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Policing Students Online: The Increasing Threat of School-Sanctioned Digital Surveillance

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Policing Students Online: The Increasing Threat of School-Sanctioned Digital Surveillance

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As a student...it makes me very uncomfortable that the district has quietly implemented this software without asking for our input. The bounds of privacy are being pushed further and further so we as a community must take a stand.

—Fresno Unified School District student

Abstract

School closures in response to the COVID-19 pandemic created yet another opportunity for the surveillance industry to profit off of a national crisis and exacerbate harm to already marginalized students. As many school districts transitioned to online learning, technology companies benefited from a surge in sales of surveillance systems designed specifically to spy on K–12 students' online activities as they learned from home.[3] While tech companies and school administrators claim that such products will protect student safety, students, parents, and civil rights groups have raised concerns that they actually cause serious harm, posing significant threats to students' privacy and free speech rights and upholding a long legacy of racist policing in public schools. Similar to other forms of surveillance, marginalized students—particularly students of color and LGBTQ students—will continue to bear the brunt of these rights violations and adverse impacts. This article 1) examines this troubling yet increasingly prevalent technology, highlighting the significant harms perpetuated by these surveillance systems and the ways in which they function as a covert form of policing;[4] 2) identifies the ways in which deployment of K–12 surveillance systems conflict with California privacy rights and equity interests; and 3) recommends next steps to make sure that the rights of California's K–12 students are respected, and that policing

in the form of digital surveillance—not just school police—are eliminated from public schools.

Introduction

Across the nation and the globe, 2020 was a remarkably challenging and consequential year.[5] The COVID-19 pandemic, economic collapse, and political upheaval undoubtedly impacted students as they continued to attend school through turbulent times.[6] The pandemic dramatically transformed how school districts provided children an education, with more than 1.2 billion children in 186 countries transitioning out of the physical classroom due to COVID-19-related school closures.[7] In March 2020, nearly all of California's K–12 public school students experienced widespread school closures, with more than 5.7 million of the state's nearly 6 million students transitioning from in-person instruction to distance learning.[8] Many school districts remained closed for much or all of the 2020–2021 school year,[9] though some schools districts across the state have begun to offer some degree of in-person instruction as the United States begins to recover from the pandemic.[10]

This global shutdown of schools led to an unprecedented rise in online distance learning,[11] a form of education that requires the use of various technologies, including the internet and digital platforms, to facilitate instruction remotely.[12] As the 2020–2021 academic year commenced in the United States, the equity and efficacy of providing a quality education via these online distance learning methods became the subject of extensive debate, with education and digital rights advocates rightfully emphasizing the challenges created by the digital divide,[13] an affordability barrier that leaves many low-income families and communities of color with limited or no access to the internet and digital devices that are required to participate in online learning.[14]

As the pandemic and its collateral impacts took a devastating toll on communities of color, millions of people took to the streets to protest police brutality and systemic racism in response to the police killing of George Floyd.[15] Demonstrators, building on years of organizing against the prison-industrial complex, demanded that local governments divest from and abolish policing, and redirect funds to critical community resources like education and mental health treatment.[16] Significantly, demands to defund and abolish policing extended to schools, following a decades-long movement across the country to remove policing infrastructure from school campuses.[17] [18] [19] [20] [21] [22]

In many ways, efforts by school administrators to provide for their students and sufficiently address the challenges of 2020—by giving families free broadband access so students could learn through the pandemic, or by cutting ties with school police departments[23]—were eclipsed by the acquisition and continued use of harmful surveillance

systems. As part of their transition to distance learning, many school districts entered into partnerships with online "safety management vendors" to aid administrators in surveilling students' activities while using district-provided hardware and software to attend classes and submit assignments.[24] These surveillance systems typically include machine-learning technology that blocks potentially harmful content and images; flagging of keywords in communications and internet searches that allegedly indicate a student's intent to harm themself or others; and human review of blocked content and flags by tech employees[25] and school district personnel to evaluate incidents and conduct any necessary follow-up, including contacting law enforcement in some cases.[26]

These vendors claim that their products protect student safety and ensure their well-being by blocking potentially harmful content and monitoring student communications and files for violations of student digital safety policies such as cyberbullying. These claims, however, are largely unsupported by sound, independent research and are largely proffered solely by tech company spokespersons.[27] In fact, independent research has consistently demonstrated that surveillance methods are not effective at preventing incidents of violence on school campuses.[28] There is even less data supporting the efficacy of surveillance systems in preventing bullying, harassment, and self-harm among students. The asymmetry between the purported benefits of this technology and their demonstrated effectiveness makes the significant civil rights concerns that outweigh them all the more troublesome.

In this article, we provide an overview of how the surveillance systems that are being increasingly deployed against K–12 public school students and their families operate, highlighting the ways in which they function as a covert form of school policing. In doing so, we ground our analysis in the decades-long work of organizers and activists to reimagine the learning environment, or "school climate," and heed the warnings of organizers in the broader movement for prison-industrial complex abolition to reject systems of racial and social control and surveillance, including those that purport to promote safety and well-being but "manifest as punishment for those experiencing them."[29] Next, we discuss the civil rights and civil liberties concerns these surveillance systems illuminate, with a focus on the unique and disproportionate harms they inflict on marginalized students, including students of color and LGBTQ students. We conclude by highlighting the legal conflicts that arise when public schools require the use of these technologies, providing recommendations on how California constitutional and statutory law can be leveraged to challenge the installment of the surveillance infrastructure in the K–12 educational context as the movement to end policing in schools carries on.

K–12 Student Policing and Surveillance: A Brief History

Surveillance encompasses policies, practices, and tools that allow the government or a third party to monitor a person's conduct in any space.[30] Surveillance can be overt, such as when a camera in plain view captures our physical movements, and it can also be covert, such as when the government wiretaps a person's telephone.[31] Either way, surveillance is inherently invasive, and the information it captures can be used against individuals. Notably, communities of color have long suffered the harsh consequences of government surveillance and policing disproportionately, particularly in response to tragic events. Historically, crises have often been exploited as a pretext for the implementation of overbroad surveillance measures that ostensibly promote public health and safety, with communities of color bearing the brunt of such political choices and being disproportionately harmed by them.

Mass government surveillance enacted in the aftermath of 9/11 is perhaps the most well-known example of this reality. Less than two months after the attacks on New York and Washington, DC, the Patriot Act became the first of many changes to surveillance laws that expanded government authority to spy on people, monitor phone and email communications, collect bank and credit reporting records, and track internet activity.[32] While these changes lead to increased surveillance of all people in the United States, Arab, Muslim, and South Asian communities specifically were targeted for secret roundups and incarceration under the pretense of preventing further acts of "terrorism."[33]

In US public schools, students in communities of color have been subjected to pervasive policing and surveillance for decades, with school campuses functioning as microcosms of an increasingly punitive and carceral social and political landscape. Police presence in schools can be traced back as far as the 1940s, when officers were deployed to K–12 campuses to suppress youth-led organizing and movements for racial justice, sometimes under the pretense of protecting school property as schools became more integrated.[34] Student participation in ongoing Black and Chicano freedom movements in the 1960s led to the installation of so-called school resource officers on campuses throughout the civil rights era, with school districts in more than forty states developing some form of on-campus policing by 1972.[35] Over the next several decades, as the war on drugs and broken windows policing were enacted to further criminalize Black and Brown communities, schools followed suit by instituting harsh zero-tolerance disciplinary policies, leading to dramatic increases in school suspensions and expulsions.[36]

This trend continued in the aftermath of the Columbine High School shooting in 1999, which lead to increased visible security measures, such as metal detectors and security cameras, and the installation of more law enforcement officers and private security guards on school campuses.[37] Significantly, schools that served primarily students of color were more

likely to rely on these intense surveillance practices, despite the fact that school-based rampage shootings[38] occur largely in suburban and rural schools, with the perpetrators typically being white males.[39]

The school surveillance methods enacted at the turn of the century—and the culture of fear and perceived threat of violence they represent—have only intensified in recent years, with online learning and students' increasing use of digital devices presenting opportunities for Big Tech to push for the adoption of new surveillance technologies to track students' every move.[40] In the aftermath of the 2018 Parkland, Florida, school shooting, for example, many school districts expanded their surveillance arsenal to include social media monitoring, facial recognition, and location data tracking, among other technologies, purportedly to prevent further school violence.[41] One of the most popular technologies marketed during this period was the so-called safety management platform developed by web-filtering and monitoring companies whose services include 24/7 surveillance capabilities, such as the monitoring of students' web searches, emails, chat messages, and documents.[42] Since the Parkland shooting, businesses like Gaggle, Securly, Bark, and GoGuardian have netted nearly $3 billion annually in the United States alone by peddling these products to schools.[43]

School closures in response to the COVID-19 pandemic presented yet another opportunity for the school surveillance industry to cash in. As many school districts transitioned to online learning in spring of 2020, these companies again tried to take advantage of a crisis to alarm school administrators and encourage the purchase of their products, claiming that educators could be alerted to allegedly risky behaviors even as students learned from home. In California, at least some school districts acquired and deployed this technology for the first time as they adjusted to online learning ushered in by the pandemic.[44] Public records reveal that California school districts entered into new contracts with surveillance vendors for spyware during or after March 2020, including Fresno Unified School District—the third-largest school district in the state and one of the largest school districts in the country.[45]

While schools may assert that their acquisition of online surveillance systems are intended to protect student safety, the social and political context in which they have become entrenched as an inevitable feature of K–12 public education cannot be ignored. More than eight decades after police were first installed on school campuses to quell movements for equality and integration in public education, the United States is in the midst of the largest racial justice movement in its history, with calls to defund and abolish police gaining wider traction.[46] In response, many school districts across the nation—including Minneapolis, Madison, Portland, and San Francisco—have committed to ending their contracts with local police departments.[47] While removing police officers from campuses is a laudable step, we contend that the deployment of surveillance systems threatens to undermine this progress by continuing the practice of monitoring and controlling students' behavior in ways that increase the risks of punishment, disciplinary action,

and contacts with law enforcement. The next section describes in detail how online student surveillance systems operate and the ways in which they uphold policing of public school students, regardless of whether police officers maintain their physical presence on school campuses.

Policing Students Online: Civil Rights and Civil Liberties Implications of School-Sanctioned Spyware

The disproportionate impact of government surveillance on marginalized communities, particularly surveillance by law enforcement, is well documented.[48] [49] [50] The 24/7 surveillance of K–12 public school students enabled by modern technology represents both a continuation and exacerbation of this reality. Demographic data indicates that the percentage of white students attending public schools across the country continues to decline, while the percentage of children enrolled in public schools with at least 75 percent students of color has increased over the last decade.[51] The segregated nature of public school districts has contributed to growing wealth disparities between white and predominantly nonwhite districts, intensifying racial inequities in education.[52] Students of color in public schools therefore experience layers of marginalization on account of their race, access to resources, and their youth. As an inherently invasive and oppressive technology, online surveillance systems only add to the challenges youth of color are confronted with throughout their educational careers.

To fully appreciate the threats these systems pose to marginalized students, it is important to understand the scope of surveillance they are capable of. Gaggle, one of the largest surveillance vendors in the business of spying on students' online activities, is representative.[53] Gaggle is typically integrated into major software suites such as Microsoft 365 and Google Workspace, which educators rely on for students to attend class, write and submit assignments, and communicate with school staff and peers via email and chat.[54] The technology utilizes a combination of in-house artificial intelligence and human content moderators to surveil students' online activities for content deemed "harmful" or "suspicious."[55]

The artificial intelligence that powers Gaggle is able to closely monitor everything a student does while using their school-issued Microsoft 365 and Google Workspace accounts, regardless of whether the student is using a device issued by their school or their personal computer or tablet.[56] The system quickly scans emails, documents, chats, and calendars, searching for "keywords," a list of banned words that, if detected, will be flagged for review by Gaggle's safety representatives.[57] Emails are generally scanned in real time and blocked from being sent if they raise any flags, while documents and other files are scanned for review shortly after they are created or saved.[58]

The implications of deploying a system that is trained to conduct student

surveillance with such granularity are frightening, particularly for marginalized students whose schools choose punitive disciplinary and surveillance measures over evidence-based measures to improve school climate. Gaggle's so-called three strike rule requires that even a trivial violation, such as using a curse word, will be reported to school officials if it occurs three or more times.[59] This automated reporting mechanism creates an ostensibly "race-neutral" means for school administrators to identify and discipline children for using profanity. Whether administrators decide to take disciplinary action based on reports that a student has violated Gaggle's language rules, however, remains a matter of discretion—discretion that, prior to the introduction of surveillance software, has overwhelmingly been demonstrated to result in suspensions and expulsions of Black, Indigenous, and Latinx students.[60] Rather than foster fairness and objectivity, which many surveillance technologies purport they can accomplish, these programs threaten to increase the efficiency of school discipline practices that cause severe racial disparities in lost instruction and facilitate the school-to-prison and deportation pipeline.[61] [62]

Surveilling students' online activities with these systems not only creates additional opportunities for children to be disciplined or criminalized, but it also can bring a student's entire family under state surveillance by law enforcement or the family regulation system. Companies like Gaggle state that, depending upon the seriousness of flagged content, they may refer violations to law enforcement in some cases, regardless of whether school officials have authorized such a referral.[63] These referrals could lead to dangerous and devastating interactions between law enforcement and families of color, whose members are more likely to be the victims of police violence.[64] Flags or violations related to mental health concerns may also push a family into the family regulation system, a network of health and human services agencies that handle child protective services and have come under increasing scrutiny for their carceral, punitive approach to addressing child abuse and neglect.[65]

For immigrant families, interactions with law enforcement and social services pose the additional risk of capturing the attention of federal immigration enforcement, particularly in light of many local governments' data-sharing practices.[66] A home visit by law enforcement due to the flagging of harmless, everyday youth behavior transmitted on a school-issued laptop, for example, would be particularly alarming to an immigrant family that was not aware their school district was closely surveilling every email, chat, and website they visited while in their own home. At worst, this interaction could lead to further surveillance by agencies like the US Immigration and Customs Enforcement, which has amassed a horrifying record of abuse, discrimination, and family separation.[67] [68] [69] [70] [71]

Software like Gaggle, Securly, and GoGuardian also elide the vulnerabilities LGBTQ students and students with mental health challenges face in insensitive learning environments. With Gaggle, for example, words that merely reference LGBTQ identity like "gay," "lesbian," and "queer" could trigger

a flag.[72] A similar intervention could occur if a student scans the internet for help with mental health concerns they have under a presumption of privacy. In both cases, the exposure of their personal information can not only cause them embarrassment, but also place the students at risk of emotional and physical harm depending on the attitudes held by school officials or family members.[73]

Inextricably linked to the discriminatory impacts already identified are the civil liberties concerns student surveillance systems raise. Privacy advocates have previously warned of the threats to privacy and free speech posed by "free" or subsidized municipal broadband services offered by internet providers who track people's personal data in order to reap economic benefits.[74] The knowledge that government entities and broadband providers may be accessing sensitive information about individuals and their browsing activities in exchange for providing low-cost services will likely deter people from visiting particular websites or voicing their opinions online.[75] Surveillance systems like Gaggle, GoGuardian, and Securly only compound the risks associated with the power imbalance between tech companies and low-income families.

At the outset of COVID-19, many school districts partnered with private internet service providers to give low-income families broadband access so their students could participate in distance learning.[76] Without adequate safeguards to ensure these families' data is protected, it is possible that internet service providers continue to collect troves of personal information in exchange for access to their services. For low-income families in particular, school-mandated spyware systems merely expand the scope of surveillance they are forced to endure as a condition of attending school online, increasing the gravity of potential infringements of their free speech and privacy rights.

Regardless of whether surveillance of students' online activities leads to direct interactions with law enforcement, the function of online surveillance systems that monitor students and families must be understood as a covert form of policing. Abolitionist organizers have cautioned that "as we fight to defund or abolish police and imprisonment, we need to be wary of ways that strengthen other forms of surveillance and control."[77] We contend that the online surveillance systems described herein represent school districts' efforts to strengthen other forms of surveillance and control in addition to, or in the absence of, school police officers, and that the impact on vulnerable students is no less harmful. In the next section, we analyze the ways in which California's robust privacy laws may be leveraged to protect K–12 students from ongoing efforts to perpetuate school policing via digital surveillance.

California Privacy Law: Protecting Students from School Surveillance

K–12 students do not forfeit their rights when they enter the schoolhouse

gate or log onto their computers from home, regardless of whether students use school-issued devices or online accounts or their own devices. While the pervasiveness of student surveillance nationwide may seem daunting, California's particularly robust constitutional and statutory laws protecting privacy and freedom of expression in the digital age provide a framework for safeguarding students' civil rights and civil liberties as the formidable threat of policing via online surveillance continues to increase.

California's constitutional protections for privacy have long afforded greater protections than the Fourth Amendment to the US Constitution.[78] The Privacy Amendment to Article I, Section 1, of the California Constitution protects the privacy rights of "all people," including young people, and was passed in response to the "modern threat to personal privacy" posed by then-emerging data-collection technology.[79] California courts have consistently held that the constitutional protection applies rigorously to collections that comprise a "virtual current biography."[80] Courts have described information accessible via electronic devices as having an "element of pervasiveness" that directly implicates the same concerns: it comprises "a digital record of nearly every aspect of [possessors'] lives—from the mundane to the intimate."[81]

The California Supreme Court has specifically held that the right to privacy in the California Constitution protects communications information that can reveal sensitive information about Californians' private lives. For example, in *People v. Blair*, the court held that the state constitution requires that police obtain a warrant to access a defendant's phone records, rejecting the federal "third party doctrine" that placed such records outside the scope of the Fourth Amendment.[82] [83]

The California Constitution also includes an express right to freedom of expression that is "in some ways broader than the comparable provision of the federal Constitution's First Amendment."[84] [85] As the California Supreme Court observed in *White v. Davis*, government monitoring may "run afoul of the constitutional guarantee [to free speech] if the effect of such activity is to chill constitutionally protected activity."[86]

California also has clear and robust statutory law that protects against electronic surveillance. The California Electronic Communications Privacy Act (CalECPA),[87] passed with overwhelming bipartisan support in 2015 and hailed as "the nation's best privacy law," [88] prevents California government entities, including schools,[89] from searching cell phones, digital devices, and electronic communications without a warrant or consent.[90]

The surveillance systems being utilized by public schools in California conflict with these protections. In many ways, the highly invasive capabilities of this spyware, which provides 24/7 access to personal and sensitive information on school-issued devices and software and students' personal computers, is precisely the modern threat to personal privacy that the California Constitution and CalECPA sought to protect.

It is likely that the secretive nature of surveillance technology like Gaggle, GoGuardian, and Securly has helped shield surveillance vendors and school districts from the widespread criticism these invasive systems warrant. Unlike physical searches of cell phones by police officers, for example, student surveillance systems are able to search for and collect information on students without their knowledge or consent, and without officers obtaining a warrant. Furthermore, these programs do not appear to provide any indication to students that the software is operating on their devices; like most spyware, they are hidden programs, running in the background unbeknownst to the user. Indeed, students and parents who have challenged their school district's deployment of these technologies report that they discovered they were being spied on in various, surprising ways, ranging from inconspicuous announcements on the school district's website[91] to law enforcement interrogating students at school about their online activity.[92]

This lack of notice and consent is unacceptable in any context, but is particularly egregious given the lack of alternative options for students and families who rely on technology for everyday learning needs in a state where K–12 education is compulsory.[93] Current practices—in which some school districts condition full participation in school or school-sponsored activities, including the use of school-issued electronic devices, on their ability to access the electronic information of the device in the student's possession—are contrary to California law. School districts cannot impermissibly condition participation in educational programs on families "consenting" to invasive digital searches. To comply with California law and adhere to long-standing privacy principles, schools that monitor the use of or otherwise access data on a school-issued device or account must, at minimum, ask the student and their parent or guardian for consent and provide alternatives when families do not consent in ways that do not subject the student to an inferior education. In light of the civil rights and civil liberties issues discussed earlier, however, we contend that schools should abandon the use of these technologies altogether. Although California law provides a framework for safeguarding student privacy and bringing legal challenges to the deployment of surveillance systems by schools, the possibility of normalizing such systems and the enduring threat of school policing they enable call for more radical solutions, namely, abolition.

Next Steps and Recommendations

Instead of investing in surveillance technologies that function as policing and are not proven to be an effective component of a comprehensive school safety plan, school districts should instead invest their resources in evidence-based best practices that have been found to actually promote school safety. In 2019, Linda Darling-Hammond, founding president of the Learning Policy Institute, highlighted multiple evidence-based measures that are effective in promoting school safety, none of which include surveillance measures or harsh discipline for students:[94]

> A recent body of research shows that a better way to make schools truly safe is to invest in student supports, including social and emotional learning and mental health supports; community involvement, including access for children to health and social services supports that address the trauma many experience; and professional development for teachers and school staff.[95] [96]Teaching students how to recognize and manage their emotions, access help when they need it, and learn problem solving and conflict resolution skills can make a huge difference in school safety. A meta-analysis of more than 200 studies found that schools using social-emotional learning programs focused on these skills make schools decidedly safer, reducing bullying and poor behavior, as well as supporting increased school achievement.[97] A second meta-analysis found that these benefits are sustained over time, positioning students and their schools for greater success.[98]

The notion that surveillance measures and harsh discipline for students are ineffective in promoting school safety or a healthy school climate is certainly not novel. The movement to end carceral approaches to student learning and development has persisted for decades, led by Black students and activists.[99] Specifically, organizations such as the Black Organizing Project and Dignity in Schools Campaign have called for "reallocating funds that were previously used for police to fund student support services such as psychologists, restorative justice practitioners, and social workers; instituting restorative justice programs with specialists trained in trauma-informed de-escalation approaches; holding annual implicit bias and anti-racism trainings for all staff; and ensuring a community-driven process involving families and community members, as well as school staff, in decision-making."[100]

Unlike digital student surveillance systems, the action steps recommended by organizers of the movement to reimagine safety in education are "grounded in research conducted by Black scholars that promotes inclusive school cultures and culturally-responsive pedagogical practices."[101] We call on school districts to heed the demands of students, parents, community members, and activists, rather than acquiesce to the narratives of fear that tech companies perpetuate and profit from. We also encourage organizers in movements to abolish school policing to be mindful of attempts by school districts to covertly replace school police officers with harmful surveillance technology. Just as school leadership should not rely on police in schools, they should also not use surveillance measures—such as online monitoring software, surveillance cameras, or face recognition—on students and their families because these measures replicate the same harms as law enforcement presence on campus.

Given the secretive nature of surveillance technologies like online monitoring and filtering programs, we also encourage students, parents, and organizers to investigate the potential use of surveillance systems in their school districts by making inquiries at school board meetings and by submitting requests for information and records under state public

records laws. In California and other states, open meetings laws require that government bodies, including school districts, publicly post their agendas and related materials a few days before a public meeting is to take place.[102] These agendas may mention plans or proposals to purchase surveillance systems to monitor students' online activities.

Conclusion

The events of 2020, specifically the COVID-19 pandemic and the protests for racial justice, brought the reality of deeply entrenched racial inequities into sharp focus. While discourse around police divestment and abolition was introduced to many people in the United States for the first time, organizers and activists, including those focused on the school-to-prison pipeline, have been building toward police-free schools for decades, recognizing that schools too often function as sites of punishment and discipline that funnel young people into other punitive state institutions.[103]

As this movement gains wider traction, it is imperative that we take seriously the call to reimagine safety in education, not simply replace one harmful form of policing with another. Yet surveillance systems that monitor students' online activities threaten to do just that, exacerbating harms to marginalized students and expanding the tentacles of the school policing and surveillance apparatus into students' families, homes, and communities. As tech companies continue to market their surveillance products as the answer to student safety, the onus rests with schools to reject this cynical view of young people and invest in resources that are proven to promote students' well-being, learning, and development.

Endnotes

1 Technology & Civil Liberties Fellow, ACLU Foundation of Northern California. Affiliation is for identification purposes only. This article reflects the author's personal opinions, not those of the organization.

2 Education Equity Attorney, ACLU Foundation of Southern California. Affiliation is for identification purposes only. This article reflects the author's own opinions, not those of the organization.

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