



## **Testimony and Statement for the Record**

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### **Maryland House Ways and Means Committee**

**Bill Hearing: HB 1062 (Education - Student Data Privacy - Reports and Student Data Privacy Council Sunset Extension)**

**February 24, 2021**

Good afternoon Chair Kaiser, Vice-Chair Washington, and members of the House Ways and Means Committee. My name is Amelia Vance, and I am the Director of Youth and Education Privacy at the Future of Privacy Forum (FPF). I was honored to serve on the Maryland Student Data Privacy Council as the attorney knowledgeable in the laws and regulations that pertain to local school systems. I am pleased to provide testimony in response to the introduction of HB 1062.

FPF is a nonprofit organization focused on how emerging technologies affect consumer privacy. We bring together privacy officers, academics, consumer advocates, and other thought leaders to explore the challenges posed by technological innovation and develop privacy protections, ethical norms, and workable business practices. FPF is based in Washington, DC, and includes an advisory board composed of leading figures from industry, academia, law, and advocacy groups.<sup>1</sup> FPF routinely provides expert testimony and comments to the US Congress, federal agencies, Congressionally-chartered commissions, US state legislatures, and legislatures around the world.<sup>2</sup> FPF's Youth & Education Privacy program works to protect child and student

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<sup>1</sup> The views herein do not necessarily reflect those of FPF's supporters or Advisory Board.

<sup>2</sup> Amelia Vance, *FPF Testifies Before Congress on Promoting and Protecting Student Privacy*, Future of Privacy Forum (May 17, 2018), <https://fpf.org/2018/05/17/studentprivacycongressionalhearing/>; Federal Trade Commission, *The Future of the COPPA Rule: An FTC Workshop*, FTC (Oct. 9, 2019), <https://www.ftc.gov/news-events/events-calendar/future-coppa-rule-ftc-workshop>; Federal Trade Commission, *Student Privacy and Ed Tech*, FTC, (Dec. 1, 2017); Commission on Evidence-Based

privacy while allowing for data and technology use that can help young people learn, grow, develop, and succeed. FPF works with stakeholders from practitioners to policymakers, providing technical assistance, resources, trend analysis, and training.

No other state has created a formal council to examine the implementation of student privacy laws, let alone a council made up of those most directly impacted such as parents, educators, and school staff. We applaud the Maryland Legislature's continued efforts to bolster student data privacy protections across the state by creating the Council and by adopting many of the Council's recommended changes to the Student Data Privacy Act of 2015 in HB 1062. We hope that the updates to the definitions of Covered Information, Persistent Unique Identifier, and Targeted Advertising will help provide much-needed clarity regarding the scope and applicability of the Student Data Privacy Act. However, we believe that HB 1062 could be enhanced by incorporating several of the Council's recommendations, which were informed by input from a broad group of external stakeholders and by comparing the Student Data Privacy Act's current language to other state student privacy laws and best practices.

We applaud the provisions in HB 1062 that would extend the term of the Council. This action would reduce the risk of the Student Data Privacy Act becoming outdated or ineffective by allowing the Council to consider emerging issues. The way schools use technology is quickly changing, as underlined most recently by rapid changes undertaken in response to the COVID-19 pandemic. By renewing the Council's term and expanding its mandate, HB 1062 will help ensure that the Student Data Privacy Act remains flexible and applicable to the ever-evolving education ecosystem.

However, we urge the Legislature to consider aligning HB 1062 with the full definition of Operator proposed by the Council. HB 1062 excludes the Council's recommendation to carve out general audience entities that also provide education tools, so long as there is no data-sharing between general audience and education entities:

*If an entity usually serves a general audience but has created a division for education clients, that division will be considered the entity covered by this law,*

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Policy-making, *The Promise of Evidence-Based Policymaking: Report of the Commission on Evidence-Based Policymaking*, App. G 310, (2017); Amelia Vance, *FPF Letter to NY State Legislature*, Future of Privacy Forum, (June 17, 2019), <https://fpf.org/2019/06/17/fpf-letter-to-ny-state-legislature/>; Liron Tzur Neumann, *Legislating Online Conference – The Knesset, Israel Parliament*, Israel Tech Policy Institute, (Oct. 24, 2018), <https://techpolicy.org.il/blog/legislating-online-conference-the-knesset-israel-parliament/>.

*and not the parent entity as a whole, so long as the education division does not share covered information with the parent entity.*

The likely result of enacting a bill without this caveat is that companies would be compelled to collect and link additional user data to determine whether they are subject to the law. The definition as written in HB 1062 risks the law suddenly covering entities that are not aware that their tools are even being used in an educational context, such as general audience services used for providing accommodations for special education students that have not proactively marketed to schools.

Moreover, the Council's report recommended clarifying that Operators subject to the law are those subject to the FERPA school official exception (education technology providers), rather than researchers and others subject to FERPA's audit and evaluation or studies exceptions. By excluding the below language from the Council's report, there is a risk that the Student Data Privacy Act would limit beneficial education research:

*Operator is only intended to apply when organizations engage with institutions under FERPA's School Official exception. Other exceptions apply, namely Audit/Evaluation and the Studies Exception, which is still subject to FERPA's "reasonable methods" and associated contractual privacy and security safeguards.*

We appreciate the Legislature's attention to the Council's identified best practice of transparency, including the new proposed requirements for County Boards to report the digital tools they utilize each school year. The creation of a statewide database of tools used in schools could be a powerful tool for empowering parents and school leaders who are concerned about the appropriate use of digital tools. However, the bill's approach to reporting should be reconsidered by providing more detailed information to County Boards about reporting requirements to avoid possible unintended consequences. In order to ground reporting requirements in the experiences of Maryland stakeholders, we suggest that the Legislature ask the Council to examine the best way to balance transparency with creating an unnecessary burden on school districts, perhaps with an explicit addition of examining that topic to the expansion of the Council in HB 1062.

We believe that HB 1062 is a significant step towards strengthening student privacy protections in the state of Maryland. By continuing the Student Data Privacy Council's

work, the Legislature has demonstrated its commitment to ensuring Maryland's Student Data Privacy Act is effectively implemented.

Thank you for inviting members of the Council to testify.

A handwritten signature in black ink, appearing to read "Amelia Vance". The signature is fluid and cursive, with the first name being more prominent than the last.

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