Bottom-Up Biometric Regulation: A Community's Response to Using Face Surveillance in Schools

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Public schools are increasingly turning to invasive technological solutions to address a wide range of school safety issues. Because events like school shootings are both nuanced and politically or socially charged, school administrators often rush to embrace technological tools without proper consideration or community consultation. The risks, concerns, and bureaucratic pitfalls of this approach are most salient in the context of biometric technologies used in schools. This case study examines the controversial move by a school district in Lockport, New York, to implement a facial and object-recognition system, and the community-driven response that sparked a national debate and led to state-wide legislation regulating the use of biometric technologies in schools.

FACIAL RECOGNITION SURVEILLANCE IN SCHOOLS

Surveillance technologies are becoming a norm in many public schools.[1] School administrators are turning to a rapidly growing market of "free"[2] or subsidized tools that monitor student emails for concerning phrases, measure student bathroom breaks, proctor exams, or provide real-time

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1   Circumstances leading to increased adoption of surveillance technologies in schools may vary by country. This chapter focuses on the United States.

2   RealNetworks, Inc., "RealNetworks Provides SAFR Facial Recognition Solution for Free to Every K–12 School In the United States and Canada," July 18, 2018, https://www.prnewswire.com/news-releases/realnetworks-provides-safr-facial-recognition-solution-for-free-to-every-k-12-school-in-the-us-and-canada-300681977.html.

alerts of potential crises,[3] often without proper consideration or community consultation. School administrators have shown significant interest in biometric and other access-control technologies for targeting nuanced school safety issues, with few existing regulations to hold them back.[4] In 2019, *Wired* "identified eight public school systems, from rural areas to giant urban districts, that have moved to install facial recognition systems," though national use statistics remain unknown.[5]

Because these technologies can be enabled as "add-on" features or easily integrated with existing systems used by a school or school district (e.g., closed-circuit television), administrators often adopt or test them without fully considering the risks they entail.[6] For example, school administrators may face legal obligations regarding the storage and use of biometric data, and may not have policies in place to deal with a data breach or sufficient funding available for maintenance of these systems.

Biometric technologies present a veneer of social control or risk mitigation,[7] but in reality they pose unique social and legal concerns for students, particularly in the K–12 setting. Though students have some enhanced data-privacy protections and greater expectations regarding government oversight and enforcement,[8] they are particularly vulnerable because the consequences of privacy and other legal violations may not be immediately felt or obvious. Moreover, for decades, critical scholars and educators have criticized these types of reactionary educational policies and practices because they are not long-term solutions. Indeed, they tend to reproduce, maintain, and naturalize structural inequities that pervade the American education system and allow policymakers to avoid necessary structural reforms.[9]

Internationally, some national authorities have opposed facial recognition and other biometric technologies in schools, finding some uses in schools to be unlawful although not banning the

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3 Meghna Chakrabarti and Hilary McQuilkin, "When Schools Use Tech to Monitor Students Online, Class Is Always in Session," *WBUR*, October 31, 2019, https://www.wbur.org/onpoint/2019/10/31/school-surveillance-students-online-privacy-safety.

4 The last substantive guidance on the Family Educational Rights and Privacy Act (FERPA) from the United States Department of Education was issued in 2007; it described the application of FERPA to the use of security videos and the transfer of educational records. US Department of Education, "Balancing Student Privacy and School Safety: *A Guide to the Family Educational Rights and Privacy Act* for Elementary and Secondary Schools," October 2007, https://www2.ed.gov/policy/gen/guid/fpco/brochures/elsec.html.

5 Tom Simonite and Gregory Barber, "The Delicate Ethics of Using Facial Recognition in Schools, *Wired*, October 17, 2019, https://www.wired.com/story/delicate-ethics-facial-recognition-schools/.

6 Bart Simon, "The Return of Panopticism: Supervision, Subjection and the New Surveillance," *Surveillance & Society* 3, no. 1 (September 1, 2002): 1–20, https://doi.org/10.24908/ss.v3i1.3317. Simon notes that individuals perform compliance around surveillance technologies, which makes assessing broader, long-term efficacy or value difficult. See also Clive Norris and Gary Armstrong, *The Maximum Surveillance Society: The Rise of CCTV* (Oxford: Berg, 1999). The authors discuss how public surveillance systems have inherent blind spots that diminish effectiveness or intended goals.

7 Andrew Hope, "Seductions of Risk, Social Control, and Resistance to School Surveillance," in *Schools Under Surveillance: Cultures of Control in Public Education*, eds. Torin Monahan, R. Torres, and Aaron Kupchik (New Brunswick: Rutgers University Press, 2009), 230–235.

8 See, e.g., Family Educational Rights Privacy Act (FERPA), 20 U.S.C. § 1232g; Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. § 1232h; Children's Online Privacy Protection Act (COPPA), 15 U.S.C. §§ 6501–6506; Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq; Children's Internet Protection Act (CIPA), 47 CFR § 54.520; National School Lunch Act, 42 U.S.C. § 1751 (2008). Several states have additional student privacy laws. FERPA/SHERPA, State Student Privacy Laws (2019), https://ferpasherpa.org/state-laws/ (updated Aug. 6, 2019).

9 See, e.g., Daniel Kiel, "No Caste Here? Toward a Structural Critique of American Education," *Penn State Law Review* 119, no. 3 (2015): 611–644, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2738704. Kiel argues that colorblind classification methods in education policy help maintain racial hierarchies in society and insulate educational institutions from legal, political, and practical interventions. See also Jason P. Nance, "Student Surveillance, Racial Inequalities, and Implicit Racial Bias," E*mory Law Journal* 66, no. 4 (2017): 765–837. Nance documents the ways in which intensified school surveillance practices and policies disproportionately and negatively affect students of color. See also David Gillborn, "Education Policy as an Act of White Supremacy: Whiteness, Critical Race Theory and Education Reform," *Journal of Education Policy* 20, no. 4 (2005): 485–505, https://doi.org/10.1080/02680930500132346. Gilborn argues that educational policy in the United Kingdom reinforces and facilitates racial inequities.

use of the technology in other settings.[10] At the same time, several states and localities have passed or are considering laws that will ban government use of facial recognition technologies, which applies to public schools.[11] US civil society organizations Fight for the Future and Students for Sensible Drug Policy created a campaign to ban use of facial recognition technology on college campuses.[12] This campaign successfully forced the University of California Los Angeles (UCLA) to reverse its plans to implement facial recognition for campus security,[13] and has garnered support from teachers' unions that are expanding the campaign's call to extend to K–12 schools.[14]

In 2019, New York became the first state to introduce legislation that explicitly sought to bar school districts from purchasing biometric surveillance technologies, and directed the State Education Commissioner to conduct a study on the use of such technologies in schools and issue statewide recommendations.[15] This legislation was in response to and in collaboration with a community-led advocacy effort in Lockport, New York.

LOCKPORT, NEW YORK: A CASE STUDY IN COMMUNITY-DRIVEN PUSHBACK TO FACIAL RECOGNITION IN SCHOOLS

In 2014, New York voters approved the Smart Schools Bond Act (SSBA), which set aside $2 billion for school districts to "improve learning and opportunity for students throughout" New York State.[16] An inconspicuous provision within the SSBA allowed school districts to utilize the

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10   The Administrative Court of Marseille (https://www.laquadrature.net/wp-content/uploads/sites/8/2020/02/1090394890_1901249.pdf) found that the use of facial recognition gates in two French high schools without student consent violated GDPR, despite national government interest in establishing a legal framework for public biometric video surveillance. See also European Data Protection Board, "Facial Recognition in Schools Renders Sweden's First GDPR Fine," August 22, 2019, https://edpb.europa.eu/news/national-news/2019/facial-recognition-school-renders-swedens-first-gdpr-fine_en. The article discusses the issuing of Sweden's first GDPR fine for failure to perform an adequate impact assessment and unlawful processing of sensitive biometric data to a municipality that used facial recognition technology to monitor student attendance. And see Scottish Government, "Biometric Technologies in Schools: Draft Guidance for Education Authorities, September 9, 2008, http://www.scotland.gov.uk/Publications/2008/09/08135019/0. The document discourages educational authorities from adopting biometric technologies but does not rescind preexisting findings that biometric technologies in schools are not illegal, even when introduced without parental consultation.

11   See Kristin Lam, "Portland, the Largest City in Oregon, Plans to Propose First Facial Recognition Ban Affecting Private Companies," *USA Today*, December 3, 2019, https://www.usatoday.com/story/tech/2019/12/03/facial-recognition-portland-oregon-ban/2601966001/; Tom McKay, "Berkeley Becomes Fourth U.S. City to Ban Face Recognition in Unanimous Vote," *Gizmodo*, October 16, 2019, https://gizmodo.com/berkeley-becomes-fourth-u-s-city-to-ban-face-recogniti-1839087651; City and County of San Francisco Board of Supervisors, File # 190110, May 31, 2019, https://sfgov.legistar.com/LegislationDetail.aspx?ID=3850006&GUID=12FC5DF6-AAC9-4F4E-8553-8F0CD0EBD3F6; Christine Fisher, "Oakland Bans City Use of Facial Recognition Software," *Engadget*, July 17, 2019, https://www.engadget.com/2019/07/17/oakland-california-facial-recognition-ban/; ACLU Massachusetts, "Somerville City Council Moves to Ban Government Face Surveillance," June 24, 2019, https://www.aclum.org/en/news/somerville-city-council-moves-ban-government-face-surveillance.

12   Stop Facial Recognition on Campus, https://www.banfacialrecognition.com/campus/.

13   Lilah Burke, "Facial Recognition Surveillance on Campus," *Inside Higher Ed*, February 21, 2020, https://www.insidehighered.com/news/2020/02/21/ucla-drops-plan-use-facial-recognition-security-surveillance-other-colleges-may-be.

14   Boston Teachers Union (@BTU66), "The BTU joins with teachers, students, civil rights and immigrant rights groups across the nation today in support of a ban on dangerous and inaccurate facial recognition technology in schools and universities," Twitter, March 2, 2020, 4:37 p.m., https://twitter.com/BTU66/status/1234593709267865603.

15   Assembly Bill A6787-D (2019–20), https://www.nysenate.gov/legislation/bills/2019/a6787.

16   Smart Schools Bond Act (2014), http://www.p12.nysed.gov/mgtserv/smart_schools/home.html.

funds on "high-tech security" projects, with little guidance. The SSBA is a reimbursement scheme that requires school districts to submit proposals and records of community engagement to the Smart Schools Review Board for review and approval.[17]

Since 2014, many school districts have applied for and obtained reimbursement for funding to acquire student instructional technology, such as laptops, smart boards, and 3D printers, and to upgrade aging internet and Wi-Fi systems.[18] As part of the application process, districts must certify that they have engaged stakeholders on the projects— specifically requiring that parents, students, teachers, and the community be notified of the project. Districts are also required to hold a public hearing about the proposals and post the proposal documentation on the district's website for at least thirty days.[19] Ostensibly, these requirements are designed to ensure that school community members are able to give input about the wisdom of the district's proposed use of state funding.

In 2016, the Lockport City School District proposed the use of $3,810,833 in SSBA funds for "new cameras and wiring…to provide viewing and automated facial and object recognition of live and recorded surveillance video," as well as "additional surveillance servers…to provide enhanced storage of recorded video and processing."[20] Lockport allegedly purchased the system to prevent school shootings.[21] It held its required public hearing on the proposal in the middle of summer break; unsurprisingly, it did not receive any comments or questions from the community about the purchase.[22] Lockport certified that it had engaged with all required stakeholders and its proposal was approved by the Smart Schools Review Board in November 2017.[23]

The first public criticism of the project started in February 2018 when the local newspaper, the *Lockport Union-Sun & Journal*, published a piece on one of two resolutions approved at the February 2018 Lockport school board meeting.[24] The resolution was to allow the use of "a new facial and shape recognition software" in the school system.[25] Lockport resident and parent Jim Shultz was alarmed by the revelation and wrote an article in his opinion column for the newspaper questioning the need for such a system, underscoring other, better uses for the funds, and

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17   The makeup of the Smart Schools Review Board is governed by statute and is comprised of the Commissioner of the New York State Education Department, the Director of the Office of the Budget, and the Chancellor of the State University of New York system, or their designees. N.Y. Educ. Law § 3641(16)(a)(2).

18   Approved Smart Schools Investment Plans, http://p1232.nysed.gov/mgtserv/smart_schools/ApprovedSSIPs.htm. See, e.g., Adirondack Central School District's request for upgrades to wireless connectivity and Chromebooks for students (http://p1232.nysed.gov/mgtserv/documents/ADIRONDACKCSD_ADKInvestmentPlan11.16.pdf).

19   Smart Schools Bond Act Implementation Guidance, p. 19, http://www.p12.nysed.gov/mgtserv/documents/SSBAGuidancerev_6_1_18_Final.pdf.

20   Lockport City School District, Smart Schools Investment Plan (2016–17), http://p1232.nysed.gov/mgtserv/documents/LOCKPORTCITYSD.pdf (last modified October 23, 2017).

21   Lockport City School District, Aegis Security System, May 2019, https://www.smore.com/q13ms.

22   Lockport City School District, August 2016 Regular Board Meeting Minutes, August 17, 2016, https://www.lockportschools.org/site/default.aspx?PageType=14&DomainID=1298&PageID=9632&ModuleInstanceID=11244&ViewID=1e008a8a-8e8a-4ca0-9472-a8f4a723a4a7&IsMoreExpandedView=True.

23   Governor Andrew M. Cuomo, "Governor Cuomo Announces Approval of 88 Smart Schools Investment Plans Totaling $75.6 Million," November 27, 2017, https://www.governor.ny.gov/news/governor-cuomo-announces-approval-88-smart-schools-investment-plans-totaling-756-million. Despite the district's certification, David Lowry, the president of the Lockport Education Association, stated that teachers were not consulted in a discussion of how to use the funding, as was required. See Tim Fenster, "Trying for More Secure Schools: Lockport District Turning to Facial Recognition Software," *Lockport Union-Sun & Journal*, March 4, 2018, http://www.lockportjournal.com/news/local_news/trying-for-moresecure-schools-lockport-district-turning-to-facial/article_f1cc9cfa-0898-5da0-ac5d-d600df21bed7.html.

24   Connor Hoffman, "Lockport Schools Look to Cut Energy Costs," *Lockport Union-Sun & Journal*, February 8, 2018, https://www.lockportjournal.com/news/local_news/lockport-schools-look-to-cut-energy-costs/article_6374faf0-7c5b-57d9-bc37-a1542df857a5.html.

25   Ibid.

warning of the risks to privacy for students and teachers.[26] Shultz created a petition asking the school district to put the project on hold and to schedule a public hearing to receive input from the community.[27] The petition, signed by over a hundred Lockport residents, raised additional questions about the district's engagement with stakeholders, potential conflicts of interest between the district and the security consultant that pitched the product, and the effectiveness of the system.[28]

After the petition was turned in, the *Lockport Journal* editorial board called on the district to postpone its scheduled vote to award an installation contract for the system.[29] Despite this call to action, the Lockport school board approved the contract.[30] Shultz then called for residents to vote down Lockport's proposed school budget until the district agreed to stop its facial recognition proposal, but was unsuccessful.[31] The *Lockport Journal*, however, continued to run pieces on the dangers of facial recognition technology, questioning its accuracy and, in particular, discrepancies in the systems' ability to identify people of color.[32] Shultz wrote monthly columns about the project, and enlisted local support through Lockport's Facebook group. He also solicited the help of the New York Civil Liberties Union, which targeted the district and the New York State Education Department (NYSED) with letters and requests under New York's freedom of information law.[33]

This advocacy garnered the attention of Monica Wallace, Democrat Assembly member representing New York's 143rd Assembly District, which borders Lockport and includes the town of Depew.[34] Wallace was aware of the school district's proposal because the superintendent of the Depew Union Free School District had expressed interest in obtaining the same system.[35] Wallace reached out to advocates in an effort to understand the concerns. As a lawyer and parent, she understood the tension between safety and privacy, but worried that the system had the potential to do more harm than good.

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26   Jim Shultz, "Lockport Schools' Security Plan Warrants Scrutiny," *Lockport Union-Sun & Journal*, February 21, 2018, https://www.lockportjournal.com/opinion/lockport-schools-security-plan-warrants-scrutiny/article_34f86bd0-849c-5251-8e73-387b90af357b.html.

27   Jim Shultz, "More Questions about School Surveillance Plan," *Lockport Union-Sun & Journal*, March 21, 2018, https://www.lockportjournal.com/opinion/more-questions-about-school-surveillance-plan/article_0c5c6948-cded-5fe2-8d9c-c3e145ae2ed4.html.

28   Ibid.

29   US&J Editorial Board, "OUR VIEW: Action on School Security Bid Should Be Postponed," *Lockport Union-Sun & Journal*, March 28, 2018, https://www.lockportjournal.com/opinion/our-view-action-on-school-security-bid-should-be-postponed/article_464b8f55-733e-554f-9ddb-c066ab3ce169.html.

30   Minutes of the Board of Education of the Lockport City School District, March 28, 2018, https://www.lockportschools.org/site/default.aspx?PageType=14&DomainID=1298&PageID=9632&ModuleInstanceID=11844&ViewID=1e008a8a-8e8a-4ca0-9472-a8f4a723a4a7&IsMoreExpandedView=True.

31   Jim Shultz, "Vote 'No' on Spy Cameras in Lockport's Schools," *Lockport Union-Sun & Journal*, April 25, 2018, https://www.lockportjournal.com/opinion/vote-no-on-spy-cameras-in-lockports-schools/article_6c8cf70a-9551-5974-b396-67bfb5672789.html; Jim Shultz, "Reject False Security: Vote 'No' on Lockport School Budget," *Lockport Union-Sun & Journal*, May 11, 2018, https://www.lockportjournal.com/opinion/reject-false-security-vote-no-on-lockport-school-budget/article_672a7a72-4908-588e-bccc-0cddaf4683b0.html.

32   Tim Fenster, "Questions remain on school district security project," *Lockport Union-Sun & Journal*, May 13, 2018, https://www.lockportjournal.com/news/local_news/questions-remain-on-school-district-security-project/article_97ce6fd3-490e-5837-834b-217b29474ee5.html.

33   See Connor Hoffman, "Civil Liberties Union Asks State to Halt Lockport Schools Security Project," *Lockport Union-Sun & Journal*, June 18, 2018, https://www.lockportjournal.com/news/local_news/civil-liberties-union-asks-state-to-halt-lockport-schools-security/article_dbf50305-cd3a-54d9-8757-4c874c02c61b.html; Stefanie D. Coyle and John A. Curr III to Commissioner MaryEllen Elia, June 18, 2018, https://www.nyclu.org/sites/default/files/field_documents/june18_2018_nyclu_letter_re_lockport_city_school_district.pdf.

34   Assemblymember Monica P. Wallace, https://assembly.state.ny.us/mem/Monica-P-Wallace/about/.

35   Thomas J. Prohaska, "Lockport Schools Turn to State-of-the-Art Technology to Beef up Security," *Buffalo News*, May 20, 2018, https://buffalonews.com/2018/05/20/lockport-schools-turn-to-state-of-the-art-technology-to-beef-up-security/.

In March 2019, Wallace introduced a bill (A6787) in the New York State Assembly that would place a moratorium on the use or purchase of any "biometric identifying technology" in a school system.[36] This broad definition covers not only facial recognition technology, but any technology that uses a fingerprint, handprint, iris, retina, DNA sequence, voice, gait, or facial geometry to identify a person.[37] Wallace consulted with advocates on the bill draft to make sure it addressed concerns about the system. The bill requires NYSED to commission a study on the following issues: the privacy implications of collecting sensitive biometric information; the risks of false identification for certain subgroups of individuals; whether information from the system might be shared with outside individuals, including law enforcement; the length of time information from the system can be retained; the risk of an unauthorized breach; maintenance costs; audits of the vendors; and how the technology should be disclosed to the public.[38] These questions are critical for analyzing the utility, efficacy, and harms of such systems, as is involving the public in decisions relating to the use of surveillance technology in schools.

The bill requires NYSED to consult with many New York State agencies in preparing the report and requires the Commissioner of Education to hold public hearings seeking feedback from teachers, school administrators, parents, and experts in school safety, data privacy, and civil rights and civil liberties.[39] In many ways, Wallace's bill mirrors the concerns raised by residents in the community and advocates across the state and country. A senate version of the bill was introduced in April 2019.[40] The bill passed the New York Assembly with a bipartisan vote of 128 to 19 on the final day of the 2019 legislative session.[41] The bill was not considered in the Senate, effectively killing the bill for the 2019 legislative session and teeing up a new fight in 2020.

Meanwhile, the community continued its efforts to prevent the use of the technology. Connor Hoffman, a reporter from the *Lockport Journal*, attended every school board meeting and filed multiple requests for information from the school district and NYSED. Hoffman received information that had not yet been publicly disclosed about the accuracy rates of Lockport's system, revealing that Black women are sixteen times as likely as white men to be misidentified by the system.[42] The persistent reporting led to national press coverage, including a feature in the *New York Times*,[43] a *New York Times* op-ed by Shultz,[44] and an MTV News documentary.[45] Without the diligence of concerned citizens and the local and national press, Lockport's acquisition of the facial recognition system and NYSED's failure to regulate this type of technology might have gone unnoticed.

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36   Sup., note 16.

37   Ibid.

38   Ibid.

39   Ibid.

40   Senate Bill S5140-B, https://www.nysenate.gov/legislation/bills/2019/s5140. Introduced by Senator Brian Kavanagh, a senator representing New York's 26th Senate District, which includes Lower Manhattan and parts of Brooklyn.

41   New York State Assembly, A06787 Floor Votes, https://assembly.state.ny.us/leg/?default_fld=&bn=A06787&term=2019&Summary=Y&Actions=Y&-Text=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y.

42   *New York Civil Liberties Union v. New York State Education Department*, Index No. 903807-20, Exh. 9, G-2, p. 94, Albany County Supreme Court, June 18, 2020.

43   Davey Alba, "Facial Recognition Moves into a New Front: Schools," *New York Times*, February 6, 2020, https://www.nytimes.com/2020/02/06/business/facial-recognition-schools.html.

44   Jim Shultz, "Opinion: Spying on Children Won't Keep Them Safe," *New York Times*, June 7, 2019, https://www.nytimes.com/2019/06/07/opinion/lockport-facial-recognition-schools.html.

45   MTV News (@MTVNEWS), ".@NYCLU says tech companies are using the fear of school shootings to turn students into lab rats for experimental technology. Meet the 25-year-old reporter @_hoffingtonpost who's exposing the spread of facial recognition in schools," Twitter, March 12, 2020, 12:31 p.m., https://twitter.com/MTVNEWS/status/1238140444992774145.

Despite the pushback, Lockport activated its facial recognition system on January 2, 2020.[46] Parents and students were not notified ahead of the deployment, nor were they given a chance to publicly comment on the system.[47] It remains unclear why the district pushed ahead with the system given the concerns of the community.

Despite this setback, there have been promising developments in the community's fight against this technology. Though the 2020 legislative session was interrupted by the COVID-19 global pandemic, the bill was amended in both houses to increase the amount of time for the moratorium until July 2022 or until the Commissioner of Education explicitly authorizes the use of the technology after issuance of the report, whichever occurs later.[48] The bill has widespread support from across the state and across the country, even garnering support from the United Federation of Teachers (UFT), the New York City affiliate of the American Federation of Teachers.[49] During the week of July 20, 2020, the bill passed both the Assembly and the Senate, and now awaits signature by the Governor to become law.[50]

In February 2020, the New York Civil Liberties Union led a town hall in Lockport attended by nearly fifty parents and concerned community members about the system. The town hall was headlined by Shultz and a recent alumna of the school district.[51] For many, it was the first time they had all been in a room together to discuss the system. Several people asked the school board members in attendance why there had not been a community forum sponsored by the district to answer questions and hear concerns. Community members expressed consternation over Lockport's lack of responsiveness, but planned to continue vocalizing their opposition and making their voices heard at school board meetings.[52]

THE IMPORTANCE OF COMMUNITY-DRIVEN POLICY ADVOCACY

The community-driven advocacy response in Lockport demonstrates that persistent and organized public scrutiny can illuminate bureaucratic failures, shape necessary reforms, and shift narratives. The district's decision to purchase and use a facial recognition system follows a

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46   See Troy Licastro, "Lockport City School District Begins Using Facial Recognition System," WIVB-TV, January 2, 2020, https://www.wivb.com/news/local-news/niagara-county/lockport/lockport-city-school-district-begins-using-facial-recognition-system/. Lockport deployed its system after receiving permission from NYSED. See also Temitope Akinyemi to Michelle Bradley, https://int.nyt.com/data/documenthelper/6688-nysed-lockport/03fc55526445f8ef41aa/optimized/full.pdf.

47   "Something this big should have been properly told to us." Christianna Silva, "Facial Recognition Technology Is Taking Over Schools—and Students Aren't OK with It," *MTV News*, March 13, 2020, http://www.mtv.com/news/3159161/facial-recognition-technology-schools-students-respond/.

48   Sup., note 16.

49   This is the same organization that experimented with Clearview AI's technology. See Michael Elsen-Rooney, "Racial Justice Groups Criticize City Teachers Union's Use of Controversial Face Recognition Technology," *Daily News*, March 27, 2020, https://www.nydailynews.com/new-york/education/ny-uft-facial-recognition-20200327-msxxn5mmw5dtjmrisjfyaj7xqq-story.html.

50   New York Assembly Bill A6787-D, https://www.nysenate.gov/legislation/bills/2019/a6787.

51   Connor Hoffman, "Spotlight on Facial Recognition: Civil Liberties Union Hosts a 'Town Hall' in Lockport," *Lockport Union-Sun & Journal*, February 25, 2020, https://www.lockportjournal.com/news/local_news/spotlight-on-facial-recognition-civil-liberties-union-hosts-a-town/article_32c29556-9f05-5934-8c03-29ef5e08212a.html.

52   In addition to concerns over the use of the facial recognition system, community members demanded that a beloved middle-school peer mediator's employment not be terminated by the school district. Connor Hoffman, "Trying to Have Mr. Cheatham's Back, *Lockport Union-Sun & Journal*, January 23, 2020, https://www.lockportjournal.com/news/trying-to-have-mr-cheatham-s-back/article_a814300a-3e61-11ea-b6fa-43627916ccc3.html.

common yet flawed pattern that government officials rely on to justify the adoption of surveillance technologies. The school district conflated an abstract or speculative risk to student safety with an objective fact of real harm. They installed an unproven and potentially ineffective system that will likely undermine students' civil rights and liberties. Though school safety concerns are legitimate and warrant critical review, the school district's actions demonstrated the inherently political nature of privileging certain risks and interests over community needs.[53] Rather than consult the community to assess actual needs and concerns, the district adopted a technological solution in search of a problem.

The community-driven advocacy made the flawed logic of this approach apparent. Parents shifted the discourse from debating whether the biometric surveillance system was necessary to focusing on the real harms posed to students if the school district decided to move forward against community opposition. In particular, Shultz's early writings on the facial recognition system emphasized the dangers to student and teacher privacy at a time when the district trivialized the idea that the system could negatively impact student privacy.[54] In 2019, however, the superintendent of the school district reluctantly acknowledged that "[p]rivacy matters are a big deal nowadays."[55] This emphasis on privacy is echoed in the current legislation.[56]

Lockport also failed to acknowledge that deployment of a flawed facial recognition system could compound preexisting racial-equity concerns regarding its school safety practices and policies. For instance, the district has struggled to address existing issues of disproportionate discipline when it comes to students of color, a problem that can be exacerbated by the use of an inaccurate and racially biased facial recognition system.[57]

During Lockport's school board elections this year, a new slate of parents, energized by the fight against facial recognition technology, organized to run for multiple open seats on the board.[58] This year's voter turnout was four times higher than the district's five-year average turnout.[59] Though the fight in Lockport and New York State continues, this community-driven advocacy effort demonstrates the importance of empowering those directly affected by problematic government decision-making to lead the change they want to see.

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53   See Hope, "Seductions of Risk," in *Schools Under Surveillance*, for a discussion of how adoption of surveillance technologies can unreasonably limit students' educational experience. See also Mary Douglas and Aaron Wildavsky, *Risk and Culture: An Essay on the Selection of Technological and Environmental Dangers* (Berkeley: University of California Press, 1983), 29–38. Douglas and Wildavsky describe how labeling risks is a social process complicated by new technologies that provoke cultural and social reassessments.

54   Sup., note 31: "When the privacy issue was raised at that March meeting it was dismissed away as a joke about the likelihood of North Korea hacking into student records."

55   Connor Hoffman, "Lockport School District Cancels Security Contract," Lockport Union-Sun & Journal, April 11, 2019, https://www.lockportjournal.com/news/local_news/lockport-school-district-cancels-security-contract/article_b5612839-211e-53ff-a70b-c1de1f66abd6.html.

56   Sup., note 16. The legislation requires NYSED to consider "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."

57   During the 2015–2016 school year, Black students made up just 12.3 percent of the student population but represented more than a quarter of the students receiving out-of-school suspensions. Students of two or more races represented 5.9 percent of the student population in Lockport, but 15 percent of the students who received out-of-school suspensions. See Civil Rights Data Collection, "Lockport City School District," 2015, https://ocrdata.ed.gov/Page?t=d&eid=31160&syk=8&pid=2539&Report=6. See also Paul Hirschfield, "School Surveillance in America: Disparate and Unequal," in Schools Under Surveillance, for a description of the disparate impact of school surveillance.

58   Jim Shultz, "Time for Change on the Lockport School Board," Lockport Union-Sun & Journal, May 23, 2020, https://www.lockportjournal.com/opinion/jim-shultz-time-for-change-on-the-lockport-school-board/article_142c3905-0612-54d6-8f66-22097b35e5cb.html.

59   Connor Hoffman, "Renee Cheatham wins a seat on the school board," Lockport Union-Sun & Journal, June 18, 2020, https://www.lockportjournal.com/news/local_news/renee-cheatham-wins-a-seat-on-the-school-board/article_6e3e73ba-b42c-5820-98df-01ccd23d234a.html.