



JUSTIN P. WILSON
Comptroller

JASON E. MUMPOWER
Chief of Staff

MEMORANDUM

TO: Lieutenant Governor Randy McNally

FROM: Comptroller Justin P. Wilson
Chief of Staff Jason E. Mumpower

DATE: February 15, 2018

SUBJECT: Review of ACT, Inc. in Response to the Misadministration of Fall 2017 ACT Retakes at Bearden High School and the Alvin C. York Institute

Handwritten signatures in blue ink for Justin P. Wilson and Jason E. Mumpower.

In response to your request, the Comptroller's Office of Research and Education Accountability (OREA) has researched various factors related to the operations of ACT, Inc., and the misadministration of fall 2017 ACT retakes at Bearden High School and the Alvin C. York Institute. OREA interviewed representatives from Knox County Schools, the York Institute, the Tennessee Department of Education, and ACT, Inc. Tax forms and contracts were also reviewed, as well as testing procedure documents, policies, and information provided by both ACT and Knox County Schools.

OREA's review falls into four areas:

- the misadministration of fall 2017 ACT retakes at Bearden High School and the Alvin C. York Institute,
- ACT contract compliance,
- ACT's nonprofit status, and
- ACT's sale of student information to colleges and universities.

Key points in each of these areas are as follows:

- The 2017 fall retake test misadministration at two Tennessee schools appears to have stemmed from a failure of the schools to correctly communicate their desired test date to ACT. The failure was not promptly corrected because of additional communication missteps by both the schools and ACT. Since then, ACT, Inc. has changed some of its procedures. The changes are designed to reduce the likelihood of similar problems in the future.

- The State of Tennessee Department of Education (TDOE) has a current contract with ACT, Inc. to provide fall ACT retake exams to eligible seniors. The one-year contract was approved for up to \$2,512,800 for 69,800 exams. The state incurred costs of about \$2 million for the 52,000 students who chose to participate. TDOE is responsible for monitoring contract compliance and indicates that it follows the procedures of the state's Central Procurement Office (CPO).
 - A test misadministration would be considered a breach of test procedures rather than a breach of contract.
 - Typically, in a misadministration where the wrong test form is used, ACT offers affected students the opportunity to retake the test at no charge, as it did for Bearden High School and the Alvin C. York Institute following the 2017 misadministration. The opportunity to retake the ACT at no charge following such a misadministration is not, however, included in the terms of the contract.
 - TDOE indicates that as of February 8, 2018, ACT is in compliance with its current state contract. The contract expires on June 30, 2018.

- The Internal Revenue Service (IRS) determined that ACT, Inc. qualifies for tax-exempt status under Internal Revenue code section 501(c)(3). As such, it must operate exclusively for charitable purposes and none of its earnings may inure to an individual. The IRS requires executive compensation at such nonprofits to be “fair and reasonable” but does not define those terms. In determining whether executive compensation is “fair and reasonable,” the IRS looks for documentation of comparable salaries in similar fields, jobs, and organizations, and whether the organization has followed certain procedures in setting executive compensation levels. Based on a review of tax forms, ACT's executive compensation, including bonuses, is comparable to other similar organizations, such as the College Board and the Educational Testing Service. (Position titles and reportable compensation levels for the five highest paid officials at ACT, the College Board, and the Educational Testing Service are provided, beginning on page 7.)

- ACT, Inc. sells student profile information (e.g., academic, demographic, extracurricular and career interests) to colleges, universities, and scholarship organizations for those organizations' recruitment and marketing purposes. ACT prices individual student record data at \$0.42 cents per record, the same rate used by the College Board, which provides similar access to data profiles of SAT test takers. This practice is legal and does not appear to violate federal or Tennessee state laws on student data privacy. Students have the option not to provide most of this profile information to ACT.

See the following pages for a more thorough explanation, including an attached detailed timeline of the Bearden High School misadministration incident.



Detailed Review of ACT Questions

1. Misadministration of October 2017 ACT test retakes at two Tennessee schools

The state test day for fall 2017 retakes was set as October 3 (the initial test date), with an alternative day of October 17 offered (makeup test date). The misadministration stemmed from Bearden High School and the Alvin C. York Institute believing they had signed up for the October 17 test date through ACT's online portal. Instead both schools were automatically signed up for the October 3 test date through the portal's default feature. The actual misadministration occurred when students at the two schools were tested on October 17 using the October 3 test booklet. Different test versions are administered each testing day for security purposes.

At the time of the fall 2017 test registration, ACT's portal was structured so that a school would be automatically scheduled for the initial test date (October 3, in this case) unless the school administrators checked a box indicating they wanted to instead schedule the test for the makeup test date (October 17, in this case). Bearden High School and York Institute believed the box was checked so that the fall 2017 retake was scheduled for October 17, but this was not registered in ACT's online portal, and so the actual scheduled date was instead the default date of October 3. Bearden High School received confirmation from ACT that students had been enrolled for fall retakes, but the confirmation message from ACT did not include the scheduled test date.

Bearden High School received the testing materials shipment from ACT in September 2017 and confirmed receipt through ACT's online portal. ACT procedures require that shipments of test materials (11 boxes total, in Bearden's case) be opened within 24 hours. The Knox County Test Coordinator acknowledges that Bearden's test materials were not opened within 24 hours of receipt because of a belief that the security of the test materials was better protected by keeping the boxes sealed and locked up until closer to the test date.

ACT indicated a bright-colored sheet was included in every box of the testing materials shipment, checked through a barcode system, and confirmed through a packing list, that stated:

Please use these test booklets **only** for the **initial** test day of **October 3, 2017**. If the test booklets in this shipment are used for any other test date or testing period, this will result in a misadministration of the ACT test and examinees will **not** receive scores.¹

Bearden High School and several other Knox County high schools reported not seeing such sheets in their shipments. The Alvin C. York Institute also reported not seeing sheets in its shipment. ACT indicates that it has included such sheets in its shipment for a number of years, although its test procedure guide does not specifically mention them.

After the October 3 test date was missed and completed test materials were not returned, ACT attempted to contact Bearden by phone three times: two attempted phone calls were made during the 2017 fall break for Knox County Schools; the third attempted phone call was made on Monday, October 16. The three attempted phone calls were unsuccessful, and voicemail messages were not left. The Alvin C. York Institute reports that it did not receive any communication from ACT after the missed October 3 test day.

Although it was not possible to confirm through documentation all the points of discrepancy between ACT's and Bearden's outline of events, it seems clear that at several points, communications that could have prevented the misadministration were missed by both parties. (See the attached detailed timeline of the events involving ACT and Bearden High School.)

Since the October 2017 test misadministration, ACT has changed its online system to eliminate the automatic default to the initial testing date. Schools will now be required to make a clear choice between the initial testing date or the makeup testing date. ACT has also indicated it will be more proactive in making contact with a school when a test date has been missed. Further, ACT states that, in looking to improve its process, the organization will begin contacting others, such as the district or the state, if someone at the school cannot be reached.

In addition, the Tennessee Department of Education plans to be more proactive in confirming schools' test scheduling. TDOE is reviewing testing procedure improvements with ACT to prevent a reoccurrence, which may include email confirmation of scheduled test dates with schools and districts.

Schools could likely benefit from annual attention to training materials and testing procedures if the state is going to continue to provide testing at each school site for improved student access to test retake opportunities.

¹ Paul Weeks, Senior Vice President, ACT Client Relations and Scott S. Montgomery, Senior Vice President, ACT Public Affairs, letter and attachment (Test Date Flyer) addressed to Lieutenant Governor McNally, Nov. 29, 2017.

2. Contract Administration

Overview

The Tennessee Department of Education (TDOE) contracted with ACT, Inc. in 2017 for the fall ACT retakes offered to eligible seniors. The state pays the cost for these retakes out of an appropriation line item separate from Basic Education Program (BEP) funding. In 2016, the first year that the state offered to pay for senior retakes, the state purchased vouchers for students to use on a Saturday national test day at designated sites. The process was changed in 2017 to contract for testing on a school day at students' high schools – similar to the state spring ACT test day.

The contract for the spring testing of all eligible juniors is between ACT and each district with a high school. The spring district testing meets the requirements of state law (*TCA 49-6-6001*) that grade 11 students be assessed on their readiness for postsecondary education.

State Contract

ACT's 2017 contract with the state, through TDOE, is in effect from August 15, 2017, through June 30, 2018, and was approved for up to \$2,512,800 (\$36 per exam for up to 69,800 exams) for the distribution, scoring, and data reporting of ACT fall retake test days offered to all eligible seniors. The state actually spent about \$2 million for the 52,000 students who chose to participate.

The contract states that ACT shall provide scoring and processing services, including data reporting, for the assessment for all eligible students who take the assessment, and will also provide reports to both the district and the state. ACT's scoring and processing responsibilities would include determinations of whether students' scores are valid, according to TDOE, since ACT authorizes each school to be a test site with the understanding that all rules and procedures must be followed.

The contract stipulates that ACT is to provide all participating districts with the testing and related materials required to administer the assessment during the period of October 3 through October 17. (Students who are approved to take the ACT with some type of accommodations have a testing window of October 3 through October 17, rather than a single test day.) Among other responsibilities, ACT must provide schools with materials, instructions, and technical support to ensure that districts are able to properly administer the assessment within district schools.

The contract stipulates that ACT is to be familiar with Family Educational Rights and Privacy Act of 1974 (FERPA) requirements and comply with them. Any information provided by the state to ACT or acquired by ACT on behalf of the state that is regarded as confidential under state or federal law is to remain confidential. ACT must also comply with Tennessee's Data Accessibility, Transparency, and Accountability Act (*TCA 49-1-701*) and any accompanying administrative rules to maintain confidentiality of all records containing student and de-identified data, and to use such data only for the purposes of performing the contract duties.

According to the state's Central Procurement Office (CPO), the existing contract with ACT is not subject to requirements for audited financial statements because of its contract classification in the state's system.

TDOE, responsible for monitoring contract compliance, indicates that it follows procedures of the CPO for establishing and managing the contract. It would compare invoices received from ACT against services provided. If issues arise, they are flagged and TDOE consults with CPO as part of the ongoing contract monitoring process.

TDOE confirmed that there are no stipulations in the contract dealing with a test misadministration; a misadministration would be considered a breach of test procedure rather than a breach of contract. As of February 8, 2018, TDOE confirmed that ACT was in compliance with the current state contract and that there were no red flags related to contract compliance.

TDOE noted that misadministration of assessments is not rare, but such incidents are usually isolated and affect a relatively small number of students. Misadministration may happen for a variety of reasons: students' failure to follow procedures, administrative failures, or environmental conditions (such as a fire alarm going off during a test), and may affect only students in one classroom or individual students with approved accommodations, or, as in the case of Bearden and York Institute, all test takers schoolwide.

ACT indicated that using the wrong test forms on the scheduled day is probably at the top of the list of misadministration causes for which there is little leeway to consider extenuating circumstances. In 2017, students at 10 Tennessee schools, as well as schools in 21 districts in Ohio, were affected by a similar misadministration of the spring ACT test, when the wrong test was used for the scheduled test day. In that particular instance, however, ACT scored the tests after identifying conditions that "may have caused confusion in the test administration process."²

Typically, in cases where a wrong test form is administered on the scheduled test day, ACT will offer an opportunity for affected students to retake the test at no charge. This is not included in the contract terms but is offered on ACT's initiative. ACT provided a free retake to students affected by the October 2017 misadministration at Bearden High School and the Alvin C. York Institute.

District Contracts

ACT contracts with each district for the spring test required for juniors, billing districts for the number of assessments they give.

The cost of the tests is covered under the Basic Education Program (BEP) formula allocation. Funding is based on districts' grade 11 enrollment and actual ACT costs. Because TDOE sets up the BEP formula and calculates districts' funding allocations almost a year ahead of when districts actually contract with ACT for spring testing, TDOE uses the ACT assessment cost for

² Catherine Gewertz, "ACT Agrees to Provide Scores for Students Caught in Testing Snafu," *Education Week*, June 5, 2017, http://blogs.edweek.org/edweek/high_school_and_beyond/2017/06/act_agrees_to_provide_scores_testing_snafu.html (accessed Dec. 19, 2017).

national test day assessments at the time it is setting up the formula. National test day costs may vary from the actual price districts contract for the state test day, plus there is a one-year lag.

For the 2017-18 school year, the BEP formula includes \$43.50 for the cost of the ACT (based on an inflation factor applied to the ACT's prior year cost), multiplied by the number of 11th grade students in a district. Tennessee districts are contracting with ACT for \$36.00 per assessment for spring 2018.

Because the BEP allocation calculated by the formula requires a local match, the actual state-funded portion of this particular BEP component is \$32.63 per eligible student statewide, requiring \$10.87 in local funding per eligible student statewide. After the fiscal capacity of the district is calculated, the actual dollars provided by the state may be adjusted further.

Contract provisions include:

- that the district is to administer the assessments in accordance with all policies and procedures provided by ACT and that testing staff must refer to the test administration manual and other manuals provided for each assessment.
- that “ACT may, in its sole and absolute discretion, cancel scores in cases of testing irregularities, which may include without limitation, use of a compromised test form, falsification by an examinee of his/her identity, impersonation of another examinee (surrogate testing), unusual similarities in the answers of examinees at the same test center, or other indicators that the test scores may not accurately reflect the examinee’s level of educational development.”³
- that districts agree that “ACT may use and disclose the data collected from the administration of the assessments, as set forth in ACT’s Privacy Policy.”⁴
- that ACT will communicate directly with designated school staff on deadlines related to the assessments and that district test coordinators are copied on all applicable communications sent to schools. ACT will maintain a Tennessee State Testing webpage to facilitate testing coordinator access to administration manuals, training and documents applicable for the tests.
- that ACT will coordinate directly with school test coordinators to facilitate the test materials ordering process.

3. ACT’s Nonprofit Status

ACT, Inc. is a nonprofit organization incorporated in the state of Iowa that operates with a mission of helping people achieve education and workplace success. Earnings from nonprofit organizations cannot inure to owners or shareholders. Instead, any revenue in excess of expenditures is reinvested into the organization. The Internal Revenue Service (IRS) has

³ Tennessee Spring 2018 ACT District Testing Program, License and Services Agreement between ACT and Knox County Schools, p. 2.

⁴ Ibid.

determined that ACT, Inc. qualifies for tax-exempt status under Internal Revenue code section 501(c)(3). In the fiscal year ending August 31, 2016, ACT employed about 1,600 people.

The IRS allows tax-exempt organizations to pay executives “fair and reasonable” compensation, but it does not define “fair and reasonable.” Generally, organizations set salary and benefit levels based on the same factors considered by for-profit organizations: the market rate to hire personnel with the talent and skills needed by the organization. The IRS most commonly levies fines for violating the fair and reasonable standard, but it also has the power to revoke an organization’s tax-exempt status. The fines are known as “excise taxes” or “intermediate sanctions” and can be levied on both the executive who received the overpayment and the board members who approved it.

When the IRS investigates compensation violations, it looks for documentation of comparable salaries in similar fields, jobs, and organization size as well as documentation of organizations’ processes in setting compensation. Tax-exempt organizations (that are not private foundations) meeting certain criteria are required to file a 990 tax form, which must include a report of compensation paid to officers, directors, trustees, and key employees, plus the five highest-paid employees who are not in those categories and earn more than \$100,000. Organizations must also report whether the process for determining compensation of the chief executive officer and other officers and key employees included “a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision,” and, if so, such process for determining compensation must be described.

ACT indicated on its 2015 Form 990 that it has a process for determining its chief executive officer’s salary but not for other officers or key employees. ACT reported that it used a compensation survey or study, Form 990s of other organizations, an independent compensation consultant, and approval by its board/compensation committee for establishing its CEO compensation. Additional information in ACT’s Form 990 states:

Compensation of the CEO is determined based upon a process that includes contemporaneous documentation and an independent compensation study conducted by a professional firm. Among other benchmarks, the study includes a review of compensation published by similar organizations contained in Form 990. Compensation of the CEO is approved by the board based upon the recommendation of the compensation committee . . . Compensation of all other officers and key employees is established under ACT’s compensation policy. The CEO approves the compensation for all other officers.⁵

⁵ Internal Revenue form 990, 2015, by ACT, Inc., year ending Aug. 31, 2016, Schedule O, Supplemental Information for Part VI, Section B.

In a 2015 *Washington Post* story, an ACT official’s email response to a question about how salaries were set was quoted:

Compensation of the CEO is determined by ACT’s Board of Directors based upon a process that includes periodic compensation studies conducted by an independent consultant. Factors considered in the review process include organizational size, geographic location, the nature of services provided, the level of experience and specific responsibilities of the position considered, and the components of the compensation offered. Based on this review, the Board believes that ACT’s compensation is reasonable.⁶

The five highest-paid officers, directors, and employees listed in ACT’s most current Form 990 available included:

| ACT, Inc. FY ending 8/31/16 | Average hours of work per week | Reportable Compensation from ACT (includes bonus pay) | Other compensation from ACT and related organizations |
|---|-----------------------------------|--|---|
| Jon L. Erickson Former President and COO, Education | 40 | \$736,170 | \$10,894 |
| Jon S. Whitmore Former CEO and Director | 42 | \$704,236 | \$62,590 |
| Richard Patz Chief Measurement Officer | 40 | \$687,483 | \$38,474 |
| Thomas J. Goedken CFO and Treasurer | 50 | \$444,661 | \$58,197 |
| Wayne Camara Senior Vice President | 40 | \$423,886 | \$32,931 |

Source: ACT, Inc., 2015 Form 990, year ending Aug. 31, 2016, pp. 16-19.

ACT reported a total of \$4.3 million in compensation of officers, directors, trustees, and key employees, and a total of \$91 million for all other salaries and wages.

In its Form 990 for fiscal year 2016, ACT reported a board-approved bonus plan for certain leadership employees, allowing them to earn additional compensation based on achievement of organization goals. They are set as a percentage of an individual’s base pay, are capped at a maximum amount, and are discretionary based on performance. Bonuses in fiscal year 2016 were reported for 12 employees, officers, and directors. Four of the five positions listed above received bonus pay, which is included in their reportable compensation from ACT.

⁶ Valerie Strauss, “How much do big education nonprofits pay their bosses? Quite a bit, it turns out,” *Washington Post*, Sept. 30, 2015, https://www.washingtonpost.com/news/answer-sheet/wp/2015/09/30/how-much-do-big-education-nonprofits-pay-their-bosses-quite-a-bit-it-turns-out/?utm_term=.ae20d2d3f231 (accessed Dec. 18, 2017).

For comparison, OREA reviewed the Form 990s for the College Entrance Examination Board, also known as the College Board, and the Educational Testing Service (ETS). The College Board, based in New York, sponsors the SAT college admissions exam, as well as the Advanced Placement program, and several other tests. It is a nonprofit 501(c)(3) membership organization comprising more than 6,000 two- and four-year colleges, universities, higher education systems, secondary schools and districts, plus other nonprofit organizations, and is governed by an elected Board of Trustees.

ETS, based in New Jersey, develops, administers, and scores the SAT and AP exams for the College Board. ETS is a 501(c)(3) nonprofit educational measurement and research organization.

| The College Board CY ending 12/31/15 | Average hours of work per week | Reportable Compensation from College Board (includes bonus pay) | Other compensation from College Board and related organizations |
|--|-----------------------------------|--|--|
| President, CEO, Trustee | 40 | \$742,278 | \$155,655 |
| Senior VP and COO | 40 | \$551,768 | \$59,303 |
| General Counsel | 40 | \$457,123 | \$55,373 |
| VP of Business Applications | 40 | \$419,841 | \$42,797 |
| Chief of Global Policy & Advocacy | 40 | \$404,359 | \$41,542 |

Source: College Entrance Examination Board, Form 990, year ending Dec. 31, 2015, pp. 13-18.

The College Board reported employing about 1,600 employees during calendar year 2015, and compensation of its officers, directors, trustees, and key employees totaled \$4.7 million.

| Educational Testing Service (ETS) CY ending 12/31/15 | Average hours of work per week | Reportable Compensation from ETS (includes bonus pay) | Other compensation from ETS and related organizations |
|--|-----------------------------------|--|---|
| President | 40 | \$1,216,906 | \$37,926 |
| Senior VP and CFO | 40 | \$788,576 | \$47,790 |
| Senior VP & General Counsel | 40 | \$744,082 | \$45,693 |
| President of Institute for Student Achievement | 40 | \$640,817 | \$39,114 |
| Senior VP of Production & Delivery | 40 | \$601,534 | \$38,216 |

Source: Educational Testing Service, Form 990, year ending Sept. 30, 2016, pp. 16-21.

ETS reported employing about 30,000 employees during the fiscal year ending September 30, 2016, and compensation of its officers, directors, trustees, and key employees totaled \$16.7 million.

4. ACT's Selling of Student Information to Colleges and Universities

ACT collects a variety of academic, demographic, career plan, and extracurricular information from students through its Educational Opportunity Service when they take the ACT test. Most of this data is optional for students to provide; students are asked to indicate their agreement for ACT to share this information with colleges, universities, and scholarship organizations. Those organizations, in turn, use the data for recruiting and marketing purposes. ACT sets agreements with approved organizations (for example, colleges and universities must be accredited) and restricts them to using the data only for their own purposes; the approved organizations cannot share the data with others.

ACT prices individual student record data at \$0.42 cents per record, the same rate as the College Board, which provides similar access to data profiles of SAT test takers. ACT states that the approved organizations cannot access specific ACT scores for students, but can search the data by score ranges, along with all the other student profile data collected. ACT also sells anonymized data on groups of ACT test takers to higher education institutions. Revenues from sales of data to these institutions is a small percentage of revenues compared to those from providing the assessments, according to ACT.

ACT's contracts for spring testing with the districts stipulate that ACT may use and disclose data collected from the administration of the assessments, as set forth in ACT's Privacy Policy. The privacy policy states, "ACT honors your preferences with regard to sharing your personally identifying information with other organizations for their marketing purposes."⁷

As noted earlier in the section on contracts, the state's contract for fall retakes includes language that ACT will abide by Tennessee's Data Accessibility, Transparency, and Accountability Act (*TCA 49-1-701 et seq.*). While that law prohibits an "operator" from using information "to amass a profile about a student" and prohibits selling or renting students' information, the definition of "operator" and certain exceptions in the law do not appear to raise any compliance issues for ACT.

ACT's website provides information on how colleges can use their student profile data:

- Specify search criteria using a wide variety of student geographic, personal, and academic characteristics
- Receive real-time volume estimates for the populations you specify
- Acquire needed data to build a successful freshman class
- Download selected records immediately.⁸

⁷ ACT Privacy Policy, last updated March 31, 2015, p. 2, <https://www.act.org/content/act/en/privacy-policy.html> (accessed Jan. 30, 2018).

⁸ ACT, Inc., "Putting EOS to Work," <https://www.act.org/content/act/en/products-and-services/act-enrollment-management-services/act-educational-opportunity-service/putting-eos-to-work.html> (accessed Dec. 18, 2017).

Fall 2017 ACT Misadministration: Timeline

ACT

Bearden High School

July 26

An ACT training webinar was conducted for district test coordinators. This training included information on how to access and use the Manage Participation Screen in Pearson Access. (Registration was sent July 14 via email.)

August 3

An ACT training webinar was conducted for school test coordinators, which included the same content provided in the July 26 webinar. (Registration was sent July 28 via email.)

August 9

All test coordinators in Tennessee were provided information via email on how to verify the student information in the Manage Participation screen in Pearson Access. This information generates the initial order for ACT materials. This is the screen that prompts districts to indicate whether they plan to test on the makeup test date. Districts were told the deadline to verify student information and testing material orders was August 25, 2017.

August 21

A project coordinator at ACT notified the district test coordinator for Knox County Schools that **Bearden High School** had not updated information in the Manage Participation screen in Pearson Access.

August 22

The ACT State and District Testing Team sent an email reminding districts to verify student enrollment information through Pearson Access. Districts were again reminded that the deadline to verify student information and testing material orders was August 25, and informed that once the deadline passed, exam materials would be automatically shipped.

August 23

According to ACT's records, Bearden's school testing coordinator went to the Manage Participation screen and clicked the "submit participation details" button, signifying that the information displayed was correct.

- The Manage Participation screen does not display or prompt users to select between two test dates. The screen contains one box under a heading titled "Not Testing on the Initial Test Date?" that users are prompted to check if their school "will be testing all standard time paper examinees during makeup testing."
- According to the screen shot provided by ACT, Bearden's school test coordinator did not check the box indicating that Bearden planned to test during makeup testing.
- Under an old procedure that has since been changed, all schools that did not check the box were automatically defaulted to test on October 3, and were sent tests by ACT for October 3.

August 25

ACT set this date as the deadline for districts to verify student information and testing material orders in the Manage Participation Screen in Pearson Access.

September 11

District test coordinators were informed via email that exam materials would be arriving soon (either the week of the 11th or the week of the 18th depending on the administration date). This email specified that, for districts testing on the makeup day of October 17, 2017, the "initial shipment will only contain non-secure materials. Your secure test materials will arrive the week listed on your Schedule of Events." This email also directed school personnel to check testing materials in with ACT within 24 hours.

Week of September 18

Bearden High was scheduled to receive ACT testing materials for the October 3 administration.

September 19

According to ACT's records, Bearden accessed the Pearson portal and indicated that the school received 10 boxes of testing material, followed by a final box of nonsecure testing materials at a later, unspecified date (for a total of 11 boxes).

September 20

ACT scheduled an appointment for FedEx to pick up testing materials from Bearden on October 4, one day after the October 3 test was scheduled. The normal process is for FedEx to call prior to pick up, and if materials are not available, the appointment will be cancelled.

October 4

ACT scheduled pick up of Bearden's testing materials with FedEx. Materials were not picked up.

October 12

ACT made its first phone call to Bearden inquiring about the missing October 3 tests but left no message.

October 13

ACT made a second phone call to Bearden inquiring about the missing October 3 tests but left no message.

October 16

ACT made a third phone call to Bearden inquiring about the missing October 3 tests but left no message.

October 17

ACT has no record of scheduling a pick up for October 18. The return packaging materials allow schools to ship materials back with FedEx on any date.

November 9

ACT denied the Tennessee Department of Education's appeal to score tests from the October 17 misadministration.

November 15

ACT denied a personal appeal from Commissioner McQueen to reconsider its decision.

August 18

The district test coordinator for Knox County offered school test coordinators an optional training on how to access and use the Manage Participation Screen in Pearson Access.

August 21

The district test coordinator confirmed the email from the project coordinator at ACT. According to the district test coordinator, in addition to notifying the district about Bearden's failure to update the Manage Participation Screen, the email stated that "TDOE is monitoring this very closely."

August 22

The district test coordinator emailed the Bearden school testing coordinator, who is also the assistant principal, and stated, "Please make sure your date is changed."

August 23

Bearden's school test coordinator emailed a Knox County Schools assessment specialist, stating that she was finished updating the page and wrote, "I think I have done what needs to be done for the Friday deadline. If I haven't covered all the steps, just let me know."

Later in the day, the assessment specialist responded to the school testing coordinator via email informing her that Bearden still needed to complete the Manage Completion Status page and "Submit Participation Details."

August 24

After completing the changes, the school test coordinator again emailed the district assessment specialist and wrote that the process was complete.

August 25

The school test coordinator received confirmation from Pearson that the registration process was complete.

September 19

According to Bearden's school testing coordinator, all Knox County schools received all testing materials on this date, three weeks earlier than expected. Despite ACT's policy, the testing team did not unpack the materials within 24 hours.

October 4

The Bearden testing team opened the boxes containing testing material and followed all other check in procedures according to the ACT manual. Bearden's five-person testing team reported not seeing the bright colored sheet indicating the test materials were only to be used for the initial test day of October 3.

Week of October 9-13

All Knox County Schools were on fall break.

October 16

Knox County Schools reopen following fall break. Due to the volume of students testing (450) and the early start time (9:00 a.m.), the Bearden testing team prepared tests the evening of the 16th, not the day of the administration, as directed in ACT's testing manual.

October 17

Bearden High School administered the October 3 ACT.

Bearden's school test coordinator called ACT about a missing "header," and ACT did not acknowledge that Bearden was testing on the incorrect date.

The school testing coordinator also indicated receiving a call from ACT verifying the pick up of materials on October 18.

October 18

FedEx picked up test materials from Bearden.

October 27

Knox County Schools was made aware of the misadministration.

November 1

Knox County Schools consulted with the Tennessee Department of Education and submitted documentation to TDOE. TDOE filed an initial appeal with ACT.

November 15

Commissioner McQueen appealed directly to ACT to reconsider its decision.