



January 14, 2025

VIA E-MAIL

Acting Commissioner Kevin Dehmer
New Jersey Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

Re: Addressing the Impact of NJ's High School Exit Testing Requirement on Students with Disabilities

Dear Acting Commissioner Dehmer:

Education Law Center (ELC) once again urges the New Jersey Department of Education (NJDOE or Department) to address the multiple, inequitable impacts of our State's problematic exit testing policy. While we write in response to specific complaints about the negative impacts experienced by New Jersey students with disabilities, the inequities we describe are not unique to those students, but also impact other historically vulnerable and underserved populations of students.

As you may know, New Jersey is now one of only [6 states](#) that use high stakes exit testing as a condition of high school graduation. Most recently, two of the largest remaining exit testing states, [Massachusetts](#) and [New York](#), have announced plans to end the practice. ELC has written extensively about the negative consequences of New Jersey's 40-year old policy of requiring students who have successfully completed all credit, service, attendance, and other requirements for graduation to also earn a specific score on a designated test. See, e.g., [More](#)

[States Reject Exit Exams: Will NJ Follow; Exit Testing is Lowering NJ's Graduation Rate.](#)

We therefore begin by urging the Department to make good on Governor Murphy's long-standing gubernatorial [campaign promise](#) to end exit testing in New Jersey and to throw the NJDOE's support behind S1562/A4121, the bills pending in the NJ Legislature that would end exit testing for high school diplomas. All the major education groups in the state, including the NJ School Boards Association, NJ Association of School Administrators, NJ Principals and Supervisors Association, NJ Education Association, NJ School Counselors Association, Save Our Schools NJ, SPAN Parent Advocacy Network, Garden State Coalition of Schools, and Education Law Center support this legislation, which would bring New Jersey in line with the vast majority of states.

Instead, New Jersey has subjected its students and their families to an ever-changing set of graduation assessment requirements. Some of these rules have violated the basic due process requirement that students be presented with consistent and reliable graduation criteria from their entry into high school through completion. See N.J.A.C. 6A:8-5.1(e). Additionally, the NJDOE has often failed to provide clear guidance and to ensure that equitable and non-discriminatory pathways are available to all students. For example, some of the assessments currently identified in regulation as part of "the State graduation proficiency test" are fee-based exams (SAT, PSAT, ACT), while others require special institutional access (Accuplacer, ASVAB-AFQT). See N.J.A.C. 6A:8-1.3 and N.J.A.C. 6A:8-4.1(e). Yet there are no provisions in the code requiring districts to ensure that students have equitable access to all assessment options.

There is no doubt that all students are required by federal and state law to participate in state and district assessments. But it is equally clear that, for students with disabilities, the

determination as to how a particular student is assessed is legally left in the hands of each child's Individualized Education Program (IEP) team. 20 U.S.C. 1412(a)(16); 34 C.F.R. 300.160; N.J.A.C. 6A:14-4.10(a); [OSEP Memorandum 00-24 \(August 24, 2000\)](#). Options for participation include: taking standard assessments with accommodations or modifications; sitting for the state's alternative assessment for students with significant cognitive disabilities; or completing other alternate assessments as determined by the IEP team. [OSEP Memorandum 00-24 \(August 24, 2000\), p. 5, Q.3.](#)

ELC commends New Jersey for having consistently offered a standard high school diploma to all students with disabilities who meet high school graduation requirements, including those who do so through alternate means set forth in their IEPs. N.J.A.C. 6A:14-4.11(a). Yet despite this legal standard, New Jersey's high school assessment landscape changed dramatically for students with disabilities following the U.S. Education Department (USED) ["performance review" report](#) issued in April 2020. See [New Jersey FY 2019 Federal Performance Review Report](#) (NJDOE guidance, April 28, 2021).

In response to the performance review, the NJDOE adopted several policies which have had a dramatic effect on special education students. Beginning with the class of 2021, the NJDOE has reported two different graduation rates, one an "official" federal rate used for school and district accountability under the federal Every Student Succeeds Act, and the other an "unofficial" state rate. Moreover, because New Jersey has maintained its exit testing policy for high school graduation, the USED performance review required the NJDOE to exclude thousands of students with disabilities from the "official" federal graduation rate, even though these students satisfied all the requirements of their IEPs and received regular state-endorsed

high school diplomas. For the class of 2022, the most recent cohort for which the relevant data is available, over 6000 students with disabilities were excluded from the official graduation count for failing to pass the state exit test or a designated alternative. As a result, the “official” federal graduation rate for students with disabilities in the class of 2022 fell to 48.5%, while the “unofficial” state rate for students with disabilities, which included all who satisfied the requirements of their IEPs and graduated with regular state diplomas, was 80.5%.

The exclusion of thousands of students with disabilities from the “official” graduation rate caused New Jersey’s overall graduation rate to fall to 85.2%, a significant decline from the all-time high of 91% in 2020.

The primary reason for New Jersey’s declining graduation rate is the continued existence of exit testing. While the exit testing requirement was suspended for the class of 2021 due to the COVID pandemic, and for the class of 2023 due to the introduction of a new assessment (the New Jersey Graduation Proficiency Assessment or NJGPA), the class of 2022 was the first to graduate under the new federal rules. Data for the class of 2024, the first class to graduate under both the new USED rules and the new NJGPA, will be available in April. There is likely to be another decline in the state’s overall graduation rate due to the continued exclusion of thousands of students with disabilities, who nevertheless earned their high school diplomas.

Notably, this new landscape has put increasing pressure on students with disabilities to qualify for inclusion in the “official” graduation rate by sitting for multiple administrations of the various graduation assessments, including the NJGPA, the “substitute” assessments, and the portfolio appeals process, a cumbersome and time-consuming process which, in many

districts, requires students to take a special, remedial portfolio preparation course in lieu of music, art or some other elective. ELC has received reports of school staff compelling the participation of students with disabilities in multiple assessment administrations *even when IEP teams have determined that these assessments are not appropriate and have recommended the use of alternative means of assessing particular students' readiness for graduation.*

The NJDOE guidance around these issues has been inadequate and confusing. For example, the NJDOE's [website](#) offers the following information regarding students with disabilities and portfolio appeals:

1. Are students with disabilities required to participate in the portfolio appeals process?

No. Students with disabilities who participate in the New Jersey Graduation Proficiency Assessment (NJGPA) and do not receive a passing score can choose to participate in the portfolio appeals process to meet the graduation assessment requirement. Students are strongly encouraged, but not required, to participate in the portfolio appeals process.

There is no explanation for why students with disabilities are “strongly encouraged” to participate in an assessment process that is “not required” and whose only discernible purpose is to bridge the gap between the state’s “official” and “unofficial” graduation rate calculations. Moreover, there is no notification of the crucial point that a student’s IEP team can determine that such participation is not appropriate.

Doing away with the exit test requirement would enable New Jersey to resume reporting one graduation rate and would eliminate the growing pressures on students with disabilities to take inappropriate and unnecessary assessments that serve no educational purpose. Unless and until that happens, students with disabilities and others will continue to experience problems that include: pressure to take unnecessary assessments, the uneven

availability of free access to substitute competency tests in “the second pathway,” and pressure to complete a portfolio appeals process that is not required and that often contradicts the legally controlling specifications of their IEPs.

Eliminating the exit testing requirement for high school diplomas would be the most direct and reliable way to end these unproductive and unsound practices. However, as long as the exit testing requirement remains intact, ELC urges the NJDOE to issue guidance that will ensure that the following safeguards are immediately put into place:

1. Prohibiting school districts from requiring students with disabilities to sit for the NJGPA or any of the substitute competency assessments whenever a student’s IEP team has determined that the particular student should be assessed through alternate means.
2. Prohibiting school districts from requiring any students with disabilities to complete the portfolio appeals process unless it is explicitly required by their IEP.
3. Guaranteeing that all students have free and equal access to all graduation pathways, including fee-based assessments defined by regulation as part of “the state graduation proficiency test.”
4. Ensuring that school districts make the portfolio appeals process a viable option for students who need a third pathway. This includes:
 - a. Prohibiting school districts from making the portfolio appeals process available only as an alternative class in lieu of an elective; and
 - b. Ensuring that special education teachers are available to work with students with disabilities who engage in the portfolio appeals process.

We hope that you appreciate the urgent need to address these critical issues, and we stand ready to answer questions or assist in any way possible. Thank you for your consideration and anticipated cooperation.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert Kim". The signature is written in a cursive style with a large initial "R" and a distinct "K".

Robert Kim, Esq.
Executive Director

cc: Governor Phil Murphy
Senator Vin Gopal, Chair, Senate Education Committee
Senate sponsors and cosponsors of S1562
 Senator Shirley K. Turner (Prime)
 Senator Patrick J. Deignan, Jr. (Prime)
 Senator Andrew Zwicker
 Senator Linda R. Greenstein
 Senator Joseph A. Lagana
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