

**SENATE CONCURRENT
RESOLUTION No. 132**

**STATE OF NEW JERSEY
217th LEGISLATURE**

INTRODUCED NOVEMBER 10, 2016

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

Co-Sponsored by:

Senators Codey, Diegnan, Sacco, Vitale and Greenstein

SYNOPSIS

Determines that State Board of Education regulations to revise assessment required for students to demonstrate graduation proficiency are inconsistent with legislative intent.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/16/2017)

1 **A CONCURRENT RESOLUTION** concerning legislative review of
2 State Board of Education regulations pursuant to Article V,
3 Section IV, paragraph 6 of the Constitution of the State of New
4 Jersey.
5
6 **WHEREAS**, Pursuant to Article V, Section IV, paragraph 6 of the
7 Constitution of the State of New Jersey, the Legislature may review
8 any rule or regulation of an administrative agency to determine if
9 the rule or regulation is consistent with the intent of the Legislature
10 as expressed in the language of the statute that the rule or regulation
11 is intended to implement; and
12 **WHEREAS**, Section 1 of P.L.1979, c.241 (C.18A:7C-1) requires the
13 Commissioner of Education, with the approval of the State Board of
14 Education, to establish a program of standards for graduation from
15 high school, including “a Statewide assessment test in reading,
16 writing and computational skills to be administered to all secondary
17 school pupils,” and section 2 of P.L.1979, c.241 (C.18A:7C-2)
18 requires each school district to “establish standards for graduation
19 from its secondary schools” including “[s]atisfactory performance
20 on the Statewide assessment test”; and
21 **WHEREAS**, In 1988, section 6 of P.L.1979, c.241 (C.18A:7C-6) was
22 amended to provide that the State graduation proficiency test “be
23 administered to all 11th grade pupils and to any 11th or 12th grade
24 pupil who has previously failed to demonstrate mastery of State
25 graduation proficiency standards on said test”; and
26 **WHEREAS**, Beginning in the 1993-1994 school year, the State satisfied
27 the statutory requirement for a graduation proficiency test by
28 administering the High School Proficiency Test, and later its
29 successor the High School Proficiency Assessment (HSPA), to all
30 11th grade students in the fall. Any student who did not
31 demonstrate proficiency was retested in the spring and, if necessary,
32 in the fall and spring of the subsequent school year; and
33 **WHEREAS**, On August 3, 2016, the State Board of Education adopted
34 regulations to revise the rules governing the assessment required for
35 students to demonstrate graduation proficiency; and
36 **WHEREAS**, The newly-adopted State Board of Education regulations
37 are designed to provide for the transition to the Partnership for
38 Assessment of Readiness for College and Careers (PARCC) 10th
39 grade English Language Arts (ELA 10) and Algebra I end-of-
40 course tests as the identified means to demonstrate proficiency for
41 graduation, in place of the HSPA; and
42 **WHEREAS**, N.J.A.C.6A:8-5.1, listing the requirements for a State-
43 endorsed diploma, now includes “[t]he requirement that all students
44 demonstrate proficiency in the high school end-of-course PARCC
45 assessments in ELA 10 and Algebra I, or through the alternative
46 means set forth at [N.J.A.C.6A:8-5.1] (f) through (i).” The
47 alternative means are other PARCC exams, substitute competency

1 tests, and the portfolio appeal, with different alternatives available
 2 to different graduating classes; and
 3 **WHEREAS**, The new Statewide graduation assessment is not an 11th
 4 grade exam as required by statute. The PARCC ELA 10 is
 5 administered in 10th grade and explicitly tied to a 10th grade
 6 course, and the PARCC Algebra I test is also not an 11th grade
 7 exam, as it is administered at the end of the year that a student takes
 8 the Algebra I course, which could be any grade; and
 9 **WHEREAS**, Various sections of State law regarding high school
 10 graduation standards refer to a single, comprehensive graduation
 11 assessment, but the PARCC tests designated as the new graduation
 12 assessment requirement, ELA 10 and Algebra I, are two separate
 13 tests given at the end of the relevant course, with administration of
 14 one PARCC exam having no connection to the administration of
 15 another. These tests do not have to be given in the same grade, let
 16 alone in the same sitting as one comprehensive assessment; and
 17 **WHEREAS**, Section 6 of P.L.1979, c.241 (C.18A:7C-6) requires that
 18 students who previously failed to demonstrate mastery of
 19 graduation proficiency standards on the State graduation
 20 proficiency test be given opportunities to retake that same test in the
 21 11th and 12th grades. The new regulations at N.J.A.C.6A:8-5.1(f)
 22 provide that students who have not demonstrated proficiency on the
 23 ELA 10 and Algebra I assessments must be provided “the
 24 opportunity to demonstrate such competence through one of the
 25 alternative means”; and
 26 **WHEREAS**, For the classes of 2016 through 2020, the alternative
 27 means include substitute competency tests, which are third-party
 28 assessments such as the SAT, PSAT, and ACT, other PARCC
 29 assessments, or the portfolio appeal, with no provision for retesting
 30 using the exams which have been designated through these
 31 regulations as the graduation assessment requirement, the PARCC
 32 ELA 10 and Algebra I tests; and
 33 **WHEREAS**, For the classes of 2021 and thereafter, N.J.A.C.6A:8-5.1(g)
 34 refers to retesting opportunities for the ELA 10 and Algebra I tests,
 35 but it is unclear how this could be implemented, since these
 36 assessments are end-of-course tests designed to be taken as students
 37 are taught the course’s content, and, additionally, in order to
 38 comply with the statute these opportunities would need to be given
 39 in the 11th and 12th grades, which for a senior taking Algebra I, for
 40 example, would not be possible; and
 41 **WHEREAS**, Under section 3 of P.L.1979, c.241 (C.18A:7C-3), “[a]ny
 42 12th grade student who does not meet [the State and district
 43 examination] requirements but who has met all the credit,
 44 curriculum and attendance requirements shall be eligible for a
 45 comprehensive assessment of said proficiencies utilizing techniques
 46 and instruments other than standardized tests.” The Alternative
 47 High School Assessment (AHSA) functioned as this alternative
 48 assessment prior to the new State board regulations; and

1 **WHEREAS**, The Department of Education has described both the
2 substitute competency tests and the portfolio appeal as replacing the
3 AHSA, but the substitute competency tests are standardized tests
4 which are prohibited under the provisions of section 3 of P.L.1979,
5 c.241 (C.18A:7C-3); and

6 **WHEREAS**, The new regulations at N.J.A.C.6A:8-5.1(f)(2) and (g) also
7 provide that for the classes of 2020 and beyond, access to non-
8 PARCC options is only available to students who “take all
9 applicable high school end-of-course PARCC assessments for all
10 courses in which they are enrolled,” thereby conditioning access to
11 the statutorily required option of an alternative pathway on prior
12 participation in PARCC; and

13 **WHEREAS**, Section 3 of P.L.1979, c.241 (C.18A:7C-3) does not make
14 access to the alternative exam conditional on participation in the
15 primary Statewide assessment, and has not previously been
16 interpreted in that manner by the State board. The new regulations
17 not only condition access to the alternative options on the
18 designated primary graduation exams, the PARCC ELA 10 and
19 Algebra I, but also condition access on participation in all PARCC
20 exams for which the student is enrolled in courses; and

21 **WHEREAS**, The regulations adopted by the State Board of Education
22 on August 3, 2016 and published in the New Jersey Register on
23 September 6, 2016 to revise the assessments required for students to
24 demonstrate graduation proficiency are inconsistent with the intent
25 of the Legislature; now, therefore,

26

27 **BE IT RESOLVED** by the Senate of the State of New Jersey (the
28 *General Assembly concurring*):

29

30 1. The Legislature declares that the regulations adopted by the
31 State Board of Education on August 3, 2016 and published in the
32 New Jersey Register on September 6, 2016 to revise the
33 assessments required for students to demonstrate graduation
34 proficiency are not consistent with legislative intent.

35

36 2. Copies of this resolution, as filed with the Secretary of State,
37 shall be transmitted by the Clerk of the General Assembly or the
38 Secretary of the Senate to the Governor, the State Board of
39 Education, and the Commissioner of Education.

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41 3. The State Board of Education, pursuant to Article V, Section
42 IV, paragraph 6 of the Constitution of the State of New Jersey, shall
43 have 30 days following transmittal of this resolution to amend or
44 withdraw the adopted regulations or the Legislature may, by
45 passage of another concurrent resolution, exercise its authority
46 under the Constitution to invalidate the regulations.

1 STATEMENT

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3 This concurrent resolution embodies the finding of the
4 Legislature that the State Board of Education's regulations to revise
5 the assessments required for students to demonstrate graduation
6 proficiency, adopted on August 3, 2016 and published in the New
7 Jersey Register on September 6, 2016, are not consistent with the
8 intent of the Legislature.

9 The State Board of Education will have 30 days from the date of
10 transmittal of this resolution to amend or withdraw the regulations,
11 or the Legislature may, by passage of another concurrent resolution,
12 exercise its authority under the Constitution to invalidate the
13 regulations.