

AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY

By: Edward Barocas, Esq. (026361992)  
Jeanne LoCicero, Esq. (024052000)  
Alexander Shalom, Esq. (021162004)

Post Office Box 32159  
Newark, New Jersey 07102  
(973) 642-2084; fax (973) 642-6523  
ebarocas@aclu-nj.org

EDUCATION LAW CENTER

By: David G. Sciarra, Esq. (026671978)  
Jessica Levin, Esq. (096262014)  
60 Park Place Suite 300  
Newark, N.J. 07102  
(973) 624-1815; fax (973) 624-7339  
dsciarra@edlawcenter.org

GIBBONS PC

By: Lawrence S. Lustberg, Esq. (023131983)  
Ana Muñoz, Esq. (146622015)  
One Gateway Center  
Newark, NJ 07102-5310  
(973) 596-4500; fax (973) 596-0545  
llustberg@gibbonslaw.com

*Attorneys for Petitioners*

**STATE OF NEW JERSEY**

---

T.B. on her own behalf and T.B. o/b/o minor child T.B.; L.B. on her own behalf and L.B. o/b/o minor child A.B.; L.F. on her own behalf and L.F. o/b/o minor child K.F.; L.G. on her own behalf and L.G. o/b/o minor child G.C.; L.R. on her own behalf and L.R. o/b/o minor child K.R.; and Education Law Center,

Petitioners,

v.

New Jersey Department of Education,

Respondent

---

**BEFORE THE COMMISSIONER OF  
EDUCATION OF NEW JERSEY**

OAL DOCKET NO. EDU  
Agency Ref. No.

**VERIFIED PETITION**

Petitioners, as set forth below, hereby request the Commissioner of Education to consider a controversy that has arisen between Petitioners and Respondent, New Jersey Department of Education, whose address is 100 Riverview Plaza, Trenton, New Jersey 08625, pursuant to the authority of the Commissioner to hear and determine controversies under the school law (*N.J.S.A.* 18A:6-9), by reason of the following facts:

### **PRELIMINARY STATEMENT**

1. This action challenges the Respondent Department of Education's ("Respondent's" or "DOE's") failure to comply with the statutory and regulatory requirements governing the issuance of State-endorsed high school diplomas and the failure to comply with the Administrative Procedure Act, *N.J.S.A.* 52:14B-1 *et seq.*, by appropriately promulgating regulations that would codify proposed changes in the graduation requirements. Specifically, the DOE has halted implementation of the graduation requirements in the High School Graduation Standards Act, *N.J.S.A.* 18A:7C-1, *et seq.*, and the agency's own standards and assessment regulations, *N.J.A.C.* 6A:8, which mandate administration of State graduation exams in the eleventh and twelfth grades. Instead, the DOE has effected significant changes to New Jersey's public high school graduation requirements, including the use and application of new State and other commercial assessments, through a series of sub-regulatory memoranda, in violation of the APA's rulemaking procedures. Petitioners bring this action for declaratory and other relief to promptly remedy these violations.

### **PARTIES**

2. Petitioner T.B. is the parent of T.B., a twelfth grade student in the Newark Public Schools district.

3. Petitioner L.B. is the parent of A.B., a twelfth grade student in Bernards Township Public Schools district.

4. Petitioner L.F. is the parent of K.F., an eleventh grade student in the South Orange-Maplewood Public Schools district.

5. Petitioner L.G. is the parent of G.C., an eleventh grade student in the Weehawken Public Schools district.

6. Petitioner L.R. is the guardian of K.R., a tenth grade student in the Paterson Public Schools district.

7. Petitioner Education Law Center (“ELC”), located in Newark, New Jersey, is a non-profit legal services organization that advocates to ensure New Jersey public school children’s access to equal and adequate education under state and federal laws. For example, since 1981, ELC has served as counsel in *Abbott v. Burke* for the plaintiff-class of school children who attend public schools and preschools in 31 poorer urban districts. In this matter, ELC represents the interests of all New Jersey high school students in order to effectuate DOE compliance with legal requirements to ensure uniform, fair, and meaningful opportunities to obtain a State-endorsed high school diploma.

8. The Respondent DOE, through the State Board of Education (“State Board”) and the Commissioner of Education (“Commissioner”), is responsible for the implementation of those requirements imposed by law for graduation of students from New Jersey high schools, and for defining the criteria for issuing State-endorsed diplomas to high school students. The DOE is located at 100 Riverview Plaza, Trenton, New Jersey 08625.

## FACTUAL ALLEGATIONS

### **The Graduation Standards Act**

9. In 1979, the Legislature enacted the High School Graduation Standards Act (“Graduation Standards Act” or “the Act”), *N.J.S.A.* 18A:7C-1, *et seq.* The Act requires the Commissioner to develop standards for high school graduation including a State assessment test “in reading, writing and computational skills to be administered to all secondary school pupils.” *N.J.S.A.* 18A:7C-1.

10. The Act further requires that, pursuant to the Commissioner’s guidelines, “each board of education shall establish standards for graduation from its secondary schools” including “[s]atisfactory performance on the Statewide assessment test.” *N.J.S.A.* 18A:7C-2. The Act directs local boards of education to “provide each high school pupil and the parents or legal guardians of such pupil” with the board’s graduation policy, including “a clear statement of the proficiencies required for graduation and those programs available to assist in attaining those levels of proficiency.” *N.J.S.A.* 18A:7C-5.

11. In 1988, the Act was amended to require that the State test for graduation be administered in the eleventh grade, beginning in the 1993-94 school year. Specifically, the Act requires that the State graduation proficiency test “be administered to all 11th grade pupils and to any 11th or 12th grade pupil who has previously failed to demonstrate mastery of State graduation proficiency standards on said test.” *N.J.S.A.* 18A:7C-6. The Act further provides that any student who does not pass the State graduation exam by the end of eleventh grade “shall be eligible for a comprehensive assessment of said proficiencies utilizing techniques and instruments other than standardized tests.” *N.J.S.A.* 18A:7C-3.

## **The DOE's Current Graduation Regulations**

12. Since enactment of the Act in 1979, DOE has devised and utilized four different State high school graduation tests to determine whether students could receive a high school diploma. Specifically, the State graduation tests administered under the Act by DOE from 1979 through 2001-02 have been the Minimum Basic Skills ("MBS") from 1981-82 to 1984-85; the High School Proficiency Test-9 ("HSPT9") from 1985-86 to 1992-93; and the High School Proficiency Test ("HSTP11") from 1993-94 to 2000-01.

13. In 1996, the State Board adopted the Core Curriculum Content Standards ("CCCS") to provide local school districts with "clear and specific benchmarks for student achievement in nine content areas," including English Language Arts ("ELA") and Mathematics, the content areas tested on State graduation exams since 1979.

14. In 2001-02, DOE replaced the HSPT11 with the High School Proficiency Assessment ("HSPA") as the graduation test in ELA and Mathematics administered in the eleventh and twelfth grades under the Act. The DOE's regulations governing standards and assessments require the HSPA exam to be "used to determine student achievement of the knowledge and skills specified by the CCCS." *N.J.A.C. 6A:8-1.3.*

15. The DOE's standards and assessment regulations also require the Alternative High School Assessment ("AHSA") to be administered in addition to HSPA as an alternative measure of "high school competency" of the CCCS standards in ELA and Mathematics. *N.J.A.C. 6A:8-1.3.* The regulations authorize districts to administer the AHSA to English language learner ("ELL") students "in their native language, when available, and/or in English." *N.J.A.C. 6A:8-4.1(d)(1)(i).*

16. Under the Act and current DOE regulations, students have multiple opportunities during the eleventh and twelfth grades to take the State high school graduation exams -- the HSPA or the AHSA -- in order to obtain a State-endorsed diploma. *N.J.S.A.* 18A:7C-6; *N.J.A.C.* 6A:8-4.1(d)(4), 5.1(f). Through the graduating class of 2015, the DOE allowed students to take the HSPA and AHSA up to three times each.

17. The DOE regulations also require that local district graduation standards include “[t]he requirement that all students demonstrate proficiency in all sections of the HSPA or AHSA process applicable to the class graduating in the year they meet all other graduation requirements.” *N.J.A.C.* 6A:8-5.1(a)(6). The regulations require districts to “administer following the 11th grade the AHSA to all students who have not demonstrated proficiency on one or more sections of the HSPA.” *N.J.A.C.* 6A:8-4.1(d)(4). Districts must “provide students who have not demonstrated proficiency on one or more sections of the HSPA following the 11th grade with the opportunity to demonstrate such competence through both repeated administrations of the HSPA and the AHSA process.” *N.J.A.C.* 6A:8-5.1(f).

18. The DOE regulations further direct districts to provide students and parents “entering high school” with a copy of the district’s requirements “for a State-endorsed diploma and the programs available to assist students in attaining a State-endorsed diploma, in accordance with *N.J.S.A.* 18A:7C-5.” *N.J.A.C.* 6A:8-5.1(e).

#### **Adoption of Common Core Standards and PARRC Assessments**

19. In June 2010, the State Board adopted a resolution revising the CCCS to incorporate the nationally-developed Common Core State Standards in ELA and Mathematics. The resolution noted that the revised standards “establish the basis for local curriculum and

instruction for all students, the Statewide assessment system, and the evaluation of local district boards of education.”

20. In April 2011, the State Board announced that New Jersey had joined the Partnership for the Assessment of Readiness for College and Careers (“PARCC”), a multi-state consortium charged with developing new assessments aligned with the Common Core State Standards.

21. In October 2011, DOE formed the College and Career Ready Task Force charged with “articulating the knowledge and skills that students should master to be ‘college and career ready,’ and ensuring that New Jersey has the appropriate graduation requirements and high school assessments in place to evaluate the mastery of these readiness standards.”

22. In April 2012, Governor Chris Christie released the “Final Report of the New Jersey Department of Education College and Career Readiness Task Force” (“Report”). The Report recommended that DOE “develop a transition that will give both students and schools a chance to adapt to the new [PARCC] assessments.” The Governor also announced that students currently in high school will continue to take the HSPA and AHSA for graduation “to maintain continuity;” that students in grades 5 through 8 (*i.e.*, the graduating classes of 2016, 2017, and 2018) “will pilot” the new PARCC assessments but “graduate based on a robust transcript while the state adapts to the new assessments;” and that over the next several years, DOE “will work to identify both the number of end-of-course assessments required for graduation and the passing scores for each assessment over several years of administration.”

23. On September 10, 2012, DOE issued a memorandum entitled “High School Assessment Transition to the Common Core State Standards,” which made clear that the HSPA would be administered for the next two years as the high school graduation exam. The

memorandum stated that tenth and eleventh graders “will have the same number of opportunities to meet their assessment graduation requirement, *i.e.*, the same number of re-take opportunities on HSPA and the same number of . . . (AHSA) administrations.”

24. The September 10, 2012 memorandum also stated that incoming freshmen (the graduating class of 2016) “will be the first cohort” to take the new PARCC assessments in 2014-2015 “when they will be juniors in high school.” The memorandum did not address the use of the PARCC assessments as a “graduation requirement,” but stated that DOE “will provide more details regarding this transition over the next several months.”

25. On February 6, 2013, DOE published proposed amendments to the standards and assessment regulations, *N.J.A.C.* 6A:8. These amendments proposed for re-adoption the continuing use of HSPA as the State graduation test and designated AHSA as the “alternative assessment” to HSPA to measure competency in ELA and Mathematics. AHSA was proposed to replace the Special Review Assessment (“SRA”), the previously designated alternative to HSPA.

26. In March 2013, Petitioner Education Law Center (“ELC”) testified before the State Board on the proposed amendments, noting that DOE had announced plans to phase out HSPA and AHSA and replace them with the new PARCC assessments but had failed to specify whether or how these new assessments would be used as a graduation requirement. ELC also noted that this lack of guidance prevented districts from providing parents and students with the requirements for obtaining a high school diploma. ELC urged the State Board to clarify these issues before adopting the proposed regulations. In adopting the proposal, the State Board indicated that if “modifications to the regulations are necessary in the future to address assessment updates and the resulting impact on graduation requirements,” DOE “will revisit the regulations at that time.” 45 *N.J.R.* 2545 (December 16, 2013).



## **DOE Graduation Policy Memoranda**

27. In 2014 and 2015, the DOE issued several memoranda to districts imposing new graduation requirements for students in the 2016, 2017 and 2018 classes, to replace the HSPA and AHSA assessments. DOE did not publish these new requirements as proposed rules to amend the current regulations in *N.J.A.C. 6A:8*, which still require the use of HSPA and ASHA as the tests to determine high school graduation under the Act. DOE has not, to date, either proposed or adopted the new graduation requirements set forth in the various memoranda as regulations, as required by the APA.

28. On September 30, 2014, DOE Commissioner David Hespe issued a memorandum entitled “Graduation Requirements Class of 2016, 2017 and 2018” (“the September 30<sup>th</sup> Memo”). The September 30<sup>th</sup> Memo outlined new graduation requirements for those students who were juniors, sophomores and freshmen at the time the memo was issued. The September 30<sup>th</sup> Memo is attached as Exhibit A.

29. The September 30<sup>th</sup> Memo sets forth various new tests and an expanded “appeal” process that students in the classes of 2016, 2017 and 2018 “will be able” to use to “satisfy the state requirement of demonstrating proficiency” in ELA and Mathematics. These include passing one or more of the new PARCC tests, achieving certain scores on a number of commercially-produced “substitute” assessments designated by DOE or satisfying the criteria of DOE’s “portfolio appeal” process in which DOE evaluates student work samples. The options do not include the HSPA or AHSA.

30. The September 30<sup>th</sup> Memo explains that the PARCC assessments include ELA exams in grades 9, 10 and 11, and Math exams in Algebra I, Algebra II and Geometry. Unlike

the HSPA and ASHA, the new PARCC exams are “End-of Course (EOC)” assessments, tied to courses rather than grade levels.

31. The September 30<sup>th</sup> Memo states that “approximately 30-40%” of students in their junior year in 2014-15 will be enrolled in a math class for which there will be no corresponding PARCC test. The Memo further explains that “[t]hese advanced students are not expected to take a PARCC End-of-Course assessment in mathematics, but must still demonstrate competency in mathematics in order to receive a state-endorsed diploma.”

32. The September 30<sup>th</sup> memo also states that “schools and districts can expect to be notified” of the PARCC scores to be used “in New Jersey graduation determinations in the Fall of 2015.” This Memo was the first indication that DOE planned to use passing scores on the new PARCC assessments to determine whether students in the classes of 2016, 2017 and 2018 had satisfied the requirements for graduation.

33. Unlike the State graduation exams discussed above, the commercially produced college entrance exams listed in the September 30<sup>th</sup> Memo, including the SAT and ACT, are not given free-of-charge, but instead require the student to pay a fee. For example, at present, a student must pay \$52.50 to take the SAT and \$54.50 to take the ACT, unless the fee is waived by the test administrator.

34. None of the assessment options nor the appeals process specified in the September 30<sup>th</sup> Memo as ways to fulfill the graduation requirements comport with DOE’s current standards and assessment regulations, *N.J.A.C. 6A:8*, as set forth in paragraphs fourteen through eighteen above.

35. On October 2, 2014, DOE issued a memorandum entitled “Transitioning to PARCC Frequently Asked Questions” (“the October 2<sup>nd</sup> Memo”). The October 2<sup>nd</sup> Memo states

that additional guidance would be forthcoming regarding the necessary scores for graduation on PARCC and substitute assessments. The October 2<sup>nd</sup> memo is attached as Exhibit B.

36. On October 21, 2014, DOE issued a memorandum entitled “Clarification Document Regarding Partnership for Assessments of Readiness for College and Careers (PARCC) End-of-Course Mathematics and English Language Arts Assessments” (“the October 21<sup>st</sup> Memo”). The October 21<sup>st</sup> Memo stated that the final administrations of HSPA and AHSA would take place at the end of the 2014-15 school year, and defined the cohort of students who would take the final administration of HSPA and ASHA. The Memo also provided a schedule for administration of PARCC assessments in the spring of the 2014-15 school year. The October 21<sup>st</sup> Memo is attached as Exhibit C.

37. The October 21<sup>st</sup> Memo included information on the administration of PARCC to English Language Learner (“ELL”) students. The Memo stated that all ninth, tenth and eleventh grade students must take a PARCC ELA assessment, including “[s]tudents enrolled in English as a Second Language beginner, intermediate, and advanced courses.” The Memo also stated that exemption from PARCC ELA assessments for newly arrived students would not apply to high school students, who must participate in the exams with appropriate ELL accommodations. The Memo indicated that PARCC math assessments would be available in Spanish and ELA assessments would be available in English only.

38. On October 30, 2014, the Commissioner issued a memorandum entitled “Student Participation in the Statewide Assessment Program” (“the October 30<sup>th</sup> Memo”). The October 30<sup>th</sup> Memo responds to “inquiries regarding the ability of parents and students to choose not to participate in the statewide assessment program,” including PARCC. The Memo states that “[f]or the 2014-2015 school year, the PARCC assessments will replace the prior statewide

assessments – the NJASK in grades 3-8 and HSPA in high school; as such all students shall take the PARCC assessments as scheduled.” The October 30<sup>th</sup> Memo is attached as Exhibit D.

39. On December 2, 2014, DOE issued a memorandum entitled “UPDATED: Graduation Requirements for the classes of 2016, 2017, and 2018” (“the December 2<sup>nd</sup> Memo”). The December 2<sup>nd</sup> Memo refers to the Commissioner’s earlier notification of “New Jersey’s transition from the High School Proficiency Assessment (HSPA) to the Partnership for the Assessment of Readiness for College and Careers (PARCC) End-of-Course assessments.” The Memo also contains an updated list of “substitute assessments” designated by the DOE along with the passing scores required for these exams to be counted toward satisfying the graduation requirements. The December 2<sup>nd</sup> Memo is attached as Exhibit E.

40. On February 24, 2015, DOE issued a memorandum entitled “Frequently Asked Questions Regarding Partnership for Assessments of Readiness for College and Careers (PARCC) Test Administration, Accessibility Features, Accommodations, and Technology” (“the February 24<sup>th</sup> Memo”). An attachment to the February 24<sup>th</sup> Memo contains information about test administration, accessibility features available to all students, accommodations available to students with disabilities and ELLs, and the technology used to administer PARCC exams. The February 24<sup>th</sup> Memo is attached as Exhibit F.

41. According to the various memoranda described in the preceding paragraphs, DOE’s new graduation requirements as set forth in those memoranda apply to the class of 2016 (i.e., those who entered high school in 2012-13) and the next two class years.

42. DOE’s failure to revise its current regulation, *N.J.A.C.* 6A:8, has caused districts to provide parents and students with inconsistent, confusing and variable information on the requirements for graduation. This includes circulating the above-referenced DOE memoranda in

2014 and 2015, providing contradictory or incomplete information on new requirements, and failing to provide updated information to parents and students regarding graduation policies.

43. Since 1979, whenever it has introduced new high school graduation tests, DOE has provided for several years of field testing before applying the test results to receipt of a high school diploma. This “due notice” testing period is necessary to ensure the validity and reliability of new exams; provide educators, families and students with advance notice of new requirements; and ensure students adequate opportunities to learn the tested material.

44. Unlike previous State graduation tests, the PARCC tests have not undergone multiple years of “due notice” testing before their use to fulfill graduation requirements. Moreover, DOE has not demonstrated or otherwise shown that the substitute assessments listed by DOE as options are aligned with the CCCS in ELA and Mathematics.

45. On January 13, 2015, ELC and the American Civil Liberties Union of New Jersey (“ACLU-NJ”) notified the Commissioner of the need to comply with the APA’s rulemaking provisions in order to impose the new graduation requirements, as set forth in the various memoranda issued by DOE in 2014-15. ELC and ACLU-NJ also noted several areas of concern requiring clarification through rulemaking, such as the provision of equal accommodations for ELLs after the elimination of AHSA; the accommodation of low-income students to access the fee-based substitute assessments; and the criteria and procedures for the “portfolio appeal” process. The January 13<sup>th</sup> letter is attached as Exhibit G. The Commissioner did not respond.

46. On April 9, 2015, ELC and ACLU-NJ again alerted the Commissioner to the urgent need to revise the statewide assessment and high school graduation regulations prior to application of the DOE’s proposed new graduation requirements. The April 9<sup>th</sup> letter is attached as Exhibit H. Again, the Commissioner did not respond.

47. To date, DOE has not proposed or adopted regulations to codify the new graduation requirements, as set forth in the memoranda described in paragraphs twenty-eight through forty above.

48. As a result of DOE's failure to comply with the graduation requirements in the Act and current agency regulations, and DOE's improper and unlawful imposition of new graduation requirements, Petitioners have not been afforded the opportunities established under applicable law for students to obtain a State-endorsed diploma and have not received timely and reliable information, consistent with law, about the requirements for high school graduation.

**Count One**  
**(Violation of the High School Graduation Standards Act and DOE Standards and Assessment Regulations)**

1. Petitioners repeat the allegations of paragraphs one through forty-eight as if set forth fully herein.

2. DOE has discontinued use of the HSPA and AHSA as the State test requirement for high school graduation, and directed a transition to PARCC assessments. Thus, the HSPA was not administered to juniors in 2014-15, and the HSPA and AHSA will not be administered in 2015-16 or thereafter.

3. DOE's failure to administer an eleventh grade graduation exam and provide opportunities to retake the exam in twelfth grade violates the High School Graduation Standards Act, *N.J.S.A. 18A:7C-6*.

4. DOE's failure to administer the HSPA and AHSA exams as the graduation test requirement violates the current standards and assessment regulations, *N.J.A.C. 6A:8*.

5. By providing district boards of education with information that differs from established statutory and regulatory requirements for graduation, DOE has caused districts to be

unable to comply with the regulations requiring districts to provide students entering high school with the requirements for a State-endorsed diploma. *N.J.A.C. 6A:8-5.1(e)*.

**Count Two**  
**(Unconstitutional Rule or Regulation)**

1. Petitioners repeat the allegations of paragraphs one through forty-eight as if set forth fully herein.

2. Article 5, Section 5, paragraph 6 of the New Jersey Constitution states: “No rule or regulation made by any department, officer, agency or authority of this state, except such as relates to the organization or internal management of the State government or a part thereof, shall take effect until it is filed either with the Secretary of State or in such other manner as may be provided by law.”

3. The Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.*, sets forth the process to which agencies must adhere in order to adopt and implement a rule or regulation, as required by the Constitution. This process includes mandating that the agency provides the public with notice of its intended action, *N.J.S.A. 52:14B-4(a)(1)*; makes available a statement summarizing the rule and explaining its purpose and effect and the legal authority under which it is adopted, *N.J.S.A. 52:14B-4(a)(2)*; affords interested parties a “reasonable opportunity to submit data, views, comments, or arguments, orally or in writing,” *N.J.S.A. 52:14B-4(a)(3)*; and makes available a report summarizing public comments and the agency’s responses, *N.J.S.A. 52:14B-4(a)(4)*.

4. The State Board has adopted regulations outlining its rulemaking process pursuant to the APA. *N.J.A.C. 6A:6*. The process includes provision of notice regarding new proposed rules and opportunity for public comment. *N.J.A.C. 6A:6-3.1*. The Office of Administrative Law (“OAL”) has also adopted “rules for agency rulemaking.” *N.J.A.C. 1:30*. These include

publication and distribution of notice of the proposal, *N.J.A.C.* 1:30-5.2, opportunity for public comment, *N.J.A.C.* 1:30-5.4, and notice of adoption of the proposed rule, *N.J.A.C.* 1:30-6.1.

5. DOE has imposed, and continues to impose, new graduation requirements through various memoranda issued in 2014 and 2015 rather than through regulations duly proposed and adopted pursuant to the process provided by law through the APA, and DOE and OAL implementing regulations.

6. DOE's imposition of new graduation requirements on Petitioners without adhering to the required procedures for adopting regulations under the APA and DOE and OAL implementing regulations violates Article 5, Section 5, Paragraph 6 of the New Jersey Constitution.

**Count Three**  
**(New Jersey Administrative Procedure Act and Implementing Regulations)**

1. Petitioners repeat the allegations of paragraphs one through forty-eight, as well as paragraphs three through five of Count 2, as if set forth fully herein.

2. The Administrative Procedure Act ("APA"), *N.J.S.A.* 52:14B-1 *et seq.*, requires an agency to follow specified procedures in order to engage in valid administrative rule-making.

3. The APA defines an "administrative rule" or "rule" as an "agency statement of general applicability and continuing effect that implements or interprets law or policy." *N.J.S.A.* 52:14B-2.

4. The new graduation requirements imposed by DOE through the memoranda issued in 2014 and 2015 clearly constitute an agency action or determination that can only be implemented through publication, adoption, and codification of regulations pursuant to the procedures under the APA and DOE and OAL implementing regulations.



5. DOE's imposition of new high school graduation requirements without adhering to the statutory and regulatory procedures for administrative rulemaking violates the Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.*, and implementation regulations of the DOE, *N.J.A.C. 6A:6*, and the OAL, *N.J.A.C. 1:30*.

**Count Four**  
**(Violation of Due Process)**

1. Petitioners repeat the allegations of paragraphs one through forty-eight as if set forth fully herein.

2. The Due Process Clause of the U.S. Constitution mandates that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const., Amend. XIV, § 1. The New Jersey Constitution provides due process protections pursuant to N.J. Const., art. 1, para. 1. New Jersey's doctrine of fundamental fairness "serves, depending on the context, as an augmentation of existing constitutional protections or as an independent source of protection against state action." *Doe v. Poritz*, 142 N.J. 1, 108 (1995).

3. Due process and fundamental fairness requires, at a minimum, that students be given timely and sufficient advance notice of the requirements for obtaining a high school diploma.

4. As set forth in paragraphs twenty-eight through forty, the DOE has imposed, and continues to impose, new graduation requirements applicable to the classes of 2016, 2017 and 2018. These requirements fundamentally alter the graduation requirements under the Graduation Standards Act and existing DOE regulations that parents and students were informed of upon entry into high school.

5. The DOE's imposition of new graduation requirements without proper notice and opportunity to meet those requirements violates the Due Process Clause of the Fourteenth

Amendment to the U.S. Constitution, the due process protections in article 1, paragraph 1 of the New Jersey Constitution, and fundamental fairness.

**WHEREFORE**, Petitioners demand the following relief:

A. A declaratory ruling that the DOE's new graduation requirements, as set forth in the September 30, 2014 Memorandum and subsequent memoranda issued by the DOE in 2014 and 2015, do not comply with the Graduation Standards Act, *N.J.S.A. 18A:7C-1 et seq.*, and the standards and assessment regulations, *N.J.A.C. 6A:8*, and have not been duly adopted pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.*, *N.J.A.C. 6A:6*, and *N.J.A.C. 1:30*, and, therefore, cannot be applied to, or imposed upon, high school students and school districts;

B. An Order requiring the DOE to either (1) resume administration of the State tests and application of the graduation requirements established in the current DOE standards and assessment regulation, *N.J.A.C. 6A:8*; or (2) immediately propose and adopt amendments or modifications to the current graduation requirements set forth in *N.J.A.C. 6A:8* consistent with the provisions of the Graduation Standards Act, *N.J.S.A. 18A:7C-1, et seq.*, and requirements for due process and fundamental fairness, pursuant to the procedures for agency rulemaking under the Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.*, and *N.J.A.C. 6A:6* and *N.J.A.C. 1:30*;

C. An Order requiring the DOE to immediately provide districts with such information as is necessary to enable them to inform high school students and parents of the requirements for a State-endorsed diploma;

D. An Order awarding Petitioners attorney's fees; and

E. Such other relief as is equitable and just.



---

David G. Sciarra, Esq. (026671978)  
Jessica Levin, Esq. (096262014)  
EDUCATION LAW CENTER  
60 Park Place Suite 300  
Newark, N.J. 07102  
(973) 624-1815; fax (973) 624-7339  
dsciarra@edlawcenter.org

Edward Barocas, Esq. (026361992)  
Jeanne LoCicero, Esq. (024052000)  
Alexander Shalom, Esq. (021162004)  
AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY  
Post Office Box 32159  
Newark, New Jersey 07102  
(973) 642-2084; fax (973) 642-6523  
ebarocas@aclu-nj.org

Lawrence S. Lustberg, Esq. (023131983)  
Ana Muñoz, Esq. (146622015)  
GIBBONS PC  
One Gateway Center  
Newark, NJ 07102-5310  
(973) 596-4500; fax (973) 596-0545  
llustberg@gibbonslaw.com

*Attorneys for Petitioners*

Dated: September 1, 2015