



July 13, 2021

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: Suspending High School Graduation Testing Requirement for Class of 2022

Dear Governor Murphy and Acting Commissioner Allen-McMillan:

Education Law Center (ELC) appreciates efforts by the New Jersey Department of Education (NJDOE) to prepare for students' large-scale return to classrooms this fall but urges the Administration and the NJDOE to recognize that the continuing effects of educational disruptions caused by the COVID-19 pandemic necessitate ongoing adjustments to state requirements imposed on students. Specifically, we write to alert the Administration and the NJDOE to the urgent need to extend the suspension of the high school graduation testing requirement—paused for the last two years—for an additional year in order to comply with relevant legal obligations and ensure the senior class of 2022 has appropriate opportunities to graduate.

Via Executive Orders 117 and 214, the Murphy Administration suspended the high school graduation assessment requirement in 2020 and again in 2021. As the Governor said in EO #117, "it is not feasible to move forward with statewide assessments while students are unable to physically attend school due to necessary COVID-19-related closures." The anticipated resumption of normal schooling in the fall does not undo the impact of the multiple year suspension of state testing for class of 2022 seniors, particularly with respect to a test-based requirement that, under the May 2019 consent agreement in *IN RE N.J.A.C. 6A:8*, must include a multi-year window of opportunities for students to satisfy it.

The May 2019 consent agreement between the NJDOE 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, guarantees students in the classes of 2019 through 2022 access to multiple pathways to satisfy the graduation testing requirement. These are delineated as 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*: 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 Due to the pandemic, the vast majority of those options have been unavailable to students for two years.

During the 2019-20 and 2020-21 school years, the State did not administer the assessments designated as the first pathway to demonstrate proficiency for graduation, due to pandemic conditions. Both the NJSLA/PARCC ELA Grade 10 and the NJSLA/PARCC Algebra I tests were cancelled during 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 list of “alternative assessments,” was also unavailable to most class of 2022 students during the 2019-20 and 2020-21 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 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.

Applying the graduation testing requirement to the classes of 2020 and 2021 would not have been compatible with the consent agreement. Based on information currently available to ELC, the same appears to be true for the class of 2022, yet the NJDOE issued a memorandum on June 9, 2021 that was labeled a “Graduation Assessment Requirement Reminder[.]” for the class of 2022.³

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

¹ See N.J. Dep’t of Educ., *New Jersey High School Graduation Assessment Requirements* (updated January 2021), <https://www.nj.gov/education/assessment/docs/GradReq.pdf>.

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 cancelations in 2021”).

³ N.J. 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>.

administered to seniors. Therefore, the planned resumption of state testing during the 2021-22 school year will 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.

The June 9 NJDOE memo notes 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 would 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 would have been limited to the NJSLA/PARCC ELA Grade 9 and Algebra I tests. State assessment results for the 2018-19 year show that the proficiency rate that spring was 56% for ELA 9 and 43% for Algebra I. *This data suggests tens of thousands of class of 2022 students will begin senior year this fall 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.*

The NJDOE’s assertion that these 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 is also wildly impractical, as neither the NJDOE nor districts have ever processed such a high volume of portfolio appeals.⁴

For all the above reasons, we urge the Administration and the NJDOE to immediately suspend the graduation assessment requirement for the class of 2022.

If the Administration and the NJDOE decline to suspend the graduation testing requirement—a decision that could have dire results for graduation rates in the class of 2022—it is essential that the NJDOE put in place additional opportunities to satisfy the requirement

⁴ In 2018, NJDOE pathway data reported a total of 3,427 students graduating 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, the only graduation testing options widely available thus far to the class of 2022, indicate that the number of rising seniors who would need to use the portfolio appeal is potentially in the tens of thousands.

and disseminate that information to students, families, and districts as soon as possible and prior to the reopening of schools in September.

Absent a suspension of the graduation assessment requirement, ELC requests the immediate provision of information about:

1. What new opportunities the NJDOE will provide to class of 2022 students to satisfy the requirement;
2. Supports the NJDOE will provide to districts to help them address this situation;
3. NJDOE and district plans to notify students and families of their status with respect to the graduation assessment requirement and their options to fulfill it.

Additionally, in the event the requirement is not suspended for the class of 2022, we request transparent pathway data to identify:

1. How many class of 2022 students have satisfied the requirement at the time of entering their senior year this fall;
2. How many class of 2022 students have not yet satisfied the requirement upon entering senior year, disaggregated by student subgroups;
3. A reliable statewide pathway report that tracks the number of students who satisfy the requirement and how, disaggregated by student subgroups.

Due to the pandemic, the class of 2022 missed multiple opportunities to satisfy the graduation assessment requirement that were guaranteed to them under the terms of the consent agreement. A resumption of the graduation testing requirement would place an extra and unwarranted burden on class of 2022 seniors, as well as their families, schools, teachers, and guidance counseling departments. We urge you to immediately extend the suspension of this requirement and promptly alert schools, students, and families so that they can concentrate on other pressing academic and social-emotional needs during the readjustment to in-person education.

Sincerely,



David G. Sciarra, Esq.
Executive Director

Via Electronic Mail Only

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