

Rt Hon Damien Hinds MP
Secretary of State for Education
Department for Education
Sanctuary Buildings
Great Smith Street
London SW1P 3BT

January 11, 2018

Dear Minister,

Congratulations on your appointment. We wish you every success in the new role.

Among the most pressing issues in your new workload, I write to ask that you will give consideration to that of the Alternative Provision Census¹ expansion, with only one week left to fix.

Next Thursday, on January 18th, school children's confidentiality will be breached and their personal data made unsafe for life, unless you pause the new expansion, until at least the next census in May.

I write as Director of defenddigitalme — supported by representatives of over 20 NGOs and charities, child rights advocates and academics, including John Carr OBE, Secretary of the Children's Charities' Coalition on Internet Safety (CHIS); the Royal Mencap Society, the Driver Youth Trust, the Teenage Pregnancy Knowledge Exchange, and Unlock — defenddigitalme specialises in children's privacy and data rights in education in England. Our work is funded by the Joseph Rowntree Reform Trust Ltd.

Children will be labelled for life by the Local Education Authority in the next AP census, as one of eight new reasons for transfer — including pregnancy, mental health and young offender — will record a move from mainstream education into Alternative Provision. It is on a named basis at national level for the first time, after the new law effective from September 2017, passed without discussion through a Statutory Instrument. Special educational needs data have also been expanded, such as autism and disabilities.²

These data are not for the child's support or direct care at national level. Personal data are already collected and used locally / by LEAs. The data are not anonymous statistics, but individual, and permanent records.

We appreciate and support the important need to understand SEND and reasons behind pupil AP transfers, in particular concerns about children "managed out" from mainstream school to boost league table results.³

However, the way it is done should not cost any child their confidentiality, and potentially discriminate against them when data are used later in life across government, and by external third parties, including police⁴. There are better privacy preserving methods of collecting knowledge and statistics, than named lists.

Our research so far with the 152 Local Education Authorities in England, shows no one has told parents and children that these new, highly sensitive data — young offender, pregnancy, mental health need — will be sent to a national register of 23 million records, [the National Pupil Database](#), or that these identifying data are onwardly shared with a wide range of third parties. The LEAs as census data collectors and processors together with the DfE as joint controller, all have a statutory obligation to communicate these changes to children. Accountability to do so, fails in lack of adequate communication. There is also confusion in about one third, that only children in Alternative Provision on Census Day i.e. Jan 18, 2018 will be included whereas it should be retrospective and count any child who has been in AP at any time in the last 364 days.

We are most concerned that data can be lost, stolen or misused, because data are sent to the users, rather than the users coming to the data. This process is insecure and without oversight in their own office settings. The data distributed to third-parties are not anonymous statistics, but individual, identifying data. Highly sensitive information including special needs data (SEN) have been passed out since 2012 about individuals to commercial companies, charities, [think tanks](#), [newspaper](#) and [TV journalists](#) without any small number suppression⁵. For example, [The Telegraph](#) was given 9 million children's identifying data in 2013, and over 1,000 releases of identifying individual pupil-level data include [BBC Newsnight](#), [The Times](#), and

¹ AP Census Guide 2018 <https://www.gov.uk/government/publications/alternative-provision-census-2018-guide>

² Twelve additional SEN codes are at individual level and not kept confidential but handed out to third parties <http://defenddigitalme.com/alternative-provision-census/>

³ Education Datalab report findings <https://educationdatalab.org.uk/2017/01/whos-left-the-main-findings/>

⁴ Nick Gibb HCWS272 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-11-27/HCWS272/>

⁵ FOI response from the Department for Education on pupil level data uses: "[The Daily Telegraph requested pupil-level data and so suppression was not applicable.](#)" https://www.whatdotheyknow.com/request/pupil_data_sensitive_data_releas#comment-69968

commercial companies like [private tutoring group](#), Tutor Hunt, and [Data consultancies](#). The government also use the data in the [Cabinet Office Troubled Families Programme](#), and the [National Citizen Service](#), which without checks for errors by the children and parents, may result in misleading findings and poor policy.

Four years ago, as a mother of three primary aged children, I was shocked to find out that our personal confidential data from school are not sent as statistics to the DfE, but as fully identifiable returns of personal data, and that these data are added to a permanent database. I was even more surprised to discover sensitive personal data are handed out⁶ to third parties, including journalists⁷ and for commercial re-use.

It is vital that children's confidentiality is put ahead of commercial interests in the best interests of the child's care, to protect them from potential harm, stigma, and barriers to their flourishing to reach their full potential, and protect the social license for public interest research based on public trust and expectations of fairness.⁸

We asked the Department to reconsider plans in September⁹, when the law was changed. The changes needed ahead of any further data collections, are part of nine recommendations from our work over the last 3 years with the Department. One month ago, we wrote to your predecessor.¹⁰

Now we ask for your consideration as previously discussed with the Data Modernisation Team, to ensure:

- the data will be safe¹¹
- children's confidentiality will be respected
- children and parents will be told how their confidential data are and will be used and retained.

A pause would give the Local Education Authorities time to tell pupils and parents what is going to happen.

A pause would give your Department the chance to put appropriate safeguards in place to make the data safe. In that time LEAs could still submit statistics without a need to transfer the new data on a named basis.

A pause would mean we do not need to press ahead with a legal challenge¹² when the data collection without fair processing results in a breach of the first and second data protection principles, and its onwards distribution infringes on human rights and breach of confidentiality and children's rights.

We would be very happy to discuss in further detail what is required and why and I hope we will be able to work constructively with you and the Department in an exciting time for children's digital rights, as we advocate for safe, fair and transparent data policy and practice across the sector:

- in the best interest of children and with respect to their rights under the UNCRC
- to provide a stable basis for data collected in schools and classroom in practice
- to underpin the use of quality education data in public interest research
- in the Data Protection Bill soon to arrive in the House of Commons after debate in the House of Lords¹³
- as a foundation for growth of edTech anticipated in the UK Digital Strategy¹⁴ and fit for the future.

Thank you for your consideration, and we look forward to your view and next steps.

Sincerely,

Jen Persson
Director, [defenddigitalme](#)
By email: jen@defenddigitalme.com

⁶ DfE National Pupil Database User Guide see p 19 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472700/NPD_user_guide.pdf

⁷ In a 2013 DfE email the Telegraph newspaper gives "cast iron assurances" not to compare the performance of individual teachers, or publish identifying data of any child, from the multiple years of Tier 2 'identifying and sensitive' pupil data they were given. In effect, the Department outsourced the management of children's privacy to ten journalists, of identifiable SEN, Free School Meals, ethnicity; attainment, school locator and more personal data for millions of children. Freedom of Information requests in 2015 show that the Telegraph had not confirmed it had destroyed the ca. 9 million children's data by the due date. How many exactly is unknown, as the volume of pupils included in distributed historic extracts is not kept. [PQ109113]

⁸ The social licence for research: why care.data ran into trouble <http://jme.bmj.com/content/early/2015/01/23/medethics-2014-102374>

⁹ Timeline of the AP census changes <http://defenddigitalme.com/timeline-alternative-provision/>

¹⁰ Coalition letter to Rt Hon Justine Greening MP <http://defenddigitalme.com/letter-to-justine-greening-calling-for-change-ahead-of-jan-2018-alternative-provision-census/>

¹¹ This safe data model has been in discussion for over two years but needs support and action urgently http://rsss.cass.anu.edu.au/sites/default/files/rsss/Ritchie_5safes.pdf

¹² Legal action considered as research shows that authorities are compiling data about pupils in alternative provision, without consulting the children or their parents <https://www.tes.com/news/school-news/breaking-news/local-authorities-collecting-sensitive-pupil-data-without-consent>

¹³ Data Protection Bill [HL] - Hansard Online December 11, 2017 [https://hansard.parliament.uk/Lords/2017-12-11/debates/154E7186-2803-46F1-BE15-36387D09B1C3/DataProtectionBill\(HL\)#contribution-16526F06-06D8-4450-A41B-592AFFFB1F7E](https://hansard.parliament.uk/Lords/2017-12-11/debates/154E7186-2803-46F1-BE15-36387D09B1C3/DataProtectionBill(HL)#contribution-16526F06-06D8-4450-A41B-592AFFFB1F7E)

¹⁴ UK Digital Strategy <https://www.gov.uk/government/publications/uk-digital-strategy>



The Alliance for Inclusive Education (ALLFIE)

Biometrics in Schools

The Campaign for State Education (CASE)

John Carr OBE, Secretary, Children's Charities' Coalition on Internet Safety (CHIS)

defenddigitalme

Driver Youth Trust

Dr Pam Jarvis, Chartered Psychologist, social media researcher, teacher and grandparent

Dr. Ansgar Koene, Senior Research Fellow, University of Nottingham

Professor Sonia Livingstone OBE, London School of Economics and Political Science

medConfidential

Royal Mencap Society

Professor Berry Mayall, Professor of Childhood Studies, UCL

The National Education Union (NUT section)

The Parents Union

Parent Zone

Rescue our Schools

Joseph Savirimuthu, Senior Lecturer in Law at the School of Law and Social Justice, University of Liverpool

Teenage Pregnancy Knowledge Exchange

Trailblazers (Mentoring Young Offenders)

Unlock