March 11, 2020

Re: Pledging Not to Use Face Surveillance in Your Schools

Dear Superintendent:

The undersigned organizations are dedicated to promoting civil rights and civil liberties, equitable educational practices, child welfare, and youth development. We write to express grave concerns about the use of face surveillance technology in schools, and to ask that you ensure that under your leadership, no school will adopt or implement a face surveillance system in your district.

What is face surveillance technology? How is it used?

Face surveillance technology allows for the automated identification, tracking, and cataloging of people based on the unique physical characteristics of their faces. The software works by creating a unique "faceprint" of an individual. A faceprint can be derived from a still photograph or an image captured by a video camera or similar surveillance device.

Face surveillance software uses an algorithm to compare a faceprint or multiple faceprints against an unlimited number of faceprints (analyzed from other photographs) stored in a database, in an attempt to match, identify, track, or learn more information about a person or groups of people. The technology can be used in concert with surveillance cameras to track people in real time and historically, using stored video data. At its most dangerous, face surveillance technology facilitates the monitoring and automated catalouging of every person's every movement, association, and habit—not just on one day, but on all days—merely with the push of a button.

The use of face surveillance by both corporations and government entities is currently unregulated in Massachusetts. There are no statutes dictating how or when it may be used or providing protections for civil rights and civil liberties. The spread of the technology is occurring largely in the dark, absent public debate or democratic oversight.

In June 2019, the Lockport City School District in New York announced that it had plans to acquire facial surveillance technology. After sustained protest and outcry from civil rights activists, the state education department placed a temporary ban on the technology.[1] In January, the Lockport school district announced it would turn the technology on, despite ongoing objections from community members and activists across the state.[2] Now, state lawmakers in New York are considering

[1] Education Department bars Lockport schools from testing facial recognition, Thomas J. Prohaska, June 2019, available at https://buffalonews.com/2019/06/28/education-department-bars-lockport-schools-from-testing-facial-recognition/

[2] State says Lockport can use facial recognition system if it tweaks policy, Thomas J. Prohaska, The Buffalo News, November 2019, available at https://buffalonews.com/2019/11/27/state-says-lockport-can-use-facial-recognition-system-if-it-tweaks-policy/

legislation that would prohibit the use of face surveillance technology in schools.[3] The legislation is supported by the New York Civil Liberties Union and teachers unions.[4]

The Lockport fiasco shows what can happen when a school district purchases face surveillance technology to deploy in schools without legislative authorization or public debate. When the public learned about it, parents and other members of the community were outraged because the privacy stakes are so high.[5]

Stopping face surveillance in Massachusetts schools before it starts.

The urgency to take action to stop the spread of this technology in Massachusetts has been heightened by recent events. According to reporting, a company called Clearview AI has been working aggressively behind closed doors to push its facial recognition software on local government agencies, including school administrations. In some jurisdictions, individual municipal employees have used the software on a free trial basis without the knowledge or consent of their supervisors, let alone the elected leadership of the city or town or the school committee.[6]

As you know, in Massachusetts the Superintendent is the "educational leader for the school system, and provides administrative leadership for all school staff in operational matters and in proposing and implementing policy changes."[7] You therefore have a unique opportunity to exercise your authority to protect the educational community from face surveillance technology before controversies and harms develop.

If national trends are any indication, private companies intent on profiting off of districts may begin to target elementary, secondary, and vocational-technical schools in Massachusetts to push the adoption of face surveillance systems here in our Commonwealth. Public records obtained by civil rights organizations confirm private companies are eager to sell their products to public institutions. Already, they are targeting police departments.[8] Emails obtained by the ACLU of Massachusetts

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[3] Assembly Bill A6787C. https://www.nysenate.gov/legislation/bills/2019/a6787.

[4] New York could put a hold on facial recognition in schools. Here's why., Rebecca Heilweil, Recode, January 2020, available at https://www.vox.com/recode/2020/1/16/21067945/lockport-facial-recognition-schools-backlash.

[5] Spying on Children Won't Keep Them Safe, Jim Shultz, June 2019, available at https://www.nytimes.com/2019/06/07/opinion/lockport-facial-recognition-schools.html

[6] Ryan Mac et al, "Clearview's Facial Recognition App Has Been Used By The Justice Department, ICE, Macy's, Walmart, And The NBA," February 27, 2020, Buzzfeed News: "While some of these entities have formal contracts with Clearview, many do not. A majority of Clearview's clients are using the tool via free trials, most of which last 30 days. **In some cases, when BuzzFeed News reached out to organizations from the documents, officials at a number of those places initially had no idea their employees were using the software or denied ever trying the facial recognition tool.** Some of those people later admitted that Clearview accounts did exist within their organizations after follow-up questions from BuzzFeed News led them to query their workers." https://www.buzzfeednews.com/article/ryanmac/clearview-ai-fbi-ice-global-law-enforcement.

[7] Advisory on School Governance, Massachusetts Department of Secondary Education, available at http://www.doe.mass.edu/lawsregs/advisory/cm1115gov.html#ie.

[8] In July 2018, the ACLU of Massachusetts filed requests with dozens of police departments to learn about how they use face surveillance technology. The Plymouth Police Department provided hundreds of emails in response to that request. The emails contain extensive correspondence between a billionaire-backed face surveillance start-up called "Suspect Technologies" and representatives for the Plymouth Police Department. See https://data.aclum.org/public-records/plymouth-police-department-face-surveillance-emails/.

indicate surveillance companies are acutely aware that public schools are also a huge market for their products.[9]

In light of this pressure, school administrators must understand the risks posed by face surveillance technologies.

For several reasons, **children and education workers should not be subject to face surveillance in schools**:

- Safety in school is critical—but it depends on support, not surveillance. This technology will not make schools safer or prevent incidents that endanger children's lives.[10] Constant surveillance of our children while they are growing up and developing their personalities is not the answer. Instead, this technology will increase anxiety at a time when students need resources and school staff to keep them calm, safe, and feeling accepted.[11]

- This technology is too often biased and inaccurate, which raises concerns about its use to police students of color. Academic, peer-reviewed studies show face surveillance algorithms are too often racially-biased, particularly against Black women, with inaccuracy rates up to 35 percent for that demographic.[12] Today, Black and brown students are more likely to be punished for perceived misbehavior.[13] Face surveillance will only perpetuate these harms, calcifying discrimination and racial profiling within schools, and growing the opportunity gap.

- Face surveillance is not designed for use on children, so the technology makes more mistakes when scanning young people's faces. These systems are modeled on and optimized for use on adult faces. Using this technology on children is particularly dangerous because as children grow, their faces change shape. Research that tested five "top performing commercial-off-the shelf" face recognition systems shows that these systems "perform poorer on children than on adults."[14] A National Institute of Standards and Technology (NIST) study published in December 2019 likewise found that these systems are much more

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[9] Ibid. In one email, the CEO of Suspect Technologies links to information about Wisconsin allocating $30 million for school safety and says, "Guys, seems at least Wisconsin schools maybe a good initial market." The draft plans for the face surveillance rollout in Plymouth called for installing the tech "in the lobbies of Plymouth police, as well as around its town, including its associated school buildings."

[10] Ava Kofman, "Face recognition is now being used in schools, but it won't stop mass shootings," May 30, 2018, the Intercept. https://theintercept.com/2018/05/30/face-recognition-schools-school-shootings/.

[11] CCTV increases people's sense of anxiety, Anna Minton, The Guardian, October 2012, available at https://www.theguardian.com/society/2012/oct/30/cctv-increases-peoples-sense-anxiety

[12] Gender Shades, Joy Buolamwini et al, MIT Media Lab, available at https://www.media.mit.edu/projects/gender-shades/overview/ and Emotion-reading tech fails the racial bias test, Lauren Rhue, Phys.org, available at https://phys.org/news/2019-01-emotion-reading-tech-racial-bias.html.

[13] Teacher treatment of students factors into racial gap in school suspensions, Brown University, July 2019, available at https://www.brown.edu/news/2019-07-18/discipline.

[14] Face Recognition Algorithm Bias: Performance Differences on Images of Children and Adults, Nisha Srinivas, Karl Ricanek, et.al, The IEEE Conference on Computer Vision and Pattern Recognition (CVPR) Workshops, 2019, available at http://openaccess.thecvf.com/content_CVPRW_2019/papers/BEFA/Srinivas_Face_Recognition_Algorithm_Bias_Performance_Differences_on_Images_of_Children_CVPRW_2019_paper.pdf

likely to fail when attempting to identify children, in addition to the elderly, women, and people with darker skin.[15]

- Face surveillance technology regularly misgenders transgender people,[16] and will have a harmful impact on transgender young people in our schools. Research shows that automatic gender recognition, a subfield of face surveillance technology, "consistently operationalises gender in a trans-exclusive way, and consequently carries disproportionate risk for trans people subject to it."[17] At a time when transgender children are being stripped of their rights at a national level,[18] Massachusetts must protect transgender kids in our schools.

- Face surveillance in schools will contribute to the "school-to-prison pipeline,"[19] threatening children's welfare, educational opportunities, and life trajectories. Already, children from low-income communities and Black, brown, and disabled students are too often funneled out of public schools and into the juvenile and criminal justice systems. Face surveillance will inevitably grease this pipeline. False positives from facial surveillance, which are more likely to impact children of color, will result in unnecessary interactions with law enforcement, lost class time, disciplinary action, and potentially even a criminal record. Equally problematic, face surveillance could be used to police minor issues that today are unremarkable and common aspects of growing up. Data show the policing of minor issues like "disturbing the peace" disproportionately harms students of color and students with disabilities. Schools should not adopt technologies that threaten to make this problem worse by automating surveillance of students at school.

- Face surveillance technology will harm immigrant families. In this political climate, immigrants are already fearful of engagement with public institutions, and face surveillance systems would further chill student and parent participation in immigrant communities. Massachusetts schools must be welcoming and safe spaces for all families. But in the absence of a commitment from school districts to prohibit the use of face surveillance technology, we worry these students and families, who are already struggling with challenges citizen families do not endure, will have reason to mistrust and fear school.

- Massachusetts schools should be safe environments for students to learn, explore their identities and intellects, and play. Face surveillance technology threatens that environment. Face surveillance in schools transforms all students into perpetual suspects, where each and every one of their movements can be automatically monitored and cataloged. The use of this

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[15] This study also showed additional bias against women, the elderly, and children. See National Institute of Standards and Technology, Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects, Patrick Grother, Mei Ngan, Kayee Hanaoka, December 2019, available at https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf

[16] Facial Recognition Software Regularly Misgenders Trans People, Matthew Gault, February 2019, available at https://www.vice.com/en_us/article/7xnwed/facial-recognition-software-regularly-misgenders-trans-people

[17] The Misgendering Machines: Trans/HCI Implications of Automatic Gender Recognition, Os Keyes, University of Washington, USA, available at https://ironholds.org/resources/papers/agr_paper.pdf

[18] Trump Admin To Transgender Kids: We Won't Deal With Your Civil Rights Complaints, Rebecca Klein, The Huffington Post, January 2018, available at https://www.huffpost.com/entry/transgender-office-for-civil-rights_n_5a5688ade4b08a1f624b2144?guccounter=1

[19] School-to-prison pipeline, ACLU, available at https://www.aclu.org/issues/racial-justice/race-and-inequality-education/school-prison-pipeline

> technology in public schools will negatively impact students' ability to explore new ideas, express their creativity, and engage in student dissent. It also, dangerously, teaches young people to expect that authorities will subject them to constant surveillance. That's not a good lesson to teach young people in a free society.

We must take action to ensure our children are not subject to this unfair, potentially biased, and chilling surveillance. The educational community cannot tolerate such an intrusion. In order to protect young people, we must stop face surveillance in schools before it begins.

For these reasons, we are asking you to prohibit the use of face surveillance and its related technologies in the schools under your authority.

Legislators and policy-makers at the federal, state, and local levels, all throughout the country, are acknowledging that the current situation with respect to face surveillance cannot continue. For example, in July, a group of national lawmakers, including Massachusetts Representative Ayanna Pressley, proposed a bill banning facial recognition technology from public housing.[20] In January, the European Union announced it would consider banning the technology for five years.[21]

Here in Massachusetts, bills that would place a moratorium on the use of face surveillance by the government were introduced both in the House[22] and in the Senate[23] on Beacon Hill. Five cities and towns—Somerville, Brookline, Cambridge, Northampton, and Springfield—have enacted municipal bans on the use of face surveillance by their local governments. Other communities across the state are considering similar prohibitions.

Taking action to stop unregulated face surveillance is popular with Massachusetts voters. A first-of-its-kind poll conducted by Beacon Research found that 76 percent of Massachusetts voters do not think the government should be able to monitor and track people with this technology. Ninety-one percent of Massachusetts voters think the Commonwealth must regulate the government's use of face surveillance technology before government agencies use it.[24]

As adults, it is our responsibility to ensure we do not normalize constant surveillance for young people. As an education leader, you have the opportunity to demonstrate a continued commitment to the well-being of our children in the digital age by prohibiting the use of this technology in the schools in your district.

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[20] House lawmakers to introduce bill banning facial recognition tech in public housing, Emily Birnbaum, The Hill, July 2019, available at https://thehill.com/policy/technology/454404-house-lawmakers-to-introduce-bill-banning-facial-recognition-tech-in-public

[21] Facial recognition: EU considers ban of up to five years, BBC, January 2020, available at https://www.bbc.com/news/technology-51148501

[22] H.1538, available at https://malegislature.gov/Bills/191/H1538

[23] S.1385, available at https://malegislature.gov/Bills/191/S1385

[24] See Massachusetts Voters Strongly Support Pausing Use Of Unregulated Face Recognition Technology, ACLU of Massachusetts, June 18, 2019, available at https://www.aclum.org/en/news/massachusetts-voters-strongly-support-pausing-use-unregulated-face-recognition-technology

We would welcome the opportunity to meet with you to discuss the issues we address in this letter. We look forward to being in touch at your earliest convenience, and we thank you for your public service.

Sincerely,

Kade Crockford

ACLU of Massachusetts

Merrie Najimy

Massachusetts Teachers Association

Beth Kontos

American Federation of Teachers – Massachusetts Chapter

Cc/ Massachusetts Association
of School Superintendents

Massachusetts Association
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