Summary

Smarter Balanced has recently received a question regarding whether a member state will be able to cease paying membership fees to Smarter Balanced, yet continue using the Consortium materials. The premise of the request is that a member state should have access to materials paid for with federal grant funds and/or a member state’s prior membership fees. As evidence, some proponents of this position assert that the federal government intended that the materials developed using the Race to the Top federal grant would be free to any state. Further, some argue that a state’s prior membership fees should provide continued access to Consortium materials developed in part with those member fees. This note responds to this question and the underlying premise.

Briefly, the U.S. Department of Education (“the Department”) has opined that “freely available” is not the same as “without cost” and that charging a fee for access is permissible as long as the charge applied to non-members of the Consortium is the same as that applied to members. Smarter Balanced has established a policy that is consistent with the Department’s opinion. The Smarter Balanced policy is essentially in order to provide sufficient funds to address the significant expenses that Smarter Balanced requires for its ongoing support of the Consortium materials and its responsibility to ensure the validity of the Smarter Balanced Assessment System.

Finally, certain open-source materials developed by Smarter Balanced are and will be available to both members and non-members.

Background

As described in Q.10 of the Department FAQs regarding intellectual property (http://www2.ed.gov/programs/racetothetop-assessment/ip-faqs.pdf), the Race to the Top Assessment Consortia may charge a fee for states to access the intellectual property developed using grant funds.

“As a result, the consortium must establish test or item security policies that protect the integrity of the assessment system, ensure the validity and reliability of the data, and ensure the comparability of the results across the member states. Those states or entities that comply with the consortium’s or state’s test or item security policies should be granted access to the assessment content developed during the grant period with Federal funds. The consortium may incur costs making content available; therefore, as a result, the Department understands that the consortium may consider charging a reasonable amount to cover the costs of making that content available to the requestor.”

Further, as described in the same FAQ, the Department established a principle of parity such that non-members should not be charged a greater fee than that charged to members:

"The Department expects that any state or entity wishing to administer the consortium’s assessment system (either the summative assessments or the entire assessment system) without modification after the grant period would be permitted to do so, provided they comply with the consortium’s requirements for administering the assessments. The consortium should not place an additional burden or cost on that state or entity as compared to any other state or entity administering the consortium’s assessment system. That is, the cost to administer, score, report, and otherwise maintain the assessment system should not differ based on whether the recipient state or entity was part of the consortium during the grant period."
Freely-Available Policy Rationale Regarding Non-Member Access

Smarter Balanced Policy

Smarter Balanced has adopted a policy that affords members and non-members alike access to Consortium property based on the same fees, consistent with the requirement of the Department. The Smarter Balanced policy is described at https://www.k12.wa.us/SMARTER/pubdocs/ResourcesforNon-Members.pdf.

As described in the policy document, the Smarter Balanced policy promotes the value of Consortium membership while also complying with the Department's requirements. The privileges of Consortium membership include the authority for decision-making regarding the Consortium's policies, budgets, and activities, and access to Consortium membership support services, as well as access to Consortium intellectual property. In contrast, non-members do not have Consortium decision-making privileges and only have access to the intellectual property of the Consortium for the duration of an agreement.

To provide non-members access to intellectual property requires infrastructure and resources. Prior to test administration, items, and information about the items that is necessary to address copyright issues, likely must be exported to the non-member's system. This export process is complicated and may require support and guidance. During operational test administration, Smarter Balanced must ensure that items are used properly, including investigating any concerns raised regarding non-members' policies or actions that may reduce the security of the item bank. Similarly, Smarter Balanced must have available resources to communicate with its member states if a security breach of items is caused by a non-member state. Finally, Smarter Balanced must write new items based in part on the exposure of items among non-member states, in order to maintain the validity of the assessments. All of these activities require staff time and resources, which incur costs. These costs that are created by non-members should not be borne by Consortium members. Further, each of these costs occurs within the most current fiscal year and accrues regardless of whether a non-member was previously a member in a prior fiscal year. Therefore, a former member should not be exempted from the non-member access policy.

Starting in July 2014, a state can establish membership status in Smarter Balanced through a member Memorandum of Understanding (MOU) between the state and the University of California. Similarly, non-members can implement access to Smarter Balanced items and related materials through a non-member MOU.

It is important to note that Smarter Balanced has sponsored the development of several open-source applications that will fundamentally change the education marketplace. These open-source applications are available to both Smarter Balanced members and non-members. For members that choose to leave the Consortium, continued access to these applications (most importantly, the test administration application) allows members to continue to provide test administration services to students and teachers, using all of the tools and processes to which they have become accustomed. For most states, this flexibility provides a new and critical level of continuity that reduces the potential risk of change in the assessment system. Similarly, Smarter Balanced provides a substantial number of assessment items on its practice tests, which are available to members and non-members as well as to the general public. These practice tests provide valuable support for teacher professional development and broad communication regarding how to effectively measure student proficiency on the Common Core State Standards.