

Notice of Refusal of the SBAC Assessment

As the parent, or legal guardian of _____, under U.S legislation and federal court decisions (*Exhibit 1*), I have the fundamental and legal right to direct the upbringing and education of my child which the school may not deny. In these cases, the courts went out of their way to assert that the rights of parents to make decisions regarding the upbringing of their children, commanding the government to meet a high bar of “compelling interest”, one unreachable by any other means before being allowed to override the parents rights.

Missouri statute and even NCLB sets requirements for states and school districts to *administer* standardized tests, but does not require students to participate in such tests. It also requires the State to use only tests with demonstrated validity and reliability. Any assessment not having demonstrated these two features is equivalent to using our children as experimental subjects and any interpretation of results from such testing are invalid.

HB1490 stated that “The department of elementary and secondary education shall **pilot assessments** from the Smarter Balanced Assessment Consortium during the 2014-2015 school year. Notwithstanding any rules adopted by the state board of education or the department of elementary and secondary education in place at the effective date of this section, for the 2014-2015 school year, and at any time the state board of education or the department of elementary and secondary education implements a new statewide assessment system, develops new academic performance standards, or makes changes to the Missouri School Improvement Program, **the first year of such statewide assessment system and performance indicators shall be utilized as a pilot year for the purposes of calculating a district's annual performance report under the Missouri school improvement program. The results of a statewide pilot shall not be used to lower a public school district's accreditation or for a teacher's evaluation.**”

Furthermore, state statute 160.526.2 requires the Commissioner of Education to “inform the president pro tempore of the senate and the speaker of the house of representatives about the *procedures to implement, modify, or revise the statewide assessment system, including a report related to the reliability and validity of the assessment instruments*” A September 12, 2014 memo from SBAC to K-12 Leads included in the report supplied by the Commissioner indicates that **evidence of validity and reliability is not available to support administration of the SBAC in spring 2015¹.**

Certainly requiring students to sit for an exam:

- which was not developed by their daily teacher who is best positioned to know about my child’s academic progress,
- which teachers and parents are not allowed to see at any point in the testing process,²
- which does not measure the full breadth of their knowledge, only a snapshot of limited topics at a particular moment in time,
- which does not have external validity to demonstrate that it actually measures what it claims to measure, (*Exhibit 2*)
- which uses cut points *designed* to place 70% of students below proficient,³

¹ https://www.sde.idaho.gov/site/commonAssessment/docs/Memo_VValidity_Overview_2014-09-11.pdf

² <http://idahoansforlocaleducation.com/wp-content/uploads/2014/05/A-Letter-on-Common-Core-and-Associated-Testing-2.pdf> p. 3

³ <http://www.edweek.org/ew/articles/2014/11/17/13sbac.h34.html>

- which provided no reliability report of the delivery system after the first pilot tests last year further confounding any claims of validity for its scores,
- from which student scores will not be used to affect district accreditation nor teacher evaluation, and
- whose questions and answers will not be reviewed by parents, teachers or children as part of the learning process,

would not qualify as a compelling interest of the state that would override the decision of the parent.

Therefore, after much consideration, I respectfully and formally state that:

1. As my child's legal guardian, I am refusing my permission for _____ school district or any of its agents to give my child the Smarter Balanced Assessment Consortia test, either on-line or in pencil and paper format as it is an experimental assessment that lacks demonstrated measures of external validity and reliability and will serve no purpose in either my child's academic growth or the district's rating by the state.
2. The stated purpose of the SBAC test is to provide the district with information about the effectiveness of its curriculum choices and program of instruction. To the extent that I have also provided instruction to my child in the topics that will be addressed by the SBAC test (language arts and mathematics) whether by myself or by outside tutors we have engaged, my child's participation in the SBAC would unfairly skew the results of the test and would not provide meaningful information about the district's specific program of instruction. Therefore it is not reasonable for my child to participate in this standardized testing.
3. Further, in compliance with Missouri mandatory attendance requirements RSMO 167.031 I will be sending my child to school on the day(s) of testing and will expect the school to provide meaningful alternative activities or assignments to fulfill its requirement in RSMO § 171.031 to provide 174 days of academic instruction.

I request that a copy of this notice be permanently included in my child's school data file.

Parent Signature _____ Date: _____

There is ample court precedent to support the right of parents to make these types of educational decisions for their children. In these cases, the courts went out of their way to assert that the rights of parents to make decisions regarding the upbringing of their children, commanding the government to meet a high bar of “compelling interest”, one unreachable by any other means before being allowed to override them. This list is by no means exhaustive:

- U.S. Supreme Court:
 - ***Troxel v. Granville*, 530 U.S. 57 (2000)**: “the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a ‘better’ decision could be made.”
 - ***Vernonia School District 47J v. Acton*, 132 L.Ed.2d 564, 115 S.Ct. 2386 (1995)**: parents have the right to guard their children’s liberty as minor children
 - ***L. v. Matheson*, 450 US 398, 410 (1991)**: the case of the right of parents to be notified of their child receiving an abortion- “We have recognized that parents have an important “guiding role” to play in the upbringing of their children.” “constitutional interpretation has consistently recognized that the parents’ claim to authority in their own household to direct the rearing of their children is basic in the structure of our society”
 - ***Hodgson v. Minnesota*, 497 U.S. 417 (1990)**: the Court found that parental rights not only are protected under the First and Fourteenth Amendments as fundamental and more important than property rights, but that they are “deemed essential.” “The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition.”
 - ***Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 US 537 (1987)**: “The Court has recognized that the freedom to enter into and carry on certain intimate or private relationships is a fundamental element of liberty protected by the Bill of Rights ... the intimate relationships to which we have accorded Constitutional protection include marriage ... the begetting and bearing of children, child rearing and education.”
 - ***Lehr v. Robertson*, 463 US 248, 257-258 (1983)**: the liberty of parents to control the education of their children was described as a “right coupled with the high duty to recognize and prepare the child for additional obligations” ... “that the custody, care and nurture of the child reside first in the parents whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”
 - ***Santosky v. Kramer*, 455 US 745, 753 (1982)**: The Court, in reaching their decision, made it clear that parents’ rights as outlined in *Pierce* and *Meyer* are fundamental and specially protected under the Fourteenth Amendment
 - ***Parham v. J.R.*, 442 US 584, 602-606 (1979)**: “Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is “the mere creature of the State” and, on the contrary, asserted that parents generally have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations. The law’s concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions.”
 - ***Carey v. Population Services International*, 431 US 678, 684-686 (1977)**: The Court included the right of parents in the area of “child rearing and education” to be a liberty interest protected by the Fourteenth Amendment, requiring an application of the “compelling interest test.”
 - ***Wisconsin v. Yoder* 406 U.S. 205 (1972)**: “This case involves the fundamental interest of parents, as contrasted with that of the state, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring tradition”
 - ***Griswold v. Connecticut*, 381 U.S. 479, (1965)**: Emphasized that the state cannot interfere with the right of a parent to control his child’s education. The Court stated that the right to educate one’s child as one chooses is guaranteed in the Bill of Rights and applicable to the States by the First and Fourteenth Amendments
 - ***Prince v. Massachusetts*, 321 U.S. 158 (1944)**: “It is cardinal with us that the custody, care, and nurture of the child reside first in the parents, whose primary function and freedom includes preparation for obligations the state can neither supply, nor hinder.”
 - ***Pierce v. Society of Sisters* 268 U.S. 510 (1925)**: “The child is not the mere creature of the state; those who nurture him and direct his destiny have the right and the high duty, to recognize and prepare him for additional obligations”
 - ***Meyer v. Nebraska* 262 U.S. 390 (1923)**: The court chastened the legislature for attempting “materially to interfere with the power of parents to control the education of their own [children].”

SBAC Tests Lack Adequate Evidence of Technical Adequacy, Validity and Reliability

In July 2014, Governor Nixon signed HB 1490. Section 160.526.2 states,

The state board of education shall [,] by contract enlist the assistance of such national experts . . . to receive reports, advice and counsel *on a regular basis pertaining to the validity and reliability of the statewide assessment system. The reports from such experts shall be received by the . . . state board of education.* [emphasis added]

. . . Within six months prior to implementation of or modification or revision to the statewide assessment system, the commissioner of education shall inform the president pro tempore of the senate and the speaker of the house of representatives about the *procedures to implement, modify, or revise the statewide assessment system, including a report related to the reliability and validity of the assessment instruments, and the general assembly may, within the next sixty legislative days, veto such implementation, modification, or revision by concurrent resolution adopted by majority vote of both the senate and the house of representatives.* [emphasis added]

Concerns

1. Publicly available formal and informal SBAC publications do not include evidence of reliability and validity^{1,2,3,4};
4. External reviews of SBAC: “work in progress” / “bizarre”/vulnerable to hacking^{5,6,7,8}
5. Performance Test Items are in SBAC Assessments, but restricted in HB 1490;
6. DESE flouted spending restrictions of HB 002 to administer SBAC in 2015^{9,10,11}
7. Ongoing lawsuit alleges SBAC may be an illegal state compact^{12,13};
8. U.S. Department of Education (DoE) Funding of SBAC Violates the Intent of Federal Laws¹⁴;
9. Purpose of SBAC inconsistent with purpose of public education in Missouri;

Absence of technical adequacy voids claims linked to SBAC scores. The submission of *a plan* to establish external validity and reliability does not guarantee validity and reliability is assured in the future. Students, teachers and school districts are vulnerable to harm associated with an indefensible test, derived from controversial standards, promoted with unsubstantiated claims, and administered by nascent computer-adaptive technology; and therefore, the state is vulnerable to litigation stemming from its implementation and questionable uses.^{15,16,17,18}

A September 12, 2014 memo from SBAC to K-12 Leads indicates evidence of validity and reliability is not available to support administration of the SBAC in 2015.¹ On page two, the memo states,

Test reliability will initially be modeled through simulations using the item pool after item review, which is due to be completed December 31, 2014. Operational test reliability will be reported in the technical manual following the first operational administration in spring 2015. . . [emphasis added]
 . . . Because this type of evidence continues to be gathered through the operational administration of the assessments, *this table mostly reflects future plans* [emphasis added] for external validity research.

A full validity study should have been completed by now, before administration of the SBAC; the memo leaves results of a full validity study unavailable. The expected reliability should have been available from the field testing results administered in 2013-14 (approximately four months after completion of the SBAC field test in Missouri). Actual reliability may be “refined” and re-computed annually after each administration; but the *expected reliability should have been available based on the field testing results*. No explanation is given for a need for simulations to report reliability.

Analysis of the statement, “*Development of a comprehensive set of content specifications that cast the Common Core content standards in terms of evidence statements about what students will be expected to know and do,*” (Test Development Phase, bullet 2, p. 1) indicates that the Common Core State Standards were actually sufficient for guiding the development of test items. This step would not be necessary if the language of the standards were as clear and concise as proponents claim. Rather, the statement suggests that writing test items for SBAC requires rewriting and expanding the standards themselves. *This also means that the real standards students will be*

measured against are not from CCSS, but rather result from closed discussions from the SBAC development team. Questions then become, Questions that must be addressed are:

- What external group is validating that effort?
- Does any state education agency have a real say?
- How are teachers supposed to access the real standards the tests are designed to assess?

Additional concern raised by the SBAC memo is the statement, "*Development of a comprehensive set of content specifications that cast the Common Core content standards in terms of evidence statements about what students will be expected to know and do,*" (Test Development Phase, bullet 2, p. 1) . Similar content appears in SBAC's General Specifications (2012), CCSS were not specifically developed for assessment and contain a great deal of rationale and information about instruction. Therefore, following a practice many states have used in the past, Smarter Balanced distilled from the CCSS a set of content specifications expressly created to guide assessment development. (p. 9) ¹⁹

The statement indicates that problems of establishing validity and reliability may be attributable to the Common Core State Standards themselves, because they were actually insufficient for guiding the development of test items. Development of a comprehensive set of content specifications would not be necessary if the language of the standards was as clear and concise as proponents claim. Rather, the statement suggests that writing test items for SBAC requires rewriting and expanding the standards themselves. This also means that the real standards students will be measured against are not from CCSS, but rather result from closed discussions from the SBAC development team.

The SBAC memo to K-12 Leads is dated 18 days before Commissioner Nicastro's September 30, 2014 letter submitted to Senator pro temp Tom Dempsey and Speaker Tim Jones as per HB 1490. However, Nicastro's letter did not include the SBAC memo in the appendices of her letter to legislative leadership. Pages 1-2 of the letter made no mention that the SBAC assessments, aligned to the Common Core State Standards and still under development by SBAC, would be administered in spring 2015 as a component of the Missouri Assessment Plan despite its lack of external validity and any reliability coefficients. Pages 3-5 of the letter discusses the importance of establishing validity of an assessment as endorsed by several assessment organizations, and the outline of a *plan* to establish validity; however, it does not provide *evidence* of the validity and reliability of the SBAC assessments.

A PPT presented at an invitational webinar hosted by McGraw-Hill (October 2010) about the next generation of state assessment programs ²⁰ documents the challenges anticipated with regard to establishing the validity and reliability of the tests, especially with respect to performance test items, artificial intelligence scoring and computer adaptive testing.

To date, test reliability and external validity information is not available despite the confirmation by DESE ²¹ and Commissioner Nicastro ²² that the SBAC 2013 pilot test and 2014 field test should have provided at least the expected reliability data for review. No explanation is given for a need for simulations to report reliability. Actual reliability may be "refined" and re-computed annually after each administration; but the *expected reliability should have been available based on the field testing results*. A full validity study should have been completed by now, before administration of the SBAC; the memo leaves results of a full validity study unavailable.

¹ https://www.sde.idaho.gov/site/commonAssessment/docs/Memo_Validity_Overview_2014-09-11.pdf

² <http://www.smarterbalanced.org/news/states-move-forward-smarter-balanced/>

³ <http://www2.ed.gov/programs/racetothetop-assessment/reports/sbac-year-3.pdf>

⁴ http://www.smarterbalanced.org/wordpress/wp-content/uploads/2014/10/SmarterBalanced_FieldTest_Report.pdf

⁵ <http://edsources.org/2014/smarter-balanced-tests-are-still-a-work-in-progress/69828#comment-15759>

⁶ <http://www.edweek.org/ew/articles/2014/11/17/13sbac.h34.html?tkn=MWYFiGvymGxUQP4DD7DfEWwqn7OqwkiWFQr w&print=1>

⁷ <http://www.teapartymedia.net/20141214/CRESST%202012.pdf>

⁸ <http://www.smarterbalanced.org/news/smarter-balanced-to-convene-member-states-and-education-experts-in-los-angeles/>

⁹ <http://www.plainsite.org/dockets/tgx6rej/missouri-western-district-court/state-of-missouri-et-al-v-the-mcgraw-hill-companies-inc-et-al/>

¹⁰ <http://www.law360.com/cases/51ba48526db4021733000001/dockets>

- ¹¹ <http://dese.mo.gov/communications/news-releases/missouri-education-department-chooses-vendor-assessments>
- ¹² <http://www.fredsauermatrix.com/wp-content/uploads/2014/11/Sauer-v.-Nixon-Temporary-Restraining-Order.pdf>
- ¹³ <http://www.smarterbalanced.org/wordpress/wp-content/uploads/2012/02/Smarter-Balanced-Governance.pdf>
- ¹⁴ <http://www.smarterbalanced.org/news/smarter-balanced-chief-state-school-officers-meet-to-advance-assessment-system-design/>
- ¹⁵ <http://www.democratandchronicle.com/story/news/2014/03/10/teachers-union-sues-performance-reviews/6256961/>
- ¹⁶ <http://www.washingtonpost.com/blogs/answer-sheet/wp/2014/04/30/houston-teachers-sue-over-controversial-teacher-evaluation-method/>
- ¹⁷ <http://newyork.cbslocal.com/2014/11/04/long-island-teacher-sues-state-over-grade-claims-evaluation-system-is-flawed/>
- ¹⁸ <http://www.takepart.com/article/2013/04/16/florida-teachers-union-sues-state-teacher-evaluations>
- ¹⁹ <http://www.smarterbalanced.org/wordpress/wp-content/uploads/2012/05/TaskItemSpecifications/ItemSpecifications/GeneralItemSpecifications.pdf>
- ²⁰ http://www.ctb-e.com/emails/pdfs/Asst_Webinar_10_28_10_final.pdf
- ²¹ <http://dese.mo.gov/sites/default/files/DESELegislativeQ&A.pdf>
- ²² <https://dese.mo.gov/sites/default/files/MAPFieldTest.pdf>

Instructions for using this form.

- 1) Make copies of the form before completing it, to share with other parents. You should include both exhibits with the form.
- 2) Fill-out the form to indicate that you are refusing the testing of your child using the SBAC assessments for spring 2015.
- 3) Make four copies of the completed form and distribute them as follows:
 - a) Give one to the school office to be placed in the student's cumulative folder.
 - b) Give another copy to the teacher for her classroom files.
 - c) Give the third to your child to present as a written reminder to the teacher that he or she is refusing the testing described. Explain to your child that it serves as their note excusing them from the online test.
 - d) Keep the fourth copy in your home files, dated with the time of submission to the school, and the signature of the person to whom it was presented.
- 4) Review your child's school folder to monitor compliance.

For more information go to www.MOAgainstCommonCore.com and see the supporting documentation attached to the Refusal Form.

Common questions when refusing the test:

How will this stop common core and high-stakes testing?

Each district/state needs 95% participation to complete a validation process and meet USDOE requirements. If at least 6% of each testing group refuses the test, the tests cannot be validated and the school cannot be held accountable for poor scores. ***This frees our students from unnecessary stress, privacy invasion and unburdens our teachers from teaching to a test that has no validity or reliability but is proposed to be tied to teachers' performance evaluations.***

Will my school be punished?

To date, nationally, no school has been closed for parents refusing testing. This includes the schools in New York city where more than 30,000 students refused the test last year. If schools claim that they will lose funding if they do not have 95% of students participate, see the supporting documents to refute this argument. There is no desire for schools to be punished in any way, but parents have a foremost right to protect their children.

What will my child do while everyone else is testing?

The Missouri Constitution provides for "gratuitous education of students at its public schools. State statute requires that schools provide 174 days of academic instruction. It is your child's right as a public school student to receive instruction daily. It is the school's responsibility to find something instructional for your child to do. Missouri schools should provide students who do not participate in the pilot testing with quality instruction. This may mean worksheets, reading or video presentations. You may also want to send your child to school with their own reading material.

Can my school report me to social services?

Missouri law regarding educational neglect language pertains to attendance (truancy) only. So long as your child attends school on testing days, there are no grounds for educational neglect for refusing to participate in a test. Unless a school has a policy in place as of August 2015 requiring students who are not participating in the tests to be kept home, they cannot force you to keep your child home and/or mark that day as an absence. You should verify if your district had such a policy in place as of the beginning of this school year and if notice of that policy was sent to parents alerting them to their rights and obligations. You will be subject to whatever policy is on the books in your district.

Can my school withhold my child's grades if we refuse the SBAC pilot tests?

The only rule that pertains to withholding a letter grade is the one that specifically addresses End of Course assessments. The language does not define anything under SBAC or benchmark exams. There is no ethical or professional justification for using pilot test scores as a component of student grades.

Why the urgency to opt-out or refuse? State and school administrators have no evidence that national standardized tests, such as these SBAC tests, will improve education for all students. Furthermore, online tests make participants vulnerable to violations of personal privacy. Field tests are created to determine which questions to use in future tests, and in essence place the students in a position of working for the corporations who develop the tests. If parents refuse to allow their children to be used as unpaid participants in the development of tests, robbing students of precious instructional time, they will allow their publically funded schools to re-establish local control in our children's education.

Additional information and resources:

Because SBAC is funded by the federal government, it is subject to the Protection of Pupil Rights Amendment (PPRA). See link: <http://www2.ed.gov/policy/gen/guid/fpco/ppra/index.html?exp=4> Some parents have attempted to view the assessments and have been told they are not available for review. You have a right to review materials and the assessments developed with federal funds if you suspect private information protected by PPRA is required to complete an item.

National Assessment for Education Progress (NAEP) can be used for schools who feel the need to administer a standardized test. This test is one that states already participate in, that assesses each state and ranks them according to student achievement.

Missouri Coalition Against Common Core assumes no liability when parents choose to use this form. You can find an online copy of this form at Missouricoalitionagainstcommoncore.com/documents