

**RESPONSE TO COMMENTS  
22 PA CODE CHAPTER 4**

**Regulation 6-326**

**Academic Standards and Assessment**

The State Board of Education published proposed regulations in the *Pennsylvania Bulletin* on October 6, 2012 (42 Pa.B. 6365), initiating a formal 30-day public comment period. During this period, individuals and organizations submitted 146 comments to the Board. A substantial number of the comments were form letters submitted through email.

This document provides a summary of the comments received and the Board's response to the comments.

**I. Record of Comment**

Listed in chronological order, the following individuals and organizations provided comment to the Board during the 30-day public comment period:

Joan L. Benso (*Pennsylvania Partnerships for Children*), Catherine Barrios, Sarah Ahmann, Deborah Pecci, Carol Zeller-Henderson, Leigh Anne Eaton, Melinda Jennings, Janice Dutton, Regina Sullivan, Jennifer Salak, Suzanne Borislow, Nathan Judge, Lani San Mateo, Elliott Seif, Susan Lee, Leslie Lewis, Sandra M. Craft, Jill Graser, Anita Borger, Juliette and Jeffrey Hyson, Vandana G. Kotapally, Michael J. Masko, Ed.D., Christine Connolly, Kelly Brent, Bernadette A. Logan, Rajesh Mathusamy, Kathleen D. Ilyes, Erika Yablonovitz, Tricia Petrane, John B. Lander, Barbara A. Lander, Kerry Puia, Micah Bertin, Chelsea E. Lander, Cheryl Boise (*Commonwealth Education Organization*), Danyll S. Lockett, Patricia Genovese, Karine P. Creamer, Kelly and Craig Bunting, Elisa A. Rodgers, Mrs. Cynthia M. Sillhart, Per Ohstrom, Marilyn Reed, HOUNG Rae Cho, Christine Naegel, John Genovese, Beth L. Winters (*Pennsylvania School Boards Association*), Kevin Hodge, Lois Kaneshiki, Thomas R. Dolley, Stephanie & Walt Smith, Samuel A. Varano, Jr., Michelle Leonatti, Ann Pereira-Ogan, Deborah Wei (*School District of Philadelphia*), Gwenn Straub Mascioli, Stephanie S. Thibault, Christina Shackelford, Amy Barrie, Manu Nayak, Dr. Jason A. Conway, Fabiola Gergerich, Tom & Bobbie Pratt, Monica Seitz, Tilly Mahon, Teresa Kunzmann, Bucks County Programs and Services Advisory Council, Doreen Milot, Deborah Hawke Spencer, Kae Kirkwood, Sharon k. Leasure-Savage, Dianne Boylan, Thomas Kennane, Peter Walowen, Leesa Bella, Laura Berry, Emily Viehland, Lori Barber, Dr. Nita K. Thingalaya, MD, Frank & Christina Losos, Gerald Woods, Pamela Stephens, Benjamin Gross, Esq., Donna Gillespie, Jackie Hemenway, Alexander Kalif, Mary Kankoski, Michele Watterson, Pat Hone, Sadie LPM, Danielle Ohliger, Karren Turner, Kerry Carfano, Thomas Bogetti, Wendy Gallagher, Naomi Langford, Colleen Hroncich, Missy Brownfield, Jessica Sikora, B. Joann Curran, Carris Kocher, Denise Olczak, Mary Christine Whipple, Lynne Christman, Dr. & Mrs. Paul Spense, Michelle Faber, Stephen George,

Arlene Kreider, Deanne & Richard Mattis, David W. Patti (*Pennsylvania Business Council*), Jonathan Hare, Mr. & Mrs. Eric Pomeroy, Peg Miller, Fuyu Guan, Tina Swanson, Dr. Fran Newberg (*School District of Philadelphia*), Jim Buckheit (*Pennsylvania Association of School Administrators*), Pennsylvania State Education Association, Christina Logan, Elise Orazem, Martha McEvoy, Karen Richardson, Mark Yeager, Diane Gramley, Curtis Savage, Elizabeth Greene, Diane Spicher, Virginia Adamiak, Roland Bechtel, Kathleene Drabic, Kristin Schilling, Rosemary Fielding, Robert Wilkey, Catherine Oxendale, Dianne Kimmel Lahr, James and Mary Chuchman, Cynthia Frey, Lori Marshall, Agnes Tillerson, Julie Marburger, Melanie Tate, Beth Kloss, Amy Clemente, Gretchen Guttman and Connie D’Agostini.

In addition, the Board received comments from the Independent Regulatory Review Commission (IRRC). *See* 42 Pa.B. 7619 (Dec. 15, 2012).

## **II. Comment and Response**

In this section, the Board responds to specific questions and concerns raised by the public during the 30-day public comment period, as well as by IRRC in its December 5, 2012 comments (State Board of Education # 6-326, IRRC # 2976). Comments and responses are grouped by topic.

### LEGISLATIVE REVIEW

**Comment:** IRRC asked the State Board to consider whether its proposal deleting existing language that requires a Keystone Exam to count for at least one-third of a course grade, and replacing it with a mandate that a student demonstrate proficiency on a Keystone Exam to meet state graduation requirements, represents a policy decision of such magnitude that the Legislature might wish to consider choosing the proper policy through statute. To this end, IRRC encourages the State Board to seek input from the House and Senate Education Committees before delivering a final-form rulemaking. *See* 42 Pa.B. at 7620.

**Response:** Section 2604-B(b)(2)(v) of the Public School Code of 1949 (School Code) provides as follows: “The Council of Basic Education shall have the power, and its duty shall be to...formulate policy proposals in all educational areas not within the purview of higher education, including, but not limited to...admission, attendance, graduation and other separation requirements.” 24 P.S. § 26-2604-B(b)(2)(v). The Board, in turn, has the authority to review the rules and regulations formulated by the Council of Basic Education, adopt broad policies and principles, and establish standards governing the educational program of the Commonwealth. 24 P.S. § 26-2603-B(a); *see also* 24 P.S. § 26-2603-B(k) (“The board shall make all reasonable rules and regulations necessary to effectuate the purposes of [A]rticle [XXVI-B of the School Code] and carry out all duties placed upon it by law.) It is through these provisions of Article XXVI-B of the School Code that the Board has clear statutory authority to require proficiency on a Keystone Exam as a condition of graduation.

Nevertheless, in consideration of IRRC's comment, the Board in fact did deliver advance copies of the final-form regulation to the Majority and Minority Chairs of the House and Senate Education Committees, which serve as liaisons between the Board and members of the General Assembly, and provided time for their input prior to Board action on the final-form regulation in March 2013. Subsequent to its initial approval of a final-form regulation, the Board withdrew the final-form rulemaking from review by the Governor's Office of Policy, Office of the Budget, and Office of General Counsel to allow the Board time to reconsider the regulation in light of additional concerns raised by members of the General Assembly and members of the public. During that time, the Board appeared at public hearings before the Education Committees of both the House and Senate to discuss the final-form rulemaking. As a result of those ongoing deliberations, the Board presented a revised final-form regulation for consideration at its public meeting on September 12, 2013.

### HIGH SCHOOL GRADUATION REQUIREMENTS

**Comment:** Commentators argued the regulation would result in high-stakes exit exams and referenced research that suggests high-stakes testing could have unintended consequences for students. IRRC noted similar concerns and asked the Board to provide acceptable data that supports the use of Keystone Exams as a standalone measure of high school graduation. *See* 42 Pa.B. at 7619.

**Response:** The final-form regulation continues to provide multiple pathways for meeting graduation requirements. The rulemaking maintains the option for districts to utilize Keystone Exams, validated local assessments, and AP or IB exams to measure student proficiency in Algebra I, Literature, Biology, Composition and Civics and Government. The regulation also continues to include protections provided in current law, such as retakes for students in districts that choose to use the Keystone Exams to measure graduation proficiencies (*i.e.*, students can retake exams in whole or in part), a rigorous project-based alternative for students who may not test well, and a provision guaranteeing supplemental instruction for any student who does not demonstrate proficiency. Finally, students who face extenuating circumstances or who are not successful in demonstrating proficiency on a project-based assessment may be exempted from one or more requirements through a waiver issued by a local chief school administrator. Given these multiple pathways to graduation and the required provision of support services in content areas where students demonstrate individual needs, no student will be denied a high school diploma based on a single test score.

During the initial phase of Keystone Exam implementation, the Board heard a number of concerns about incorporating a Keystone Exam score as part of a student's final course grade. Logistical concerns were raised about the practicality of administering end-of-course assessments in early May in order to return scores to schools in time to calculate grades.

Additional concerns were raised about the potential for inconsistent implementation among school districts due to the lack of a statewide grading scale. The Board also heard concerns about a provision that would require students who score below basic to receive a score of zero incorporated as one-third of their course grade, and whether it is fair not to grant any credit to students for the work they successfully accomplished. Finally, additional logistical questions were raised about how many times a student may retake a Keystone Exam and whether districts would be required to recalculate course grades if a student attained a higher score on a future Keystone Exam administration.

Further, during the initial phase of implementation, the Board received inquiries from districts that were considering using one or more Keystone Exams as a standalone measure of graduation without incorporating the exam scores into a student's course grade by adopting the keystones as a validated local assessment. In response to these inquiries from the regulated community, the State Board in September 2010 adopted a policy to certify that use of Keystone Exams as a standalone assessment is a valid option for demonstrating graduation requirements.

The use of Keystone Exams as a standalone measure of graduation requirements, combined with the additional pathways and supports provided under current law, also is supported by the *Standards for Educational and Psychological Testing* established by the American Educational Research Association, American Psychological Association and National Council on Measurement in Education. Standard 13.5 states that "when test results substantially contribute to making decisions about student promotion or graduation, there should be evidence that the test adequately covers only the specific or generalized content and skills that students have had an opportunity to learn." Standard 13.6 states

[S]tudents who must demonstrate mastery of certain skills or knowledge before being promoted or granted a diploma should have a reasonable number of opportunities to succeed on equivalent forms of the test or be provided with construct-equivalent testing alternatives of equal difficulty to demonstrate the skills or knowledge. In most circumstances, when students are provided with multiple opportunities to demonstrate mastery, the time interval between the opportunities should allow for students to have the opportunity to obtain the relevant instructional experience.

The *Standards for Educational and Psychological Testing* further support the final rulemaking in the following excerpt addressing fairness in testing:

For example, when tests are used for promotion and graduation, the fairness of individual interpretations can be enhanced by (a) providing students with multiple opportunities to demonstrate their capabilities through repeated testing with alternate forms or through other construct-equivalent means, (b) ensuring students have had adequate notice of skills and content to be tested along with other appropriate test preparation material, (c) providing students with curriculum and instruction that affords them the opportunity to

learn the content and skills that are tested, and (d) providing students with equal access to any specific preparation for test taking (*e.g.*, test taking strategies).

The final rulemaking comports with these standards by providing students with unlimited opportunities to take a Keystone Exam to demonstrate proficiency, providing an alternative project-based assessment, and requiring students to engage in supplemental instruction before a second attempt on a Keystone and before being able to participate in a project-based assessment. The state assessment system further comports with these standards through the establishment of assessment anchors and eligible content that clearly communicate the academic content that will be assessed.

**Comment:** Commentators expressed opposition to the inclusion of Keystone Exam scores as part of a student’s course grade.

**Response:** The final-form regulation removes the requirement that Keystone Exam scores be included in the calculation of a student’s final course grade.

**Comment:** One commentator suggested that the Department allow school districts to assess on an individual basis the weight of a Keystone Exam score when determining whether a student has successfully completed a course or qualified for a high school diploma.

**Response:** As noted above, the Board heard a number of concerns about including Keystone Exam scores as part of students’ course grades, including logistical concerns about the timing to administer exams, the potential for inconsistent implementation across districts, and potentially recalculating course grades if students make multiple attempts at a Keystone Exam. For these reasons, the Board disagrees with the commentator’s suggestion.

**Comment:** Commentators opposed the development of Keystone Exams in subjects beyond Algebra I, Biology and Literature.

**Response:** Keystone Exams in broader subject areas are required by statute. Act 82 of 2012 amended section 121 of the School Code to require, subject to annual appropriations, that the Department of Education develop and implement Keystone Exams in the following subjects: Algebra I, Literature, Biology, English Composition, Algebra II, Geometry, United States History, Chemistry, Civics and Government, and Word History. *See* 24 P.S. § 1-121 (relating to Keystone Exams). Act 82 further directed the State Board to promulgate regulations necessary to implement this provision of the School Code. *Id.*

**Comment:** Commentators expressed concern that the rulemaking would result in a narrowing of instruction to tested subjects and “teaching to the test.”

**Response:** This regulation does not create a state-mandated curriculum. School districts are required to align their curriculum to the state academic standards, a requirement that has been in place since academic standards were established in Chapter 4 in January 1999. While districts

have significant flexibility in the design and delivery of instruction, all districts are to educate students to proficiency in all 12 sets of state academic standards. As stated in Chapter 4, districts may go beyond these standards and graduation requirements; in other words, Chapter 4 sets a floor, not a ceiling.

**Comment:** One commentator noted that the Department has not conducted a study related to the validity or reliability of Keystone Exams for use as high-stakes assessments or for determining college or career readiness.

**Response:** Chapter 4 currently directs the Department to conduct a validity study of Keystone Exams at least once every five years. The research study must determine the degree to which Keystone Exams and performance level cut scores are: valid for the purposes for which they are used; aligned with state academic standards; aligned with performance levels of other states; internationally benchmarked; and predictive of college and career success. The current provisions of Chapter 4 require the Department to convene a State Assessment Validation Advisory Committee to advise the Department on its plans for the study. The Department has convened an Advisory Committee that includes representatives of the Department, State Board, educators, and higher education; and the process of designing a Keystone Exam validation study is underway.

**Comment:** One commentator suggested the Keystone Exam cut scores should not be used for determining proficiency on exit exams because educators who participated in the standards setting process may have made different decisions based on how the exams would be considered relevant to graduation determinations. The commentator suggested that new cut scores be established.

**Response:** Keystone Exam cut scores were developed by Pennsylvania educators and approved by the State Board. The process used to establish cut scores considers student performance on a set of academic standards relative to an exam's associated performance level descriptors. This process does not change based on how an exam is utilized. Therefore, the commentator's proposal to establish new cut scores would cause the Department and Board to engage in an unnecessary, duplicative process.

**Comment:** One commentator asserted that the regulations limit the number of Keystone Exam retake opportunities, thereby reducing students' chances to achieve success.

**Response:** The commentator is incorrect in the assertion that the regulations limit the number of times a student who is not proficient may retake a Keystone Exam. To ensure clarity to the regulated community in this regard, the final-form regulations specify that there is no limit to the number of times a student who has not demonstrated proficiency may retake a Keystone Exam or exam module.

**Comment:** One commentator proposed allowing students who are English language learners (ELL) to receive a high school diploma if they show adequate progress according to the ACCESS test administered to ELL students each spring and if they successfully complete an academic program aligned to the Pennsylvania English Language Proficiency Standards.

**Response:** The Board disagrees with the commentator. The current provisions of Chapter 4 already allow for ELL students to be provided with appropriate accommodations when participating in Keystone Exams. *Accommodations Guidelines for English Language Learners* are available on the Department's publicly accessible website. The final-form regulation further requires that supplemental instruction for students who do not demonstrate proficiency on a Keystone Exam must be consistent with a student's educational program, which would ensure that supplemental services provided to ELL students are in sync with the student's identified language development needs.

The final-form rulemaking provides for additional considerations that are relevant to ELL students. The regulation directs school districts to determine whether students who transfer from out-of-state, including students who transfer from other countries, already have demonstrated the academic proficiencies required for graduation based on coursework and assessments completed in the student's prior place of residence. The final-form rulemaking also allows the local chief school administrator to grant waivers of graduation requirements on a case-by-case basis for students who are not able to successfully demonstrate proficiency on a project-based assessment or for students facing extenuating circumstances, including frequent transfers or transfer from an out-of-state school in grade 12. Finally, Keystone Exams in Algebra I and Biology are available in Spanish and, upon its implementation, the Department plans to make a Spanish version of the Keystone Exam in Civics and Government available as well.

**Comment:** IRRC notes that the regulation requires the Secretary of Education to develop guidelines to inform determinations of whether students who transfer from out-of-state already have demonstrated proficiency on assessments congruent with academic standards assessed by each Keystone Exam. IRRC asks whether the guidelines will be in place prior to completion of the regulatory package. *See* 42 Pa. B. at 7621.

**Response:** The final-form rulemaking clarifies the Board's intention that the Secretary shall develop guidance to assist local school districts, AVTSs, charter schools and cyber charter schools in determining whether students transferring from out-of-state have demonstrated required proficiencies through coursework and assessments completed in the student's prior place of residence. The Department is actively working to complete this guidance by Fall 2013.

**Comment:** The Board received comment expressing both support and opposition to eliminating the culminating project as a graduation requirement beginning in the 2016-2017 school year. IRRC notes that the preamble prepared for the proposed rulemaking does not

explain why the requirement is being eliminated and asked the Board to explain the basis for this decision. *See* 42 Pa.B. at 7621.

**Response:** Retaining the requirement for all students to complete a culminating project could pose logistical difficulties for school districts by creating duplicative project requirements for students participating in project-based assessments. School districts would maintain authority to require students to complete a culminating project as a local graduation requirement.

**Comment:** One commentator questioned whether the regulation fails to include a path for students to take a Keystone Exam prior to taking the associated coursework.

**Response:** The commentator is incorrect in the assertion. Section 4.24(c)(1)(iii)(A)(I)-(III) of Chapter 4 allows students to take a Keystone Exam prior to taking the associated coursework. To ensure this provision is implemented consistently across school districts, the final-form regulation clarifies the Board's intention that the opportunity to take a Keystone Exam should be made available to students who demonstrate academic excellence, as measured by the most recent associated Pennsylvania System of School Assessment exam. The final-form regulation further clarifies that, while all districts must make the opportunity to take an exam available to students who excel academically, whether a student receives course credit for taking a Keystone Exam and attaining a score of advanced remains a local decision.

**Comment:** One commentator asked whether the regulation would include exceptions for students with disabilities.

**Response:** The current provisions of Chapter 4 provide that the graduation requirements listed in Chapter 4 apply to students with disabilities only if the student's individualized education plan (IEP) so designates.

**Comment:** One commentator stated that the administration of Keystone Exams will occur too early in the school year to ensure that students have received full instruction in the associated course content.

**Response:** The final-form regulation removes the connection between Keystone Exams and course grades, allowing the exams to be administered later in the year than would be necessary to include scores in final course grades. Further, Chapter 4 currently provides for school districts, AVTSs, charter schools and cyber charter schools to request that the Department approve alternative test administration and scoring timeframes.

**Comment:** Commentators suggested that separate Keystone Exams in literature and composition are duplicative and unnecessary.

**Response:** The Keystone Exams in literature and composition each measure distinct components of the Commonwealth's English Language Arts standards and are not duplicative in the content they assess. The literature exam measures student proficiency in reading

comprehension, while the composition exam assesses student proficiency in communicating clearly and effectively in a written format.

**Comment:** Commentators stated that the Keystone Exam in Civics and Government will require restructuring of high school curricula to restructure the associated coursework at different grade levels.

**Response:** Chapter 4 does not mandate when school districts provide instruction in academic standards related to Civics and Government and does not require districts to adjust their current associated coursework to a particular grade level. Districts have local flexibility to determine when to best provide instruction in the state's Civics and Government standards.

**Comment:** Commentators questioned whether the regulation would provide flexibility for high-performing schools and additional support for struggling schools.

**Response:** The final-form regulation maintains current provisions of Chapter 4 that provide for school districts to use a validated, locally-developed assessment in lieu of Keystone Exams to assess student proficiency for graduation. Likewise, the final-form regulation maintains current provisions of Chapter 4 that require the Department to provide supports to school districts, AVTSs, charter schools and cyber charter schools in developing educational programs that enable students to attain state academic standards, specifically including voluntary model curriculum and diagnostic supports aligned with the academic standards assessed by Keystone Exams; assistance in developing effective tutoring, remediation and extended instructional time programs; opportunities for professional development designed to improve instruction in the content areas assessed by Keystone Exams; and technical guidance in developing local assessments.

**Comment:** One commentator noted that the proposed rulemaking failed to reference an alternate measure of proficiency for graduation for career and technical education (CTE) students that previously was approved by the Board.

**Response:** The Board agrees that the pathway to graduation approved by the Board in a statement of policy issued on November 18, 2010, should be reflected in the final-form rulemaking. The statement of policy approved by the Board was developed in consultation with the State Assessment Validation Advisory Committee, which is currently comprised of Pennsylvania educators, Department staff, State Board members, representatives of higher education, and CTE representatives. The final-form rulemaking includes the recommendation of the Advisory Committee to require CTE students to demonstrate proficiency in state assessments required for accountability purposes via a Keystone Exam, local validated assessment or project-based assessment, and allow CTE students to demonstrate proficiency in other state graduation requirements by attaining a score of competent or advanced on an occupational skills assessment.

## PROJECT-BASED ASSESSMENT

**Comment:** Commentators expressed concern over the required duration of supplemental instruction before a student who does not demonstrate proficiency on a Keystone Exam is able to participate in a project-based assessment. Commentators requested that districts be provided greater flexibility with supplemental instruction and that the project-based assessment be made available to students at an earlier point.

**Response:** The Board agrees that the provision included in its proposed rulemaking requiring students below grade 12 to participate in at least two school years of supplemental instruction (or the equivalent for schools that operate on a block schedule) before being able to participate in a project-based assessment could delay access to a project-based assessment too long after a student has taken the associated coursework. The final-form regulation provides greater flexibility by allowing students below grade 12 to participate in a project-based assessment after two attempts at a Keystone Exam and satisfactory participation in supplemental instruction. Further, the final-form regulation maintains flexibility for local school districts to determine how supplemental instruction will be delivered and does not mandate that students participate in one-size-fits-all programming.

**Comment:** One commentator expressed concerns about cost, time and staffing to implement project-based assessments and requested that the Department's proposed implementation procedures be subject to public rulemaking. The commentator further requested that school districts have the option of developing their own project-based assessments using multiple measures or other systems in lieu of being required to use the state-developed projects. Finally, the commentator requested that local scoring of projects be permitted.

**Response:** Implementation procedures for project based assessments (PBA) described on the Department's Standards Aligned System website were informed by PBA field tests conducted in Spring 2013. Further, the Department works with a committee that includes education practitioners in developing PBAs. The Board disagrees that PBA implementation procedures should be subject to public rulemaking given that the procedures and the project themselves are informed by the experience of districts with PBAs via the field tests, and are further informed by education practitioners involved in the project development committee.

Preliminary feedback from districts that participated in the Spring 2013 field tests indicated that online projects were an effective means of engaging students in this work. Further, school districts have varying capacity to develop project modules aligned to the Keystone Exams. The state-developed projects are closely aligned to the Eligible Content of the Keystone Exams and assess the rigor of the assessments. The use of statewide panels to score PBAs provides for projects to be scored by a neutral party to further ensure consistency in the implementation of PBAs. Therefore, to maintain consistency in the alignment and rigor of PBA,

the Board disagrees with the commentators suggestions that the regulation provide for alternative projects and alternate scoring procedures.

Finally, as noted elsewhere in this document, the final-form regulation removes the requirement for a culminating project, which will alleviate potentially duplicative project requirements for some students and allow districts to refocus staff time on project-based assessments.

## ACCOUNTABILITY

**Comment:** Commentators questioned the Department’s authority to administer Keystone Exams in Algebra I, Biology and Literature to serve as the Commonwealth’s high school level single accountability system in the 2012-2013 school year. Commentators expressed concern that the Keystone Exams had not yet been approved by the U.S. Department of Education to replace the 11<sup>th</sup> grade Pennsylvania System of School Assessment (PSSA) for that purpose, as required by 22 Pa. Code § 4.51(e)(14).

**Response:** In January 2013, the U.S. Department of Education confirmed that Pennsylvania may use the Keystone Exams for the purpose of accountability until such time as the federal peer review process becomes available.

**Comment:** IRRC suggested that the final-form rulemaking specify how banking of Keystone Exam scores would be administered and used to determine whether a school entity made adequate yearly progress (AYP) when a student reaches 11<sup>th</sup> grade. *See* 42 Pa.B. at 7621.

**Response:** After the Board submitted its proposed rulemaking, the U.S. Department of Education granted approval of Pennsylvania’s ESEA Waiver application. Under the parameters of the approved waiver, AYP is no longer used for accountability purposes. Therefore, the commentator’s suggestion is no longer relevant since AYP is no longer utilized by the Commonwealth. Some components of AYP, such as attendance and graduation rates, still will be reported to the public as part of Pennsylvania’s new statewide accountability system. Growth (as determined by the Pennsylvania Value Added Assessment System) will be reported for students who take a Keystone-related course and the corresponding Keystone Exam in the same year for educator effectiveness purposes. However, their achievement performance level (below basic, basic, proficient or advanced) will be banked until 11<sup>th</sup> grade for accountability purposes.

## COST

**Comment:** Commentators expressed concerns that the regulatory analysis does not fully reflect the overall fiscal impact to school districts, including costs for such procedures as redesigning curriculum, remediation and project-based assessments.

**Response:** The Board’s regulatory analysis addresses the fiscal impact of the revisions made to Chapter 4 by the final-form rulemaking. The final-form rulemaking does not impose

new costs for remediation or project-based assessments. Provisions requiring certain students to participate in supplementary instruction and providing for project-based assessments are current requirements of Chapter 4 that took effect in 2010 and do not represent new costs imposed by the rulemaking currently before the Board. Further, requirements establishing project-based assessments and mandating supplemental instruction for students who do not demonstrate proficiency on a Keystone Exam underwent review by the House Education Committee, Senate Education Committee and Independent Regulatory Review Commission prior to their enactment in 2010.

Rather, the final-form rulemaking will provide relief to school districts by reducing the number of Keystone Exams developed and administered to measure academic proficiencies for graduation from 10 exams to five exams. This reduction in testing subsequently will reduce the number of subjects for which supplemental instruction is mandated from 10 to five and reduce the number of Keystones for which project-based assessments must be developed and administered from 10 to 5. The regulation provides further relief to school districts by eliminating the requirement for culminating projects at the high school level and removing the requirement that districts engage in strategic planning via a state-mandated timeframe and state-prescribed format.

With regard to redesigning curriculum, there is an expectation that districts, having local control, regularly engage in a cycle of curriculum renewal. The Board's final rule published in the *Pennsylvania Bulletin* at 40 Pa.B. 5903 on October 16, 2010, initiated a multi-year implementation period for revised academic standards to provide districts time to adjust local curriculum cycles accordingly to prepare for the revised standards. The regulatory analysis produced at that time identified a negligible cost to the regulated community to incorporate standards revisions into curriculum and instructional practice due to the high degree of alignment between the revised standards and current state standards, supportive resources available from the Department on its Standard Aligned Systems website, and the statutory requirement for educators to participate in ongoing professional development. That analysis identifying a negligible cost to implement standards' revisions was deemed approved by the House Education Committee and Senate Education Committee and approved by the Independent Regulatory Review Commission in August of 2010. In recognition of the subsequent refinements made to the standards by this final rulemaking, the current rulemaking extends the implementation period further.

## TRANSCRIPTS

**Comment:** One commentator requested clarity on whether student transcripts represent dynamic data contained within a student information system, dynamic electronic documents that change during the course of a student's progress through high school, static documents that are printed at graduation, or something else.

**Response:** The final-form regulation clarifies that the information presented on student transcripts must include the highest performance level demonstrated at the time the transcript is produced. Therefore, a student transcript represents a dynamic document that may change over the course of a student’s high school career. Whether a transcript is produced in electronic or print format is a local determination.

**Comment:** One commentator requested clarity on the school year that Keystone Exam performance levels must begin to be presented on student transcripts. Likewise, the commentator requested clarity on whether PSSA scores must be presented on student transcripts for the graduating class of 2013.

**Response:** The final-form regulation clarifies that the current provision of Chapter 4 requiring PSSA scores to be presented on student transcripts will remain in effect through the 2012-2013 school year. The final-form regulation further clarifies that performance levels in subjects assessed by a Keystone Exam must be reported on student transcripts beginning in the 2016-2017 school year – the year Keystone Exams will take effect as state graduation requirements. The transcript must include the highest performance level demonstrated on a Keystone Exam, a locally validated assessment or a project-based assessment.

**Comment:** Commentators requested clarity on whether students or their parents may elect not to have Keystone Exam performance levels reported on student transcripts. Further, a commentator questioned whether allowing an opt-out of including Keystone Exam performance levels would lead to inconsistent reporting of results and would require additional resources for schools to track and monitor student permissions to release Keystone performance levels.

**Response:** The final-form regulation clarifies that parents and students may not opt-out of having proficiency in state graduation requirements reported on student transcripts. The regulation requires that performance levels in subjects assessed by a Keystone Exam must be reported on student transcripts beginning in the 2016-2017 school year – the year Keystone Exams will take effect as state graduation requirements. A transcript must include the highest performance level demonstrated on a Keystone Exam, a locally validated assessment, or a project-based assessment.

**Comment:** One commentator sought clarity on whether student transcripts must include performance levels for each module of a Keystone Exam, given that each Keystone Exam contains two modules.

**Response:** Students do not receive performance levels for each Keystone module. Therefore, only an overall Keystone performance level would be reported on a student transcript.

**Comment:** One commentator sought and IRRC suggests clarity on whether school districts must include performance levels on student transcripts in a consistent fashion or whether how such information is presented is a local decision. For example, the commentator asked

whether performance levels may be reported by: scaled score only, scaled score and performance level, performance level only, or score and chart showing the proficiency cut points.

**Response:** The final-form regulation requires performance levels (advanced, proficient, basic or below basic) in subjects assessed by a Keystone Exam to be reported on student transcripts beginning in the 2016-2017 school year. The inclusion of performance levels, as opposed to solely reporting scale scores, provides the clearest means of communicating whether a student met graduation requirements to members of the higher education community and employers. A transcript must include the highest performance level demonstrated either on a Keystone Exam, locally validated assessment or project-based assessment.

While the regulation requires all transcripts to include performance levels, it does not mandate how such information must be presented and does not preclude school districts from presenting additional information on student transcripts.

## WAIVERS

**Comment:** IRRRC questioned the need to include waiver provisions that were provided for in both § 4.24(k) and § 4.51(n) of the proposed rulemaking and suggested that the Board consider consolidating the provisions or, at a minimum, review both sections to ensure they are consistent and do not conflict with one another. *See* 42 Pa.B. at 7622.

**Response:** The Board agrees that two discrete sections addressing waivers are unnecessary. The final-form rulemaking consolidates provisions related to the granting of waivers for state graduation requirements into a new comprehensive § 4.51d.

**Comment:** One commentator suggested that decisions regarding whether a student will receive a diploma should not lie with the Secretary of Education and suggested that such authority is contrary to school districts' authority to grant diplomas. The commentator requested that chief school administrators be authorized to grant waivers to graduation requirements upon approval by a local school board. The commentator further asserted that authorizing chief school administrators to grant waivers would ensure that the sum of a student's achievement would be properly reflected in waiver determinations and asserted that determinations made by the Secretary would be based on state-developed tests and not broader factors. The commentator proposed that the Department could establish guidelines for local governing boards and administrators to consider in issuing waivers.

**Response:** The Board agrees that waiver determinations should lie with the local chief school administrator. The final-form regulation has been revised to vest such authority with chief school administrators, rather than with the Secretary of Education. In line with the commentator's proposal that the Department could establish guidelines to be considered in local waiver determinations, the regulation requires a chief school administrator to certify that a student has met certain criteria prior to issuing a waiver.

**Comment:** One commentator suggested waiver determinations made by the Secretary be treated as an adjudication under the Administrative Agency Law (2 Pa.C.S. §§ 501-08, 701-04).

**Response:** The Board disagrees with the commentator. The final-form regulation was revised to place waiver determinations with the local chief school administrator rather than with the Secretary of Education. Local chief school administrators have access to information that will allow them to execute waiver determinations in a timely manner based on a student's full academic record. The final-form rulemaking was further revised to reflect that the waiver process does not confer an individual right on any student, and that the decision of a chief school administrator concerning a waiver request is not an adjudication.

## STRATEGIC PLANNING

**Comment:** IIRC requested an explanation as to why the Board is deleting strategic plan requirements. IIRC also requested that the Board address the concern that stakeholders will still have an opportunity to participate in the development and review of the other plans prior to implementation or submittal to the Department or Secretary. *See* 42 Pa.B. at 7620. Commentators expressed concern that strategic plans establish a form of accountability, as well as instructional supports and measurable goals to improve student achievement.

**Response:** Chapter 4 currently requires each school district and AVTS within the Commonwealth to complete a strategic plan. Strategic plans must be submitted to the Department every six years and revised every three years. As a result of this process, each school district and AVTS within the Commonwealth, including those who are low performing and those who did not achieve AYP, currently have a strategic plan.

Although the Board recognizes the potential benefits of strategic planning, the current process emphasizes the inputs rather than the outcomes and, as a result, has not positively impacted student learning in many of the Commonwealth's lowest performing schools. Strategic planning, as defined by Chapter 4, is a costly and prescriptive process that allows for little local control by requiring plans to be developed via a state-prescribed process and a state-prescribed timeframe. The elimination of strategic planning requirements in Chapter 4 does not preclude school districts and AVTSs from continuing to engage in their own strategic planning process. Rather, it will allow districts and AVTSs to focus their efforts and limited resources on a process they feel is meaningful and meets the specific needs of their students.

The Board agrees with commentators that stakeholders should have an opportunity to participate in the development and review of the six plans that are required by Chapter 4 – educator professional development, educator induction, special education, gifted education, student services and early childhood education. The final-form rulemaking requires local governing boards to offer a minimum 28-day public comment and inspection period prior to adoption of those local plans. It also is worth noting that section 1205.1 of the School Code (24 P.S. § 12-1205.1) establishes requirements for educators and administrators to be engaged in

developing plans for educator professional development and that Chapter 49 of the State Board's regulations requires that educators be engaged in developing plans for teacher induction.

**Comment:** Chapter 4 currently requires graduation requirements to be part of a school district's strategic plan. IRRC indicates that the regulation should address where local high school graduation requirements must be specified if the state-mandated strategic planning process is no longer required.

**Response:** Section 4.24(a) of the final-form regulation specifies that local high school graduation requirements must be published and distributed to students, parents and guardians, and that copies of the requirements be made available in each school building or on each school entity's publicly available website. Local graduation requirements that are adopted to comply with final-form revisions to Chapter 4 must be made available within six months of the regulation's publication in the *Pennsylvania Bulletin*, and any subsequent changes to local graduation requirements must be communicated to students, parents and guardians immediately following approval by a school's governing body.

**Comment:** One commentator noted that by removing the requirement for schools and districts to develop and maintain strategic plans, parents, students and teachers potentially lose a voice in the process and are subject to the decisions of school boards.

**Response:** The elimination of strategic planning increases local flexibility by allowing school entities to determine what planning process best meets their needs. Further, the Board has addressed concerns about stakeholder input by amending the final-form regulation to require a minimum 28-day public comment and inspection period for the six plans required in Chapter 4.

**Comment:** One commentator noted that the elimination of the strategic plan will hurt efforts to provide students with a coherent and comprehensive curriculum.

**Response:** The elimination of a state-prescribed strategic planning process does not negate a school entity of its responsibility to design a curriculum that achieves the state academic standards and allows for students to develop knowledge and skills in English language arts, mathematics, science and technology, environment and ecology, social studies, arts and humanities, career education, health, safety and physical education, and family and consumer science. School entities should continue to plan independent of state requirements using a process that best meets the school entity's needs for curriculum development.

**Comment:** One commentator noted that strategic plans allow for school districts to set short-term and multi-year organizational goals that guide the curriculum and delineate how all academic areas, including those not tested, contribute to student achievement. This process allows time for programs and curricula to impact student achievement, and the periodic reviews offer schools and the district the opportunity to reflect on students' achievement.

**Response:** Under the proposed changes to Chapter 4, school entities may continue to establish short-term and multi-year organizational goals, but in a manner that is most logical, valuable and conducive to local timelines and student needs. School entities who find the current process to be the most logical, valuable and conducive to local needs may continue to engage in that process independent of a state requirement. The Board encourages school entities that do not find this process to be meaningful to refocus their efforts and resources on initiatives that better support their students.

**Comment:** One commentator requested that the proposed elimination of strategic plans and the prescribed strategic planning process be rejected and instead be streamlined to avoid redundancies and improve the process. The commentator recommended that the streamlined process include: 1) participation in the planning process by representatives of all stakeholders; 2) measureable goals for student achievement; 3) descriptions of planned instruction, assessment practices, and instructional supports; 4) explanations of the personnel and resources needed to achieve the goals; and 5) plans for early childhood education, early intervention programs and transition programs.

**Response:** The Board disagrees with the commentator's recommendation and asserts that the process is the most efficient and streamlined by affording local entities greater flexibility. The proposed elimination of strategic planning does not negate school districts and AVTSs from all planning requirements; but in cases where a state and/or federal mandate does not exist, it is the Board's position that local school boards should determine if the planning process is meaningful, and if so, when it occurs, who participates and what it includes. The current process has not rendered a consistent and positive result statewide, and, as such, local entities should determine its impact on their students.

School entities may consider and implement the commentator's proposed process if they feel it best meets the needs of their students.

**Comment:** One commentator noted that the attempt to reduce the burden of LEA planning actually further complicates the LEA's efforts and creates isolation, confusion and uncertainty in the field.

**Response:** The Board disagrees with the commentator's statement and believes that the proposed elimination of strategic planning simplifies local efforts by allowing local entities to create a planning process that is most valuable to their school district or AVTS. School entities that feel the current process is the most logical should continue to utilize it for local planning purposes. The Board encourages school entities that do not find this process to be meaningful to refocus their efforts and resources on initiatives that better support their students.

**Comment:** One commentator recommended that Chapter 4 recognize the Comprehensive Planning (CP) process as the state-sanctioned planning process and data collection tool to satisfy Chapter 4's current strategic planning requirements, federal planning requirements under No

Child Left Behind, and additional state and federal mandates. The commentator believes the process should be adopted based on the recorded LEA needs of a CP process; complexity of regulatory requirements made simple by the CP process; unifying quality of the CP process with PDE initiatives; recorded and observed field experiences of LEAs and schools using the CP process; and adaptability and relief offered by the CP process.

**Response:** The Board rejects the commentator's proposal to recognize the Comprehensive Planning process as the state-sanctioned planning process. The elimination of strategic planning does not impact the process by which school entities fulfill and submit additional state and federal planning requirements. School entities continue to submit their required plans according to their state/federal requirements.

### ACADEMIC STANDARDS

**Comment:** Commentators expressed opposition to Common Core Standards and assert that the standards represent national education standards authored by private organizations.

**Response:** Common Core Standards began as an initiative of states across the country, including Pennsylvania, in cooperation with the National Governors Association and the Council of Chief State School Officers. These standards were not imposed upon the Commonwealth, and Pennsylvania retains sovereign authority over its academic standards.

In 2010, both the Board and IRRC approved Common Core Standards as the Commonwealth's academic standards in English Language Arts and mathematics and provided for a three-year implementation period. *See* 40 Pa.B. 5903 (Oct. 16, 2010); 42 Pa.B. 7619 (Dec. 15, 2012). Prior to its adoption of Common Core in 2010, the Board took a number of steps to inform its decision to approve the standards. The Board commissioned an alignment study from the University of Pittsburgh that found the Common Core to be well-aligned with revised academic standards already under consideration by the Board both in terms of content and degree of rigor. The Board also convened four public hearings across the Commonwealth prior to adoption of the standards to provide an opportunity for input from the regulated community and members of the public.

The final-form rulemaking would rescind the Common Core Standards and replace them with state-specific Pennsylvania Core Standards. The Pennsylvania Core Standards were developed by Pennsylvania educators in consultation with staff of the Pennsylvania Department of Education to meet the needs of the Commonwealth. Names of Pennsylvania educators involved in this process are identified in the Regulatory Analysis Form prepared for the final-form regulation.

**Comment:** Commentators cite a Pioneer Institute publication estimating a \$650 million implementation cost to the Commonwealth to implement Common Core Standards.

**Response:** Since the adoption of revised academic standards in English Language Arts and Mathematics in 2010, the Department has expended \$204,355 on implementation to support standards' alignment, revisions to Pennsylvania System of School Assessment (PSSA) assessment anchors, and the development of Eligible Content related to the revised standards.

Further, the charts submitted by a commentator estimating technology, professional development and textbook/materials costs at \$650 million are labeled as "costs for states in PARCC and SBAC." Those acronyms refer to the Partnership for Assessment of Readiness for College and Careers (PARCC) and the Smarter-Balanced Assessment Consortium (SBAC), two state-led efforts developing assessments aligned to the Common Core Standards. Pennsylvania currently is not a governing state in either assessment consortium, meaning the Commonwealth has not made a commitment to utilize either assessment. Further, the final-form regulation prohibits the Commonwealth from becoming a governing state in either consortium and expresses the Board's intention to not utilize these national assessments as part of the state assessment system. Therefore, cost estimates specific to the requirements of those assessment consortium are not directly relevant and do not reflect the Commonwealth's plan for implementation of its academic standards and related state-specific assessments.

**Comment:** One commentator opposes the adoption of state-specific Pennsylvania Common Core standards and supports retaining the Common Core Standards in mathematics and English Language Arts to facilitate familiarity with labeling of standards and information sharing among teachers across states.

**Response:** The Department has developed resource guides for teachers that provide a cross-walk between Common Core and the state-specific Pennsylvania Core Standards. These cross-walks allow educators to see how Common Core labeling corresponds to Pennsylvania Core Standards' labeling. The cross-walks and other resource materials to support the implementation of Pennsylvania Core Standards are available to educators and the public on the Department's Standards Aligned System website.

#### MISCELLANEOUS COMMENTS

**Comment:** IRRC suggested that the definition of Keystone Exams lacks clarity and should be expanded to fully reflect the purpose and use of the exams. *See* 42 Pa.B. at 7621.

**Response:** In the final-form regulation, the definition of Keystone Exams has been expanded to clarify that designated exams will be used to determine, in part, a student's eligibility for high school graduation.

**Comment:** IRRC requested that the Board explain the need to change § 4.4(d)(4) to strengthen the security of state assessments by narrowing and refining parents and guardians' rights to review the assessments. *See* 42 Pa.B. at 7620.

**Response:** The Department is undertaking revisions to security protocols related to the administration of state assessments that address proctoring of exams, secure transmittal of completed exams and more. The proposal to limit review of state assessments by parents and guardians to circumstances where the parent or guardian must determine whether they have a religious objection to the assessment will further enhance the Department's more comprehensive changes to test security. Further, the transparency of information regarding state assessments is greater than ever before. The Department's Standards Aligned System website includes sample PSSA questions by grade level, sample Keystone Exam questions by subject, descriptions of state assessments' related performance levels, information about how state assessments are scored, and assessment anchors and eligible content that are publicly accessible to parents or guardians at any time.

**Comment:** One commentator stated that the regulation will increase the amount of test administrations school districts must annually administer.

**Response:** The final-form regulation reduces the number of Keystone Exams required to demonstrate proficiency for graduation from 10 to five. Three exams in Algebra I, Biology and Literature would take effect as graduation requirements beginning with the class of 2016-2017, and two additional exams in Composition and Civics and Government would come online with the graduating classes of 2018-2019 and 2019-2020, respectively, subject to funding from the General Assembly. Thus, the final-form regulation would reduce the amount of state-level testing currently required by Chapter 4.

**Comment:** One commentator noted that parents will be permitted to review state assessments only to determine whether the parent has a religious objection to the assessment and asked at what point parents will be permitted to review the results.

**Response:** Chapter 4 provides that parents and guardians must be provided the right to review a state assessment to determine whether they have a religious objection to the assessment in the school entity during hours convenient for parents and guardians at least two weeks prior to the administration of the assessment.

**Comment:** IRRC notes that section 4.51 (State Assessment System) addresses several topics, including state assessments as measured by the PSSA; state assessments as measured by the Keystone Exams; supplemental instruction for students that did not score proficient on a Keystone Exam; Keystone Exams as a graduation requirement; the development of additional Keystone Exams subject to funding by the General Assembly; project-based assessments and waivers. IRRC requests that the Board break the complex section into more easily understandable and more specific sections to assist the regulated community with compliance. See 42 Pa.B. at 7621.

**Response:** The final-form regulation responds to IRRC's request for clarity by reorganizing section 4.51 of the proposed rulemaking into five discrete sections relevant to

assessment. Section 4.51 consolidates current provisions of Chapter 4 relevant to state assessments generally into one comprehensive section. A new section 4.51a addresses provisions specific to the PSSA and a new section 4.51b addresses provisions specific to Keystone Exams. The final-form regulation also includes new sections addressing project-based assessments (section 4.51c) and waivers (section 4.51d).

**Comment:** IRRC notes that certain terms in section 4.51 of the proposed rulemaking are used in a generic way when a more precise, defined term would be clearer. *See* 42 Pa.B. at 7621.

**Response:** In addition to reorganizing the final-form regulation to provide shorter, more specific sections and reorganizing certain provisions for better flow, the final-form regulations include a definition for state assessment, clarify terminology to consistently refer to PSSA assessments rather than PSSA instruments, and consistently refer to performance levels rather than levels of proficiency.

**Comment:** IRRC suggests that section 4.51(a) of the proposed rulemaking be amended to indicate that the state assessment system is tied into graduation requirements to fully reflect the purposes of the state assessment system delineated in this section (a). *See* 42 Pa.B. at 7621.

**Response:** The Board agrees with IRRC. The relevant section of the final-form regulation expands provisions addressing the purposes the state assessment is designed to serve to include assessing student proficiency in academic standards for English Language Arts, Mathematics, Science and Technology and Environment and Ecology, and Civics and Government, to demonstrate, in part, a student's eligibility for high school graduation.

**Comment:** IRRC notes that the response to Regulatory Analysis Form question # 8 provides an incorrect citation of its statutory authority for the regulation. *See* 42 Pa.B. at 7622.

**Response:** The citation has been corrected in the Regulatory Analysis Form prepared for the final-form regulation.

**Comment:** IRRC noted that the Annex to the proposed rulemaking was not formatted to show that the existing Appendix A is being deleted and being replaced by a new Appendix A. *See* 42 Pa.B. at 7622.

**Response:** The final-form rulemaking has been formatted to show that the existing Appendix A is being placed in reserve. Relevant provisions of Chapter 4, along with the new Appendix, have been formatted to reference the Pennsylvania Core Standards included in the new Appendix A-2.

**Comment:** Commentators requested that the Board extend the public comment period on the proposed regulation.

**Response:** The Board invited stakeholder participation in drafting proposed revisions to Chapter 4 through a series of statewide public hearings conducted in the winter of 2012. At that time, the Board also invited individuals who were unable to participate in the hearings to submit written comment to the Board. Based on public input received during that initial comment period, the Board advanced a proposed regulation that was adopted by the Board in May 2012. The proposed revisions to Chapter 4 adopted by the Board then were made publicly available on the Board's web site for more than four months before the Board commenced an official 30-day public comment period. Further, from the time the Board announced that it would conduct public hearings on Chapter 4 through the Board's adoption of an initial final-form regulation in March 2013, there were 14 meetings of the State Board of Education and the Board's Council of Basic Education, all of which included an opportunity for members of the public to comment on regulations currently before the Board.

The Board subsequently withdrew its initial final-form regulation to provide additional time to reconsider concerns expressed by members of the public and the General Assembly. During this time, the Board appeared before the Education Committees of both the House and Senate to discuss the regulation and provided an opportunity for additional public comment before the Board at its public meetings on July 10, 2013 and September 11-12, 2013. Given the multiple opportunities to engage with the Board, in both verbal and written formats and in multiple locations across the Commonwealth, the Board feels that it has provided adequate opportunity for public comment.

**Comment:** One commentator asserted that the Board did not provide adequate public notice of opportunities for stakeholder involvement and that the facility selected for a public meeting of the Board made public access difficult.

**Response:** Public notices of Board meetings and meetings of the Committee on Academic Standards/Chapter 4 were made in accordance with the Sunshine Act. The Board went above and beyond the requirements of the Sunshine Act by posting notice of its meetings on the Department's publicly accessible website, by maintaining a list of stakeholders who expressed interest in matters related to Chapter 4, and by providing electronic notification to those stakeholders of the Board's public meetings and opportunity for comment.

Further, the Board selected the Pittsburgh facility of the Pennsylvania Training and Technical Assistance Network (PaTTAN) to host a public hearing on Chapter 4. PaTTAN is a Department of Education facility affiliated with the Bureau of Special Education. The initiative's Pittsburgh location has in place security procedures necessary to access its parking garage, and such security protocols were relayed to members of the public who expressed interest in attending in advance of the meeting. While members of the public registered to attend the advertised public hearing on Chapter 4 in Pittsburgh as observers, the meeting ultimately was cancelled because no members of the public registered to provide testimony to the Board. Thus, there would be no proceedings to observe.