



## **News and information for providers of assessment products and services from the Association of Test Publishers ("ATP")**

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### **Test publishers respond to parental consent bill...by Alan Thiemann, Legislative Counsel**

Round two of the federal "parental consent" fight has begun in Washington and, after the initial skirmish in the House Education and Workforce Subcommittee on Early Childhood, Youth and Families, ATP has made a significant contribution toward a potential solution. It is doubtful that this legislation will make it through both the House and Senate this year -- but ATP has provided reasonable language to establish a framework for handling this sensitive issue.

On May 1, 1998, the Early Childhood Subcommittee held a hearing on HR 3189, the "Parental Freedom of Information Act," introduced by Congressman Todd Tiarht (R-KS). As was the case two years ago when Congress first considered a similar bill, conservative members of Congress are seeking to aid parents who claim they have been denied access to instructional materials, including test materials. The legislation attempts to give parents broader access rights by clarifying and expanding the 1974 Family Education Rights and Privacy Act (FERPA).

As drafted, parents would be provided with the right to "inspect and review any instructional material used with respect to the educational curriculum of, or testing material administered to, the student."

Furthermore, the bill defined testing materials as "a copy of any test (without responses) that is administered to a student during the current or preceding school year, and if available, any statistical comparison data regarding the test results with respect to the student's age or grade level." However, ATP feared that the bill would actually give parents the right to a walk-away copy of testing materials.

In order to protect test publishers against the unscrupulous copying and redistribution of their products, ATP representatives, including ATP Executive Director William G. Harris, ATP Counsel Alan Thiemann and Jay Urwitz (Counsel for The Psychological Corporation), met with Congressman Tiarht, his staff and Subcommittee staff, to clarify the precise scope of this new access right. (Continued, see Parental consent, page 2) During these meetings, ATP clarified that parents should be able to read and understand the appropriate test being requested and discuss it with qualified school personnel, but should not have the right to copy, photocopy, transcribe or take notes about the contents of any testing materials that are subject to a copyright or licensing agreement.

ATP also pointed out that, if proprietary testing materials are requested during dispute resolution proceedings, the copy must be provided for the limited purpose of the proceeding and must be returned to the educational agency or institution that provided the copy. Furthermore, ATP contended that no part of the testing material should be included in any public record of the mediation or arbitration proceeding.

Although HR 3189 was scheduled to be marked up by the full Committee on June 9, 1998, it was withdrawn from consideration after ATP provided specific clarifying language. No new markup date has been scheduled. In the meantime, ATP will continue to discuss the future of this bill with congressional staff, as well as with other organizations that may be supportive when the Committee decides to vote.

## **ATP news notes on technology...**

### **Keynote speaker to address opportunities in the electronic labor exchange**

James Vollman, Associate Assistant Secretary, Employment and Training Administration, U.S. Department of Labor addressed the ATP General Meeting t held August 15, 1998 at the Hotel Nikko San Francisco. Mr. Vollman's presentation was titled "Opportunities in the Electronic Labor Exchange."

James W. Vollman joined the Employment and Training Administration in December of 1993 and currently is responsible for the administration of the One Stop Career Center initiative. He also has been the principal Federal architect for America's Labor Market Information System, working with our State partners, the Bureau of Labor Statistics and the National Occupational Information Coordinating Committee to design the applications, products and services which will benefit our nation's job seekers and employers. Operating products include America's Job Bank ("AJB"), America Talent Bank ("ATB"), America Career Information Network ("ACINet") and America's Learning eXchange ("ALX").

Mr. Vollman has extensive public sector experience at the local, state and federal level and was the 1996 recipient of the Vladimir Chavrid Memorial Award which recognizes excellence in the field of labor market information and employment security operations research.

### **Consortium continues work in developing technology-based guidelines for the testing industry**

A consortium of nearly 30 individuals from different companies, industries and backgrounds is currently in phase II of developing guidelines for computer-based testing.

These guidelines are meant to enhance the APA/AERA/NCME standards as appropriate, and to emphasize the differences involved with the development and delivery of computer-based testing. A second draft of these guidelines will be available on the ATP website. For more information on the consortium contact Cyndy Fitzgerald, Ph.D., Psychometric and Certification Manager, Microsoft Corp. at [cyndyf@microsoft.com](mailto:cyndyf@microsoft.com).

## **Association notebook**

ATP welcomes its newest members...Bawden Printing of Eldridge, IA, Psychological Services, Inc. ("PSI") of Glendale, CA and SPSS, Inc. of Chicago, IL.

**The ATP web site...**is up and running at <http://www.testpublishers.org>. ATP members should ensure that they are listed in the Products and Services section of the ATP web site. If there is no listing for your company, send a fax or e-mail to ATP Administrator [Lauren Scheib](mailto:Lauren.Scheib) with your company's listing information. Fax to 717.755.8962.

Certain sections of the ATP web site are restricted to ATP members only and/or ATP subscribers only. Members and subscribers who need information regarding the password should contact [Lauren Scheib](mailto:Lauren.Scheib) at 717.755.9747.

ATP congratulates newly elected board members...the following individuals were elected to serve a two year term on the ATP Board of Directors commencing August 1, 1998. They are: Dr. Gerald Borofsky, Bay State Psychological Associates, Joanne M. Lenke, The Psychological Corporation and David Wm. Smith, NCS Assessments.

## **Legal update...**

**Thompson v. Borg-Warner Case Settled...**by Maureen P. Toner and David W. Arnold, Esq., Reid Psychological Systems

Earlier this month, Borg-Warner, the nation's largest security firm, settled a lawsuit regarding its use of a preemployment test for \$2.1 million. In 1994, the American Civil Liberties Union had filed a class action suit against Borg-Warner Protection Services, alleging that the defendant's subsidiary, Burns International Security Services, had violated the Americans with Disabilities Act ("ADA") and the California Labor Code when it declined to hire plaintiffs such as Mel Craig Thompson as a result of a preemployment test, the PASS-III D.A.T.A Survey ("PASS-III").

The Court, when asked in a pre-trial motion to grant summary judgment for these claims, granted summary judgment to the defendant with regard to the ADA claims. In the opinion of the Court, the test had not violated the ADA for two reasons. First, the test was not considered a preemployment medical examination as defined by the Equal Employment Opportunity Commission ("EEOC"). Further, the test had also not violated the ADA because it had not inquired about past drug or alcohol addiction. The Court noted that pre-offer inquiries about current unlawful drug use, past casual use and the use of alcohol, short of alcoholism, are permitted under the ADA.

However, the Court denied summary judgment for the claim that the test violated the California Labor Code prohibiting discrimination on the basis of political views or affiliations. In the opinion of the Court, the issue of whether questions designed to reveal attitudes towards illegal drug use

could be interpreted as political barometers should be decided in court. Some questions which could be interpreted as such are:

- The government has no right to interfere with a person who chooses to use drugs if it doesn't hurt anyone.
- The police and courts are lenient on drug users.
- The drinking age should be lowered.
- Marijuana should be legalized.

The plaintiffs argued that applicants who tend to exhibit lenient attitudes toward drug use (and other politically charged topics) also tend to hold more liberal political beliefs, and that a question regarding the legalization of marijuana was particularly politically charged in the state of California.

According to the lawyers for the plaintiffs, the settlement would cover the approximately 8,000 applicants who were administered the PASS-III between 1991 and 1995, at which time Burns Security discontinued its use as a preemployment screening tool. Those who were denied employment as a result of the test would receive an estimated \$1,259, while applicants who took the test and were hired would receive \$500. According to the San Francisco Chronicle, Borg-Warner issued a statement: "We denied all liability...and our decision to settle was based on business and economic reasons."

The court still must approve the settlement which is due back later this summer.

### **The debate about how to achieve diversity in higher education and its impact on testing**

**Toward Diversity in Higher Education...**by Patricia H. McAllister, Director, ETS State and Federal Relations Office

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The debate about how to achieve diversity in higher education has intensified among public policy makers, educators and others in the wake of the Hopwood decision, California Proposition 209 and related initiatives. The controversy on affirmative action is related to the appropriate role and use of admission test scores within the context of achieving diversity in higher education. The (ETS) State and Federal Relations Office closely follows federal, state and other initiatives relative to affirmative action. This article provides an update on recent initiatives and issues of interest...

An initiative to ban affirmative action as part of the higher education and admissions process was recently considered in Congress. The Riggs amendment to the Higher Education Act ("HEA"), which was voted down, would have barred public institutions of higher education receiving federal funds from giving preferences in admission to applicants based on race, ethnicity, gender or national origin. The active opposition to the amendment by members of the higher education community, including the Educational Testing Service ("ETS"), culminated in bipartisan resistance and subsequent defeat in the House.

State legislatures are also considering legislation on this topic. Last year eleven states considered bills to limit affirmative action in some way, and such considerations, continue this year in 12 states. The California state legislature is considering legislation to establish a pilot student success study which utilizes alternative admissions criteria and waives the use of

standardized tests in undergraduate admissions. The bill describes three pools of talented students to which the University of California (UC) will apply alternative criteria for admissions. One pool will consist of applications of potentially eligible students from schools with a historically low rate of UC eligibility. For these students, SAT II subject test scores will be waived, provided that students complete a college preparatory sequence of courses and earn grade point averages (GPA's) above the minimum required by the University. The SAT I /ACT will be waived if the earned score does not fall more than one-half standard deviation below the score needed to attain regular eligibility, and all other requirements are met.

The pilot study will be in place for five years to monitor the academic progress and success of all students granted alternative admission, compared with a control group of regularly admitted students. The study will examine term-to-term and year-to-year persistence, successful completion of degree requirements and degree receipt, among other things.

Another proposal receiving active consideration in California involves offering admission to UC to the top four percent of graduating seniors from every public high school in the state. Students' class rank would be based on their grades in the academic courses already required for UC admissions. These students would still be required to take the SAT, but it would be for record keeping purposes only. This proposal would need UC Board of Regents' consideration and approval which may come as early as July.

The Texas legislature recently created a Senate Interim Committee to forge a legislative plan on affirmative action in higher education, state contract and employment. Houston Mayor Bob Lanier was selected to head this Committee, whose work began in May with the goal of developing a plan in time for the 1999 session of the Texas legislature. (There is no legislative session in Texas this year.)

The Texas Higher Education Coordinating Board has created the Texas Commission on a Representative Student Body to undertake a serious assessment of current efforts associated with the recruitment, retention, and graduation of minority students at colleges and universities in the state.

By August 1998, the Commission will develop recommendations for the future designed to encourage more representative student populations at Texas colleges and universities.

Observers of affirmative action initiatives are also attuned to a forthcoming ballot initiative in Washington state this fall. The Washington proposal is similar to California's Proposition 209 in that it would ban "preferences" based on race or sex in state contracting, hiring and admissions to public colleges and universities. The Washington ballot initiative is receiving special attention because minorities constitute only 14 percent of the population, and most ballot and legislative initiatives with the exception of Proposition 209 have not been successful.

Passage of the Washington state ballot initiative could signal renewed vigor in the ballot movement. The courts are the venue where anti-affirmative action bans have had the most success.

The University of Wisconsin Board of Regents recently approved a 1990s affirmative action plan (Plan 2008) to expand the pool of qualified minority students by doubling the number of precollege programs the university sponsors in elementary and secondary schools. This proposal is intended to improve teaching, along with college and career counseling in the schools. It also is likely to forge a stronger partnership between K-12 educators and the higher education sector. Higher education has often been criticized for not having a stronger presence in K-12 education reform and the Wisconsin initiative will be worth watching, as it focuses on expanding the pool of qualified applicants without altering admission standards

## **LONG-TIME "ETS" LEADER TO HEAD ATP BOARD OF DIRECTORS AS 1998-99 CHAIR**

**Dr. John J. Fremer, Senior Development Leader, Educational Testing Service ("ETS") began his term as Chair of the 1998-99 Board of Directors on August 1.**

Dr. Fremer has been with ETS since 1965, except for four-years as Vice President and Director, Measurement Division of The Psychological Corporation. He has a Ph.D. in Measurement from Columbia University, where he studied with Robert L. Thorndike and Walter MacGinitie. He is active in measurement-related associations and is a frequent speaker on testing-related issues. Dr. Fremer serves on the Joint Committee on Testing Practices as Chair of the Work Group that produced the "Code of Fair Testing Practices in Education," an industry code of practice.

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