

# EXHIBIT E

1:14-cv-00857-TSC-DAR

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

AMERICAN EDUCATIONAL RESEARCH ) ASSOCIATION, INC., AMERICAN ) PSYCHOLOGICAL ASSOCIATION, INC., ) and NATIONAL COUNCIL ON ) MEASUREMENT IN EDUCATION, INC., )	)	Civil Action No. 1:14-cv-00857-CRC
Plaintiffs,	)	<b>PLAINTIFFS' INITIAL</b>
v.	)	<b>DISCLOSURES PURSUANT TO</b>
PUBLIC.RESOURCE.ORG, INC.,	)	<b>FED. R. CIV. P. 26(a)(1)</b>
Defendant.	)	

Plaintiffs, American Educational Research Association, Inc. (“AERA”), American Psychological Association, Inc. (“APA”), and National Council on Measurement in Education, Inc. (“NCME”) (collectively, “Plaintiffs”), by and through their attorneys, hereby submit the following initial disclosures to Defendant, Public.Resource.Org, Inc. (“Public Resource”), pursuant to Fed. R. Civ. P. 26(a)(1). Plaintiffs submit these Initial Disclosures based upon information they have acquired to date. Plaintiffs reserve their right, consistent with Fed. R. Civ. P. 26(e), to modify, amend, and/or supplement these disclosures as additional evidence and information becomes available.

**I. Identities of Individuals Likely To Have Knowledge Of Discoverable Information Who May Be Used To Support The Disclosing Party’s Claims Or Defenses<sup>1</sup>**

Plaintiffs submit the following names of individuals likely to have discoverable information that Plaintiffs may use to support their claims and/or defenses, and the subjects of the information believed to be known by these individuals:

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<sup>1</sup> For purposes of this proceeding, all individuals identified in these Disclosures are being represented by counsel for Plaintiffs and may be contacted only through Plaintiffs’ counsel.

1. Person: Felice Levine, Ph.D., Executive Director  
Company: AERA  
Address: 1430 K Street, NW, Suite 1200, Washington, D.C. 20005  
Telephone: (202) 238-3200

Dr. Levine is expected to testify regarding the publication, marketing, sales, and Plaintiffs' copyright ownership in the *Standards for Educational and Psychological Testing* (1999 ed.) (the "1999 Standards").

2. Person: Marianne Ernesto, Director for Testing and Assessment  
Company: APA  
Address: 750 First Street, NE, Washington, D.C. 20002  
Telephone: (202) 336-6000

Ms. Ernesto is expected to testify regarding the availability of the 1999 Standards and the use of those Standards by practicing psychologists relating to matters of testing and assessments.

3. Person: Laress L. Wise, Ph.D., President  
Company: NCME  
Address: 20 Ragsdale Drive, Suite 260, Monterey, CA 93940  
Telephone: (831) 647-1004

Dr. Wise is expected to testify regarding the availability of the 1999 Standards and the use of those Standards by individuals involved in aspects of educational measurement relating to matters of testing and assessments.

4. Person: Diane L. Schneider, Ph.D., Senior Human Capital Consultant  
Company: pdri  
Address: 3000 Wilson Boulevard, Suite 250, Arlington, VA 22201  
Telephone: (703) 276-4680

Dr. Schneider is expected to testify regarding the process of creating the 1999 Standards, including the selection of the members of the Joint Committee and the role of the Joint Committee in preparing the 1999 Standards.

5. Person: Wayne J. Camara, Ph.D., Senior Vice President, Research  
Company: ACT, Inc.  
Address: 101 ACT Drive, Iowa City, IA 52243  
Telephone: (319) 337-1869

Dr. Camara is expected to testify regarding the development of the 1999 Standards, the availability of the 1999 Standards and the use of those Standards by practicing psychologists relating to matters of testing and assessments.

6. Person: Carl Malamud, President and Founder  
Company: Public.Resource.Org, Inc.  
Address: 1005 Gravenstein Highway. North, Sebastapol, CA 95472  
Telephone:(707) 827-7290

Mr. Malamud is expected to testify regarding Public Resource's knowledge that the 1999 Standards were and are subject to copyright protection. Mr. Malamud also is expected to testify regarding Public Resource's knowledge that the 1999 Standards were replicated in digital format for the purpose of publishing them online. Mr. Malamud further is expected to testify regarding Public Resource's publishing of the 1999 Standards online at <https://law.resource.org/pub/us/cfr/ibr/001/aera.standards.1999.pdf>, as well as Public Resource's knowledge that The Internet Archive had published the 1999 Standards online at <https://archive.org/details/gov.law.aera.standards.1999>.

7. Person: Corporate Representative from The Internet Archive  
Company: The Internet Archive (Archive.Org)  
Address: 300 Funston Avenue, San Francisco, CA 94118  
Telephone: (415) 561-6767

The Corporate Representative from The Internet Archive is expected to testify regarding The Internet Archive's knowledge that the 1999 Standards were and are subject to copyright protection. The Corporate Representative is also expected to testify regarding The Internet Archive's knowledge that the 1999 Standards were available at a website under Public Resource's control and that The Internet Archive obtained the 1999 Standards from Public Resource's website and published them at <https://archive.org/details/gov.law.aera.standards.1999>.

## **II. Documents And Things In The Possession Of Counsel Or The Party That May Be Used To Support The Disclosing Party's Claims Or Defenses**

Plaintiffs identify the following categories of documents and tangible things in its possession, custody, or control that Plaintiffs may use to support their claims and/or defenses:

1. *Standards for Educational and Psychological Testing* (1999 ed.);
2. 1999 Copyright Certificate of Registration for Registration Number TX 5-100-196;
3. 2014 Corrected Copyright Certificate of Registration for Registration Number TX 6-484-609;
4. Select documents pertaining to the preparation of the 1999 Standards;
5. Select documents pertaining to the advertisement of the 1999 Standards;
6. Select documents pertaining to the revenue generated from sales of the 1999 Standards;

7. Portions of Public Resource's website <https://law.resource.org/pub/us/cfr/ibr/001/aera.standards.1999.pdf>, when a full copy of the 1999 Standards was available online.
8. Portions of <https://archive.org/details/gov.law.aera.standards.1999>, when a full copy of the 1999 Standards was available online.
9. Select documents establishing Plaintiffs' ownership of the Standards.

These categories of documents are located at the offices of Oblon, Spivak, McClelland, Maier & Neustadt, L.L.P., counsel for Plaintiffs, and/or at the facilities of Plaintiffs. Plaintiffs also believe that documents in the possession, custody, or control of Public Resource, and/or third parties, such as The Internet Archive, may be relevant to the facts and issues in this case.

The identification of the documents above is without any waiver of any right to object to the production of any document or item pursuant to privilege, work product, or any other rule or law that limits the discoverability of documents and physical materials.

Plaintiffs will either (1) subject to a reciprocal agreement with Public Resource, provide Public Resource with copies of the above-identified documents, or (2) make the above-identified documents available for inspection and/or copying at a time and place that is mutually agreeable between Plaintiffs and Public Resource.

Plaintiffs reserve the right to identify and/or produce additional materials in the future. Plaintiffs expressly reserve the right to identify and to rely upon additional materials if, during the course of discovery and investigation relating to this case, Plaintiffs learn that such additional materials are relevant to Plaintiffs' claims.

### **III. Statement of Basis for Any Damages Claimed**

Plaintiffs have not made a claim for damages in this action; however, Plaintiffs reserve the right to seek recovery of attorneys' fees and costs incurred in connection with this action.

#### IV. Insurance Agreements

Plaintiffs are unaware of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of any judgment which may be entered in this action against Plaintiffs or to indemnify or reimburse Plaintiffs for payments made to satisfy said judgment. Plaintiffs reserve the right to supplement this response if additional information becomes available.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT,LLP

/s/ Jonathan Hudis

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Attorneys for Plaintiffs

AMERICAN EDUCATIONAL RESEARCH  
ASSOCIATION, INC.  
AMERICAN PSYCHOLOGICAL  
ASSOCIATION, INC.  
NATIONAL COUNCIL ON  
MEASUREMENT IN EDUCATION, INC.

Dated: October 1, 2014  
{431384US, 11006079\_1.DOCX}

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 1, 2014 a copy of the foregoing **PLAINTIFFS'**  
**INITIAL DISCLOSURES PURSUANT TO FED. R. CIV. P. 26(a)(1)** was served via e-mail  
on the following counsel for Defendant:

Andrew P. Bridges  
FENWICK & WEST LLP  
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1530 P Street NW  
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815 Eddy Street  
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Counsel for Defendant  
PUBLIC.RESOURCE.ORG, INC.

*/s/ Jonathan Hudis*  
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Jonathan Hudis