

Comments of the Independent Regulatory Review Commission



State Board of Education Regulation #6-326 (IRRC #2976)

Academic Standards and Assessment

December 5, 2012

We submit for your consideration the following comments on the proposed rulemaking published in the October 6, 2012 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the State Board of Education (Board) to respond to all comments received from us or any other source.

1. Fiscal impact of the regulation.

The Board's response to Regulatory Analysis Form (RAF) Question #20 states that the proposed regulation will not impose any new costs on school districts; however, commentators raise concerns about the costs of this regulation, including costs for such procedures as redesigning curriculum, remediation and project-based assessments. We agree that the RAF does not adequately address fiscal impacts. We ask the Board to consult with the regulated community to gain a thorough understanding of the fiscal impacts of this proposal and include those findings in the RAF submitted with the final-form regulation.

2. Need for the regulation; Acceptable data.

Much of the opposition to this regulation stems from concerns that these proposed changes alter the nature of the Keystone Exams from one indicator of student achievement to high-stakes exit exams. In the Preamble and RAF #18, the Board cites a 2006 study in support of this proposed change, stating, "There is strong evidence that 'high stakes' testing or requiring passage of a test or exam in order to achieve high school graduation can be a 'potent policy in terms of bringing about real positive changes in student learning.'" However, a commentator noted that "empirical research . . . continues to suggest that multiple measures of student achievement and knowledge are more accurate and reliable." Another commentator questions whether the Board and the Department of Education (Department) have conducted studies related to the validity or reliability of the Keystone Exams for use as high stakes assessments or for determining college or career readiness. The commentator notes that as a stand-alone exit exam, the Keystone Exams could have unintended consequences such as increased dropout rates, narrowed curricula, diversion of resources away from education of students and toward more standardized testing of students, and disproportionate harm to some of the more vulnerable students, such as those living in poverty, minority students, English language learners and special needs students.

Public commentators have raised valid concerns about the impact of making Keystone Exams high stakes exit exams. We have similar concerns, including that the Board cites a 2006 study

which shows that high stakes testing *may* bring about changes in learning. We further question the basis on which the Board is making this significant change to the nature of the Keystone Exams since the Board did not provide supporting evidence in its response to RAF #28 regarding data. We ask the Board to explain in detail why this change is needed, and to provide acceptable data that supports high stakes exams as graduation requirements.

3. Implementation procedures.

According to Section 4.51 (e)(14) of the rulemaking:

The Department will seek to have the Keystone **[Exam system] Exams** approved as the high school level single accountability system under the No Child Left Behind Act of 2001. Upon approval by the United States Department of Education, the Algebra I and Literature exams will be used to determine adequate yearly progress at the high school level.

This language first appeared in Section 4.51 of the final-form rulemaking published at 40 Pa.B. 240 on January 9, 2010. Since the Board amended this provision but did not amend its statement that it “will seek” approval, we ask if the Board has received approval from the United States Department of Education (USDOE) to use Keystone Exams as the adequate yearly progress (AYP) assessment system? If not, when does the Board expect to receive a decision from the USDOE on this request?

Commentators express concern that the Keystone Exams have not yet been approved by the USDOE to replace the Pennsylvania System of School Assessment (PSSA) as the measure of proficiency when the proposed rulemaking does just that. One commentator states that Pennsylvania’s current federally-approved accountability plans mandate administration of the PSSA, and, therefore, questions the Department’s authority to make these changes at this time. The commentator states that the Department risks denial of the plans, as well as penalties.

If the Board has not received federal approval prior to submitting the final-form regulation, the Board should explain in the Preamble how the Board’s decision to move forward without federal approval is in the best interest of Pennsylvania’s schools, students and other stakeholders. What potential penalties and costs would the Department face if denied by the USDOE? In the Preamble to the final-form regulation, we ask the Board to explain how schools would be expected to implement this rulemaking if it is not in alignment with the State’s current federally-approved accountability plans. Further, the Board should explain how the benefits of moving forward with the Keystone Exams, which are an unapproved measure of AYP, outweigh the risks of the USDOE denying the Board’s request.

4. Whether the regulation represents a policy decision of such a substantial nature that it requires legislative review.

A major component of this proposed rulemaking is the Board’s decision to replace existing language that states a Keystone Exam counts for at least one third of a course grade with the mandate that a student will demonstrate proficiency on a Keystone Exam to graduate. We question whether this change represents a policy decision of such a substantial nature that it requires legislative review. When the House and Senate Education Committees are designated for the 2013-2014 legislative session, we urge the Board to share this proposal with those Committees and to seek their input. We also suggest that the proposal be shared with all

members of the General Assembly before the final-form rulemaking is delivered for consideration.

5. Section 4.3. Definitions. – Clarity.

Under the Board’s existing regulations, the term “Keystone Exams” is defined as, “State-developed end-of-course exams.” Since Keystone Exams serve as part of the State assessment system and now also as a graduation requirement, we suggest that the definition be expanded to fully reflect the purpose and use of the exams.

6. Section 4.4. General policies. – Need.

As noted by the Board, Subsection (d)(4) is being rewritten to strengthen the security of the State assessment by narrowing and refining parents and guardians’ rights to review the assessments. We ask the Board to explain the need for this change. What problem is being addressed?

7. Section 4.13. Strategic plans. – Need; Implementation procedures; Clarity.

Amendments to this section of the proposed regulation eliminate the strategic plan requirements and provide references to other sections of the Board’s regulations that still require specific plans for professional education, induction, student services, special education and gifted education. Commentators raise concerns that strategic plans establish a form of accountability, such that schools must provide the public with information about planned instruction, assessment, professional personnel and other resources, as well as instructional supports and measureable goals to improve student achievement. The Preamble to the final-form regulation should provide an explanation of why the Board is deleting these requirements. Since there will no longer be a required 28-day minimum public inspection period, will stakeholders still have an opportunity to participate in the development and review of the other plans before the plans are implemented or submitted to the Department or Secretary?

We note that if the Board continues with its proposal to eliminate the strategic plan requirements from Chapter 4, the Board should update related provisions in existing regulations, including Chapters 12, 14, 16 and 49.

8. Section 4.24. High school graduation requirements. – Reasonableness of the regulation; Implementation procedures; Need; Clarity.

Subsection (a)

This subsection requires each school district, Area Vocational Technical School and charter school, including a cyber charter school, to specify requirements for graduation. The existing regulations require the requirements to be part of a school’s strategic plan. Since strategic plans are being eliminated, as noted above, where must a school’s graduation requirements be specified? This should be clarified in the final-form rulemaking.

Subsection (c)

Under Subparagraph (c)(1)(ii), the Board is proposing to eliminate the culminating project as a graduation requirement beginning in the 2016-2017 school year. However, the Preamble does not explain why it is being eliminated. We ask the Board to explain the basis for this decision.

Subsection (h)

A commentator raises several concerns regarding the reporting of testing results on student transcripts under Subsection (h). We agree that the provision addressing transcripts is unclear. In the final-form regulation, the Board should clarify how it intends for schools to implement the required reporting of testing results on transcripts. In other words, would schools report a student's result using only a scaled score, only a performance level (such as proficient versus non-proficient), a scaled score and performance level, or a scaled score with a chart showing proficiency ranges? Would all schools report using the same method or would each school choose its reporting method?

If schools report results using *only* performance level, then ideally all students' transcripts would report them as being proficient. The Board should explain in the Preamble why this method of reporting would be in the best interest of students and those who would use transcripts as a means of evaluation.

In addition, since students can demonstrate proficiency by testing at that level on a Keystone Exam or by completing a project-based assessment under § 4.51 (m), will the transcripts denote the manner in which proficiency was achieved? The final-form regulation should clarify these issues.

Subsection (l)

This subsection addresses students who transfer from out-of-State schools and have demonstrated proficiency on an assessment congruent with academic standards assessed by each Keystone Exam. It states that the Secretary of Education will develop guidelines to address this issue and the guidelines will be submitted to the Board for approval or disapproval. Will the guidelines be in place prior to the completion of this regulatory package?

9. Section 4.51. State assessment system. – Clarity; Implementation procedures; Reasonableness.

Clarity

This section of the rulemaking addresses several topics including:

- State assessments as measured by the PSSA;
- State assessments as measured by the Keystone Exams;
- Supplemental instruction for students that did not score proficient on a Keystone Exam;
- Keystone Exams as a graduation requirement;
- The development of additional Keystone Exams subject to funding by the General Assembly;
- Project-based assessments; and
- Waivers.

In order to assist the regulated community with compliance, we ask the Board to consider breaking this complex section of Chapter 4 into more easily understandable and more specific sections.

In addition, we note that certain terms are used in a generic way when a more precise, defined term would be clearer. For example, Subsection (a) references the undefined term "state assessment system," Subsection (b) uses the undefined term "PSSA instruments" and other subsections make reference to performance on PSSA English Language Arts assessments, PSSA mathematics assessments and PSSA science assessments. As noted above, the existing definition

of Keystone Exams is also limited. It is our understanding that as the Commonwealth transitions from the use of PSSAs to Keystone Exams at the high school level, the use of PSSAs at the elementary and middle school level will continue. As the Board develops the final-form rulemaking, we ask that it pay particular attention to the use of these terms and provide the necessary clarity in the regulation so that the regulated community can understand and comply with what is required.

Implementation procedures

It is our understanding that if a student takes a Keystone Exam prior to their 11th grade year and scores proficient on that exam, the score can be “banked” and used by the school entity for determining AYP when that student is in 11th grade. However, the proposed regulation does not reference this option or provide any direction on how it will be administered. If scores could be “banked,” we suggest that the final-form regulation specify how “banking” must be administered.

Subsection (a)

This subsection states that the “State assessment system” is designed to serve six specific purposes. It does not reference the fact that the State assessment system, through the administration of the Keystone Exams, will also serve as a graduation requirement. We suggest that Subsection (a) be amended to reflect the fact that the State assessment system is tied into graduation requirements.

Subsection (m)

Subsection (m)(3) pertains to students below grade 12 that have not demonstrated proficiency on Keystone Exams or Keystone Exam modules after at least two attempts and that student’s qualification for project-based assessments. One of the qualifications is that the student has participated in a satisfactory manner in supplemental instruction for at least two years. We are concerned that the two-year requirement for supplemental instruction before a student can qualify for a project-based assessment would be an unreasonable requirement. If the student has already failed to meet the proficient level on two previous occasions after receiving supplemental instruction, will additional supplemental instruction be of any benefit to that student compared to beginning a project-based assessment? Will the additional supplemental instruction interfere with other course work the student is trying to complete? We ask the Board to consider the overall impact the two-year supplemental instruction requirement will have on students and provide an explanation of why the two-year duration of the supplemental instruction is reasonable.

Subsection (n)

This subsection, and Subsection (k) of § 4.24, pertaining to graduation requirements, address waivers for students that have not scored proficient on Keystone Exams or project-based assessments. What is the need for including waiver provisions in both sections of the regulation? Has the Board considered consolidating the waiver provisions under one section of the regulation? At a minimum, we ask the Board to review both sections pertaining to waivers and to ensure they are consistent and do not conflict with each other.

10. Miscellaneous clarity.

- The Board’s response to RAF #8 provides an incorrect citation of its statutory authority for the regulation. The Board should provide a corrected citation in the RAF when it returns the final-form regulation.
- The Board’s existing Chapter 4 regulations include Appendix A, relating to Academic Standards for Reading, Writing, Speaking and Listening. The Preamble to this rulemaking notes that the existing Appendix A will be replaced by a new Appendix A, related to Pennsylvania Common Core Standards for English Language Arts and Mathematics. The Annex to this proposed rulemaking is not formatted to show that the existing Appendix A is being deleted and replaced by a new Appendix A. The final-form rulemaking should be formatted to show the Board’s intended change to Appendix A.