

- 1- If enacted, the proposed regulations would nullify the intent and language of Education Law §2-d, which prohibits the selling of personal student data or its use for marketing purposes in all circumstances. They attempt to redefine marketing by stating in §121.9 that if a parent or eligible student consents to the data's use in this way it is not really marketing.<sup>i</sup> Thus these new regulations would be open to challenge in court.
2. This revision of the regulations was done to allow the College Board and ACT to continue selling student data and its use for marketing purposes when they act as school vendors. The College Board alone makes an estimated \$100 million off this practice.<sup>ii</sup>
3. Yet in May 2018, the US Department of Education warned districts that contract with these vendors that they are in potential violation of several federal laws, including FERPA and IDEA, as the companies collect personal data from minor students before the administration of exams, and then sell it without parent consent to third parties. The College Board survey also includes questions in which students are asked about their religious affiliations. Collecting this information without parental consent is explicitly prohibited by the Protection of Pupil Rights Amendment, passed by Congress in 1978.<sup>iii</sup>
4. In July 2018, the NY Times revealed that at least one organization to which College Board had sold student data had resold it to a for-profit company that markets expensive programs to families with dubious benefits, and that this practice likely contributes to a thriving and largely unregulated commercial market in student data.<sup>iv</sup>
5. More recently, the ACT has been sued in federal court for allegedly selling personal information without parental knowledge or consent, including sensitive student disability information.<sup>v</sup>
6. The whole notion of consent is questionable in this context, as students under eighteen are not legally allowed to "consent," and are also provided with confusing and often deceptive instructions before the administration of these exams as to whether answering all these personal questions is fully voluntary.
7. Both the ACT and the College Board are unclear as to which specific student data they share and that they sell it at all. On one website page, the College Board denies they sell the data at all, by stating in their "Data Privacy Overview" that "**The College Board does not sell student information**" while on another page, offering up this data to customers for 47 cents per student name.<sup>vi</sup>
8. The College Board also claims on its website that "**we never share...actual student scores**" while in another place buried deep in the SAT Handbook, it is revealed that "**Colleges can ask for names of students within certain score ranges**" – e.g. students who score above a certain level.<sup>vii</sup>
9. Even if ACT and College Board granted only parents and students over 18 with the power of consent, and made clear which data may be shared, it will be impossible for anyone including the state to provide sufficient oversight to ensure that once the data is sold, it is not resold and/or utilized for purposes other than which consent was originally granted.
10. The loophole created by the proposed regulations is so broad that other vendors in addition to the CB and ACT could also sell and/or commercialize personal student data via the same sort of deceptive practices – or worse.
11. According to a research summary on the College Board website, most colleges that currently buy the data via the Student Search process to fill their seats and/or improve their acceptance rates see very limited benefit from it. Footnote 4 states: "*The base rate of SAT score sending to the licensing college is less than 0.5%, so 23% is roughly a 0.1 percentage point increase. Similarly, a 22% increase in enrollment probability reflects a 0.02 percentage point increase on top of a base rate of 0.1%.*"<sup>viii</sup>
12. As a policy question, does the Board of Regents really want to encourage the continuation of an arms race in marketing, in which colleges are forced to compete and use their precious resources on sending unsolicited materials to students, rather than ensuring that more dollars are spent on improving their outreach to schools and/or their educational programs and services?

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## Endnotes

<sup>i</sup> <https://www.studentprivacymatters.org/wp-content/uploads/2016/06/NYS-student-privacy-law-section-2-D.pdf> ; for more on this issue see the Washington Post op-ed here: <https://www.washingtonpost.com/education/2019/09/11/is-new-york-state-about-gut-its-student-data-privacy-law/>

<sup>ii</sup> College Board 2017 IRS 990, Section VIII under “College Opportunities and Enrollment” at <https://pdf.guidestar.org/PDF/Images/2017/131/623/2017-131623965-Off27623-9.pdf>

<sup>iii</sup> [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/TA%20College%20Admissions%20Examinations.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/TA%20College%20Admissions%20Examinations.pdf)

<sup>iv</sup> <https://www.nytimes.com/2018/07/29/business/for-sale-survey-data-on-millions-of-high-school-students.html>

<sup>v</sup> <https://www.businesswire.com/news/home/20180807005834/en/Students-Disabilities-File-Class-Action-ACT-Test>

<sup>vi</sup> <https://about.collegeboard.org/privacy-policy/data-privacy-overview> and

<https://collegeboardsearch.collegeboard.org/pastudentsrch/support/licensing/pricing-payment-policies>

<sup>vii</sup> <https://studentsearch.collegeboard.org/about-your-data> vs. <https://collegereadiness.collegeboard.org/pdf/sat-registration-booklet-students.pdf> p. 22.

<sup>viii</sup> <https://cbsearch.collegeboard.org/pdf/college-outreach-and-student-outcomes.pdf>