Dear Smarter Balanced Governing, Affiliate and Executive Committee Members:

We, the National Federation of the Blind ("NFB") along with other advocate signators below, write with great urgency regarding the upcoming rollout of your operational assessments and their detrimental impact on students who are blind or have learning or other disabilities. We are terribly concerned that many students with disabilities will be denied the right to participate equally in these assessments. Despite our ongoing outreach to Smarter Balanced and its contractor, American Institutes for Research ("AIR"), we fear that many students with disabilities will be harmed by the significant accessibility barriers that still remain so close to the tests’ launch and that components of your policy decisions will mean that certain students will be completely excluded from taking portions of the assessment.

As of our most recent discussion on January 15, 2015, with members of your staff (including Tony Alpert and Magda Chia) and AIR, several critical issues require immediate resolution to ensure that students with disabilities will be able to participate in the tests on an equal basis with their peers. A description of each issue follows.

1. Exclusion of Text-to-Speech Accommodations for Grades Three to Five

Smarter Balanced currently prohibits all text-to-speech accommodations for certain portions of the English Language Assessment ("ELA") for students in grades three through five.¹ Many students who are blind or have low vision and who cannot read Braille, or who have learning or other disabilities, require text-to-speech to access the test. These students will be excluded altogether from taking parts of the test intended to measure reading skills. We understand that Smarter Balanced decided to prohibit these accommodations because one of the skills measured in the affected test sections – decoding – may not be accurately assessed when text-to-speech is employed. However, the excluded questions also measure other reading skills that are not impacted by text-to-speech, including vocabulary, reading comprehension and related skills, such as determining point of view and drawing inferences. Excluding students from these questions will have damaging consequences. For example, a student whose abilities exceed grade level in

reading comprehension and who has an exceptional vocabulary would receive scores that do not reflect her true reading ability. Depending on how her school chooses to use the student’s test results, the child may be placed in classes that do not reflect her abilities or she may not receive the supports she needs to improve her skills. In addition, Smarter Balanced’s exclusion policy may prompt IEP teams to similarly exclude these testing accommodations from a student’s IEP, furthering the harm. Interim solutions like working with schools to avoid unintended consequences will not be sufficient because it is unclear how long data from these assessments will be attached to a student’s record. The mere documentation of an inaccurate score has potential for great harm. Thus, the policy could create long-term damage to a student’s academic progress. The detrimental impact also affects schools and teachers, who will not be measured accurately with respect to their students’ mastery of Common Core State Standards.

We expressed our concerns about the exclusion of text-to-speech on the January 15 call, as we have attempted to do on other calls, and appreciated Mr. Alpert’s and Ms. Chia’s willingness to work with us to identify possible solutions. We discussed as an alternative, assessing decoding separately by decoupling that skill from the other reading skills that are measured. Please note that flagging these students’ test scores to indicate a difference in testing or accuracy of scoring is not an acceptable solution, since it could have adverse consequences that follow the student, and would violate the Americans with Disabilities Act (“ADA”). We understand Mr. Alpert, Ms. Chia and Ms. Anne Davidson will be bringing this issue and proposed alternative to your attention and will provide us your response by January 29.

2. Failure to Provide Other Essential Accommodations

In addition to the exclusion of text-to-speech accommodations for grades three to five, we remain extremely troubled about other decisions Smarter Balanced has made to deny or ignore commonly-used and necessary accommodations. To name a few, Smarter Balanced is not permitting the use of a calculator for grades three to five, American Sign Language on ELA reading passages for grades three to five, or use of a scribe for all test items other than ELA non-writing items and math items. We also understand Smarter Balanced has failed to address other necessary accommodations, including accommodations for students who require essential writing supports (commonly found on students’ IEPs and Section 504 plans, such as graphic organizers and word-prediction software) and use of text-to-speech for proofreading.

Providing accommodations is not a matter of preference or policy but a matter of law. If a student with a learning or other disability requires the use of text-to-speech or another accommodation to access curriculum and has the accommodation on his IEP or 504 plan, the exclusion of the needed accommodation on a Smarter Balanced assessment is inappropriate. The standard for meaningful access is not whether the student will be able to demonstrate some degree of mastery

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of the skills and knowledge being targeted, but whether the test provides the student an equal opportunity under Section 504 and the ADA to demonstrate the student’s actual level of mastery. We request Smarter Balanced reassess the exclusion of these critical and legally required accommodations.

3. Accessibility Barriers on the AIR Platform

Smarter Balanced’s test platform continues to contain extensive accessibility barriers that will prevent students who use screen-access software from accessing the test content equally to their non-disabled peers. The NFB’s Director of Access Technology, Anne Taylor, recently reviewed test questions through a link provided by AIR and found numerous barriers that will prevent students who use screen-access software from accessing test information and navigating through the test. Many of these accessibility barriers are basic, “low-hanging fruit” that should already have been corrected. Ms. Taylor described the problems on the January 15 call as she has done in previous conversations with your staff and contractor. We are alarmed that so many barriers are present so close to the test window. We urge Smarter Balanced to correct the accessibility barriers as soon as possible and to include additional user testing to ensure that all barriers are fixed before the tests are launched.

4. Incompatibility with Commonly Used Screen-access Software Programs and Devices

Smarter Balanced currently offers students who rely on screen-access software only one viable option to take the test, that is, to take the test on a PC with JAWS screen-access software. However, JAWS is only one of the widely-used screen-access software programs. Many students use NVDA, Zoom-Text (particularly low-vision students), VoiceOver, and other major, commercially available screen-access software programs. These students, unfamiliar with JAWS on a PC, will be forced to learn a new method to read and access information while they are taking the test.

JAWS users, too, will be unable to take the test in the manner that best reflects their abilities because it is our understanding that AIR has reconfigured the JAWS commands for the assessment. This means a student who has learned and is familiar with hitting standard JAWS command keys to navigate to a chart, for example, will find these commands do not work on the Smarter Balanced test.

Finally, while Smarter Balanced offers its test to non-disabled students on multiple platforms, including iPads and other devices, it makes only one platform – PCs – available to students who require screen-access software. Increasingly, IEP teams are encouraging Macs and iPads with VoiceOver for students with disabilities to use as primary devices to access content.

Students who require screen-access software, whether JAWS or another type, or devices other than PCs, therefore, will be tested on how well they learn a new method of acquiring information as a result of their disability, rather than the skills the test is designed to measure, a practice the
ADA prohibits. We urge Smarter Balanced to make the test accessible to the screen-access technology and platforms that reflect what students with disabilities use.

5. Requirement that Schools Emboss Tactile Graphics with a Tiger Embosser

Smarter Balanced’s test is administered to students electronically and is computer adaptive; that is, based on student responses, the computer program will adjust the difficulty of questions throughout the assessment. Students who use Braille, and some blind and low vision students who use text-to-speech or read aloud, will need tactile graphics for test questions that are accompanied by a picture, diagram, or other image. Smarter Balanced currently requires schools to emboss the tactile graphics on-demand, while the test session is live, on a Tiger embosser. However, many schools do not own or have access to a Tiger brand embosser, and these embossers can be very expensive. We are also concerned that school personnel administering the test may not know how to use the Tiger embosser or how to ensure the graphics are embossed correctly.

For schools that cannot emboss the graphics on demand, Smarter Balanced offers a hard copy, non-adaptive Braille test for Braille readers. However, this test is different from the test offered to non-disabled students and, as we understand it, will be scored differently. Instead of a separate test or forcing schools to emboss graphics, we urge Smarter Balanced to provide schools with a full set of embossed graphics for students who need them, from which the appropriate graphic can be selected during the computer adaptive testing.

Most of the issues identified above were preventable, had appropriate attention been paid during the several years leading up to the tests’ release, and all of the issues identified above would have likely been prevented had the NFB and other advocate signators been consulted during test development. If left unresolved, these barriers and exclusions place the school districts administering the Smarter Balanced assessments and Smarter Balanced itself at risk of violating federal disability rights laws, including titles II and III of the ADA, the IDEA, and section 504 of the Rehabilitation Act of 1973. These laws broadly prohibit discrimination against students with disabilities and require testing entities and recipients of federal funds to administer assessments in a place and manner accessible to persons with disabilities and “so as to best ensure that, when the examination is administered to an individual with a disability . . . the examination results accurately reflect . . . [what] the examination purports to measure, rather than reflecting the individual’s impaired sensory skills except where those skills are factors that the examination purports to measure.”

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4 See Enyart v. Nat’l Conference of Bar Examiners, 630 F.3d 1153, 1163 (9th Cir. 2011) (holding that a particular combination of accommodations was “the only way” a blind test taker could “fully comprehend” testing materials); Jones v. Nat’l Conference of Bar Examiners, 801 F. Supp. 2d 270, 288 (D. Vt. 2011) (holding that “Plaintiff’s primary and most effective means of accessing lengthy written material is achieved only through her use of [the accommodation] that she has consistently and successfully used over the past eight years.”)

We urge you, as Members of the Governing Board, to take immediate action to resolve the issues described above before the launch of the 2015 operational assessments. We look forward to hearing from Mr. Alpert, Ms. Chia, and Ms. Davidson regarding Smarter Balanced’s exclusion of text-to-speech accommodations by January 29 and hope to hear your plan to address the additional issues raised in this letter at that same time. We continue to be available for consultation.

Sincerely,

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