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ADVISOR TO THE PENNSYLVANIA
REGULATORY COMMISSION

November 23, 2005

Mr. Kim Kaufman
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Mr. Kaufman:

On behalf of the Pennsylvania Association of School Administrators, Pennsylvania State Education Association, American Federation of Teachers, Pennsylvania Association of Vocational Administrators, and the Pennsylvania School Boards Association, I am enclosing a joint statement in opposition to proposed revisions to Section 4.52 of the regulations under Title 22, Chapter 4, regarding academic standards and assessments. The entire draft of revisions was published in the Nov. 5, 2005 issue of the *Pennsylvania Bulletin*.

We are strongly opposed to the revision of Section 4.52, subsections (2), (3) and (4) and ask that you seek removal of this language. This language allows schools to use a local assessment as a graduation requirement, but does so in a way that creates numerous barriers and disincentives. Effectively, the proposal is just one step away from establishing the state assessment as an exit exam.

We offer these comments to you as the proposal moves through the regulatory review process. Each of our organizations stands ready to meet with you or to testify on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy M. Allwein", is written over a large, stylized flourish.

Timothy M. Allwein
Assistant Executive Director
Governmental and Member Relations

cc: Members, Senate Education Committee
Members, House Education Committee
Karl Girton, State Board of Education
Jim Buckheit, State Board of Education



Pennsylvania School Boards Association

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REGULATORY
REVIEW COMMISSION

Nov. 23, 2005

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

Dear Mr. Buckheit:

The Pennsylvania School Boards Association would like to take this opportunity to comment on proposed 22 Pa. Code, Chapter 4, regarding pupil attendance, as revised by the State Board of Education and published in the Nov. 5, 2005 issue of the *Pennsylvania Bulletin*.

PSBA supports the efforts of the board to revise various sections of Chapter 4, particularly as school districts are working hard to mesh the provisions of these regulations with the requirements of the federal No Child Left Behind Act. Since these regulations became effective in 1999, many changes have occurred through the enactment of NCLB coupled with Pennsylvania's plan and practice for implementation of the law. This is an opportunity for the State Board to strengthen and clarify issues that have a profound impact on schools and students.

We have generally supported these changes with some exceptions to various sections, and our comments here reflect these concerns. At this time, we would like to address the following issues:

Inconsistencies between this draft of Chapter 4 revisions with PDE's early childhood education package— Since this proposal was written prior to the introduction of the Department of Education's proposed early childhood education package, some of the language in this draft is inconsistent with that package. As you are likely already well aware of these inconsistencies, we mention them here only for the record. First, in **Section 4.3 (i)**, the definition of pre-kindergarten is different from the definition suggested as part of the Chapter 4 changes with early childhood. Next, language in **Section 4.21** on elementary education states that the primary program may include pre-kindergarten. In contrast, the early childhood package proposes the creation of a new Section 4.20 that deals exclusively with pre-kindergarten education. **Section 4.13 (12)** calls for parent and community participation in the strategic planning process with language that is different from the same sub-section as part of the early childhood package. The early childhood package also adds a subsection (17) and makes changes to **4.13 (d)** regarding the composition of the strategic planning committee that is different from the other package.

Section 4.4 Opt-Out Policy – Language under 4.4 (5) that gives parents the right to have their children excused from the state assessment if they believe it conflicts with their religious beliefs places Pennsylvania and school districts at odds with a requirement under NCLB for all students

to participate in the state assessment. The state Accountability Workbook for compliance with NCLB says that these students do count toward the participation rate for determining Adequate Yearly Progress. In practice, these students also are given a score of “Below Basic” on the assessments, even though they did not take them. This false reporting hurts the student, the school and the school district. While PSBA is not opposed to the opt-out policy, the association believes the Department of Education should take steps to have these students excused from the participation rate. Although we realize that the best way to accomplish this is by amending NCLB, which is beyond the ability of the State Board or PDE, the department could request an amendment to the Accountability Workbook seeking an allowance for Pennsylvania students. **PSBA urges the State Board to pursue this issue by formally requesting PDE to seek such an amendment.**

Section 4.13 Strategic Planning – The State Board has proposed various substantive changes to this section. PSBA would like to offer comments on these specific provisions:

4.13 (a) – The proposal calls for school districts to update their strategic plans “as necessary each year” in addition to the requirement to develop a plan once every six years and review/revise it at the mid-point. The addition of this new requirement is redundant, as districts already have the “ability to conduct a continuous strategic planning process” as stated in subsection (c). Districts need time to properly evaluate the elements of their plans, and should not be required to update their plans annually. The existing language in subsection (c) provides flexibility for those districts that decide to revise their strategic plans more often than the six-year/mid-point review cycle. The addition of the phrase “as necessary each year” seems to suggest that districts may or will be expected to revise their plans annually. **PSBA requests that the language in (a) calling for an annual review be deleted in order to prevent confusion or misinterpretation of the regulations.**

4.13 (c) – This comprehensive subsection contains the provisions for the heart of the strategic planning process, the focus for the plans and a listing of 16 elements that the plans must include. While we are generally supportive of the language, we offer the following comments.

PSBA has two concerns with the proposed addition in (c) of the following sentence: “Each plan, as received and filed by the Department, becomes an extension of this chapter uniquely adapted to each school entity and can only be changed by the strategic planning committee approved by the local school board.”

First, what does it mean for a strategic plan to become an extension of Chapter 4? What is the purpose/impact of this language on school districts? Would a strategic plan then fall under the jurisdiction of the Department of Education? Second, the latter part of the sentence states that the plan can only be changed by the strategic planning committee approved by the local school board. It is unrealistic to assume that the original membership of a planning committee will not change over a six-year period. People come and go for many reasons, and those vacancies are filled as necessary.

Of more critical concern is the implication that only the committee can change the plan. The role of the strategic planning committee is to develop a proposed plan to the school board, not to revise or to approve the document. As it is clearly stated in subsection (e), only the school board has the authority to approve the strategic plan, and it is not required to accept the recommendations of the committee in their entirety. If the board alters a proposed plan, it must try to reach the greatest possible consensus, but the final decision rests with the board. The school board is the governing body of the school district, and has the best understanding of the needs and resources available. Therefore, if the board wishes to change the plan, it clearly has the authority to do so without the permission of the committee.

With these two concerns in mind, PSBA urges the State Board to delete this entire sentence under subsection (c).

Also under the subsection is the listing of the 16 elements that must be addressed in a strategic plan. Clearly, the focus is for districts to create and implement rigorous efforts to raise and maintain student and school achievement that reflects the goals under the No Child Left Behind Act. These 16 elements will require school boards and strategic planning committees to conduct thoughtful, meaningful deliberations as they develop their plans. Some of the elements appear to be very similar, such as “(2) Results for students,” (4) Measurable annual improvement targets,” and “(14) Milestones of progress.” Perhaps some of these elements could be combined/blended as a means of helping boards and strategic planning committees to consider such concepts as a whole. PSBA supports the continuation of language that allows school boards to have final approval of their plans and requires them to file their plans with the department.

In addition, PSBA believes additional clarification is needed to element “(16) Coordination with other programs.” Under this element, districts must describe how they “will accomplish coordination” with before and after school programs and services for all grade levels. The services and programs include child care, after school programs, youth workforce development programs and tutoring. This language is awkward and vague. What does “accomplish coordination” mean? Coordination with what – transportation, staffing, curriculum? What would be the specific responsibilities of the school district?

Finally, we note in subsection (d) the addition of specific groups of teachers and educational specialists on the strategic planning committee. Currently, teachers are included in the committee, along with parents, students, school directors, school administrators, other school personnel and business and community representatives. There is no specific requirement for representation of these other groups of participants, and we question why there is a need to do so regarding teachers. The 16 elements that must be addressed in a strategic plan will require the committee and the school board to address the needs of students and employees at the elementary, middle and high school levels. PSBA recommends that the existing language be retained with only the addition of educational specialists, who may bring a specific expertise to the committee.

Section 4.24 High School Graduation – We support continuation of existing language that allows school entities to specify requirements for high school graduation, particularly provisions that allow students to achieve proficiency on either the state assessment or a local assessment in order to graduate. This section clarifies the State Board’s policy of not requiring the use of the PSSA as a high school exit exam. As a technical matter, the board may consider deleting the phrase “Beginning in the 2002-2003 school year” since we are now in the 2005-2006 school year.

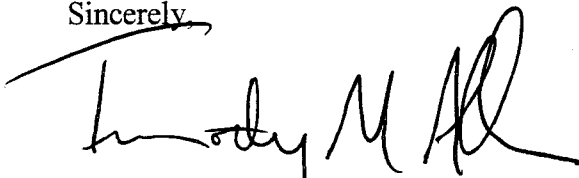
Section 4.25 Languages – We support the board’s decision to maintain the existing requirement for school districts to provide planned instruction in at least two languages, with no mandate in the proposal for students to take such courses. While we agree with the requirement for schools to offer such instruction, and support the development of world language standards, we also believe that these courses should be taken by students who wish to take them and not be part of a mandated curriculum. The board’s decision to maintain the existing requirement does not in any way diminish the importance of world language programs. Rather, it provides continued flexibility for students and ensures that opportunities to learn another language will be provided in public schools.

Section 4.51 State Assessment System – The changes to this section have been made to acknowledge and incorporate the administration of the state assessment system to comply with requirement of the No Child Left Behind Act. However, the subject testing at specific grade levels is inconsistent with actual practice and should be updated. For example, in **4.51 (b)** the proposal states that reading and math assessments will be given in grades 5, 8 and 11, and that writing tests will be administered in grades 6, 9 and 11. Likewise, in **4.51 (d)** it again states that writing tests will be given in grades 6, 9 and 11; additionally it states that the science assessment will be administered in grades 4, 7 and 10. As you know, in practice the reading and math tests will be given in grades 3, 4, 5, 6, 7, 8 and 11 in 2006. The writing assessment is given in grades 5, 8 and 11. The Department of Education has issued assessment anchors for the science assessment for grades 4, 8 and 11. **PSBA recommends that the grades levels be revised to reflect actual current practice.**

Section 4.52 Local Assessment System – PSBA has serious concerns with the language that is proposed for this section. **The association has joined with other education organizations to issue a statement that details the reasons for our opposition to the language, and to urge the State Board to delete subsections (2), (3) and (4).** As proposed, Section 4.52 focuses on the use of local assessments versus the PSSA as a high school graduation requirement. Through the requirements and procedures outlined in the proposal, the regulations create a strong disincentive for school districts and AVTSs to use a local assessment as a graduation requirement, even though they are allowed under to do so under Section 4.24 (relating to graduation requirements) and may conflict with provisions under Section 4.4 (permitting parents to have their child excused from state assessments). A copy of the joint statement is enclosed.

We appreciate the opportunity to review and comment on the proposed amendments to Chapter 4, and we would welcome the opportunity to continue discussion regarding the issues addressed in this letter.

Sincerely,



Timothy M. Allwein
Assistant Executive Director
Governmental and Member Relations

cc: Members, Senate Education Committee
Members, House Education Committee
Kim Kaufman, Independent Regulatory Review Commission

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**Joint statement from PASA, PSEA, AFT Pa, PAVA and PSBA
in opposition to proposed changes to Title 22, Chapter 4, Section 4.52**

The Pennsylvania Association of School Administrators, Pennsylvania State Education Association, American Federation of Teachers, Pennsylvania Association of Vocational Administrators and the Pennsylvania School Boards Association have joined together to oppose proposed changes to Section 4.52 of the regulations under Title 22, Chapter 4 (Standards and Assessment). The State Board of Education announced its intention to adopt the proposal on June 30, 2005. It was added to the previously adopted (July 2004) draft of proposed revisions to the entire Chapter 4.

Currently, Section 4.52 requires school districts and area vocational technical schools to create a local assessment system. Local assessments must be aligned with the state academic standards and be used to determine the degree to which students are achieving the standards. The local assessment system must be designed to include a variety of assessment strategies that may include tests, written work, scientific experiments, works of art, musical or theatrical performances, and other demonstrations or projects by students. The results of these assessments are used to help identify students who need assistance in attaining the academic standards and also to improve curriculum and instructional practices of the school. Our organizations support the use and purpose of the local assessment system in its current form because it allows schools and teachers to obtain a more complete picture of a student's knowledge, skills and talents in academic areas. An assessment system does not put high stakes reliance on just one test, but instead uses a variety of tests and other strategies to measure academic progress.

As proposed, Section 4.52 focuses on the use of local assessments versus the PSSA as a high school graduation requirement. In effect, the proposed language would create a presumption that a single PSSA test is a better assessment than the local school districts' multi-year, in-depth analysis that is based on many tests and projects over the course of the students' education. It also would authorize the secretary of education to force the local districts to make their local assessment results mirror the PSSA results. Thus, through the requirements and procedures outlined in the proposal, the regulations create a strong disincentive for school districts and AVTSs to use a local assessment as a graduation requirement, even though they are allowed to do so under Section 4.24 (relating to graduation requirements). Furthermore, this may conflict with Section 4.4's provisions permitting parents to opt their child from state assessments.

The new language under Section 4.52 would still allow school entities to use either the PSSA or a local assessment as a graduation requirement. However, the proficient level on the local assessment must be comparable to the proficient level on the PSSA, and the Department of Education would determine whether a school entity has met that requirement.

School entities that choose to use a local assessment instead of the PSSA as a graduation requirement would be required to submit an annual report to PDE “on a form and in a manner determined by the department” certifying the alignment between the local assessment and the PSSA. The school also would have to provide data specified by PDE to support the certification. If more students achieve proficiency on the local assessment than the PSSA, the PDE will infer that the local assessment is not aligned with the PSSA or the PSSA’s meaning of proficient.

A school entity whose certification is rejected by PDE would then be required to use the PSSA as a graduation requirement until PDE determines that the local assessment meets the requirement to be aligned with the PSSA.

If the annual report and certification are not submitted as required, or if the secretary “is not satisfied with the form or accuracy of the report,” the secretary will withhold funding “until such time as the secretary is satisfied that the school entity is in compliance with this chapter.”

We oppose these proposed changes to Section 4.52, subsections (2), (3) and (4) because the language is vague, subjective, punitive and counterproductive. Although the proposal still permits schools to use a local assessment system as a graduation requirement, the hoops that they must continually jump through to do so – and the pressure for the local assessment to mirror the state exam – make this flexibility a sham. **This proposal is one step away from establishing the PSSA as Pennsylvania’s mandatory high school exit exam.** There are many concerns and questions that we raise about the proposal. Among them:

1. Graduation requirements should remain a local determination, with the understanding that schools must establish clear expectations, and require rigorous instruction and assessment of students in accordance with the academic standards and provisions of Chapter 4.
2. The alignment between local assessments and the academic standards should be the key issue, rather than the alignment of local assessments and the PSSA.
3. The sole use of the PSSA provides a single snapshot of a student’s knowledge of the standards. The use of a variety of assessment strategies is a holistic approach that more accurately measures a student’s abilities. Think of it as looking at one photo of a student versus an entire photo album – which one will show you more?
4. The proposed language creates a conflict with provisions of Section 4.4 that allow parents to have their child excused from taking the PSSA. If a parent properly requests excusal, the school must grant it. If the PSSA is forced upon a district or AVTS as a graduation requirement, would such a student be unable to graduate?
5. How will “comparability” between the PSSA and local assessments be measured by the state, particularly if a combination of assessment strategies is used? How will the Department of Education compare the results of PSSAs in reading, math and writing taken in 11th grade with local assessments given in 12th grade?

6. What percentage of students will be used by the state to determine whether “significant numbers” achieve proficiency on a local assessment versus the PSSA?
7. Why is there an automatic inference that if the Department of Education determines that such “significant numbers” exist, that something is wrong with the local assessment? If local assessments must be aligned with the state standards, and students demonstrate proficiency on local assessments, isn’t the goal being met? Why is it assumed that the PSSA is the only correct way to measure achievement of the standards? The PSSA cut scores have not been externally validated. A close reading of the report conducted by the Human Resources Research Organization (HumRRO) suggests that the 11th grade proficiency levels were high. HumRRO's comparisons of student performance on the PSSAs and SATs indicate that a large percentage of students who score basic on the PSSA achieve SAT scores that will gain them admission to college. Is it reasonable to deny students diplomas based on PSSA performance levels that may turn out to be poor predictors of subsequent performance?

At the behest of the Pennsylvania State Board of Education, HumRRO investigated the relationship between 11th grade PSSA Math and Reading scores and other measures of educational achievement. In order to do this the investigators obtained data from three public research universities in Pennsylvania. The HumRRO researchers were able to match student records of PSSA test scores, their performance on their university’s Math and English proficiency exams, and their course grades in their first college English and Math courses.

No one disagrees that performance on the PSSA is positively related to performance on other proficiency tests. The two most interesting findings of latest HumRRO study of the PSSAs are: 1) Both the PSSAs and university proficiency exams were "weak", or in a few cases "moderate" predictors of student grades in their first college Math or English course. 2) Approximately 60% of the students who scored "basic" or "below basic" on the PSSA enrolled in college level Math or English courses in the same subject they had "failed" on the PSSA. Both these results raise questions regarding the external validity of the PSSA cut scores. Consequently, this suggests that proposed revisions to Chapter 4, section 4.52 may result in the denial of high school diplomas to thousands of Pennsylvania's students who would have enrolled in college level (nonremedial) courses in the same subjects they had "failed" on the PSSA.

8. If local assessments had been required to replicate PSSA results in 2003-04, the following percentages of Black, IEP and LEP students would have been unable to graduate because they did not reach Proficient:

	Math	Reading
Black	82%	72%
IEP	89%	86%
LEP	71%	82%

This would be a particularly cruel development for students who demonstrate on the local assessments that they have reached the Proficient level on Pennsylvania's academic standards, given the serious questions that have been raised about the process used to set the PSSA cut scores, as well as the questions that have been raised nationally regarding bias against minority groups in standardized testing generally.

9. What kind of timelines will be established for school entities to prepare and submit an annual report? What kind of documentation and data must the district or AVTS provide to show that it is meeting state requirements? What kind of timelines will be established for the Department of Education to respond? What guidelines will the department use to determine whether it will approve or reject a school's report?
10. Why do school entities have to file reports and certifying data every year? This creates a burdensome administrative requirement that seems to have no purpose other than to act as a disincentive to use a local assessment.
11. The proposal does not allow for any type of appeal process if the Department of Education rejects a school's annual report.
12. The proposal also does not call for the Department of Education to provide any technical assistance to school districts and AVTSs to help them develop their local assessments in a way that meets the state requirements. If the department were to offer assistance to those schools that request help, it would not become necessary to force schools to use the PSSA as a graduation requirement as the only alternative.
13. Rather than providing for a process of assistance to help schools, the regulations instead authorize the secretary of education to withhold their funding. Again, there is no appeal process. How long will the funding be withheld? How will the loss of state funds help schools enhance their instruction and assessment plans to meet the requirements of this regulation?

Our organizations believe that it is important for students to graduate with a knowledge and understanding of the state's academic standards. The development and use of state standards allow for a uniform, but not identical, guide for schools to prepare students for college or the workplace. State initiatives such as PAGE 1, Project 720, dual enrollment, improvements to career and technical centers, and others enhance local efforts. We agree that the use of the PSSA is an important component in measuring student achievement. However, we do not agree that achievement can only be correctly measured in one way, through the PSSA. If students can consistently demonstrate an understanding of the state academic standards through a local assessment system, they should be permitted to graduate.

We urge you to consider these issues and questions as you review this proposal. We ask that you seek changes to this proposal to delete subsections (2), (3) and (4) of Section 4.52.

We would be pleased to meet with you to discuss our comments.

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