Big Data in the Education Sector

Collection and analysis of data about students and educators offer unprecedented opportunities to improve student learning, assess educator performance, and understand what techniques and technologies actually make a difference in learning outcomes. But this new frontier also presents serious risks and challenges for schools and the educational vendors that serve them. Because major advances in data science are so new and applicable laws have not kept pace with these changes, important unanswered questions surround innovative uses of Big Data in the education sector.

PRACTICE AT A GLANCE

- We guide universities, colleges, school districts, private schools and education companies through government investigations, high-profile litigation and public crises.

- We help our education sector clients defend their intellectual property, deal with cybersecurity incidents and navigate a rapidly changing regulatory landscape.

- Our Big Data Practice counsels education clients on privacy and data protection and cybersecurity risks; technology transactions and licensing; IP applications and registrations; and disputes about who owns the data and the analytics, algorithms and devices used to process it.

INDUSTRY-SPECIFIC ISSUES

Privacy: Many sector-specific privacy laws apply to educational data and other information about students. Compliance is often difficult, and a number of institutions and vendors have made well-publicized missteps related to such data.

Fairness: The federal government has warned that educational analytics can create "implicit biases." Educational decisions may be guided by Big Data, but procedures must be developed to ensure proper interpretation and promote fairness for all students.

Security: Educational institutions and service providers store vast amounts of sensitive information, such as educational records, health data and email communications. Every institution needs a robust cybersecurity plan.

Novel platforms for unobtrusive, real-time collection of enormous amounts of data on student learning and daily activities are touted in the federal government's new National Education Technology Plan.

visit tech.ed.gov/netp

$100 Million

The amount of money invested in support of inBloom, a New York nonprofit venture launched in 2011. The company collected voluminous information from public school students in New York state, which it analyzed and distributed to authorized third parties. However, amid concerns about student privacy expressed by parents, advocates and educators, the company shut down in 2014.

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EXPERIENCE

- We have advised a company that evaluates educational outcomes on the security of its databases and electronically stored information; the physical security of its facilities, supply chain and off-site storage; and the administrative and technical measures that it employs to safeguard and ensure the integrity of its products and services.

- We have assisted a mentoring and job search social media and data analytics platform on ways to comply with laws restricting certain forms of information-gathering activities and marketing to college students and educational institutions.

- We have counseled, negotiated on behalf of, and drafted policies and procedures for software and mobile app vendors that provide services to school districts, including platforms that track in-class student performance.

- We have represented after-school service providers that partner with school districts on how they may collect, use and disclose a range of information about at-risk students and leverage Big Data to improve educational outcomes for the vulnerable populations that they serve.

- For a company that manufactures handheld devices and software used in classrooms to test student performance and conduct surveys, we have provided advice on a range of Big Data issues, including storage and processing of data in the cloud; cross-border data transfers; appropriate contract language; and disclosures to students, educators and educational institutions.

- We advise clients on the regulatory constraints surrounding research and product development in biotech, medical and other spheres, and on the increasingly contentious issue of intellectual property protections for such innovations.

- We have advised companies that design electronic textbooks and develop educational software on compliance with FERPA and COPPA, as well as on the various contractual safeguards that are either necessary or advisable in transactions with school districts and educators.

- We have conducted internal reviews for universities facing high-profile enforcement and litigation challenges that carry serious legal and reputational risks.

- We have provided a range of guidance on Big Data issues, including written disclosures and contractual language, to a prominent nonprofit organization that matches STEM mentors with children in both school settings and community organizations.

- Our representation of colleges and universities in complex, high-stakes matters is informed by our understanding that educational institutions have multiple constituencies—including students, administrators, trustees, faculty, staff, alumni, donors and parents—with differing interests and perspectives.

LEGAL LANDSCAPE

Laws regulating student data held by schools and their service providers include federal statutes and regulations, as well as a patchwork of state laws:

Family Educational Rights and Privacy Act of 1974 (FERPA)— Prohibits the unauthorized disclosure of education records. FERPA applies to any school receiving federal funds and imposes financial penalties for noncompliance.

Protection of Pupil Rights Amendment (PPRA)—Governs the administration of surveys soliciting specific categories of information, and imposes certain requirements regarding the collection and use of student information for marketing purposes.

Children's Online Privacy Protection Act of 1998 (COPPA)— Imposes certain requirements on operators of websites or online services directed to children under 13 years of age, and on operators of other websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age.

As of September 2015, **28 bills** addressing student privacy were enacted into law in **15 states** (Data Quality Campaign, 2015).

1,000 LAWYERS

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