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Pearson, ETS, Houghton Mifflin, and McGraw-Hill Lobby Big and Profit Bigger from School Tests
A CMD Reporters' Guide

Prepared by CMD's Jonas Persson, March 30, 2015

School testing corporations have spent at least $20 million on lobbying along with wining and dining—or even hiring—policymakers in pursuit of big revenues from federal and state testing mandates under "No Child Left Behind" measures and the Common Core curriculum, according to new analysis detailed in this Reporters' Guide by the Center for Media and Democracy (CMD).

The expanded testing has fueled a testing boom worth nearly $2 billion annually, giving the main corporations getting the testing contracts a huge return on investment for their lobbying while generating a growing backlash from parents across the country.

With big stakes for the corporations, student privacy interests are taking a back seat to securing lucrative contracts, leaving aside concerns that the fixation on tests is distorting what's taught and displacing programs that prepare students to unleash their potential in an array of fields and interests whether they test well or not.

"Pearson is monitoring all social media," a New Jersey superintendent warned her colleagues in an email earlier this month. Finding out that a foreign-based multinational was spying on American kids' Tweets and social media posts under the rationale of Common Core testing security was "a bit disturbing," she said.

But Pearson has a track record of lobbying against privacy protections for kids, using some of the big profits it is making off of Americans' federal and state tax dollars from the expansion of testing. These contracts are big and lucrative.

For example, Pearson's $108 million contract to administer Common Core testing in New Jersey will be up for renewal, and privacy interests of school children are subservient to the corporation's bottom line: "The security of the test is critical," a company spokesperson told the *Washington Post*.

With more and more money flowing from federal and state governments to testing companies rather than to practices that make our schools better—like smaller class sizes to help kids get more individualized attention—CMD conducted a review of the profits, lobbying, and other activities of the testing companies that dominate the U.S. market.

CMD's research reveals that those companies—Pearson Education, ETS (Educational Testing Service), Houghton Mifflin Harcourt and McGraw-Hill—have collectively spent more than $20 million lobbying in states and on Capitol Hill from 2009 to 2014.

They have called for an expansion of the K-12 testing regime, while fighting tooth-and-nail against legislation designed to safeguard student privacy or protect kids from commercial data mining. Aside from the disclosed amount spent on lobbying legislators, Pearson, for example, underwrote untold sums on luxury trips for school officials.

With the huge stakes for kids and tempting profits at taxpayer expense, the testing industry plainly requires far more scrutiny.

In the case of Pearson, it was not government oversight but investigative reporting that led to the *New York Times'* discovery of how Pearson had been using its charitable arm for private gain by flying school officials to conferences in London, Helsinki, Singapore and Rio de Janeiro, where they stayed in five-star hotels and hobnobbed with company executives.

That led to a crackdown by the New York Attorney General, and Pearson was forced to pay a $7.7 million settlement in 2013 while ultimately shuttering the tax-deductible operation closely connected to it.

Using non-profits as matchmakers between officials making big decisions on expanding testing and corporate executives who want more revenue is not however, unique to Pearson.

In fact, all four testing companies have donated to the American Legislative Exchange Council (ALEC) member Foundation for Excellence in Education, until recently led by Jeb Bush—with Pearson writing three checks totaling at least $125,000 between 2012 and 2014.[1]

Open records requests from the watchdog group In the Public Interest reveal how FEE has acted both as a bill mill, and as a broker, setting up meetings between corporate donors and state education commissioners.

Aided by an increased focus on testing under federal programs, the companies have also been persistent in exploiting the new markets: they act as

1The Foundation lists donations within brackets. ETS has contributed at least $15,000, Houghton Mifflin $25,000 and McGraw $50,000 during the same period.

consultants in helping schools draft applications, and they have bespoke product portfolios on the ready once the schools are awarded the grants.

The corporations develop and administer high-stakes tests and also sell software and textbooks containing the answers, which provide additional revenue.

As Meredith Broussard pointed out in *The Atlantic*, many impoverished school districts—whose schools, principals, teachers and students are at the mercy of test results—simply cannot afford to buy the testing aids marketed by the companies to profit even more from winning testing contracts.

Here is CMD's quick guide to the profits, lobbying, and troubling track records of the four big testing corporations.

PEARSON EDUCATION, the North American arm of the British firm Pearson:

Big Revenue from Expanded Testing Market

- Pearson PLC, based in London, posted revenues of £6.12 billion ($9.43 billion with the current exchange rate) in fiscal year 2013. The same year, CEO John Fallon received a total compensation of £1.7 million ($2.64 million).
- While "declines in state assessment contracts," held back profits in 2012 and 2013, these were more than offset by contracts for federally mandated tests, such as the NAEP, which kept the company from out of the red on the North American market, which accounts for 54% of business.
- Since then, the company has expanded its state testing presence dramatically. In the first half of 2014, Pearson administered nine million high-stakes K12 test for a total increase in testing volume by 38% over the same period in 2013.
- In the past six months, company shares have seen a dramatic upsurge of 15.5% with a current market capitalization of $17.9 billion. During the same period, the NYSE Composite Index saw a modest 1% increase.
- Caveat: Whether increased testing revenue contributed to this is unclear, but it comes in the wake of an "unprecedented" $1 billion deal to administer high-stakes testing for the member states in the PARCC consortium, as well as an expected $500 million dollar contract with Texas. Analysts predict a further "low-single digit boost in the new materials and testing business in 2015."

Millions in Lobbying

- Between 2009 and 2014, Pearson spent more than $4.5 million lobbying on Capitol Hill, and a further $3.5 million lobbying state legislatures, primarily in Texas, Florida and California. Vying for a renewed state testing contract worth $500 million, the company spent $580,000 lobbying in Texas last year.

Snooping on U.S. Children, a/k/a "Streamlined Social Media Listening"

- A closer look at Pearson's federal lobbying reports from 2013 makes for interesting reading. The company "continued to monitor" what impact the "legislative and regulatory activity on the Children's Online Privacy Protection Act" would have on their products. In other words: privacy protection for children could hurt the company's bottom line.

- The practical upshot of this privacy busting can be seen in the New Jersey snooping scandal that erupted in March 2015. Pearson, it turned out, was using advanced software tools to snoop on children's Twitter feeds and social media posts to clamp down on suspected cheating. The company behind the spying software, New York-based Tracx, had even published an online case study, which proudly announced how "Pearson streamlines social media listening" through its products. (The case study was later removed, but is available from the Internet Archive.)

- Emails obtained by CMD under an open records request, show how Bryce Adams, Senior Director of State Relations at Pearson's chain of virtual schools—Connections Academy—exerted pressure on Utah school officials. When the state in October 2014 tightened its regulations by prohibiting schools from outsourcing their student records to third parties, Adams submitted a corporate line-by-line rewrite of the law. He also issued a warning: if the law is not changed, "student achievement" will suffer.

- In a scathing *Politico* report on Pearson's aggressive expansion on the U.S. market in both secondary and post-secondary education, Stephanie Simone notes that even though "Pearson says it does not sell [personal student] data . . . the contracts do not give the colleges Pearson works with any mechanism to monitor or enforce that policy. Pearson has declined to join more than 100 other education technology firms in signing a Student Policy Pledge "recently hailed by President Barack Obama as an important safeguard against commercial data mining."

Accusations of Bid-Rigging

- In May 2014, Pearson was awarded a contract on an "unprecedented scale" (estimated to be worth in excess of $1 billion) to develop and administer Common Core testing for the PARCC consortium. There were no other bidders. The non-profit American Institutes for Research (AIR) filed suit against the New Mexico Public Education Department, which handled the bidding process. According to AIR, the RFP was tailor-made for Pearson, and contained "anticompetitive, overly restrictive, and unlawful specifications." The state and Pearson have denied any wrongdoing. The suit remains pending.

Wooing School Officials

- The New Mexico/PARCC contract is not an isolated example. There is a pattern of the company landing lucrative state contracts with no other bidders, which could partly be accounted for by an aggressive outreach strategy focused on state and school officials privy to the awards process. As noted above, its charitable wing flew school officials to conferences in Europe and Asia and invited them to hobnob with Pearson executives—all expenses paid.[2]

- That outreach appears to include hiring school officials too. A 2013 report by the Texas State Auditor found that eleven "former employees who worked on student assessment" had gone on to work for Pearson.

Testing Scandals

- The ease by which Pearson has landed "unprecedented" testing contracts belies a history of repeatedly failing to deliver on its promises. But with a return on lobbying investment of 1000:1 (if awarded the Mexico contract), the company can afford a few hiccups. A 2011 review by FairTest found that the company had been forced to pay $42 million in fines and settlements for delayed and mis-graded state tests between 2000 and 2010 in five states.

- The problems are ongoing. In April 2014, the Pearson system crashed in Florida during high-stakes testing. "When will we talk about the emotional and psychological effect all of these 'glitches' have on our children?" Colleen Doherty with the grassroots group 50thNoMore asked.

2The 990s for the Foundation list Drascena Communications, a mysterious company with no web presence, as the top contractor for "consulting services", with payments of $2.1 million in 2012 and $1.6 million the year before. It was founded by Adam Ray, a former Pearson Project Manager. On LinkedIn, Ray is listed as CEO not of "Drascena" but of Scena Media–a company whose only web presence is on LinkedIn.

EDUCATIONAL TESTING SERVICE, a Non-Profit Based in New Jersey

For-Profit Type Salaries for This Charity

- Educational Testing Service (ETS) has increased its annual revenue from $906 million in 2009 to $1.07 billion in 2012.

- Registered as a non-profit 501(c)(3) with the IRS, ETS pays its directors and trustees for-profit style salaries. President/CEO Kurt Landgraf, who stepped down in 2013, received $1.3 million in total compensation in 2012. The highest paid trustee, Valdes Guadelupe, PhD, was paid $80,500 for an estimated two-hour work-week, in stark contrast to what U.S. teachers are paid.

- Criticism of ETS being a "highly competitive business operation that is as much a multinational monopoly as a nonprofit institution" goes back decades. Speaking to a New Jersey newspaper in 2013, outgoing CEO Landgraf dismissed criticisms: "The not-for-profit status comes up a lot . . . I don't say this to be facetious, but the status is a section of the tax code."

Lobbying to Remove Student Safeguards

- A 501(c)(3) organization is allowed to engage in a limited amount of lobbying, and ETS has spent at least $1.3 million trying to influence state legislature between 2009 and 2013, primarily in Texas and California.

- In 2014, ETS lobbied heavily for the introduction of a statewide testing system in California and against a bill requiring test agencies to "immediately initiate an investigation" after complaints on "inadequate" testing conditions. It also lobbied against a bill designed to safeguard pupil data when Local Education Agencies (LEAs) sign contracts with 3rd party entities.

But Don't Mention Evolution or Global Warming?

- In 2012, ETS developed "Bias and Sensitivity Guidelines" for the Smarter Balanced Consortium, a federally funded entity charged with administering Common Core testing in its member states. Any hint of evolution and global warming is strictly forbidden. The ETS/Smarter Balanced does not advocate "for one side in a controversial situation."

- "[H]ow long ago did homo sapiens evolve into a distinct species?" is an example of a question deemed unacceptable. The guidelines also contain rules to safeguard against derogatory language and an unduly Western or privileged perspective on things. But this creates a sense of false equivalence; banning the N-Word in instructional materials is not the same as banning testing about evolution or global warming.

- It is possible to put a positive gloss on the issue: students who do not believe in climate change might get upset and underperform, but the overwhelming weight of the scientific community has concluded that our climate is changing rapidly as a result of industrial activities that jeopardize our future.

- Also, the discourse of avoiding "controversial" subjects is eerily similar to the one pushed by ALEC in the "Academic Bill of Rights for Public Education Act," and by the ideological Discovery Institute.

- The bills written by Discovery are designed to usher in creationism in K12 schools under the guise of avoiding bias, while calling for caution when teaching "biological evolution, global warming . . . and other scientific subjects that may cause debate," to quote from one of its bills recently introduced in the South Dakota legislature.

HOUGHTON MIFFLIN HARCOURT, a For-Profit Firm in Massachusetts

Big Profits and Big Salaries

- Houghton Mifflin Harcourt posted revenues of $1.37 billion in fiscal year 2014 with a market share of 44 percent that includes some Common Core instructional materials, and a $13 million increase in higher assessment net sales. CEO Linda K. Zecher received $5.2 million in FY 2013. [See note of clarification at end of memo.*]
- After emerging from a bankruptcy three years ago, the company has seen a rapid increase in its worth. It completed its IPO with a $12 share price in November 2013 and it is now up to around $21/share.

- In a 2014 earnings call, CFO Eric Shuman chalked up the increase to a rapid expansion of the cognitive testing market (which is distinct from Common Core) and from reading and math "intervention"—so rapid, in fact, that while Houghton Mifflin had profited, it still had not been able to meet the demand from school districts. [See note.*]

Testing Pre-K Kids as a New, Lucrative Revenue Stream

- In a 2015 interview, Zecher honed in on the company's recent foray into the pre-K market with educational games and computer adaptive testing.

- The company credited the federal government with having created this in its 2012 annual report: "Federal agencies are pushing the focus to children at even younger ages to provide intervention . . . leading to more opportunity in the early childhood market space from birth to eight." In 2014, Houghton Mifflin saw a $13 million increase in higher assessment net sales.

Cashing in on Federal Grants to States for Expanded Testing

- Between 2009 and 2014, the company spent more than $2.1 million lobbying state legislatures with most money spent in California, Florida, and Tennessee.

- Houghton Mifflin also spent a further $1.4 million on Capitol Hill influencing the legislative agenda on "early childhood education" and "[the] federal funding of education."

- Federal grants mandating K12 testing boost the Houghton bottom line in two ways: the company markets testing solutions, but it also helps schools draft the applications on a consultancy basis through its "Grants and Funding Team."

McGRAW-HILL EDUCATION, a Global Corp Owned by a Private Equity Firm

Following in Houghton's Footsteps?

- The McGraw-Hill group, which includes Standard & Poor's, sold its education business to private equity firm Apollo Global Management[3] for $2.5 billion in 2013. Speculation has been rife that McGraw-Hill Education will soon IPO, and follow in the footsteps of Houghton. Whether Apollo will let go of its lucrative business is another question. In a 2014 Q4 earnings call, Apollo CFO Martin Kelly told investors that dividends from McGraw-Hill were part of what drove it to increase its cash distribution from $0.15 to $0.86.

Privacy Smoke Screens

- McGraw has thus far refused to sign the Student Privacy Pledge, although a spokesperson for the company told *EdWeek* that it might do so this year. But when NPR education blogger Anya Kamenetz asked senior VP Jeff Livingston about student data mining back in 2013, Livinsgton brushed aside any concerns by arguing that at least McGraw isn't as bad as Joe Camel: "The people worried about student privacy are fighting the wrong war . . . They should be asking, why is there a cartoon camel on the billboard on the street across from the school?"

3The flagships in the Apollo armada are for-profit colleges, such as Carnegie Learning and University of Phoenix, which derive 90% of their revenue from federally subsidized student loans.

Why Deliver When You Can Expand?

- With rapid expansion of its testing business to make up for lost revenue from the textbook segment, a series of "glitches" have disrupted the contracted tests.

- Widespread disruptions in Indiana in 2012 affected 9,000 students. The CEO personally apologized to the state board of education, assuring the members that it was a one-time glitch. The year after, 70,000 students were kicked out.

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- Oklahoma saw the same pattern of disruptions, assurances, and more problems. In July 2014, the state Board of Education voted unanimously to revoke the contract worth $16,2 million a year. In 2014, Florida, Kansas and Washington reported problems with the company's high-stakes tests.

* *Houghton Mifflin Harcourt told the* Washington Post *that "44 percent represents its 'addressable market share for U.S. instructional resources K-12,' which includes non-Common Core. The company also says it does not offer any high-stakes Common Core assessments." We regret the error.*
In a call to CMD, its spokesperson noted that its earnings report referenced the term CMD used--"higher assessment net sales"--but it is important to clarify that this is not a Common Core test and instead is a term of art for cognitive tests. The company's press release noted that the $13 million in additional revenue is "related to the release of the latest version of the Woodcock Johnson program and higher direct-to-consumer sales." An earlier version of this report also stated that the company's increased revenue was due in part to expanded testing, but should have clarified that the testing referenced was the cognitive assessments mentioned above, as distinct from Common Core test. The text has been amended to reflect this. We appreciate the opportunity to clarify these points.