

April 5, 2022

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

Dr. Angelica Allen-McMillan, Acting Commissioner
Department of Education
200 Riverview Plaza
Trenton, New Jersey 08625

Re: High School Graduation Assessment Requirement for Class of 2022

Dear Governor Murphy and Acting Commissioner Allen-McMillan:

Education Law Center (ELC) and the American Civil Liberties Union of New Jersey (ACLU-NJ) write to again alert you to a pressing issue negatively affecting New Jersey's current high school seniors, particularly the most vulnerable, and to urge you to take immediate action to remedy it. The State's insistence on imposing the high school graduation testing requirement on the class of 2022—which has been robbed of so many typical high school opportunities, including almost all their chances to satisfy this requirement—will put the graduation prospects of high numbers of students at risk even if they meet all their coursework requirements, simply because they did not have access to fair, legally mandated testing opportunities.

For the past two years, the graduation assessment requirement has been suspended based on the commonsense recognition that it would be unfair to expect students to meet an assessment requirement for which the normal testing opportunities have also been suspended due to the pandemic. In July 2021, ELC and ACLU-NJ wrote to you to urge a continued suspension of this requirement for the class of 2022, and to warn of the harm to students and school districts if the State did not act. Our July 2021 letter went unanswered. Since then, the State has only doubled down on its insistence that students must meet the graduation assessment requirement in these highly unusual circumstances, without putting in place *any* additional options beyond the usual ones—most cancelled by the State—for students to satisfy that requirement.

In May 2019, a consent agreement was reached between the New Jersey Department of Education (NJDOE) and the organizations represented by ELC and ACLU-NJ in *IN RE N.J.A.C. 6A:8* after the Superior Court, Appellate Division declared the NJDOE's graduation rules unlawful. The agreement was approved by the Appellate Division to govern graduation testing requirements for students in the classes of 2019 through 2022. It is beyond dispute that the

consent agreement guarantees students in the class of 2022 access to all the same pathways and standards originally applicable to the graduating class of 2019 under regulations promulgated in 2016 at *N.J.A.C. 6A:8*. These consist of a primary pathway of designated state NJSLA/PARCC tests, a secondary pathway of alternative assessments, and a third pathway called the portfolio appeals process.¹ However, it is also a fact that the *vast majority* of those guaranteed options have been unavailable to students for the past two years of the pandemic.

During the 2019-20 and 2020-21 school years, the State did not administer—at all—the assessments designated as the *primary* pathway to meet the graduation testing requirement. Both the NJSLA/PARCC English Language Arts (ELA) Grade 10 and the NJSLA/PARCC Algebra I tests were completely cancelled for the past two years, when class of 2022 students were sophomores and juniors and would typically have taken those assessments.

The second pathway, the approved “alternative assessments,” was also unavailable to most class of 2022 students during the past two school years due to pandemic cancellations of test administrations or physical school closures.² These circumstances deprived students of access to school-based or school-facilitated administrations of alternative tests such as the PSAT, the Accuplacer, and the ASVAB-AFQT Composite, as well as administrations of state assessments also designated as “second pathway” options including the NJSLA/PARCC Geometry and NJSLA/PARCC Algebra II. The third pathway, the portfolio appeals process, was also cancelled by the State during the 2019-20 and 2020-21 school years, but is not available to students before their senior year in any event.

The opportunities available to students in the class of 2022 to satisfy the graduation assessment requirement are further restricted by the fact that most of the assessments designated as the “first pathway” or included in the “second pathway” are typically not administered to seniors. Therefore, the resumption of state testing during the 2021-22 school year does not provide additional opportunities to most class of 2022 students to satisfy the requirement. Moreover, class of 2022 students would be years removed from taking the courses that the designated end-of-course tests are designed to assess.

¹ See NJ Dep’t of Educ., *Class of 2022 High School Graduation Assessment Requirements*, <https://www.nj.gov/education/assessment/requirements/2022.shtml>.

² See, e.g., Jeremy Bauer-Wolf, *Difficulties taking SAT and ACT persist, signaling long-term problems for test makers*, Higher Ed Dive (Nov. 3, 2020), <https://www.highereddive.com/news/difficulties-taking-sat-and-act-persist-signaling-long-term-problems-for-t/588292/>; Art Sawyer, *Compass Education Group, SAT and ACT Policies and Score Ranges for Popular Colleges and Universities* (June 8, 2021), <https://www.compassprep.com/college-profiles/> (noting “ongoing test site cancellations in 2021”).

Despite these circumstances, the NJDOE issued a memorandum on June 9, 2021 that was labeled a “Graduation Assessment Requirement Reminder[.]” for the class of 2022.³ It noted that “[s]tudents in the class of 2022 will be able to access the third graduation pathway, the Portfolio Appeals Process, during their twelfth-grade year.” However, this does not come close to providing the unrestricted access to multiple graduation pathways required by the consent agreement and will overwhelm districts with a huge number of labor-intensive portfolio appeals.

The only opportunity class of 2022 students had to satisfy the graduation assessment requirement with a designated state test was as freshmen during the 2018-2019 school year. Those opportunities were limited to the NJSLA/PARCC ELA Grade 9 and Algebra I exams. State assessment results for the 2018-19 year show that the proficiency rate was 56% for ELA 9 and 43% for Algebra I. This data suggests tens of thousands of class of 2022 students began senior year still needing to satisfy the graduation assessment requirement, having missed multiple opportunities to do so, and with no new opportunities on the State’s assessment calendar.

Although our request last July that the NJDOE gather data about this pressing issue received no response, a recent survey conducted by ELC with the assistance of Great Schools New Jersey, an association of high needs district superintendents, indicates its potential dimensions. Responses from 28 high needs districts showed a 50% increase in the number of portfolio appeals over 2019 (the last year portfolio appeals were accepted), with the process still ongoing. Eleven districts reported increases of more than 100%. These districts reported submitting portfolios for as many as one third of all members of the senior class. By comparison, the percentage of students submitting portfolio appeals in 2019 statewide was 5.6% for ELA and 7.2% for math.

The NJDOE’s assertion that class of 2022 students will be able to access the portfolio appeals process not only falls short by providing only a fraction of the assessment pathways guaranteed by the consent agreement, it also imposes an unprecedented burden on schools and districts, as neither districts nor the NJDOE have ever processed such a high volume of portfolio appeals.⁴ The data collected by ELC demonstrates that this process is currently placing

³ NJ Dep’t of Educ., *Cancellation of Summer 2021 NJSLA Administration and Graduation Assessment Requirement Reminders* (June 9, 2021), <https://www.nj.gov/education/broadcasts/2021/june/CancellationofSummer2021NJSLAAdministrationandGraduationAssessmentRequirementReminders.pdf>.

⁴ In 2018, NJDOE pathway data reported a total of 3,427 students graduated through the use of portfolio appeals. In 2019, according to NJDOE data, 5.6% of all graduates used the portfolio appeals process to satisfy the ELA component of the graduation testing requirement, and 7.2% used it for the math component. Thus, approximately 5,400 students used the portfolio assessment for ELA and almost 7,000 students for math. The 2018-19 proficiency rates of 56% and 43% on the NJSLA/PARCC ELA 9 and Algebra I tests indicate that the number of seniors who would need to use the portfolio appeal is potentially in the tens of thousands.

significant strain on districts already overburdened by the acute academic and mental health needs of students returning to in-person learning after two years of pandemic conditions.

Further, the most vulnerable student groups, including English learners (ELs) and students with disabilities, rely disproportionately on the portfolio process to earn their diplomas—meaning they will be disproportionately harmed by overburdening this pathway to graduation. For example, in the above-mentioned survey, 27% of portfolios have been submitted on behalf of EL students, even though EL students comprise about 7% of all New Jersey public school students. Districts serving concentrated populations of students from low-income families also generally rely more heavily on the portfolio process. Over-reliance on portfolios will stretch these districts' resources even thinner, and some students may not receive the support they need to submit successful appeals and graduate on time.

The Administration and the NJDOE must work through appropriate channels, including the Legislature if necessary, to suspend the graduation testing requirement for the class of 2022.

If this step is not taken, it is essential that the NJDOE immediately put in place additional opportunities to satisfy the requirement and disseminate that information to students, families, and districts. These additional opportunities should include, but need not be limited to:

- Allowing students to meet the requirement by earning a passing grade in one of the courses associated with the state test, *e.g.*, by passing the English II or Algebra I course;⁵
- Making free SAT, ACT, and Accuplacer test alternatives available to all class of 2022 seniors;
- Allowing districts to score portfolios with NJDOE spot checks instead of sending every portfolio to Trenton.

Transparency and accountability to the public about the effects of the State's decisions are also essential. Regardless of the specific steps the Administration and NJDOE take to ensure seniors who have met all other requirements are able to graduate, we request data identifying: (1) how many class of 2022 students had not yet satisfied the assessment requirement upon entering senior year, disaggregated by student subgroups; and (2) a reliable statewide pathway report that tracks the number of students who satisfy the requirement and how, disaggregated by student subgroups. ELC has also filed an Open Public Records Act request (#W183642) seeking graduation pathway data for the class of 2022, including the number of students who

⁵ The State of New York is adapting its high school requirements in this way. Because the New York Regents exams have been suspended during the pandemic, the State is considering successful completion of the associated courses sufficient to meet the relevant requirements. See NY State Dep't of Educ., *Frequently Asked Questions Related to the Cancellation of the January 2022 New York State (NYS) High School Regents Examinations* (Jan. 2022), <http://www.nysed.gov/common/nysed/files/programs/coronavirus/faq-january-2022-exemptions.pdf>.

had satisfied the requirement as of September 1, 2021, the number who had not yet satisfied it as of March 1, 2022, and disaggregated data.

The State has declined to acknowledge that class of 2022 students have not received fair, legally required opportunities to meet the graduation assessment requirement, thus ignoring the clear terms of the consent agreement and the imperative to concentrate on urgent academic and social-emotional needs. This unfairly deprives seniors in the class of 2022 of alternative pathways to graduation that they had been promised and to which they are entitled. Without taking reasonable measures within the next few weeks, the State will irreparably injure students who have suffered far too much hardship already. We strongly urge you to act.

Sincerely,



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Via Electronic Mail Only

cc: Caroline Jones, Deputy Attorney General
Diane Shoener, Director, State Board Office