



March 26, 2020

The Honorable Phil Murphy, Governor
Office of the Governor
P.O. Box 001
Trenton, New Jersey 08625

Dr. Lamont Repollet, Commissioner
Department of Education
200 Riverview Plaza
Trenton, New Jersey 08625

Re: Suspending High School Graduation Testing Requirement During COVID-19 Pandemic

Dear Governor Murphy and Commissioner Repollet:

As an advocate for New Jersey's public school students, Education Law Center (ELC) supports the Administration's decision to suspend the 2020 State assessments in response to the COVID-19 pandemic. However, we write to request the Administration take an additional, immediate step to protect the graduation rights of students in the class of 2020.

In deciding to suspend State assessments, your Administration acknowledged that it "is simply not feasible for us to be able to move forward with testing in any meaningful way."¹ We submit it is similarly "not feasible" to fairly and properly implement the testing required for high school graduation under New Jersey's Proficiency Standards and Assessment Act, N.J.S.A. 18A:7C-1 *et seq.*, or to comply adequately with the consent agreement between the Department of Education (DOE) and organizations represented by ELC and the ACLU of New Jersey in *IN RE N.J.A.C. 6A:8*, which was approved by the Appellate Division in May 2019.

The May 2019 consent agreement guarantees students in the class of 2020 access to multiple pathways to satisfy the testing requirement. These are delineated as the same pathways and standards applicable to the graduating class of 2019. Due to the pandemic, many of those pathways are no longer available.

The DOE's March 24th assessment guidance cancels "all statewide student assessments for the spring 2020 testing window." This includes the springtime administration of the New Jersey Student Learning Assessments (NJSLA), the primary graduation testing option. In addition, many of the "substitute competency tests" that students rely upon as alternatives to fulfill the graduation assessment requirement are not being administered this spring due to the pandemic or are not available online to students who are quarantined at home.

¹ John Mooney, *Amid COVID-19 Crisis, NJ Seeks Pass on Student Test Requirement*, NJ Spotlight (Mar. 25, 2020), <https://www.njspotlight.com/2020/03/draft-j-mooney-stop-testing/>.

Yet, despite generally cancelling State testing due to the COVID-19 pandemic, the DOE guidance did not suspend the graduation testing requirement and left in place the “portfolio assessment,” which is used extensively by New Jersey’s at-risk (low-income) students, English language learners (ELLs), and students in our high needs districts to fulfill this graduation requirement.

The portfolio assessment is available to seniors who have not satisfied the graduation testing requirement by other means. In 2019, according to DOE data, 5.6% of all graduates used the portfolio to satisfy the Proficiency Standards and Assessments Act’s English Language Arts (ELA) testing requirement, and 7.2% used it for the Math testing requirement. Thus, approximately 5,400 students used the portfolio assessment for ELA and almost 7,000 students for Math.

The portfolio is a comprehensive state assessment, administered between January and May of a student’s senior year, with detailed protocols that require school and district support to complete. With schools closed, there is no infrastructure in place adequate to support use of the portfolio assessment for students in the class of 2020.

Completion of portfolios requires significant one-on-one support from school staff for many students. In addition, some students, particularly ELLs, will need translation support to complete the portfolio assessment. DOE data shows these students rely disproportionately on the portfolio assessment to meet the ELA testing requirement. Other students will need internet access, which they may not have or which may not be available. Further, there is no safe, secure process in place for distributing and collecting portfolio assessment materials and no protocols for the administration and proctoring of portfolio tasks in students’ homes.

In announcing the cancellation of State assessments, the Governor made a firm commitment not to “prevent students from graduating high school due to the decisions we are making about standardized testing. . . .”² Yet, as discussed above, the guidance outlined by the DOE on March 24 would do just that.

We commend your Administration’s swift and decisive action to support our schools and our students in the midst of an unprecedented public health crisis. To continue that proactive approach, we urge you to take the additional necessary step of suspending the graduation testing requirement for the class of 2020.

Sincerely,



David G. Sciarra, Esq.
Executive Director

Via Regular and Electronic Mail

cc: Donna Arons, Deputy Attorney General

² *Id.*