

Privacy & Data Security Law News

# Facial Tech Moratorium Spotlights Children's Privacy Importance

By Jake Holland

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- New York suspends use of facial recognition in schools
  - Moratorium in place until at least July 1, 2022
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A first-of-its-kind New York law suspending the use of facial recognition technology in schools across the state underscores the importance of protecting children's privacy and follows a nationwide trend toward greater protections for young people's data, attorneys say.

Gov. Andrew Cuomo (D) signed the legislation on Dec. 22. The law places a moratorium on public and private schools purchasing and using biometric identifying technology until at least July 1, 2022.

The ban follows concerns about facial recognition technology's implications for student safety, security, and privacy, Cuomo said in a statement. He said New York's Office of Information Technology will work with the State Education Department to study the technology's potential impact on student civil liberties and data use.

Children's privacy is a "hot issue," and this legislation allows the state to take another look at the technology before it makes a decision, said Gretchen Ramos, co-chair of Greenberg Traurig LLP's data, privacy, and cybersecurity practice.

"Students' data needs to be protected," Ramos said. "What Cuomo did makes sense."

Remote learning brought about by the pandemic, with the proliferation of Zoom calls and online assignment management platforms, has caused government officials to take a hard look at student safety, said Paul Greene, chair of Harter Secrest & Emery LLP's privacy and data security practice.

Children can't always consent to how their data is being collected or handled, so understanding the technology's effects before deciding whether to implement it is important, he said. Facial recognition technology has been found to be less effective in identifying people of color and women, Greene said.

"It makes no sense to bring this aggressive surveillance technology into our schools when no one has made a compelling case, either that it will meaningfully improve security or that it can be used without violating the privacy and civil rights of students, staff, and visitors," New York Sen. Brian Kavanagh (D), who pushed for the legislation, said in a statement.

### 'Part of a Wave'

The New York ban fits into a growing national trend of restrictions on biometric technology cropping up across the country, Greene said.

"It's certainly part of a wave that's rising in other states," he said. "We've seen a number of cities ban facial recognition at the government level."

San Francisco last year banned the use of facial recognition technology by police and other municipal agencies. A similar measure being floated in Massachusetts stops short of banning the technology's use by police but requires transparency in data collection.

The facial recognition moratorium comes after the New York State Education Department this year announced a model data privacy agreement that can be used as an addendum to a third-party contractor agreement or as a guide to schools in developing privacy agreements.

Along with California, New York is a leader in privacy in the U.S., Ramos said.

The Empire State last October expanded its data breach notification statute to include biometric information such as fingerprints and facial recognition scans, Greene said. He said the patchwork of privacy regulations among states and business sectors is likely to continue in the absence of a federal law.

The trend toward protecting children's privacy means New York's recently passed legislation could spur other statehouses and the federal government to implement bans, Greene said. And, "with a new presidential administration, we might see more enforcement regarding tools like facial recognition."

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