

# EXHIBIT NN

Case No. 1:14-cv-00857-TSC-DAR



AMERICAN  
PSYCHOLOGICAL  
ASSOCIATION



April 7, 2000

Ms. Jill Morningstar, Legislative Assistant  
U. S. Senator Paul Wellstone  
136 Hart Senate Office Building  
Washington, DC 20510

Dear Jill:

We very much appreciate your seeking the endorsement of the American Psychological Association (APA) for the bill introduced by Senator Wellstone this week on Fairness and Accuracy in Student Testing. We wanted to get back to you quickly with an interim response about the Association's views.

As we mentioned on the phone earlier this week, APA is not in a position to endorse the bill at this time. APA policy on this issue is guided by *The Standards for Educational and Psychological Testing*, the 1999 version of which was developed over a six-year period with the American Educational Research Association and the National Council on Measurement in Education. While we are drafting a more comprehensive response for the Senator, we wanted to let you know the general areas of our concerns. First, we believe that the most fair and appropriate way to approach the problems Senator Wellstone seeks to address is to investigate high stakes decision-making in educational settings, how such decisions are informed, and the impact on educational outcomes. The critical issue is not tests, *per se* (provided they are valid, reliable instruments) but rather the instances wherein they and other measures of accountability (i.e. grades), are used inappropriately in making these decisions. Second, the bill appears to misstate the intent of both the *Standards* and the National Academy of Sciences (NAS) report by holding tests for tracking, retention and graduation to the same standard. The NAS study and the *Standards* treat those uses differently. Both documents treat graduation tests as certification tests, and do not prohibit assigning them determinative weight, but offer recommendations for implementing them fairly.

We understand the Senator wants to offer this amendment to the Elementary and Secondary Education Act soon and would appreciate APA's assistance in doing so. Regrettably, APA has not yet adopted a policy that goes beyond the *Standards* to address the issues of how high stakes decision-making in schools affects education and educational outcomes more broadly, particularly for certain groups of children. Accordingly, it would be impossible for us to offer you language that the Association could endorse within your timeframe. However, we would welcome the opportunity to work with you on your Plan B: an amendment to authorize specific evaluation research that would provide additional needed information about the impact of high stakes decision-making on the educational opportunities of different populations of children, and on the educational system more generally. The NAS report and other sources point to significant gaps in the data. We hope to provide specific draft language to you late next week.

Again, we appreciate your willingness to work with us. Senator Wellstone has been a champion of many of the issues most important to psychologists, and we are grateful to him.

Sincerely,

A handwritten signature in cursive ink that reads "Ellen Garrison".

Ellen G. Garrison, Ph.D.  
Director of Public Interest Policy

750 First Street, NE  
Washington, DC 20002-4242  
(202) 336-5500  
(202) 336-6123 TDD

A handwritten signature in cursive ink that reads "Pat Kober".

Patricia C. Kober  
Director of Science Policy

Web: [www.apa.org](http://www.apa.org)

106TH CONGRESS  
2D SESSION

S. \_\_\_\_\_

IN THE SENATE OF THE UNITED STATES

Mr. WELLSTONE introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

**A BILL**

To provide for fairness and accuracy in student testing.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. FAIRNESS AND ACCURACY IN STUDENT TEST-**  
4       **ING.**

5       (a) **FINDINGS.**—Congress finds the following:

6           (1) The use of large-scale achievement tests in  
7       education has grown significantly in recent years.  
8       States and local school districts have increasingly  
9       used these tests in such contexts as raising student  
10      academic standards to make high-stakes decisions  
11      with important consequences for individual students,

1       such as tracking (assigning students to schools, pro-  
2       grams, or classes based on achievement level), pro-  
3       motion of students to the next grade, and gradu-  
4       ation of students from secondary school.

5       (2) The serious and often adverse consequences  
6       resulting from the sole or determinative reliance on  
7       large-scale tests have increasingly resulted in ques-  
8       tions and significant concerns by students, parents,  
9       teachers, and school administrators about how to en-  
10       sure that such tests are used appropriately and in  
11       a manner that is fair.

12       (3) In 1997, Congress directed the National  
13       Academy of Sciences to "conduct a study and make  
14       written recommendations on appropriate methods,  
15       practices, and safeguards to ensure that, among  
16       other things, ... existing and new tests that are used  
17       to assess student performance are not used in a dis-  
18       criminatory manner or inappropriately for student  
19       promotion, tracking, or graduation."

20       (4) In 1999, the National Academy of Sciences,  
21       through its National Research Council, completed its  
22       study and issued a report entitled 'High Stakes:  
23       Testing for Tracking, Promotion and Graduation'.  
24       Guided by principles of measurement validity, attri-  
25       bution of cause, and effectiveness of treatment, the

1        National Research Council made key findings for ap-  
2        propriate test use in educational settings, including  
3        the following:

4                (A) When tests are used in ways that meet  
5        relevant psychometric, legal, and educational  
6        standards, students' scores provide important  
7        information, that combined with information  
8        from other sources, can lead to decisions that  
9        promote student learning and equality of oppor-  
10        tunity.

11               (B) Tests are not perfect. Test questions  
12        are a sample of possible questions that could be  
13        asked in a given area. Moreover, a test score is  
14        not an exact measure of a student's knowledge  
15        or skills.

16               (C) To the extent that all students are ex-  
17        pected to meet world-class standards, there is a  
18        need to provide world-class curricula and in-  
19        struction to all students. However, in most of  
20        the Nation, much needs to be done before a  
21        world-class curriculum and world-class instruc-  
22        tion will be in place. At present, curriculum  
23        does not usually place sufficient emphasis on  
24        student understanding and application of con-  
25        cepts, as opposed to memorization and skill

1 mastery. In addition, instruction in core sub-  
2 jects typically has been and remains highly  
3 stratified. What teachers teach and what stu-  
4 dents learn vary widely by track, with those in  
5 lower tracks receiving far less than a world-  
6 class curriculum.

7 (D) Problems of test validity are greatest  
8 among young children, and there is a greater  
9 risk of error when such tests are employed to  
10 make significant decisions about children who  
11 are less than 8 years old or below grade 3, or  
12 about their schools. However, well-designed as-  
13 sessments may be useful in monitoring trends  
14 in the educational development of populations  
15 of students who have reached age 5.

16 (5) The National Research Council made the  
17 following recommendations:

1 and into educational programs for principals,  
2 administrators, public officials, and others.

3 (B) A test may appropriately be used to  
4 lead curricular reform, but it should not also be  
5 used to make high-stakes decisions about indi-  
6 vidual students until test users can show that  
7 the test measures what they have been taught.

15 (D) In general, large-scale assessments  
16 should not be used to make high-stakes deci-  
17 sions about students who are less than 8 years  
18 old or enrolled below grade 3.

19 (E) High-stakes testing programs should  
20 routinely include a well-designed evaluation  
21 component. Policymakers should monitor both  
22 the intended and unintended consequences of  
23 high-stake assessments on all students and on  
24 significant subgroups of students, including mi-

✓ rewrite  
as NAS  
report  
disaggregated

1 minorities, English-language learners, and stu-  
2 dents with disabilities.

3 (6) These principles and findings of the Na-  
4 tional Academy of Sciences are supported in signifi-  
5 cant measure by the Standards for Educational and  
6 Psychological Testing, adopted and approved in De-  
7 cember of 1999, by the leading experts and profes-  
8 sional organizations on testing, including the Amer-  
9 ican Educational Research Association, American  
10 Psychological Association, and the National Council  
11 on Measurement in Education.

12 (b) TEST PERFORMANCE.—If performance on a  
13 standardized test is considered as part of any decision  
14 about the retention, graduation, tracking, or within-class  
15 ability grouping of an individual student by a State edu-  
16 cational agency or local educational agency that receives  
17 funds under the Elementary and Secondary Education Act  
18 of 1965, such test performance shall not be the sole deter-  
19 minant in such decision and may be considered in making  
20 such decision only if—

21 (1) the test meets professional standards of va-  
22 lidity and reliability for the purpose for which the  
23 test's results are being used, including the validity  
24 and reliability of any cut score or performance  
25 standard set or established for use on the test;

14 (4) students tested have been provided multiple  
15 opportunities to demonstrate proficiency in the sub-  
16 ject matter covered by the test;

17 (5) the test is administered in accordance with  
18 the written guidance from the test developer or pub-  
19 lisher;

20 (6) the State educational agency or local edu-  
21 cational agency has evidence that the test is of ade-  
22 quate technical quality for each purpose for which  
23 the test is used;

24 (7) the State educational agency or local edu-  
25 cational agency provides appropriate accommoda-

1       tions and alternate assessments for students with  
2       disabilities that provide the students with a valid op-  
3       portunity to show what they know and can do;

4               (8) the State educational agency or local edu-  
5        cational agency provides appropriate accommoda-  
6        tions for students with limited English proficiency,  
7        including—

8                       (A) if such a student is tested in English,  
9        the student received academic instruction pri-  
10       marily in English for at least 3 years prior to  
11       the test, or if the student received instruction in  
12       English for more than such 3 years, the local  
13       educational agency determines that the student  
14       has achieved sufficient English proficiency to  
15       ensure that the test will accurately measure the  
16       student's subject matter knowledge and skills;

17                       (B) in the case of students with limited  
18        English proficiency who have not been taught  
19        primarily in English for 3 years prior to the  
20        test, such students are assessed, to the greatest  
21        extent practicable, in the language and form  
22        most likely to yield accurate and reliable infor-  
23        mation about what those students know and  
24        can do; and

### 11 (c) EVALUATIONS.—

(1) STATE EDUCATIONAL AGENCIES.—Each State educational agency that receives funds under the Elementary and Secondary Education Act of 1965 and uses a standardized test as part of a high stakes decision described in subsection (b), shall conduct a comprehensive evaluation of the impact of the test's use on students' education and educational outcomes, with particular consideration given to the impact on individual students and subgroups of students disaggregated by socioeconomic status, race, ethnicity, limited English proficiency, disability, and gender. The State educational agency shall make the results of the evaluation available to the public and shall provide clear and comprehensible information

2102

18:29 18/08/2008

AERA APA NCME 0031825

1       about the nature, use, and interpretation of the test  
2       and the scores the test generate.

3                   (2) LOCAL EDUCATIONAL AGENCY.—Each local  
4        educational agency that receives funds under the El-  
5        ementary and Secondary Education Act of 1965,  
6        uses a standardized test as part of a high stakes de-  
7        cision described in subsection (b), and is located in  
8        a State that does not conduct an evaluation under  
9        paragraph (1), shall conduct a comprehensive eval-  
10      uation of the impact of the test's use on students'  
11      education and educational outcomes, with particular  
12      consideration given to the impact on individual stu-  
13      dents and subgroups of students disaggregated by  
14      socioeconomic status, race, ethnicity, limited English  
15      proficiency, disability, and gender. The local edu-  
16      cational agency shall make the results of the evalua-  
17      tion available to the public and shall provide clear  
18      and comprehensible information about the nature,  
19      use, and interpretation of the test and the scores the  
20      test generate.

21                   (3) DEPARTMENT OF EDUCATION.—The Sec-  
22      retary shall—

23                   (A) conduct an evaluation similar to the  
24      evaluation described in paragraph (1) among a

11

1           representative sample of States and local edu-  
2           cational agencies;

3           (B) report the results of such evaluation to  
4           Congress; and

5           (C) make the results of the evaluation  
6           available to the public.

7           (d) DEFINITION OF STANDARDIZES TEST.—In this  
8           section the term “standardized test” means a test that  
9           is administered and scored under conditions uniform to  
10          all students so that the test scores are comparable across  
11          individuals: