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I am the Plaintiff or Defendant

Attorney for the Plaintiff or Defendant

This is a Limited Appearance

THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

ACT Education Corp. f/k/a ACT, Inc.

Plaintiff,

vs.

Scott Hildebrandt, an Individual, d/b/a
eKnowledge

Defendant.

**Defendant's Attorney Planning
Meeting Report**

Case No. 2:24-cv-00703-CMR

District Judge

Cecilia M. Romero

Magistrate Judge

Under Fed. R. Civ. P 26(f), the Local Rules of Practice, and the Order to Propose Schedule, if applicable, the parties must confer and develop a proposed discovery plan addressing the areas that follow. The parties must email a copy of the proposed scheduling order in an editable format to the assigned magistrate judge's chambers. If a

2. PROTECTIVE ORDER

a.	The parties anticipate the case will involve the disclosure of information, documents, or other materials that will be designated as confidential.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
b.	If the case will involve the disclosure of information, documents, or other materials that will be designated as CONFIDENTIAL, then good cause exists for the court to enter the court's Standard Protective Order (SPO) under DUCivR 26-2: <i>(describe the need for a protective order)</i>		
c.	<p>If a protective order is needed and the parties are not using the court's SPO, then the court's SPO, in effect under DUCivR 26-2, will govern until a different protective order—proposed by the parties via motion under DUCivR 7-1(a)(4)(D)—is adopted by the court.</p> <p>The parties' proposed protective order should identify a process to resolve all claims of waiver of attorney-client privilege or work-product protection, whether or not the information, documents, or other materials will be designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY, and this process must be included in the proposed protective order under Fed. R. Evid. 502(d): <i>(describe the process)</i></p>		
d.	If the parties do not anticipate the case will involve the disclosure of information, documents, or the materials that will be designated as		

		<p>CONFIDENTIAL, the parties still should identify, in the space below, a process to resolve all claims of waiver of attorney-client privilege or work-product protection, whether or not the information, documents, or other materials will be designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY, and this process must also be included in the proposed Scheduling Order: <i>(describe the process)</i></p>
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3. DISCOVERY PLAN

a.		<p><u>Discovery Plan</u>: The parties agree to the following discovery plan.</p> <ul style="list-style-type: none"> If the parties disagree, clearly indicate the disagreement in the space below: 	Yes <input type="checkbox"/>	No <input type="checkbox"/>
b.		<p><u>Discovery Subjects</u>: <i>(describe the subject areas in which discovery will be needed)</i></p> <p>We have already provided all of the items listed by Plaintiff.</p> <p>We have a much more difficult process because of the inherent asymmetry, complexities, public interest, and potential counter/cross complaints. Also, we don't know what we don't know, so it's virtually impossible to set forth all of the areas of discovery right now before we have competent representation and before we have started to truly research the Plaintiff. Here we attempt to lay out the areas of discovery that seem relevant at this stage and without expert legal representation:</p> <ol style="list-style-type: none"> The new ACT Nexus has repeatedly and publicly claimed that NOTHING has changed, they are the exact same ACT nfp that 		

everyone has known and trusted for 65 years...we want to see whether that is true—that is one reason why we need all of this discovery. We must establish what exactly was the “old nfp” and what the “new ACT Nexus” is planning, in order to show they are defrauding the public with those statements, or to allow the court the leeway to hold them to their claims that “nothing has changed.”

2. We believe it is very likely that ACT nfp for years thoughtfully and carefully understood they were creating reliance by the public and other prep providers and that they intended to create a fair use category for their retired exam questions.
3. ACT nfp would NOT enjoy the favored position it has today as 1 of 2 without 65-years as a trusted public interest nfp

History of providing retired exams to the public

Since the inception of ACT nfp (approximately 1959) the history and details of ACT not-for-profit’s internal documents, emails, discussions, communications of any kind etc. related to its decision to release retired exams to the public.

Over the past 70 years, all ACT nfp public statements, letters, emails, social media posts, and communications of any kind relating to ACT decision releasing retired exams to the public

During any period of time, the history and all internal and public documents, communications, emails, social media posts etc related to ACT nfp’s decision NOT to enforce copy right infringement claims for previously released retired exams.

Any documents etc. re eKnowledge

Copy of all retired exams and questions that ACT nfp has publicly released over the past 70-years.

Details of providing ACT exams to schools, districts, states

Over the past 70-years, the history and details of ACT not-for-profit’s internal discussions and communications with schools, districts, states, and other related entities re agreements to provide the ACT exam

All contracts and agreements during ACT not-for-profit’s 70-year history related to providing ACT exams and prep to any entity (including but not limited to schools, districts, states, etc.)

Nexus sale

The history, details, communications, internal discussions, agreements, contracts etc. between ACT not-for-profit and Nexus Capital relating to the purchase of ACT nfp.

All documents, communications, emails etc. related to the negotiation and sale of ACT nfp to Nexus

All internal documents, communications, and emails related to business plan that Nexus has developed for/with ACT nfp.

All Nexus' public and private investor documents, communications, and emails related to Nexus pitches and expectations related to the ACT nfp acquisition and opportunity for investment.

All internal documents, communications, and emails related to Nexus' exit strategy for the ACT nfp acquisition.

During any period of time, the history and all internal and public documents, communications, emails, social media posts etc. related to Nexus' decision to enforce the copy right infringement claims for the previously released retired exams.

During any period of time, any public or private discussions, internal communications, emails, or documents (before, during after the sale of ACT nfp to Nexus) related to the public policy or fair use aspects of releasing retired exam questions over the past 65-years.

During any period of time, any public or private discussions, internal communications, emails, or documents (before, during after the sale of ACT nfp to Nexus) related to the issues of converting the ACT nfp to a for profit corporation

During any period of time, any public or private discussions, internal communications, emails, or documents (before, during after the sale of ACT nfp to Nexus) related to the issues of reliance by other groups, NFP, or organization of any nature) upon the previously released retired exams.

During any period of time, any public or private discussions, internal communications, emails, or documents (before, during after the sale of ACT nfp to Nexus) related to the issues of implied licenses created by the previous release of retired exams.

During any period of time, any public or private discussions, internal communications, emails, or documents (before, during after the sale of ACT nfp to Nexus) related to the details and meaning of “expanding access and opportunity for students” and how ACT Nexus plans to accomplish this.

During any period of time, any public or private discussions, internal communications, emails, or documents(before, during after the sale of ACT nfp to Nexus) related to the issue of ACT Nexus’s future plans to provide ACT test prep directly to students, schools, districts, states, or other organizations.

During any period of time, any public or private discussions, internal communications, emails, or documents(before, during after the sale of ACT nfp to Nexus) related to the pricing model for ACT Nexus’s future plans to provide ACT test prep directly to students, schools, districts, states, or other organizations.

Kaplan Agreement

All documents, communications, emails etc. related to the negotiation between ACT nfp and Kaplan.

All contracts and documents that constitute the agreement between ACT nfp and Kaplan to offer ACT Prep.

Financials

All documents, financial and otherwise, that indicate the financial position year-by-year of ACT nfp over the past 65-years

During the past 70 years, all documents indicating precisely each category of revenue, for example: the amounts each year from student, schools, districts, states, other orgs.

During the past 70-years, all documents indicating gross sales and revenue from exams vs exam prep.

All documents showing revenue generated by any retired exam questions that were released to the general public for the past 65 years.

d.		<u>Electronically Stored Information</u> : (describe how the parties will handle discovery of electronically stored information)
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4. FACT DISCOVERY

a.	Fact Discovery Limitations—		
	1.	Maximum number of depositions by Plaintiff:	<u>3</u>
	2.	Maximum number of depositions by Defendant:	<u>Unk ~100</u>
	3.	Maximum number of hours for each deposition: (<i>unless extended by agreement of parties</i>)	<u>unk</u>
	4.	Maximum interrogatories by any party to any party:	<u>Unk possibly 1000s</u>
	5.	Maximum requests for admissions by any party to any party:	<u>Unk possibly 1000s</u>
	6.	Maximum requests for production by any party to any party:	<u>Unk possibly 1000s</u>
b.	Other Fact Discovery Deadlines—		
	1.	Deadline to serve written discovery:	<u>08/19/25</u>
	2.	Deadline for fact discovery to close:	<u>10/01/25</u>
	3.	Deadline for supplementation of disclosures and responses under Fed. R. Civ. P. 26(e): (<i>optional</i>)	<u>10/01/25</u>

5. AMENDING OF PLEADINGS AND JOINING OF PARTIES¹

a.	Deadline to file a motion to amend pleadings—		
	1.	Plaintiffs:	<u>07/28/25</u>
	2.	Defendants:	<u>07/28/25</u>
b.	Deadline to file a motion to join additional parties—		
	1.	Plaintiffs:	<u>07/28/25</u>

¹ Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

	2.	Defendants:		<u>07/28/25</u>
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6. EXPERT DISCOVERY

a.	Filing of Notice of Designation required by DUCivR 26-1(a)(2)—			
	1.	Parties bearing the burden of proof:		<u>09/28/25</u>
	2.	Parties not bearing the burden of proof:		<u>10/19/25</u>
b.	Service of Fed. R. Civ. P. 26(a)(2) Disclosures and Reports—			
	1.	Parties bearing the burden of proof:		<u>10/19/25</u>
	2.	Parties not bearing the burden of proof:		<u>11/16/25</u>
	3.	Rebuttal reports, if any:		<u>12/07/25</u>
c.	Deadline for expert discovery to close:			<u>12/07/25</u>

7. OTHER DEADLINES AND TRIAL-RELATED INFORMATION

a.		Deadline for filing dispositive or potentially dispositive motions: <i>(including a motion to exclude experts when expert testimony is required to resolve the motion)</i>		<u>12/29/25</u>
b.		Trial:	Bench <input type="checkbox"/>	Jury <input checked="" type="checkbox"/>
c.		Trial days: unk		<u># days</u>

_____ Date: ___/___/___
Signature and typed name of Plaintiff's Attorney (or Party's Name if self-represented)²

_____ Date: ___/___/___
Signature and typed name of Defendant's Attorney (or Party's Name if self-represented)

² Instructions for attaching the Attorney Planning Meeting Report to a Stipulated Motion for Scheduling Order or Motion for a Scheduling Conference can be found on the court's [Civil Scheduling](#) webpage.