MDL 1643

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE EDUCATIONAL TESTING SERVICE PLT 7-12 TEST SCORING LITIGATION

BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D. LOWELL JENSEN, J. FREDERICK MOTZ, ROBERT L. MILLER, JR., KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL*

TRANSFER ORDER

This litigation currently consists of the four actions in the Eastern District of Louisiana, three actions in the Eastern District of Pennsylvania, two actions each in the Western District of Louisiana and the Northern District of Ohio, and one action each in the Middle District of Louisiana and the Southern District of Ohio as listed on the attached Schedule A.[1] Before the Panel is a motion, as amended, pursuant to 28 U.S.C. § 1407, brought by common defendant Educational Testing Service (ETS) for coordinated or consolidated pretrial proceedings of the actions in the Eastern District of Louisiana. Plaintiff in one Northern District of Ohio action opposes the motion; should the Panel order transfer over her objections, then this plaintiff would support the Northern District of Ohio as transferee district. All other responding plaintiffs support the motion for transfer, but disagree upon the appropriate transferee forum. These plaintiffs variously suggest the Eastern District of Louisiana, the District of New Jersey, the Northern District of Ohio, the Southern District of Ohio and the Eastern District of Pennsylvania.

On the basis of the papers filed and hearing session held, the Panel finds that these thirteen actions involve common questions of fact, and that centralization under Section 1407 in the Eastern District of Louisiana will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. All actions arise out of an anomaly in scoring the "Praxis Principles of Learning and Teaching: Grades 7-12" test in connection with nine test administrations between

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* Judge Motz took no part in the decision of this matter.

[1] The parties have notified the Panel of ten related actions pending as follows: two actions each in the Middle District of Louisiana, the District of New Jersey and the Northern District of Ohio; and one action each in the Western District of Kentucky, the Western District of Louisiana, the Southern District of Mississippi and the Middle District of Tennessee. These actions and any other related actions will be treated as potential tag-along actions. *See* Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

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January 2003 and April 2004, which resulted in approximately 4,100 candidates nationwide receiving non-passing scores when they should have received passing scores. The actions share allegations that ETS breached contractual and/or other duties owed to plaintiffs and members of putative nationwide classes in the administration, grading and reporting of the exams at issue. Centralization under Section 1407 is thus necessary in order to eliminate duplicative discovery; prevent inconsistent pretrial rulings, including those with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary.

Given the range of locations of parties and putative class members in this docket and the geographic dispersal of current and anticipated constituent actions, an array of suitable transferee districts presents itself. In concluding that the Eastern District of Louisiana is an appropriate forum for this docket, we note that this district, where four actions are already pending, provides an accessible, metropolitan location with favorable caseload conditions. Furthermore, centralization in this forum allows the Panel to assign this litigation to an available transferee judge with prior, successful experience in the management of Section 1407 litigation.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Eastern District of Louisiana are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Sarah S. Vance for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A.

FOR THE PANEL:

Wm. Terrell Hodges
Chairman

SCHEDULE A

MDL-1643 -- In re Educational Testing Service PLT 7-12 Test Scoring Litigation

Eastern District of Louisiana

Lois Adams, et al. v. Educational Testing Service, C.A. No. 2:04-1997
Christal Aguillard, et al. v. Educational Testing Service, C.A. No. 2:04-2122
James R. Johnson v. Educational Testing Service, C.A. No. 2:04-2291
Rolanda Thigpen v. Educational Testing Services, Inc., C.A. No. 2:04-2305

Middle District of Louisiana

Steven G. Miller v. Educational Testing Service, et al., C.A. No. 3:04-563

Western District of Louisiana

Shawn M. Gary, et al. v. Educational Testing Service, C.A. No. 2:04-1583
Ian Cohen, et al. v. Educational Testing Services, Inc., C.A. No. 2:04-1686

Northern District of Ohio

Katherine J. Brouse v. Educational Testing Service, C.A. No. 1:04-1599
Janet Riehle v. Educational Testing Service, C.A. No. 3:04-7430

Southern District of Ohio

Paul A. Perrea, et al. v. Educational Testing Service, C.A. No. 1:04-492

Eastern District of Pennsylvania

Eric Rutledge, et al. v. Educational Testing Service, C.A. No. 2:04-3465
Michelle T. Kochensky v. Educational Testing Services, C.A. No. 2:04-3794
Raffael M. Billet v. Educational Testing Service, C.A. No. 2:04-3795