

Suite 8 – Executive House  
101 South Second Street  
Harrisburg, Pennsylvania 17101  
(717) 234-2621 • 234-7615 (fax)  
[www.thearcpa.org](http://www.thearcpa.org)

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*The Arc of Pennsylvania is affiliated with The Arc of the United States and 39 local chapters of The Arc across PA.*



June 11, 2008

Jim Buckheit  
State Board of Education  
333 Market Street, 2nd Floor  
Harrisburg, PA 17126-0333

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.

The Arc of Pennsylvania, affiliated with The Arc of United States, is the largest grassroots, non-profit advocacy organization in Pennsylvania for citizen's with cognitive, intellectual and developmental disabilities and their families. The Arc of Pennsylvania is the state chapter of The Arc and works with 35 chapters in 47 counties across Pennsylvania. The Arc's mission is to include all children and adults with cognitive, intellectual and developmental disabilities in every community.

As an advocacy organization, The Arc of Pennsylvania strongly objects to the high stakes Graduation Competency Assessments proposed by the State Board of Education. While we recognize that strong academic standards and accurate, measurable outcomes are essential for the success of our high school graduates, we strongly believe that the proposed Graduation Competency Assessment will not only fail to achieve the desired outcomes, but will actually cause significant harm to our schools and students in a number of areas.

The Independent Regulatory Review Commission is mandated to consider each proposed set of regulations in accordance with the guidelines established by the Independent Regulatory Review Act, (IRRA) 71 P.S. Sect. 745.1. It is the position of The Arc of Pennsylvania that the proposed Chapter 4 regulations fail to meet the standards required by the act in several important areas as they apply to students with disabilities.

#### A. IRRA Criteria Regarding Statutory Authority for the Regulation

1. Is the proposed regulation consistent with the intent of the General Assembly?

No, the proposed regulation is not consistent with the intent of the general assembly. There is no current state law that authorizes the linkage of standardized assessment performance with the granting of a diploma. Current state law allows local school districts to decide whether or not students are

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prepared to graduate. The impact on students with disabilities is crucial to consider under this guideline. For over 30 years, Pennsylvania law has stated that students with disabilities qualify for regular high school diploma's based on the goals set forth in their individualized education program. Whether the student should receive a regular high school diploma should depend on whether the IEP team concludes that the student has satisfactorily completed his special education program—the current standard under Pennsylvania law—not on whether the student has successfully completed the assessments as provided in 22 PA Code §4.24 (see 22 PA Code §4.24(e)(2)).

Furthermore, the General Assembly has not enacted statutes authorizing these regulations nor the subject matter contained therein. The Commission must reject a regulation that lacks such specific statutory authority.

2. Is the proposed regulation consistent with existing statutes and regulations?

No. The proposed regulation conflicts with existing statutes and regulations. There is no state or federal law which gives the State Board the power to require a certain level of performance in order to receive a high school diploma. Pennsylvania already has strong student assessments in the form of the PSSA and the PASA, which are reliable indicators of the students and school districts that are struggling. Adding yet one more unfunded mandate will not increase success in our schools or help students with disabilities become inclusive parts of their educational community. The General Assembly has only permitted the use of statewide assessments to measure individual districts' progress, not for deciding which students receive diplomas. See 24 P.S. 26-2603-B (i) (3). The Commission must reject a regulation that lacks such authority in state or federal law.

B. IRRA Criteria Regarding Economic or Fiscal Impact of the Regulation

1. What is the economic and fiscal impact on serving students with disabilities? P.L. 75, No. 19, Sec. 5.2 (b)(1).

The economic and fiscal impact of the proposed regulations is immense. There will be additional costs for student tutoring, teacher training, curriculum development, and more. In addition to the direct financial costs, there will be time costs as teacher "teach to the test" repeatedly, leaving no time for individual accommodation for students with disabilities.

It is anticipated that the proposed regulations will result in increased referrals and requests for evaluations for students with disabilities, resulting in increased financial burden

Under the proposed regulations, students with Individualized Education Programs under the Individuals with Disabilities Education Act may opt out of the graduation competency exams through team decision. This option makes obtaining an IEP a desirable goal for many borderline students. The advocacy community anticipates, as a result of this option, an increase in requests for evaluation and referral to special education from these borderline students who may have difficulty passing the exams. Parent's of students with learning difficulties may clamor to get IEP's for them in order to make a request of the IEP team that they opt out of taking the GCA's

Furthermore, those students who are not successful in qualifying for special education will be our future drop outs, which will increase the financial costs to society; one of the very goals that the proposed regulations hope to address. While the intent of the proposed regulations is to ensure more competent graduates, statistical studies confirm that the drop out rate actually increases in the states that have implemented these types of assessments.

2. Will the proposed regulations have an impact on legal, consulting or accounting services which the public or private sector may incur? P.L. 75, No 19, Sec. 5.2 (b)(1)

Yes. The proposed regulations will have a direct impact on all children with disabilities attempting to secure a free and appropriate public education under the Individual's with Disabilities Education Act. Advocates of inclusion for students with disabilities have grave concerns about the impact of these proposed regulations on efforts to have students with disabilities included as part of the regular educational community. Advocates envision that inclusion will be hampered in several ways. First, students who are in inclusive settings may be marginalized or pushed aside by teachers who view their primary responsibility to be getting "qualified students" (i.e, students who have not opted out of the exams) to pass the exams. We anticipate an increase in litigation over students with Individualized Education Programs (IEP's) being denied the supports and services they need make adequate yearly progress on their educational goals. If teacher's time and efforts are focused on the teaching and remediation to enable students to pass the competency exams, and students in the room with an IEP have opted out of these exams, the teaching staff may perceive themselves as less responsible for these student's performance, and they will not have access to the remediation and support being offered to others. This may lead to more requests for mediation and due process hearing requests as students with disabilities are deprived of their right to a free appropriate public education. The Commission should reject the proposed regulations due to the likelihood that they will create significant and unfunded legal costs for the state and local school districts.

### C. IRRA Criteria Regarding Exemptions or Setting Lesser Standards of Compliance


What is the impact on the public interest of exempting or setting lesser standards of compliance for individuals or small businesses when it is lawful, desirable and feasible to do so? P.L. 75, No. 19, Sec. 5.2 (b)(1).

Exemptions and lesser standards of compliance are needed for some students when high-stakes consequences are attached to individual performance on mandatory assessments. Students with disabilities are entitled under the Individuals with Disabilities Education Act to receive accommodations and exemptions because they are disadvantaged on exams through no fault of their own. These accommodations often take the form of an alternative testing format, including but not limited to portfolios, oral examinations, ongoing performance reviews. These accommodations recognize that students have multiple and diverse intelligences and learning styles, well documented by educational research. Not all students, regardless of cognitive level of functioning, can perform well on a pencil and paper standardized test. Denying these students the appropriate accommodations and exemptions would violate state and federal laws and the

equal protection principles of the U.S. and Pennsylvania Constitutions. *See* U.S. Const. amend. XIV., Pa. Const. Art. I § 6. The proposed regulations do not contain sufficiently clear exemptions for students with disabilities. Some exemptions and lesser standards are included in the proposed regulations for students with disabilities, but the Board has not provided any evidence of the impact of these exemptions and lesser standards on students with and without disabilities. The Commission should reject the regulations as they do not provide sufficient exemptions and lesser standards and threaten the legal rights of disadvantaged students.

For all of the reasons outlined above, The Arc of Pennsylvania cannot support the proposed Chapter 4 regulations regarding high stakes graduation testing. The educational system in Pennsylvania will be irreparably harmed, at significant cost to students with disabilities, if these proposed regulations are allowed to pass as written. We respectfully request that the Commission reject the regulations before it. Thank you for the opportunity to comment on these regulations.

Respectfully,



Pam Klipa  
Public Policy and Advocacy Specialist  
On Behalf of  
The Arc of Pennsylvania