October 19, 2023

The Honorable Miguel Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary Cardona,

Thank you for your efforts focused on the use of Artificial Intelligence (AI) in education, including through the release of the U.S. Department of Education ("Department") recommendations in *Artificial Intelligence and the Future of Teaching and Learning*. As you know, in the year since the release of the White House Blueprint for an AI Bill of Rights ("Blueprint"), students have continued to experience harm through AI-driven technology, particularly in the area of civil rights.[1] With the expansion of generative AI tools, student protections related to education technology are more urgent than ever. As you continue to implement the education-related priorities reflected in the Blueprint, we urge the Department to issue further guidance and take appropriate enforcement action concerning the application of civil rights laws to schools' use of educational technology, including AI-driven technologies.

While the expansion of educational technology helped facilitate remote learning that was critical to students, parents, and teachers during the pandemic, these technologies have also amplified student harms. As recent research from the Center for Democracy and Technology (CDT) highlights, technologies that monitor student activity online, moderate and filter online content, and use predictive analytics raise serious concerns about the application of civil rights laws to schools' use of these technologies. We are particularly concerned about the application of existing laws that protect students from discriminatory policies and outcomes related to sex, race, disability, and LGBTQ+ status.

As CDT's research shows, two-thirds of teachers recently reported that a student at their school was disciplined due to AI-powered monitoring software, with disproportionate impacts for marginalized communities. Nineteen percent of LGBTQ+ students, for instance, reported they or someone they know was outed due to this software, and licensed special education teachers are more likely to report knowing students who have gotten in trouble and been contacted by law enforcement due to student activity

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1 Elizabeth Laird, Madeleine Dwyer, & Hugh Grant-Chapman, Off Task: *EdTech Threats to Student Privacy and Equity in the Age of AI*, Ctr. for Democracy & Tech (Sep. 20, 2023), https://cdt.org/insights/report-off-task-edtech-threats-to-student-privacy-and-equity-in-the-age-of-ai/
Kristin Woelfel, Ariana Aboulafia, Elizabeth Laird & Sydney Brinker, *Late Applications: Protecting Students' Civil Rights in the Digital Age*, Ctr. for Democracy & Tech. (Sept. 20, 2023), https://cdt.org/insights/report-late-applications-protecting-students-civil-rights-in-the-digital-age/.

monitoring.[2] Additionally, filtering and blocking software has recently been equated to a digital book ban, with one-third of teachers reporting that content associated with LGBTQ+ students and students of color is more likely to be restricted.[3] And sixty percent of teachers report that their schools use algorithmic early warning systems that predict whether a student is dropping out of high school, some of which incorporate protected characteristics such as race, gender, and disability status.[4] This research is particularly concerning due to linkages between school disciplinary policies and incarceration rates of our nation's youth.[5]

While the responsible use of AI in schools may enhance students' educational experience, these examples show a consistent pattern of negative impacts to students in protected classes related to educational technology, including AI-driven technologies. As schools develop and refine policies related to their use of AI, we urge the Department, in coordination with the Office of Science and Technology Policy, to provide clarity on how educators can fulfill their civil rights obligations. Specifically, we echo recent calls by a broad coalition of civil society organizations urging the Department to provide guidance on four areas of civil rights law that intersect with the use of AI-driven technology in schools: (1) Disparate treatment; (2) Disparate Impact; (3) Hostile learning environment, including for students who are most likely to use school-issued devices and are therefore subjected to increased monitoring; and (4) the right to a Free Appropriate Public Education (FAPE) for students with disabilities, who teachers report disproportionately face negative impacts from student activity monitoring and generative AI.[6] We urge the Department to take appropriate enforcement action to safeguard against civil rights violations in the use of education technology, and we request that you answer the following questions regarding any work you may have done on this issue:

1. Has the Department's Office of Civil Rights (OCR) received any complaints alleging discrimination that involved, in any way, the use of an educational technology software, program, or service, including AI-driven technologies? If so, how many complaints has OCR received, and how many has OCR investigated?
2. Has OCR initiated any enforcement actions against potential violations of civil rights law related to the use of education technology?

Thank you again for your attention to this important matter. We look forward to working together to protect students' civil rights and ensure the responsible use of AI in the classroom.

Sincerely,

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2 *Id.*

3 *Id.*

4 Todd Feathers, *Takeaways From Our Investigation Into Wisconsin's Racially Inequitable Dropout Algorithm*, Markup (Apr. 27, 2023, 8:00 AM), https://perma.cc/3DV3-6TAK.

5 Wald, Johanna, and Daniel J. Losen. Deconstructing the School-to-Prison Pipeline: New Directions for Youth Development, Number 99. Edited by Johanna Wald and Daniel J. Losen, Wiley, 2003.

6 https://cdt.org/insights/letter-to-ed-and-the-white-house-from-tech-policy-civil-rights-and-civil-liberties-advocates-calling-for-civil-rights-guidance-and-enforcement-regarding-edtech-and-ai/.

Lori Trahan
Member of Congress

Sara Jacobs
Member of Congress

Henry C. "Hank" Johnson, Jr.
Member of Congress

Bonnie Watson Coleman
Member of Congress

Adam B. Schiff
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cc: Director of the Office of Science and Technology Policy Arati Prabhakar