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Comments to the Pennsylvania State Board of Education

Proposed Regulations for 22 PA Code Chapter 4, Academic Standards and Assessment (#006-312)

March 13, 2009

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The Education Law Center (ELC) appreciates the opportunity to testify at today's hearing about the proposed regulations for academic standards and assessments, focusing on high school graduation tests. ELC is a statewide non-profit legal advocacy and educational organization, dedicated to ensuring that all of Pennsylvania's children have access to a quality public education.

ELC shares the ambition of the State Board of Education that all students should graduate from high school with the knowledge and skills allowing them to succeed in life. And ELC acknowledges that state assessments have a legitimate role in measuring student performance and identifying students in need of extra assistance. The fundamental questions presented by the proposed regulation are whether new state assessments are truly needed and whether better options exist for strengthening the existing assessment system and raising the quality of Pennsylvania's public schools.

ELC submitted detailed comments to the Independent Regulatory Review Commission (IRRC) in June, 2008, and our comments were considered by IRRC along with many other public and legislative comments.

The State Board has not officially considered any alterations to the proposed regulations on this issue, since the proposed regulations were the subject of comments from IRRC in July, 2008.

The Board recently announced an agreement with the Pennsylvania School Boards Association (PSBA) to amend the proposed regulations. The agreement would increase the choices available to school boards for selecting and validating the assessments used to determine when students are eligible for graduation. Local assessments could continue to be used to qualify students for graduation, with more flexibility than in the original proposed regulations.

ELC believes that the agreement between PSBA and the state does not address or resolve most of the concerns previously raised by IRRC, by ELC, and by others. Thus, the proposal for "Keystone Exams" should not be approved for the following reasons:

- The regulations exceed the authority of the State Board of Education by attempting to establish policy against the clear intent of the General Assembly and in contradiction of existing law regarding assessments, the issuance of diplomas, and other

issues. The Board should not proceed with its proposal, unless and until the General Assembly first enacts a law authorizing such new regulatory standards and the resulting state expenditures.

- The proposed regulations would create immense unfunded costs and time-consuming administrative tasks for local schools, on educators, and on the state. In this time of economic crisis and government deficits, the Board should not seek to burden the future of public education in the Commonwealth with new, costly, and unproven student testing programs.
- The regulations create unnecessary and wasteful student assessments, duplicating the function of existing state assessments and academic standards. The Board should work to strengthen the PSSA testing system already in place and the local assessments that serve as a back-up system for the PSSA.
- The regulations harm the academic and career interests of students by focusing on extreme consequences (denial of graduation) and assessment results, when hundreds of school districts are under-funded by the state and when hundreds of thousands of students will not receive the instruction and support services needed to learn the material being tested. The Board should not proceed to consider a major new assessment system until after the state provides and sustains adequate resources for improving public education, especially in the most disadvantaged schools.
- The regulations violate the rights of students to receive fair and equitable treatment in public schools, especially children with disabilities, English language learners, students living in poverty, and students forced to attend schools already identified by the state as ineffective for failing in multiple years to make adequate yearly progress. The State Board should work to improve the education of these students in other ways, and any new assessment regulation must include greater protections for their interests.
- The regulations are not necessary for the purpose stated by the State Board. Working within their proper authority, the State Board and the Pennsylvania Department of Education can take many other actions to support student achievement, improve school quality, and strengthen the value of high school diplomas issued by local school districts throughout the state. Valid state action toward these objectives could include enhanced monitoring of school districts, improved technical assistance from the state for struggling schools, expanded support services and training for teachers and local school officials, and improved interventions and remediation for low achieving students.

The following pages include excerpts from the 2008 comments of IRRRC and ELC, which support each other on most points.

Thank you for your consideration. ELC remains available to work with the State Board to address these and other concerns.



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July 16, 2008

James Buckheit, Executive Director
State Board of Education
333 Market Street, 1st Floor
Harrisburg, PA 17126

Re: Regulation #6-312 (IRRC #2696)
State Board of Education
Academic Standards and Assessment

Dear Mr. Buckheit:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbj
Enclosure

cc: Honorable James J. Rhoades, Chairman, Senate Education Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Education Committee
Honorable James R. Roebuck, Jr., Majority Chairman, House Education Committee
Honorable Jess M. Stairs, Minority Chairman, House Education Committee

→ See "Proposed IRRC Comments" at
<http://www.irc.state.pa.us/Regulations/RegInfo.cfm?IRRCNo=2696>.



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June 13, 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 (#008-312), Proposed by the State Board of Education.

The Education Law Center (ELC) is a statewide non-profit legal advocacy and educational organization, dedicated to ensuring that all of Pennsylvania's children have access to a quality public education. We appreciate this opportunity to submit comments concerning the Chapter 4 regulations establishing high-stakes assessments, proposed by the State Board of Education.

ELC shares the ambition of the State Board of Education that all students should graduate from high school with the knowledge and skills allowing them to succeed in life. And ELC acknowledges that state assessments have a legitimate role in measuring student performance and identifying students in need of extra assistance. Current Pennsylvania law establishes state assessments for this purpose. However, the regulations proposed by the State Board would go far beyond this purpose and, for the first time, establish a mandatory system of high-stakes graduation tests used by the state to deny diplomas to students. This major change in state policy would have a significant impact on every student, teacher, and public school in Pennsylvania.

There are strong legal and policy arguments against the proposed Chapter 4 regulations. ELC believes that the regulations should not be approved for the following reasons:

- The regulations exceed the authority of the State Board of Education by improperly establishing state-level power to deny high school graduation diplomas to individual students and by unlawfully removing the existing statutory authority of local school districts to make final graduation decisions for their students;
- The regulations impose immense unfunded costs and time-consuming administrative tasks on local schools, on educators, and on the state;
- The regulations create unnecessary and wasteful student assessments, duplicating the function of existing state assessments and academic standards;
- The regulations harm the academic and career interests of students by imposing extreme consequences (denial of graduation) based on state assessment results, when

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	<u>IRRC Comments (July 2008)</u>	<u>ELC Comments (June 2008)</u>
	<i>The following comments from IRRC and ELC are aligned and in agreement.</i>	
(1) The proposed regulations do not meet state regulatory criteria.	Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.	ELC will address these issues in the context of the Independent Regulatory Review Act (IRRA). 71 P.S. § 745.1. ELC believes that the proposed regulations violate the Act – not just in cursory, insignificant, or limited ways – but so fundamentally and extensively that the Commission should consider rejecting the regulations in the strongest possible terms.
(2) The regulations exceed the authority of the Board.	We believe the actions taken by the General Assembly and the House Education Committee indicate that the proposal is a policy decision of such a substantial nature that it requires legislative review. We urge the Board to work closely with both chambers of the legislature and the House and Senate Education committees to ensure that the final-form regulation is consistent with the intent of the General Assembly. . . . Therefore, what is the Board's statutory authority for promulgating these requirements?	The General Assembly has not enacted statutes authorizing these regulations nor the subject matter contained therein, and thus the State Board has acted precipitately. The Commission must reject a regulation that lacks such specific statutory authority.
(3) There is no need for a new testing system.	What types of corrective action has the Department taken to improve the local assessments of school districts that are failing? Before the Board moves forward with this proposal, we ask for a more thorough explanation of why the current system is not adequate to address the problem the proposal seeks to address.	The proposed regulations conflict with and duplicate the PSSA system established by the General Assembly and by existing regulations. New assessments are unnecessary to ensure that students and schools are high performing. PSSA results already identify which students are in need of remediation and which schools are in need of reform. The State Board itself commissioned a study in 2005 which validated these conclusions about the PSSA system. The state is fully capable of using existing PSSA results to implement and fund programs to meet student and school needs as identified with current assessments; students, educators, and school districts would welcome this kind of assistance from the state.

	<u>IRRC Comments (July 2008)</u>	<u>ELC Comments (June 2008)</u>
<i>The following comments from IRRC and ELC are aligned and in agreement.</i>		
<p>(4) The regulations may impose a large unfunded mandate.</p>	<p>While the RAF [Regulatory Analysis Form submitted by the Board] addresses costs related to state government, the RAF does not estimate the costs to local school districts for such procedures as validating the local assessment, administering and scoring the tests, record keeping, and compliance with federal law (with respect to special education students). In addition, commentators have suggested that if this proposal goes forward, it will result in litigation. Therefore, the RAF does not fully reflect the overall fiscal impact to school districts and the Commonwealth.</p>	<p>The regulations will force local school districts to cover most of the cost of implementing the various new programs and services associated with the regulations. There are innumerable "hidden" costs affiliated with implementing the regulations such as professional development and supervision, adjusting academic curricula and classroom lesson plans, academic remediation, and other support programs for students at risk for failing. The State Board does not have the power to allocate state funding to school districts to cover these myriad costs, so the regulations amount to a huge unfunded mandate by the Board.</p>
<p>(5) The regulations do not sufficiently address the special needs of certain student groups.</p>	<p>The House Education Committee and public commentators have raised valid concerns about the impact of the proposed regulation on various categories of students [students living in poverty, minority students, English language learners, and special needs students] and the potential for an increase in the drop-out rate. These issues are not addressed in detail in the RAF and Preamble. In light of these concerns, the Board should explain how the proposal adequately protects the health, safety and welfare of all citizens of the Commonwealth. . . . The final-form regulation should provide clear and binding standards for how the school district will accommodate the needs of special education and English as Second Language (ESL) students with respect to administration of the GCAs and any resulting remediation.</p>	<p>In short, students in certain disadvantaged circumstances must not be penalized when they do not have a fair opportunity to learn the material being tested. The proposed regulations do not contain sufficient [accommodations and] exemptions for students with disabilities and would risk unfairly penalizing them. The regulations completely fail to address the needs of English language learners, merely indicating that the Pennsylvania Department of Education "will provide guidance" to schools on this issue. Finally, the regulations do not address the needs of students attending under-funded schools and students attending schools failing to make AYP. . . . The regulations completely fail to provide for due process and appeals procedures. Students and their parents should have an opportunity to contest assessment results, education deficiencies or testing problems, and graduation decisions.</p>

	<u>IRRC Comments (July 2008)</u>	<u>ELC Comments (June 2008)</u>
<p>(6) The regulations are vague and incomplete regarding the proposed mandates for tutoring failing students and training teachers.</p>	<i>The following comments from IRRC and ELC are aligned and in agreement.</i>	
	<p>We have two concerns. First, why is supplemental instruction for students not scoring proficient or higher on the PSSA required only after 11th grade? Second, the regulation appears to be silent on requirements for supplemental instruction for students scoring less than proficient on local assessments. At what point would a school entity be required to provide supplemental instruction to these students?</p>	<p>The regulations state that PDE “shall provide support” to school districts in aligning instruction to state exams, developing tutoring and remediation programs, and professional development. The regulation does not detail for how long or how extensive the state support and local activities will be nor does it detail who will be responsible for the cost of these services. In addition, the proposed regulations state that students who do not pass the GCAs, PSSAs, or local assessments “shall be provided supplemental instructional support by the student’s school entity.” The regulations do not specify the extent of this support nor do they specify the expected amount of time that students can receive this support.</p>