



Preliminary Report on CT RISE in New Haven September 28, 2018

Summary

The CT RISE program interacts with a number of key issues in public education, including: how we define, quantify, and measure student learning; teacher autonomy; teacher morale; student data privacy; and the role of philanthropists and other external and private interests in our public schools. This report takes CT RISE as a concrete and revealing case study. NHPS Advocates are volunteers, who do not have access to all the potentially relevant information and have not undertaken exhaustive research. Accordingly, this report is “preliminary” in that it summarizes our emerging findings, based on the available information. It does not supply a comprehensive overview, but is aimed at contributing to ongoing discussion.

The CT RISE program—currently being piloted at high schools in New Haven (Career), Meriden, Hartford, and East Hartford—is under consideration for expansion in NHPS. The core of the CT RISE program is a “data dashboard” that collates data such as grades, test scores, attendance data, course credits, and behaviors. The program provides a number of potential benefits, including streamlined access to student data and added supports for students and teachers. NHPS Advocates also note concerns in the following areas:

1. **Instruction:** There is no compelling evidence that the CT RISE program improves student learning. At the same time, its dashboard may bring unintended consequences, such as distracting from teaching and learning, prioritizing engagement with data profiles rather than human connections, steering teachers’ attention toward discrete data points and away from holistic development, and focusing excessive energies on narrow and/or standardized metrics.
2. **Governance:** Though it provides data in a useful collated format, the CT RISE dashboard essentially duplicates existing NHPS services. The RISE program also operates without oversight structures that incorporate key participants, such as students and families. It appears that no party provided the required parental notification of student participation, or appropriate opt-out forms, an omission that violates RISE’s Memorandum of Understanding with NHPS and the CT Student Data Privacy Law.
3. **Data Privacy:** NHPS’ partnership with CT RISE increases the use of surveillance technologies in communities of color, with data profiles possibly following students beyond their current school sites and foreclosing future opportunities. It also potentially enables corporate experimentation with student data.
4. **Fundraising Practices:** CT RISE’s use of Wishbone fundraising reveals an exploitative model. Wishbone requires that students raise a non-refundable \$99 deposit in order to participate in fundraising. Partial funding for projects that fail to meet their fundraising goal are redirected to other students, not to donors.
5. **Connections:** CT RISE is funded and operated by individuals and organizations with demonstrated interest in the privatization of public education. CT RISE is funded by the Dalio Foundation and is a spin-off organization from New Visions for Public Schools, a charter management organization. Both organizations have advanced the outsourcing and private management of public services.

In sum, the existing partnership between NHPS and CT RISE potentially erects barriers to student learning; operates without inclusive governance structures; raises concerns about data privacy; promotes an exploitative fundraising model; and strengthens ties with special interests working to privatize public education. Thus we urge a restructuring of the relationship—one that ensures school leadership and educators are in control of student learning; centers students, rather than a data dashboard; creates transparent, inclusive structures to govern the program; guarantees data privacy; ends any exploitative practices; communicates an opt-out option to families; and offers teachers the option to opt-out without penalty. NHPS Advocates also call for the district to re-evaluate this and all data agreements in light of the information in this document and to verify compliance with the CT Student Data Law.

Introduction

The CT RISE program—currently piloted at high schools in New Haven (Career HS), Meriden, Hartford, and East Hartford—is under consideration for expansion in NHPS, where it has been in place since 2016. This Report summarizes preliminary findings from a review of available information about the NHPS and CT RISE partnership and the implications of its proposed expansion.¹

The core of CT RISE’s program is a “data dashboard,” which collates data such as grades, test scores, attendance data, course credits, and behaviors. The dashboard offers colorful graphs, showing student performance on standard measures. Some Career teachers note that access to this collated data is a useful tool in pinpointing trends in student performance, as well as identifying flaws in data collection. In addition to collating data, potential positive features of the program include: 1) enriching conversations among teachers about how to best support students; 2) supplying teachers with needed technology and supplies; 3) offering teachers paid travel, professional development, and other opportunities; 4) providing extra staff support for students; 5) funding student scholarships to SAT prep courses; and 6) supporting in-school summer programs and college campus visits. Some Career teachers express enthusiastic support for the CT RISE program based on these tangible offerings.

Despite potential benefits, the CT RISE program raises significant concerns in the following areas, each of which are addressed below: Instruction, Governance, Data Privacy, Fundraising, and Organizational Connections.

1. Instruction

a. No demonstrated improvements in student learning.

CT RISE identifies “early results” of its work at Career as a slightly improved “on track” rate from 86% in 2016-17 to 94% in 2017-18. For reasons detailed below, “on track” is not a reliable indicator of progress in student learning, nor is there any indication that the change is statistically significant. CT RISE also identifies a marginal reduction in absenteeism in the same time frame, from 22.2% to 20.5%. No measure of uncertainty is reported to confirm that these variances differ substantially from normal ebbs and flows. There is also no evidence that these rates of improvement are better than those of other NHPS schools, or that the RISE program was a driving factor. Numerous other considerations—the work and number of truancy officers, Principal leadership, other program interventions, and changes in family circumstances—are all relevant factors as well.²

b. A distraction from teaching and learning.

Instructional staff are at their best when building learning modules for children and cultivating positive relationships with children. Yet some teachers and administrators report spending extensive time interacting with and analyzing the dashboard, citing a variety of reasons including its complexity and its central role in planning and decision-making. This practice inevitably draws time away from student work samples and the intensive human work of directly supporting children and diagnosing individualized learning needs. For the

¹ At the time of release, available information included content from email, phone, and in person exchanges with some Career teachers and Career Principal Zakia Parrish, who initiated unsolicited contact, corroborated sentiments provided by others, and/or were quoted in press coverage. It also included electronic and in-person exchanges with representatives of CT RISE and the Dalio Foundation, as well as documents related to their respective partnerships with NHPS, attached as appendices. In addition, legal statutes were consulted, including the Federal Family Educational Rights and Privacy Act (FERPA) and CT Student Data Law. These documents are also provided as appendices.

² Figures reported by CT RISE in its “RISE Network Overview,” included as Appendix A.

majority of students, the CT RISE dashboard offers nothing but an “on track” label. Yet for all students, whether “on track” or not, there is a price paid for school leaders’ and teachers’ diverted focus. Indeed, if instructors are given the time to fully engage with their students, they do not need to rely on a dashboard to know which are having difficulty. But in a dashboard-focused environment, there may be little time left for this intensive work. Instructional practices focus on compliance with data-related goals, which are not necessarily linked with individual student needs—and as a result, student learning can diminish. This risks creating a climate that is “data-driven” rather than “data-informed.”

Data serves educators well when it *informs* at a granular level. Here is a description of a more “data-informed” approach, drawn from David Kirp’s book about Union City, NJ, *Improbable Scholars: The Rebirth of a Great American School System and a Strategy for America’s Schools*.

“The tidal wave of information can overwhelm anyone who isn’t a stats-wonk, and so the coaches break down data into user-friendly chunks. In one instance, a teacher may need to spend time with a handful of kids who are confused about the same thing—how to write that persuasive letter to the school board, for example—while in another case, when most of the students are dumbfounded, the teacher has to find new ways of getting the point across.”³

Yet the CT RISE dashboard does not monitor data at this level, with the capacity to improve classroom instruction. The dashboard tracks only standardized data, which paint an incomplete picture and tend to produce standardized “solutions” that do not adequately account for contextual factors or meet the instructional needs of individual children. Consider, for example, the attendance data for a frequently absent child who provides home care to a disabled adult or child care to a younger sibling. The data dashboard does not provide the information needed to assess the child’s needs in context. Ultimately, prioritizing teacher-student relationships, team-based collaboration, and the provision of necessary support services, not teacher time with data dashboards, will improve learning and increase achievement among students.

c. Lost teacher preparation time.

Quality professional development and teacher collaboration are essential for teachers and students, and easily make up for classroom time spent in their pursuit. Yet under the CT RISE approach, the data dashboard and meetings consume time set aside for teaching preparation and collaboration. For example, Career teachers report that Grade Level Team and Professional Learning Community meetings integrate close review of RISE data, with teachers assessing students using information available in the dashboard and determining courses of action based on what is found there. Some Career teachers further report the dashboard commandeers attention, taking priority over the sharing of holistic, developmentally appropriate teaching strategies or specific supports for children that may not immediately result in improved scores on the data dashboard. To quote some Career High School teachers:

- “We now have to meet twice a week during time that was meant to be preparation time, in small groups using the CT RISE dashboard and its protocols to keep students ‘on track’ which is the CT RISE focus for their ‘data flow.’ There is a big focus on 9th grade and some ambiguity about what they want from the older students.”
- “Learning does not seem to be the goal, the only thing that counts is results according to their own measurement.”
- “We are rapidly losing autonomy and time to adequately prepare for class.”
- “Meetings (focusing on CT RISE data) are the priority now, not classroom teaching.”

³ Kirp, David L. (2013) *Improbable Scholars: The Rebirth of a Great American School System and a Strategy for America’s Schools*. New York: Oxford University Press, 148-9.

- “From the ground level it is difficult to get a handle on what’s happening because there is absolutely no transparency.”

d. Expectations adjusted to fit metrics.

With the dashboard influencing decision-making, academic expectations may be adjusted to meet its requirements, rather than students’ needs. As teachers and administrators chase metrics, there is often little time “wasted” on activities that don’t count toward metric goals. Indeed, some Career High School teachers report that CT RISE data, which do not identify specific student instructional needs, now determine student performance goals, with teachers using the dashboard’s limited data to pre-determine student expectations. For example, the dashboard would not necessarily reveal that a student in algebra still struggles with fractions, specifically; that student would more likely be labeled “off track.” In another example, when a student is in danger of failing a course, teachers have been asked to give the student extra credit opportunities, with the sole objective of raising the metric, rather than investing the time to understand the student’s underlying learning needs. Some comments from teachers suggest that the demands of the CT RISE dashboard, rather than teachers’ fine-tuned assessments of what students can and should achieve, drive expectations.

e. Reinforcement of a stigmatizing deficit model.

Gloria Ladson-Billings, Professor of Curriculum and Instruction at the University of Wisconsin-Madison School of Education and former President of the American Educational Research Association, explains how a traditional focus on “achievement” reflects and promotes a troubling “deficit model” that stigmatizes students of color in particular:

“This all-out focus on the ‘Achievement Gap’ moves us toward short term solutions that are unlikely to address the long-term underlying problem... However, when we begin to look at the construction and compilation of what I have termed the education debt, we can better understand why an achievement gap is a logical outcome. I am arguing that the historical, economic, sociopolitical, and moral decisions and policies that characterize our society have created an education debt.”⁴

Repaying this “debt” to our learners, Ladson-Billings argues, begins with an encouraging learning environment that is “not amenable to a single, static measurement” and allows for nuanced academic determinations based on students’ development and determination, rather than solely on test scores.⁵ Unfortunately the potential for this holistic learning environment is weakened via emphasis on the CT RISE dashboard. An “off-track” label highlights deficits, rather than strengths, and implicitly locates the source of those deficits in students themselves, disregarding students’ intrinsic motivation to achieve in ways not easily represented in dashboard data. This is detrimental to students’ feelings of belonging and positive identification with school and education. For example, a recent Career High School newsletter calls out the fact that eighteen students are “not on track.” In addition, critical aspects of school culture, such as the quality of human relationships, are not presented on the dashboard. Nor are children’s social and emotional health (nor, for confidentiality purposes, should they be). Yet all of these factors are foundational to student learning and skill acquisition.

f. Advances a culture of suspicion and blame.

A healthy, positive school culture is cultivated by staff who help students develop constructive coping mechanisms and de-escalation strategies for students and staff alike. Yet by collecting and highlighting student

⁴ Ladson-Billings, Gloria. (2006 October). “From the Achievement Gap to the Education Debt: Understanding Achievement in U.S. Schools.” *Educational Researcher*. (35) 7, 3-12. Retrieved from <http://ed618.pbworks.com/f/From%20Achievement%20Gap%20to%20Education%20Debt.pdf>.

⁵ Ladson-Billings, G. & Gomez, M. L. (2001). “Just showing up.” *Phi Delta Kappan*. (82) 9, 675-681.

behavioral data, the CT RISE dashboard can put students on the defensive. Student infractions, which include “inciting a fight/riot,” “threat/intimidation/verbal harassment” and “insubordination/disrespect,” are recorded in a database for all teachers and staff at the school to see, increasing the likelihood of a negative feedback loop. As described in greater detail in Section 3b below, collecting this data in a centralized dashboard expands surveillance in communities of color and may increase the use of ‘predictive surveillance’—a practice that ignores the likelihood of negative behaviors as expressions of unaddressed trauma and encourages systems of rewards and punishments (e.g., ice cream socials for “on track” students only) rather than supportive social-emotional healing and development for all students.

g. Potential deterrent to teacher innovation.

Use of the CT RISE data dashboard as an indicator of teacher performance—how many students moved from “off track” to “on track,” for example—risks exacerbating a “teach to the test” mentality and discouraging teachers from exploring students’ interests alongside them. Some Career High School teachers report that merely skepticism of the CT RISE program led to lower scores on their evaluations.⁶ Such practices stymie teacher innovation by focusing teachers’ attention on metrics such as standardized test scores, which have not been shown to support high quality instruction and assessment, and by potentially distracting teachers away from more complex, engaging instruction and assessment.⁷ This is especially problematic given the “broad agreement among statisticians, psychometricians, and economists that student test scores alone are not sufficiently reliable and valid indicators of teacher effectiveness to be used in high-stakes personnel decisions.”⁸ In a more holistic scenario:

“Assessments... are clearly linked to standards that are reflected in the rubrics used for scoring the work; when these criteria are made available to students as they are developing their work; and when students are given the opportunity to engage in self- and peer assessments using these tools. In addition, students develop these skills when assessments ask them to exhibit their work in presentations to others, where they must both explain their ideas or solutions and answer questions that probe more deeply, and then revise the work to address these further questions... They end up with a much better idea of what to do differently next time, particularly compared to what they do if they receive an item analysis from a standardized test or generalized comments from a teacher on a paper such as “nice job,” or “good point.” When students receive feedback of many different types from different sources, they are able to begin to triangulate among them to identify patterns of strength and weakness beyond just the specific questions they got right or wrong. This more comprehensive, holistic sense of knowledge and skills empowers the learner and builds self-awareness and self-efficacy.”⁹

A standardized data dashboard can steer teaching energies away from these more nuanced, sensitive kinds of support, which are essential to a healthy learning environment. Identifying children as “off track” just once can be the event that undermines the trust necessary to sustain a student’s learning. Likewise, identifying children as “on track” according to standardized measures alone is inadequate, and teachers should not be discouraged from more holistic approaches that nourish a lifelong love of learning.

⁶ Teachers are understandably hesitant to publish identifying details from their performance reviews. Nevertheless, NHPS Advocates received compelling information that RISE was a factor in some teachers’ evaluation.

⁷ See Darling-Hammond, L. and Falk, B. (2013). “Teacher Learning Through Assessment.” Washington, DC: Center for American Progress. Retrieved from <https://www.americanprogress.org/wp-content/uploads/2013/09/TeacherLearning.pdf>. The NAACP also recently issued a brief opposing high-stakes educational testing, a core component of a student’s dashboard status; see <http://www.naacp.org/wp-content/uploads/2010/06/Education.pdf>.

⁸ Shavelson, Richard J. et al. (2010). “Problems with the use of student test scores to evaluate teachers.” *Economic Policy Institute*, Briefing Paper #278. Retrieved from <https://www.epi.org/publication/bp278/>.

⁹ Conley, D.T. and Darling-Hammond, L. (2013). *Creating systems of assessment for deeper learning*. Stanford, CA: Stanford Center for Opportunity Policy in Education. Retrieved from https://edpolicy.stanford.edu/sites/default/files/publications/creating-systems-assessment-deeper-learning_0.pdf.

h. Potential for data misinterpretation and manipulation.

CT RISE offers anecdotes and cherry-picked statistics to support its claims of improving student achievement. Yet some Career High School teachers' on-the-ground experience suggest reasons to question these numbers. One explained the following:

"It's all about numbers and cooking them when they need to. They have charts all over the school showing the percentage of each class 'on track.' Freshmen were at 72% on track, and then they 'improved' to 92% seemingly overnight. The explanation, which was not publicized, was that the 72% was using a floor of 70 as passing, suggesting their higher standards. But then, reality required that they have a higher number 'on track' for passing 7 of 8 classes and so the passing mark was reset at 60 and the number of freshman passing shot up to 92%."

Practices like "moving the goal line" are predicted by Campbell's Law, which states that "the more any quantitative social indicator is used for social decision-making, the more subject it will be to corruption pressures and the more apt it will be to distort the social processes it is intended to monitor."¹⁰ Such practices are to be expected in a data-driven environment that prioritizes adherence to metrics above students' individual learning needs.¹¹

Even without active misrepresentation, CT RISE dashboard users may read its statistics in problematic ways, given variation in users' technical understanding of the data as presented. For example, improvement in "on track" numbers over time is reported without any measure of uncertainty or statistical significance, allowing for the possibility that expected fluctuation in the numbers will be interpreted as actual improvement or backwards progress.

Likewise, data analysis and visualization are only as sound as their input data. There are, for example, well-known and fairly widespread errors made in attendance data. These impact the validity of any subsequent data analysis, a condition often described as the "garbage in, garbage out" phenomenon. And in fact, CT RISE observed an over-reporting of absences on Wednesdays, attributed to irregular attendance-taking because of Career's Wednesday advisory period. It's harder to control for random errors, and the dashboard has no way to report a margin of error.

i. Data profiles and automated analyses threaten to undermine human connections and understanding.

The data dashboard profile of a child might give a stranger a sketch of a child's abilities and behaviors, but it cannot replace the deeper and more nuanced understanding of a skilled teacher. Proponents of CT RISE have said that the aggregate information—for example, about a student who is repeatedly tardy on a certain day of the week—give a level of understanding not available to human observers. That statement underestimates human observers. Teachers are perceptive and intelligent and can easily draw connections such as "students act up in the cafeteria" without spending their limited time analyzing information in a student data management system. In this way, programs like CT RISE have the potential to disrupt, rather than build, human connection. More data, and more attention paid to data, does not necessarily yield better insight. Indeed, researchers who study data use have argued that very point.

¹⁰ See https://en.wikipedia.org/wiki/Campbell's_Law.

¹¹ See, for example, Booher-Jennings, J. (2005), Below the bubble: "Educational triage" and the Texas Accountability System. *American Educational Research Journal*, 42(2), 231-268.

“It is not surprising that big data is opening new avenues of blindness. Paradoxically, when we collect a great amount of data, suddenly people start seeing patterns in random data. Researchers of big data thus point out that we are experiencing apophenia: seeing patterns where none actually exist, simply because enormous quantities of data can offer connections that radiate in all directions.”¹²

Much has also been written about the false sense of objectivity derived from algorithms that incorporate common social biases.¹³ Whenever data are subjected to automated analysis or decision-making, fairly arbitrary and/or potentially biased human decisions have contributed to the design of that seemingly objective structure. Examples include threshold values indicating the point at which some action should be taken; the stratification of values into quartiles, quintiles or some other categorization; or a ranking of people or institutions according to some composite metric. None of these is objective, but each has been used to make important real-world decisions under the guise of impartiality. As one recent article explains, “Data science applied in public education just moves the points of interpretation and subjectivity. It doesn’t eliminate them.”¹⁴

2. Governance

a. Families not engaged or informed.

Despite the widely documented centrality of familial support to student learning, the CT RISE dashboard is not accessible to students or their families. There also appears to be no parental notification of student participation in the CT RISE program and no provision of appropriate opt-out forms for students and families. Yet the Connecticut Student Data Privacy Law, included as Appendix C, requires a “local or regional board of education to provide electronic notice to any student and the parent or legal guardian of a student affected by the contract” within five business days of a contract involving student data privacy. The RISE Memorandum of Understanding (MOU) likewise requires this notification, as well as the posting of the notice and the MOU agreement on the NHPS website. No such notice was sent to Career parents following the execution of the MOU and no such information is to be found on nhps.net. A document request to the district yielded no parent opt-out or permission forms and no informational materials about RISE for Career parents.

b. Duplicates services.

All of the information collated by CT RISE is already available to teachers, students, and families, and generally well-known. The CT RISE dashboard draws its data from easily accessible sources: PowerSchool, which includes Review 360 behavioral data, and SchoolNet. Other data on the dashboard is publicly available from the CT State Department of Education. This year, the NHPS paid \$122,590 for PowerSchool. As school staff need this information, they can readily access desired data. Unlike CT RISE, PowerSchool also provides information directly to students and families through a password protected web-based portal.

In addition, NHPS has already developed its own more targeted dashboard assessment tools, tied to specific learning needs along the lines of the *Improbable Scholars* example described in Section 1b above. This includes an online system using Google Docs to track student progress in reading, as described in the *New Haven Independent*.¹⁵ These existing systems call for ongoing refinement, not another layer of dashboard.

¹² Dugain, M. and Labbe, C. (2016) “L’homme nu. La dictaire invisible de numerique,” cited and translated in Salecl, R. (2018) Big data - big ignorance. *Big Data, Crime and Social Control*. Ales Zavaranski, ed. New York: Routledge, 58-74.

¹³ O’Neill, C. (2017) *Weapons of Math Destruction*, New York: Penguin Random House.

¹⁴ Abamu, J. (2018 February 5) “Big Data, Different Visions: Why Charter Networks Are Investing Heavily in Data Teams.” *EdSurge*. Retrieved from <https://www.edsurge.com/news/2018-02-05-big-data-different-visions-why-charter-networks-are-investing-heavily-in-data-teams>.

¹⁵ See https://www.newhavenindependent.org/index.php/archives/entry/teachers_get_on_same_google_docs_page/ and https://www.newhavenindependent.org/index.php/archives/entry/literary_coaches/.

c. Echoes a prior program with unknown results.

NHPS previously had two contracts with New York’s New Visions for Public Schools, the organization that developed CT RISE (as described below in Section 5). In 2014, the Board of Education approved a \$27,780 contract for New Visions to “provide professional development and technical assistance on the Hillhouse High School Academies Reorganization.”¹⁶ In 2015, the Commissioner’s Network paid \$115,618 for New Visions to conduct “Campus Planning” at Wilbur Cross High School. Cross personnel were to attend “learning tours” of New Visions schools, experience “leadership capacity building,” weekly meetings and strategic planning, and—interestingly—receive assistance in “designating [sic] student-level data tools to support the leadership of Wilbur Cross in tracking student performance, on-track status, and interventions to improve outcomes. These tools, to be produced by the district, will support the weekly leadership team meetings and the team’s inquiry into the effectiveness of student supports.”¹⁷ In other words, CT RISE appears similar to a program the district already used. Yet promoters of CT RISE point to no lasting, demonstrable benefits of Cross’s participation in that program.

d. Establishes donor dependence, while diminishing the urgency to address problems systemically.

The recent NHPS Teacher Wellness Survey reveals that low teacher morale is a widespread problem in the district, due to a variety of factors including workplace stress, inadequate supplies and support, insufficient paid time to fulfill work responsibilities, exclusion from meaningful decision-making, and disregard for teachers’ professional experience and expertise.¹⁸ Thus it is not surprising that teachers appreciate a windfall of supplies, experiences during which they are respected as professionals, and other perks, regardless of their source. Yet in the case of CT RISE, these offerings are bandaids over a gaping wound, supplied by external parties with their own goals.

Once implemented, the educational extras supplied by CT RISE would be difficult to lose, thereby giving the Dalio Foundation influence over NHPS vision and strategy. Yet as detailed in Section 5 below, the Dalio Foundation is not a sustainable source of revenue and, like every organization, is guided by internal objectives. Some Career educators report that they were consulted in advance of designing the RISE program and that CT RISE continues to carefully consider their feedback. While this is a positive trend, neither CT RISE nor the Dalio Foundation is governed by or defines its goals in relation to NHPS’ own objectives. In addition, neither is accountable to the public.

Long term, the factors that contribute to low teacher morale cannot be addressed comprehensively and sustainably by external parties. Regrettably, chronic underfunding of public schools drives dependence on donors. A district that is self-sufficient, with adequate and sustainable funding, would not be subject to the interests of funders. Donor dependence puts our district in the position of supporting only what external parties choose to prioritize, rather than educators’ and families’ insider knowledge of students’ most pressing student needs. Instead, NHPS can strategize to solve problems systemically and then, if appropriate, invite external funders to support *the district’s own initiatives* in meeting *its own goals*.

¹⁶ New Haven Board of Education, Agreement No. 96106629 with New Visions for Public Schools, July 7, 2014.

¹⁷ New Haven Board of Education, Agreement No. 9610363 with New Visions for Public Schools, Oct. 24, 2014, amended June 10, 2015.

¹⁸ See the NHPS 2016-17 NHPS Wellness Survey.

3. Data Privacy¹⁹

Note: The data privacy concerns described below pertain to all forms of electronic student data collection and storage, including PowerSchool, SchoolNet, Review 360, ClassDojo, and many others. Concerns are heightened by the CT RISE dashboard, as an aggregator of student data from different sources.

a. Data profiles may follow students beyond their school years.

Data scientist Cathy O’Neill argues that “the belief that data can solve problems that are our deepest problems, like inequality and access, is wrong. Whose kids have been exposed by their data is absolutely a question of class.”²⁰ Absent strict requirements for regular data deletion—preferably annually—a child’s data profile may follow them indefinitely, possibly foreclosing future opportunities. The CT RISE MOU states that CT RISE shall not retain student data beyond the termination of the agreement, but that “RISE is not required to destroy any de-identified student records and information... and that RISE may retain and use such de-identified data for research purposes in support of public education, student achievement, and evidence-based programming.”

The sensitivity of student data cannot be overstated. If parents waive their child’s rights to data privacy, as often happens without full understanding, children’s data may continue to be associated with them beyond the school year.²¹ The CT RISE dashboard, via its access to Powerschool, receives not only grades, scores, and attendance data, but also Review 360 “behavioral data.” All student disciplinary information and comments are currently entered into Pearson’s Review 360 program (which is also held by a private corporation). The extensive student data held by external entities and now aggregated by the CT RISE dashboard evoke concerns that, “arguably, [student data profiles] more closely resemble credit reports, court records or even psychological dossiers.”²²

The CT Student Data Privacy Law protects, “information in the student’s records or electronic mail account, first or last name, home address, telephone number, date of birth, electronic mail address, discipline records, test results, grades, evaluations, criminal records, medical records, health records, Social Security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious affiliations, text messages, documents, student identifiers, search activity, photographs, voice recordings, survey responses or behavioral assessments.” CT RISE’s online materials claim that with their help, schools will “identify students demonstrating attendance, academic, social, and/or behavioral risk factors.” While we do not yet know what additional metrics or scores CT RISE may derive from NHPS student data, as described above, even labeling students as “on track” and “off-track” is a stigmatizing judgment that burdens a child with a record of success or failure. Via a “data dashboard,” these judgments can follow a child from classroom to classroom and grade to grade, and potentially further on to college and career.

Furthermore, the 1974 Federal Educational Rights and Privacy Act (FERPA) and the Connecticut Student Data Privacy Law require full disclosure of stored student data to law enforcement. Nearly all corporate privacy policies and data protection agreements contain similar exemptions. The district and/or its contractors may, in

¹⁹ The Electronic Frontier Foundation provides extensive reports on student data privacy and recommendations for districts, parents, students, teachers and librarians: <https://www EFF.org/wp/school-issued-devices-and-student-privacy#loopholes-pledge>.

²⁰ O’Neill, C. (2017) *Weapons of Math Destruction*, New York: Penguin Random House.

²¹ Kamenetz, A. (2016, June 7) “What’s At Risk When Schools Focus Too Much on Student Data?” *Mind/Shift*. Retrieved from <https://www Kqed.org/mindshift/45396>. Barnes, K. (2014, December 19) “Student data collection is out of control.” *New York Times*. Retrieved from

<https://www nytimes.com/roomfordebate/2014/09/24/protecting-student-privacy-in-online-learning/student-data-collection-is-out-of-control>. See also

<https://www nytimes.com/2015/03/12/technology/learning-apps-outstrip-school-oversight-and-student-privacy-is-among-the-risks.html>.

²² Ibid.

the future, be compelled to disclose any stored personal, academic, linguistic or behavioral data of students or staff to law enforcement to further an investigation of immigration status or for other discriminatory investigations, such as those based on Muslim religious affiliation or country-of-origin.²³ The Superintendent of the Boston Public Schools was recently forced to resign facing a lawsuit that claimed the district shared student behavioral and other data with Immigration and Customs Enforcement (ICE).²⁴ Integrating student data with other government agency data is a growing concern.²⁵ These trends highlight the need to consider carefully whether the benefits of a given system outweigh its potential downsides, as well as how these risks can be mitigated.

b. Increases the use of surveillance technologies in communities of color.

The CT RISE dashboard aggregates comparative metrics by race, gender, classroom, school, and district—absentee rates of white versus black students, for example, or number of fights in the cafeteria versus in the bathrooms—and makes these comparisons available to any user in the system. This capability opens the potential for more widespread data profiling, which is known to cause problematic feedback loops, similar to those found in data-driven predictive policing.²⁶ Where there have been clusters of incidents, more resources (e.g., discipline specialists, behavioral interventions, etc.) are directed. Those resources provide more observers to make future incident reports, leading again to the appearance of clusters of incidents. Like non-white neighborhoods, segregated schools with a majority of black and brown students are disproportionately policed and surveilled. The same student behaviors are frequently ignored in mostly-white schools because the students there are given the benefit of the doubt, the presumption of innocence. Civil rights law scholar Michelle Alexander sees this as part of a broader trend: “For those folks, if there are technical innovations that make it possible to keep people under perpetual surveillance for much of their lives—if it’s cheaper and it keeps crime rates down they’ll take it, regardless of the impact on human beings.”²⁷

c. Leaves student and teacher data vulnerable to re-use by CT RISE and its partners.

It has been said that “data is the new oil.”²⁸ Data collection on children in working-class communities takes advantage of parents signing data use permissions bundled with other required paperwork at the start of the school year. Without violating data sharing restrictions, private and sensitive student data can be repackaged and used by marketers, aggregators, and analysts. A report by the National Education Policy Center at the University of Colorado, Boulder concluded:

²³ Vaznis, J. (2018, June 21) “Chang, BPS sued over secrecy surrounding student information sharing with ICE.” *Boston Globe*. Retrieved from <https://www.bostonglobe.com/metro/2018/06/21/chang-bps-sued-over-secrecy-surrounding-student-information-sharing-with-ice/AWsz0zx7M8xhRwya9qrVhM/story.html>.

²⁴ Colen, A. (2018, June 25) “Boston superintendent resigns amid lawsuit claiming he shared student immigration info with ICE.” *TheBlaze*. Retrieved from <https://www.theblaze.com/news/2018/06/25/boston-superintendent-resigns-amid-lawsuit-claiming-he-shared-student-immigration-info-with-ice>. Note that Chang denies the allegation: “BPS would never give student information to ICE, *unless required under law*.” The law sometimes does require such disclosure.

²⁵ Herold, B. (2015, October 19) “Schools, Government Agencies Move to Share Student Data.” *Education Week*. Retrieved from <https://www.edweek.org/ew/articles/2015/10/21/schools-government-agencies-move-to-share-student.html?r=1899377504&mkey=6B703582-7AEE-11E8-83C2-5DEBB8682667>. Hartford Public Schools are listed as participating in cross-agency collaboration.

²⁶ Smith IV, J. (2015, 9 November) “‘Minority Report’ is real — and it’s really reporting on minorities.” *Mic*. Retrieved from <https://mic.com/articles/127739/minority-reports-predictive-policing-technology-is-really-reporting-minorities>.

Isaac, W and Lumm, K. (2016, October) “To predict and serve?” *Significance Magazine*. Retrieved from <https://rss.onlinelibrary.wiley.com/doi/epdf/10.1111/j.1740-9713.2016.00960.x>.

²⁷ Mock, B. (2016) “Interview with Michelle Alexander.” *Citylab*. Retrieved from <https://www.citylab.com/equity/2016/09/life-after-the-new-jim-crow/502472/>.

²⁸ Aphorism, variously attributed.

“Schools have proven to be a soft target for data gathering and marketing. Not only are they eager to adopt technology that promises better learning, but their lack of resources makes them susceptible to offers of free technology, free programs and activities, free educational materials, and help with fundraising. Constant digital surveillance and marketing at school combine to normalize for children the unquestioned role that corporations play in their education and in their lives more generally.”²⁹

A new Student Data Privacy law in Connecticut, Public Act 16-189³⁰, revised as PA 18-125³¹ and codified as Conn. Gen. Stat. Sec. 10-324³², provides stricter student data protections. It took effect on July 1, 2018 and is attached here as Appendix C. The Act requires all new contracts to contain a number of minimally protective provisions, such as limiting use of student data, allowing inspection, and requiring deletion at the contract’s end. It also requires contractors to comply with data use, ownership, privacy and security measures, as well as notify parents in case of a breach. Any contract concerning student data entered into after July 1 without those ten contract terms will be void. Other districts in Connecticut have already begun to plan their compliance with this new law.³³

While CT RISE’s Memorandum of Understanding (MOU) with the New Haven Public Schools contains these items, some of the law’s protections are ambiguous. For example, PA 16-189 places strict data-sharing restrictions on “Operators.” One might interpret that CT RISE is only required to follow the lesser restrictions placed on “Contractors” or “Consultants.” Contractors, for example, are allowed to use de-identified student records to “demonstrate the effectiveness of the contractor’s products in the marketing of such products, and . . . develop and improve the contractor’s products and services.” Another example of an ambiguity in CT’s Student Data Privacy law is the restriction on targeted advertising, which—while banned if directed at students—says nothing about advertising directed at families (e.g., charter school recruitment marketing materials, tutoring services, etc.).

Students below the age of 14 are further protected by the federal Children’s Online Privacy Protection Act (COPPA), which applies directly to the operators of websites and online services, but most of the high school students affected by CT RISE’s data practices will have aged out of those protections. FERPA governs privacy of and access to student education records; but interestingly it contains an exemption allowing protected, personally-identifiable information to be provided without parental consent “*to organizations conducting certain studies for or on behalf of a school.*”³⁴ The MOU explicitly states CT RISE to be one of those organizations exempt under FERPA 99.31.

²⁹ Boninger, F and Molnar, A (2016) “Learning to be watched: surveillance culture at school.” *Nation Education Policy Center Report*. Retrieved from <http://nepc.colorado.edu/publication/schoolhouse-commercialism-2015>. See also <https://www.npr.org/sections/ed/2016/06/03/480029234/5-doubts-about-data-driven-schools>.

³⁰ State of Connecticut Substitute House Bill No. 5469, Public Act No. 16-189, “An Act Concerning Student Data Privacy.” Retrieved from <https://www.cga.ct.gov/2016/ACT/pa/2016PA-00189-R00HB-05469-PA.htm>.

³¹ State of Connecticut Substitute House Bill No. 5444, Public Act No. 18-125, “An Act Concerning Revisions to the Student Data Privacy Act.” Retrieved from <https://cga.ct.gov/2018/act/pa/2018PA-00125-R00HB-05444-PA.htm>

³² It should be noted, without allegation of intentional malfeasance, that the MOU between NHPS and CT RISE states “WHEREAS the Parties are committed to protecting student privacy and data security consistent with the requirements of Connecticut Public Act 16-186 [sic — mis-cited statute pertains to detained youth], codified as Conn. Gen. State. [sic] Section 10-23aa [sic — mis-cited statute has been repealed and concerned driver’s education].”

³³ See http://www.meridenk12.org/Departments/Instructional_Technology/Student-Data-Privacy/;
<https://www.aces.org/schools-programs/school-based-services/educational-technology/data-privacy-practices>;
<http://schoollaw.pullcomblog.com/archives/changes-to-student-data-privacy-act-enacted-is-your-district-ready-for-july-1-2018/>.

³⁴ CT RISE highlights this exemption, 34 CFR 99.31, in its Memorandum of Understanding with NHPS. “WHEREAS FERPA Regulations 99.31(a)(1) permits the disclosure of personally identifiable student information without parental consent to school officials, including contractors who are deemed by NHPS to have a legitimate educational interest in such information.”

It is not clear how CT RISE's relationship with New Visions encompasses data sharing.³⁵ The Memorandum of Understanding states that, "A contractor shall not use student information, student records or student-generated content for any purposes other than those authorized pursuant to the contract." It further states that, "RISE shall not knowingly disclose student data to any third parties except as expressly permitted under the CT Student Data Law and FERPA, *or with the express written permission of a parent or eligible student.*" It also says that RISE persons, "employees, Directors, Officers, *consultants and/or advisors,*" who have signed a confidentiality agreement, may have access to student data if they "need to know for purposes of helping to administer or support the RISE network."³⁶ Furthermore, RISE is allowed to retain and use de-identified data for research and may report aggregated or de-identified data publicly. Technically, these contract terms allow for the possibility that New Visions personnel could receive aggregate and de-identified data, a large quantity of identifiable data with parent permission, and/or some identifiable data and derivative data products even without parent permission. The interplay among the statutes and the MOU is unclear and, as a general principle, a MOU may not be legally binding and lacks the enforceability of a full contract or agreement.

Emily Pallin, Director of CT RISE, states that no NHPS student data is currently shared with New Visions, and that no such sharing is planned. However, over time, the leadership, structure, goals and internal policies of CT RISE may change. Change in ownership—"a common phenomenon among many ventures in the edtech space"—has been identified as a key event during which student data privacy safeguards may be undermined.³⁷ Many edtech ventures are built with a goal of being acquired or merged, and the surviving entity may revise the privacy policies of the original organization.³⁸ Student data must be protected against long-term changes in ownership, organizational control and jurisdiction, as well as possible future changes in data protection laws and the development of new analytic techniques.

A related concern is that the distribution of aggregate data shifts possible stigma (of poor academic performance, behavioral issues, etc.) from individual students to the aggregate level—the classroom (teacher), cohort, neighborhood, school, district, or city. Examples of data-based stigmatization of aggregate units are abundant.³⁹ Under a school choice arrangement, such stigmatization can contribute to flight from a school labeled "failing" or depression of property values in a neighborhood labeled "troubled."⁴⁰ In this regard, fine-grained urban public school data would be of great interest to charter operators like New Visions.

Finally, the sharing of de-identified data should also be appraised critically. Techniques for re-identifying personal data are now well-developed and pose a growing concern for researchers.⁴¹ For example, FERPA 99.31(b)(1) only requires student names to be replaced by a record code that is not easily reverse-engineered. But, even the mundane combination of zip code, birthdate and gender uniquely identifies 87% of the population. As explained by a prominent data privacy scholar:

³⁵ See Section 5, Organizational Connections, below.

³⁶ Italics added for emphasis.

³⁷ Kurshan, B. (June 22, 2017) "The elephant in the room with EdTech data privacy." *Forbes*. Retrieved from <https://www.forbes.com/sites/barbarakurshan/2017/06/22/the-elephant-in-the-room-with-edtech-data-privacy/#599aaf7c57a5>.

³⁸ See <http://www.dataitlaw.com/data-protection-and-mergers-acquisitions-legal-issues/>.

³⁹ Francis, Leslie P. and John G. (2017) "Data Reuse and the Problem of Group Identity," in Austin Sarat (ed.) *Studies in Law, Politics, and Society* (Studies in Law, Politics and Society, Volume 73) Emerald Publishing Limited, pp.141 - 164. Retrieved from <https://www.emeraldinsight.com/doi/abs/10.1108/S1059-433720170000073004?fullSc=1>.

"These risks may arise even when individuals were not part of the original data set being repurposed. Data reuse, repurposing, and recombination may have damaging effects on others not included within the original data sets. These issues of justice for individuals who might be regarded as indirect subjects of research are not even raised by approaches that consider only the implications for or agreement of the original data subject."

⁴⁰ For example, "studies show that a one standard deviation increase in test scores corresponds to a 1 to 4 percent increase in housing costs, accounting for other neighborhood characteristics that may affect house prices." Owens, A. (2016) "Inequality in children's contexts: income segregation of households with and without children." *American Sociological Review*, 81(3), 549-574.

⁴¹ Salecl, R. (2018) Big data - big ignorance. *Big Data, Crime and Social Control*. Ales Zavaranski, ed. New York: Routledge, 58-74.

“Reidentification science disrupts the privacy policy landscape by undermining the faith we have placed in anonymization. This is no small faith, for technologists rely on it to justify sharing data indiscriminately and storing data perpetually... Advances in re-identification expose these promises as too often illusory.”⁴²

4. Fundraising Practices

CT RISE partners with Wishbone, a non-profit organization that works to get urban students interested in an expensive opportunity—usually a summer program recommended by Wishbone—and helps them fundraise to afford it. The fundraising is conducted via Go-Fund-Me, but there are significant differences between the normal crowdfunding model, where funds are returned to donors if the goal is not met, and the Wishbone model. Wishbone’s student materials say that the company collects a \$99 student contribution which only can be refunded if the student is rejected by their chosen program (i.e., not if they simply fail to meet fundraising goals).⁴³ Their terms of use state:

“When a partially funded scholarship does not reach complete funding within the allotted time of the date it was posted on Wishbone.org, Donors may receive ‘account credits’ which they can request be used to fund other scholarships. A donor may request that the funds be redirected to a new scholarship within 14 days of receiving the credits. After 14 days, Wishbone.org will redirect the account credits to the ‘Wishbone General Fund,’ funding scholarships as directed by Wishbone or to pay student application fees to programs, or to fund other program related costs. The donor may also request to “let Wishbone choose” where the donation should be redirected. At this point, the funds will immediately be redirected towards the Wishbone General Fund before the allotted 14 days.”⁴⁴

Even if not the intent, this enables exploitation of families living in poverty. CT RISE via Wishbone sells students a dream, puts them through the fundraising, and then keeps the funds if the goal is not met. At the bottom of the student materials, it says that fewer than 2% of projects have failed to meet their goals (“since 2012”). This year, 111 students participated in fundraising, but CT RISE reports only the number of donors and total dollars raised, not the number of students actually successfully funded.⁴⁵ Counting up the success stories on each school’s page indicates 94 were funded. If those lists are complete, that is a success rate closer to 85%, with 17 students presumably losing their \$99 deposit and all of their partial donations.

Following NHPS Advocates’ initial “Advisory on CT RISE in New Haven,” circulated in June of this year, all projects were funded by the Dalio Foundation and Emily Pallin reports that CT RISE is exploring alternative platforms.

5. Organizational Connections

As mentioned above, CT RISE is a spin-off of New York’s New Visions for Public Schools, a well-funded and sometimes controversial charter school company, expanding into general education reform and “operational support” for New York public schools. Both New Visions and CT RISE are largely funded by the Dalio Foundation, which donates to a number of worthwhile endeavors in New Haven, as well as to charter school networks, corporate “education reform” efforts that give control of public entities to private interests, and the school privatization movement more broadly. As a recent profile explains, “The [Dalio] couple’s Giving Pledge

⁴² Ohm, P. (2010) “Broken promises of privacy: responding to the surprising failure of anonymization” 57 UCLA L. Rev. 1701.

⁴³ See <https://www.wishbone.org/students/details>. Students’ families also have to pay transportation costs upfront and are later reimbursed, an expense that may preclude some students’ participation in the programs that they’ve fundraised for.

⁴⁴ See <https://www.wishbone.org/terms>.

⁴⁵ See <https://ctrise.org/get-involved/invest-in-a-rise-student>.

letter mentions that Barbara ‘gives particular attention to trying to help inner city education,’ and the Foundation ‘has continued to fund outfits in the Connecticut and New York City area such as Achievement First, Harlem Children's Zone, New Visions for Public Schools, and Teach for America,’ the latter of which received \$1.5 million in 2013.⁴⁶

Ray Dalio is the founder of the Bridgewater Hedge Fund, which came under criticism for receiving a \$22 million grant from Connecticut taxpayers to facilitate its expansion.⁴⁷ This 2016 subsidy followed another in 2015 of \$52 million.⁴⁸ Bridgewater and Dalio have also benefited greatly from the state-level “carried interest loophole” that allows hedge-fund income to be taxed at a lower rate than ordinary income and to deprive Connecticut of millions of dollars that could have been used to support public education. School privatization and corporate reform efforts have long been seen as a money-saving mechanism by anti-tax groups.⁴⁹

Moreover, the Dalio Foundation funding is not a sustainable source of revenue. In May 2015, the Dalio Foundation pulled the second half of a million-dollar grant to the Norwalk Public Schools for several administrative positions, writing that “Quite simply, the change in district leadership and *the lack of an aligned vision and strategy* require a new approach for the Foundation.”⁵⁰ Given that numerous features of the CT RISE program would be difficult to lose once implemented, a similar action in New Haven could create significant disruptions in our schools, especially if program features are centered over important matters.

New Visions for Public Schools, meanwhile, “incubated” CT RISE at its inception, before CT RISE established independent not-for-profit status. To underscore organizational ties, consider that a Program Manager position posted on New Visions’ website is directly supervised by Barbara Dalio and lists among its duties to “advance the Connecticut RISE Network.”⁵¹ New Visions for Public Schools has described its relationship with RISE as follows:

- Collaborate with RISE district teams comprised of the district superintendent, school supervisor, district data administrator, high school principal, high school teacher, and other school and district staff.
- Cultivate strong partnerships with RISE schools and districts, building strong relationships with teachers and leaders.
- Develop a nuanced understanding of district strengths, priorities, and growth areas.
- Provide embedded and consultative support in RISE schools and districts aligned to the Network common aim.
- Support each school and district on its unique path to advance student outcomes.⁵²

⁴⁶ Adeniji, A. (2015) “The Rise of Dalio Philanthropy: A Case Study of the New Mega Giving.” *Inside Philanthropy*. Retrieved from <https://www.insidephilanthropy.com/wall-street-wallets/2015/4/2/the-rise-of-dalio-philanthropy-a-case-study-of-the-new-mega.html>.

⁴⁷ Phaneuf, K. (2016 May 27) “Bond panel OK’s \$22M for hedge fund expansion; Lembo votes no.” *The CT Mirror*. Retrieved from <https://ctmirror.org/2016/05/27/bond-panel-oks-22m-for-hedge-fund-expansion-lembo-votes-no/>.

⁴⁸ “State Aid for Rich Hedge Fund Helps Connecticut.” (2012 August 17) *Hartford Courant*. Retrieved from http://articles.courant.com/2012-08-17/news/hc-ed-bridgewater-deal-20120817_1_hedge-fund-job-recovery-ray-dalio.

⁴⁹ See <https://www.alec.org/issue/education/>.

⁵⁰ Chapman, N. (2015) “Dalio blamed loss of superintendent, lack of Norwalk schools’ vision in pulling \$1.1 million grant’s second half.” Retrieved from <https://www.nancyonnorwalk.com/2015/08/dalio-blamed-loss-of-superintendent-lack-of-norwalk-schools-vision-in-pulling-1-1m-grants-second-half/> (emphasis added).

⁵¹ See https://www.newvisions.org/pages/Central-Office-Careers?gh_jid=1132108. Job description removed from website following mention in Zahn, B. (2018 July 2) “Parents, teachers express skepticism of student data dashboards.” *New Haven Register*. Retrieved from <https://www.nhregister.com/news/article/Parents-teachers-express-skepticism-of-student-13041234.php>.

⁵² Referenced in Peltó, J. (2016 April 11) “New York’s ‘New Visions for Public Schools’ is coming to save Connecticut.” Retrieved from <http://jonathanpeltó.com/category/new-visions-for-public-schools-connecticut-rise-initiative/>. The same language appears in a job description for New Visions’ RISE School Partnerships Manager; see <https://web.archive.org/web/20160421122602/http://www.idealists.org/view/job/353BnP48tNw8d/>.

As noted above in Section 2c above, in 2015, New Visions was granted a “Campus Planning” contract for Wilbur Cross High School, which involved producing “student-level data tools” seemingly similar to the RISE dashboard. The results of this effort remain unknown. The current MOU between NHPS and CT RISE allows RISE to retain all intellectual property rights in any data analysis tools or methodologies developed in collaboration with NHPS staff, allowing NHPS a no-cost license to use the tools they helped build as long as the agreement is in effect (and potentially at a cost after the end of the relationship).

The profitability of data mining has led some to argue that it represents, as noted above, “the new oil.” And indeed, organizations and corporations are investing vast resources into data acquisition, storage, and analysis. New Visions, for example, “has invested approximately \$8 million into its School Systems and Data Analytics team, which has 26 full-time staff who are headquartered close to the heart of Manhattan on the east side of 42nd street.”⁵³ While some of this investment may support the pursuit of “data-driven” efforts to “personalize and customize supports to schools and students,”⁵⁴ the potential for secondary use in market research and political lobbying, as well as the sale of aggregate or de-identified data to for-profit data miners, should not be overlooked.

At present, in fact, New Visions maintains a Data Warehouse that enables it to do the following:

“...to make comparative data accessible to our schools, unite traditionally separated data strands, and conduct sophisticated analysis over time... [to] facilitate the integration of data from multiple sources to encompass academic information, behavioral history, teacher assignments, scheduling and program practices, grades and curricula, and budget and resource allocations... [and]to create meaningful tools and user interfaces that coherently aggregate this data to meet the diverse and complex day-to-day needs of New Visions’ organizational staff, school staff, and *the external providers* that deliver services to our students.”⁵⁵ (emphasis added)

If the CT RISE program expands in New Haven, the possibility remains for NHPS student data to join that data warehouse in some form.⁵⁶ What are the parameters of this data sharing and use? What are the data privacy terms of Amazon AWS, the “cloud” where the data warehouse is stored? What will happen to NHPS data if RISE or New Visions changes ownership or if RISE exercises its option to terminate the MOU? It is unnecessary and improper for sensitive data on public school students to enrich the analytic or marketing capacity of a Charter Management Organization.

Conclusion

The CT RISE program provides a number of potential benefits, including streamlined access to student data and added supports for students and teachers. Yet the potential benefits associated with CT RISE are best achieved when envisioned and driven by professional educators within schools, in partnership with external funders when necessary, and with measures in place to protect the district’s autonomy, students’ privacy, and the integrity of teacher-student relationships. The existing partnership between the NHPS and CT RISE has the potential to erect barriers to student learning; operates without inclusive governance structures; raises concerns about data

⁵³ Abamu, J. (2018 February 5) *op. cit.*

⁵⁴ *New Visions website quoted in Abamu, J. (2018 February 5) op. cit.*

⁵⁵ Carrano, J. (2013) “Measuring Academic Tenacity.” *Voices in Urban Education*. (38), 12-18. Retrieved from <http://vue.annenberginstitute.org/issues/38/measuring-academic-tenacity-new-visions-public-schools>.

⁵⁶ If New Visions is designated by RISE as a consultant or advisor allowed to receive data, New Visions personnel could sign the appropriate confidentiality agreements and be considered “RISE personnel.” RISE could then give (not “trade, rent or sell”) aggregate or de-identified data to New Visions, despite current declarations that there is no plan to do so; parent permission could specifically allow the transfer of data; or New Visions could acquire RISE.

privacy; utilizes an exploitative fundraising model; and strengthens ties with special interests working to privatize public education.

Based on the information reviewed to date, NHPS Advocates urges the following:

- a. Limit uses of the CT RISE dashboard until the relationship is restructured to ensure that school leadership and educators are in control of student learning; learning is prioritized over a data dashboard or “on-off track” labels; transparent and inclusive structures govern the program; data privacy is guaranteed; exploitative practices end; families receive communications regarding the option to opt-out; and teachers are given the option to opt-out without penalty.
- b. Establish district-wide criteria governing external partnerships, including the need to put students at the center and ensure sustainability, autonomy, transparency, and data privacy.
- c. Re-evaluate with urgency all district data agreements in light of the concerns presented in this document, and verify compliance with the new CT Student Data Law.
- d. Revise protocols governing who gains access to NHPS students and data, in order to ensure consistency and transparency.

###

The New Haven Public School Advocates is a network of families, educators, students, and community allies working to ensure that all community members have a voice and a role in NHPS decision-making.

This Report was produced collaboratively and reflects the contributions of a large and varied group of volunteers. A handful of volunteers did most of the writing, and a larger contingent of contributors offered information and feedback. For the purpose of streamlined communication, questions about this document should be directed to Jill Kelly and Sarah Miller at newhavenpublicschoolparents@gmail.com, who have agreed to serve as primary contacts on this Report.

Appendices

- Appendix A: RISE Network Overview
- Appendix B: RISE MoU with the New Haven Public Schools
- Appendix C: CT Student Data Privacy Law
- Appendix D: Relevant Sections of the Federal Educational Rights and Privacy Act (FERPA)



RISE Network Overview:

The Connecticut RISE Network's ("RISE") mission is to empower educators to achieve breakthrough results, helping all students realize and achieve their full potential. As a network and a Connecticut-based 501(c)(3) organization, RISE represents a partnership between teachers, counselors, school leaders, and district administrators in New Haven, Hartford, Meriden, and East Hartford Public Schools. While RISE partners with public school districts, we collaborate directly with high schools in those districts. Our specific focus is around high school-age youth and advancing three shared goals: promoting successful transitions to high school; increasing college and career readiness, access, and success; and strengthening data systems and practices.

As a Network, RISE directly supports approximately 6,000 students and over 500 educators across the five partner high schools. RISE recently concluded its second school year of collaboration with Hill Regional Career High School in New Haven. The Dalio Foundation is currently the sole funder of the RISE Network, providing grants directly to RISE as well as the district to support students and educators at Career. The Foundation also supports Career High School and the RISE partnership through a collaboration with Clifford Beers.

New Haven Public Schools and Career High School Partnership:

As a partner in the RISE Network, Career implements a variety of strategies to support students' on-track achievement and college and career readiness.

- **Resources:** Over the past three years, Career and New Haven Public Schools have benefited from over \$450,000 in grant funding from the Dalio Foundation to support the strategies outlined in this section, in addition to in-kind supports such as staff support and professional learning opportunities offered at no cost.
- **AHEAD Summer Program:** Career offers a summer program for students transitioning from middle to high school. The program is designed to build strong connections between students and staff, and ensure all students are prepared for high school success. This year, 63 rising Grade 9 students will engage in the AHEAD program.
- **Additional Capacity:** Career benefits from additional student-facing staff support. Career now has an embedded Clifford Beers Clinician to support school-identified students and families, and an On-Track Coordinator to support a caseload of 60 freshmen demonstrating attendance, behavior, and academic needs.
- **Sophomore College Visits:** Career staff organized five college visits for sophomores this year. Approximately 153 sophomores participated in college visits, building early college awareness and aspirations.
- **Educator Innovation Fund:** RISE and the Dalio Foundation collaborate with DonorsChoose.org to support teachers with resources to pursue their innovative ideas. Educators may submit project proposals throughout the year for classroom resources, professional development, technology, field trips, etc. To date, 13 Career teachers have submitted 28 projects, receiving \$26,428 in total resources and supplies.
- **SAT Preparation Programs:** For the past two years, all Career juniors have had the opportunity to participate in an eight-week SAT prep program offered at no cost at Career. Over 150 juniors have benefited from SAT prep programs, building students' confidence and helping students achieve their post-secondary goals.
- **Student Summer Programming:** Through a partnership with Wishbone.org, the Dalio Foundation has supported 41 New Haven high school students over the past two years in attending summer programs aligned to their

passions. Students have participated in programming at Yale, UConn, and UNH, in areas such as medicine, fine arts, music, law, and culinary arts.

- **On-Track Student Conferences:** Career teachers conduct quarterly on-track student conferences. These conferences engage students in one-on-one conversations with a staff member to discuss their data, successes, challenges, and goals. Career conducted approximately 300 student conferences this year.
- **Professional Learning:** Over 40 Career teachers, counselors, and administrators have participated in optional professional learning opportunities facilitated by RISE.
- **On-Track Data Work:** Educators meet weekly in grade-level teams review student data and develop personalized student support plans. Teachers receive access to secure and user-friendly data tools to support these meetings.

Early Results at Career:

Career recently concluded its second year in the RISE Network. We are encouraged by the early results and the data that reflect the hard work and dedication of educators at Career. During the first two years of our partnership, we have focused heavily on improving Grade 9 on-track achievement. This focus was informed by research from the University of Chicago that identifies Grade 9 on-track achievement (i.e., whether students earn enough credits during freshman year to promote on-time to sophomore year) as the single most important factor in predicting whether students will graduate from high school within four years.¹

- **Grade 9 On-Track Achievement:** Career's Grade 9 on-track rate improved from 86% in 2016-17 to 94% in 2017-18.
- **Grade 9 Chronic Attendance:** Career's Grade 9 chronic absenteeism rate decreased from 22.2% in 2016-17 to 20.5% in 2017-18.

¹ Elaine Allensworth, *What Matters for Staying On-Track*, University of Chicago.

**Memorandum of Understanding
New Haven Public Schools and the Connecticut RISE Network, Inc.**

This Memorandum of Understanding (hereinafter “Agreement”) expresses the terms and conditions under which New Haven Board of Education, New Haven, Connecticut (hereinafter “New Haven Public Schools” or “NHPS”) will share certain student information to the Connecticut RISE Network, Inc., a nonprofit 501(c)(3) tax-exempt organization based in Connecticut (hereinafter “RISE”, and together with NHPS, the “Parties”) in connection with NHPS’ participation in the RISE Network (hereinafter “the RISE Network”).

WHEREAS, NHPS participates in the RISE Network: a multi-year partnership between RISE and public school districts in Connecticut to support educators striving to ensure every student graduates college and career ready;

WHEREAS, the RISE Network provides public school teachers and leaders with opportunities and resources for collaboration and professional learning aligned to shared Network-wide goals;

WHEREAS, public school teachers and leaders helped to create RISE as an independent nonprofit organization for purposes of facilitating and convening the RISE Network, and providing technical assistance for public schools in Connecticut;

WHEREAS, in collaboration with NHPS’ teachers and leaders, RISE offers and facilitates opportunities and programs for students, including, but not limited to, summer bridge programs and on-track counseling for high school students;

WHEREAS, NHPS and RISE aim to implement, and continuously improve, evidence-based programs to help all students realize and achieve their full potential, and thus, need access to integrated, real-time, accurate, and user-friendly data tools and systems in order to empower NHPS’ teachers and leaders to support students’ unique needs.

WHEREAS, the Parties are committed to protecting student privacy and data security consistent with the requirements of Connecticut Public Act 16-186, codified as Conn. Gen. State. Section 10-23aa *et seq.* (hereinafter “CT Student Data Law”) and the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g, as amended from time to time, (hereinafter “FERPA”);

WHEREAS, FERPA Regulation § 99.31(a)(1)(i) permits the disclosure of personally identifiable student information (hereinafter “PII”), without parental consent to school officials, including contractors who are deemed by NHPS to have a legitimate educational interest in access to such PII;

NOW THEREFORE, the Parties agree as follows:

I. Data and Guiding Principles

A. RISE will collaborate with NHPS, as a partner in the RISE Network, to develop data tools, systems, analyses, and research for purposes, including, but not limited to, empowering teachers and leaders to support all students graduating from high school within four years and achieving college and career ready.

B. In connection therewith, RISE will have access to certain student information, student records and student-generated content, as those terms are defined by the CT Student Data Law (collectively, “student data”) and specified in Section III.A.1. of this Agreement, from NHPS, as determined by NHPS, in order to support NHPS in implementing and continuously improving evidence-based programs and opportunities for students as part of the RISE Network.

C. Each Party agrees to ensure that its organization acts in compliance with the CT Student Data Law and FERPA with respect to NHPS’ student data disclosed to RISE pursuant to the this Agreement.

D. The Parties acknowledge and agree that any disclosure of PII by NHPS, is being done pursuant to FERPA Regulation § 99.31(a)(1)(i), and that RISE is: (i) a contractor to which NHPS has outsourced institutional services, namely the development of data related-tools and systems to support student performance, the facilitation of cross-district professional learning, and the design of student programming in collaboration with teachers and leaders; (ii) under direct control of NHPS with respect to the provision of such services; and (iii) subject to the requirements of FERPA Regulation § 99.33(a) with respect to the use of PII and the limitations on any further re-disclosure of PII.

II. RISE Responsibilities and Obligations

RISE acknowledges and agrees that:

A. Ownership of Data. Student data is not the property of or under the control of RISE.

B. Deletion of Data. NHPS may request that RISE delete student data in RISE's possession by sending such request to RISE by electronic mail at the following address data@ctrise.org. RISE shall promptly comply with any written request made by NHPS to delete any student data in its possession.

C. Limitations on Data Usage. RISE shall not (i) use student data for any purposes other than those authorized pursuant to this Agreement, namely the purposes described in the WHEREAS clause and Article I, (ii) use student data to engage in targeted advertising as defined under the CT Student Data Law, or (iii) sell, rent or trade student data.

D. Review of Data. RISE shall support NHPS in its efforts to coordinate, respond to, and comply with any request by a student, parent, or guardian to review, correct and/or delete any PII that has been shared with RISE under this Agreement.

E. Data Security. RISE shall take actions designed to protect student data from unauthorized access, destruction, use, modification or disclosure, including:

1. All PII stored on RISE servers shall be password-protected;
2. All electronic data analyses of PII shall be performed on secure, password-protected servers;
3. Printed data and all external electronic storage devices containing PII shall be kept in a locked cabinet in the RISE office; and
4. Compliance with any other requirements of CT Student Data Law 16-189, Sections 2(c) and 3(a) as applicable.

F. Breach of Security. Upon the discovery of a breach of security that results in the unauthorized release, disclosure or acquisition of student data, RISE shall provide NHPS with written notice of such breach without unreasonable delay, and in no event later than 30 days from discovery, by contacting Michele Sherban, Research, Assessment and Analytics Department, 54 Meadow Street, 4th floor, New Haven, CT 06519. The written notice of breach shall include the following information, to the extent known by RISE: (i) date and time of the breach; (ii) names of students whose data was affected by the breach; (iii) nature and type of student data affected by the breach; and (iv) nature and extent of the breach. In such an event, RISE shall also take necessary steps to restore the integrity of its data system.

G. Destruction of Data. RISE shall not retain student data upon NHPS ceasing to participate in the RISE Network or any other termination of this Agreement unless a student, or parent or legal guardian of a student chooses to establish or maintain an electronic account with the Contractor for the purpose of storing student-generated content, if RISE makes such option available. Notwithstanding the foregoing or any other provision

of this Agreement, consistent with FERPA Regulation § 99.31(b) and the requirements thereunder, the parties agree that, RISE is not required to destroy or return de-identified student records and information (hereinafter “de-identified data”), and that RISE may retain and use such de-identified data for research purposes in support of public education, student achievement, and evidence-based programming.

H. Limitation on Access and Disclosure.

1. *Persons Affiliated with RISE.* RISE shall only provide access to student data to RISE persons providing direct services to NHPS or other RISE persons that have a “need to know” for purposes of helping to administer and support the RISE Network. RISE persons shall mean RISE employees, Directors, Officers, consultants, and/or advisors who have signed a RISE confidentiality agreement consistent with this Memorandum of Agreement.
2. *Persons Affiliated with and Identified by NHPS.* RISE shall provide RISE Network data tools and student data in its possession to NHPS personnel identified by NHPS. RISE shall not provide access to RISE Network data tools and/or student data to NHPS unless NHPS’ Superintendent (or his/her designee) (i) requests that such personnel have access, and (ii) has indicated to RISE that such personnel has a legitimate educational interest to access the data consistent with FERPA Regulations. Notwithstanding the foregoing, RISE shall be under no obligation to independently investigate or determine whether such personnel do indeed have such an interest.
3. *RISE Partners.* Each public school district participating in the RISE Network will only have access to its own student data. RISE shall not share student data from NHPS with other RISE Network partner school districts and their personnel.
4. *Third Parties.* RISE shall not knowingly disclose student data to any third parties except as expressly permitted under the CT Student Data Law and FERPA, or with the express written permission of a parent or eligible student.
5. *Data Analyses.* RISE shall not report PII in any analyses shared outside NHPS; only aggregate, de-identified data will be reported publicly as part of the RISE Network.

III. NHPS Responsibilities and Obligations

NHPS acknowledges and agrees that:

A. Covered Data.

1. NHPS intends to provide to RISE student data necessary for purposes outlined herein and desired by NHPS, including, but not limited to: student enrollment and demographic, attendance, behavior, academic achievement, and post-secondary data. The Parties shall evaluate and make adjustments to the type and nature of the student data provided over time based on the evolving needs and interests of NHPS and the RISE Network, provided however, that the final decision regarding the nature of student data to be provided to RISE shall rest with NHPS.
2. In order to effectively achieve NHPS’ goals, including through the RISE Network, NHPS will provide databases to RISE within a reasonable lead time to allow RISE to prepare its work in collaboration with NHPS. Schedules for database deliveries will be created cooperatively by NHPS and RISE staff.

B. Student Data Security & Confidentiality.

1. NHPS shall transfer student data to RISE by secure means, with data encrypted in transit.
2. NHPS shall be responsible for determining which NHPS personnel, in addition to those persons participating in the RISE Network, have a legitimate educational interest to access the RISE data dashboards and tools consistent with FERPA.
3. NHPS shall be responsible for determining which level of data access each unique user shall receive (e.g., aggregate district data only, district-wide student-level data, or school-specific student-level data), ensuring that the access level corresponds with each user's legitimate educational interest to view such data consistent with FERPA.
4. NHPS shall be responsible for regularly updating and auditing its user list to ensure appropriate and accurate accounts and permission settings.
5. NHPS shall ensure persons granted access to student data pursuant to this Agreement shall receive guidance about data privacy and security requirements under relevant laws (i.e. CT Public Law and FERPA) and best practices before receiving access to RISE data tools.

C. Data Breach.

1. Consistent with CT Public Law, upon receipt of notice of a security breach from RISE, NHPS shall electronically notify the student and the parents or guardians of the student whose student data is involved in such breach of security not later than 48 hours after receipt of such notice. NHPS shall post such notice on NHPS' Internet web site.
2. NHPS shall promptly provide RISE notice upon learning of any breach of data security or confidentiality related to the RISE data work and shall work expeditiously to fix any problems related to NHPS' networks, systems, and practices.

D. Intellectual Property.

1. NHPS acknowledges and agrees that all intellectual property rights in and to the RISE Network software functionality and design, including without limitation, all source and object code, the analytic tools, and the user interface, and the look and feel of the dashboards, whether developed independently by RISE or in connection with RISE Network (collectively, "RISE Intellectual Property"), are owned exclusively by RISE. During this term of this Agreement, RISE grants NHPS a non-exclusive, non-sublicenseable, royalty-free license to use such intellectual property for its own internal purposes in connection with RISE Network activities and in furtherance of improving student outcomes in NHPS. Upon expiration or termination of this Agreement, the license set forth in this Section 1 shall automatically terminate, and NHPS shall immediately cease use of the RISE Intellectual Property.
2. NHPS acknowledges and agrees that RISE is the sole owner of the RISE logo and RISE Network name and service mark (collectively, the "Marks"). During the term of this Agreement, RISE grants NHPS a non-exclusive, non-sublicenseable, royalty-free license to use such Marks for the purposes of promoting and indicating NHPS' participation in the RISE Network. Upon RISE's request, NHPS shall provide RISE with samples of its use of the Marks and shall discontinue any use of the Marks to which RISE objects. Upon expiration or termination of this Agreement, the license set forth in this Section 2 shall automatically terminate, and NHPS shall immediately cease use of the Marks.

E. Required Notices and Records.

1. Data Agreement. As required under CT Public Law, not later than five business days after execution of this Agreement, NHPS shall provide electronic notice to any student and the parent or legal guardian of a student affected by this Agreement. The notice shall: (i) state that the Agreement has been executed and the date of execution; (ii) provide a brief description of this Agreement and its purpose; and (iii) state what student data may be collected as a result of the Agreement. In addition, NHPS shall post such notice and this Agreement on its Internet web site.
2. FERPA Annual Notification. As required under FERPA, NHPS shall annually notify eligible students of their rights under FERPA, including, without limitation, information about NHPS' definitions of the terms "school official" and "legitimate educational interest."
3. FERPA Disclosure Records. As required under FERPA, NHPS shall maintain a record of individuals, agencies or organizations that have requested or obtained access to a student's educational record (as defined under FERPA) to the extent required by FERPA.

F. Cessation of Disclosure. NHPS shall not make student data available to RISE upon NHPS ceasing to participate in the RISE Network or any other termination of this Agreement.

V. **Miscellaneous.**

A. Governing Law; Resolution of Disputes. The rights and duties of the Parties, and any disputes arising from or relating to this Agreement, including its formation and validity, shall be governed by the laws of the State of Connecticut.

B. Transferability. No part of this Agreement shall be assigned or subcontracted without the prior written approval of each Party.

C. Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the Parties with respect to its subject matter, and supersedes any prior oral or written agreement among the Parties regarding its subject matter. This Agreement may be changed, amended, or superseded only upon an agreement in writing executed by both Parties hereto.

D. Severability. If any provision of this Agreement or the application of the Agreement is held invalid by a court of competent jurisdiction, the invalidity does affect other provisions or applications of the Agreement that can be given effect without the invalid provision or application.

E. Term; Termination; Survivability. This Agreement will become effective immediately upon signature and shall remain in effect until terminated by either Party upon 60 days' prior written notice. A Party may also terminate this Agreement immediately upon written notice for good cause, including failure by the other Party to cure a breach of this Agreement within 10 business days of written notice of such breach. The provisions regarding confidentiality and destruction of PII will survive termination or expiration of this Agreement.

F. Representations; Warranties. Each Party represents and warrants that it has all necessary power and authority to enter into this Agreement, and that the person signing below on behalf of its entity has the authority to sign this Agreement and thereby bind the Party to this Agreement.

IN WITNESS WHEREOF, the Parties, by their duly authorized agents, have executed this Agreement as of the date set forth below.

NEW HAVEN PUBLIC SCHOOLS

BY: 

Reginald Mayo, Ph.D.
Superintendent of Schools
New Haven Board of Education
54 Meadow Street
New Haven, Connecticut 06519

5/5/17
Date

CONNECTICUT RISE NETWORK, INC.

BY: 

Emily Pallin
RISE Network Director
700 State Street
New Haven, CT 06511

6/8/17
Date

Appendix C: CT Student Data Privacy Law

Substitute House Bill No. 5469 *Public Act No. 16-189*

AN ACT CONCERNING STUDENT DATA PRIVACY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2016*) As used in this section and sections 2 to 4, inclusive:

- (1) "Contractor" means an operator or consultant that is in possession of or has access to student information, student records or student-generated content as a result of a contract with a local or regional board of education;
- (2) "Operator" means any person who (A) operates an Internet web site, online service or mobile application with actual knowledge that such Internet web site, online service or mobile application is used for school purposes and was designed and marketed for school purposes, to the extent it is engaged in the operation of such Internet web site, online service or mobile application, and (B) collects, maintains or uses student information;
- (3) "Consultant" means a professional who provides noninstructional services, including, but not limited to, administrative, planning, analysis, statistical or research services, to a local or regional board of education pursuant to a contract with such local or regional board of education;
- (4) "Student information" means personally identifiable information or material of a student in any media or format that is not publicly available and is any of the following: (A) Created or provided by a student or the parent or legal guardian of a student, to the operator in the course of the student, parent or legal guardian using the operator's Internet web site, online service or mobile application for school purposes, (B) created or provided by an employee or agent of a local or regional board of education to an operator for school purposes, or (C) gathered by an operator through the operation of the operator's Internet web site, online service or mobile application and identifies a student, including, but not limited to, information in the student's records or electronic mail account, first or last name, home address, telephone number, date of birth, electronic mail address, discipline records, test results, grades, evaluations, criminal records, medical records, health records, Social Security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious affiliations, text messages, documents, student identifiers, search activity, photographs, voice recordings, survey responses or behavioral assessments;
- (5) "Student record" means any information directly related to a student that is maintained by a local or regional board of education, the State Board of Education or the Department of Education or any information acquired from a student through the use of educational software assigned to the student by a teacher or employee of a local or regional board of education, except "student record" does not include de-identified student information allowed under the contract to be used by the contractor to (A) improve educational products for adaptive learning purposes and customize student learning, (B) demonstrate the effectiveness of the contractor's products in the marketing of such products, and (C) develop and improve the contractor's products and services;
- (6) "Student-generated content" means any student materials created by a student including, but not limited to, essays, research papers, portfolios, creative writing, music or other audio files or photographs, except "student-generated content" does not include student responses to a standardized assessment;
- (7) "Directory information" has the same meaning as provided in 34 CFR 99. 3, as amended from time to time;

(8) "School purposes" means purposes that customarily take place at the direction of a teacher or a local or regional board of education, or aid in the administration of school activities, including, but not limited to, instruction in the classroom, administrative activities and collaboration among students, school personnel or parents or legal guardians of students;

(9) "Student" means a person who is a resident of the state and (A) enrolled in a preschool program participating in the state-wide public school information system, pursuant to section 10-10a of the general statutes, (B) enrolled in grades kindergarten to twelve, inclusive, in a public school, (C) receiving special education and related services under an individualized education program, or (D) otherwise the responsibility of a local or regional board of education;

(10) "Targeted advertising" means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student-generated content or inferred over time from the usage of the operator's Internet web site, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted advertising" does not include any advertising to a student on an Internet web site that such student is accessing at the time or in response to a student's response or request for information or feedback;

(11) "De-identified student information" means any student information that has been altered to prevent the identification of an individual student; and

(12) "Persistent unique identifier" means a unique piece of information that can be used to recognize a user over time and across different Internet web sites, online services or mobile applications and is acquired as a result of the use of a student's use of an operator's Internet web site, online service or mobile application.

Sec. 2. (NEW) (*Effective October 1, 2016, and applicable to contracts entered into, amended or renewed on or after said date*) (a) On and after October 1, 2016, a local or regional board of education shall enter into a written contract with a contractor any time such local or regional board of education shares or provides access to student information, student records or student-generated content with such contractor. Each such contract shall include, but need not be limited to, the following:

(1) A statement that student information, student records and student-generated content are not the property of or under the control of a contractor;

(2) A description of the means by which the local or regional board of education may request the deletion of student information, student records or student-generated content in the possession of the contractor;

(3) A statement that the contractor shall not use student information, student records and student-generated content for any purposes other than those authorized pursuant to the contract;

(4) A description of the procedures by which a student, parent or legal guardian of a student may review personally identifiable information contained in student information, student records or student-generated content and correct erroneous information, if any, in such student record;

(5) A statement that the contractor shall take actions designed to ensure the security and confidentiality of student information, student records and student-generated content;

- (6) A description of the procedures that a contractor will follow to notify the local or regional board of education, in accordance with the provisions of section 4 of this act, when there has been an unauthorized release, disclosure or acquisition of student information, student records or student-generated content;
- (7) A statement that student information, student records or student-generated content shall not be retained or available to the contractor upon completion of the contracted services unless a student, parent or legal guardian of a student chooses to establish or maintain an electronic account with the contractor for the purpose of storing student-generated content;
- (8) A statement that the contractor and the local or regional board of education shall ensure compliance with the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g, as amended from time to time;
- (9) A statement that the laws of the state of Connecticut shall govern the rights and duties of the contractor and the local or regional board of education; and
- (10) A statement that if any provision of the contract or the application of the contract is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the contract which can be given effect without the invalid provision or application.
- (b) All student-generated content shall be the property of the student or the parent or legal guardian of the student.
- (c) A contractor shall implement and maintain security procedures and practices designed to protect student information, student records and student-generated content from unauthorized access, destruction, use, modification or disclosure that, based on the sensitivity of the data and the risk from unauthorized access, (1) use technologies and methodologies that are consistent with the guidance issued pursuant to section 13402(h)(2) of Public Law 111-5, as amended from time to time, (2) maintain technical safeguards as it relates to the possession of student records in a manner consistent with the provisions of 45 CFR 164. 312, as amended from time to time, and (3) otherwise meet or exceed industry standards.
- (d) A contractor shall not use (1) student information, student records or student-generated content for any purposes other than those authorized pursuant to the contract, or (2) personally identifiable information contained in student information, student records or student-generated content to engage in targeted advertising.
- (e) Any provision of a contract entered into between a contractor and a local or regional board of education on or after October 1, 2016, that conflicts with any provision of this section shall be void.
- (f) Any contract entered into on and after October 1, 2016, that does not include a provision required by subsection (a) of this section shall be void, provided the local or regional board of education has given reasonable notice to the contractor and the contractor has failed within a reasonable time to amend the contract to include the provision required by subsection (a) of this section.
- (g) Not later than five business days after executing a contract pursuant to this section, a local or regional board of education shall provide electronic notice to any student and the parent or legal guardian of a student affected by the contract. The notice shall (1) state that the contract has been executed and the date that such contract was executed, (2) provide a brief description of the contract and the purpose of the contract, and (3) state what student information, student records or student-generated content may be collected as a result of the contract. The local or regional board of education shall post such notice and the contract on the board's Internet web site.

Sec. 3. (NEW) (*Effective October 1, 2016*) (a) An operator shall (1) implement and maintain security procedures and practices that meet or exceed industry standards and that are designed to protect student information, student records and student-generated content from unauthorized access, destruction, use, modification or disclosure, and (2) delete any student information, student records or student-generated content within a reasonable amount of time if a student, parent or legal guardian of a student or local or regional board of education who has the right to control such student information requests the deletion of such student information, student records or student-generated content.

(b) An operator shall not knowingly:

(1) Engage in (A) targeted advertising on the operator's Internet web site, online service or mobile application, or (B) targeted advertising on any other Internet web site, online service or mobile application if such advertising is based on any student information, student records, student-generated content or persistent unique identifiers that the operator has acquired because of the use of the operator's Internet web site, online service or mobile application for school purposes;

(2) Collect, store and use student information, student records, student-generated content or persistent unique identifiers for purposes other than the furtherance of school purposes;

(3) Sell, rent or trade student information, student records or student-generated content unless the sale is part of the purchase, merger or acquisition of an operator by a successor operator and the operator and successor operator continue to be subject to the provisions of this section regarding student information; or

(4) Disclose student information, student records or student-generated content unless the disclosure is made (A) in furtherance of school purposes of the Internet web site, online service or mobile application, provided the recipient of the student information uses such student information to improve the operability and functionality of the Internet web site, online service or mobile application and complies with subsection (a) of this section; (B) to ensure compliance with federal or state law or regulations or pursuant to a court order; (C) in response to a judicial order; (D) to protect the safety or integrity of users or others, or the security of the Internet web site, online service or mobile application; (E) to an entity hired by the operator to provide services for the operator's Internet web site, online service or mobile application, provided the operator contractually (i) prohibits the entity from using student information, student records or student-generated content for any purpose other than providing the contracted service to, or on behalf of, the operator, (ii) prohibits the entity from disclosing student information, student records or student-generated content provided by the operator to subsequent third parties, and (iii) requires the entity to comply with subsection (a) of this section; or (F) for a school purpose or other educational or employment purpose requested by a student or the parent or legal guardian of a student, provided such student information is not used or disclosed for any other purpose.

(c) An operator may use student information (1) to maintain, support, improve, evaluate or diagnose the operator's Internet web site, online service or mobile application, (2) for adaptive learning purposes or customized student learning, (3) to provide recommendation engines to recommend content or services relating to school purposes or other educational or employment purposes, provided such recommendation is not determined in whole or in part by payment or other consideration from a third party, or (4) to respond to a request for information or feedback from a student, provided such response is not determined in whole or in part by payment or other consideration from a third party.

(d) An operator may use de-identified student information or aggregated student information (1) to develop or improve the operator's Internet web site, online service or mobile application, or other Internet web sites, online services or mobile applications owned by the operator, or (2) to demonstrate or market the effectiveness of the operator's Internet web site, online service or mobile application.

(e) An operator may share aggregated student information or de-identified student information for the improvement and development of Internet web sites, online services or mobile applications designed for school purposes.

(f) Nothing in this section shall be construed to (1) limit the ability of a law enforcement agency to obtain student information, student records or student-generated content from an operator as authorized by law or pursuant to a court order, (2) limit the ability of a student or the parent or legal guardian of a student to download, export, transfer or otherwise save or maintain student information, student records or student-generated content, (3) impose a duty upon a provider of an interactive computer service, as defined in 47 USC 230, as amended from time to time, to ensure compliance with this section by third-party information content providers, as defined in 47 USC 230, as amended from time to time, (4) impose a duty upon a seller or provider of an electronic store, gateway, marketplace or other means of purchasing or downloading software applications to review or enforce compliance with this section on such software applications, (5) limit an Internet service provider from providing a student, parent or legal guardian of a student or local or regional board of education with the ability to connect to the Internet, (6) prohibit an operator from advertising other Internet web sites, online services or mobile applications that are used for school purposes to parents or legal guardians of students, provided such advertising does not result from the operator's use of student information, student records or student-generated content, or (7) apply to Internet web sites, online services or mobile applications that are designed and marketed for use by individuals generally, even if the account credentials created for an operator's Internet web site, online service or mobile application may be used to access Internet web sites, online services or mobile applications that are designed and marketed for school purposes.

Sec. 4. (NEW) (*Effective October 1, 2016*) (a) (1) Upon the discovery of a breach of security that results in the unauthorized release, disclosure or acquisition of student information, excluding any directory information contained in such student information, a contractor shall notify, without unreasonable delay, but not more than thirty days after such discovery, the local or regional board of education of such breach of security. During such thirty-day period, the contractor may (A) conduct an investigation to determine the nature and scope of such unauthorized release, disclosure or acquisition, and the identity of the students whose student information is involved in such unauthorized release, disclosure or acquisition, or (B) restore the reasonable integrity of the contractor's data system.

(2) Upon the discovery of a breach of security that results in the unauthorized release, disclosure or acquisition of directory information, student records or student-generated content, a contractor shall notify, without unreasonable delay, but not more than sixty days after such discovery, the local or regional board of education of such breach of security. During such sixty-day period, the contractor may (A) conduct an investigation to determine the nature and scope of such unauthorized release, disclosure or acquisition, and the identity of the students whose directory information, student records or student-generated content is involved in such unauthorized release, disclosure or acquisition, or (B) restore the reasonable integrity of the contractor's data system.

(3) Upon receipt of notice of a breach of security under subdivisions (1) or (2) of this subsection, a local or regional board of education shall electronically notify, not later than forty-eight hours after receipt of such notice, the student and the parents or guardians of the student whose student information, student records or student-generated content is involved in such breach of security. The local or regional board of education shall post such notice on the board's Internet web site.

(b) Upon the discovery of a breach of security that results in the unauthorized release, disclosure or acquisition of student information, student records or student-generated content, an operator that is in possession of or maintains student information, student records or student-generated content as a result of a student's use of such

operator's Internet web site, online service or mobile application, shall (1) notify, without unreasonable delay, but not more than thirty days after such discovery, the student or the parents or guardians of such student of any breach of security that results in the unauthorized release, disclosure or acquisition of student information, excluding any directory information contained in such student information, of such student, and (2) notify, without unreasonable delay, but not more than sixty days after such discovery, the student or the parents or guardians of such student of any breach of security that results in the unauthorized release, disclosure or acquisition of directory information, student records or student-generated content of such student. During such thirty-day or sixty-day period, the operator may (A) conduct an investigation to determine the nature and scope of such unauthorized release, disclosure or acquisition, and the identity of the students whose student information, student records or student-generated content are involved in such unauthorized release, disclosure or acquisition, or (B) restore the reasonable integrity of the operator's data system.

Sec. 5. (*Effective from passage*) (a) There is established a task force to study issues relating to student data privacy. Such study shall include, but not be limited to, an examination of (1) when a parent or guardian of a student may reasonably or appropriately request the deletion of student information, student records or student-generated content that is in the possession of a contractor or operator, (2) means of providing notice to parents and guardians of students when a student uses an Internet web site, online service or mobile application of an operator for instructional purposes in a classroom or as part of an assignment by a teacher, (3) reasonable penalties for violations of the provisions of sections 2 to 4, inclusive, of this act, such as restricting a contractor or operator from accessing or collecting student information, student records or student-generated content, (4) strategies in effect in other states that ensure that school employees, contractors and operators are trained in data security handling, compliance and best practices, (5) the feasibility of developing a school district-wide list of approved Internet web sites, online services and mobile applications, (6) the use of an administrative hearing process designed to provide legal recourse to students and parents and guardians of students aggrieved by any violation of sections 2 to 4, inclusive, of this act, (7) the feasibility of creating an inventory of student information, student records and student-generated content currently collected pursuant to state and federal law, (8) the feasibility of developing a tool kit for use by local and regional boards of education to (A) improve student data contracting practices and compliance, including a state-wide template for use by districts, (B) increase school employee awareness of student data security best practices, including model training components, (C) develop district-wide lists of approved software applications and Internet web sites, and (D) increase the availability and accessibility of information on student data privacy for parents and guardians of students and educators, and (9) any other issue involving student data security that the task force deems relevant.

(b) The task force shall consist of the following members:

(1) Two appointed by the speaker of the House of Representatives, one of whom is an operator, pursuant to section 1 of this act and one of whom is an expert in information technology systems;

(2) Two appointed by the president pro tempore of the Senate, one of whom is a representative or member of the Connecticut Education Association and one of whom is a high school student in the state of Connecticut;

(3) Two appointed by the majority leader of the House of Representatives, one of whom is a representative of a contractor, pursuant to section 1 of this act and one of whom is an expert in information technology systems;

(4) Two appointed by the majority leader of the Senate, one of whom is a representative or member of the Connecticut Parent Teacher Association and one of whom is a representative or member of the American Federation of Teachers;

(5) Two appointed by the minority leader of the House of Representatives, one of whom is a student privacy advocate and one of whom is a representative or member of the Connecticut Association of Boards of Education;

(6) Two appointed by the minority leader of the Senate, one of whom is a representative of the Connecticut Association of School Administrators and one of whom is a representative or member of the Connecticut Association of Public School Superintendents;

(7) The Attorney General, or the Attorney General's designee; and

(8) The Commissioner of Education or the commissioner's designee.

(c) All appointments to the task force shall be made not later than thirty days after the effective date of this section. Any vacancy shall be filled by the appointing authority.

(d) The speaker of the House of Representatives and the president pro tempore of the Senate shall select the chairpersons of the task force from among the members of the task force. Such chairpersons shall schedule the first meeting of the task force, which shall be held not later than sixty days after the effective date of this section.

(e) The administrative staff of the joint standing committee of the General Assembly having cognizance of matters relating to general law shall serve as administrative staff of the task force.

(f) Not later than January 1, 2017, the task force shall submit a report on its findings and recommendations to the joint standing committee of the General Assembly having cognizance of matters relating to general law and education, in accordance with the provisions of section 11-4a of the general statutes. The task force shall terminate on the date that it submits such report or January 1, 2017, whichever is later.

Approved June 9, 2016

Appendix D: Relevant Sections of the Federal Educational Rights and Privacy Act (FERPA)

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

(1)(i)(A) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(B) A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party -

(1) Performs an institutional service or function for which the agency or institution would otherwise use employees;

(2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and

(3) Is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

§ 99.31 (b)(1) De-identified records and information. An educational agency or institution, or a party that has received education records or information from education records under this part, may release the records or information without the consent required by § 99.30 after the removal of all personally identifiable information provided that the educational agency or institution or other party has made a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information.

(2) An educational agency or institution, or a party that has received education records or information from education records under this part, may release de-identified student level data from education records for the purpose of education research by attaching a code to each record that may allow the recipient to match information received from the same source, provided that -

(i) An educational agency or institution or other party that releases de-identified data under paragraph (b)(2) of this section does not disclose any information about how it generates and assigns a record code, or that would allow a recipient to identify a student based on a record code;

(ii) The record code is used for no purpose other than identifying a de-identified record for purposes of education research and cannot be used to ascertain personally identifiable information about a student; and

(iii) The record code is not based on a student's social security number or other personal information.

§ 99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record 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.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.