

September 18, 2014

Dr. Judy Park
Utah State Office of Education

Dear Dr. Park,

Thank you for taking the time to address some of the issues with AIR and SAGE testing. We, especially, appreciate your citations of the contract. In the interest of openness and transparency, we have a point of clarification, as well as some follow-up questions.

To begin, a point of clarification. Your letter is directed to Superintendent Henshaw who communicated some of our concerns about SAGE and AIR to you. In your letter, you indicate that "False, undocumented and baseless allegations need to cease." We wish to clarify that the concerns expressed by Dr. Henshaw were not coming from him, and, as such, your directive would not be to him but to those of us on the board and our constituents who are raising questions, based on our reading of the AIR contract with USOE. Because Dr. Henshaw reports to the Alpine School Board and not the other way around, any directive for Dr. Henshaw to rein in these 'allegations' from his board members or constituents would be inappropriate. We can appreciate that you are troubled by this, but we would recommend that more information and more discussion would be a preferable way of resolving concerns, as opposed to suggesting that concerned representatives and their constituents simply remain silent.

So, in that spirit of openness, we have the following clarifications and follow-up questions.

We begin by addressing the sections of the AIR contract cited in your letter of August 14. It was very much appreciated because these are the same sections of the contract that we have studied. We were hopeful that there would be additional insight. Unfortunately, we did not find any assurance in the pages listed.

I-96 – I-98: This section nicely addresses the physical, network, and software security for the server and test items. However, the only reference to AIR employees, their ability to access or use any data is left to "Utah's public records laws, FERPA, and other federal laws." FERPA, as many know, has been modified by the US Dept of Education to allow for the sharing of data without parental knowledge or consent as long as it can be justified as 'an educational program'. Additionally, FERPA only contains penalties for those entities receiving federal funds. Since Utah is paying directly for SAGE testing, FERPA is a meaningless law in this regard. Additionally, Utah's public records laws appear to only address the openness of public records, but are insufficient when it comes to privacy or use of data, including that of a minor. If there are robust privacy laws in Utah's public records laws, we would appreciate additional citations. Please cite the other federal laws that protect the privacy of our students.

I-61: Addresses the technical protocols for the data transfer, as well as encryption of passwords. Again, this doesn't address those who are given access by AIR to the data for whatever purpose.

I-72 - I-73: Addresses the security of those contractors who will be manually scoring during the pilot testing. This addresses a particular third-party in a particular role, but not AIR as an entity or its employees, other than this particular instance.

I-85 - I-86: Addresses the issues of users and roles for the database and USOE updates. This limits the appropriate access to those of us in Utah, based on whether we are teachers, principals, board members, USOE, etc. Again, this does not address anything about AIR as an entity or its employees.

While all these security precautions are necessary, and we are grateful they are included, they do nothing to address the particular issues that were raised at the August 12, 2014 Alpine School Board Meeting. Some of our concerns are as follows:

- 1) Prior to the Addendum from March, 2014 (for which we are grateful) there was no prohibition on sharing data with a third-party. As indicated, the changes to FERPA would allow AIR to legally share data with a third-party as long as that sharing was for 'an educational program' without parental knowledge or consent. As such, the addendum now allows for that sharing only with the USOE's consent. We are still concerned that parents are not asked to give consent and may not have knowledge of their student's data being shared.
- 2) AIR, itself, is a research firm dedicated to conducting and applying the best behavioral and social science research and evaluation. As such, they are involved with data collection and evaluation. In the contract and addendum cited, there is nothing that prohibits how AIR or its subsidiary organizations may use, query, analyze or access any or all student data from the SAGE tests in Utah. They would have access to many data sets from many entities. They, also, would have multiple on-going research projects. There is no prohibition on what inquiries, research or analysis can be done on the data from SAGE testing. As long as AIR does not profit from the data or share with a third-party without the USOE's consent, the data is managed by AIR and available for access. What are the methods in place to prevent AIR from accessing the data for additional research or analysis? What are the prohibitions on AIR from using even aggregate data for research and analysis? AIR does not need to share the data with a third-party to violate the privacy of a student or set of students. However, since they control and manage the database, there is nothing that would prevent this access.
- 3) There are no prohibitions in the contract regarding behavioral data. While we realize Mr. Cohen has said the contract does not call for gathering or evaluating behavioral data, and that AIR is not inclined to do so, there are, again, no prohibitions or penalties associated with gathering or evaluating behavioral data. State law allows for the use of behavioral data in the year-end testing. So, there are no legal prohibitions on the use or collection of behavioral data. Since behavioral research is the primary mission of AIR, as indicated by its mission statement, it is a concern for parents. If AIR has no desire to collect behavioral data as part of the SAGE testing, it should state so explicitly in a legally-binding manner.
- 4) Many parents have, legally, opted out of SAGE testing for their students. As such, why is AIR receiving any information on these students? Parents feel it a grave violation of their trust by USOE that any data the USOE has received from the schools can be input into the SAGE database, not to mention the State Longitudinal Data System (SLDS). There must, at a minimum, be a way for parents to opt out of all sharing of their student's data with AIR and the SLDS. At what point, if any, will student data be purged from the AIR database? What is the method for demonstrating the data has been properly purged?

Additionally, we appreciate the response of Mr. Cohen to our concerns. Based on his response, we have the following questions.

1. Please list the "express purposes" for which the release, sharing or sale of data is not prohibited, per contract.
2. What third parties are AIR "explicitly permitted by the State of Utah" to provide data to?

3. What research has AIR been requested and directed by the Utah State Office of Education to conduct?
4. What entity (or entities) has AIR been authorized by the State of Utah to release data to?
5. Please list the source of the contract that states that AIR is prohibited from releasing data to the federal government.
6. What entity (or entities) have been designated by the USOE to receive data from AIR?
7. The memo does not address companies owned or operated by AIR, which would not be considered 3rd parties. Please state, per contract, where AIR does not share data within related party entities.

Finally, we have the following questions related to the validity and reliability of the SAGE testing. We understand that this information would not be protected by copyright, and therefore, could be provided to us, as elected officials.

1. Normative Sample details (who took the test).
2. Coefficient Alpha reliability.
3. Content description validity.
3. Differential item functional analysis.
4. Criterion Prediction Validity.
5. Construct Identification Validity.
6. Other types of validity scales/constructs that are applicable only to CAT test designs.

We appreciate the opportunity to discuss this more in the future. As those who are responsible to the parents of this district, we feel it imperative that our concerns are addressed. And, when all is said and done, it is most important that parents have the opportunity to protect whatever student information they feel is necessary. Just because parents decide to educate their children in our public school system does not mean that we, as a state government, are entitled to whatever information about their children we feel is necessary. Parents are still, by state law, primarily responsible for the education and the upbringing of their children. As such, their wishes and their need to protect information on their students is paramount. As members of the Alpine School Board, we must represent the different views and concerns of all the parents in our area. For those who have no concerns, then you may proceed as usual. For those who do have concerns, it is incumbent on us to raise these questions and to obtain the most accurate information possible.

Thank you for your time, and we look forward to more information in the future.

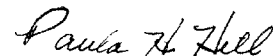
Sincerely,



Brian Halladay
ASD4



Wendy Hart
ASD2



Paula Hill
ASD1