

July 8, 2015

Mr. Tony Alpert
Executive Director
Smarter Balanced Assessment Consortium
10954 Le Conte Avenue, Suite 1400
Los Angeles, CA 90095

Dear Mr. Alpert:

I am writing to inform the Smarter Balanced Assessment Consortium that Missouri will not continue as a licensee of materials for the 2015-2016 school year per section 2.2.d of the MOU. The appropriations bill passed by the legislature and signed by the governor contains language preventing the agency from spending money as a member or licensee of the Smarter Balanced Assessment Consortium.

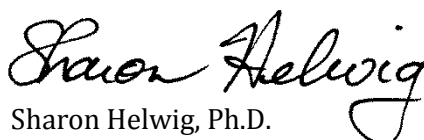
The appropriations bill, House Bill 2 contains the following directions:

To the Department of Elementary and Secondary Education For the Performance Based Assessment Program, provided that no funds are used to support the collection, distribution, or sharing of any individually identifiable student data with federal government with the exception of the reporting requirements of the Migrant Education Program funds in Section 2.085, the Vocational Rehabilitation funds in Section 2.135, and the Disability Determination funds in Section 2.140, and further provided that no funds from this section shall be used for license fees or membership dues for the Smarter Balanced Assessment Consortium, and further provided that not later than February 1, 2016 the Department of Elementary and Secondary Education shall submit a plan for review and approval by the House Budget Committee and the Senate Appropriations Committee, and further provided that \$7,000,000 be used solely for development of a Missouri-based state assessment plan, and further provided that no funds from this section shall be used for assessments which generate results used to lower a public school district's accreditation or a teacher's evaluation.

Included with this letter you will find the required legal opinion affirming that Missouri may no longer engage with the consortium as a member or licensee.

Thank you for your time and concern regarding this matter.

Sincerely,



Sharon Helwig, Ph.D.
Assistant Commissioner

MEMORANDUM

TO: Sharon Helwig, Assistant Commissioner, Office of College and Career Readiness

FROM: William R. Thornton, General Counsel *WRT*

DATE: July 8, 2015

RE: Smarter Balance Assessment Consortium Memorandum of Understanding and Agreement

Legal Opinion

The purpose of this memo is to inform you that the State of Missouri, represented by the Missouri Department of Elementary and Secondary Education (DESE), must respectfully terminate participation in the Smarter Balance Assessment Consortium pursuant to Section 2.2(b)(d) of the Memorandum of Understanding and Agreement which was signed by DESE on 9/5/2014.

During the 2015 legislative session, Missouri legislators passed an appropriation bill, HB 2, which specifically prohibits DESE using funds for this fiscal year “for licensed fees or membership dues for the Smarter Balance Assessment Consortium.”

As you know Section 2.2(b) permits a Member to terminate for violation of state law with thirty (30) days prior written notice. As general counsel for DESE, it is my legal opinion that the language of HB 2 specifically prohibits the State of Missouri from participating as a member or as a licensee in the Smarter Balance Assessment Consortium.

In addition, Section 2.2(d) permits termination for withdrawal due to non-appropriation of funds necessary to pay for the Member’s Annual Fee. HB 2 specifically prohibits the state of Missouri to use any appropriated funds to be pay for membership dues or to pay license fees for the Smarter Balance Assessment Consortium. DESE understands that it is preferred that a Member provide at least sixty (60) days written notice to terminate its membership under this subsection, but due to the specific prohibitive language of the Missouri appropriation language, the State of Missouri respectfully requests the termination be effective immediately.

The State of Missouri appreciates your efforts to help the State of Missouri work through this matter with support, patience and cooperation.

If you have any questions, please contact me.