

27 February 2019

To Members of the Illinois General Assembly:

As members of the College and Career Interest Task Force (PA: 100-0107), we are writing to urge the members of the General Assembly to consider two additional recommendations that were not amenable to the full Task Force for inclusion in the final report.

Recommendation 1: Investigate the College Board's business practices with respect to selling Illinois school student data

The original impetus for the creation of the Task Force was the current cost to the State's public institutions of higher education of purchasing student data from the College Board and other vendors for the purposes of recruitment. The first version of HB4781, amended in the final version to create the Task Force, would have had the Illinois State Board of Education (ISBE) create and administer a survey and share the data with public colleges and universities so that they would no longer have to purchase such data.

Currently, a survey is administered to students along with the SAT and some versions of the PSAT, and the survey data along with student personally-identifiable information (PII) is available for purchase from the College Board. Public and private colleges and universities in Illinois and in other states buy this data¹. Details about the cost can be found on the College Board website². In addition, there was discussion of the type of data purchased from the College Board and elsewhere and its cost at several of the Task Force meetings, including November 8th and January 10th, with representatives from several of the institutions of higher education on the Task Force.

Our concern is that current state law, the Student Online Privacy Protection Act (SOPPA) (PA: 100-0315), bars operators from selling or renting student information. It is clear that the College Board is selling Illinois students' data. If IL public institutions of higher education are distressed at the price of this data, parents are equally, and perhaps more so, distressed that our children's data is available for sale at all—especially now that the SAT is a requirement for a diploma from an Illinois public high school and both the PSAT and SAT are factored into schools' accountability ratings.

Has the College Board been selling data collected via Illinois public schools' administration of the PSAT and SAT? If so, how can this sale be allowed to continue under both the spirit and the letter of SOPPA?

We urge the General Assembly to initiate an inquiry into what data on Illinois K-12 students the College Board is selling, and whether those sales are in violation of state law, including SOPPA or other Illinois statutes, including the Children's Privacy Protection and Parental Empowerment Act (325 ILCS 17), which bars the sale of data from children under age 16 without the consent of a parent.

Illinois is in the first year of an almost \$60M contract with the College Board to administer the SAT and PSAT to Illinois high school students. As a vendor being paid with millions of tax dollars, the College Board should be held to the highest standard for a business operating in our State, and it should not be allowed to profit off illegal data sales.

¹ See "[Technical Assistance on Student Privacy for State and Local Educational Agencies When Administering College Admissions Examinations](#)", Privacy and Technical Assistance Center, US Department of Education. (May 2018)

² College Board Search: "[Pricing and Payment Policies](#)"

Recommendation 2: Prioritize security, privacy and transparency as paramount for any collection or use of student data to be shared with Illinois’ public higher education institutions

The Task Force recommended the following with respect to protecting the security and privacy of student and parent data:

“The College and Career Interest Task Force states that any sharing of college and career interest information of high school students with public colleges would have to be in full adherence to all pertinent state and federal student privacy protection and data security laws. This holds true whether the college and career interest information being considered for provision to the public colleges involves information that is currently collected, or requires a new collection or survey.”

We feel this statement represents merely the legal minimum for any new policy or system dealing with student data—compliance with existing state and federal law.

Our recommendation instead is that any system for collecting and sharing public school students’ personally identifiable information with Illinois public institutions of higher learning should be designed and implemented with the protection of the security and privacy students’ data as the top priority and with full transparency about how such data is to be used, disclosed and maintained.

If resources are insufficient to provide for such security, privacy and transparency, then data collection and sharing should not take place.

Data security is a major issue for institutions of higher education³ and for government agencies (e.g. the 2017 breach of the federal FAFSA application that exposed up to 100,000 applicants data.⁴) As such, in providing public IHE with non-enrolled student PII or access to such PII, ensuring the security of this data in collection, transit, storage and use is crucial.

In addition to ensuring protection of the data security of any new system or collection of student PII to be shared, we have three additional sub-recommendations:

Recommendation 2.1: Ensure public transparency and public benefit for use of data: Any institutions of higher education that receive student PII data should make publicly available a description of how they intend to use the data, including:

- whether the data will be cross-referenced with other commercially available databases,
- whether the data will be used in admissions decisions or post-enrollment (as opposed to only being used for recruitment and marketing); and
- how any uses will expand access for students of color, students with disabilities and economically-disadvantaged groups.

Data about students can be used in ways that increase college access (e.g., ACT, Inc’s own in-house research has found a slight increase in the numbers of colleges applied to in comparing populations of students who opt-in vs do not opt in to their Educational Opportunity Service.⁵) But it can also be used to exclude

³ Readiness and Emergency Management for Schools Technical Assistance Center. “Cybersecurity Considerations for Institutions of Higher Education” (Jan. 2018)

⁴ *Washington Post*. “Identity thieves may have hacked files of up to 100,000 financial aid applicants.” (April 2017)

⁵ ACT Technical Brief. “Do Students Who Opt Into ACT’s Educational Opportunity Service Enroll in College at Higher Rates?” (June 2017)

students. For example, cash-strapped universities may be motivated to recruit and enroll students from higher-income communities who are more likely to pay full tuition. Institutions may also wish to increase their number of applications while holding the number of seats constant in order to boost their selectivity, which can increase standing in national rankings. In addition, data acquired from student search surveys may be used in admissions decisions without the knowledge of students and parents. These problematic strategies already take place via data purchased from survey services operated by the College Board and ACT, Inc.⁶

In implementing a publicly-run data sharing system, the State has a special duty to ensure that PII collected via public agencies like the public school system and provided to other public institutions, like the Illinois public institutions of higher education, will *only* be used in ways that increase access and enhance the overall public good. And, for any data usage funded by public dollars, transparency and accountability about that use is imperative.

Recommendation 2.2: Audits of algorithms processing student PII: If colleges and universities will be using algorithms to process this data, these algorithms must be transparent and independently audited by privacy and/or civil rights experts to ensure they are fair and do not discriminate against students of color, students with disabilities or economically-disadvantaged groups.

Any use of student PII as the input data for algorithmic, statistical and/or machine learning-based models or tools for student recruitment and admissions requires additional oversight and transparency to ensure that the data is being used for inclusivity rather than restricting access (over and above what is done to satisfy Recommendation 2.1.)

Statistical algorithms can easily build in unintentional biases. Independent audits of algorithms by privacy and civil rights experts are a potential solution to monitoring these methods. Currently, European data privacy law states that individuals have the right not to be subject to any decisions that are based solely on automated processing of their personal data (Art. 22, GDPR). Parents and students should be assured that automatic processing of shared data will not be used as the basis to exclude a student from admission to any college or university.

Recommendation 2.3: Parental consent for any data collection and sharing. Student PII should only be collected and shared with fully-informed written consent of a student's parent. Parents should be informed of the following when asked to provide consent:

- who the data will be shared with;
- what the data will be used for;
- how long the data will be stored before being destroyed; and
- how they can revoke consent for sharing should they change their mind before that time.

No PII provided to institutions of higher ed should be permitted to be redisclosed to any additional third-parties or used for purposes other than those presented at time of consent. Parents and students should be confident that any sharing stops with Illinois public institutions of higher ed, and that data would not be used for any purpose but student recruitment.

In addition, at the time of consent parents should be provided with resources about how to access Illinois' public college and universities' admissions departments in lieu of consenting to share their child's data.

⁶ See *Inside Higher Ed*. Micro-Targeting Students (Oct. 2013); *PBS NewsHour*. "The new tool colleges are using in admissions decisions: big data" (Aug. 2015); and *Fast Company*. "Your Data Footprint Is Affecting Your Life In Ways You Can't Even Imagine" (March 2016)

As consumer and student privacy laws may undergo changes, adopting stricter standards of notification and consent at the *outset* of any system creation means that any sharing protocols that are set up will likely have greater robustness in the long term.

We look forward to the General Assembly taking up any of the recommendations outlined above and would be happy to discuss any of the content of this letter in more detail.

Sincerely,

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