

Notice of Substantial Changes Upon Adoption to Proposed Amendments at N.J.A.C. 6A:8, Standards and Assessments

The following is the accessible version of the notice of substantial changes upon adoption to proposed amendments at N.J.A.C. 6A:8. The notice includes three sections – [take notice statement](#), [summary of agency-initiated changes](#) and [text of the proposed changes](#).

Proposals Section

Education

State Board of Education

Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments

Standards and Assessment

Proposed Changes: N.J.A.C. 6A:8-1.3, 4.1, and 5.1

Proposed: November 5, 2018, at 50 N.J.R. 2189(a); Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments, December 2, 2019, at 51 N.J.R. 1725(a).

Authorized By: New Jersey State Board of Education, Angelica Allen-McMillan, Ed.D., Acting Secretary and Acting Commissioner, Department of Education.

Authority: N.J.S.A. 18A:7A-10 through 14, 18A:7C-1 et seq., 18A:7E-2 through 5, 18A:35-4.2, 18A:35-4.7, and 18A:59-5.

Submit written comments by August 6, 2021, to:

Lisa Gleason, Ed.D., Assistant Commissioner

Division of Academics and Performance

New Jersey Department of Education

100 River View Executive Plaza

PO Box 500

Trenton, New Jersey 08625-0500

Email: chapter8@doe.nj.gov

Take notice that the Department of Education (Department), in November 2018, proposed amendments to N.J.A.C. 6A:8-1.3, 3.1, 4.1, 4.3, 4.5, 5.1, and 5.2, regarding the Statewide assessment system and State high school graduation assessment requirements.

Amendments originally proposed to N.J.A.C. 6A:8 were approved by the State Board of Education at proposal level on October 3, 2018, and published in the New Jersey Register on November 5, 2018, at 50 N.J.R. 2189(a). The Department proposed, at that time, to maintain State assessments in grades three through 10, including the State assessments required to graduate high school (Algebra I and English language arts (ELA) in grade 10). Under the rulemaking, students taking the State ELA 10 and Algebra I assessments who did not achieve a passing score on one or both assessments would have been eligible to access the menu of substitute competency assessments and the portfolio appeals process. The proposed amendments would have ensured that the menu of substitute competency assessments available to the class of 2019 and 2020 remained an option for students in the classes of 2020 through 2025.

On October 21, 2019, the State Board approved for publication in the New Jersey Register the notice of proposed substantial changes, which included a number of changes to the proposed amendments. No part of the original rulemaking was adopted. The October 2019 State Board action approved the Department's revised proposal for amendments to certain rules at N.J.A.C. 6A:8-1.3, 4.1, 5.1, and 5.2 in response to an amended consent order entered into by the Department to resolve a legal challenge to amendments adopted in 2016 related to the rules at N.J.A.C. 6A:8 that govern graduation assessments required by State law (N.J.S.A. 18A:7C-1, 2, 3, 4, 6, and 6.1). The notice of proposed substantial changes, which included a summary of only the comments related to the proposed substantial changes and the agency's responses, was published in the December 2, 2019, New Jersey Register (51 N.J.R. 1725(a)) and the comment period ended January 31, 2020. The notice of proposed substantial changes can be found [online](#).

As a result of the ongoing COVID-19 pandemic, Governor Philip D. Murphy signed Executive Order No. 127 (2020) on April 14, 2020, to extend all rulemaking deadlines until 90

days after the end of the State of Emergency that was originally declared in Executive Order No. 103 and subsequent Executive Orders extending the COVID-19 State of Emergency.

Executive Order No. 117 (2020), signed April 7, 2020, by Governor Murphy, waived the graduation assessment requirement for any 12th grade student who was expected to graduate in the class of 2020, but, as of March 18, 2020, had not yet met the graduation assessment requirement, including the portfolio appeals process. Students in the class of 2020 who had not yet met the assessment requirement as of March 18, 2020, were still required to meet all the other State and local graduation requirements, including, but not limited to, credit, curriculum, and attendance requirements. On January 11, 2021, Governor Murphy signed Executive Order No. 214 (2021), which waived the same provisions for any 12th grade student who is expected to graduate in the class of 2021.

The Department has made a concerted effort to ensure that the public is fully aware of the graduation assessment expectations for the State's current and future public high school students. To provide greater clarity regarding the proposed graduation assessment requirements for the classes of 2023, 2024, and 2025, the Department has decided to provide time for public input on additional changes upon adoption. The attached document contains new clarifying amendments to five rules (see Agency-Initiated Changes below).

The Department received comments from the public on both the original notice of proposal and the subsequent notice of proposed substantial changes. The new clarifying changes upon adoption are all agency-initiated changes and not the result of comments on the original notice of proposal or the notice of proposed substantial changes. All comments received on the original notice proposal, the notice of proposed substantial changes, and the new changes upon adoption will be addressed in the adoption materials presented to the State Board of Education at a later date.

Summary of Agency-Initiated Changes:

1. In the 2019 notice of substantial changes upon adoption, the Department proposed, at N.J.A.C. 6A:8-1.3, a definition for “State graduation proficiency test” to mean State assessment that is aligned, at a minimum, to the New Jersey Student Learning Standards (NJSLS) for English language arts (ELA) 10, Algebra I, and Geometry and administered pursuant to N.J.S.A. 18A:7C-1, 2, 3, 4, 6, and 6.1. The proposed definition also stated: “For students eligible to utilize the alternative means in accordance with N.J.A.C. 6A:8-5.1(g)1 to meet the graduation assessment requirement, the State graduation proficiency test shall also include the substitute competency test, which is an alternative set of third-party assessments approved by the Commissioner, including, but not limited to, the SAT, PSAT, ACT, ACT-Aspire, Armed Services Vocational Aptitude Battery-Armed Forces Qualifying Test (ASVAB-AFQT), or Accuplacer.” As previously stated, the Department is no longer proposing to establish State assessments in ELA 10 and Algebra I as the high school graduation requirements due to the Appellate Division’s decision. Beginning in the 2021-2022 school year, the Department intends to administer the State graduation proficiency test in grade 11 as required by State law. The State graduation proficiency test will include an ELA component aligned to NJSLS for ELA 10 and a mathematics component aligned to NJSLS for Algebra I and Geometry.

The Department now proposes to amend the proposed definition of “State graduation proficiency test” to replace “including, but not limited to” with “that may include, but are not limited to” for clarity.

2. As part of the original 2018 proposal, the Department proposed new N.J.A.C. 6A:8-4.1(d)3iii to require the Department to implement an approved English language

proficiency assessment to measure the progress in English language proficiency of English language learners (ELLs) who have been determined eligible by the individualized education program (IEP) team for an alternative Department-approved English language proficiency assessment for students with disabilities. The Department now proposes to amend the proposed regulation to add “with an IEP” after “of ELLs.” The proposed amendment will clarify the proposed rule relates to ELLs with an IEP and not all ELLs.

3. Existing N.J.A.C. 6A:8-4.1(d)4 requires district boards of education to implement alternative ways for students to demonstrate graduation proficiency in accordance with N.J.A.C. 6A:8-5.1(f). In the 2019 notice of substantial changes upon adoption, the Department proposed to amend the regulation by adding cross-references to N.J.A.C. 6A:8-5.1(g), (h), or (i), as applicable. The Department now proposes to amend the regulation by adding a cross-reference to N.J.A.C. 6A:8-5.1(a)6, which was omitted in the first notice of proposed substantial changes due to a typographical error. Adding the cross-reference upon adoption will reinforce the options provided at N.J.A.C. 6A:8-5.1(a)6.
4. Existing N.J.A.C. 6A:8-5.1(a)6 requires district board of education graduation policies to include the requirement that all students demonstrate proficiency in the PARCC ELA 10 and Algebra I assessments, or through the alternative means set forth at N.J.A.C. 6A:8-5.1(f) through (i). In the original 2018 proposal, the Department proposed to delete the reference to “the high school end-of-course PARCC.” The Department also proposed to amend the regulation to require students to demonstrate proficiency in “assessments in ELA 10 and Algebra I, such as State ELA 10 and State Algebra I” or through the

alternative means set forth at N.J.A.C. 6A:8-5.1(f) through (h).

In the 2019 notice of substantial changes upon adoption, the Department proposed to further amend N.J.A.C. 6A:8-5.1(a)6 to replace the proposed language of “[a]chieving a passing score on assessments in ELA 10 and Algebra I, such as State ELA 10 and State Algebra I; or [t]hrough the alternate means set forth at (f) through (h) below” with “achieving a passing score on the ELA and mathematics components of the State graduation proficiency test or through the alternative means at (g)2 or (h) below, as applicable. Students who take the State graduation proficiency test but do not achieve a passing score may also demonstrate proficiency through the alternative means set forth at (g)1 and (i) below.”

The Department now proposes to amend N.J.A.C. 6A:8-5.1(a)6 to delete “(g)2 or” and to replace “as applicable. Students” with “if applicable or, for students.” The Department also now proposes to replace “(g)1” with “(g).” The new proposed amendments upon adoption will clarify that students must take the State graduation proficiency test before accessing the corresponding substitute competency test and/or the portfolio appeals process. The proposed amendment will align N.J.A.C. 6A:8-5.1(a)6 with existing N.J.A.C. 6A:8-4.1(d), which states: “Pursuant to (b) and (c) above, all students at grade levels three through 12, and at any other grade(s) designated by the Commissioner pursuant to (a) above, shall take all appropriate Statewide assessments as scheduled.”

There has been confusion regarding the sitting requirement because an amended consent order approved by the Appellate Division applied the graduation assessment requirements for the classes of 2017 through 2019 to the classes of 2020 through 2022.

Therefore, current seniors and juniors have three avenues to meet the graduation assessment requirement. For these classes, there is no requirement that a student take a particular assessment prior to participating through the portfolio appeals process. However, the classes of 2023, 2024, and 2025 will have a new graduation assessment that will be a comprehensive assessment – rather than an end-of-course assessment – and will include geometry standards, making it more rigorous than the current graduation assessment standard of Algebra I. Under the Department’s revised rulemaking, the classes of 2023, 2024, and 2025 will also be able to utilize a non-standardized, portfolio appeals option, or a menu of substitute competency tests. However, students will be required to take the State graduation proficiency test before accessing the substitute competency tests or portfolio appeals process.

5. Existing N.J.A.C. 6A:8-5.1(c) allows district boards of education to specify, through the IEP process, alternate requirements for a State-endorsed diploma for individual students with disabilities. The Department now proposes to add “set forth at N.J.A.C. 6A:14-3.7” after “IEP process” to cross-reference the section at N.J.A.C. 6A:14, Special Education, that governs the IEP process.

Full text of the proposed substantial changes to the proposed amendments follows (additions to proposal indicated in italicized boldface ***thus***; deletions from proposal indicated in italicized cursive brackets *{thus}*; original additions indicated in boldface **thus**; original deletions indicated in brackets [thus]):

Subchapter 1. General Provisions

6A:8-1.3 Definitions

The following words and terms shall have the following meanings when used in this chapter unless the context clearly indicates otherwise.

...

“State graduation proficiency test” means a State assessment that is aligned, at a minimum, to the New Jersey Student Learning Standards (NJSLS) for ELA 10, Algebra I, and Geometry, and administered pursuant to N.J.S.A. 18A:7C-1, 2, 3, 4, 6, and 6.1. For students eligible to utilize the alternative means in accordance with N.J.A.C. 6A:8-5.1(g)1 to meet the graduation assessment requirement, the State graduation proficiency test shall also include the substitute competency test, which is an alternative set of third-party assessments approved by the Commissioner that may include, but are not limited to, the SAT, PSAT, ACT, ACT-Aspire, Armed Services Vocational Aptitude Battery-Armed Forces Qualifying Test (ASVAB-AFQT), or Accuplacer.

...

Subchapter 4. Implementation of The Statewide Assessment System

6A:8-4.1 Statewide assessment system

- (a) – (c) (No change from proposal.)
- (d) Pursuant to (b) and (c) above, all students at grade levels three through 12, and at any other grade(s) designated by the Commissioner pursuant to (a) above, shall take all appropriate Statewide assessments as scheduled.
 - 1. – 2. (No change from proposal.)
 - 3. At specific times prescribed by the Commissioner, district boards of education shall administer the alternative **State** assessment for students with disabilities to

students with severe disabilities who cannot participate in other assessments due to the severity of their disabilities.

i. – ii. (No change from proposal.)

iii. The Department shall also implement an approved English language proficiency assessment to measure the progress in English language proficiency of ELLs with an IEP who have been determined eligible by the IEP team for an alternative Department-approved English language proficiency assessment for students with disabilities.

4. District boards of education shall implement alternative ways for students to demonstrate graduation proficiency in accordance with N.J.A.C. 6A:8-5.1(a)6, (f), (g), (h), or (i), *as applicable*.

(e) (No change.)

Subchapter 5. Implementation of Graduation Requirements

6A:8-5.1 Graduation requirements

(a) For a State-endorsed diploma, district boards of education shall develop, adopt, and implement local graduation requirements that prepare students for success in post-secondary degree programs, careers, and civic life in the 21st century, and that include the following:

1. – 5. (No change.)

6. The requirement that all students demonstrate proficiency [in the high school end-of-course PARCC] **by{:}**

{i. Achieving} *achieving* a passing score on {assessments in} *the* ELA {10}

and {Algebra I, such as State ELA 10 and State Algebra I;}
mathematics components of the State graduation proficiency test or

[through]

{ii. Through} *through the alternative means at {(g)2 or} (h) below, if applicable or, for students who take the State graduation proficiency test but do not achieve a passing score through* the alternative means set forth at {(f) through} [(i)] **(g) and (i)** below;

i. (No change from proposal.)

7. – 8. (No change from proposal.)

(b) (No change.)

(c) Through the IEP process **set forth at N.J.A.C. 6A:14-3.7** and pursuant to N.J.A.C. 6A:14-4.11, district boards of education may specify alternate requirements for a State-endorsed diploma for individual students with disabilities as defined in N.J.A.C. 6A:14-1.3.

1. – 2. (No change.)

(d) – (e) (No change.)

(f) – (j) (No change from proposal as modified by 2019 notice of substantial changes upon adoption.)