



AMERICAN CIVIL LIBERTIES UNION

## Minnesota

P.O. Box 14720  
Minneapolis, MN 55414  
T: (651) 645-4097  
[www.aclu-mn.org](http://www.aclu-mn.org)  
[@aclumn](https://twitter.com/aclumn)

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Senator Susan Kent  
Senate Minority Leader

Representative Melissa Hortman  
Speaker of the House

Representative Ryan Winkler  
House Majority Leader

Representative Kurt Daudt  
House Minority Leader

July 30, 2020

Dear Members of the Minnesota Legislature,

In May of this year, we wrote to you urging you to address the inequitable and unsafe manner in which remote learning was being provided to Minnesota's students during the ongoing COVID-19 crisis. We urged specific action to ensure adequate and uniform privacy protections are in place to protect students engaged in remote learning. Today, in light of Governor Walz's announcement that distance learning will be recommended in part or in full for districts facing ongoing COVID-19 impacts, we renew our call for student data privacy protections.

There is growing bipartisan consensus around the need for protecting the privacy of student data. However, Minnesota still has yet to bring its laws around digital privacy into the 21<sup>st</sup> century. With the prospect of a portion Minnesota's students returning to school remotely this fall, the need to address this lag in Minnesota's laws is more critical than ever. Without action, students are left vulnerable, as many of the technologies needed for remote learning, including hardware, software, internet services, and educational learning platforms, are capable of collecting massive amounts of private, personal information on students and/or spying on students using surveillance technologies.

Students should never be required to surrender their privacy or consent to being spied upon as a condition of receiving a constitutionally guaranteed education, and that principle holds especially true during the COVID-19 crisis, when remote learning may be the only option. All students must feel safe to learn remotely, and that simply cannot happen if the tools used for remote learning are allowed to collect and retain information for non-instructional purposes.

The ACLU-MN has been engaged with the Minnesota Legislature around enacting student data privacy protections for over four years. House File 1821/Senate File 2291 was introduced in 2019 and the House bill was heard in the House Judiciary Committee in February 2020. ACLU-MN supported HF1821/SF2291 as an important first step towards protecting student data privacy. However, given the critical urgency of the issue in light of COVID-19 and Governor Walz's announcement today, we reiterate our support for stronger privacy-protective action based on the following principles:

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

While the aforementioned privacy protections should be applicable to student information whether we are in the midst of a public health crisis or not, at a minimum, they should be made mandatory while the use of remote learning tools is, for all practical purposes, compulsory. The existence of a public health crisis, no matter how daunting, does not suspend students' legal and constitutional rights. We urge you to act now – quickly, decisively, and with every resource at your disposal – to ensure the privacy of Minnesota's students is protected.

Sincerely,

Julia Decker  
Policy Director  
ACLU-MN