

Congressman David Brat
1628 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Brat,

As leaders of national and state parent and citizen organizations deeply concerned about student data-privacy, parental rights, and local control, we are writing to you about the June 28 hearing¹ of the U. S. House Subcommittee on Early Childhood, Elementary, and Secondary Education of the Committee on Education and the Workforce. That hearing was titled “Exploring Opportunities to Strengthen Education Research While Protecting Student Privacy.” We ask that you review the following concerns and add this letter to the record of the hearing, as is your prerogative.

The June 28 hearing was quite similar to the hearing held on this topic² in March of last year. This seems to be the latest effort by the Committee to reauthorize the Education Sciences Reform Act of 2002 (ESRA) as the Strengthening Education Through Research Act (SETRA),³ which failed in the last session of Congress.

Despite the efforts of members such as yourself who understand these privacy concerns, leadership seems to have learned nothing from the parent revolt on data-collection and social emotional profiling that blocked the bill in the 114th Congress. Here are our major concerns with the hearing:

- 1) **The attitude persists that the government is entitled to all manner of student data on freeborn American citizens that should follow them from cradle to grave.** Three of the four witnesses strongly supported continued or expanded student data-mining. All of them are or have been intimately involved with the Institute for Education Sciences (IES) that would be reauthorized by SETRA. Two witnesses, Dr. Nathaniel Schwartz⁴ and Dr. Diane Whitmore Schwanzenbach,⁵ are part of organizations receiving major grants from IES. The third pro-data witness was Dr. Grover Whitehurst,⁶ who was the first head of IES when it was created in 2002 to begin the womb-to-tomb state longitudinal database system. Their overarching theme was that constant data-mining and research is essential to make federal education programs and education in general more effective; therefore, any efforts to minimize data-collection, or to enhance parental-consent requirements or transparency of what is collected, should be resisted.

This unquenchable thirst for more and more data to support more and more federal programs would perhaps be understandable if federal involvement in education had any track record of success. But in fact, the overwhelming number of federally funded education programs has been either ineffective or

¹ <https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=401779>

² <https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=400420>

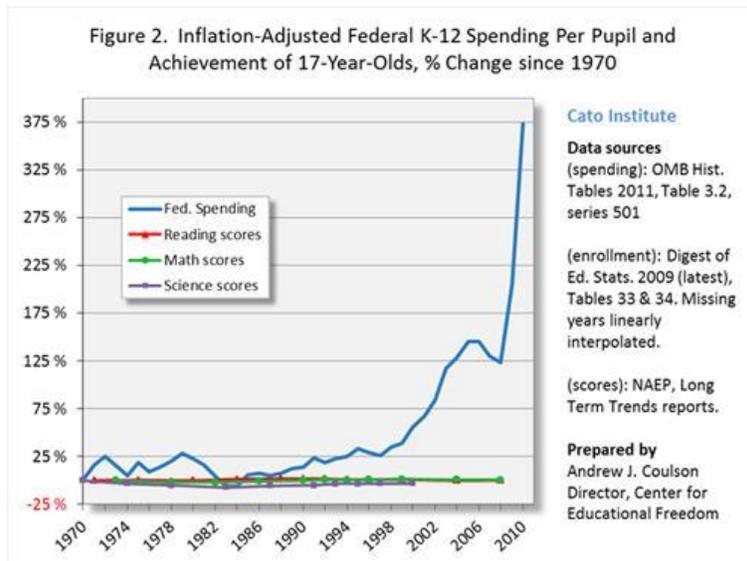
³ <http://bit.ly/2uqLN3K>

⁴ https://edworkforce.house.gov/uploadedfiles/nathaniel_schwartz_written_testimony_-_final.pdf

⁵ https://edworkforce.house.gov/uploadedfiles/diane_schanzenbach_written_testimony_-_final.pdf

⁶ https://edworkforce.house.gov/uploadedfiles/russ_whitehurst_written_testimony_-_final.pdf

harmful.⁷ As this graph shows, American taxpayers are spending skyrocketing sums for utterly useless programs:



Research shows what works (phonics in reading⁸ and standard algorithms in math⁹) and what doesn't (Common Core,¹⁰ pre-K, and home visiting¹¹) in education. We don't need ramped-up data-collection to tell us that. But research is ignored if it does not fit with the prevailing ideological and profit agendas of the education establishment of both parties. Why endanger students' privacy to feed research that will be disregarded if it comes out "wrong"?

- 2) **Legitimate student-privacy concerns only received lip service.** Rachael Stickland¹² of the Parent Coalition for Student Privacy was the only privacy advocate of the four witnesses. She made many important points in her testimony:

While parents generally support the use of research and evidence to drive decision-making in education, policymakers must consider legitimate parental concerns over the use and disclosure of student data stored in statewide longitudinal data systems or SLDSs, and any federal repository of personal student information, for research or other purposes. Parents generally believe education should be in the control of their local community

⁷ www.cato.org/publications/congressional-testimony/impact-federal-involvement-americas-classrooms

⁸ There are over 16,000 studies available on the U.S. Department of Education research site www.eric.ed.gov when using the query "success of phonics to teach reading"

⁹ <http://www.chemreview.net/CCMS.pdf>

¹⁰ www.brookings.edu/research/2016-brown-center-report-on-american-education-how-well-are-american-students-learning/

¹¹ www.thefederalist.com/2016/07/13/sending-government-agents-into-peoples-homes-wont-fix-preschools-failures/

¹² www.workforce.house.gov/uploadedfiles/rachael_stickland_written_testimony_-_final.pdf

and that a student's data should remain within the school or district for the benefit of the child. When state or federal agencies access identifiable student data without parental consent, many parents perceive this action as government overreach.

Other parents recognize that data collected on individuals, even when limited to certain elements and collected ostensibly for one purpose, could be expanded in scope and subjected to mission-creep, to be used for purposes beyond the original prescribed intent. K-12 student data currently maintained by most states in their SLDS contain upwards of 700 highly sensitive personal data elements, including students' disciplinary records, disabilities, immigration status, and homelessness data. The comprehensive nature of these data sets creates life-long dossiers on individuals, and could quickly become a go-to repository for other state agencies or the federal government.

Ms. Stickland is correct that life-long dossiers are being created. Sadly, the repositories she mentions as a real concern are in a way already here. In 2012 the Obama administration implemented federal regulations¹³ that gutted the Family Educational Rights and Privacy Act (FERPA), the 43-year-old law governing student privacy law, so that now student data may be shared with literally anyone in the world – without parental consent or even notification – as long as the custodian of the data designates that entity an “authorized representative” to receive the data. One higher-education organization described this regulatory change as a “data free-for-all”¹⁴ -- and the pro-data witnesses at the hearing want to make the situation even worse by increasing the pool of data that can be disclosed.

Given the near constant news of hacks and breaches of personally identifiable information in multiple federal agencies, especially the U.S. Department of Education (USED) and the Internal Revenue Service involved in the student-loan program via the Free Application for Federal Student Aid (FAFSA), it is very difficult for parents to believe that their children's data is safe. (In fact, Ms. Stickland's family suffered from the FAFSA data breach.) In November 2015 the House Committee on Oversight and Government Reform concluded after hearings that “[USED] is not heeding repeat warnings from the Inspector General (IG) that their information systems are vulnerable to security threats.”¹⁵ In light of this evidence, expanding the pool of vulnerable data from vulnerable children is reckless at best.

3) There was almost no discussion of the rapidly escalating psychological profiling via social emotional research and learning programs and standards.
Besides trying to expand social emotional research and data-collection on children

¹³ <https://www.law.cornell.edu/cfr/text/34/99.31>

¹⁴ American Association of Collegiate Registrars and Admissions Officers, Comment on Proposed FERPA Regulations (May 2011), *available at* https://www.scribd.com/document/217174726/Ferpa-Aacrao-Comments?irgwc=1&content=10079&campaign=Skimbit%2C%20Ltd.&ad_group=40063X1035282X4b66a794a62c1555f6278543ed6d0d1c&keyword=ft750noi&source=impactradius&medium=affiliate.

¹⁵ <https://oversight.house.gov/hearing/u-s-department-of-education-information-security-review/>.

in the last version of SETRA,¹⁶ there is much evidence that this is happening in state accountability plans under ESSA,¹⁷ in preschool programs across the nation,¹⁸ in the National Assessment of Educational Progress (NAEP),¹⁹ and in myriad other programs and commissions.²⁰ No committee members asked about it, and Ms. Stickland was the only witness who came close to mentioning it in her testimony:

It's not difficult to imagine how this gold mine of data could be repurposed for political or ideological gain, which is one reason that our coalition supports maintaining the Higher Education Act's 2008 ban on the creation of a federal student unit-record system.

The addition of social emotional research to the federal trove was the by far the most serious objection to the SETRA bill last time around, and proponents of that concept so dangerous to liberty are doing no better selling it now than then. Especially is this the case since Ms. Stickland's concern about political manipulation is coming true, with SEL used to promote controversial social justice²¹ and sex-education classes for young students.²²

The American Principles Project²³ and Education Liberty Watch,²⁴ among others, both strongly agree with Ms. Stickland about retaining the prohibition on the student unit-record system and have testified to that point to the Commission on Evidence-based Policymaking, the entity created by Congress to try to tear down that vital student privacy safeguard.

CONCLUSIONS AND RECOMMENDATIONS

Our [conclusions and recommendations](#) for SETRA and federal student-data research in general remain essentially unchanged since the 2016 hearing.²⁵ It is imperative not only that the social emotional research and profiling issue be dealt with (by prohibiting government involvement in such research and profiling), but also that FERPA be updated to address 21st-century privacy threats to students and families *before* SETRA is reauthorized. Our full list of recommendations is as follows:

1. Student privacy and parental consent should always be considered pre-eminent over the research desires of the government or private sector, especially in the realm of psychological profiling.

¹⁶ <http://edlibertywatch.org/2016/02/new-details-on-the-dangerous-social-emotional-research-in-setra/>

¹⁷ www.thenationalpulse.com/commentary/attention-parents-social-emotional-learning-state-education-plans

¹⁸ <http://www.casel.org/state-scan-scorecard-project/>

¹⁹ www.edlibertywatch.org/wp-content/uploads/2014/11/Final-Ltr-NAEP-legal-and-privacy-concerns-06272016.pdf

²⁰ <http://thefederalist.com/2016/10/19/schools-ditch-academics-for-emotional-manipulation/>

²¹ <https://thenationalpulse.com/commentary/social-emotional-learning-turning-children-leftist-activists/>

²² www.breitbart.com/big-government/2017/07/03/school-district-halts-decision-planned-parenthood-lgbt-inclusive-sex-ed-curriculum/

²³ <https://americanprinciplesproject.org/app-in-news/statement-before-the-congressional-commission-on-evidence-based-policymaking/>

²⁴ <https://www.cep.gov/content/dam/cep/events/2017-02-09/2017-2-9-effrem.pdf>

²⁵ <http://edlibertywatch.org/wp-content/uploads/2014/11/Summary-Response-to-House-SETRA-hearing.pdf>

2. The government has no constitutional, statutory, or moral right to collect highly personal and sensitive social emotional data on our children.
3. Government's having this kind of data poses major dangers to freedom of thought, as when California prisoners were forcibly treated with antipsychotics because their so-called "extreme homophobia" was considered delusional.²⁶
4. As discussed above, federal involvement in education has yielded either stagnant or declining academic performance.
5. The vast majority of federal education programs are unconstitutional because USED is unconstitutional. Most of these programs should be eliminated, with block-granting to the states any remaining that are demonstrably effective and constitutional.
6. Government policy-makers routinely ignore studies that refute the pet theories of the progressive education establishment (*e.g.*, studies showing the ineffectiveness and or harm of current government education and child social programs²⁷). So why must the taxpayers fund so many studies in the first place?
7. The committee should therefore:
 - Remove the social emotional research language from any further attempts to pass SETRA.
 - Prohibit social emotional data-gathering and the use of data for predictive testing in any FERPA reauthorization.
 - Include in the FERPA reauthorization strict data-transparency language, and update the data-security language per the recommendations of technical experts such as Dr. Joel Reidenberg..
 - Require third-party software and testing vendors to notify parents what data is collected on students and how it is used.
 - In addition to imposing penalties on researchers or private vendors who allow student data to be compromised, allow compensation for students who are victims of such breach.
 - Close the "curriculum and assessment" loophole for invasive surveys in the Protection of Pupil Rights Amendment.
 - Demand that USED immediately repair the federal data-security failures found in the Inspector General's recent report and uncovered by the House Oversight and Government Reform Committee.
 - Strongly consider a moratorium on further federal research until programs already shown to be ineffective and/or harmful are transformed or eliminated and until effective privacy measures are implemented.

Thank you for hearing our concerns on this vital education topic. We look forward to working with you as ESRA is reauthorized and hope you will feel free to rely on both the

²⁶www.washingtonpost.com/wp-dyn/content/article/2005/12/09/AR2005120901938.html?referrer=emailarticle

²⁷<http://edlibertywatch.org/2015/11/compilation-analysis-of-early-childhood-research-regarding-effect-fade-out-academic-emotional-harm/>

expertise and passion of the members of this national coalition.

Best regards,