



To: BOCES District Superintendents
Charter School Leaders
Data Protection Officers
Non-Public School Leaders
School Leaders
School District Superintendents
School District Business Officers

From: Temitope Akinyemi, Chief Privacy Officer

Date: March 10, 2021

Subject: Regarding Chapter 2 of the Laws of 2021 relating to the use of biometric identifying technology (State Technology Law § 106-b).

I am writing to provide you with an update on the use of biometric identifying technology such as facial recognition systems in New York state schools given recent changes in state law. Assembly Bill A.6787-D, which, among other things, prohibited the use of biometric identifying technology in all elementary and secondary schools until at least July 1, 2022, was enacted as Chapter 349 of the Laws of 2020. Earlier this year, Chapter 349 was amended to correct a technical error and to move its provisions from the Education Law to the State Technology Law as § 106-b. This amendment was embodied in Assembly Bill A.954 and enacted as Chapter 2 of the Laws of 2021, effective December 22, 2020.

State Technology Law § 106-b prohibits all public (including charter schools) and non-public elementary and secondary schools (collectively referred to as “Elementary and Secondary Schools”), from using biometric identifying technology for any purpose other than: (1) for fingerprint identification of prospective employees in compliance with the Education Law and/or the Regulations of the Department of Education; or (2) to identify employees who have consented, individually or through their union, to such use. Any Elementary or Secondary School that is currently utilizing biometric identifying technology must immediately cease using such technology unless its use falls into one of the two exceptions.

The statute defines biometric identifying technology as “any tool using an automated or semi-automated process that assists in verifying a person's identity based on a person's biometric information.” State Technology Law § 106-b(1)(a). Biometric information is defined as “any measurable physical, physiological or behavioral characteristics that are attributable to a person, including but not limited to facial characteristics, fingerprint characteristics, hand characteristics, eye characteristics, vocal characteristics, and any other characteristics that can be used to identify a person including, but are not limited to: fingerprints; handprints;

retina and iris patterns; DNA sequence; voice; gait; and facial geometry.” State Technology Law § 106-b(1)(b).

Pursuant to State Technology Law § 106-b, the Director of the Office for Information Technology Services (“ITS”) must prepare a report for the Governor and Legislature evaluating the use of biometric identifying technology in Elementary and Secondary Schools and providing recommendations and guidelines for the use of such technology by Elementary and Secondary Schools. In preparation of the report, ITS must hold public hearings to obtain feedback from teachers, principals, parents, and persons with expertise in school safety and security, as well as consult with the Commissioner of the State Education Department and other governmental agencies. The statute further provides that the Commissioner of Education shall not authorize the purchase or utilization of biometric identifying technology, including but not limited to facial recognition technology, without the Director of the Office of Information Technology Services first issuing a report prepared in consultation with the State Education Department that makes recommendations regarding its utilization of such technology is appropriate in public and nonpublic schools. In any case, authorization for the purchase or utilization of biometric identifying technology in the State cannot occur before July 1, 2022 .

cc: Betty A. Rosa, Commissioner
Sharon Cates Williams, Executive Deputy Commissioner
John D’Agati, Senior Deputy Commissioner
Kim Wilkins, Deputy Commissioner
Daniel Morton-Bentley, Counsel and Deputy Commissioner