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_____	:	STATE OF NEW JERSEY
T.B., et al.,	:	OFFICE OF ADMINISTRATIVE LAW
	:	DOCKET NO. EDU-1732-2015N
Petitioners,	:	
	:	<u>Civil Action</u>
v.	:	
	:	SETTLEMENT AGREEMENT
New Jersey Department of Education,	:	
Respondent.	:	

WHEREAS, the High School Graduation Standards Act, N.J.S.A. 18A:7C-1, et seq., prescribes various requirements for students to be eligible and entitled to graduate from a New Jersey high school, including satisfactory performance on the Statewide assessment; and

WHEREAS, on September 2, 2015, Petitioners filed a Petition of Appeal challenging the Department's graduation standards for the classes of 2016, 2017, 2018 and 2019; and

WHEREAS, because DOE did not adopt the new graduation standards pursuant to the Administrative Procedure Act, the

parties agree that it is imperative to immediately clarify for students, parents, and school districts the graduation standards that apply until such time as new regulations are formally adopted;

WHEREAS, on April 6, 2016, the State Board of Education approved proposed amendments to the regulations at N.J.A.C. 6A:8, and those proposed amendments were submitted for publication in the New Jersey Register; and

WHEREAS, the parties agree that resolution of the current matter is in the best interest of the parties, students, parents, school districts, and the general public;

NOW THEREFORE, the parties hereby agree to settle this matter as follows:

1. The following procedures will be applicable to seniors graduating in the Class of 2016 and any other graduating class until the adoption of the proposed amendments to the regulations at N.J.A.C. 6A:8;

A. The school districts will continue to be responsible for determining whether students have satisfactorily demonstrated mastery of graduation proficiency standards as required by N.J.S.A. 18A:7C-1, et seq.;

B. Students who achieve scores that meet or exceed the DOE recommended proficiency scores on any of the tests set forth in the September 30, 2014, September 9, 2015, and April 5,

2016 DOE memoranda regarding graduation requirements from September 2014 through the date of this settlement should be presumed to meet the state requirement for graduation, provided all other state and local graduation standards are met. Students who choose to take one of the tests listed in these memos until the amendment of N.J.A.C. 6A:8 may continue to satisfy the State graduation assessment requirement through this option. By memoranda dated April 5, 2016, DOE added the Accuplacer Write Placer ESL test to the list of assessments that students may use to satisfy the State testing requirement and that assessment will be included on the list until the adoption of the proposed amendments to N.J.A.C. 6A:8.

C. Unless a student has achieved a score recommended by DOE on those assessments, he or she shall undergo an alternative "portfolio" review by the district to fulfill the graduation assessment requirement.

i. DOE will require districts to notify parents/guardians of students or adult students, if the student needs to complete a portfolio to qualify for graduation, by May 6, 2016, or five (5) days after the execution of this agreement, whichever is later. Such notice will be provided in English and the native language of the parent and/or student if other than English to the extent practicable. The notice will include information about the specially appointed DOE contact person

described below.

ii. All students who have not yet satisfied the state assessment requirement for graduation shall have access to the district portfolio review. Access does not depend on participation or performance on the assessments previously listed in the DOE memos as options for satisfying the State testing requirement. An appropriate school staff member shall assist such students in the portfolio review process as described in paragraph (viii), below.

iii. DOE will require districts to submit data regarding the number of students who have satisfied a portfolio review, and the number of current seniors who have not yet satisfied the state assessment requirement for graduation, by district and state, disaggregated by student subgroup, by June 1, July 1, August 1 and September 15, 2016. DOE shall promptly provide this data to Petitioners and make this data public. DOE shall also provide, by December 1, 2016, a final report of 2016 graduation information that shall include state and district totals, disaggregated by subgroup, for all data required by N.J.A.C. 6A:8-5.2(f).

iv. DOE will allow districts to continue to accept, review and submit portfolio reviews until September 1, 2016. DOE will also notify all districts that the districts may permit any student for whom the portfolio review process is

ongoing but who has satisfied all other graduation requirements to participate in his or her school's graduation ceremony.

v. Districts will review and assess portfolios. DOE will immediately inform districts that students can satisfy the portfolio review process through one, or a combination of both, of the following methods, with assistance from appropriate school staff as described in paragraph (viii):

- a. Submitting prior graded classwork that demonstrates proficiency in English language arts and mathematics, in accordance with Paragraph 1(A) above; or
- b. Completing the portfolio review tasks set by the district to demonstrate proficiency in English language arts and mathematics, in accordance with Paragraph 1(A) above.

If a student is unsuccessful in satisfactorily completing one option, he or she shall be provided multiple opportunities to satisfactorily complete another option. The DOE may review only to verify completion of a portfolio and provide technical assistance to districts upon request.

vi. A student who is determined by a district to have satisfied mastery of the Statewide proficiency standards, and who has met all other State and local requirements, shall be presumed to have met the State standards for graduation.

vii. Districts may consider any information in the student's academic record. However, failure to meet the DOE recommended proficiency score on any of the assessments set forth in DOE's guidance memoranda shall not bar the student from meeting the standards for graduation, so long as s/he successfully completes the portfolio appeal.

viii. DOE will notify all districts that they must provide students with assistance in completing a portfolio, if necessary. Specifically, DOE will notify districts that appropriate staff must affirmatively contact each student who needs to complete a portfolio to qualify for graduation, assist students in selecting work for and assembling the portfolio, and guide students through the process.

ix. Districts may administer and review student portfolios in native languages, where available.

x. If a district determines that a student has not satisfied the portfolio review, the district shall provide the student, his/her parent, and DOE with a written explanation of the basis for the decision and a copy of the student's portfolio. The written explanation shall also: (1) inform the student that the matter is being immediately forwarded to DOE for review; and (2) provide notice of the right to appeal the decision to the Commissioner of Education pursuant to N.J.S.A. 18A:6-9. The notice shall include contact information for:

Education Law Center, the American Civil Liberties Union of New Jersey, and the DOE contact person described in Paragraph D.

xi. For any student who falls under (x) above, the district shall immediately forward the student's materials to DOE for automatic review. The DOE's review will be de novo based on the portfolio and the district's explanation, with authority to overturn the district's decision.

xii. Any Petition of Appeal to the Commissioner filed by a student who falls under (x) above prior to the last day of school in the district of residence shall be considered on an expedited basis.


D. DOE shall designate one or more person(s) to receive any complaints that may arise between districts, students and parents concerning a portfolio review and intervene promptly to resolve such complaints as soon as possible. Notice of the designated person(s) and contact information will be disseminated publicly by the DOE through posting on the DOE website and other means, and shall be communicated by school staff directly to students, and included with notice to parents and adult students submitting a portfolio review.

2. The Parties agree to hold this matter in abeyance until September 15, 2016, or until regulations amending N.J.A.C. 6A:8 are adopted and published, whichever comes first. Once the proposed amendments to the regulations at N.J.A.C. 6A:8 are

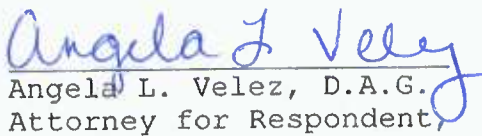
adopted, this matter shall be dismissed by Petitioners.

3. Nothing agreed to herein either forecloses or waives the right of any Petitioner or other student who is denied a diploma based on application of the new graduation policies from challenging that denial pursuant to the legal means available to them.

4. Nothing agreed to herein either forecloses or waives the right of Petitioners or any individual or entity to comment upon or challenge regulations amending N.J.A.C. 6A:8, within legally prescribed timeframes.

  
David G. Sciarra, Esq.,  
Education Law Center  
Attorney for Petitioners

Date: 5/6/16

  
Angela L. Velez, D.A.G.  
Attorney for Respondent,  
New Jersey Department of Education

Date: 5/6/16