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Open Source America's Operating System

"It's Not Just A Good Idea—It's The Law!"

December 19, 2013

John Neikirk
Director of Publications
American Educational Research Association
1430 K Street, NW, Suite 1200
Washington, DC 2005

Dear Mr. Neikerk:

I am receipt of your communication of December 16 regarding the publication of the AERA publication, "Standard for Educational and Psychological Testing" (1999) at <https://law.resource.org/pub/us/cfr/ibr/001/aera.standards.1999.pdf>. We are responsible for uploading this document. In addition, you will find this document at <https://archive.org/details/gov.law.aera.standards.1999>.

The 1999 Edition of "Standard for Educational and Psychological Testing" was Incorporated by Reference by the Department of Education, Office of Postsecondary Education, at **34 CFR 668.148(a)(1)(iv)**. Incorporation by reference is not a casual affair and requires a carefully followed procedure by the governmental agency and the explicit approval of the Director of the Office of the Federal Register.

As this standard has been incorporated into law, the standard contained in this document is the law of the United States, and people in the United States are compelled to obey it. Long-standing precedent of the United States Supreme Court holds that copyright claims cannot prevent citizens from reading and speaking the law. See *Wheaton v. Peters*, 33 U.S. 591 (1834); *Banks v. Manchester*, 128 U.S. 244 (1888).

While the standards drafted by the American Educational Research Association, were entitled to copyright protection when issued, once they were incorporated into regulations these standards became the law, and thus have entered the public domain. Chief Judge Edith H. Jones of the 5th Circuit expressed this principle clearly in her opinion in *Veck v. Southern Building Code Congress*, which concerned a model building code incorporated in the law of two Texas towns:

"The issue in this en banc case is the extent to which a private organization may assert copyright protection for its model codes, after the models have been adopted by a legislative body and become "the law." Specifically, may a code-

writing organization prevent a website operator from posting the text of a model code where the code is identified simply as the building code of a city that enacted the model code as law? Our short answer is that as law, the model codes enter the public domain and are not subject to the copyright holder's exclusive prerogatives. As model codes, however, the organization's works retain their protected status." 293 F.3d 791 (5th Cir. 2002) (en banc).

As you can see by looking at the document in question, a cover sheet has been prepended clearly spelling out the section of the Code of Federal Regulations that has incorporated by reference this document into law. Please note that we were careful to only publish the specific document incorporated by law. As the 1999 Edition is the one required by law and as it has been duly incorporated into law, we respectfully decline to remove this document and respectfully decline to request permission.

Sincerely yours,



Digitally signed by Carl
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