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Education Law Center

By first class mail, fax, and email.

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August 11, 2009

Mr. Joseph M. Torsella
State Board of Education
333 Market Street, 1st Floor
Harrisburg, PA 17126-0333

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

Dear Mr. Torsella:

The Education Law Center (ELC) is a non-profit legal advocacy and educational organization, dedicated to ensuring that all of Pennsylvania's children have access to a quality public education. We acknowledge the State Board's excellent intentions in this Chapter 4 regulation, as well as the considerable effort that has gone into developing it. However, the proposal seems to us to represent a costly, ineffectual and legally problematic route toward achieving the goal of ensuring that all children achieve at high levels. Accordingly, we urge the State Board to disapprove it.

This proposal will require large expenditures of money, time, and effort, on the part of students, teachers, and administrators, on the creation, validation, and implementation of a whole regimen of new tests – at both the state and local levels. If we lived in a world in which money were no object, and in which there were also evidence that teachers and administrators at the local level could not improve their schools in the absence of more standardized testing, this proposal might make sense.

But funding is currently so short in this Commonwealth that even the six-year route for funding adequacy adopted last year has now become impracticable. And, from our many conversations with parents, teachers, and administrators, we know very few professionals – and virtually no families – who believe that testing is anywhere near the top of the list of what our schools need.

Rather, the needs – as we observe them – look more like this.

- Students in some districts attend classes with 30 or more other students. Teachers confronted with classes of this size cannot hope to meet the needs of all of the students whom they are supposed to be serving. Reduced class sizes are far likelier to raise the achievement of these students than are new tests.
- We work with many children who attend schools without libraries, laboratories, or working technology. No amount of testing or "remediation" can compensate for the fact that, without these essential tools, students do not have a fair opportunity to learn. We support using time and money to fix the problem – rather than to perform further testing of the symptoms, or to try to patch things up after the student has failed.

Making sure that all of Pennsylvania's children have access to quality public schools.

- We work with English language learners who do not receive the adapted instruction that they need, because of a shortage of staff and/or a lack of training and support for those staff who are available. If a child cannot understand what she is being taught, she will not achieve at acceptable levels – no matter how many times we test her, or how many “accommodations” we build into the test. In our view, funds and effort should be spent on providing services to these children and support to the teachers who teach them – rather than on creating additional testing systems.
- We deal with children with disabilities, “included” in regular classes but not provided with the (sometimes costly) supports that could enable them to succeed. We support putting resources into helping teachers and administrators serve these students to meet their full potential – rather than on additional layers of testing.

These are simply examples of what we observe in the “real world” of Pennsylvania education. Of course, we also observe many fine schools in which teachers are adequately supported and students, including disadvantaged students, are already achieving at remarkable levels. But these, of course, are not the students who are depending on the State Board for help.

As to those students – students in poor districts, students of color, students with disabilities, English language learners – we think the proposal will divert scarce resources that could be used for improved instruction, facilities, and support. And we emphasize our strong belief that administrators and teachers will for the most part do the job we expect from them if we provide them with those resources, instead of burdening them with yet another testing regimen.

There are other strong legal and policy arguments against the regulation. For example, the denial of a diploma to a student whose only school option is a school that has been identified – perhaps for years – as failing to make adequate yearly progress actually punishes the student for circumstances over which he has no control. The problem is compounded if the student has special needs, involving language or disability, that have not been met. In short, holding students accountable for learning without providing them with adequate opportunity to learn creates, in our view and in the experience of other states, an opening for legal challenge. There is also substantial question about the State Board’s legal authority to adopt a far-reaching regulation of this sort – and there are additional legal concerns too numerous to list here.

The Independent Regulatory Review Commission (IRRC) identified these and other problems in its July 16, 2008 comments on the proposed regulation. The State Board has not addressed the IRRC concerns in substantial ways in the final form regulation. While we respect the time and effort invested by the Board in making revisions to the regulation, these changes do not resolve the significant problems previously specified by IRRC, ELC, and other commenters.

For these various reasons, but primarily because the student assessment regulation provides a costly and time consuming diversion from the school reforms that are most needed by children, ELC encourages the State Board to table the regulation and tackle other reforms that more directly benefit all students and schools.

Thank you for your consideration and for sharing this letter with the other State Board members.

Respectfully,



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cc: **Members of the State Board of Education**
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Gerald Zahorchak, Secretary of Education
Jeffrey Piccola, Majority Chair, Senate Education Committee
Andrew Dinniman, Minority Chair, Senate Education Committee
James Roebuck, Majority Chair, House Education Committee
Paul Clymer, Minority Chair, House Education Committee