

**MEMORANDUM OF LAW**  
**North Carolina Budget Puts Common Core Assessments on Ice**  
North Carolina Institute for Constitutional Law<sup>1</sup>  
August 14, 2013

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The North Carolina Institute for Constitutional Law recently published a multi-part series of white papers (available [here](#)) that explain many of the legal and constitutional concerns about the federal effort to establish national educational standards known as Common Core. While Common Core implementation continues despite vocal opposition centered on these and other concerns, a provision in the recently enacted state budget prohibits the State Board of Education from purchasing or implementing Common Core assessments, i.e., tests, unless and until the General Assembly first passes legislation giving its approval. This memorandum explains this budgetary provision and explores how it could impact implementation of Common Core moving forward.

**Appropriations Act of 2013**

The Appropriations Act of 2013 ([SB 402](#)) was signed into law by Governor McCrory on July 26, 2013. S.L. 2013-360. Section 9.2.(b) of the budget requires the State Board of Education to report to the Joint Legislative Education Oversight Committee and get General Assembly approval before buying or implementing Common Core aligned<sup>2</sup> testing instruments. The section states:

Notwithstanding the provisions of G.S. 115C-174.11(c), the State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to the purchase and implementation of a new assessment instrument to assess student achievement on the Common Core State Standards, including the Common Core Smarter Balance Consortium Assessments. The State Board shall not purchase such an assessment instrument without the enactment of legislation by the General Assembly authorizing the purchase.

Sec. 9.2.(b), S.L. 2013-360. This provision of the budget effectively overrides [G.S. 115C-174.11\(c\)](#). Among other things, that statute directs the State Board of Education to “continue to participate in the development of the Common Core State Standards” and “adopt the tests...that are required by federal law or as a condition of a federal grant.”

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<sup>2</sup> Aligned assessments are essentially end-of-year standardized tests designed specifically to test students on Common Core standards.

Notwithstanding this directive to continue implementation of Common Core and aligned testing, Sec. 9.2.(b) of the budget introduces two additional procedural hurdles to implementing and purchasing aligned assessments: (1) reporting to the Joint Legislative Education Oversight Committee, and (2) obtaining approval from the General Assembly prior to purchasing an assessment instrument. Sec. 9.2.(b) essentially freezes Common Core assessment implementation until the General Assembly decides to either move forward or withdraw from Common Core. This provides the General Assembly and the public an opportunity to learn more about Common Core and aligned testing before the State expends more of its resources committing to Common Core.

### **Standards vs. Assessments**

While Sec. 9.2.(b) of the budget prevents further implementation of *assessments* that are aligned with Common Core without legislative approval, it does not halt implementation of the Common Core *standards*. As explained in NCICL's paper "[Common Core's History and Structure](#)," the standards are actually a series of benchmarks in English language arts (ELA) and mathematics that are calibrated for each grade-level, kindergarten through twelfth grade. In addition, the Common Core standards will "set requirements not only for English language arts (ELA) but also for literacy in history/social studies, science, and technical subjects." [Common Core State Standards for English Language Arts & History/Social Studies, Science, and Technical Studies](#), p. 3. Proponents of standards based reform do not promote testing for the sake of testing. Rather, they promote such reform as a means "to guide the development of curricula, instructional materials, assessments, and the preparation and professional development of teachers." The Hunt Institute, "[A Report From the 2008 Governors Education Symposium](#)," June 8-10, 2008. Implementation of the Common Core standards and the associated changes to curricula, instructional materials, and professional development training will continue unimpeded notwithstanding Sec. 9.2.(b). This is because Sec. 9.2.(b) applies *only* to testing. All other aspects of Common Core are subject to G.S. 115C-174.11(c), and the State Board of Education must "continue to participate in the development of the Common Core State Standards."

Implementation of aligned assessments, as distinguished from standards, is limited by Sec. 9.2.(b) of the budget. Two consortia of states, the Partnership for Assessment of Readiness for College and Careers (PARCC) and the Smarter Balanced Assessment

Consortium (SBAC), have been developing aligned assessments for use by the states. [Common Core FAQ](#). North Carolina is a “governing state” member of SBAC and field-tested assessments for the organization during the 2012-13 school year. As detailed in NCICL’s paper “[How Much Does It Cost?](#)”, the cost of assessments will be significant. Although concrete numbers are not yet available, the N.C. Department of Public Instruction estimates that the cost per student will jump from the current \$10 up to \$27. NC SBE Orientation, Part 2, June 5, 2013. *See also* Terry Stoops, “[Common Core: Critics in search of a coherent vision](#),” The News and Observer, June 13, 2013. New assessments could cost North Carolina taxpayers \$109 million. *See* Theodor Rebarber, AccountabilityWorks, “[National Cost of Aligning States and Localities to the Common Core Standards](#),” A Pioneer Institute and American Principles Project White Paper 10-11, Feb. 2012.<sup>3</sup> However, Sec. 9.2.(b) of the budget will put the brakes on these expenses, for the moment. Before the State Board of Education can purchase assessments from SBAC or implement those tests, it must first report to the Joint Legislative Education Oversight Committee and also obtain approval from the General Assembly. Sec. 9.2.(b). Until it reports to the Joint Committee and gets authorization from the legislature, the Board of Education cannot lawfully spend money to buy Common Core aligned tests or otherwise further implement Common Core aligned assessments.

## **Conclusion**

With the passage of North Carolina’s 2013 budget, the General Assembly issued a new directive in Sec. 9.2.(b) that requires the State Board of Education to report to the Joint Legislative Education Oversight Committee and obtain legislative approval before purchasing or implementing Common Core aligned tests. Sec. 9.2.(b) does not stop implementation of the Common Core State Standards in North Carolina, but it does place a hold on Common Core assessments. This pause may give legislators additional time to reconsider North Carolina’s participation in Common Core.

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<sup>3</sup> With 786,206 N.C. students in grades 3 through 8 and 11 (based on the Pioneer Study’s data) multiplied by SBAC’s estimate of \$1981 per test, the one-year cost of is \$15,574,740.86. For the purposes of the Pioneer Study, this figure should be multiplied by 7 to determine the cost over 7 years, which is \$109,023,186.