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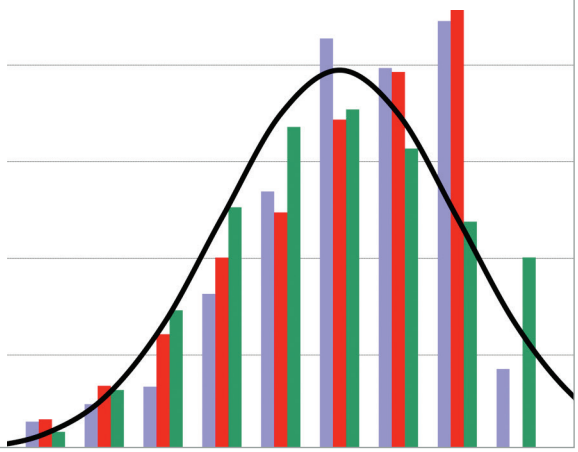

A Review of State Test Security Laws in 2013

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Michelle Croft

Abstract

Test security has increased in importance in the last few years given high-profile cases of educator misconduct. This paper provides a review of state test security statutes and regulations related to statewide achievement testing using as a framework recent best practices reports by the U.S. Department of Education's National Center for Education Statistics (NCES), the National Council for Measurement in Education (NCME), and the Technical Issues in Large Scale Assessment (TILSA) group within the Council of Chief State School Officers. The review indicates that many states have laws related to preventing test security breaches, but few specify detection or investigation methods.

A Review of State Test Security Laws in 2013

During the last decade, student test scores have become more important in K-12 education. Historically, statewide achievement test results largely provided educators, parents, and students information about a student's strengths and weaknesses (Anastasi & Urbina, 1997). Informed by test data and other sources, instruction could be adapted to fit the individual needs of a student. Test scores have moved beyond the traditional use of providing information about a student's strengths and weaknesses to include high-stakes policy-oriented purposes such as school and educator accountability.

States have been using student achievement test scores for school-level accountability for over ten years, at least since the passage of the *No Child Left Behind* (NCLB) reauthorization of the *Elementary and Secondary Education Act* (20 U.S.C. § 6301 et seq.). NCLB required that schools reach certain levels of student proficiency in reading, mathematics, and science, with the goal of every student being proficient by the 2014 school year (20 U.S.C. 6311). Schools failing to meet its state's proficiency standard faced increasingly severe sanctions culminating in the closure of the school or the dismissal of the school's administration (32 C.F.R. Part 200.32-200.34). States now have the option to receive flexibility from the NCLB requirements through the Elementary and Secondary Education Act (ESEA) Waiver Program (U.S. Department of Education, n.d.). The waiver, while eliminating the 2014 proficiency deadline, still requires states to use student achievement information to identify the lowest-performing schools that would be subject to interventions.

The use of test scores for educator accountability has also increased in recent years. In 2011, 20 states required student test scores for teacher evaluation purposes (National Council on Teacher Quality, 2011). The number of states using student scores for teacher evaluation is

expected to increase given the ESEA Waiver Program requirement that states use student achievement data as a part of teacher evaluation (U.S. Department of Education, 2013).

As the importance of test scores has increased, so has the incentive to coach students inappropriately, or to tamper with their responses or scores. In the last few years, reports of educator cheating on standardized tests have been reported by the mainstream media. The cheating scandals, broken by newspapers including the *Atlanta Journal Constitution*, *The Dallas Morning News*, and *USA Today*, have spanned the country: Georgia, Washington, DC, Arizona, California, Ohio, Florida, Michigan, and Philadelphia. The alleged cheating incidents ranged from the actions of individual educators to coordinated efforts by an entire school administration. The consequences for proved violations were severe and included losses of employment and teacher licenses, fines, and damaged reputations. In Atlanta, the state opted to pursue criminal prosecution of the educators involved, and as of January 2014, eight have plead guilty (Niesse & Rankin, 2013; Maxwell, 2014a). In Philadelphia, three high school principals were fired and 130 other educators still face disciplinary actions (Maxwell, 2014b).

Educator cheating is damaging in many ways. Educator cheating undermines the reputation of the education system. Cheating also undermines the ability of test scores to give teachers, parents, and students accurate information about the students' academic achievement, thus making them no longer useful for informing instruction or accountability (NCES, 2013). When cheating occurs, the purposes for carrying out educational assessment are thwarted.

For example, information about schools becomes biased. School-level student achievement data is used for a variety of purposes including: federal accountability, evaluating the effectiveness of educational programs, and providing information to parents making

decisions on where their child should attend school. Without accurate data, decision-making at all levels—parent, school, and federal—is contaminated (NCME, 2012).

Cheating on tests also results in large financial costs (Olson & Fremer, 2013). Investigations into suspected cheating are expensive. The cost for the District of Columbia to hire outside investigators in 2012 was over a quarter of a million dollars (Office of the State Superintendent of Education, 2013). Moreover, creating test items takes years and is expensive. If either operational or piloted items are compromised, they cannot be used for future administrations, and more items will need to be developed to replace those that were lost. In sum, the costs—moral, educational, and financial—of educator misconduct with respect to student testing are high.

The frequency and negative consequences of cheating highlight the difficulty states face regarding test security. Given that testing for accountability is likely to continue, so will the temptation for educators to cheat. Therefore, it is important to understand the legal requirements and implications related to the entire scope of test security practices. The presence of the test security information in statutes and regulations provides a clear message to educators about the importance of test security. Moreover, by examining statutes and regulations, one can obtain a better understanding of states' approaches to test security, because the statutes and regulations provide a stable foundation for the more detailed test security manuals developed by the state department of education. Because the focus of this paper is limited to statutes and regulations, however, it is possible that states are engaging in some test security best practices that are not explicitly defined in statutes and regulations. This paper provides a first step in examining what states are doing to enhance test security.

The purpose of this paper is to locate, identify, and classify state test security statutes and regulations with respect to the best practices identified from: 1) the U.S. Department of Education's National Center for Education Statistics (NCES) 2012 best practice symposium; 2) the National Council for Measurement in Education (NCME); and 3) the Technical Issues in Large-Scale Assessment (TILSA) group within the Council of Chief State School Officers.

Method

To identify the state statutes and regulations, I used the legal database Lexis with the search terms "test or assessment and secure or security and education" during June 2013. For a state where I was unable to find an applicable section using the keywords, the next step depended on whether the state reported having test security "regulations or codes" on the Government Accountability Office (GAO) Test Security survey (GAO, 2013). If a state reported to the GAO that it did have test security regulations or codes, I directly reviewed the state statute and rules pertaining to assessment and teacher certification. In eight cases (Colorado, Connecticut, Iowa, Kansas, Maine, Michigan, Nebraska, and Vermont), I was unable to locate the test security statutes and regulations despite the state's indication to the GAO that it had such laws. It is possible that some of these states had test security statutes and regulations, but the difficulty in locating them indicates that the laws may not provide much guidance to the educators within the states. Alternatively, a state may have interpreted the GAO question to include state policy guidance. Data from states that reported they did not have test security statues or rules were coded accordingly. Test security laws were found in 38 states (Figure 1).

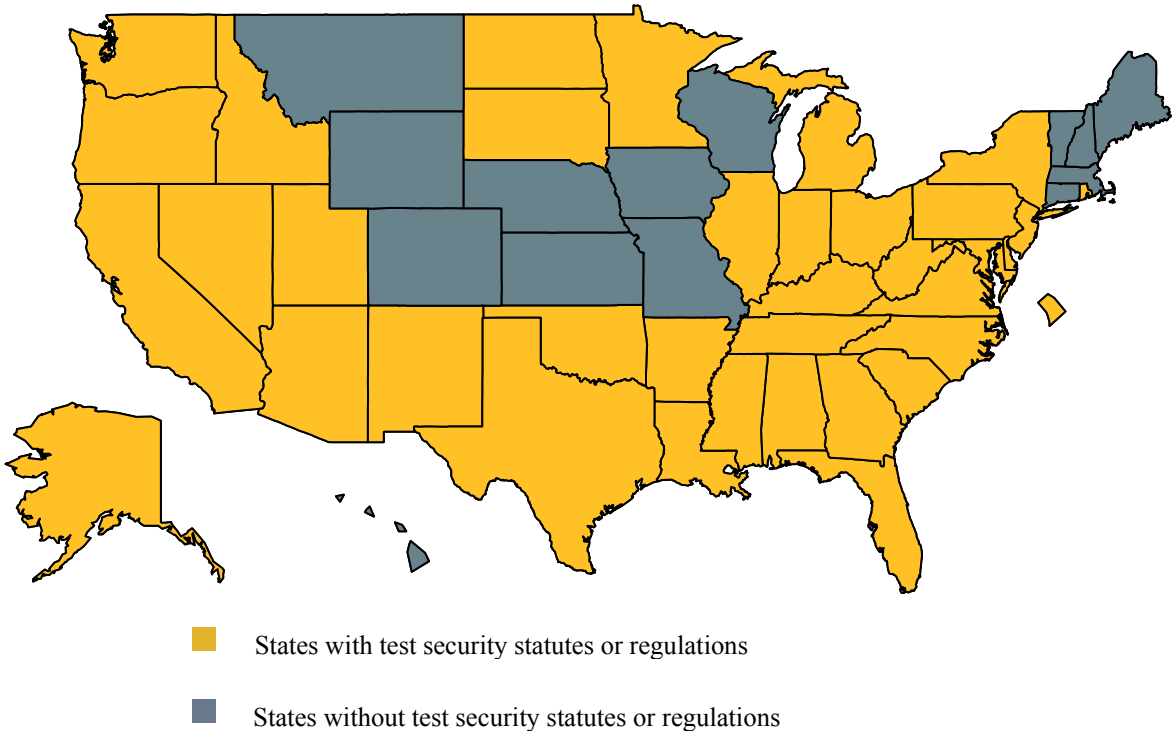

Figure 1. States with statutes or regulations related to test security

Results

Using the NCME, NCES, and TILSA reports, I classified states' statutes and regulations into the three general categories related to test security practices: 1) prevention, 2) detection, and 3) investigation. The following sections discuss each test security practice category individually, and indicate where states' laws address it.

Prevention

Test security policy. Ideally, testing irregularities are prevented. The first step in preventing cheating is to have a comprehensive test security/data integrity policy (NCME, 2012). The policy should include the definition of assessment integrity. A clear definition helps provide educators and students with an understanding of what test security is and specifies activities that are required, recommended, or forbidden. The policy should be clear and cover the

administration of the test, secure storage of testing materials, the protocol for reporting breaches, explanations of methods used to detect irregularities, and sanctions for misconduct (NCES, 2013).

Prevention is characterized by NCES, NCME, and TILSA as the most important component of test security, meaning that if states and districts are able to prevent security breaches, then the detection and investigation components become either unnecessary or less cumbersome. Despite the need for prevention, only a little more than half of the states have test security laws that include some prevention best practices.

Of states with test security laws, approximately half (*n*=17) provide a definition of assessment integrity or test security (Table 1). Some states have extremely detailed definitions that encompass all aspects of testing. For example, Indiana provides explicit definitions for "integrity breach," "security breach," "testing administration breach," and "testing irregularity" (IND. CODE ANN. § 511-5-5-2). Louisiana also provides a clear definition of testing irregularity as "any incident in test handling or administration that leads to a question regarding the security of the test or the accuracy of the test data" (LA. ADMIN. CODE tit 28, § 301). Other states develop a test security definition by outlining the prohibited practices. For instance, Mississippi's definition of test security states that "[i]t is unlawful for anyone knowingly and willfully to do any of the following acts regarding mandatory uniform tests administered to students . . ." and then lists the prohibited practices (MISS. CODE ANN. § 37-16-4).

Table 1

Test Security/Data Integrity Policy

State	Test Security Definition	Appropriate/Inappropriate Practices	Storage
Alabama	Y	Y	Y
Alaska	N	Y	Y
Arizona	N	Y	Y
Arkansas	Y	Y	Y*
California	N	Y	Y
Delaware	Y	Y	Y
Florida	Y	Y	Y
Illinois	N	N	Y
Indiana	Y	N	N
Louisiana	Y	Y	Y
Maryland	Y	Y	Y
Minnesota	N	N	Y
Mississippi	Y	Y	Y
Nevada	Y	N	Y
New Mexico	Y	Y	Y
North Carolina	N	Y	Y
Ohio	Y	Y	Y
Oklahoma	N	Y	Y
Oregon	Y	Y	Y
South Carolina	Y	Y	Y
South Dakota	N	N	Y*
Texas	Y	N	N
Utah	Y	Y	Y
Virginia	Y	Y	N
West Virginia	Y	Y	Y

* State requires district to create storage policies.
Note: This table only includes states with at least one of the data integrity policy elements. See Appendix for a listing of citations.

As the Mississippi definition indicates, some states incorporate listings of appropriate and inappropriate testing practices into the definition of test security. Overall, 19 states explicitly list practices that are appropriate or inappropriate (Table 1). States have differences in the types of practices that were listed. For instance, in New Mexico, disparaging testing or the importance of standardized tests is prohibited (N.M. CODE R. § 6.10.7.11). Likewise, in North Carolina, principals must provide an encouraging and positive atmosphere for testing (16 N.C. ADMIN. CODE 6D.0306). More common prohibited practices are activities such as giving examinees access to the test, copying testing booklets, failing to follow test administration manuals, etc. (See, FLA. STAT. § 1008.24; MISS. CODE ANN. § 37-16-4; LA. ADMIN. CODE tit 28, § 3101).

Finally, a majority of the states with test security laws (*n*=22) detail security procedures related to storage, and one state, Arkansas, requires districts to develop and provide that information to schools (Table 1). States' focus on storage issues is generally associated with paper-and-pencil testing such as placing the materials in locked storage (e.g., MINN. R. 3501.0150); this suggests that states may need to update regulations as they adopt computerized testing. Two states do explicitly reference computerized testing. Oregon requires using a secure internet application, as well as active monitoring by proctors to ensure that students do not leave the website or use software that could compromise the security of the assessment (OR. ADMIN. R. 581-022-0613). Delaware also specifically references computerized administration, including the use of a secure browser (DEL. CODE. ANN. Tit. 14 § 171).

Staff training. Staff should receive training on proper test administration and score interpretation (NCES, 2013; NCME, 2012; Olson & Fremer, 2013). Despite the need for staff training, just over half of the states explicitly require staff training in test security (*n*=20). Like the test security policies, the explicitness of the staff training requirements varies depending on

the state. Some states require annual training (e.g., MD. CODE REGS. 13A.03.04.03); whereas others simply mention that staff training should occur (e.g., ALASKA ADMIN CODE tit. 4 § 06.765).

Overall, approximately seventy percent (*n*=26) of states with test security laws (*n*=38) have specific information about the test security plans and staff training (see Tables 1 and 2). As prevention is a key component to test security, more states should consider providing more detail in their laws in these key areas. Although the prevention information may be included in state education agency manuals, a formal statutory framework would emphasize the importance of test security and the prevention of security breaches.

Table 2

Staff Training

State	Citation
Alabama	ALA. ADMIN. CODE r.290-4-2-.04
Alaska	ALASKA ADMIN. CODE tit. 4 § 06.765 (2013)
California	CAL. CODE REGS. tit.5, § 850 (2013)
Georgia	GA. COMP. R. & REGS. 160-3-1-.07 (2012)
Florida	FLA. ADMIN. CODE ANN. r. 6A-10.042
Illinois	ILL. ADMIN. CODE tit. 23, § 401.145 (2013)
Indiana	511 IND. ADMIN. CODE 5-5-5 (2013)
Louisiana	LA. ADMIN. CODE tit. 28 § 501
Maryland	MD. CODE REGS. 13A.03.04.03 (2013)
Mississippi	36-000 MISS. CODE. R. § 097, Appendix E
Nevada	NEV. REV. STAT. § 389.644 (2013)
New Mexico	N.M. CODE R. § 6.10.7.9 (2013)
North Carolina	16 N.C. ADMIN. CODE 6D.0306 (2013)
Ohio	OHIO ADMIN. CODE 3301:7-01 (2013)
Oklahoma	OKLA. ADMIN. CODE § 210:10-13-21 (2012)
Oregon	OR. ADMIN. R. 581-022-0610 (2013)
South Carolina	S.C. CODE ANN. REGS. 43-262 (2012)
Texas	19 TEX. ADMIN. CODE § 101.3031 (2013)
Utah	UTAH ADMIN. CODE r.27-473-9 (2013)
West Virginia	W. VA. CODE. R. § 126-14-4 (2013)

Detection and Analysis of Irregularities

Preventing test security breaches is ideal, but prevention is not always effective. Thus, it is important to build procedures to detect testing irregularities. NCES recommends that states include an audit process to detect tampering before the test is administered, as well as a post-administration analysis to look for irregularities (NCES, 2013). The audit process for pre-administration irregularities could include identifying if there are missing materials or other signs that the tests or items have been compromised. For instance, a broken test booklet seal is one indicator of a possible security breach. Detection also includes proctors monitoring the test administration and reporting any irregularities.

After administration, officials should do a comprehensive analysis using multiple measures at multiple levels (i.e., district, school, classroom, and/or students) to help identify cheating. Each type of analysis detects different types of cheating behavior. For example, erasure analysis looks at the number of items that were changed from incorrect to correct responses. An unusually high number of wrong-to-right erasures can be an indicator of testing irregularities. The item-response pattern analysis, on the other hand, detects whether there are unusually common response patterns for students who are either within the same class or the same testing session. Unusually common patterns might suggest that students were coached on particular items before the test. Finally, a test-score analysis determines whether there are unusually large gains from year to year (either large gains or large drops in the subsequent year). If a state is conducting a test-score analysis for the first time, a drop could be seen as circumstantial evidence that inappropriate testing practices were taking place. Additional analysis would be necessary, however, to determine whether the score changes were due to other factors such as small sample size or changes in student populations (Sawyer, 2013). The results should only identify those students, classes, schools, or districts where there is strong evidence that further investigation is needed (NCME, 2012). Potential limitations of the statistical analyses are high rates of false positives and/or false negatives: they flag some classrooms where no cheating occurred and do not flag other classrooms where cheating did occur (NCES, 2013).

Whereas the majority of states include prevention-related best practices, few mention the detection of testing irregularities. Only six states include specific methods of detecting testing irregularities in their statutes and regulations. Although more states report general references to detection, the level of detail in the states listed in Table 3 is extremely useful, particularly when highlighting that improprieties may occur at a variety of levels: classroom, school, or district. The explicitness of the types of analyses also serves to put educators on notice that there will be annual audits to ensure the validity of the test scores.

Table 3

Statistical Detection of Testing Irregularities

State	Cite	Type
Louisiana	LA. ADMIN. CODE tit. 28 § 301; LA. ADMIN. CODE tit. 28 § 311	Erasure, common elements in writing
Maryland	MD. CODE REGS. 13A.03.04.07	Improbable test score gains; inappropriate collaboration; or any other situation that may result in the invalidation of test results
Mississippi	MISS. CODE. ANN. § 37-16-4; 36-00-097 MISS. CODE R. § 5.3	Statistical analyses including class, grade, age group, or school district
Oklahoma	OKLA. ADMIN. CODE § 210:10-13-18	Extreme changes in year to year test score, erasure analysis, change in student demographics
South Carolina	S.C. CODE ANN. REGS. 43-100	Improbable gains
West Virginia	W. VA. CODE. R. § 126-14-6	Review counties, schools, and classrooms for wrong to right erasures

Investigations

Whereas the best practices in the previous sections are fairly well established, investigation best practices are still "in their infancy" (NCES, 2013). State laws reflect the novel nature of investigations related to test security breaches.

Processes. One challenge in investigations involving educator cheating is the lag time between testing and identifying suspect scores. Student achievement tests are typically administered in the late spring (April or May). The test contractor often returns preliminary scores to states after school is out of session. After preliminary scores become available, the additional statistical analyses, such as erasure and item pattern analysis, are conducted, creating an additional time delay between testing and identification of the schools that require investigation. Policies that require retaining information about the names of the persons who administered the test, the time and location of administration, which students had which booklet, and seating charts, can aid the investigation (NCME, 2012; NCES, 2013).

Another challenge is creating a system where educators can report irregularities without fear of retaliation. There should be multiple reporting systems including phone, e-mail, letter, fax, or personal conversation. After a tip is received, there should be a secure system in place to ensure that each report is logged, tracked, and reported to the appropriate authorities. Further, whistleblower protections should be developed, particularly for educators to self-report inadvertent errors (NCME, 2012).

Standard for investigations. Once there is a suspected impropriety, the state or district must decide whether the allegation warrants an investigation. NCES (2013) recommends that the bar for triggering investigations be set low so that even hearsay or gossip would merit an investigation.

The next decision is determining the entity responsible for the investigation, and policies should identify which entity is responsible for which types of investigations (NCES, 2013: Olson & Fremer, 2013). For instance, a school may be responsible for conducting its own investigations in matters that do not implicate system-wide security breaches. If the allegations indicate that the misconduct is within the school administration, then it would be more appropriate for the state to conduct the investigation. Likewise, if the allegation or data suggests that the cheating is widespread, trained personnel outside of the school should conduct the investigation. Regardless of whom conducts the investigation, the state education agency and the local education agency should cooperate with one another during the investigation (NCES, 2013) so that a timely report can be produced (NCME, 2012).

Few states have specific information about the investigation procedures (Table 4). Many states specify an affirmative obligation to report misconduct. The level of detail for reporting varies considerably across the states. States like Minnesota provide a general obligation to report (i.e., "school districts shall report any known violations of test security to the department"), but there are not specific procedures such as the time frame for reporting (MINN. R. 3501.0150). Nine states (Delaware, Florida, Louisiana, Mississippi, Nevada, New Mexico, Ohio, Oklahoma, and West Virginia) provide detailed information. Of particular interest is the entity responsible for investigations. In most states, the state education agency maintains authority to investigate. In two states—Mississippi and South Carolina—state law enforcement or the district attorney are responsible for conducting the investigation. Given the expertise of law enforcement and prosecutors in conducting investigations, such a system may be advantageous, depending on their existing caseload.

Table 4

Investigation Procedures and Responsibilities

State	Reporting Breach	Investigation Procedures	Investigation Responsibility	Citation
Alabama	X			ALA. ADMIN. CODE r.290-4-2-.04
Alaska	X			ALA. ADMIN. CODE r. 290-4-2-.04
Arizona	X			ARIZ. ADMIN. CODE § R7-2-310
Arkansas	X			ARK. CODE ANN. § 6-15-438
Delaware	X	X	State	14-1000 DEL. CODE. REGS. § 7.0
Florida	X	X	District or State	FLA. ADMIN. CODE ANN. r. 6A-10.042
Georgia	X			GA. COMP. R. & REGS. 160-3-1-.07
Illinois	X			ILL. ADMIN. CODE tit. 23, § 401.145
Indiana	X			511 IND. ADMIN. CODE 5-5-4
Louisiana	X	X	District or State	LA. REV. STAT. ANN. § 81.6; LA. ADMIN. CODE tit. 28 § 305
Maryland	X		District	MD. CODE REGS. 13A.03.04.06 (2013)
Michigan	X			MCLS 380.1279A AND D

Table 4 (Con't.)

State	Reporting Breach	Investigation Procedures	Investigation Responsibility	Citation
Minnesota	X		State	MINN. R. 3501.0150
Mississippi	X	X	State District Attorney	36-000-097 MISS. CODE. R. Appendix E.
Nevada	X	X	District or State	NEV. REV. STAT. § 389.624; § 389.628; § 389.648
New Mexico	X		State	N.M. CODE R. § 6.10.7.13 (2013)
North Carolina	X			16 N.C. ADMIN. CODE 6D.0306 (2013)
Ohio	X	X	District	Ohio Admin. Code 3301:13-05
Oklahoma	X	X	State	Okla. Admin. Code § 210:10-13-9; § 210:10-13-18
Oregon	X			OR. AMIN. R. 581-022-0610
Pennsylvania	X			22 PA. CODE § 4.51
South Carolina	X		State Law Enforcement Division	S.C. CODE ANN. § 59-1-445(2012)
West Virginia	X	X	District and State	W. VA. CODE R. § 126-14-5; § 126-14-8

Sanctions

After an investigation has uncovered a violation, the state and/or local education agency (LEA) should determine an appropriate sanction. The state and LEA should be clear about what types of sanctions may be imposed for serious infractions (NCES, 2013). The sanctions can range from reprimands to revocation of the educator's license to criminal prosecution. Civil sanctions to recover monetary damages due to loss of intellectual property may also be considered. The sanctions should be fair and appropriate based on the type of infraction (NCME, 2012). For instance, an educator who inadvertently provides an incorrect accommodation to a student should not lose his or her license. An educator who purposefully photocopies a test booklet, however, should be subject to harsher sanctions.

A greater number of states provided information about penalties for violating test security than provided information about methods to detect irregularities or conduct investigations. From state statutes and regulations, there are four categories of penalties: (1) educator, (2) district, (3) civil, and (4) criminal.

Educator penalties. Educator penalties are the most common penalty. Twenty-six states have some type of penalty for educators who committed test security violations. As shown in Table 5, the penalties range from requiring additional professional development, to returning bonuses, to suspension or revocation of certification.

Table 5

Educator Penalties for Test Security Violations

State	Certification	Disciplinary Action	Professional Development	Return Bonuses	Citation
Alabama	X	X			ALA. ADMIN. CODE r.290-4-2-.04
Alaska	X				ALASKA ADMIN CODE tit. 4, § 06.765
Arizona		X			ARIZ. ADMIN. CODE § R7-2-1308
Arkansas	X	X	X		ARK. CODE ANN. § 6-15-438
Delaware	X				DEL. CODE ANN. Tit. 14, § 174
Georgia	X	X		X	GA. COMP. R. & REGS. 505-6-.01
Illinois	X		X		105 ILL. COMP. STAT. ANN 5/21B-75
Indiana	X				511 IND. ADMIN. CODE 5-5-3
Louisiana	X				LA. ADMIN. CODE tit. 28 § 908
Maryland	X	X			MD. CODE REGS. 13A.03.04.07
Minnesota	X				MINN. R. 3501.0150
Mississippi	X				36-000 MISS. CODE. R. § 097, Appendix F
New Mexico	X				N.M. CODE R. § 6.10.7.14
North Carolina	X			X	16 N.C. ADMIN. CODE 6D.0306
North Dakota	X				N.D. ADMIN. CODE 67.1-03-01-03

Table 5 (Con't.)

State	Certification	Disciplinary Action	Professional Development	Return Bonuses	Citation
Ohio	X				OHIO REV. CODE ANN. § 3319.151
Oklahoma	X				OKLA. ADMIN. CODE § 210:10-13-4
Pennsylvania	X	X			22 PA. CODE § 4.51
Rhode Island	X				08-010-012 R.I. CODE R. § 2
South Carolina	X				S.C. CODE ANN. § 59-1-445
Tennessee	X				TENN. CODE ANN. § 49-1-607; TENN. COMP. R. & REGS. 0520-02-04-.01
Texas	X				19 TEX. ADMIN. CODE 249.3; 249.15
Utah		X			UTAH ADMIN. CODE r. 277-473-9
Virginia	X	X			VA. CODE ANN. § 22.1-292.1; 8 VA. ADMIN. CODE § 20-22-710
Washington	X	X			WASH. ADMIN. CODE 181-87-060
West Virginia	X				W. VA. CODE R. § 126-14-7

In states that do not specifically mention test security violations as a reason for taking action against an educator's license, a test security violation may be treated as a violation of the educator code of conduct. For instance, in Colorado, the department of education may "deny, annul, suspend, or revoke [the credential] . . . if the state board finds and determines that the applicant . . . [is] guilty of unethical behavior" (COLO, REV. STAT. § 22-60.5-107).

District penalties. District-level penalties are less common. Only 12 states have penalties in place for districts where testing improprieties occurred (Table 6). One consequence is a warning letter or censure. A school or district's accountability determination and accreditation status can also be changed if testing improprieties are found. Finally, in 6 states, retesting of students may be required if there is an impropriety, generally at the expense of the school. On average, states budget and spend approximately $27 per pupil annually in Grades 3—9 (Chingos, 2012) for testing. Thus, depending on the number of students, retesting could be an unexpected financial burden on district budgets.

Table 6

District Penalties for Test Security Violations

State	Warning/ Censure	Accreditation	Retesting	Accountability Data	Citation
Arkansas	X				ARK. CODE. ANN. § 6-15-438
Louisiana				X	LA. ADMIN. CODE tit. 28 § 3
Maryland	X				MD. CODE REGS. 13A.03.04.07
					36-00-097
Mississippi	X	X		X	MISS. CODE R. § 2.5.1
Nevada			X	X	NEV. REV. STAT. ANN. § 389.636
New Mexico		X	X	X	N.M. CODE R. § 6.10.7.14
North Carolina			X		16 N.C. ADMIN. CODE 6D.0302 (2013)
Oklahoma		X	X	X	OKLA. ADMIN. CODE § 210:10-13-18 (2012)
Oregon			X	X	OR. AMIN. R. 581-022-0610
South Carolina				X	S.C. CODE ANN. REGS. 43-100 (2012)
Virginia		X			8 VA. ADMIN. CODE § 20-131-340
West Virginia			X	X	W. VA. CODE. R. § 126-14-8 (2013).

Civil penalties. Six states (Delaware, Maryland, North Carolina, Oklahoma, Virginia, and West Virginia) specifically permit civil penalties for test security violations (Table 7). Three states do not specifically mention the standard of proof. Of those that do, two—Delaware and Virginia—require that the violation be a "knowing" violation. Maryland only requires the "reasonable person" standard. In states where the penalty allows recovery of costs associated with item or test development, high fines may result, depending on the number of compromised items.

Table 7

Civil Penalties

State	Citation	Standard	Penalty
Delaware	DEL. CODE. ANN. Tit. 14 § 174	Knowing violation	Any costs incurred by the State or Department as a result of the violation
Maryland	MD. CODE REGS. 13A.03.04.07	Reasonable person	Costs incurred as a result of the violation
North Carolina	16 N.C. ADMIN. CODE 6D.0306	Not specified	Not specified
Oklahoma	OKLA. ADMIN. CODE § 210:10-13-9	Not specified	Punitive measures as the Board sees fit
Virginia	VA. CODE Ann. § 22.1-19.1	Knowingly and willfully	Not to exceed $1,000 for each violation
West Virginia	W. VA. CODE R. § 126-14-7; 126-14-8	Not specified	Allows WVBE to enforce copyright laws

Criminal penalties. The lack of a criminal penalty specific to test security does not preclude criminal charges. In Georgia, the Atlanta Public School superintendent and 34 others were charged with 65 criminal counts including one count of violating Georgia's Racketeer Influenced and Corrupt Organizations Act (Carter, 2013). However, having specific test security sanctions is useful, because it provides explicit notice to educators of possible penalties.

Seven states (Florida, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Washington) have criminal penalties for test security violations (Table 8 on page 25). States most often use the "knowingly and willful" standard; however, Florida permits criminal penalties when there is any violation of the test security section. Washington also permits criminal penalties when there is a disclosure of an examination question, regardless of the intentionality of the disclosure.

Overall, states with investigation information focus on the sanctions but provide little information on investigation procedures. Given allegations of wide-spread educator misconduct in certain states, clearly defining the roles and responsibilities of investigations is essential.

Table 8

Criminal Penalties

State	Standard	Type	Penalty	Citation
Florida	"Any person who violates this section"	Misdemeanor	Prison not exceeding 1 year or a fine of $1,000	FLA. STAT. § 1008.24
Louisiana	"knowingly and willfully"	Misdemeanor	Less than $500 or imprisoned for not more than six months, or both.	LA. REV. STAT. ANN. § 17:81.6
Mississippi	"knowing and willful"	Misdemeanor	Less than $1,000 or imprisoned for not more than 90 days.	MISS. CODE. ANN. § 37-16-4
North Carolina	Not specified	Not specified	Not specified	16 N.C. ADMIN. CODE 6D.0306
South Carolina	Not specified	Misdemeanor	Less than $1,000 or imprisoned for less than 90 days, or both.	S.C. CODE ANN. 59-1-445
Texas	Intentionally discloses	Misdemeanor	Less than $500	TEX. EDUC. CODE ANN. § 39.0303

Table 8 (Con't.)

State	Standard	Type	Penalty	Citation
Washington	"Directly or indirectly disclose [or] assist"	Misdemeanor	Between $100 and $500	WASH. REV. CODE ANN. § 28A.635.040

Discussion

For test scores to be useful for their varied purposes, they must be valid measures of students' knowledge and abilities. Test security policies are one step in ensuring that the scores fulfill that function.

Most states are adopting basic prevention approaches based on recommend best practices, at least for paper-and-pencil tests. With states moving towards computerized testing, it is likely that many of the prevention strategies will need to be revisited. For example, less emphasis may be needed on the importance of storage and more emphasis on computer security protocols and browsers. Technical information (such as the types of devices that may be used and the specific browser requirements) is best left to the state test security manuals, but states like Oregon and Delaware provide examples of how states can acknowledge the move towards computerized testing.

In the areas of detection and investigation, more work must be done both in developing best practices and in designing and implementing state policies. Specifying in detail the types of analyses to be used (e.g., erasure, year-to-year gains) and the criteria for investigation, might allow educators to game the detection system (e.g., if they know how large a gain would warrant an investigation). It would be advisable, however, to include statutory or regulatory requirements that analyses be conducted each year. The advantages of such an approach are not only that it provides notice to educators that scores will be examined for inappropriate activity, but it also allocates resources in the state department of education to conduct the analyses. More research is needed to identify best practices regarding who has the authority to conduct investigations. In some states, the authority to investigate is with the district, in others it is with the state department of education, and in others, the state district attorney is responsible. The optimal entity may vary from state to state.

Examining state statutes and regulations is only the first step in understanding state test security policies. Additional research is needed to describe and understand the policies specified in state testing manuals. Testing manuals provide the most direct and specific information regarding the implementation of the state statutes and regulations, and, for some states, the manuals are the only source for test security policy within the state. By examining the manuals we could have a more complete understanding of how states are dealing with test security.

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Appendix

State Test Security Laws

Appendix A-1

Citations for Table 1. Elements of a Test Security/Data Integrity Policy

State	Test Security Definition	Lists Appropriate/ Inappropriate Practices	Storage
Alabama	ALA. ADMIN. CODE r. 290-4-2-.04	ALA. ADMIN. CODE r. 290-4-2-.04	ALA. ADMIN. CODE r. 290-4-2-.04
Alaska	NA	ALASKA ADMIN. CODE tit. 4 § 06.765	ALASKA ADMIN. CODE tit. 4 § 06.765
Arizona	NA	ARIZ. ADMIN. CODE § R7-2-310	ARIZ. ADMIN. CODE § R7-2-310
Arkansas	ARK. CODE ANN. § 6-15-438	ARK. CODE ANN. § 6-15-438	ARK. CODE ANN. § 6-15-438
California	NA	CAL. CODE REGS. Tit. 5, § 1211.5; CAL. CODE REGS. Tit. 5, § 859	CAL. CODE REGS. Tit. 5, § 859; CAL. CODE REGS. Tit. 5, § 1029
Delaware	14 DEL. CODE ANN. tit. 14, § 170	14 DEL. CODE ANN. tit. 14, § 172	14 DEL. CODE ANN. tit. 14, § 171
Florida	FLA. STAT. § 1008.24; FLA. ADMIN. CODE ANN. r. 6A-1.0944	FLA. STAT. § 1008.22 and § 1008.24; FLA. ADMIN. CODE ANN. r. 6A-1.0944	FLA. STAT. § 1008.24; FLA. ADMIN. CODE ANN. r. 6A-1.0944
Illinois	NA	NA	ILL. ADMIN. CODE tit. 23, § 401.145
Indiana	511 IND. ADMIN. CODE 5-5-2	NA	511 IND. ADMIN. CODE 5-5-2
Louisiana	LA. ADMIN. CODE tit. 28 § 301 et. seq.	LA. ADMIN. CODE tit. 28 § 301 et. seq.	LA. ADMIN. CODE tit. 28 § 301 et. seq.

State	Test Security Definition	Lists Appropriate/ Inappropriate Practices	Storage
Maryland	MD. CODE REGS. 13A.03.04.02	MD. CODE REGS. 13A.03.04.05-.06	MD. CODE REGS. 13A.03.04.03
Minnesota	NA	NA	MINN. R. 3501.0150
Mississippi	36-000 MISS. CODE. R. § 097, Appendix F	36-000 MISS. CODE. R. § 097, Appendix F	36-000 MISS. CODE. R. § 097, Appendix F
Nevada	NEV. REV. STAT. ANN. § 389.604 and § 689.608	NA	NEV. REV. STAT. ANN. § 389.616
New Mexico	N.M. CODE R. § 6.10.7.7	N.M. CODE R. § 6.10.7.9	N.M. CODE R. § 6.10.7.9
North Carolina	NA	16 N.C. ADMIN. CODE 6D.0306	16 N.C. ADMIN. CODE 6D.0306
Ohio	OHIO REV. CODE ANN. §3319.151; OHIO ADMIN. CODE 3301:7-01	OHIO ADMIN. CODE 3301:7-01	OHIO ADMIN. CODE 3301:7-05
Oklahoma	NA	OKLA. ADMIN. CODE § 210:10-13-4	OKLA. ADMIN. CODE § 210:10-13-4
Oregon	OR. ADMIN. R. 581-022-0610	OR. ADMIN. R. 581-022-0610	OR. ADMIN. R. 581-022-0610; OR. ADMIN. R. 581-022-0613
South Carolina	S.C. CODE ANN. REGS. 43-100	S.C. CODE ANN. REGS. 43-100	S.C. CODE ANN. REGS. 43-100
South Dakota	NA	NA	S.D. ADMIN. R. 24:43:11:15
Texas	TEX. EDUC. CODE ANN. § 39.0303	NA	NA
Utah	UTAH ADMIN. CODE. r. 277-473-1	UTAH ADMIN. CODE. r. 277-473-9	UTAH ADMIN. CODE. r. 277-473-4
Virginia	VA. CODE ANN. § 22.1-292.1	VA. CODE ANN. § 22.1-292.1	NA

State	Test Security Definition	Lists Appropriate/ Inappropriate Practices	Storage
West Virginia	W. VA. CODE R. § 126-14-5	W. VA. CODE R. § 126-14-8	W. VA. CODE R. § 126-14-7

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