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June 23, 2020

Dear Chair Youakim and Members of the House Education Policy Committee,

As this committee considers distance learning for the upcoming 2020/2021 school year, the American Civil Liberties Union of Minnesota urges you to consider the inequitable and unsafe manner in which remote learning may be provided to Minnesota's students during the ongoing COVID-19 crisis. We specifically urge action to ensure that adequate and uniform privacy protections are in place to protect students when they are engaged in remote learning.

While the rapid movement to remote learning during this crisis reflects a good faith effort to educate students, in practice it also presents additional challenges to providing an education on equal terms.¹ The burden of these challenges will likely fall disproportionately on students who already face barriers to education, including students from low-income families, students of color, students with disabilities, and students who lack permanent housing. Remote learning is not a sufficient remedy to school closures unless all students have access to the tools they need to participate fully and equally.

Further, despite growing bipartisan consensus around the need for protecting the privacy of student data, Minnesota still has yet to bring its laws around digital privacy into the 21st century. This leaves students vulnerable, as many of the technologies needed for remote learning, including hardware, software, internet services, and educational learning platforms, are capable of collecting massive amounts of private, personal information on students and/or spying on students using surveillance technologies.

Students should never be required to surrender their privacy or consent to being spied upon as a condition of receiving a constitutionally guaranteed education, and that principle holds especially true during the COVID-19 crisis, when remote learning is the only option. All students must feel

¹ See, e.g., Erin Hinrichs, "State efforts to close internet gap hampering distance learning aren't being expedited – at least for now," MINNPOST, <https://www.minnpost.com/education/2020/06/state-efforts-to-close-internet-gap-hampering-distance-learning-arent-being-expedited-at-least-for-now/> (last accessed Jun. 22, 2020); Marta Jewson, "Lessons learned: Remote learning successes and challenges," THE LENS, <https://thelensnola.org/2020/06/08/lessons-learned-remote-learning-successes-and-challenges/> (last accessed Jun. 22, 2020).

safe to learn remotely, and that simply cannot happen if the tools used for remote learning are allowed to collect and retain information for non-instructional purposes.

The ACLU-MN has been engaged with the Minnesota Legislature around enacting student data privacy protections for over four years. House File 1821/Senate File 2291 was introduced in 2019 and the House bill was heard in the House Judiciary Committee in February 2020. ACLU-MN supported HF1821/SF2291 as an important first step towards protecting student data privacy. However, given the critical urgency of the issue in light of the current COVID-19 outbreak, we urge you to adopt legislation based on the following principles:

- *One:* All computer hardware/software/ISP/EdTech companies who provide or sell remote learning technologies should be prohibited from collecting, using, and retaining any private, personal information about a student or their family members unless doing so is directly necessary for their platforms' remote learning functionality. Moreover, these companies should be required to expunge all the personal information they gather during this health crisis when it resolves, unless a student's parent or legal guardian specifically opts-in to it being retained (via a clear, post-crisis request, and not as part of a broad user agreement they sign now under pressure).
- *Two:* All computer hardware/software/ISP/EdTech companies who provide or sell remote learning technologies should be required to remove or permanently disable any surveillance functions that accompany their products/services, including communications and social media monitoring, search term and browsing history monitoring, keyword alerts, surreptitious access capabilities including video and audio surveillance, facial recognition and other biometric identifying capabilities, and web filtering functions. Students and their families need these technologies to learn at home, not to enable companies and school districts to spy on them.
- *Three:* To ensure the computer hardware/software/ISP/EdTech companies abide by these mandates, each should be required to consent to government auditing of their compliance with the above privacy conditions.

While the aforementioned privacy protections should be applicable to student information whether we are in the midst of a public health crisis or not, at a minimum, they should be made mandatory while the use of remote learning tools is, for all practical purposes, compulsory. The existence of a public health crisis, no matter how daunting, does not suspend students' legal and constitutional rights. We urge you to act now to ensure our students and their families receive the equal educational and privacy rights to which they are entitled.

Sincerely,

Julia Decker
Policy Director
ACLU-MN