100 state and national organizations, prohibits the use of biometric identifying technology in schools until NYSED commissions an independent study on the risks and benefits of this technology in public schools. Specifically, the bill requires a report that addresses the privacy implications of collecting biometric information, the risks of false identification of people of color, the risks of data breaches, and the costs to districts of maintaining the systems and storing the data. It is critically important for you to sign this bill into law before students are back in school and before any school districts waste precious resources on these unstudied surveillance systems.[2]

As students return to school buildings across the state, the focus should be on their mental health and academic support, not on their constant surveillance. Children all over the state have suffered enormous trauma due to the pandemic: losing loved ones, the massive disruption of their academic and social lives, untold economic hardship, and all that goes with it. And, as you have noted on several occasions, the pandemic has taken a disproportionate toll on Black New Yorkers. This is no time to create additional burdens on Black students and their families by allowing schools to adopt a technological tool that is likely to harm them disproportionately. There is mounting evidence that facial recognition technology is particularly inaccurate with regard to women, young people, and people of color.[3]

The threat of face surveillance in our schools is growing quickly, as New York is seen as a source of lucrative contracts for private security firms. The Smart Schools Review Board implicitly acknowledged this, and the need for further study before allowing schools to adopt biometric identifying technologies, when it recently announced that it would no longer approve funding requests for these types of systems.[4]

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[1] A6787 (Wallace)/S5140 (Kavanagh), https://www.nysenate.gov/legislation/bills/2019/a6787.

[2] While the Lockport City School District was reimbursed for its expenditures, it is important for the bill to be signed to ensure that taxpayer funds are not wasted on technology that districts cannot use. Connor Hoffman, *Lockport district receiving its Smart Schools money*, Nov. 12, 2019, https://www.lockportjournal.com/news/local_news/lockport-district-receiving-its-smart-schools-money/article_ec3aea82-e348-5356-a8da-0a64affc0724.html.

[3] Kashmir Hill, *Wrongfully Accused by an Algorithm*, The New York Times, June 24, 2020, https://www.nytimes.com/2020/06/24/technology/facial-recognition-arrest.html; Natasha Singer and Cade Metz, *Many Facial-Recognition Systems Are Biased, Says U.S. Study*, The New York Times, December 20, 2019, https://www.nytimes.com/2019/12/19/technology/facial-recognition-bias.html; Cynthia M. Cook et al., Demographic Effects in Facial Recognition and their Dependence on Image Acquisition: An Evaluation of Eleven Commercial Systems, 1 IEEE TRANSACTIONS ON BIOMETRICS, BEHAVIOR, AND IDENTITY SCIENCE 32–41 (2019); Joy Buolamwini & Timnit Gebru, Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification, PROCEEDINGS OF MACHINE LEARNING RESEARCH (2018), http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf.

[4] "The Review Board is not currently approving plans that include facial recognition technology or other similar self-learning analytic software." http://www.p12.nysed.gov/mgtserv/smart_schools/.

Yet, on July 30, the Smart Schools Review Board approved $94 million in funding through the Smart Schools Bond Act ("SSBA"), $24.9 million of which was for "high tech security" projects.[5] These approved projects included 11 school district plans for surveillance technologies with facial recognition capabilities.[6] This demonstrates the need for a statewide policy to slow down the proliferation of these technologies—and the flow of public dollars to purchase them—until we better understand their impact.

It is unconscionable that, as districts face dramatically slashed budgets—funding insufficient to meet COVID-19 related health and safety guidelines and ensure each student can digitally connect to remote learning—millions of precious dollars would be spent on face surveillance systems. Funding from the SSBA could be better spent on tools for remote learning such as laptops, Wi-Fi hotspots, and tablets to support access to education for millions of New York students.

Despite this, the July 2020 approvals contained proposals to acquire Avigilon's ACC 6 and ACC 7 systems[7] – software systems which include biometric recognition capabilities via, among other software, "Appearance Search."[8] As described on Avigilon's website, "Appearance Search video analytics technology" is a "sophisticated deep learning AI search engine for video" that uses "face analytics" and "physical descriptions… including gender and age categorization" to "search for a person."[9] We are aware that Avigilon disputes that their products are facial recognition technology, but their argument—coming from a company that stands to rake in tens of millions in taxpayer money—is without merit. ACC 6 and ACC 7 include both facial recognition technology (via the "Appearance Search" functionality) and self-learning analytic capabilities, and therefore fall squarely within the Review Board's prohibition and the moratorium under the recently-passed bill.

While it is possible the districts intend to use functions of the software other than Appearance Search, this is not apparent from the documents we have reviewed, nor does it seem to have been required by the Review Board. Further, our experience with the Lockport City School District gives us little faith in the willingness or ability of either NYSED or most

[5] Governor Cuomo Announces $94 Million For School Technology Upgrades Through the Smart Schools Bond Act, July 30, 2020, https://www.governor.ny.gov/news/governor-cuomo-announces-94-million-school-technology-upgrades-through-smart-schools-bond-act.

[6] *See, e.g.*, Fairport City School District (requesting funding for, among other things, a license for Avigilon ACC6 software which includes "Appearance Search") http://p1232.nysed.gov/mgtserv/documents/FAIRPORTCSD_Application1.pdf; Avigilon Appearance Search Technology, http://avigilon.com/products/video-analytics/avigilon-appearance-search/ ("Avigilon Appearance Search technology also incorporates the characteristics of a person's face, enabling the technology to search for the same person, even if items such as their clothing change over time.").

[7] Avigilon Control Center 6 (ACC 6) software "combines an intuitive interface with advanced search functions called Avigilon Appearance Search." Appearance Search technology "is a sophisticated AI search engine for video data that incorporates the characteristics of a person's face." Avigilon describes their ACC 6 software as "self-learning video analytics," https://www.avigilon.com/support/software/avigilon-acc6.14-datasheet-en.pdf. Avigilon Control Center 7 (ACC 7) incorporates "AI-powered facial recognition technology to detect people of interest based on one or more secure watch lists" and has "next-generation analytics and self-learning video analytics," https://www.avigilon.com/support/software/acc7/avigilon-acc7-datasheet-en.pdf.

[8] The following districts submitted SSBA proposals for the Avigilon ACC 6 system: Arkport, Beacon City, Canajoharie, Cortland City, Fairport, Livingston Manor, Roscoe, Tri-Valley, and West Irondequoit. Moravia submitted a proposal for ACC 7 while Farmingdale appears to have submitted a funding proposal for software from IntraLogic Solutions which includes "facial recognition and visitor tagging and tracking", https://www.securityinfowatch.com/video-surveillance/product/12416961/intralogic-solutions-intralogic-solutions-vms-30.

[9] https://www.avigilon.com/products/ai-video-analytics/appearance-search.

local school districts to adequately review manufacturers' claims about student privacy. NYSED did not adequately interrogate Lockport's claims that the system did not implicate student data; it didn't question whether the district had properly engaged students, parents, or teachers in the decision to purchase the technology; and it didn't require a meaningful privacy policy.[10]

This is the perfect time to adopt limitations on the use of face surveillance technology, as most schools will not be operating at full capacity, and will be strictly limiting entry to members of the school community. In addition, these systems are not highly functional in a pandemic, when most people are wearing masks. The National Institute of Standards and Technology found two weeks ago that "[e]ven the best of the 89 commercial facial recognition algorithms tested had error rates between 5% and 50% in matching digitally applied face masks with photos of the same person without a mask."[11]

We hope we can count on you to sign A6787/S5140 into law and give New York's students and families a chance to understand how these systems will affect them before they are widespread. School communities deserve to have more and better information about their functionality and impact than only that which is provided by for-profit consultants and vendors. If you would like to contact us or have questions about our work in this area, please contact Stefanie Coyle at scoyle@nyclu.org.

Sincerely,

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[10] Davey Alba, *Facial Recognition Moves Into a New Front: Schools*, New York Times, Feb. 6, 2020, https://www.nytimes.com/2020/02/06/business/facial-recognition-schools.html; Rachel Silberstein, *NYCLU blasts 'premature' approval for school facial recognition system*, Albany Times Union, Jan. 8, 2020, https://www.timesunion.com/news/article/NYCLU-calls-on-SED-rescind-approval-for-facial-14953124.php; *NYCLU issues critical report on Lockport school security plan*, Niagara-Gazette, Aug. 29, 2018, https://www.niagara-gazette.com/news/local_news/nyclu-issues-critical-report-on-lockport-school-security-plan/article_55270edf-d460-567a-8873-3d5775d811ad.html; Connor Hoffman, *NYCLU shreds Lockport school security plan*, Lockport Union-Sun & Journal, Aug. 30, 2018, https://www.lockportjournal.com/news/local_news/nyclu-shreds-lockport-school-security-plan/article_167df768-ed31-5589-b917-fa078f56f641.html.
[11] NIST, *NIST Launches Studies into Masks' Effect on Face Recognition Software*, July 27, 2020, https://www.nist.gov/news-events/news/2020/07/nist-launches-studies-masks-effect-face-recognition-software.