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February 7, 2013

Massachusetts Board of Elementary and Secondary Education  
75 Pleasant Street  
Malden, MA 02148

Dear Board Member,

It has come to our attention that the Massachusetts Department of Elementary and Secondary Education intends to share confidential student and teacher data with the Gates Foundation, as part of its Shared Learning Collaborative, consisting of personally identifiable information including student names, test scores, grades, disciplinary and attendance records, and most likely, special education needs, economic status, and racial identity as well.

The Gates Foundation is building a national “data store” of such information, and intends to hand all this information to a new, separate corporation, which in turn plans to make it available to commercial vendors to help them develop and market their “learning products.”<sup>1</sup> The operating system of this “data store” is being built by Wireless Generation, a subsidiary of the News Corporation, which has been investigated for violating the privacy of individuals both here in the United States and in Great Britain.<sup>2</sup>

The Foundation has stated that this new corporation, inBloom, will be financially sustainable and independent of philanthropic support by 2016, meaning that states, districts, and/or vendors will likely have to pay for the maintenance and upkeep of the “data store,” which is to be placed on a cloud run by Amazon.com.<sup>3</sup> Of particular concern, inBloom has stated that it “cannot guarantee the security of the information stored in inBloom or that the information will not be intercepted when it is being transmitted” to third party vendors.<sup>4</sup>

We have grave concerns about this unprecedented plan to disclose highly sensitive information with private entities, and we urge you to take the following steps to ensure that student privacy rights are fully protected:

1. Provide and post publicly the contract between the Department of Elementary and Secondary Education and the Gates Foundation concerning this matter;
2. Hold hearings and explain to the public what specific confidential information will be shared and for what purposes;
3. Require parental consent before a child’s data is shared with the Gates Foundation or any other private corporation that intends to store it and/or make it available to others, as FERPA requires<sup>5</sup>;
4. Promise that this data will never be used for commercial purposes;
5. Ensure maximum protections against data breaches and explain who will be held liable if a child’s personal information leaks out or is used in an unauthorized fashion;

6. Explain what resources are being used to facilitate this project, and what further costs will accrue to state taxpayers for the long-term maintenance of this “data store,” once the new corporation becomes independent of philanthropic support;
7. Create an advisory group to oversee this project, including public school parents, advocates, independent experts in data security and privacy, and other stakeholder groups.

The Federal Trade Commission has recently strengthened restrictions on the capture and use of a child’s personally identifiable information, in recognition of the huge risks to safety and privacy that occur when commercial entities obtain access to it.<sup>6</sup> The Massachusetts Board of Elementary and Secondary Education should be leading the effort to protect this data, rather than involved in facilitating its disclosure. The Board should have as its top priority securing the privacy rights of the state’s schoolchildren and their families, rather than serving the interests of private corporations. Until and unless the above steps are taken, we trust that you will not allow any disclosures to occur.

We await your reply,

ACLU of Massachusetts  
Campaign for a Commercial-Free Childhood  
Citizens for Public Schools  
Massachusetts PTA

Please reply to:

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cc: Commissioner Mitchell D. Chester  
Governor Deval L. Patrick

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<sup>1</sup> The Shared Learning Collaborative, Facts and FAQ. Accessed February 5, 2013 from [http://www.classsizematters.org/wp-content/uploads/2011/12/SLCFactSheet\\_FINAL.pdf](http://www.classsizematters.org/wp-content/uploads/2011/12/SLCFactSheet_FINAL.pdf).

<sup>2</sup> A similar contract between the New York State Department of Education was rejected by New York State Comptroller Thomas DiNapoli “in light of the significant ongoing investigations and continuing revelations with respect to News Corporation.” The venture, however, was re-funded by the Gates Foundation using no public money, and approved by the New York Board of Regents in December, 2011. See Adams, R. (August 30, 2011). News Corp. Loses Contract, *The Wall Street Journal*. Accessed February 5, 2013 from <http://online.wsj.com/article/SB10001424053111904332804576539013195155444.html>.

<sup>3</sup> Haimson, Leonie (October 21, 2012). My interesting but not reassuring afternoon with the Gates Foundation's Shared Learning Collaborative. *NYC Public School Parents*. Accessed February 5, 2013 from <http://nycpublicschoolparents.blogspot.com/2012/10/my-interesting-but-not-reassuring.html>.

<sup>4</sup> inBloom Privacy and Security Policy. Accessed February 5, 2013 from <https://inbloom.org/privacy-security-policy>.

<sup>5</sup> The Family Educational and Privacy Rights Act. Under FERPA CFR 99.33, an educational agency or institution can re-disclose information: *only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.*

<sup>6</sup> Federal Trade Commission (December 19, 2012). FTC Strengthens Kids' Privacy, Gives Parents Greater Control Over Their Information By Amending Children's Online Privacy Protection Rule. Accessed February 6, 2013 from <http://www.ftc.gov/opa/2012/12/coppa.shtm>.