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Senate of Pennsylvania
September 23, 2009

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Arthur Coccodrilli, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Mr. Coccodrilli:

As you know, State Board of Education Final-Form Regulation 006-312 is now before the Independent Regulatory Review Commission. I have been a vocal opponent of the original Graduation Competency Assessment proposal and continue to have concerns about the current Keystone Exam proposal. As such I ask that you disapprove of this controversial regulation.

Background

In 2006, the Rendell Administration proposed a new high-stakes testing scheme -- the Graduation Competency Assessments (GCAs) -- that all high school students would have to pass in order to graduate. In January of 2008, the State Board of Education approved the proposed regulatory package. The education community was overwhelmingly opposed to the GCAs -- with 22 leading education organizations and over 200 school districts taking public stances.

Former Senate Education Committee Chairman Jim Rhoades called the tests, "*just another fad...that won't help a single student anywhere.*" As such, Sen. Rhoades sponsored legislation (SB 1442), which would have barred the Department of Education from establishing any new statewide requirement for high school graduation without legislative approval. In connection with the FY 2008-09 Budget, the General Assembly passed and the Governor signed into law HB 1067 which prohibited the Department from promulgating, approving, or proposing a regulation to change or establish high school graduation requirements during FY 2008-09.

Despite this explicit language, the Department of Education issued a Request for Proposal (RFP) to develop the GCAs. In October of 2008, Senators Pileggi, Rhoades and I wrote to the Governor asking for a halt to the tests when the RFP came to our attention.

In February of 2009, I introduced Senate Bill 281 which would strictly prohibit the Department of Education from establishing any new statewide requirement for high school graduation without legislative approval. Furthermore, it would bar the Department from developing the GCAs until the General Assembly specifically appropriates funding.

In March, the Administration announced a revised proposal, Keystone Exams, which would be “optional” for schools. The announcement was done with the leadership of the PA School Boards Association -- a critic of the original GCAs. It is my understanding that the negotiations with PSBA were done without the knowledge of its members. Essentially, PSBA was strong-armed to support the proposal or they would lose their seat at the “funding table.” Despite being “optional,” many believe it is voluntary in name only due to the potential costs on schools -- as they would be required to have their local assessments validated in order to opt out. Eighteen organizations formed the Coalition for Effective and Responsible Testing, to oppose the Keystone Exams. Also, over 50 school boards adopted resolutions opposing the proposal.

To his credit, Senate Education Chairman Jeff Piccola tried to reach a compromise with the Administration. During talks, however, the Administration did not inform Sen. Piccola that it had signed a \$201 million contract over 7 years for test development. As such, in May, the Senate Education Committee unanimously reported SB 281, which would specifically prohibit the Department from directly or indirectly developing or implementing additional statewide graduation requirements or entering into a contract that provides for graduation competency assessments until the General Assembly specifically appropriates funds for such purposes.

When the Senate passed SB 281 (48-1), State Board of Education Chairman Joe Torsella asked to work out a compromise. Mr. Torsella assured me that he was committed to working with the General Assembly on finding a solution. He wrote that he “believe[s] that all state policymakers should have substantial, timely, and meaningful voice in this debate.” In June, Mr. Torsella announced a new proposal. To my surprise, I learned that he did not negotiate with any education group with concerns, except the PA State Education Association (PSEA). Torsella simply “heard” various viewpoints and simply came up with a new proposal. The best the PSEA could offer was to “drop its opposition.” It is important to note that at this time, the PSBA membership bucked its leadership by adopting a resolution opposing the Torsella proposal.

At this point, Senate Education Chairman Piccola agreed to put the Torsella proposal before the full Senate to find out if there is legislative support. In July, the Senate Education Committee reported SR 156; however, it has remained in the Senate Appropriations Committee.

In August, the House Education Committee reported SB 281 after Rep. Stan Saylor, sponsor of the House version (HB 970), filed a discharge resolution. Rather than having a full House vote, Committee Chairman Jim Roebuck held an un-sunshined meeting to consider SB 281. Rep. Roebuck asked members to report the bill with a “negative recommendation;” with members doing so to move the process forward. While the bill was reported with a negative recommendation, House rules stated, “The recommendations by a committee that a bill or resolution be reported negatively shall not affect its consideration by the House.”

In September, Rep. Paul Clymer, Minority Chairman of the House Education Committee, Rep. Rosita Youngblood, a House Education Committee member, and over 160 House Members sponsored a concurrent resolution (HR 456) on behalf of the National Association for the Advancement of Colored People calling for the Rendell Administration to halt the Keystone Exams. It is my hope that this resolution will be considered by the House in the very near future.

Critique of the Final-Form Regulations

While I support high academic standards and accountability, I have the following concerns about Final-Form Regulation 006-312:

1. **Statutory Authority.** While the Pennsylvania School Code provides the State Board of Education with broad authority, I do not believe that the Board has the authority to adopt such a high-stakes testing scheme without legislative direction. I believe there needs to be clear statutory authority prior to the State Board of Education adopting any new graduation requirement, particularly on an issue with far reaching consequences.
2. **Legislative Intent.** As you know, one of the criteria used in evaluating a regulation is “whether the regulation is consistent with the intent of the General Assembly.” Both the Senate and House Education Committees have reported SB 281, which would prohibit the Department from directly or indirectly developing or implementing additional statewide graduation requirements or entering into a contract that provides for graduation competency assessments until the General Assembly specifically appropriates funds.

While the Senate Education Committee reported SR 156 -- a “sense of the Senate Resolution” -- the full Senate has not acted on it. It has, however, voted 48-1 in support of SB 281. While some may say that the Senate’s vote on SB 281 occurred prior to the “Torsella” proposal, the House Education Committee vote was taken after the “Torsella” proposal. Meanwhile, the fact that there are over 160 members of the House signed on as cosponsors of HR 456 is indicative of the position in the House.

Finally, despite the fact that there has been extensive debate surrounding this issue, there is no specific funding allocated in the 2009-10 Budget Agreement for Keystone Exams. As such, it is clear that there is little legislative support for the Final-Form Regulation.

3. **No Support from the Education Community.** The original GCA’s were opposed by 22 organizations: American Federation of Teachers PA, The ARC of PA, Autism Society of America/PA Government Relations Work Group, Disability Rights Network of PA, Education Law Center, Learning Disabilities Association of PA, Mental Health Association in PA, NAACP-PA State Conference of NAACP Branches, National Center for Fair & Open Testing, PA Association of Agricultural Educators, PA Association of Career and Technical Administrators, PA Association of Elementary and Secondary School Principals, PA Association of Pupil Services Administrators, PA Association of Rural and Small Schools, PA Association of School Administrators, PA Association for Supervision and Curriculum Development, PA Middle School Association, Parent Teacher Association-PA, PA School Boards Association, PA State Education Association, PA for the Education of Gifted Students, and Philadelphia Student Union.

The 18-member Coalition for Effective and Responsible Teaching formed in opposition to the Keystone Exams: American Federation of Teachers PA, Autism Society of America/PA Government Relations Work Group, Learning Disabilities Association of PA, NAACP - PA State Conference of NAACP Branches, National Center for Fair &

Open Testing, Parent Teacher Association, PA Association for Gifted Education, PA Association for Supervision and Curriculum Development, PA Association of Agricultural Educators, PA Association of Career and Technical Administrators, PA Association of Elementary and Secondary School Principals, PA Association of Pupil Services Administrators, A Association of Rural and Small Schools, PA Association of School Administrators, PA Middle School Association, PA Psychological Association, PA State Education Association, and PA for the Education of Gifted Students.

It is important to note that not one of the original members of the coalition of 22 education organizations or the 18 member CERT group is in support the regulation. The fact that there is no real buy-in from the education community -- despite their pleas to be a part of the conversation -- is alarming to me. In fact, the rank-and-file PSBA members bucked its leadership by opposing the "Torsella" proposal. Meanwhile, PSEA is only on record as dropping its opposition -- hardly an endorsement. Over 200 school boards adopted resolutions opposing the GCAs and over 50 school boards adopted resolutions opposing the Keystone Exams. Without one of these leading education organizations -- those that are tasked with implementing education policy in Pennsylvania -- supporting the proposal, I find it extremely difficult to support this proposal.

4. **Cost.** With a \$3.2 billion deficit, the Commonwealth cannot afford any new program. In February, the Governor requested \$18 million in FY 2009-10 to develop the 10 Keystone Exams. In May, the Department of Education signed a contract with a vendor to develop the tests for \$201 million over 7 years. In these dire economic times, cost must be taken into consideration.

5. **"Taxpayers will save Money."** The contract the Department signed was for \$201 over 7 years. While State Board Chairman Torsella claims that the Final-Form Regulation will eliminate the 11th grade PSSA and save \$40 million from the original \$201 million cost, there is still \$161 million of new spending. And it is also noted that the amount of the testing contract has not been officially revised. Furthermore, what is not being said is that there are new state costs associated with the proposal -- including validation of the Keystone Exams as well as the half of the costs for validation of local school assessments. The state would be required to set up a new bureaucracy for validating assessments -- comprised of school board and teacher representing but without principals or superintendents (two groups that have been critical). We need to know the full fiscal impact of these mandates prior to implementing this testing scheme.

6. **New/Unfunded Mandates on Schools.** There has not been a full-scale assessment of the new costs to be borne by local taxpayers.

Validation of Local Assessments. The Regulation would require schools to validate their local assessments every six years to ensure that they are in line with PA's academic standards. Prior versions only called for a local assessment validity study. Mr. Torsella has estimated that it will cost \$5,000 to \$15,000 to validate each local exam. At 501 school districts times 10 exams times \$5,000, this comes to \$25 million. This cost would be split 50/50 by the state and schools.

Remediation. The costs for remediation (summer school) will fall to schools.

Alternative Pathways. While there is much to like about alternatives to the Keystone Exams, the Final-Form Regulation would require school districts to pick up the costs of establishing and paying for a new regional bureaucracy that will be charged with scoring Alternative Pathway projects. This will be a new cost for schools and circumvents the role of the local teacher grading a project. In other states, the cost of regional scoring at the regional level is around \$500,000.

Books. With the latest proposal containing model curriculum and testing, schools will ultimately be forced to pick up the costs for new books, instructional material and related teacher professional development to ensure alignment with the academic standards, model curriculum and Keystone Exams.

These all represent new costs for the Commonwealth and schools and the Commonwealth should know the full fiscal impact prior to approving the Exams.

7. **“Voluntary.”** While the Administration touts that the Keystone Exams are voluntary, they are voluntary in name only. First, if the 11th grade PSSA is eliminated -- as called for under the latest proposal, all school districts will still be required to administer 4 of the 10 Keystone Exams (Algebra 1, Literature, Science, and Writing). Secondly, while the proposal states that school boards can continue using their own local assessments; these local assessments will have to be “validated” every 6 years to ensure that they are aligned with Pennsylvania’s academic standards. The costs associated with validating local assessments will force many school districts to “opt into” the Keystone Exams. The voluntary nature of the exams will be negated if the USDOE approves these exams as part of the single accountability system required under No Child Left Behind (NCLB).

8. **Loss of Local Control.** The Keystone Exams are intended to replace the local tests. Once a school administers the Keystone Exams, the state would forbid students to graduate unless they pass 6 of the 10 exams or go through an Alternative Pathways route. The scoring of student Alternative Pathway projects would be done at the regional level and the Secretary of Education could exempt students on a case-by-case basis (circumventing the role of the school board). The Department’s \$201 million contract also calls for model curriculum (negating the role of school boards setting curriculum). As such, what would become of the role of the school district curriculum directors?

9. **High-Stakes Testing.** Students scoring below proficient on any Exam will get a 0%. This arbitrary decision -- with no science behind it -- will adversely affect the lives of many students. Students should be given credit for their actual level of achievement no matter how high or low. The Exams will also count as 1/3rd of a student’s final grade in that course. The 1/3rd percentage is also an arbitrary figure that has no basis in science. Overall, if a straight “A” student scores below basic on a Keystone Exam, his/her final average will be 67% at the most. Students would have to pass at least 4 Keystone Exams to graduate (new graduation requirement). While the regulation indicates that students

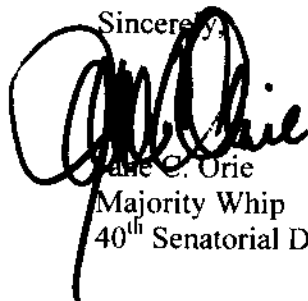
will have to pass 6 of 10 exams, technically, students will be required to pass all ten as 30% of a student's GPA is going to be based on the exams. In reality, we could have at least 2-3 years of students taking both the PSSA and Keystone Exams simultaneously until the transition is made. As research indicates, there is a very real concern that students will simply drop out, rather than going through the new hoops to graduate. This is, in fact, a high-stakes testing scheme. The infatuation with testing at the both the state and national levels, in essence, treats our children as lab rats.

10. **"PSSAs are Working."** In July, the Rendell Administration released the latest PSSA results -- ahead of schedule -- so that it could tout that for the first time ever three-quarters of Pennsylvania students scored on grade level in reading and math. At a time when we are finally seeing progress and have limited resources why change course?

11. **Federal Level.** The federal government is moving toward national standards and testing. The Rendell Administration has approved our participation and endorsement of this movement. It is noted that the national coalition recently released its first set of common core academic standards.

12. **Research.** The fact remains that there is no data demonstrating that passing exit exams or end of course exams provides any subsequent benefit in college or career success. Furthermore, there is no distinctive research or empirical evidence to suggest that other states that have these exams in place have outstanding and/or distinctive results to prove this reform has legitimate merit. If there was one, we'd all be doing it and emulating them. There is, however, research showing that dropout rates would increase.

For all of these reasons, I respectfully request that you disapprove Final-Form Regulation 006-312.

Sincerely,

Jane C. Orie
Majority Whip
40th Senatorial District

JCO/ns