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INDEPENDENT REGULATORY
REVIEW COMMISSION

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

RE: 22 PA Code Chapter 4 Regulations for Academic Standards and Assessment (#006-312),
Proposed by the State Board of Education

Juvenile Law Center asks you to encourage the State Board of Education (Board) to take the proposed graduation assessment regulations off the fast track. We further request that you consider including our suggestions for improving the regulations, which we offer at the end of our comments, in your recommendations to the Board.

Founded in 1975 as a non-profit legal service, Juvenile Law Center (JLC) is one of the oldest multi-issue public interest law firms for children in the United States. JLC promotes juvenile justice and child welfare reform in Pennsylvania and nationwide through legal and policy advocacy. In representing youth in the child welfare and juvenile justice systems, JLC attorneys have observed a direct connection between the educational achievement of youth in these systems and their capacity to overcome the unique challenges they encounter. We are therefore committed to ensuring that youth in the child welfare and juvenile justice systems receive the same access and opportunity to succeed in their education as all other children.

Recently, the State Board of Education (Board) gave initial approval to a plan that would require Pennsylvania students who have not performed at a proficient level on PSSA testing to pass graduation tests in order to qualify for a regular high school diploma. In its current form, the Board's plan would have a disproportionate impact on the vulnerable population of youth we represent.

In the context of the regulatory review criteria specified in the Independent Regulatory Review Act (IRRA), the foreseeable impact of the Board's plan on at risk youth, and state-involved youth in particular, renders the plan unacceptable. According to the IRRA, the Independent Regulatory Review Commission (IRRC) must consider both the effect of a proposed regulation on the "public health, safety, and welfare" and the cost of the regulation in determining whether the regulation is in the public interest. 71 P.S. § 745.5b. In the discussion that follows, we explain that the Board's plan would interfere with the "public health, safety, and welfare" by dramatically increasing the number of youth, and especially state-involved youth, who drop out

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of high school without ensuring a higher level of academic achievement for those who graduate. We consider why the higher drop-out rate would interfere not only with the “health, safety and welfare” of the youth who drop out but also with that of their families and communities. Furthermore, we note that the Board’s plan will be costly for the state. Because youth who drop out of high school earn significantly less than their peers who graduate from high school, a higher drop-out rate would reduce the state’s tax base. At the same time, the state would have to increase spending to address the harm that would result from the higher drop-out rate.

Like all students, youth in the foster care and juvenile justice systems want to receive a diploma granted by a Pennsylvania public high school: a diploma that represents a high standard of academic achievement and full preparation for college and employment. Yet, many of these youth will never achieve this goal. Studies have shown that foster youth are more than twice as likely to drop out of school as other teens,¹ and that only 15% of youth who are incarcerated in ninth grade complete high school four years later.² Recently, Project U-Turn in Philadelphia reported that 70% of foster youth in high school and 90% of those in the juvenile justice system drop out of high school in the city.³

Several factors contribute to the low graduation rates among youth in the child welfare and juvenile justice systems. These youth face an uphill battle to graduation. Most foster youth, for example, switch schools multiple times as a result of changes in their living arrangements.⁴ Each time foster youth switch schools, they lose approximately four to six months of academic progress.⁵ When foster youth are placed in new schools and when formerly incarcerated youth return to school, they often face delays in school enrollment, difficulties in transferring course credits, inappropriate school placements, and a lack of educational support services.

Now it appears that youth in the child welfare and juvenile justice systems will be confronted with yet another obstacle to graduation: graduation tests that will push many of these youth who are standing at the edge of failing out of high school over the edge. We believe that the Board’s “test first – reform later” approach will have a devastating and disproportionate impact on youth in the foster care and juvenile justice systems. While we do not dispute that schools need to have high expectations for the education of *all* children, imposing such a requirement in the absence of other strategies to provide quality education for all students will only increase the already dismal drop-out rates of this at-risk population.

We do not believe that it was ever the intent of the Governor’s Commission on College and Career Success to promote high stakes testing in the absence of necessary supports. In fact, the Commission has recommended new student assessments only as part of an overall strategy to improve educational outcomes through new teacher training programs, academic interventions for struggling students, expanded guidance and counseling services, better options for career and technical education, increased dropout prevention efforts, and action to eliminate inequities of funding and resources that result in diminished opportunities for many of the state’s most disadvantaged students. Unfortunately, the proposed graduation assessment regulations are now moving forward in isolation from the broader set of reforms recommended by the commission.⁶

If pursued in isolation from the broader set of necessary education reforms, the new high stakes graduation requirements proposed by the Board of Education will be counterproductive by

raising the drop-out rate statewide and among youth in the foster care and juvenile justice systems in particular. Indeed, several studies show that drop-out rates have increased in states that have adopted high-stakes graduation exams.⁷ Moreover, some of these studies demonstrate that when states adopt high-stakes graduation exams, drop-out rates increase most significantly among minority students and low-achieving students.⁸ A disproportionate number of students involved in the child welfare and juvenile justice systems fall into these categories. Furthermore, state-involved youth face unique obstacles to educational progress as a result of their involvement in the child welfare and juvenile justice systems. Thus, the drop-out rate among state-involved youth in Pennsylvania will likely increase dramatically if the Board's plan is adopted without the supports necessary to provide all youth an opportunity to pass graduation exams.

The individual and societal costs of denying a diploma based on a state test score are extraordinary—youth, and especially state-involved youth, without diplomas face significantly greater risks of poverty, unemployment, family instability, dependence on public benefits, homelessness, and incarceration. These outcomes would have a devastating effect not only on the youth who would be affected by them, but also on their families and communities. In addition, these outcomes would be expensive for the state. The state's tax base would diminish as a result of the higher unemployment rate and the decreased earning potential of youth who are denied diplomas. Furthermore, to address the increased rates of poverty, family dysfunction, and crime, the state would have to spend more on social welfare and criminal justice programs.

Finally, there is scant evidence that the benefits of standardized graduation assessments are worth the cost. Proponents of graduation assessments argue that the exams raise academic achievement and increase the value of high school diplomas in the labor market. It is, however, far from clear that graduation assessments provide these benefits when they are adopted separately from other reforms. Hardly any states using high stakes exams have seen increases in their national rank in SAT or National Assessment of Educational Progress scores—suggesting that a focus on high stakes testing prepares students for the test itself, but for little else.⁹ Moreover, there is insufficient evidence that employers view high school diplomas differently when they are tied to high stakes exams.¹⁰ As a result, graduation assessments risk harming youth from disadvantaged backgrounds, and especially state-involved youth, without granting obvious benefits to them or their peers.

Juvenile Law Center encourages the IRRC to make the following recommendations to the Board to address potential problems with the Board's current proposal:


- Take the current proposal off the fast track. Engage all branches of government, along with stakeholders, in a process of developing the full range of policies needed so that *all* students can receive a fair opportunity to receive a quality education and earn a meaningful diploma. While the proposed regulations state that the Pennsylvania Department of Education “shall provide support” to help school districts develop tutoring, remediation, and professional development programs, the regulations do not specify in any detail how long or extensive the state support will be, and who will be responsible for the cost of this support. Furthermore, the Board, acting alone, does not have the authority to mandate and fund the complete array of supports necessary to enable districts to provide all students with a quality education. The


Board should therefore work in collaboration with all branches of government to provide districts with the support they need to help students reach high academic standards.

- Improve educational outcomes for state-involved youth by collaborating with all branches of government on the adoption of legislation and policies to ensure school stability, prompt enrollment, transfer of credits, quality instruction, appropriate school placement, adequate educational support services, and the issuance of diplomas for youth in the child welfare and juvenile justice systems.
- Before implementing new academic assessments, secure new student rights and state mandates for timely remediation, qualified teachers who are capable of teaching students from diverse backgrounds, small class sizes, modern textbooks and technology, and funding adequate to pay for these resources. Such resources are deceptively simple to list on paper, but have evaded concrete action by state government for decades. Without the guarantee of these resources, students from disadvantaged schools and backgrounds, including state-involved youth, will be penalized for failing to demonstrate mastery of material that they were never given an opportunity to learn.
- Ensure that new assessments involve multiple measures of student knowledge, including a portfolio of work supervised and approved by local school officials and the state. A student's fate must not be determined by a single test and multiple choice exams are not always the best measurement devices.
- Target school reforms, student support programs, and alternative assessment options for schools failing to make adequate yearly progress based on PSSA results. The state currently uses the PSSA to identify failing schools, but provides insufficient support for reforms. It is not fair to hold students accountable for failing an exam when their schools do not provide them with a meaningful opportunity to learn the material.
- Provide students who do not score proficient on the PSSA or GCA the opportunity to retake the tests and free remedial instruction for up to two years.

We urge the IRRC to include these recommendations in its comments to the State Board of Education.

Sincerely,


Robert G. Schwartz
Executive Director


Sherry Orbach
Zubrow Fellow

CC: Members of the Senate and House Education Committees

¹ See Courtney, M. et al. (2007). *Midwest Evaluation of the Adult Functioning of Former Foster Youth (at 21)*. Chapin Hall Center for Children at the University of Chicago; Moving from Risk to Opportunity: KIDS COUNT 2004 Essay. The Annie E. Casey Foundation. www.kidscount.org.

² Moving from Risk to Opportunity: KIDS COUNT 2004 Essay, The Annie E. Casey Foundation, www.kidscount.org.

³ Curran, R. & Balfanz, R. (2006). *Unfulfilled Promise: The Dimensions and Characteristics of Philadelphia's Dropout Crisis, 2000-2005*. Project U-Turn. http://www.projectuturn.net/downloads/pdf/Unfulfilled_Promise_Project_U-turn.pdf.

⁴ Pecora, P., Kessler, R., Williams, J., et al. 2005. Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study. Seattle, WA: Casey Family Programs. (Revised). <http://www.casey.org/Resources/Publications/NorthwestAlumniStudy.htm>

⁵ See Rogers, J. (1991). Education Report of Rule 706 Expert Panel, presented in *B.H. v. Johnson*, 715 F. Supp. 1387(N.D. Ill. 1989). Chicago, IL: Department of Education, Loyola University.

⁶ While Governor Rendell recently proposed significant increases in funding to schools in low-income districts, it is unclear whether the legislature will ultimately accept the Governor's proposal. Moreover, even if the Governor's proposal is accepted, the additional funding would not solve many of the problems that prevent state-involved youth from completing high school, including the difficulties they face in transferring course credits when they switch schools.

⁷ Darling-Hammond, L., Rustique-Forrester, E. & Pechione, R. (2005). Multiple Measures Approaches to High School Graduation: A Review of State Student Assessment Policies. Stanford, CA: Stanford University, School Redesign Network.

⁸ *Id.*

⁹ Mueller, J. (2002). *Facing the Unhappy Day: Three Aspects of the High Stakes Testing Movement*. 11 Kan. J.L. & Pub. Pol'y 201; See *Id.*

¹⁰ Warren, J.R., Grodsky, E., & Lee, J. (2007). *State High School Exit Examinations and Post-Secondary Labor Market Outcomes*. <http://www.soc.umn.edu/~warren/Warren,%20Grodsky,%20&%20Lee.pdf>.