

The  
University of the  
Education  State of New York  
Department

WHEREAS, State Technology Law § 106-b prohibits public and nonpublic elementary and secondary schools, including charter schools (hereinafter, "schools"),<sup>1</sup> from purchasing or utilizing biometric identifying technology for any purpose except for fingerprint identification of prospective school employees or to exclusively identify employees (individually or through their union) who have consented in writing to the use of such technology until July 1, 2022 or authorization from the Commissioner of Education, whichever occurs later;

WHEREAS, a condition precedent to a decision to authorize or purchase biometric identifying technology is the issuance of a report by the Office of Information Technology Services, prepared in consultation with the State Education Department, that makes recommendations as to the circumstances in which the utilization of such technology is appropriate in public and nonpublic elementary and secondary schools, including charter schools, and what restrictions and guidelines should be enacted to protect individual privacy, civil rights, and civil liberty interests;

WHEREAS, this report was issued on August 7, 2023, following consultation with stakeholders and other interested parties;

WHEREAS the report considers the twelve topics required by State Technology Law § 106-b, including the privacy implications of collecting, storing, and/or sharing biometric information of students, teachers, school personnel and the general public entering a school or school grounds and the potential impact of the use of biometric identifying technology on student civil liberties and civil rights;

WHEREAS the report identifies serious concerns regarding the use of facial recognition technology in schools, including, as reported in referenced studies, potentially higher rate of false positives for people of color, nonbinary and transgender people, women, the elderly, and children as well as the ability of schools to use such technology without parental consent;

WHEREAS these concerns are not outweighed by the claimed benefits of facial recognition technology at this time as little information is available about real-life situations where such technology detected and helped prevent violent incidents;

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<sup>1</sup> This definition of school, utilized in State Technology Law § 106-b, applies throughout this order.

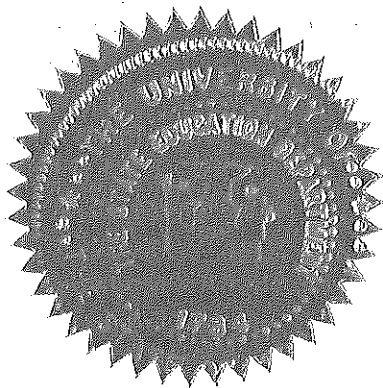
WHEREAS the concerns associated with widely used biometric identifying technology other than facial recognition technology are either minimal/beneficial (e.g., fingerprint identification) or unknown due to their infrequent or nonexistent use in New York schools (e.g., identification based upon retina and iris patterns, DNA sequencing, voice, or gait);

NOW, THEREFORE, pursuant to the authority vested in me pursuant to Article 7 of the Education Law and State Technology Law § 106-b,

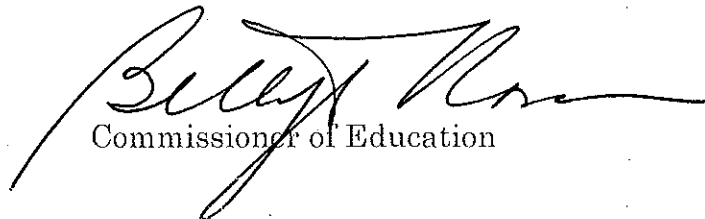
IT IS ORDERED that no school in the State of New York shall purchase<sup>2</sup> or utilize facial recognition technology unless and until issuance of a superseding order of the Commissioner;<sup>3</sup> and

IT IS ORDERED that, schools that purchased Facial Recognition Technology products or products with Facial Recognition Technology capabilities using Smart Schools Bond Act funds before December 20, 2020 must, if they have not yet done so, discontinue any use of such technology and certify that they have discontinued its use<sup>4</sup>; and

IT IS ORDERED that schools are hereby authorized to determine whether to use biometric identifying technology other than facial recognition technology at the local level. In so determining, schools must consider the privacy implications thereof; the impact on civil rights, if any; the effectiveness of the biometric tool; and parental input.



IN WITNESS WHEREOF, I, Betty A. Rosa, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 27<sup>th</sup> day of September 2023.

  
Commissioner of Education

<sup>2</sup> "Purchase" shall include seeking grant money or other financing, including reimbursement under the Smart Schools Bond Act.

<sup>3</sup> This order does not affect schools' ability to utilize biometric identifying technology for fingerprint identification of prospective school employees or to exclusively identify employees (individually or through their union) who have consented in writing to the use of such technology as provided in State Technology Law § 106-b (2) (b).

<sup>4</sup> Schools that purchased Facial Recognition Technology products after December 20, 2020 will not be reimbursed with Smart Schools Bond Act funds.