

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.,)
))
Plaintiffs,)
))
v.)
))
PUBLIC.RESOURCE.ORG, INC.,)
))
Defendant.)

Civil Action No. 1:14-cv-00857-TSC-DAR

**DECLARATION OF LAURESS
L. WISE IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND ENTRY
OF A PERMANENT INJUNCTION**

I, LAURESS L. WISE, declare:

1. I am the Immediate Past President of the National Council on Measurement in Education, Inc. ("NCME"). I have been a member of this organization for approximately 30 years. I previously was the President of NCME from April 2014 through April 2015, and Vice President of this organization from April 2013 through April 2014. I submit this Declaration in support of the motion of the American Educational Research Association, Inc. ("AERA"), the American Psychological Association, Inc. ("APA"), and the NCME (collectively, "Plaintiffs" or "Sponsoring Organizations") for summary judgment and the entry of a permanent injunction.

2. I also am a principal scientist with the Human Resources Research Organization ("HumRRO"), spending full time on research and evaluation projects relating to educational measurement. I previously served as HumRRO CEO for 13 years, combining management and research activities and, before that, directed research and development for the Armed Services Vocational Aptitude Battery for the Department of Defense. Before that I spent 16 years as a researcher for the American Institutes for Research, rising to the position of Director of Research. I am also a member of both AERA and APA.

3. NCME is a District of Columbia not-for-profit corporation.

4. NCME is a professional organization for individuals involved in assessment, evaluation, testing, and other aspects of educational measurement. NCME's members are involved in the construction and use of standardized tests; new forms of assessment, including performance-based assessment; program design; and program evaluation.

5. In 1955, AERA and NCME prepared and published a companion document to APA's "Technical Recommendations for Psychological Tests and Diagnostic Techniques" (published in 1954), entitled "Technical Recommendations for Achievement Tests."

6. Subsequently, a joint committee of the three organizations modified, revised and consolidated the two documents into the first Joint Standards. Beginning with the 1966 revision, the Sponsoring Organizations collaborated in developing the "Joint Standards" (or simply, the "Standards"). Each subsequent revision of the Standards has been careful to note that it is a revision and update of that document.

7. Beginning in the mid-1950s, the Sponsoring Organizations formed and periodically reconstituted a committee of experts in psychological and educational assessment, charged with the initial development of the Technical Recommendations and then each subsequent revision of the (renamed) Standards. These committees were formed by the three organizations' Presidents (or their designees), who would meet and jointly agree on the membership. Often a chair or co-chairs of these committees were selected by joint agreement. Beginning with the 1966 version of the Standards, this committee became referred to as the "Joint Committee." For example, I was the co-chair of the Joint Committee for the 2014 edition of the Standards.

8. Financial and operational oversight for the Standards' revisions, promotion,

distribution, and for the sale of the 1999 and 2014 Standards has been undertaken by a periodically reconstituted Management Committee, comprised of designees of the three Sponsoring Organizations.

9. All members of the Joint Committee(s) and the Management Committee(s) are unpaid volunteers. The expenses associated with the ongoing development and publication of the Standards include travel and lodging expenses (for the Joint Committee and Management Committee members), support staff time, printing and shipment of bound volumes, and advertising costs.

10. Many different fields of endeavor rely on assessments. The Sponsoring Organizations have ensured that the range of these fields of endeavor is represented in the Joint Committee's membership – *e.g.*, admissions, achievement, clinical counseling, educational, licensing-credentialing, employment, policy, and program evaluation. Similarly, the Joint Committee's members represent expertise across major functional assessment areas – *e.g.*, validity, equating, reliability, test development, scoring, reporting, interpretation, large scale interpolation and cognitive behavioral therapy.

11. From the time of their initial creation to the present, the preparation and periodic revisions to the Standards entail intensive labor and considerable cross-disciplinary expertise. Each time the Standards are revised, the Sponsoring Organizations select and arrange for meetings of the leading authorities in psychological and educational assessments (known as the Joint Committee). During these meetings, certain Standards are combined, pared down, and/or augmented, others are deleted altogether, and some are created as whole new individual Standards. The 1999 version of the Standards is nearly 200 pages, and took more than five years to complete – resulting from work put in by the Joint Committee to generate a set of best

practices on educational and psychological testing that are respected and relied upon by leaders in their fields.

12. The Standards originally were created as principles and guidelines – a set of best practices to improve professional practice in testing and assessment across multiple settings, including education and various areas of psychology. The Standards can and should be used as a recommended course of action in the sound and ethical development and use of tests, and also to evaluate the quality of tests and testing practices. Additionally, an essential component of responsible professional practice is maintaining technical competence. Many professional associations also have developed standards and principles of technical practice in assessment. The Sponsoring Organizations' Standards have been and still are used for this purpose.

13. The Standards, however, are not simply intended for members of the Sponsoring Organizations, AERA, APA, and NCME. The intended audience of the Standards is broad and cuts across audiences with varying backgrounds and different training. For example, the Standards also are intended to guide test developers, sponsors, publishers, and users by providing criteria for the evaluation of tests, testing practices, and the effects of test use. Test user standards refer to those standards that help test users decide how to choose certain tests, interpret scores, or make decisions based on tests results. Test users include clinical or industrial psychologists, research directors, school psychologists, counselors, employment supervisors, teachers, and various administrators who select or interpret tests for their organizations. There is no mechanism, however, to enforce compliance with the Standards on the part of the test developer or test user. The Standards, moreover, do not attempt to provide psychometric answers to policy or legal questions.

14. The Standards promote the development of high quality tests and the sound use of

results from such tests. Without such high quality standards, tests might produce scores that are not defensible or accurate, not an adequate reflection of the characteristic they were intended to measure, and not fair to the person tested. Consequently, decisions about individuals made with such test scores would be no better, or even worse, than those made with no test score information at all. Thus, the Standards help to ensure that measures of student achievement are relevant, that admissions decisions are fair, that employment hiring and professional credentialing result in qualified individuals being selected, and patients with psychological needs are diagnosed properly and treated accordingly. Quality tests protect the public from harmful decision making and provide opportunities for education and employment that are fair to all who seek them.

15. The Standards apply broadly to a wide range of standardized instruments and procedures that sample an individual's behavior, including tests, assessments, inventories, scales, and other testing vehicles. The Standards apply equally to standardized multiple-choice tests, performance assessments (including tests comprised of only open-ended essays), and hands-on assessments or simulations. The main exceptions are that the Standards do not apply to unstandardized questionnaires (*e.g.*, unstructured behavioral checklists or observational forms), teacher-made tests, and subjective decision processes (*e.g.*, a teacher's evaluation of students' classroom participation over the course of a semester).

16. The Standards have been used to develop testing guidelines for such activities as college admissions, personnel selection, test translations, test user qualifications, and computer-based testing. The Standards also have been widely cited to address technical, professional, and operational norms for all forms of assessments that are professionally developed and used in a variety of settings. The Standards additionally provide a valuable public service to state and

federal governments as they voluntarily choose to use them. For instance, each testing company, when submitting proposals for testing administration, instead of relying on a patchwork of local, or even individual and proprietary, testing design and implementation criteria, may rely instead on the Sponsoring Organizations' Standards to afford the best guidance for testing and assessment practices.

17. The Standards were not created or updated to serve as a legally binding document, in response to an expressed governmental or regulatory need, nor in response to any legislative action or judicial decision. However, the Standards have been cited in judicial decisions related to the proper use and evidence for assessment, as well as by state and federal legislators. These citations in judicial decisions and during legislative deliberations occurred without any lobbying by the Plaintiffs.

18. NCME has never communicated with Congress for the purpose of encouraging the enactment of the Standards into law.

19. Additionally, NCME has never solicited any government agency to incorporate the Standards into the Code of Federal Regulations or other rules of Federal or State agencies.

20. In the policymaking arena, NCME believes the Standards should be treated as guidelines informing the enactment of legislation and regulations consistent with best practices in the development and use of tests – to insure that they are valid, reliable and fair.

21. The Sponsoring Organizations promote and sell copies of the Standards via referrals to the AERA website, at annual meetings, in public offerings to students, and to educational institution faculty. Advertisements promoting the Standards have appeared in meeting brochures, in scholarly journals, and in the hallways at professional meetings. Accompanying this Declaration as Exhibit KKK is a true copy of advertisements for the 1999

Standards published in NCME's Journal of Educational Management. These advertisements were produced at Bates Nos. AERA_APA_NCME_0031444-0031451.

22. Distribution of the Standards is closely monitored by the Sponsoring Organizations. AERA, the designated publisher of the Standards, sometimes does provide promotional complementary print copies to students or professors. Except for these few complementary print copies, however, the Standards are not given away for free; and certainly they are not made available to the public by any of the three organizations for anyone to copy free of charge.

23. To date, NCME has never posted, or authorized the posting of, a digitized copy of the 1999 Standards on any publicly accessible website.

24. Without receiving at least some moderate income from the sales of the Standards to offset their production costs and to allow for further revisions, it is very likely that the Sponsoring Organizations would no longer undertake to periodically update them, and it is unknown who else would.

25. In late 2013 and early 2014, the Sponsoring Organizations became aware that the 1999 Standards had been posted on the Internet without their authorization, and that students were obtaining free copies from the posting source. Upon further investigation, the Sponsoring Organizations discovered that Public Resource was the source of the online posting.

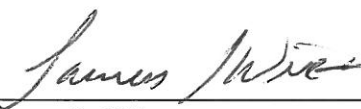
26. Public Resource posted Plaintiffs' 1999 Standards to its website and the Internet Archive website without the permission or authorization of any of the Sponsoring Organizations.

27. Plaintiffs have been made aware that at least some of those users who obtained the 1999 Standards for free from Public Resource did so to avoid paying the modest sale price for authorized print copies.

28. Accompanying this Declaration as Exhibit LLL is a true copy of an e-mail dated March 5, 2014 from Gregory J. Cizek to me regarding a student not purchasing the 1999 Standards because “they [were] available for free online” at <https://law.resource.org/pub/us/cfr/ibr/001/aera.standards.1999.pdf>.” This e-mail exchange was marked as Exhibit 1252 during my deposition.

I DECLARE, under the penalty of perjury, that the foregoing is true and correct.

Dated: December 9, 2015



Laress L. Wise

EXHIBIT 1

LAURESS L. WISE

Curriculum Vitae

OVERVIEW

Dr. Lauress Wise has over 35 years' experience in educational research and continues extensive work on educational policy and assessment issues. Dr. Wise currently advises several states and the PARCC assessment consortium on technical issues in test development and use. He serves on the Board of the National Council of Measurement in Education as the immediate past-president. He is also serving on a National Research Council Committee that is evaluating the NAEP achievement levels. He recently co-chaired the panel that revise the AERA/APA/NCME *Standards for Educational and Psychological Testing* and previously chaired the National Academy of Sciences Board on Testing and Assessment. Recent research and development efforts include a 15-year independent evaluation of the California High School Exit Exam and quality assurance work for the National Assessment of Educational Progress (NAEP). Dr. Wise previously served on several National Research Council committees, chairing the Committees on Scientific Research in Education and the Evaluation of the National Voluntary Tests.

EDUCATION

Ph.D. , Mathematical Psychology	1975	University of California, Berkeley
B.S. , Mathematics, Psychology (with Distinction)	1967	Stanford University

AREAS OF EXPERTISE

- | | |
|-----------------------------------|---------------------------------------|
| • Test Development and Validation | • Project Management |
| • Program and Policy Evaluation | • Statistical and Psychometric Issues |
| • Test Use Policy | • Computer-Based Testing |

PROFESSIONAL EXPERIENCE

Human Resources Research Organization **1994 - 2015**
Principal Scientist

- Served as HumRRO's president from 1994 to 2007. Remained active in research on testing and test use policy. Directed two major HumRRO educational testing projects, one to provide quality assurance for the National Assessment of Educational Progress (NAEP) and the other an independent evaluation of California's High School Exit Exam (CAHSEE). He continues to serve as a senior psychometric advisor for a graduate school admissions testing program.
- Served as co-chair of the committee that revised the 1999 AERA/APA/NCME Standards for Educational and Psychological Testing, and has previously served as Chair of the National Academy of Science (NAS) Board on Testing and Assessment and chaired the NAS Committee on Research in Education.
- Currently serves on technical advisory committees for the Hawaii, Wyoming, Utah, Tennessee, and Virginia departments of education, and the Partnership for Assessing

Readiness for College and Career (PARCC) advisory committees. Also serves on the Rhode Island Technical Advisory Committee for Teacher Evaluation.

- Served as co-Principal Investigator on the first year of the Congressionally-mandated evaluation of President Clinton's Voluntary National Tests and chaired the NAS committee that performed the second year of that evaluation, and on the NAS committee to evaluate the NAEP and on the National Academy of Education's Panel for the Evaluation of the NAEP Trial State NAEP.
- Other work includes vertical alignment of state content standards, modeling the effects of motivation on examinee performance on low-stakes assessments, the impact of changes in exclusions on NAEP results for Kentucky, and scaling constructed response and multiple choice items on the Florida assessment. Dr. Wise also worked on the development and validation of a computer-administered assessment now used for selection of air traffic controllers and developed a computer-based system for assessing work values as part of a Department of Labor effort to develop improved career guidance tools.

Defense Manpower Data Center

1990 - 1994

Chief, Personnel Testing Division

- Spokesperson for the Department of Defense on matters relating to the development and use of cognitive tests. Dr. Wise's unit was responsible for all research and development for the Armed Services Vocational Aptitude Battery (ASVAB).
- Work included evaluation and implementation of a computerized, adaptive version of the ASVAB, automated item and form development procedures, new career exploration procedures for use with the high school testing program, the development and testing of a new career interest inventory, and extensive validity research.

American Institutes for Research (AIR)

1974 - 1990

Associate Research Scientist to Director of Research

- Directed a variety of studies and projects, including the Review and Analysis of the General Aptitude Test Battery (GATB) Project for the U.S. Employment Service within the Department of Labor, the Army Synthetic Validation Project, the Army's Computerized Adaptive Screening Test (CAST) Revision Project, and validation studies for the Software Engineering Institute at Carnegie Mellon University.
- Served as director of analysis for the Army's massive Project A, analyzing new selection tests, developing models of performance in a variety of jobs, and assessing the validity of each new test for predicting different facets of performance in different jobs.
- Served for twelve years as the chief psychometrician for the Medical College Admissions Test, developing procedures for the screening and calibration of new items and for the construction and equating of new forms. Also consulted with the Department of Education on issues related to testing and data analysis as part of the Statistical Analysis Group in Education.
- From 1978 to 1982, served as Director of Project TALENT, a nationally representative longitudinal study of nearly 400,000 members of the high school classes of 1960 through 1963. Oversaw the collection of the final wave of follow-up data and conducted targeted research on issues such as gender differences in mathematics achievement, school differences in student achievement, the development of careers in science and medicine, and the consequences of adolescent childbearing.

University of California

Programmer and Instructor

- While a graduate student at the University of California, Dr. Wise served as the computer consultant for the Psychology Department, helping both faculty and students in the design and execution of data analyses. He also taught an undergraduate course in Psychological Statistics.

California Department of Public Health

1968 - 1972

Computer Programmer and Data Processing Systems Analyst

- Created data systems to support licensing functions and vital statistics systems at the Department of Public Health. Was in-house project manager for a new management information system that involved defining "outputs" for each bureau and department and relating these outputs to costs.

PROFESSIONAL AFFILIATIONS AND SERVICE

- American Educational Research Association (AERA)
- American Psychological Association (APA)
 - Divisions 5, 14, 19
- Member, National Council on Measurement in Education (NCME)
- Psychometric Society

SELECTED BIBLIOGRAPHY

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Presentations

Wise, L. L. (2015). *The Standards for Educational and Psychological Tests: Implications for Peer Review of State Assessments*. Workshop for state testing directors at the National Conference on Student Assessment, San Diego, CA.

Wise, L. L. (2015). *Psychometric Considerations for the Next Generation of Performance Assessment: What are the implications for state assessment programs?* Paper presented at the National Conference on Student Assessment, San Diego, CA.

Wise, L. L. (2015). *Educational Measurement: What lies ahead?* Presidential address to the annual meeting of the National Council on Measurement in Education. Chicago, IL.

Wise, L. L. (2015). *Psychometric Considerations for the Next Generation of Performance Assessment: Modeling, Dimensionality, and Weighting of Performance Task Scores*. Paper presented at the annual meeting of the National Council on Measurement in Education, Chicago, IL.

Wise, L. L. (2015). *Test Design and Development Following the Standards for Educational and Psychological Testing*. Presentation to the annual meeting of the National Council on Measurement in Education. Chicago, IL.

Wise, L.L. (2013). *Different but Comparable: Good enough for government work?*. Paper presented at the annual meeting of the National Council on Measurement in Education. San Francisco, CA.

Wise, L.L. (2012). *Combining multiple indicators of achievement and growth*. Paper presented at the annual meeting of the National Council on Measurement in Education. Vancouver, BC.

Wise, L.L. (2012). *Prior linking efforts: The best laid plans* Paper presented at the annual meeting of the National Council on Measurement in Education. Vancouver, BC.

Wise, L.L. (2012). *Revising our Standards for Educational and Psychological Testing*. Paper presented at the Association of Test Publisher's Innovations in Test Design Conference. Palm Springs, CA.

Wise L. (April 2011). *Situating the Generalizability of Performance Assessments within a Validity Framework*. Paper presented at the 2011 Annual Meeting of the National Council on Measurement in Education, New Orleans, LA.

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Wise, L. (April 2011). *The Evolving U.S. Educational System: How Can I-O Psychology Contribute?* Paper presented at the annual meeting of the Society for Industrial and Organizational Psychology, Chicago, IL.

Wise, L. (June 2011). Update on Revision of the *Standards for Educational and Psychological Testing*. Paper presented at the National Conference on Student Assessment, Orlando, FL.

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Wise, L.L. (2009) *Revising our Test Standards: Issues with Increased Use of Tests for Accountability*. Presentation at the 2009 annual meeting of the American Psychological Association, Toronto, Canada.

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- Wise, L.L. (2009, April) *Revising our Test Standards: Issues for Work Place Testing*. Presentation at the 2009 annual meeting of the American Educational Research Association, San Diego, CA.
- Wise, L.L. (2008). *Validating Indicators of College Preparedness: Ready or Not?* Presentation to the 2008 Reidy Interactive Lecture Series. Portsmouth, NH
- Wise, L.L. (September 2008). *State Assessments Today: What State are We In?* Presentation to the Conference on Educational Testing in America: State Assessment Achievement Gaps, Federal Policy and Innovations. Washington, DC.
- Wise, L.L. (June 2008). *Strengthening K-12 Accountability Systems: What could be better than peer review?*. Presentation to the CCSSO National Conference on Student Assessment, Orlando, FL.
- Wise, L.L., & Plake, B. (June 2008). *Procedures for Revising the Test Standards*. Presentation to the CCSSO National Conference on Student Assessment, Orlando, FL.
- Wise, L.L., & Rui, N. (2008, March). *Computing and Communicating Test Accuracy for High-Stakes Decisions*. Paper presentation at the 2008 annual meeting of the National Council on Measurement in Education, New York City, NY.
- Wise, L.L. (2007). *Vertical Alignment*. Paper presented at the CCSSO Large Scale Assessment Conference, Nashville, TN.
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- Wise, L. (Discussant) (2006, May). *Expanding our influence: How I –O psychologists can improve education*. Practice Forum conducted at the 21st Annual Conference of the Society for Industrial and Organizational Psychology, Dallas, TX.
- Wise, L.L. and Becker, D.E. (2006, April). Analysis of Results from Administrations of the California High School Exit Exam (CAHSEE). In L. Roberts (Chair), *Evaluating the Impact of a High-School Graduation Test*. Symposium conducted at the annual conference of the American Educational Research Association, San Francisco.
- Wise, L. W. (2004). *Independent evaluation of the California High School Exit Exam (CAHSEE)*. Presentation at the American Educational Research Association Annual Meeting, San Diego, CA.
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Wise, Laress L. (2004). Independent Evaluation of the CAHSEE: Update on Evaluation Findings and Recommendations. Presentation to the California State Board of Education, Sacramento, CA.

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Wise, L.L. (2001). *Building a selection test battery: Validity, fairness, and other tradeoffs*. Presentation to the Personnel Testing Council/Metropolitan Washington. Washington, DC: National Research Council.

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Wise, L.L. (1997). Career directions beyond the dissertation: R&D "think tanks." Presenter at invited symposium, Career directions in measurement: Beyond the dissertation, sponsored by NCME Graduate Student Issues Committee and co-sponsored by AERA Division D, at the 1997 National Council on Measurement in Education Annual Meeting, Chicago, IL.

Wise, L.L. (1996, April). A persistence model of motivation and test performance. Paper presented at the annual meeting of the American Educational Research Association, New York, NY.

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Welsh, J.R., & Wise, L.L. (1994). The stability of the Mantel-Haenszel odds ratio. Paper presented at the annual meeting of the International Military Testing Association, The Netherlands.

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Wise, L.L. (1993, April). Scoring rubrics for performance tests: Lessons learned from job performance assessment in the military. Paper presented at the annual meeting of the National Council on Measurement in Education, Atlanta, GA

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Wise, L.L., & McDaniel, M.A. (1991). Cognitive factors in the Armed Services Vocational Aptitude Battery and the General Aptitude Test Battery. Paper presented at the annual meeting of the American Psychological Association, San Francisco, CA. Wise, L.L., Chia, W.J., & Park, R.K. (1989). Effects of item position on IRT parameter estimates and item statistics. Paper presented at the annual meeting of the American Educational Research Association, San Francisco, CA.

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Szenas, P.L., Wise, L.L., & Arabian, J.M. (1988). Combining individual standards into an overall standard: Modeling the judgement process and investigating differences among judges. Paper presented at the annual meeting of the American Psychological Association, New Orleans, LA.

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Wise, L.L. (1987). Differential item difficulty indicators in small samples. Paper presented at the annual meeting of the American Educational Research Association, Washington, DC.

Wise, L.L., McHenry, J.J., Rossmeissl, P.G., & Oppler, S.H. (1986). ASVAB validities using improved job performance measures. Paper presented at the annual meeting of the Military Testing Association, Mystic, CT.

Wise, L.L., Campbell, J.P., McHenry, J.J., & Hanser, L.M. (1986). A latent structure model of job performance factors. Paper presented at the annual meeting of the American Psychological Association, Washington, DC.

Wise, L.L. (1986). Latent trait models for partially speeded tests. Paper presented at the annual meeting of the American Educational Research Association, San Francisco, CA.

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Wise, L.L., Wilson, S.R., & Stancavage, F.B. (1980). The development of medical practice and residence value scales that distinguish physicians in different specialties and practice locations. Paper presented at the annual meeting of the American Educational Research Association, Boston, MA.

Wise, L.L., & Steel, L.M. (1979). The effects of school quality on student's knowledge and skills. Paper presented at the annual meeting of the American Educational Research Association, San Francisco, CA.

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Wise, L.L. (1978). The role of mathematics in women's career development. Paper presented at the annual meeting of the American Psychological Association, Toronto, Canada.