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COMMERCIAL ACTIVITIES IN SCHOOLS

Use of Student Data is
Limited and
Additional
Dissemination of
Guidance Could Help
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Why GAO Did This Study

Congress has continuing interest in commercial activities in U.S. public schools. These include product sales, advertising, market research, and the commercial use of personal data about students (such as names, addresses, and telephone numbers) by schools. To update information about commercial activities in schools, Congress asked us to answer the following questions: (1) Since 2000, what statutes and regulations have states enacted and proposed to govern commercial activities in schools? (2) To what extent have districts developed policies implementing amended provisions of the Protection of Pupil Rights Amendment (PPRA) in the No Child Left Behind Act on the use of student data for commercial purposes? (3) What guidance has the Department of Education (Education) disseminated?

To answer these questions, we researched state laws, surveyed a national sample of school districts, analyzed policies provided by districts, interviewed officials at Education, and examined its guidance. In addition, we updated findings from the districts we visited in 2000.

What GAO Recommends

We recommend that Education disseminate to state school boards associations its guidance on the use of student data for marketing and selling purposes. Education agreed with our recommendation.

www.gao.gov/cgi-bin/getrpt?GAO-04-810.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Marnie Shaul at (202) 512-7215 or shaulm@gao.gov.

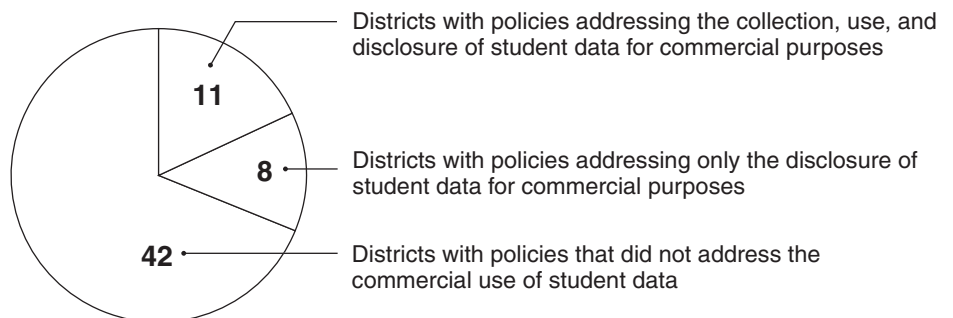
What GAO Found

Since we reported on commercial activities in 2000, 13 states have established laws addressing commercial activities in public schools, and at least 25 states are considering such legislation. Of the states establishing new laws, 6 established laws affecting market research by addressing the use of student data for commercial activities. Almost all of the proposed bills target the sale of food and beverages. Prior to 2000, 28 states established laws addressing commercial activities, particularly product sales and advertising. At that time, only 1 state passed a provision affecting market research.

PPRA provisions required districts to implement policies on the collection, disclosure, or use of student data for marketing and selling purposes, and we estimate that about two-thirds of the districts in the nation believe they are developing or have developed such policies. However, of the 61 districts that sent us policies, only 19 policies addressed these issues. No district reported having collected student data for commercial purposes. Only a few reported disclosing student information for these purposes, and all had done so for school-related purposes such as graduation pictures.

Education has undertaken several activities, such as sending guidance to state education agencies and school district superintendents and posting information on its Web page, to inform districts about the student information provisions of PPRA, but many districts appear not to understand the new requirements. Some districts told us that they relied on their state school boards association to develop policies for them because state school boards associations address federal and state laws. School districts in one state sent us policies that addressed commercial activities that had been developed by their state school boards association. Education was not required to disseminate guidance to associations of local school boards in each state and has not done so.

District Policies Addressing the Commercial Use of Student Data (N = 61)



Source: GAO analysis.

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Abbreviations

FERPA Family Educational Rights and Privacy Act

NCLBA No Child Left Behind Act

PPRA Protection of Pupil Rights Amendment

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United States Government Accountability Office
Washington, DC 20548

August 20, 2004

The Honorable Christopher J. Dodd
Ranking Minority Member
Subcommittee on Children and Families
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Richard C. Shelby
United States Senate

Over the past decade, public schools and businesses have been forging new types of relationships to help each other achieve their educational and business-related goals. In some of these relationships, business' apparent focus is on improving teaching and learning, but in others, the apparent focus is on developing product loyalty and increasing sales. In recent years, Congress and the public at large have become increasingly interested in the mixing of school activities with commercial enterprise. Some parties have wanted to limit such relationships by restricting product sales, advertising, market research, and the commercial use of personal data about students (such as names, addresses, and telephone numbers) by schools. However, others have promoted business relationships with schools as a desirable and necessary way to generate additional funding and resources for students.

We first reported on product sales, direct and indirect advertising, and market research in schools in 2000.¹ At that time, we found state laws and district school board policies governing commercial activities were not comprehensive, and in most states, local school officials were responsible for making decisions about commercial activities. In addition, we found that the visibility and profitability of commercial activities varied widely and the high schools we visited had more commercial activities than the middle or elementary schools.

Since then, some changes related to these commercial activities have occurred. Schools are facing even greater needs for funds; the use of the

¹GAO, *Public Education: Commercial Activities in Schools*, [GAO/HEHS-00-156](#) (Washington, D.C.: Sept. 8, 2000).

Internet as a marketing tool has expanded; and through the No Child Left Behind Act (NCLBA) of 2001, Congress has legislated new protections regarding the collection, disclosure, and use of student data for marketing or selling purposes. For decades, federal law has safeguarded the release of student education records and has allowed parents some control over the use of information about their children. For example, federal law has prohibited districts from releasing students' Social Security numbers without parental approval. However, NCLBA established new safeguards about the use of student data for marketing or selling purposes. Specifically, NCLBA amended the Protection of Pupil Rights Amendment (PPRA) of 1994 addressing pupil privacy by requiring school districts to develop a policy on the collection, disclosure, and use of personal data about students for commercial purposes that includes requirements for parental notification and permission. Finally, there has been growing concern about childhood obesity and whether the sale of beverages and food outside those offered by school breakfast and lunch programs might contribute to this problem.

In view of these developments, you asked us to examine efforts by states to regulate a broad range of commercial activities in public schools and determine how districts have followed through with the PPRA provisions about the collection, disclosure, or use of student data for marketing and selling purposes. We conducted research to answer the following questions: (1) Since 2000, what statutes and regulations have states enacted to govern commercial activities in schools and what proposed legislation are states considering? (2) To what extent have districts developed policies implementing the PPRA provisions in NCLBA on the use of student data for commercial purposes? (3) What is the Department of Education (Education) doing to help districts implement the new provisions on the use of student data for commercial purposes?

To answer these questions, we reviewed state laws and regulations in all 50 states and Washington, D.C., as of May 2004. Also, we reviewed proposed legislation that had been introduced between January 1, 2003, and February 2004 to obtain a snapshot description of possible future state legislative activities. We conducted a national sample survey of school districts to determine if their policies were consistent with the PPRA provisions on the use of student data for commercial activities and asked them to report on any activities in which they engaged that used student data for commercial purposes. We obtained an 87 percent weighted response rate. We also asked superintendents in the districts we surveyed to send us copies of their policies that govern activities involving the use of student information for marketing and selling purposes. We evaluated

the extent to which these policies implemented PPRA requirements by examining whether they covered the collection, disclosure, and use of student data for commercial purposes. To discern changes in commercial activities in the seven school districts we visited in 2000, we interviewed district and school officials in those districts by telephone. We had selected these seven districts, located in California, Michigan, and New Mexico, to illustrate a range of commercial activities in states identified as having legal frameworks generally supportive of such activities as well as a range of geographic, economic, and demographic characteristics. Finally, we interviewed officials at Education and examined its guidance and initiatives on PPRA's commercial provisions. See appendix I for a detailed explanation of our scope and methodology. We conducted our work between November 2003 and August 2004 in accordance with generally accepted government auditing standards.

Results in Brief

Since our previous report in 2000, 13 states have enacted 15 statutory provisions and issued 3 regulatory provisions that pertain to commercial activities in public schools, and since January 1, 2003, we identified 25 states in which legislators have proposed laws that address commercial activities. Of the 13 states establishing new laws, 6 established provisions addressing the collection, disclosure, or use of student information for marketing and selling purposes. For example, Colorado enacted a law prohibiting student participation in any survey without written parental consent. Other new provisions addressed product sales and advertising. Most of the proposed bills targeted food and beverage sales. Prior to 2000, 28 states had passed laws or regulations pertaining to commercial activities. Almost all of these provisions addressed direct advertising and product sales. At that time, only one state had passed a provision relating to the use of student data for commercial purposes. The seven districts we visited in 2000 continue to conduct a variety of commercial activities, particularly product sales, and three districts told us that they have increased the level of activities with local businesses. However, the types of activities in these districts have not substantially changed.

Based on the responses to our survey, we estimated that about two-thirds of the school districts in the nation had developed or were developing policies addressing PPRA requirements concerning the commercial use of student data. However, for the 61 districts that voluntarily provided us policies they had developed, we concluded that only 19 of these policies specifically addressed the commercial uses of student data. Regardless, no district reported having collected student data specifically for marketing purposes, and those we spoke to who had released student names,

addresses, or telephone numbers for marketing or selling purposes said they did so for school-related purposes, such as graduation pictures. Three of the seven districts we visited in 2000 reported that they had subsequently adopted new policies banning or restricting the use of student data, although none collected student data for commercial purposes. One of the seven released information in order for seniors to obtain class pictures, class rings, and graduation announcements.

Education has taken steps to inform districts about the added student data safeguards included in PPRA, but many policies that districts provided to us did not specifically address the collection, disclosure, or use of student information for commercial purposes. Education has issued guidance advising districts that if they do not already have such a policy, they must develop and adopt one and notify parents. The department also provided districts with model notification information that districts could use to inform parents, posted relevant information on its Web site, and covered the provision in some of its training activities. However, only 19 of the 61 districts that responded to our request sent policies that did address commercial activities. District officials in several states reported that they relied on state school boards associations for help in developing policies. In addition, two districts in one state sent us policies that had been developed by their state school boards association. Although Education has disseminated its guidance to school districts and state education agencies, it has not disseminated this guidance directly to the school boards association in each state.

We recommend that the Secretary of Education take additional action to assist districts in understanding that they are required to have specific policies in place for the collection, disclosure, and use of student information for marketing and selling purposes by disseminating its guidance to state school board associations. In commenting on a draft of our report, Education agreed with our recommendation.

Background

As we reported in 2000, commercial activities in school can generally be classified in four categories—product sales, direct advertising, indirect advertising, and market research—although each category encompasses a wide range of activities.² For example, advertising activities could range from selling advertisements for a high school football game to selling

²[GAO/HEHS-00-156](#).

naming rights to a school. Although this report synthesizes statutes, regulations, and proposed legislation addressing all four categories, our discussions of school district policies and Education’s activities focus on the fourth category, market research, because of the amendments made by NCLBA that place requirements on districts that deal with the collection, disclosure, and use of student data for marketing and selling. (See table 1.)

Table 1: Categories of Commercial Activities

Commercial activities	Examples
Product sales	<ul style="list-style-type: none"> • Product sales benefiting a school district, school, or student activity, such as the sale of beverages or food within schools • Cash or credit rebate programs • Fundraising activities, such as the short-term sales of gift wrap, cookie dough, or candy, to benefit a specific student population or club
Direct advertising	<ul style="list-style-type: none"> • Signage and billboards in schools or school facilities, and on school buses and shelters • Corporate logos or brand names on school equipment, such as marquees, message boards, or scoreboards • Ads, corporate logos, or brand names on book covers, student assignment books, or posters • Ads in school publications, such as newspapers or yearbooks • Media-based advertising, such as ads on Channel One or Internet sites • Free samples, such as food or personal hygiene products
Indirect advertising	<ul style="list-style-type: none"> • Corporate-sponsored educational materials, teacher training, contests, incentives, grants, or gifts
Market research	<ul style="list-style-type: none"> • Surveys or polls related to commercial activities • Internet surveys or polls asking for information related to commercial activities • Tracking students’ Internet behavior and responses to questions calling for personal identification at one or more Web sites

Source: GAO/HEHS-00-156.

In recent years, the growth of the Internet has had a large impact on commercial activities, particularly market research, by enabling marketers to elicit aggregated and personally identifiable information directly from large numbers of students. For example, some Web filtering systems used in schools that block student access to certain Web sites also allow the company that maintains that software to measure and analyze how children use the Internet by tracking which Web sites they visit and how long they stay there. Although this information is aggregated and does not

identify particular children, this information, especially when used with demographic data, can help businesses develop advertising plans that target particular audiences if districts allow the installation of the software. Also, Web sites directly elicit the participation of students in market research panels by offering them cash or prizes in exchange for information about themselves and their preferences. This makes it possible for companies to engage large-scale customized panels of students to test out marketing strategies and provide data to develop product lines and product loyalty without relying on schools.

NCLBA Amends Statutory Safeguards on the Use of Student Data for Marketing and Selling Purposes

NCLBA addresses some concerns about commercial activities and student data by amending and expanding certain student data safeguards that were established in PPRA.³ Prior to NCLBA, PPRA generally prohibited requiring students to submit to a survey concerning certain personal issues without prior written parental consent. As amended, PPRA⁴ for the first time requires districts to develop and adopt new policies, in consultation with parents, for collecting, disclosing, and using student data for marketing or selling purposes.⁵ Districts are also required to directly notify parents of these policies and provide parents an opportunity to opt their child out of participation in such activities. Furthermore, districts are required to notify parents of specific activities involving the collection, disclosure, and use of student information for marketing or selling purposes and to provide parents with an opportunity to review the collection instruments. PPRA did not contain deadlines for districts to develop policies. Also, PPRA requires Education to annually inform each state education agency and local school districts of their new obligations under PPRA. Finally, PPRA continues to require Education to investigate, process, and adjudicate violations of the section.

³See 20 U.S.C. §1232h(c)(1)(E)(Supp. 2003).

⁴In this report we are not addressing other amendments to PPRA, which established requirements for surveys unrelated to marketing and selling and nonemergency invasive physical examinations.

⁵If a school district already had a policy in place on January 8, 2002, that addressed the collection, disclosure, or use of student data for commercial purposes, the amendments do not require the district to adopt a new policy. See U.S.C. §1232h(c)(3).

**FERPA and PPRA
Safeguards Address
Different Student Privacy
Issues**

For the past 30 years, student and parent privacy rights related to students' education records have been protected primarily under the Family Educational Rights and Privacy Act (FERPA), which was passed in 1974. FERPA protects the privacy of students' education records by generally requiring written permission from parents before records are released. FERPA also allows districts to classify categories of information as publicly releasable directory information so long as the district has provided public notice of what will constitute directory information items and has allowed parents a reasonable period of time to advise the district that directory information pertaining to their child cannot be released without consent. Under FERPA, directory information may include a student's name, telephone number, place and date of birth, honors and awards, and athletic statistics. Unlike PPRA, FERPA does not address the participation of students in surveys or the collection, disclosure, or use of student data for marketing or selling purposes. (See table 2.) As a result of the NCLBA amendments, Education is required to annually inform each state and local education agency of the educational agency's obligations on PPRA and FERPA.⁶

⁶See 20 U.S.C. §1232h(c)(5)(c)(Supp. 2003).

Table 2: Comparison of Selected PPRA and FERPA Provisions

Provisions	PPRA	FERPA
Activities targeted	<p>Collection, disclosure, or use of personal student data for marketing or selling purposes</p> <p>Survey, analysis, or evaluation concerning political affiliations or beliefs; psychological problems; sexual behavior or attitudes; self-incriminating behavior; critical appraisal of individuals with whom respondents have close relationships; privileged relationships; religious beliefs; or income (other than that required by law to determine program eligibility)</p> <p>Nonemergency invasive physical examinations of children</p>	<p>Disclosure of students' education records</p> <p>Inspection, review, and amendment of education records</p>
Definitions of personal student data	<p>Individually identifiable information including:</p> <ul style="list-style-type: none"> Name Address Telephone number Social Security number^a 	<p>All student information contained in education records</p> <p>Each district can define a subset of information called "directory information" that is generally not considered harmful or an invasion of privacy to release, such as name, address, telephone number, height and weight (if an athlete), and scholastic honors and awards^a</p>
Notification	<p>Districts must directly notify parents of policies regarding the collection, release, or use of student data</p> <p>Districts must give parents an opportunity to exclude their child's participation in specific activities or to prevent the release of information about their child except for certain types of educational activities and for the armed services</p>	<p>Districts must notify parents of the categories of information it has designated as directory information</p> <p>Districts are to notify parents of students of their right to opt out of the disclosure of directory information</p>

Source: GAO analysis.

^aThere are restrictions on the use of Social Security numbers. See GAO, *Social Security Numbers: Use Is Widespread and Protections Vary*, GAO-04-768T (Washington, D.C.: June 15, 2004). Consequently, districts would not designate students' Social Security numbers as part of directory information.

School District Policies Are Set at the Local Level under State Laws

State education laws are enacted by state legislatures and administered by each state's department of education, which is led by the state's chief state school officer. The Council of Chief State School Officers represents states' education interests in Washington, D.C., and acts as a conduit of information between the federal government and the states regarding federal education laws. Each state department of education provides guidance and regulations on state education laws to each school district.

School district policies are generally set by local school boards according to the authority granted to them by state legislatures. The policies are then administered by the school district's superintendent and other school district staff. Local school boards in each state have come together to form a state school boards association. They provide a variety of services to their members including help on keeping their local school board policies current. For example, a partial list of services offered by one school board

association includes policy development services, advocacy, legislative updates, legal services, executive search services, conferences and training, and business and risk management services.

Since 2000, Most States Have Enacted Laws and Proposed Legislation That Affect Commercial Activities in Schools

Since 2000, 13 states have established statutes, regulations, or both that address one or several categories of commercial activities in schools. Six of these states established provisions addressing market research by restricting the use of student data for commercial activities and for surveys. Other states passed statutes or issued regulations addressing product sales and advertising. In addition, as of February 2004, at least 25 states are considering proposed legislation that would affect commercial activities. Most of these proposals would affect product sales, particularly the sale of food and beverages. Prior to 2000, 28 states had passed provisions addressing commercial activities. At that time, most provisions addressed direct advertising and product sales. The seven districts we visited in 2000 continued to conduct a variety of commercial activities, particularly product sales, and three districts reported that they have increased the level of activities with local businesses. However, the types of activities in these districts have not substantially changed since our visit.

State Statutes and Regulations Vary Widely in Purpose and Scope

Since our previous report in 2000, 13 states have enacted 15 statutory provisions and issued 3 regulatory provisions addressing one or more types of commercial activities in schools. Six states passed legislation affecting marketing research. Three of these 6 passed laws restricting the disclosure or use of student data for commercial purposes, and another 3 placed restrictions on students' participation in surveys. For example, an Illinois statute prohibited the disclosure of student data to businesses issuing credit or debit cards, and a New Mexico regulation prohibited the sale of student data for commercial reasons without the consent of the student's parent. Laws in Arizona, Arkansas, and Colorado prohibited student participation in surveys without the consent of their parents. Five states passed new provisions affecting product sales. In most cases, these

laws targeted the sale of soft drinks and snack food.⁷ Other new provisions addressed direct and indirect advertising.⁸

Prior to 2000, 28 states had established one or more statutes or regulations that affected commercial activities in schools. Twenty-five states established provisions addressing advertising—in 19 states, measures affected direct advertising and in 6, indirect advertising. Sixteen states established provisions addressing product sales. Only 1 state established a measure that addressed market research. See appendix II for a state-by-state listing of provisions addressing commercial activities.

Most Proposed Legislation Affecting Commercial Activities Regards Food and Nutrition

Legislatures in 25 states have recently considered one or more bills that affect commercial activities in schools, with most having a particular focus on child nutrition. These bills are intended to improve child nutrition and reduce obesity, and to achieve this intention, place limitations, restrictions, or disincentives on the sale of beverages and food of limited nutritional value. Legislatures in 24 of the 25 states recently considered bills that restrict or ban the sale of beverages and food of limited nutritional value in schools. For example, a bill in New York would prohibit vending machines from selling food and drinks of minimal nutritional value. Additionally, legislatures in several states have considered bills that restrict the hours when students can buy products of limited nutritional value. For example, bills in Alaska and Ohio would restrict the sale of soft drinks during certain hours. Finally, pending legislation in Maryland would require schools to sell food of limited nutritional value at higher prices than nutritious food.

Legislatures in seven states have recently proposed bills that focus on other aspects of commercial activities in schools. In three states—Connecticut, Minnesota, and North Carolina—bills would restrict the ability of schools to enter into exclusive contracts with beverage and food vendors. In two states—New Jersey and North Carolina—bills would place limits on the ability of schools to release or collect personal information

⁷For additional information on policies restricting the sale of foods that compete with school meal programs, see GAO, *School Meal Programs: Competitive Foods Are Available in Many Schools; Actions Taken to Restrict Them Differ by State and Locality*, [GAO-04-673](#) (Washington, D.C.: Apr. 23, 2004).

⁸Some provisions addressed more than one activity. For example, a provision in Virginia affected direct and indirect advertising.

about students, such as prohibiting the release of data from the student-testing program to any marketing organization without the written permission of the parent or guardian. Other proposed bills addressed a variety of issues, such as allowing schools to sell advertising and accept supplies bearing logos or other corporate images or requiring school boards to disclose the portion of proceeds from fundraising activities that is contributed to the school activity fund. See appendix III for a state-by-state listing of legislative proposals.

Commercial Activities in the Seven Districts We Visited in 2000 Have Not Generally Changed

In updating the site visit information we collected in 2000, we found only slight changes in commercial activities in all seven school districts. All districts reported they continued to engage in product sales and display advertising. As we found earlier, most commercial activities, particularly product sales and advertising, occurred in high schools. All the high schools we visited in 2000 still sold soft drinks, and most sold snack or fast food. To varying degrees, all displayed corporate advertising. High schools continued to report the receipt of unsolicited samples, such as toiletries, gum, razors, and candy, that they did not distribute to students. In contrast, the elementary schools we contacted did not sell carbonated soft drinks to students or display corporate advertising. Grocery and department store rebate programs continued to operate in almost all schools, but coupon redemption programs were largely an elementary school enterprise. As we found before, none of the districts reported using corporate-sponsored educational materials or engaging in market research for commercial purposes.

Officials did report some changes in commercial activities. Three of these districts reported stronger ties with local businesses, and three schools in two districts reported they now sell healthier soft drinks. One district reported a new relationship with a computer firm headquartered in its area that provided tutors as well as cash donations to schools in the district. Under this relationship, company employees tutored students who were at risk of failing, and the company donated \$20 to schools for each 10 hours of tutoring that its employees provided. A principal in this district reported that many students in her school benefit substantially from this relationship and her school earned between \$6,000 and \$9,000 per year in donations. Another district reported it had entered into a new contract with a local advertising agency to raise revenue to renovate sport concession stands, and a third had organized a new effort to sell advertisements to fund construction on the district's baseball field. Three principals told us that vending machines in their schools now offer a

different mix of beverages—for example, more juice, milk, and water and fewer carbonated beverages—than they did when we visited in 2000.

Districts Are Beginning to Implement Provisions on Student Data, and Few Use Student Data for Commercial Purposes

We estimate that about two-thirds of the districts in the nation were either developing or had developed policies addressing the new provisions on the use of student data for commercial purposes. However, only 19 of the 61 districts that provided us copies of their policies specifically addressed these provisions. Very few school districts reported releasing student data for marketing and selling, and all these releases were for student-related purposes. Of the seven districts we visited in 2000, three adopted new policies on the use of student data since our visit, and only one released data and that was for graduation pictures.

Although districts reported they had developed policies, many of the policies they sent us did not fully address PPRA requirements. On the basis of the results of our surveys, we estimate about a third of districts were developing policies regarding the use of student data for commercial purposes; another third had developed policies; and about another third had not yet developed policies.⁹ However, when we analyzed policies that 61 districts sent to us, we found only 19 had policies that specifically addressed marketing and selling of student information. Of these, 11 policies addressed the collection, release, and use of student information for commercial purposes. Eight policies partially addressed the provisions by prohibiting the release of student data for these purposes. Policies in the 42 remaining districts did not address the new PPRA provisions. Many of these districts provided us policies concerning FERPA requirements.

We telephoned all districts in our sample that reported they release data for commercial purposes and a subsample of districts that reported they had not. Of the 17 districts that released data for commercial purposes, all reported that they released data only for school-related purposes. For example, all 17 released students' names to photographers for graduation or class pictures. Two of these districts also released student data to vendors who supplied graduation announcements, class rings, and other graduation-related products, and another two districts released student information to parent-teacher organization officials who produced school

⁹Because the survey is based on a sample, all estimates in this report are subject to sampling error. Unless otherwise noted, the 95 percent confidence intervals for estimates in the report are less than plus or minus 9 percentage points.

directories that they sold to students' parents. Of the 16 districts that reported they did not release student data, one actually did release student data. As in the other cases, that district released it to a school photographer.

Of the seven districts we visited in 2000, three adopted new policies on the use of student data. One of the districts we visited adopted new policies that incorporated PPRA provisions on the use of student data for commercial purposes. Two adopted policies with blanket prohibitions against some uses of student data for marketing and selling. In one of these districts, policies prohibited the release of students' data for any survey, marketing activity, or solicitation, and policies in the other banned the use of students to support any commercial activity. Officials in all seven districts reported that their district did not collect student data for marketing or selling purposes, and several expressed surprise or disbelief that this practice did in fact occur. However, a high school in one district reported that it disclosed information on seniors to vendors selected by the district to sell senior pictures, school rings, and graduation announcements.

Education Developed and Disseminated Guidance, but Many Districts' Policies Did Not Address Requirements

As required by NCLBA, Education has developed guidance and notified every school district superintendent and chief state school officer in the country of the new required student information protections and policies, and has charged the Family Policy Compliance Office to hear complaints on PPRA. Education issued guidance about the collection, disclosure, and use of student data for commercial purposes as part of its general guidance on FERPA and PPRA in 2003 and 2004. In addition, although not required by statute to do so, Education provided superintendents with model notification information that districts could use to inform parents of their rights, included information about PPRA in some of its training activities, and posted its guidance and other PPRA-related material prominently on its Web site. Education has charged its Family Policy Compliance Office to hear complaints and otherwise help districts implement the new student data requirements. Although the office has received some complaints about other provisions related to student privacy, as of June 2004, officials from that office reported they have received no complaints regarding the commercial uses of student data.

Many districts did not appear to understand the new requirements, as shown by our analysis of the 61 policies sent to us by districts in our sample. Although we asked districts to send us their policies that addressed these new provisions, only 11 districts sent policies that

addressed these new provisions comprehensively, and 8 sent policies that covered these provisions partially. The 42 remaining districts sent policies that did not contain specific language addressing the collection, release, or use of student data for commercial purposes, although districts sent them to us as documentation that the districts had developed such policies. Most of these policies contained only general prohibitions about the release of student records and concerned FERPA.

Although Education is not required to issue its guidance to state school boards associations, four districts in two states in our survey offered unsolicited information that they relied on state school boards associations to develop policies for their consideration and adoption. Two districts in a third state that sent us policies used policies developed by their state school boards association to address commercial activities in schools. However, Education did not distribute its guidance to these associations.

Conclusions

Although state laws both limit and support commercial activities in schools, many state legislatures have chosen to pass laws addressing only specific activities such as permitting or restricting advertising on school buses. In addition, many states have not enacted legislation concerning commercial activities or have passed the authority to regulate these activities to local districts, thus allowing district school boards, superintendents, or principals to determine the nature and extent of commercial activities at the local level. Not only do commercial activities—product sales, direct advertising, indirect advertising, and market research—encompass a broad spectrum of activities, but also the levels of these activities and the levels of controversy attached to them vary substantially. For example, few would equate selling advertisements for a high school football program with selling the naming rights to a school, although both are examples of direct advertising. Because of these differences, as well as philosophical differences among districts and communities, it is probably not surprising that states legislatures have taken various approaches toward the regulation of commercial activities.

Perhaps because providing student information for commercial purposes may have serious implications, few districts do so. In fact, some school officials said they were skeptical that schools would allow the use of student data for this purpose. In the past, marketers may have approached schools to survey students about commercial products or services. Today, however, technology, particularly the proliferation and availability of the Internet, provides marketers with quick and inexpensive access to very

large numbers of children without involving the cooperation of schools. As Internet users, children often submit information about themselves and their personal product preferences in exchange for cash or prizes. Because of the disinclination of school officials to sell student data and the ability of marketers to get data directly from students without involving schools, it may be understandable that relatively few districts as yet have actually adopted policies that specifically address the selling and marketing provisions of PPRA. On the other hand, few would argue against the need to protect students' personal information. Many businesses, particularly local businesses catering to youth markets, might still profit from acquiring student information from schools. Although we found districts did not use student data for purposes generally viewed as offensive, this does not mean such use would not happen in the future in the absence of safeguards.

It appears that some superintendents may not be aware of the new PPRA requirements or have not understood Education's guidance because many thought their district's policies reflected the latest federal requirements on use of student data when, in fact, they did not. Also, several districts told us that they relied on state school boards associations to develop policies. Unlike models or guidance that reflect only federal law, policies developed by these groups may be most useful to districts because they correspond to both federal and state requirements. These associations are not on Education's guidance dissemination list.

Recommendation for Executive Action

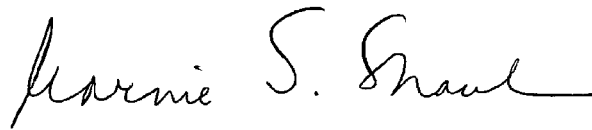
We recommend that the Secretary of Education take additional action to assist districts in understanding that they are required to have specific policies in place for the collection, disclosure, and use of student information for marketing and selling purposes by disseminating its guidance to state school boards associations.

Agency Comments

We provided a draft of this report to the Department of Education for review and comment. Education concurred with our recommendation. Education's comments are reproduced in appendix V. Education also provided technical comments, which were incorporated as appropriate.

Unless you publicly announce its contents earlier, we plan no further distribution until 30 days after the date of this letter. At that time, we will send copies of this report to the Secretary of Education, appropriate congressional committees, and others who are interested. We will also

make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>. If you or your staff have any questions, or wish to discuss this material further, please call me on (202) 512-7215. Other contacts and staff acknowledgments are listed in appendix VI.

A handwritten signature in black ink that reads "Marnie S. Shaul". The signature is written in a cursive style with a long horizontal flourish at the end.

Marnie S. Shaul, Director
Education, Workforce, and
Income Security Issues

Appendix I: Scope and Methodology

To conduct our work, we reviewed state statutes, regulations, and proposed legislation; received mail questionnaires from 219 school districts selected on the basis of a national stratified probability sample design; conducted additional brief telephone interviews with 36 of these districts; analyzed policies voluntarily provided by 61 districts; interviewed officials at Education; and examined guidance issued by the department. In addition, we conducted telephone interviews with district and school officials in the 7 districts that we visited in 2000 for our previous study on commercial activities in schools to update our previous findings.

Review of State Legislation

To update our compilation of state statutes and regulation contained in our 2000 report, we researched legal databases, including Westlaw and Lexis, to identify laws passed between January 2000 and May 2004. To identify pending laws, we researched information available on databases maintained by state legislatures or followed links provided by these databases to identify bills introduced between January 2003 and February 2004. However, there are inherent limitations in any global legal search, particularly when—as is the case here—different states use different terms or classifications to refer to commercial activities in schools.

Survey of School Districts

Sample

We selected a national probability sample of districts, taken from school districts contained in the Department of Education's Common Core of Data (CCD) Local Education Agency (LEA) file for the 2000-2001 school year. After removing districts from this list that were administered by state or federal authorities, we identified a population of 14,553 school districts. In the course of our study, we learned that some special education and other units in this list do not have legal authority to establish formal policies. As a result, we estimate that our study population consists of 13,866 districts in the 50 states and the District of Columbia. The sample design for the survey consisted of a stratified random probability sample design: 271 districts were drawn from the three strata shown in table 3. The strata were designed to draw relatively large numbers of districts from states likely to include districts that had engaged in or planned to engage in one or more specific activities involving the collection, disclosure, or use of student information for the purposes of marketing or selling or

providing information to others for these purposes. Because we thought the activities of interest were low incidence activities, we wanted to maximize our ability to examine situations involving the use of student data for commercial purposes. The expected high-activity strata were defined as states that we identified as having laws that permitted commercial activities when we performed our work in 2000. As shown in table 4, the response rates were 76 percent, 83 percent, and 88 percent in the three sampling strata. The overall estimated response rate was 87 percent.

Table 3: Sample and Response Rates by Strata

Stratum number	Stratum	Estimated population size (number of districts) ^a	Sample size (unweighted)	Number of ineligible districts (unweighted)	Number of returned surveys from eligible districts (unweighted)	Weight	Weighted response rate
1	States with laws that permitted commercial activities (Maine and New Mexico)	312	80	0	61	3.900	76% ^b
2	State with laws that permitted some types of commercial activities (California, Florida, Louisiana, Kansas, Maryland, Minnesota, Mississippi, Nevada, North Carolina, and Texas)	3,224	95	1	78	34.294	83%
3	School districts in all other states	10,330	96	5	80	113.520	88%
Total estimated		13,866	271	6	219		87%^c

Source: GAO analysis.

^aAdjusted for ineligible units.

^bThe response rate for each stratum is calculated as the ratio of the weighted number of eligible returned surveys to the weighted number of all eligible surveys.

^cThe total response rate is calculated as the ratio of the weighted number of eligible returned surveys over all strata to the weighted number of all eligible surveys over all strata.

Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample might have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval (for example, plus or minus 9 percentage points). This is the interval that would contain the actual

population value for 95 percent of the samples we could have drawn. As a result, we are 95 percent confident that each of the confidence intervals in this report will include the true values in the study population.

Survey Errors Procedures

The practical difficulties of conducting any survey introduce nonsampling errors. For example, errors could be made in keying questionnaire data, some people may be more likely than others to respond, or questions may be misinterpreted. To minimize data-handling errors, data entry and programs were independently verified. To reduce the possibility of misinterpreting questions, we pretested the questionnaire in four districts. The full questionnaire is reproduced in appendix IV. We took additional steps to check answers for a subsample of respondents because of concerns about misinterpretation. We were concerned about possible misinterpretation of a question about implementing the law (question 1) because we discovered during our pretest that there was confusion between a narrow and (probably) little used portion of a student privacy law (PPRA) regarding selling and marketing of student data and a more familiar older law (FERPA) concerning student records. We were also concerned that there could be an underreporting of commercial activities because our question did not specify the activities (“During school year 2003-2004, did your LEA, or any school in your LEA, engage or plan to engage in one or more activity regarding the collection, disclosure, or use of student information for the purposes of marketing or selling or providing the information to others for these purposes?”) and because very few schools reported using student information for commercial purposes. Further, our pretesting indicated a potential problem with respondents suggesting they would be hesitant to report commercial activities. Moreover, because 86 percent of our respondents answered “no” to question 2, a higher rate than expected, there was some question in our minds whether our respondents who answered no had really considered all the possible ways in which student information could be used for commercial purposes when formulating their answers.

We attempted to verify the answers to our question about commercial practices by telephoning 36 districts, the 20 districts that reported using student data for commercial purposes, and the 16 randomly selected districts from among the districts that reported not using student data for commercial purposes. Three of the 20 districts originally reporting the use of student data were found not to be using the data for commercial purposes because they were supplying the data to military organizations or for scholarships, allowed uses. For the 16 sampled districts reporting not using students’ data for commercial purposes, we asked the

superintendent or other knowledgeable person in the district detailed questions about 20 possible commercial activities. We asked whether the school provides student addresses or phone numbers for specific activities (student pictures, letter jackets, any types of school uniforms, yearbooks, class rings, tuxedo rentals for prom, corsages for prom, musical instrument rentals, caps and gowns for commencement, preparation for Scholastic Aptitude Test or other tests, any other type of tutoring, transportation for school field trips, or travel for other trips such as spring break or ski trips), or to outside organizations for students to serve on an Internet or study panel, answer questionnaires, test or try out a product, or receive mailings from or talk with representatives of outside organizations who are selling services or products. One of these 16 districts was found to be using the data for commercial purposes in connection with photographers for school pictures. As a result of these telephone calls, we corrected the three incorrect records but did not make further adjustments for districts that were not contacted.

Analysis of District Policies

We attempted to verify the answers about the development of policies by examining policies that were voluntarily submitted by districts in our sample. Sixty-one districts complied with our request to submit a copy of their policy. We analyzed these policies to determine if they specifically referred to marketing or commercial activities.¹ We found 11 districts submitted policies that addressed these provisions and an additional 8 submitted policies that partially addressed the provisions in that they prohibited the release of student data for commercial purposes but did not address the collection or use of such data. Therefore, our questionnaire gathered relevant data about districts' perceptions of the extent to which they thought they were implementing the provision, rather than the extent to which these policies actually did so. This probably reflects confusion in interpreting the provision or lack of awareness of its existence.

Contacts at Education

We interviewed officials at Education's Family Policy Compliance Office and the Office of the General Counsel. We examined in detail the guidance

¹Because of the self-selected nature of these 61 districts, we do not consider them a probability sample and therefore results from this analysis should not be generalized to the study population.

issued by the department to assist schools in implementing PPRA provisions on use of student data for marketing and selling purposes.

Follow-up Telephone Interviews with the Seven Districts We Visited in 2000

We conducted telephone interviews with district and school officials in the seven districts we visited to collect information for *Public Education: Commercial Activities in Schools* (GAO-00-156), a report we issued in 2000, to discern changes in commercial activities in these districts. (See table 5.) We selected these districts because they engaged in a variety of commercial activities, served diverse populations—ranging from large numbers of poor students to children from affluent families—and varied in terms of geography and urbanicity. In updating that information for this report, we interviewed district-level officials, including superintendents and business managers, and elementary, middle school, and high school principals.

Table 4: Districts Contacted from Our Site Visits in 2000

State	District
California	Long Beach Unified School District
	Oxnard School District (elementary and middle school)
	Oxnard Union High School District
Michigan	Grand Rapids Public Schools
	Ludington Area Schools
New Mexico	Albuquerque Public Schools
	Los Alamos Public Schools

Source: GAO-00-156.

Appendix II: State Statutes and Regulations Addressing Commercial Activities in Schools

This appendix lists state statutory and regulatory provisions relating to commercial activities as of May 2004. Shaded entries were enacted since 2000. This updated table identifies 15 new statutes and 3 new regulations and also includes state laws pertaining to the sale of competitive food in schools. In addition, the table includes several laws that were not identified in our previous report.

State	Statutory/ regulatory provision	Product sales	Advertising		Marketing or market research
			Direct	Indirect	
Alabama	Statute	Prohibits requiring students to participate in school fundraising			
Alaska	Statute				Prohibits students from participating in survey or questionnaire without parental consent
Arizona	Statute		Permits advertising on school buses under certain restrictions		
Arkansas	Statute	Prohibits vending machines in elementary schools			Prohibits students from participating in survey or questionnaire without parental consent

**Appendix II: State Statutes and Regulations
Addressing Commercial Activities in Schools**

State	Statutory/ regulatory provision	Product sales	Advertising		Marketing or market research
			Direct	Indirect	
California	Statute	<p>Restricts the type of individual food items sold at elementary schools to those that comply with certain fat and sugar content restrictions</p> <p>Restricts the type of beverages sold at middle and junior high schools during the school day to water, milk, fruit-based drinks, and electrolyte replacement beverages meeting certain restrictions</p> <p>Restricts the type of beverages sold at elementary schools during the school day to water, milk, 100 percent fruit juice, and unsweetened fruit-based drinks containing at least 50 percent fruit juice</p> <p>Restricts school boards and schools from contracting for carbonated beverages and non-nutritious foods</p> <p>Prohibits teachers, dentists, or optometrists from soliciting students on school grounds</p>	<p>Prohibits schools from contracting for electronic products or services that disseminate advertising to students unless certain notice requirements are followed</p> <p>Prohibits advertising of tobacco products on any outdoor billboard within 1,000 feet of any public (or private) school</p>	<p>Prohibits states and local boards from adopting basic instructional materials that provide unnecessary exposure to brand names, products, or company logos</p>	
Colorado	Regulation	<p>Prohibits the operation of competitive food service beginning one-half hour before and ending one-half hour after the school's breakfast and lunch period</p>	<p>Student editors determine advertising content of school-sponsored publications</p>		<p>Prohibits student participation in any survey without written parental consent</p>

**Appendix II: State Statutes and Regulations
Addressing Commercial Activities in Schools**

State	Statutory/ regulatory provision	Product sales	Advertising		Marketing or market research
			Direct	Indirect	
Connecticut	Regulation	Prohibits sale of coffee, soft drinks, tea, and candy one-half hour before, during, or after lunch or breakfast			
Florida	Regulation	Foods of minimal nutritional value can only be sold in secondary schools for 1 hour after lunch			
	Statute	Permits school boards to establish fundraising policies	Permits school boards to establish policies regarding advertising		
Georgia	Regulation	Prohibits sale of foods of minimal nutritional value in elementary schools until after lunch and in other schools during mealtime in the dining, serving, and kitchen areas			
Hawaii	Statute	Permits schools to have vending machines and concessions if operated by the blind or individuals with visual handicaps Prohibits the sale of cigarettes from a lunch wagon engaging in any sales activity within 1,000 feet of any elementary or secondary school grounds			

**Appendix II: State Statutes and Regulations
Addressing Commercial Activities in Schools**

State	Statutory/ regulatory provision	Product sales	Advertising		Marketing or market research
			Direct	Indirect	
Illinois	Statute				Prohibits the disclosure of a student's name, address, telephone number, Social Security number, email address, or other personal identifying information to a business organization or financial institution that issues credit or debit cards
	Regulation	Elementary schools participating in the National School Lunch Program are prohibited from selling competitive food during breakfast and lunch periods			
	Statute	Prohibits solicitation of students by certain private businesses or vocational schools unless approved by the superintendent	Prohibits certain private businesses or vocational schools from advertising for student enrollees unless approved by the superintendent		
Indiana	Statute				Prohibits the disclosure of a list of students enrolled in public school to a commercial entity where the governing body has adopted a policy that prohibits disclosure for commercial purposes or identifies categories or classes of commercial entities to which the list may not be disclosed
Kansas	Statute		Permits student editors to determine advertising content in student publications		

**Appendix II: State Statutes and Regulations
Addressing Commercial Activities in Schools**

State	Statutory/ regulatory provision	Product sales	Advertising		Marketing or market research
			Direct	Indirect	
Kentucky	Regulation	Prohibits selling any food outside the National School Breakfast or Lunch program until one-half hour after lunch period			
Louisiana	Regulation	Prohibits sale of competitive foods until the last 10 minutes of each lunch and in food service areas	Permits donor decals on school buses to acknowledge donations of cellular telephone service		
Maine	Statute	Permits school districts to fundraise for their benefit			
Maryland	Statute		Permits advertising on school bus shelters under certain restrictions		
Massachusetts	Statute	Requires school committee to establish a travel policy that addresses expectations for fundraising by students			
	Regulation		Prohibits outdoor advertising of cigarettes within 1,000-foot radius of any school		

**Appendix II: State Statutes and Regulations
Addressing Commercial Activities in Schools**

State	Statutory/ regulatory provision	Product sales	Advertising		Marketing or market research
			Direct	Indirect	
Minnesota	Statute		<p>Prohibits school boards from contracting for computer or related equipment that requires advertising to be disseminated to students unless parents are given the opportunity to opt their child out of exposure to the advertising</p> <p>A school board may contract with advertisers or others to sell naming rights and advertising rights to its school facilities</p> <p>Permits advertising on school buses under certain restrictions</p>		
Mississippi	Regulation	Prohibits selling any food item for 1 hour before a school meal			
	Statute		Permits commercial advertising on protective textbook covers		

**Appendix II: State Statutes and Regulations
Addressing Commercial Activities in Schools**

State	Statutory/ regulatory provision	Product sales	Advertising		Marketing or market research
			Direct	Indirect	
	Statute	Requires school boards to include a disclosure statement advising that a portion of the proceeds of fundraising activities, such as school pictures, cap and gown rentals, etc., authorized by a school board for which the board receives a commission, rebate, or fee shall be contributed to the school activity fund			
Nevada	Statute		Permits advertising on and in school buses		
New Hampshire	Statute		Permits advertising on school bus shelters		
	Regulation		Prohibits advertising on school bus exterior except for manufacturer's logo		
New Jersey	Regulation	Prohibits selling food items of minimal nutritional value before the end of the last school lunch period	Prohibits advertising on the interior or exterior of buses except for manufacturer's or vendor's trade name Permits advertising on school bus stop shelters subject to governmental approval		

**Appendix II: State Statutes and Regulations
Addressing Commercial Activities in Schools**

State	Statutory/ regulatory provision	Product sales	Advertising		Marketing or market research
			Direct	Indirect	
New Mexico	Statute/ regulation		Commercial advertising permitted inside and on sides of school buses		
	Regulation				Prohibits sale or use of personally identifiable information for marketing purposes unless parent consents in writing for legitimate educational purposes
New York	Statute	Generally prohibits selling soft drinks and candy during school day until the last scheduled meal period			
	Regulation		Generally prohibits commercial promotional activities on school premises except where commercial entity sponsors a school activity which does not involve promoting the sponsor's product or service		
North Carolina	Statute		Permits school boards to adopt instructional materials containing commercial advertising so long as the materials relate to the academic curricula		
	Regulation	Prohibits the individual, or "a la carte," sale of foods of minimum nutritional value and limits the sale of individual food items until after the established lunch hour has ended		Requires local school boards to assure that students are not regularly required to observe, listen to, or read commercial advertising	

**Appendix II: State Statutes and Regulations
Addressing Commercial Activities in Schools**

State	Statutory/ regulatory provision	Product sales	Advertising		Marketing or market research
			Direct	Indirect	
North Dakota	Statute	Requires school boards to approve fundraising involving students			
Rhode Island	Statute	Prohibits school officials from soliciting any pupil in any public school, generally prohibits the sale of commercial goods or services in schools, and requires school committee to issue rules related to fundraising activities	Prohibits the distribution to students of commercial materials unless approved by the local school committee		
Tennessee	Regulation		Permits commercial advertising on school buses, in accordance with policy established by local school board		
	Statute				Requires districts to develop a policy setting forth the rights of parents and students and guidelines for teachers and principals with respect to the administration of surveys, analyses, or evaluations of students
Texas	Regulation			Permits commercially sponsored high school athletic programs	
	Statute/ regulation		Permits advertising on the exterior of a school bus, provided that it does not distract from the effectiveness of required safety warning equipment		

**Appendix II: State Statutes and Regulations
Addressing Commercial Activities in Schools**

State	Statutory/ regulatory provision	Product sales	Advertising		Marketing or market research
			Direct	Indirect	
Virginia	Statute		Requires each school board to develop a policy on commercial, promotional, and corporate partnerships and sponsorships involving public schools	Requires each school board to develop a policy on commercial, promotional, and corporate partnerships and sponsorships involving public schools	
	Statute			Permits school boards to contract with commercial institutions for a telephone service or credit card that, without endorsing the product, bears the name of the school board, and provides a portion or percentage of the revenues to a fund established for a public school purpose	
	Regulation	All foods sold in school from 6:00 a.m. until after the breakfast period must be of sound nutritional value			
West Virginia	Regulation	Prohibits the sale of candy, soft drinks, chewing gum, or flavored ice bars during the school day, except that county boards may permit the sale of soft drinks in high schools except during the breakfast and lunch periods			

Source: GAO analysis.

Appendix III: Legislative Proposals Addressing Commercial Activities in Schools, February 2004

This appendix lists proposals addressing commercial activities in schools that have been introduced by some state legislatures between January 2003 and February 2004. The data are taken from the Web sites maintained by state legislatures. Many of these sites are revised only periodically, and information on some is limited to the current legislative session. Therefore this information should be viewed as a rough snapshot, rather than a comprehensive analysis.

State	Product sales	Advertising		Marketing and market research
		Direct	Indirect	
Alabama	<ul style="list-style-type: none"> • Would allow students to choose any photographer for yearbook pictures • Would prohibit schools from preventing a picture taken by that photographer from appearing in a yearbook if the picture meets the specifications of the yearbook staff 			
Alaska	<ul style="list-style-type: none"> • Would prohibit the sale of soft drinks from 8 a.m. through 5 p.m. in public schools 			
Connecticut	<ul style="list-style-type: none"> • Would set up a pilot program in which participating schools would be barred from allowing the sale of chewing gum and other specified foods and beverages • Would require public hearings prior to the completion of contracts between food vendors and public schools • Would call for a pilot school food nutrition program to test restricting beverages sold to schoolchildren to fruit juices, water, or milk and offer fruits and nonfried vegetables for sale at lower prices than other food^a 			

**Appendix III: Legislative Proposals
Addressing Commercial Activities in Schools,
February 2004**

State	Product sales	Advertising		Marketing and market research
		Direct	Indirect	
Georgia	<ul style="list-style-type: none"> Would prohibit the sale of soft drinks to students and consumption of soft drinks by students in school buildings and on school grounds, except in the school cafeteria, before and during school hours 			
Hawaii	<ul style="list-style-type: none"> Would require vending machines in public schools to dispense only water, milk, and 100 percent fruit juice Would establish nutrition standards for beverages sold to students in public schools Would require food and drink items in public school vending machines to comply with board of education standards Would provide minimum standards for vending machine food and drink items 	<ul style="list-style-type: none"> Would allow schools to sell advertising to companies and other organizations, including selling advertising space at sports competitions and other space on school campuses 	<ul style="list-style-type: none"> Would allow schools to accept donated supplies and equipment bearing logos, trademarks, labels, or any other image or mark representing a commercial or noncommercial organization 	
Illinois	<ul style="list-style-type: none"> Would require revenue from vending machines that are not within the cafeteria to be used exclusively for physical education and nutrition education Would prohibit soft drinks and candy from being dispensed to students by school vending machines. Would require school boards to prohibit the sale of candy, soda pop, and chips at school or on school grounds Would set requirements for beverages and foods sold in 			

**Appendix III: Legislative Proposals
Addressing Commercial Activities in Schools,
February 2004**

State	Product sales	Advertising		Marketing and market research
		Direct	Indirect	
	school vending machines and requires the State Board of Education to prepare and distribute a list of products that meet the standards			
Kentucky	<ul style="list-style-type: none"> • Would prohibit sales during the day through vending machines, school stores, canteens, or fundraisers of chewing gum, water ices, foods that contain more than 40 percent added sugar by weight, and foods that contain more than 6 grams of fat per serving (except seeds and nuts) • Would prohibit an elementary school from selling soda waters during a school day; would require that at least 75 percent of the beverages sold in middle and high schools be healthy beverages, and would prohibit the sale of any beverage to students in competition with the School Breakfast Program and the National School Lunch Program 			
Maine	<ul style="list-style-type: none"> • Would ban chewing gum, candy bars, food, or drinks that contain 35 percent or more sugar or other sweeteners; juices that are less than 100 percent real fruit juice; and foods with greater than 8 grams of fat per serving. Would ban soft drinks from elementary and middle schools and soft drinks containing caffeine from high schools 			

**Appendix III: Legislative Proposals
Addressing Commercial Activities in Schools,
February 2004**

State	Product sales	Advertising		Marketing and market research
		Direct	Indirect	
Maryland	<ul style="list-style-type: none"> • Would require county boards of education to develop and adopt specific policies relating to vending machines in public schools and requiring each school to install and use timing devices on every vending machine • Would require that 50 percent of all food and drink options available in vending machines be nutritious food and the price of foods of minimal nutritional value sold in vending machines to be at least 25 percent higher than the price of nutritious food • Would prohibit the sale of any beverages between the hours of 12:01 a.m. and the end of the last lunch period in public schools except water, fruit juices with at least 50 percent fruit juice, isotonic beverages that replenish electrolytes and do not contain more than 42 grams of added sweetener per 20 ounce serving, or milk • Would prohibit the sale of food (except for school lunches) between the same hours if more than 35 percent of the total calories per package are from fat, more than 10 percent of the total calories per package are from saturated fat, or more than 35 percent of the total calories per package are from sugar (except for fruits and vegetables) 			

**Appendix III: Legislative Proposals
Addressing Commercial Activities in Schools,
February 2004**

State	Product sales	Advertising		Marketing and market research
		Direct	Indirect	
Massachusetts	<ul style="list-style-type: none"> • Would prohibit vending machines containing soda or soft drinks in public school buildings or charter schools 			
Michigan	<ul style="list-style-type: none"> • Would require the number of milk vending machines to be at least equal to the number of soda vending machines in school buildings • Would require the department of education to promulgate rules providing healthy eating in schools that will apply to school meals, vending machines, and other food sales and ban the sale of chewing gum, candy bars, foods and drink containing more than 35 percent sugar, food or drink containing more than 8 grams of fat per serving, juice that is less than 100 percent real juice, and soft drinks in elementary and middle schools 			
Minnesota	<ul style="list-style-type: none"> • Would ban contracts that allow the exclusive sale of a particular beverage brand, that prohibit the sale of a competing brand, include sales incentives, or limit the ability of schools to control the number and location of vending machines • Would prohibit the sale of nutritious beverages at a price per unit volume higher than the price per unit volume of non-nutritional beverages • Would require schools that sell packaged beverages to encourage students to drink milk and other nutritional beverages 			

**Appendix III: Legislative Proposals
Addressing Commercial Activities in Schools,
February 2004**

State	Product sales	Advertising		Marketing and market research
		Direct	Indirect	
New Jersey	<ul style="list-style-type: none"> Would prohibit the sale at public elementary or middle schools during the school breakfast or lunch period any soft drink or juice product that is less than 100 percent fruit or vegetable juice, candy bars, hard candy or chewing gum, or any other food or drink that has more than 35 percent sugar or other sweeteners, or has more than 8 grams of fat 			<ul style="list-style-type: none"> Would require schools to receive written informed consent from parents or guardians and provide a document for reviewing before permitting students to participate in surveys, assessments, or evaluations that reveal certain types of personal information Would permit students to participate in a voluntary survey if the district sends prior written notification to student's parents
New Mexico	<ul style="list-style-type: none"> Would prohibit the sale of foods of minimal nutritional value in the food service areas during school lunch periods Would prohibit beverages other than water and 100 percent fruit or vegetable juices from being accessible to elementary school students during the school day Would require all vending machines located on school grounds to feature graphics of only 100 percent fruit or vegetable juices, water or educational programs 			
New York	<ul style="list-style-type: none"> Would prohibit vending machines from selling certain foods and drinks, such as foods of minimal nutritional value on public school grounds or public school property 			
North Carolina	<ul style="list-style-type: none"> Would call for a moratorium on soft drink contracts in schools 			<ul style="list-style-type: none"> Would prohibit the release of data from the student-testing program to any marketing organization without the express written permission of the parent or guardian Would require schools to obtain written consent of the

**Appendix III: Legislative Proposals
Addressing Commercial Activities in Schools,
February 2004**

State	Product sales	Advertising		Marketing and market research
		Direct	Indirect	
				student's parent or the adult student before administering surveys or evaluations that collect certain personal information, and would require local school boards and their employees to the anonymity and confidentiality of students' responses to such instruments
Ohio	<ul style="list-style-type: none"> • Would restrict beverages sold to students in grades kindergarten through 4 to milk and other specified beverages • Would restrict beverages sold to students in grade 5 to 12 from one-half hour before school to one-half hour after the end of the school day • Would permit the sale of other beverages that do not meet nutritional standards if students are selling them as a fundraiser • Would restrict food sold to students in grades kindergarten to 4 to food meeting certain minimal nutritional standards 			
Oklahoma	<ul style="list-style-type: none"> • Would require the board of education to bar access to vending machines that contain food or soft drinks of low nutritional value by students in grades K-5 and limits access by students in grades 6-12 			
South Carolina	<ul style="list-style-type: none"> • Would ban the sale of foods and drinks that do not comply with federal standards • Would restrict the sale of foods to students outside of school meals to whole grain products and other specified foods and beverages 			

**Appendix III: Legislative Proposals
Addressing Commercial Activities in Schools,
February 2004**

State	Product sales	Advertising		Marketing and market research
		Direct	Indirect	
Tennessee	<ul style="list-style-type: none"> • Would restrict the sale of food items from sources other than the school cafeteria • Would require that drinks sold in elementary and secondary schools be limited to water, milk, 100 percent fruit juice, or a minimum of 10 percent fruit-based drinks, and electrolyte replacement beverages • Would prohibit the sale of soft drinks in middle and high schools until 1 hour after the last lunch period 			
Texas	<ul style="list-style-type: none"> • Would ban the sale of competitive foods and beverages in elementary schools • Would restrict the sale of competitive foods at middle schools, junior high schools, and high schools to certain times of day, and would require food items to meet certain nutritional standards • Would ban the sale at elementary schools of any food or beverage not offered for sale as part of the regular school meal program • Would impose nutritional requirements on food offered for sale in secondary schools 			
Utah	<ul style="list-style-type: none"> • Would restrict products sold in vending machines in elementary schools to only those meeting federal nutritional standards 			

**Appendix III: Legislative Proposals
Addressing Commercial Activities in Schools,
February 2004**

State	Product sales	Advertising		Marketing and market research
		Direct	Indirect	
Vermont	<ul style="list-style-type: none"> • Would prohibit the sale on school grounds from the time schools open until the end of the last school lunch period of any beverage for which any of the first two ingredients listed on the label are water and any type of sweetener 			
Virginia	<ul style="list-style-type: none"> • Would require the board of education to establish rules regarding vending machines in middle and high schools • Would ban schools from contracting for allowing or continuing to use vending machines selling soft drinks or solid foods having empty calories, high fat, high sodium, or high caffeine 			
Washington	<ul style="list-style-type: none"> • Would establish minimum nutritional standards for competitive foods sold in schools • Would limit the types of beverages that may be sold to pupils • Would ban the sale of foods with minimal nutrition value on school campuses during regular schools hours 			

Source: GAO analysis of state legislature Web sites, February 2004.

*This provision was approved June 8, 2004, and became effective July 1, 2004.

Appendix IV: Questionnaire: GAO Study on the Marketing and Selling of Student Data

GAO STUDY ON THE MARKETING AND SELLING OF STUDENT INFORMATION

U. S. General Accounting Office

Introduction.

The United States Congress has asked the United States General Accounting Office (GAO), an independent agency that gathers information for the Congress, to conduct a study of the implementation of the newest provision of student privacy safeguards. These safeguards concern the use of student information for the purposes of marketing or selling—and were part of the No Child Left Behind Act (SECTION 1061; 20 U.S.C. sec. 1232h). The U.S. Department of Education plans to issue regulations regarding this provision within the next 6 months. However, the Department of Education sent out model parent notifications letters to all superintendents in February 2003.

Section 1061 of the law pertains to such activities as the selling of personal information collected from students—such as students' names, addresses, telephone numbers, major field of study, etc.-- to for-profit businesses or non-profit organizations or providing directory information to outside groups for marketing or selling purposes.

As part of this study, we are contacting a national random sample of Local Education Agencies (LEAs), including your agency, and asking them to respond to the 4 questions below. It will take less than 5 minutes to answer these 4 questions.

District Identification _____

Instructions

Please fax your survey back to GAO within the next 5 working days. If your district has developed a formal policy covering the use of student information for marketing or selling purposes, please include a copy of that policy with your completed survey.

FAX-Back Directions. When you have completed your responses, you can fax these pages, a copy of your LEA's policy regarding the use of student information for marketing or selling purposes if one has been developed, along with any comments you may wish to make, to Kathy White at Fax Numbers (202) 512-3190 or (202)-512-6826.

If you prefer, you may mail this questionnaire and a copy of your LEA's policy if one has been developed in the accompanying return envelope to:

**U.S. General Accounting Office
Attn: Kathy White
C/O Cathy Roark
701 Fifth Avenue, Suite 2700
Seattle, WA, 98104**

Contact Information. If you have questions, contact Kathy White at whitek@gao.gov or (202) 512-8512.

GENERAL INFORMATION

First, we understand that you have sent out general information on education privacy issues for several years. However, we wish to address a very specific part of this topic: the newest provision—section 1061 of the No Child Left Behind Act—that addresses the use of student information for selling or marketing purposes.

Appendix IV: Questionnaire: GAO Study on
the Marketing and Selling of Student Data

1. In what stage of development is your district regarding the development of policies that reflect the provisions of section 1061 that pertain to the use of student information for buying and selling purposes? (*Check One*)

- 1 Policies have not been developed
 2 Policies are being developed
 3 Policies have been developed
 4 Policies have been developed and implemented
 5 Other (please explain)

SPECIFIC INFORMATION

Now, we'd like to ask you about specific activities during school year 2003-2004 regarding the use of student information for the purposes of marketing or selling.

2. During school year 2003-2004, did your LEA, or any school in your LEA, engage, or plan to engage, in one or more specific activity involving the collection, disclosure, or use of student information for the purposes of marketing or selling or providing the information to others for these purposes? (*If you don't know, but know individuals that might, please ask for their assistance in answering this question.*) (*Check one*)

- 1 Yes
 2 No (*Skip to question 4.*)
 3 Don't know (*Skip to question 4.*)

3. During school year 2003-2004, what activities involving the collection, disclosure, or use of student information for the purposes of marketing or selling occurred, or are planned to occur, in your LEA or schools in your LEA? (*Check All that Apply*)

- 1 Collection or disclosure of student

information by your LEA or schools in your LEA to photographers for the purpose of selling graduation or class pictures

2 Collection or disclosure of student information by your LEA or schools in your LEA to tuxedo rental shops or salons for the purpose of marketing or selling prom-related services.

3 Collection or disclosure of student information to other for-profit organizations for the purposes of marketing and selling.

4 Collection or disclosure of student information to nonprofit organizations for the purposes of marketing and selling.

5 Other (*please describe below or on an enclosed page.*)

4. If you have any comments regarding the topics discussed in this questionnaire, please provide them below.

5. Are you providing us with a copy of your district's policy or draft policy?

- 1 Yes (Please enclose)
 2 No

In case we have any questions or need to clarify responses, please provide the following information for the primary person completing this questionnaire:

Name _____

Title _____

Phone number, including area code

Thank you for your help.

Appendix V: Comments from the Department of Education



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INNOVATION AND IMPROVEMENT

THE DEPUTY UNDER SECRETARY

AUG 3 2004

Ms. Marnie S. Shaul
Director, Education, Workforce,
and Income Security Issues
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Shaul:

Thank you for permitting the Department of Education to comment on the draft report entitled "Commercial Activities in Schools: Use of Student Data is Limited and Additional Dissemination of Guidance Could Help Districts Develop Policies." The subject matter of the report relates to amendments to the Protection of Pupil Rights Amendment (PPRA) made by the No Child Left Behind Act of 2001. In the draft report, GAO recommends that the Department take additional action "to assist districts in understanding that they are required to have specific policies in place for the collection, disclosure, and use of student information for marketing and selling purposes by disseminating its guidance to state school board associations." I would like to provide some comments on that recommendation.

As you note in the report, the Department's Family Policy Compliance Office (FPCO), which is now in the Office of Innovation and Improvement, is responsible for administering the provisions of PPRA. FPCO, as you note, has taken a number of actions to ensure that school officials are made aware of their responsibilities under PPRA and to assist them in carrying out these responsibilities. Most notably, the office provides compliance training on PPRA to assist elementary, secondary, and postsecondary school officials around the country in understanding and carrying out the mandated responsibilities of educational institutions and agencies under three laws – PPRA, the Family Educational Rights and Privacy Act (FERPA), and the military recruiter provisions of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act. This training takes place at national and regional association conferences, at State departments of education, and at schools.

The report recommends that we disseminate our PPRA guidance to State school board associations. We will comply with that recommendation. The FPCO also stands ready to provide training to State school board associations, as it did in September 2002 for the Kansas Association of School Boards and in March 2002 for the North Carolina School Boards Association. In addition, FPCO will provide training in October 2004 to the National Council of State Education Attorneys (NCOSEA), an affiliate of the National Association of State Boards of Education (NASBE). Because NCOSEA will be holding its annual conference in conjunction

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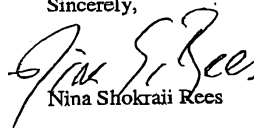
Page 2 – Ms. Marnie S. Shaul

with NASBE, FPCO offered to also provide training at the NASBE conference. However, because of the schedule for that conference, NASBE is not able to accommodate FPCO training for the October meeting.

FPCO has also worked with the National School Boards Association (NSBA) on several privacy-related issues. In September 2003, NSBA released a document entitled "Guidance for School Districts on Student Education Records, Directory Information, Health Information and Other Privacy Provisions." The chapter on "Collection of Student Data for Marketing Purposes" was based on information provided on FPCO's website. FPCO plans to contact both NASBE and NSBA with updates to any guidance on PPRA or FERPA that needs to be distributed to the States. FPCO will also continue to offer training to State affiliates.

Thank you for undertaking a thorough analysis of this issue and for the constructive recommendations you have provided to the Department. I am also enclosing, with this letter, some technical comments on the report.

Sincerely,



Nina Shokraii Rees

Enclosure

Appendix VI: GAO Contacts and Staff Acknowledgments

GAO Contacts

Eleanor L. Johnson, Assistant Director (202) 512-7902 or johnsone@gao.gov
Kathleen D. White, Analyst-in-Charge (202) 512-8512 or whitek@gao.gov

Staff Acknowledgments

In addition to those names above, the following people made significant contributions to this report: Susan Bernstein, Carolyn Blocker, Richard Burkard, Jim Fields, Behn Kelly, James Rebbe, and Jay Smale.

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