





AMERICAN
SPEECH-LANGUAGE-
HEARING
ASSOCIATION

Association of Assistive Technology
Act Programs (ATAP)



DREDF



Disability Rights Education & Defense Fund



December 4, 2013

Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Ave., S.W.
Washington, DC 20202

Dear Secretary Duncan:

On behalf of the 100 members of the Assistive Technology Industry Association who manufacture, develop and distribute assistive technology devices (AT), we write to urge the U.S. Department of Education (ED) to rethink the decision allowing the Race to the Top Assessment Consortia to develop a fee-based certification system. Together, with partner parent and other advocacy organizations, we speak out against this policy for the significant number of special education students requiring AT to succeed in school and life; and, we wish to explain how tremendously detrimental this policy is for these students. On its current trajectory, this policy is sure to disproportionately create excessive expense, student anxiety and other negative outcomes for the very students that assistive technology is meant to support.

In October 2013, the Smarter Balanced Assessment Consortia (SBAC) launched a new website which requires AT developers to ‘certify’ devices annually for a fee of \$5,000.00 each. This site was launched without any consultation with AT experts and without any public input from parents or other advocates who truly understand the complete ecosystem that supports and connects students in their use of AT for learning. The process that a student, their family and school go through to select appropriate AT requires delicacy and accuracy. Purchase decisions are not made lightly and may ultimately be conducted through the school, a health insurance company or via the family – depending on the student’s disability and access needs. While certification of AT may seem like an easy requirement to push onto the manufacturers in order to address system compatibility, it lacks serious forethought and understanding regarding the student-level individualization necessary to assure students are well matched and comfortable with their AT.

As ATIA has previously stated in correspondence with SBAC and the Partnership for Assessment of Readiness for College and Career (PARCC), while the security of the assessment must be a priority, test security should not trump access to the test, nor should it prohibit students from using the device(s) they need to navigate their day. There must be a way to collaborate together – AT manufactures and advocates with assessment developers – to assure assessments are secure while at the same time utilizing design standards that allow the vast majority of AT devices currently used by students to be utilized during testing. Unfortunately, the new certification process creates unnecessary burden for manufacturers [post-development and distribution] as well as unnecessary access barriers for students. Therefore, we oppose pre-certification for the following reasons:

- **Student Civil Rights:** The Individuals with Disabilities Education Act (IDEA) requires that eligible students have the ability to use an Assistive Technology Device (20 USC § 1401(1), 34 CFR § 300.5) and schools are also obligated to ensure they are *made available* to an eligible child (34 CFR § 300.105). Students using such devices rely on them throughout the day to listen, to read, to speak, to write and to navigate the classroom, the curriculum and tests. All students served under IDEA are also automatically protected under Section 504 of the

Rehabilitation Act of 1973 which requires programs that receive federal financial assistance to provide accommodations to people with disabilities when necessary to ensure effective communication (34 CFR § 104.3(i)(2)(iii)). See also 34 CFR §§ 104.4 and 104.21. Additionally, all students must have access to the state assessment, and the rights of students with disabilities to participate in state assessments is grounded in Section 504 and its implementing regulations, which prohibit discrimination and the denial of comparable aids, benefits and services (34 CFR § 104.4(b)(1)(i)-(iii)). In order for aids, benefits and services to be “equally effective,” they must provide “an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement” (34 CFR § 104.4(b)(2)). Finally, Title II of the Americans with Disabilities Amendments Act, 42 USC §§ 12101-12213, requires comparable access by all state and local government programs. Therefore, we contend that to deny a student access to the assessment – because the device used by a student on a daily basis does not meet SBAC certification – would effectively deny these students comparable aids, benefits and services, thus denying them an equal opportunity to participate in the assessment as their peers without disabilities.

An additional unfortunate outcome related to the consortia not conducting any in-depth, strategic planning or collaboration with the AT industry and advocates related to compatibility is that certain states and PARCC specifically are indicating that if the student’s AT device is not compatible with the testing platform, they will ‘just give the student the paper and pencil test.’ This practice, if allowed, also discriminates against students with disabilities, and it would be shameful if ED allowed the consortia to revert to a practice that we know inherently does not allow students with disabilities to best demonstrate their full range of skills and knowledge. While we understand the need to build in transition time to fully implement the new assessments, ED must not support policy and practice decisions that disproportionately impact and discriminate against students with disabilities.

Recommendation: ED must require SBAC to retract the requirement for manufacturers to certify AT devices annually for a fee in order to protect student civil rights.

- **Structural Design and Interoperability:** In their original, approved proposals, both SBAC and PARCC addressed the issue of accessibility as it relates to students with disabilities in the *design of the new assessments* to a certain extent and especially as it related to universal design to assure accessibility of test items; however, neither consortia addressed how the AT needs of students -- as it related to the new assessments and to test items – would be considered and accommodated. The consortia made limited attempts to meet with AT developers and advocates with expertise in student use of AT devices and as a result, both PARCC and SBAC have failed completely in conducting or developing a comprehensive, transparent, technically coherent process to address the concerns raised by the AT manufactures and advocacy community. The consortia have not provided any standards or technical specifications to developers with regard to device design to create greater interoperability and address security issues. This lack of planning and communication with experts and advocates regarding the technical design, combined with the lack of interoperability of the existing testing framework(s) works counter to ensure the assessments are universally designed, as promised by the consortia and agreed to by ED in the original proposals. We know that this means students will not have the access they need via their own privately purchased or school provided AT and therefore will be barred from truly accessing the assessments.

Recommendation: ED must require the consortia to work directly with AT manufacturers serving students with disabilities to ensure new policies will support students having access to the AT they use daily for formative and summative testing.

In conclusion, we reiterate our opposition to the certification requirement. We would like to meet with you to discuss ways to collaborate on the development of a cohesive plan related to assistive technology and the new assessments. As stated, we urge the Department to reexamine this process so that students will have every opportunity to demonstrate their full range of knowledge and skills and graduate from high school ready for college or a career. We look forward to hearing from you.

Sincerely,

Assistive Technology Industry Association
American Foundation for the Blind
American Speech-Language-Hearing Association
Association of Assistive Technology Act Programs
CAST
Conference of Educational Administrators of Schools and Programs for the Deaf, Inc.
Disability Rights Education and Defense Fund
Easter Seals
Higher Education Consortium for Special Education
Institute for Educational Leadership
National Association of School Psychologists
National Association of State Directors of Special Education, Inc.
National Center for Learning Disabilities, Inc.
National Down Syndrome Congress
National Federation of the Blind
PACER Center
Teacher Education Division, Council for Exceptional Children
The Advocacy Institute
The Arc
The Council of Parent Attorneys and Advocates, Inc.

cc: Deborah Delisle, Assistant Secretary
Michael Yudin, Acting Assistant Secretary
Catherine Lhamon, Assistant Secretary
Scott Sargrad, Deputy Assistant Secretary
Ann Whalen, Director of Program and Policy Implementation
Patrick Rooney, Education Program Specialist
Claudia Gordon, Public Engagement Advisor on Disability, The White House