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October 14, 2009

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Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: 22 Pa. Code Chapter 4 Regulations for Academic Standards and Assessment (2696) proposed for final approval by the IRRC.

The Public Interest Law Center of Philadelphia (PILCOP) remains very concerned about the high stakes testing scheme proposed by the State Board of Education. Although the rhetoric supporting the tests aims to make sure district graduation standards are sufficient, the price is paid by individual students who will not be allowed to get a diploma, **despite satisfactory course completion meeting the standards for passing set by their teachers.** The regulations, moreover, do not adequately address accommodating the needs of English Language Learners or persons with disabilities. We are writing, therefore, to express our opposition to the proposal, and endorse the comments of The Education Law Center, The Arc, Pennsylvania and the VALUE Coalition.

We hope there is no dispute that it is basically unfair to deprive students of a diploma who have satisfied all the course work presented to them. The point of the state's efforts is to require the districts to have a more rigorous curriculum and higher standards of what they ask from their students. If the District is doing its job of aligning its instruction to the graduation exam, a substantial majority of the students in the district should be passing the exam. What is missing in this proposal is a transition rule for those districts which still have not succeeded in adapting their instructional and curriculum practices to the state standards.

The current results from the PSSAs make clear that many school districts in Pennsylvania are failing to instruct their students to state standards. This past year, there were 40 school districts in which 50 percent or more of the 11th grade



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students were not able to reach state standards in Reading, and 132 districts in which 50 percent or more could not attain state standards in Math. This is a clear indication of failure on the part of those districts to adequately prepare their students in these basic subjects. Among the reasons may well be insufficient state resources. We note that the State Board's Costing Out Study in 2007 reported the gap between what it would cost each district to bring all of its students to the proficient level and what each district actually spent. From that Study we have computed the spending gap of each of the 40 school districts with more than half of its 11th grade students failing in Math and found the average gap to be \$2,516 per student.

We also looked at the socio-economic status of the districts which are failing to adequately prepare their students for the state tests. Again these districts disproportionately include low income students on free lunch and minority students. This last year, there were over 33,500 economically disadvantaged 11th grade students in Pennsylvania schools, about 25 percent of all 11th graders. On average, 58.8 percent of these students failed Math, and 48.6 percent failed Reading. Clearly the schools are a long way from implementing a successful teaching methodology with these students. Not surprisingly, these economically disadvantaged students are concentrated in the school districts where more than half of the students are failing; they make up 37.5 percent of the 11th grade students in districts where more than half of the students are failing Math and more than 50 percent of the students in districts failing Reading. In contrast, the twenty school districts with the highest reading scores have an average of 5.4 percent economically disadvantaged students.

While minorities make up a little over 11 percent of the total student population in the state, they are 42 percent of the 11th grade students in the districts which failed to have half their students pass the reading test. In fact, those school districts with the seven worst Reading scores all had over 95 percent minority enrollment.

We strongly believe that imposing high stakes testing on these students is both counterproductive and unfair: it diverts much-needed funding at the same time that it penalizes individual students for the failures of the system. A central finding of research on high-stakes tests implemented across the country shows that students denied a graduation diploma are disproportionately low-income and minority students. (Groves, 2002¹; Haney, 2000²; Madaus and Clarke, 2001³; Nichols, Glass and Berliner, 2005⁴)

¹ Groves, P. Doesn't It Feel Morbid Here? High-Stakes Testing and the Widening of the Equity Gap, *Educational Foundations* v. 16 n. 2 (2002).

² Haney, W. The Myth of the Texas Miracle in Education, *Education Analysis Policy Archives* v. 8 n. 41 (2000).

³ Madaus, G. and Clarke, M. The Adverse Impact of High Stakes Testing on Minority Students, in Orfield, G. and Kornhaber, M.L., eds., *Raising Standards or Raising Barriers?* (2001).

⁴ Nichols, Glass and Berliner, High-Stakes Testing and Student Achievement: Does Accountability Pressure Increase Student Learning? *Education Policy Analysis Archives* v. 14 n. 1 (2006).



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These tests are also shown to increase drop-out rates: a study of 18 states showed that 62 percent of those states that instituted high school exit exams saw increases in drop outs. (Amrein and Berliner, 2002⁵) Florida, one of the first states to implement a high-stakes standardized testing regime in 1998, had a graduation rate of 63.6 percent in 2006, one of the lowest in the country and nearly 10 percentage points below the national average. Even eight years after instituting the exam, one school had a graduation rate of 28.2 percent. Research shows that in Florida, students with moderate grades who fail the examination (ranging from 1.5 to 2.5 on a 4-point scale) show a significant increase in likelihood of dropping out of school.⁶ These findings offer clear evidence that such a testing system in Pennsylvania will cause serious harm to our most at-risk students. **In light of fundamental questions about the deleterious effect of these exams on minority, low income, English language learners and disabled students, the Keystone exams ought not be approved at all.**

Proposed Transition Rule

However, we also strongly urge the IRRC that if this testing regime is to be adopted, the students in the districts in which substantial percentages are failing reading or math ought to be exempt from using passage on the Keystone as a graduation requirement. Only after the Keystone scores in those districts cross the threshold of a substantial majority of students meeting proficiency, should test results be used in assessing entitlement to graduate. We think the very fact that their diploma is not found to be equivalent to proficiency on the Keystone exam will be a spur to those districts to improve their instructional efforts.

We urge the IRRC to reject the Board's proposal, or in the alternative, to require it to be modified in a way that does not further harm students for the education system's failures by exempting students in districts where less than a substantial majority of the students obtain proficiency on the Keystone exam. This is the only way that the purpose of the test can be met fairly without punishing students who have successfully met their District's standards, but the District has failed to successfully adjust its instructional practices to state standards.

Sincerely,

The Public Interest Law Center of Philadelphia
By: Michael Churchill and Katie Ottenweller

⁵ Amrein, A. and Berliner, D. High-Stakes Testing, Uncertainty, and Student Learning, *Education Policy Analysis Archives* v. 10 n. 18 (2002).

⁶ Clarke, M., Haney, W. and Madaus, G. High Stakes Testing and High School Completion, *National Board on Educational Testing and Public Policy* v. 1 n. 3 (2000).