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INDEPENDENT REGULATORY  
REVIEW COMMISSION



*Leadership for Public Education*

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Mr. James Buckheit, Executive Director  
State Board of Education  
333 Market Street  
Harrisburg, PA 17126-0333

Re: Comments, Graduation Competency Assessments  
Proposed Regulations 6-312, IRRC No. 2696  
22 Pa. Code Ch. 4 (Relating to Academic Standards and Assessment)

Dear Mr. Buckheit:

The Pennsylvania State Education Association (PSEA), on behalf of more than 170,000 public school teachers, educational support personnel, school counselors, administrators, curriculum specialists, librarians, school dental hygienists, school nurses, school psychologists, and school social workers, is opposed to the above-referenced regulatory proposal to establish Graduation Competency Assessments (GCAs).

PSEA submits both the following comments and those set forth in the attached Joint Statement in Opposition to Graduation Competency Assessments. Said Joint Statement is signed by a broad and diverse array of 24 organizations. Signatories represent parents, most types of educators, students, parents of special education students, parents of gifted students, minorities, school administrators, and children's advocates. We ask that the State Board and the Independent Regulatory Review Commission (IRRC) consider the breadth and depth of community opposition to these proposed regulations, as well as the reasons for that opposition set forth in the attached Joint Statement..

Comments:

- Is the regulation in the public interest?

PSEA contends that the modifications to Chapter 4 are not in the public interest. The changes establish a test-based graduation requirement known as an "exit exam system" or "high-stakes testing." We should note that the regulation's option of a local assessment system establishes such cost-prohibitive requirements to render that option meaningless. By any name, the proposal does more harm than good for Pennsylvania's students.

PSEA is not alone in believing the proposed regulation is not in the public interest. We have attached a joint statement to this effect signed by 24 Pennsylvania organizations and community groups.

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**The PSEA Mission**

*To advance quality public education for all students while fostering the dignity and worth of members through collective action.*

Affiliated with the National Education Association

There is extensive research that demonstrates significant unintended consequences of high stakes testing that Pennsylvania will assuredly encounter if the changes to Chapter 4 are adopted as proposed. In sum, the research has found that the negative consequences of high stakes testing include:

- increased dropout rates;
- harmfully narrowed curriculum;
- diversion of resources away from education of students and toward more standardized testing of students; and
- disproportionate harm to some of our most vulnerable students—students living in poverty, minority students, English language learners, and special needs students.

- Is the regulation consistent with the intent of the General Assembly?

PSEA believes the General Assembly has a long tradition of respecting local control—believing that those closest to the situation have the best understanding of the issues. We believe it is the intent of the General Assembly to have the local school board—those closest to the community and the students—have control over the graduation requirements of its community's schools.

The proposed regulation, by establishing stringent and expensive requirements of maintaining a local assessment system for graduation, in effect establishes the state mandated (and produced) Pennsylvania System of School Assessments (PSSA) and/or the Graduation Competency Assessments as the graduation requirement of all Pennsylvania students.

- Does the regulation conflict with or duplicate other statutes or existing regulations?

The State Board of Education cites a disparity between the number of students graduating from school districts and the number of students scoring proficient on the state's assessment—the PSSA—as proof of a deficiency in the local assessment system. Additionally, it cites college enrollment and success statistics to imply that students are not properly prepared for college.<sup>1</sup> The State Board fails, however, to show any direct link between the statistics and the implication. Many factors impact whether a student enters college and when he or she finishes that have nothing to do with whether the student was properly prepared in high school.

Even the State Board of Education's own data demonstrates it is false to claim that local graduation assessments must be inadequate when they show more students to be proficient than those who scored proficient on the PSSA. This data is found in the State Board's HumRRO report<sup>2</sup>, which studied students who enrolled in three Pennsylvania universities. The study shows that 58.7% of students it tracked who scored basic or below on the PSSA tests took at least the standard level mathematics or English college course. This means that most students who supposedly "failed" the PSSA enrolled in non-remedial college courses in the same subject area. There were thousands of students in these three universities who would not have been able to go on to college if we were to

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<sup>1</sup> (Proposed Rulemaking, State Board of Education, 22 PA. Code Ch 4, May 2008, page 1).

<sup>2</sup> Sinclair, Andrea L and Thacker, Arthur A., *Relationships Among Pennsylvania System of School Assessment (PSSA) Scores, University Proficiency Exam Scores, and College Course Grades in English and Math*, (HumRRO FR-05-55)

believe that a proficient score on the standardized PSSA test is the correct standard for determining who should graduate.

PSEA believes the current regulations provide the State Board and the Department of Education with the authority and the means to intervene with school districts where it can be demonstrated that curriculum, instruction, and assessment are not aligned with the state's academic standards. Additionally, such targeted intervention would be a more economical and efficient solution to the perceived problem than adding an additional layer of state assessments required of all school districts.

- What is the economic and fiscal impact of the regulation?

PSEA believes there are numerous long term and short term costs to implementing an exit exam system in Pennsylvania.

In the long term, there is extensive evidence<sup>3</sup> that demonstrates the substantial value of a diploma compared to a having a GED or dropping out of high school. We believe the State Board's proposed regulation will result in the unintended consequence of the loss of this valuable credential to a large number of Pennsylvania's students.

In the short term, PSEA estimates that the cost of developing and implementing the GCAs has the potential to require hundreds of millions of dollars in new expenditures at the state and local level. Further, we believe that the Regulatory Analysis Form, forwarded along with the proposed regulation, is flawed and missing pertinent data.

The form includes dollar amounts in various savings and costs categories, but no explanation of the basis for those estimates. The \$5 million per GCA for test development (\$50 million total for 10 GCAs) is possible, although it appears to represent a low-end estimate in light of the fact that the proposed regulation would require each GCA to be administered three times per year. Three distinct versions of each GCA would need to be developed.

Other cost estimates in the Regulatory Analysis Form appear to be inaccurate. Costs to the Regulated Community, which includes school districts, are estimated at "zero". According to the Center for Education Policy's "High School Exit Exams: Costs to Consider":

*"While state policymakers may view exit exams as a low-cost way to raise student achievement, the exam costs -- both apparent and hidden -- are considerable. The true costs of an exit exam policy often are invisible to state policymakers because the majority of expenses are absorbed by the local school district -- an estimated 96% according to CEP research."*

One example of a cost that school districts would have to bear under this proposal is test administration. Already, school professional staff divert many hours to protecting security on the PSSAs and proctoring those exams. School guidance counselors commonly lose days every year to

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<sup>3</sup> Krueger, Alan B. *Reassessing the View that American Schools are Broken*, Princeton University. 1998  
Parent, Daniel. *Return to a High School Diploma and the Decision to Drop Out: New Evidence from Canada*, CIRANO, Montreal, Qc, Canada. 2001

counting out tests, checking test numbers, collecting tests, proctoring exams, etc. The PSSA is administered just once a year, in stark contrast to the GCAs, which would be administered multiple times each year. Further, participants who spoke at the State Board roundtables questioned the feasibility of maintaining security on these tests. This equates to more than a fiscal impact; a guidance counselor dedicating days to protecting security on shrink-wrapped standardized exams is losing days of working with and counseling students. Students can ill afford additional loss of counseling services sacrificed on the altar of more standardized testing.

Another item that appears to have been ignored during this policy debate is the cost of remediation. PSEA's Research Division prepared a minimum cost estimate for remediation in just two of the 10 GCAs. The result was \$115 million per year if the remediation is provided in class sizes of 25, and \$187 million per year if provided in class sizes of 15. Carrying these estimates out to all 10 GCAs, the minimum cost PSEA estimates for remediation are \$575 million to \$945 million per year.

- What is the nature and estimated cost of legal, consulting or accounting services which the public or private sector may incur?

It is highly likely that the state will incur substantial legal costs in defending the proposed regulations. In this regard, imposition of high school exit examinations has led to lengthy, complex and costly legal challenges in a number of cases since the 1970's. E.g. Debra P. v. Turlington, 730 F.2d 397 (5<sup>th</sup> Cir. 1981). These cases have been based upon claims that exit examinations violate the Due Process and Equal Protection Clauses of the United States Constitution. Given the strong opposition to the regulations from a number of advocacy groups which have participated in prior education cases (E.g. The Education Law Center, Pennsylvania Arc), it is highly likely that one or more such challenges will be brought in Pennsylvania.

The above cited decision in the Debra P. case highlights the legal problems posed by high stakes exit examinations. The court in this case determined that the state violated the due process rights of students by depriving them of the economic and educational benefits of a high school diploma when it administered an exit exam which was invalid and fundamentally unfair to the extent that it covered matters not taught in the schools. In reaching this conclusion, the court noted that to comply with constitutional requirements, a state's high stakes test must be valid and reliable and that states are obligated to avoid action which is arbitrary, capricious, does not achieve or even frustrates a legitimate state interest, or is fundamentally unfair.

The testing scheme set forth in the proposed regulations is fundamentally unfair and, thus, illegal for a number of reasons. **First**, with regard to the issue of test validity, professional standards governing educational testing require statistical analysis ("validation") to be undertaken to ensure that a test is properly used for its intended purpose. In this regard, the American Psychology Association's Standards on Psychological Testing require that evidence of validity should be presented for the major types of inferences for which the use of a test is recommended. Sharif by Salahuddin v. New York State Educ. Dept., 709 F.Supp. 345 (S.D.N.Y., 1989); Cf. Larry P. By Lucille P. v. Riles, 793 F.2d 969 (9<sup>th</sup> Cir. 1984) (defendants violated the provisions of special education and civil rights laws by failing to ensure that the tests were validated for the specific purpose for which they were used).

The PSSA, one of the options included in the regulations as a high stakes exit exam, has never been validated for the purpose of determining whether students possess the necessary skills for success in post secondary education or employment. HumRRO, *PSSA Issues and Recommendations* (2004). Similarly, the regulations do not include any requirement that the state validate Graduation Competency Exams (GCAs) for this purpose.

**Second**, the regulations would not establish guidelines or require that there be any educational justification for the cutoff scores used to determine whether students are eligible to graduate. *Cf. Groves v. Alabama State Bd. of Educ.*, 776 F.Supp. 1518 (M.D.Ala.,1991)(striking down cut off scores for admissions examination which had no educational justification and which had an adverse racial impact).

**Third**, under the proposed regulations, there is not any requirement that the Pennsylvania Department of Education ensure that the tests at issue cover material which is actually being taught. In this regard, the language of the regulations is so vague that it is not even possible to determine with specificity what material is going to be tested.

**Fourth**, another manner in which plaintiffs can demonstrate that an exit exam is fundamentally unfair is through showing that the assessment holds students accountable for an inadequate educational funding system. Dyson, *Leave No Child Behind: Normative Proposals to Link Educational Adequacy Claims and High Stakes Assessment Due Process Challenges*, 7 TXFCLCR 1 (2002). Such a claim would have strong support in Pennsylvania from the Costing-Out Study commissioned by the General Assembly in 2007 which concluded that the overwhelming majority of Pennsylvania's school districts are underfunded. *See, Augenblick, Palaich and Associates. Costing Out the Resources Needed to Meet Pennsylvania's Public Education Goals*, November 2007.

Specifically, the implementation of testing requirements will support the claims of plaintiffs and could prolong the litigation in a case which is currently before Pennsylvania's Federal District Court, *CG v. PDE*, Civil Action No. 1:06-CV-1523 (M.D. Pa. 2008). In this case, which recently survived a Motion to Dismiss, plaintiffs allege that under the current special education funding system, special education students including those students who also have Limited English Proficiency (LEP), is inequitable and inadequate. To the extent that the State Board of Education is permitted to impose additional high stakes testing requirements upon the students at issue in this litigation, the harm alleged in the Complaint will be greatly exacerbated and the position of the plaintiffs significantly strengthened.

**Fifth**, the use of a standardized test as the sole criterion for abrogation of a student's rights is contrary to general guidelines on fairness in testing. *Sharif v. New York State Education Department*, 709 F.Supp. 345 (S.D.N.Y. 1989); STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTING, published jointly by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. In light of the fact that students will not be able to graduate if they fail to obtain a required score on a single GCA, portion of the PSSA, or similar local assessment, the proposed regulations violate this requirement and, again, are fundamentally unfair.

In this regard, according to statistics published by the Pennsylvania Department of Education, the large majority of students with disabilities; those with Limited English Proficiency; minority students; and those from lower socio-economic groups have not scored at the "proficient" level on the PSSA which would be required for graduation under the proposed regulations.

For instance, according to information published on the Department of Education's website, in 2007, over 88% of eleventh grade special education students scored below the level required in math and over 81% scored below this level in reading. Similarly, over 75% of eleventh grade African American students and over 72% of Hispanic students scored below the level which would be required for graduation in math, and over 63% of students from these groups scored below this level in reading.

Given current information and trends in exit examinations, it is likely that these groups of students will experience similar difficulty on the GCAs and local assessments. See e.g., Rowe, *High School Exit Exams Meet IDEA*, 2004 B.Y.U. Educ. & L.J. 75. <http://www.cep-dc.org/>. Thus, in essence, the proposed regulations will create a class of students who are unable to graduate based upon their inability to perform at an arbitrary level on one or more standardized tests which have not been validated for these groups of students or for the purpose of determining whether the students have the skills needed to successfully succeed in post secondary education or employment.

In addition to supporting claims under the Equal Protection Clause, this discriminatory effect would support a federal complaint or action for a violation of: (1) Title VI of the Civil Rights Act of 1964 and its implementing regulations which prohibit government actions which have the *effect* of discriminating against persons on the basis of race, color, or national origin; and (2) Section 504 of the *Rehabilitation Act of 1973* which prohibits discrimination on the basis of disability. Cf. Brookhart v. Illinois State Bd. of Educ., 697 F.2d 179 (7th Cir. 1983).

As the above discussion indicates, there are a number of viable legal challenges which may be brought against the high stakes testing scheme set forth in the proposed regulations. It is likely that these challenges will result in substantial legal costs. This provides strong support for a determination that the regulations are not in the public interest.

- What is the nature of required reports, forms, or other paperwork and the estimated cost of their preparation as imposed by the legislation?

PSEA is skeptical of the State Board's claim that local school districts face no additional costs with compliance with the proposed regulation. This claim underestimates the impact at the local level. School districts will be required to provide for the security of the assessments as well as the shipping, handling, and grading of the assessments. This requires processing and recordkeeping by multiple district personnel.

- Does the regulation protect the public health, safety, and welfare?

PSEA contends that the negative consequences of high stakes testing, including increased dropout rates and disproportionate harm to some of our most vulnerable students—students living in poverty, minority students, English language learners, and special needs students—can hardly be viewed in a

positive light for the public safety and welfare.

Additionally, if Boston, Massachusetts's experience in 2006 is any indication, there could be a profound negative impact. According to Lisa Guisbond of the National Center for Fair and Open Testing, Boston's annual "dropout rate rose from 7.7% to 9.9% and with it the city suffered a wave of youth violence"<sup>4</sup> attributed by city officials to, in part, student frustration with the schools' focus on preparing students for the state's exit exam.

It is interesting to note that after several years of an exit-exam graduation system in Massachusetts, the state still reports an inability to adequately prepare students for college<sup>5</sup> and to compete in the 21<sup>st</sup> century global economy<sup>6</sup>—two goals cited for the public welfare of the proposed regulation.

- Is the regulation needed clear, feasible, and reasonable, with realistic implementation procedures?

PSEA believes the proposed regulation fails this test in that it fails to demonstrate the need for an exit-exam graduation system and sets an unreasonable and unrealistic bar for school districts to maintain their local assessment systems. We believe it inappropriate for a state agency to provide a regulatory option for compliance with requirements that will be very difficult, if at all possible, and surely very expensive for school districts to meet.

Thank you for considering PSEA's comments on the GCA regulatory proposal. Please contact me if you would like any additional information.

Sincerely,



James P. Testerman  
President

cc: Mr. Kim Kauffman, IRRC, Executive Director  
Senator James J. Rhoades  
Senator Raphael J. Musto  
Representative James R. Roebuck, Jr.  
Representative Jess M. Stairs

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<sup>4</sup> Guisbond, Lisa, Testimony before PA Senate Education Committee, May 14, 2008

<sup>5</sup> Ngowi, Rodrique, Associated Press, *State report shows many students are not ready for college.*, February 28, 2008

<sup>6</sup> Massachusetts Department of Education: [www.doe.mass.edu/news/news.asp?id=4074](http://www.doe.mass.edu/news/news.asp?id=4074)

## **JOINT STATEMENT IN OPPOSITION TO GCAs**

We, the undersigned organizations, representing hundreds of thousands of Pennsylvania citizens including parents, teachers, students, children with disabilities, gifted children, members of minority groups, school principals, school superintendents, and school board members, oppose regulations proposed by the State Board of Education that essentially would mandate high stakes standardized high school exit exams. The Graduation Competency Assessment (GCA) proposal would result in denial of diplomas to students if they do not score "proficient" on statewide standardized tests. Our concerns include:

- A paper and pencil standardized test is a very imperfect measure of what students have learned. Current regulations require each school district and area vocational technical school to create a local assessment system, of which local graduation assessments are a part. Local graduation assessments must be aligned with the state academic standards and be used to determine the degree to which students are achieving the standards. Local assessment systems, including the local graduation assessments, must include a variety of assessment strategies, including portfolios and research papers, presentations, projects and assignments, results of exams, scientific experiments, works of art, and musical or theatrical performances. These types of assessments provide a richer, more accurate and fairer measure of what students know than can a few paper-and-pencil tests. The state should not override these "local assessments" with one-size-fits-all standardized tests.
- While the proposal continues to allow the use of local assessments for graduation purposes, it creates numerous costly barriers in the name of test "validation" that would be a disincentive for most school districts to continue using local graduation assessments. The proposal also allows the use of Advanced Placement and International Baccalaureate exams as a graduation test; however, these programs are limited in their availability to Pennsylvania high school students. Therefore, the only option for high school graduation for most students under this new proposal would be scoring proficient on the PSSA or on six out of 10 GCAs. For all practical purposes, there would be no local option for students to graduate.
- If the state has concerns about local assessments, the proper first step would be to analyze local graduation assessments. Local assessment systems may be, in fact, a better measure of students' knowledge than the PSSA. It is premature to impose a new set of standardized tests on students in 501 school districts prior to a formal evaluation of the local assessments they currently utilize.
- Denying a student a high school diploma has serious long-term negative effects on that student's life, as well as significant social costs. Before fundamentally altering Pennsylvania's system and structure for earning a diploma, the state must be sure that the change will not unfairly hurt our young people. It would be appropriate to first audit the local graduation assessments of various districts to determine why some students do not score "proficient" on a PSSA test but do show, through local assessments, that they have mastered the curriculum. It is inappropriate to assume that paper-and-pencil standardized tests are so accurate that students who do not score highly enough should not be able to graduate from high school.



- The differences between the number of students who score “proficient” on the PSSA and the number of students who show they are “proficient” through local graduation assessments must be considered in light of the fact that the PSSA was not designed to be an exit exam. In fact, thousands of students who scored “basic” on the PSSAs have gone on to college without any need for remediation. Some GCA proponents say that students who do not score “proficient” on the state PSSA cannot even read at grade level. That is not what a basic score on the PSSA means. Such a claim has never been supported by any data and has, in fact, been disproved. The state’s own PSSA validity study (HumRRO), which reviewed students at three Pennsylvania universities, shows that several thousand students in those universities who scored basic on the PSSAs, in fact, went on to college with no need for remedial classes. Among all three universities, 58.7% of students who scored basic or below on the PSSA tests took at least the standard level Math or English college course. That is, most students who “failed” the PSSA enrolled in nonremedial college courses in the same subject area(s) in which they failed. (Andrea L. Sinclair and Arthur A. Thacker, (2005) Relationships Among Pennsylvania System of School Assessment (PSSA) Scores, University Proficiency Exam Scores, and College Course Grades in English and Math. (HumRRO FR-05-55) Tables 16, 17, 18, 19, 20.)
- Dropout rates have increased significantly in states that have begun to use a high stakes exit exam. (Warren, J.R., Kulick, R.B., & Jenkins, K.N. 2006. High school exit examinations and state-level completion and GED rates, 1975 through 2002. *Education Evaluation and Policy Analysis*, V28, N2: 131-152) (Dee, T.S. & Jacob, B.A. 2006. Do high school exit exams influence educational attainment or labor market performance? Social Science Research Network, April) (Radcliffe, J. & Mellon, E. May 12, 2007. TAKS tests cost 40,000 Texas seniors chance to graduate, Houston Chronicle.) (FairTest Examiner. January 2007. Exit exam update: WA, TX, CA, AZ, MA). There are costs, both human and financial, of putting kids out on the street who are willing to come to school, want to come to school, and want to do their work, but know they are not going to do well on paper-and-pencil standardized tests. Minority and ELL students have been especially hard hit.
- Career and technical education students would be disproportionately harmed by the GCA proposal. Students in career and technical centers spend much of their time learning specific professions. While math content is woven through some vocational courses, it is in a different format than is provided in an academic Algebra II class. Career and technical education students take professional exams in the areas in which they have been trained. Yet, both the student who takes a college preparatory, academic Algebra II class, and the student who learns the practical application of Algebra II concepts in his or her profession would be judged on the same academic Algebra II test.
- No formal cost analysis of developing, distributing, and administering GCAs has been provided, but it is clear that the minimum costs will run into the tens of millions of dollars. In his 2008-09 budget proposal, Governor Rendell proposed spending \$15 million for the development of three of the 10 required GCAs. These costs will increase significantly because the GCAs must be administered at least three times per year, which will require three different versions of each test. The expense is even greater when the cost of providing remediation in the various components of all of the tests is added. In the end, hundreds of millions of dollars are at stake -- all for a type of testing system that

has not been shown to improve student achievement but has been shown to have negative effects on student dropout rates, on curriculum offerings, and on the success of minority student populations.

- No matter what financial outlay it would take to develop and implement GCAs, that money could instead be used to make a positive difference in students' lives and achievement -- i.e. it could be used for evidence-based programs and initiatives. These could include: establishing parental involvement programs; reducing class sizes in the early grades; funding transition programs to help students move from elementary to middle school and from middle to high school; providing safe, professional working conditions for teachers and students; instituting funding equity; or other evidence-based initiatives.

**The undersigned organizations respectfully request that the Pennsylvania General Assembly reject the proposed Graduation Competency Assessment regulations:**

**American Federation of Teachers  
Pennsylvania (AFT-PA)**

**The ARC of Pennsylvania**

**Autism Society of America/PA  
Government Relations Work Group**

**Disability Rights Network of  
Pennsylvania**

**Education Law Center**

**Learning Disabilities Association of  
Pennsylvania (LDAPA)**

**Mental Health Association in  
Pennsylvania (MHAPA)**

**NAACP - Pennsylvania State Conference  
of NAACP Branches**

**National Center for Fair & Open Testing  
(FairTest)**

**Pennsylvania Association of Agricultural  
Educators (PAAE)**

**Pennsylvania Association of Career and  
Technical Administrators (PACTA)**

**Pennsylvania Association of Elementary  
and Secondary School Principals  
(PAESSP)**

**Pennsylvania Association for Gifted  
Education (PAGE)**

**Pennsylvania Association of Pupil Services  
Administrators (PAPSA)**

**Pennsylvania Association of Rural and  
Small Schools (PARSS)**

**Pennsylvania Association of School  
Administrators (PASA)**

**Pennsylvania Association for Supervision  
and Curriculum Development (PASCD)**

**Pennsylvania Middle School Association  
(PMSA)**

**Pennsylvania Psychological Association  
(PPA)**

**Pennsylvania PTA**

**Pennsylvania School Boards Association  
(PSBA)**

**Pennsylvania State Education Association  
(PSEA)**

**Pennsylvanians for the Education of Gifted  
Students (PEGS)**

**Philadelphia Student Union**

*List is current as of May 29, 2008*