



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

RACHEL POMERANTZ
DIRECTOR
NEW YORK OFFICE

March 17, 2022

Sent via email only to: XXXXXXXXXXXXXXXXXXXXXXXX

Jeremy Singer
President
The College Board
250 Vesey Street
New York, New York 10281

Re: Case No. 02-21-2173
College Board

Dear President Singer:

This letter is to notify you of the determination made by the U.S. Department of Education (the Department), Office for Civil Rights (OCR) regarding the complaint filed against the College Board. The Complainant alleged that the College Board discriminates on the basis of age by not permitting students under age 13 to take the SAT.

OCR enforces the Age Discrimination Act of 1975 (the Age Discrimination Act), 42 U.S.C. § 6101 *et seq.*, and its implementing regulation at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age in programs and activities receiving financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the College Board is subject to the Age Discrimination Act.

The regulation implementing the Age Discrimination Act, at 34 C.F.R. § 110.10, provides that persons may not, on the basis of age, be excluded from participation in, denied the benefits of, or be subjected to discrimination in programs operated by recipients of Federal financial assistance; however, the regulation, at 34 C.F.R. § 110.12, states that a recipient is permitted to take an action otherwise prohibited by 34 C.F.R. § 110.10 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity.

In its investigation, OCR interviewed the Complainant and College Board staff. OCR also reviewed documentation that the Complainant and the College Board submitted. OCR made the following determinations.

The Complainant alleged that the College Board discriminates on the basis of age by not allowing students under age 13 to register for the SAT. In support of the allegation, the Complainant stated that on XXXXXXXX XX, 2021, the College Board website stated that students under 13 could not take the SAT.¹ The Complainant also stated that when she attempted to use the College Board's online registration process for the SAT, she could not create an online account for her son (who is younger than 13), and the College Board does not offer an alternative to the online SAT registration process for students under age 13. The Complainant asserted that when she contacted the College Board by telephone to inquire about SAT registration for her son, the College Board representative informed her that the College Board prohibited students under 13 from taking the SAT.

The College Board informed OCR that any individual who wishes to take the SAT for its intended purpose of using the score to apply to post-secondary institutions may register for the SAT, including students under age 13. The College Board offers the SAT on various weekend dates (SAT Weekend) throughout the year.² Any individual over the age of 13 can register for the SAT Weekend on the College Board's website by creating an online account, completing a registration form with demographic information and desired testing dates/locations, uploading their photo, and paying the registration fee. However, the College Board asserted that it cannot permit creation of online accounts for children under 13 on its website pursuant to regulations governing children's privacy.³ Instead, it is College Board's practice to allow students under 13 to register for the SAT Weekend by telephone, by providing information to a College Board customer service representative, who then completes the test registration for the student.

According to College Board staff, when an individual attempts to create an online account on behalf of a student under age 13 to register for the SAT Weekend, a generic notification appears stating that the registration could not be completed and to contact the College Board customer service by telephone at the number provided for further information. The College Board's website does not otherwise include any information to indicate that students under 13 are permitted to take the SAT Weekend if they register by telephone through College Board customer service instead of online. The College Board asserted that its customer service representatives are trained upon hiring and periodically thereafter, to complete the registration process for the SAT Weekend for students under 13 over the telephone. However, when OCR staff called the College Board customer service number on three occasions on XXXXXXXXXXXX XX, 2021, three different customer service representatives advised OCR staff that students under 13 could not register for the SAT. On XXXXX XX, 2022, OCR staff again called the College Board customer service number, and a customer service representative stated that a student under 13 could not register for

¹ <https://collegereadiness.collegeboard.org/sat/register/special-circumstances/younger-students> (site last visited March 4, 2022). The webpage has been updated and does not include a reference to students under 13. It includes information on how to register for the SAT with accommodations, request Sunday testing, or join a waitlist for test registration.

² SAT testing is also available on school days (SAT School Day) by signing up directly with a participating school/qualifying entity. For the SAT School Day, there is no advance registration process through the College Board.

³ See, Children's Online Privacy Protection Act (COPPA), 15 U.S.C. 6501-6508, and its implementing regulation at 16 C.F.R. Part 312, which govern the collection of personal information from children by websites or online services. OCR notes that the COPPA regulation permits the collection of this information subject to certain notice requirements and safeguards.

the SAT Weekend by telephone but must submit a paper registration by mail. Data OCR reviewed indicated that during 2020, the College Board permitted 2,017 students under age 13 to register for the SAT Weekend, and during 2021, it permitted 1,113 students under age 13 to register for the SAT Weekend.

Prior to the completion of OCR's investigation, on March 14, 2022, the College Board signed the enclosed resolution agreement to resolve the compliance concerns OCR identified with regard to the College Board's registration process for students under age 13. Pursuant to the resolution agreement, the College Board will post a notice on its website stating that students under the age of 13 may register for the SAT, including the SAT Weekend, and provide instructions for doing so; review the registration processes for any other exams for which online registration is limited for students under age 13, and ensure that notice regarding applicable registration processes are posted on any relevant webpage. The College Board will also provide training to all its customer service representatives and any other relevant College Board staff regarding the College Board's SAT registration process for students under age 13, including clarifying that students under 13 may register for the SAT Weekend, and providing instructions regarding the applicable registration process. OCR will monitor the implementation of the resolution agreement. Upon the College Board's satisfaction of the commitments made under the resolution agreement, OCR will close the case.

This concludes OCR's investigation of the complaint and should not be interpreted to address the College Board's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

The Complainant has the right, pursuant to the regulation implementing the Age Discrimination Act, at 34 C.F.R. § 110.39, to file a civil action for injunctive relief in federal court following the exhaustion of administrative remedies. Administrative remedies are exhausted if: (1) 180 days have elapsed since the Complainant filed the complaint with OCR, and OCR has made no finding, or (2) OCR issues any finding in favor of the College Board. A civil action can be brought only in a United States district court for the district in which the College Board is found or transacts business. A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but these costs must be demanded in the complaint filed with the court. Before commencing the action, the Complainant shall give 30 days' notice by registered mail to the Secretary of the Department of Education, the Secretary of the Department of Health and Human Services, the Attorney General of the United States, and the College Board. The notice shall state the violation of the Age Discrimination Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the Complainant prevails. The Complainant may not bring an action if the same alleged violation of the Age Discrimination Act by the College Board is the subject of a pending action in any court of the United States.

Please be advised that the College Board must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint against the College Board with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Erin M. Greene, Compliance Team Attorney, at (646) 428-3870 or erin.greene@ed.gov; Jessica Daye, Compliance Team Investigator at (646) 428-3812 or jessica.daye@ed.gov; Félice A. Bowen, Compliance Team Leader at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Rachel Pomerantz

cc: Jill Green, Esq.
Steven Pereira, Esq.