



## STATE OF SOUTH CAROLINA DEPARTMENT OF EDUCATION

Mick Zais  
Superintendent

1429 Senate Street  
Columbia, South Carolina 29201

April 14, 2014

VIA Electronic Mail and First Class Mail

Barry Bolen, Chair  
State Board of Education  
133 Congaree Park Drive  
West Columbia, SC 29169

RE: Smarter Balanced Assessment Consortium

Dear Mr. Bolen:

Last week, I requested the State Board of Education's (State Board) permission to exit the Smarter Balanced Assessment Consortium as an act of good faith and in hopes that the South Carolina Department of Education (SCDE) and the State Board could move forward and consider all assessment options in the spirit of cooperation with the General Assembly. I am disappointed with the State Board's vote on this matter. I have subsequently learned that the authority to exit the consortium lies solely with me, and based on that authority and for the reasons articulated below, I am withdrawing the State of South Carolina from the Smarter Balanced Assessment Consortium.

Two years ago, the SCDE recommended to the State Board that the state enter into the Smarter Balanced Assessment Consortium. At the time, there were two assessment consortia being funded through federal grants to develop assessments that would meet federal accountability requirements related to the state-adopted common core standards: the Partnership for Assessment of Readiness for College and Careers (PARCC) consortium and the Smarter Balanced Assessment Consortium. There were no "off-the-shelf" tests on the market that assessed the Common Core State Standards, and it was determined that a home-grown assessment (assessment written by the SCDE) was not a viable option because of the time and costs involved in developing a test. In order to have meaningful input with regard to the assessment, the SCDE wanted a seat at the table to help develop the assessment. To accomplish that, South Carolina had to become a governing state of one of the two assessment consortia. The SCDE recommended membership in Smarter Balanced. The Smarter Balanced bylaws required three signatures for a state to become a governing state: the Governor's, the Superintendent's, and the Chair of the State Board's. On February 8, 2012, at the SCDE's request, the State Board voted to become a governing state in Smarter Balanced and voted to approve the adoption of the assessments being developed by Smarter Balanced. The SCDE believed that Smarter Balanced was the best option at the time. However, the State Board synopsis for that item stated that "[a] State Board of Education decision in February 2012 will not prevent South Carolina from changing the decision anytime in the future if conditions change." (See February 8, 2012, State Board Agenda, Code BD-CCSS-03, February 8, 2012, p. 2).

Conditions have changed. In the two years since this matter was first considered, there have been other testing companies that have emerged with assessments to assess the common core standards. At

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least two states have released requests for proposals for assessments and have received responses from numerous vendors. The South Carolina General Assembly has recognized this trend and is moving forward with legislation that will require the State of South Carolina to exit Smarter Balanced and prohibit the use of the Smarter Balanced assessment in South Carolina. Last week, we provided the State Board with copies of three bills that are pending in the General Assembly that will specifically ban the use of Smarter Balanced and require South Carolina to exit the consortium. A day after the State Board dismissed the possibility of legislative action, House Bill 3893, which specifically bans the testing of Smarter Balanced, was passed by the House with overwhelming bi-partisan support. There are two similar bills moving through the Senate. My recommendation was to get ahead of these actions of the General Assembly and show the members of the General Assembly that we believe exploring assessment options is the most prudent course of action for South Carolina.

### **Effect of the February 2012 Vote**

Based on the State Board's vote on April 9, 2014, it seems as if certain members of the State Board believe that the action taken in February 2012 was a final action with regard to the state assessment program. State Board of Education Regulation 43-262 sets forth the approved assessment program. That regulation is promulgated under the authority of the Education Accountability Act and the Administrative Procedures Act, and it names the *Palmetto Assessment of State Standards*, *South Carolina Alternative Assessments*, *Exit Examinations*, and *End-of-Course Tests* as the statewide assessment program. Specifically, Regulation 43-262 states:

B. The statewide assessment program will involve testing public school students at selected grade levels and in selected content and skill areas at times specified by the South Carolina Department of Education. The grade(s) and content/skill areas to be included in the assessment program are identified by the EAA, NCLB, and State Board of Education regulations.

The statewide assessment program includes

Palmetto Assessment of State Standards (PASS),  
South Carolina Alternate Assessment (SC-Alt),  
Exit Examination, and  
End-of-Course Tests.

Since the State Board approved the assessment program in regulation, the State Board cannot mandate a change in the assessment program by a one-vote process alone. Until a regulation is promulgated, the decision of the State Board with regard to the assessment program is not final. The 2012 request allowed the SCDE to start the process to consider the approval of a new assessment—it was not the final approval of the statewide assessment program, as was made clear in the synopsis.

I am not wed to any particular test. I want to make sure that the state considers all options available and does not exclude from participation vendors who have assessments that meet or exceed the requirements for a college- and career-ready assessment simply because those assessments were not in existence two years ago. I want to have a high quality assessment that meets the specific needs of South Carolina, at a competitive price. If we continue to focus only on Smarter Balanced, we lose any opportunity to consider alternatives. The South Carolina Procurement Code requires competition and applies to "every procurement or expenditure of funds by this State under contract acting through a

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governmental body. . .," S.C. Code Ann. § 11-35-40. The Procurement Code (S.C. Code Ann. § 11-35-1560) limits the ability to issue sole source procurements.

(A) A contract may be awarded for a supply, service, information technology, or construction item without competition if, under regulations promulgated by the board, the chief procurement officer, the head of a purchasing agency, or a designee of either officer, above the level of the procurement officer, determines in writing that there is only one source for the required supply, service, information technology, or construction item.

Since there is clearly not one sole supplier for assessments aligned to the Common Core State Standards, we believe in the spirit of competition and compliance with the Procurement Code that the State of South Carolina should consider an open procurement.

My decision to exit Smarter Balanced does not address which assessments will be offered in South Carolina next year. It is my understanding that a state does not have to be a governing state to offer the Smarter Balanced Assessment. However, there is language in the bills pending in the General Assembly that would prohibit use of this assessment. When I brought this item to the State Board last week, I had hoped that a positive vote from the State Board would perhaps make the passage of those bills unnecessary.

In consideration of the foregoing, and the discovery that I have the authority to withdraw South Carolina from its status as a governing state of the Smarter Balanced Assessment Consortium, and after full consultation with the Governor's Office and appropriate members of the General Assembly, I am informing you that I am exercising that authority.

Sincerely,

A handwritten signature in black ink that reads "Mick Zais". The signature is written in a cursive, slightly stylized font. There is a horizontal line drawn above the signature.

Mick Zais, Ph.D.  
State Superintendent of Education

MZ/sk

cc: The Honorable Nikki R. Haley  
The Honorable John E. Courson  
The Honorable Robert Wesley Hayes, Jr.  
The Honorable Phillip D. Owens  
Members of the South Carolina Senate  
Members of the South Carolina House  
Members of the State Board of Education