

Notice of Substantial Changes for N.J.A.C. 6A:8-1.3, 4.1, 5.1, and 5.2

The following is the accessible version of the notice of substantial changes to N.J.A.C. 6A:8-1.3, 4.1, 5.1, and 5.2 to propose a number of changes to the amendments in response to an amended consent order entered by the Department as part of a legal challenge to the 2016 amendments to the regulations at N.J.A.C. 6A:8 that govern graduation assessments. The proposal level document includes four sections: [memo from Commissioner Repollet](#), [administrative code comment response form memo](#), [summary of comments and agency responses](#), and [summary of agency-initiated changes](#).



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State of New Jersey
DEPARTMENT OF EDUCATION
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Proposal Level
October 21, 2019

LAMONT O. REPOLLET, ED.D.
Commissioner

To: Members, State Board of Education

From: Lamont O. Repollet, Ed.D.
Commissioner

Subject: N.J.A.C. 6A:8-1.3, 4.1, 5.1, and 5.2

Reason
For Action: Notice of Proposed Substantial Changes

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

Sunset Date: May 3, 2025

In November 2018, the Department of Education (Department) proposed amendments to N.J.A.C. 6A:8 regarding the Statewide assessment system and State high school graduation assessment requirements (see 50 N.J.R. 2189(a)). The proposed amendments reflected the Department's transition to the next generation of State assessments. As a part of this transition, the Department proposed to simplify graduation requirements and to clarify assessment requirements for English language learners (ELLs) and students with disabilities.

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.

The rulemaking was 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 public comment period closed January 4, 2019.

Via a notice of proposed substantial changes, the Department now is proposing a number of changes to the proposed amendments without adopting any part of the original rulemaking at this time. The Department is proposing amendments to certain rules in 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 as part of a legal challenge to amendments adopted in 2016 related to the regulations 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). A summary of only the comments related to the proposed substantial changes and the agency's

responses are provided in the attached comment-response form, which will serve as the notice.

If approved by the State Board for publication in the N.J. Register, only the new amendments being proposed in this notice will be subject to public comment for 60 days.

After the 60-day comment period is over, the Department plans to present to the State Board the combined amendments from the original proposal and the notice of substantial changes. The adoption also will include comments received regarding the notice of proposed substantive changes and the Department's responses, along with all comments received during the 60-day comment period on the initial proposal (50 N.J.R. 2189(a)), including comments not captured in the attached notice.

**State Board of Education
Administrative Code
Comment/Response Form**

Topic: Standards and Assessment **Meeting Date:** October 21, 2019

Code Citation: N.J.A.C. 6A:8 **Level:** Proposal of Notice of Proposed Substantial Changes

Division: Academics and Performance **Completed by:** Division of Academics and Performance

In November 2018, the Department of Education (Department) proposed amendments to the rules at N.J.A.C. 6A:8 regarding the Statewide assessment system and State high school graduation assessment requirements. The proposed amendments reflected the Department’s transition to the next generation of State assessments. As a part of this transition, the Department proposed to simplify graduation requirements and to clarify assessment requirements for English language learner (ELL) students and students with disabilities.

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.

The rulemaking was 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 public comment period closed January 4, 2019.

The Department now is proposing substantial changes to the proposed amendments without adopting any part of the original rulemaking at this time. The Department is proposing amendments to certain rules in 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 as part of a legal challenge to amendments adopted in 2016 related to the regulations at N.J.A.C. 6A:8 that govern graduation assessments required by State law (N.J.SA. 18A:7C-1, 2, 3, 4, 6, and 6.1).

The New Jersey Superior Court Appellate Division’s decision on December 31, 2018, invalidated existing N.J.A.C. 6A:8-5.1(a)6, (f), and (g). However, the State graduation assessment requirements for students in the classes of 2019 through 2022 (that is, students who graduated last school year and current seniors, juniors, and sophomores) have been solidified by an amended consent order approved by the Appellate Division. Under the amended consent order, the pathways and standards for graduation applicable to the graduating class of 2019 set forth in N.J.A.C. 6A:8-5.1(a)6, (f), and (f)1 as of December 31, 2018, apply to the graduating classes of 2019 through 2022.

The following chart indicates the graduation test requirements for students in the classes of 2019 through 2022, as agreed to in the amended consent order:

	9th Grade	10th Grade	11th Grade	12th Grade
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Class of 2019 (June 2019 graduates)	Algebra I* (taken as an end-of-course assessment in any middle or high school grade)	ELA 10*		
Class of 2020 (current 12 th graders)	Algebra I* (taken as an end-of-course assessment in any middle or high school grade)	ELA 10*		
Class of 2021 (current 11 th graders)	Algebra I* (taken as an end-of-course assessment in any middle or high school grade)	ELA 10*		
Class of 2022 (current 10 th graders)	Algebra I* (taken as an end-of-course assessment in any middle or high school grade)	ELA 10*		

End of table

*State assessments in ELA and mathematics administered from 2015 through 2018 were PARCC assessments. State assessments administered in spring 2019 to the present are called the New Jersey Student Learning Assessment (NJSLA).

Since N.J.A.C. 6A:8-5.1(a)6, (f), and (f)1 are invalid for students beyond the class of 2022, the Department is proposing substantial changes to the amendments to establish graduation pathways for the classes of 2023, 2024, and 2025 that comply with State law. The Department proposes to administer to students in grade 11 – starting in the 2021-2022 school year – a State graduation proficiency test 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 State law. The Department proposes to maintain the menu of substitute competency assessments for students in the classes of 2023, 2024, and 2025 who take but do not achieve a passing score on the State graduation proficiency test. As before, the portfolio appeals process also will be available to students. The Department also will maintain the State assessments in grades three through nine.

The substantial changes proposed to the amendments contained in the current rulemaking are included below as agency-initiated changes. A summary of the comments about only the rules proposed for amendment as part of the notice of substantial changes and the agency’s responses are provided below.

Summary of Comments and Agency Responses

The following is a summary of the comments received from the public and the Department’s responses. Each commenter is identified at the end of the comment by a number that corresponds to the following list:

1. John Burns, Counsel
New Jersey School Boards Association
2. Stan Karp, Director of Secondary Reform Project, and Jessica Levin, Senior Attorney,
Education Law Center and Jeanne LoCicero, Legal Director, American Civil Liberties
Union of New Jersey

3. Marie Blistan, President, Sean Spiller, Vice President, and Steve Beatty, Secretary Treasurer New Jersey Education Association

1. **Comment:** The commenter expressed concern about the impact of the New Jersey Superior Court Appellate Division’s decision on December 31, 2018, that invalidated existing N.J.A.C. 6A:8-5.1(a)6, (f), and (g). The commenter asked how the court’s decision will affect the current proposal. **(1)**

Response: Please see the Agency-initiated Changes below for the Department’s amendments related to the consent order. The Department’s new proposal will align the high school graduation assessment rules to the New Jersey Superior Court Appellate Division ruling on December 31, 2018, and the resulting amended consent order. The new proposed amendments reflect the Department’s transition plan for high school assessments. The Department will continue to consult with the State Board of Education (State Board), legislators, stakeholders, parents, and students to develop and smoothly implement the next generation of the State assessment system.

The Department will use the grade nine and 10 State assessments in ELA and mathematics for State and Federal accountability purposes during the 2019-2020 school year. The Department will use the grade nine State assessments in ELA and mathematics for State and Federal accountability during the 2020-2021 school year. For clarity, Quality Single Accountability Continuum, or QSAC, is the State’s accountability system and Federal accountability is governed by the Every Student Succeeds Act, or ESSA.

2. **Comment:** The commenter, who was a party that agreed to the consent order, made the following comments prior to the consent order’s development: The commenter stated the proposed amendments to the rules governing high school graduation testing requirements, if adopted, would violate the Appellate Division’s ruling and, therefore, the State Board must withdraw the proposal. The commenter also stated the proposed amendments contain the same legal deficiencies as the graduation regulations invalidated in the court’s decision because the rules as proposed for amendment continue to contradict the State statute they purport to implement by designating assessments in ELA 10 and Algebra I as the primary graduation exams rather than an assessment administered to all 11th grade students. The commenter further stated the proposed amendments would continue to the use of substitute competency tests through the class of 2025 even though the Department previously claimed the tests would be used on a temporary basis and the fee-based tests violate the requirement of a free public education and the Law Against Discrimination. **(2)**

Response: Please see the Agency-initiated Changes below for the Department’s amendments related to the consent order. The newly proposed amendments reflect the Department’s transition plan for high school assessments. The Department will continue to consult with the State Board, legislators, stakeholders, parents, and students to develop and smoothly implement the next generation of the State assessment system.

3. **Comment:** The commenter requested clarification regarding the proposed amendment at N.J.A.C. 6A:8-5.1(f) that would require district boards of education to provide students who have not demonstrated proficiency on the ELA 10 and Algebra I assessments with remediation and the opportunity to retake the applicable assessment if the student so chooses and with the opportunity to demonstrate such competence through one of the alternative means. The commenter asked if the Department intended to use “or” instead of “and” before “with the opportunity to demonstrate such competence through one of the

alternative means.” The commenter stated alternative means become unnecessary if a student is able to demonstrate proficiency when an assessment is retaken. The commenter also asked how many opportunities students will be given to demonstrate proficiency. (1)

Response: To implement the consent order, the Department is not adopting the referenced amendment at N.J.A.C. 6A:8-5.1(f). The Department is proposing new N.J.A.C. 6A:8-5.1(a)7 regarding the opportunity for students who have not demonstrated proficiency on or both components of the State graduation proficiency test to access remediation and additional opportunities to demonstrate proficiency through a retake. Please see Agency-initiated Change 10 for details.

- 4. Comment:** The commenter expressed concern for the proposed amendment at N.J.A.C. 6A:8-5.1(f) that would require a student who has not demonstrated proficiency on the ELA 10 and Algebra I assessments to be remediated and offered the opportunity to retake the assessments. The commenter stated that school districts could interpret the proposed amendment to mean that every student who fails a section of the PARCC assessment needs to take a one-size-fits-all remedial course, rather than tailoring remediation to a student’s individual needs. The commenter also stated that students could be denied other educational opportunities in lieu of the remedial course.

The commenter further requested that the Department provide guidance about how to support students in need of remediation and the various options beyond required courses to be taken during the school year if the regulations, as proposed for amendment, remain in effect. (3)

Response: The Department agrees that support for students who have not yet demonstrated proficiency on the graduation assessment requirements is most effective when tailored to the student’s needs. Since 2017, the Department has explained that such support does not have to be delivered through a “remedial course” (see for example, a Department memo from [August 8, 2017](#), providing multiple options for types of remediation support). The Department is providing educators with tools to improve data-driven decision making and aligned instruction. The Department also plans to develop guidance to help educators support students who do not demonstrate proficiency on grade nine State assessments or the State graduation proficiency test.

Summary of Agency-initiated Changes:

1. The Department proposes at N.J.A.C. 6A:8-1.3 to further amend the definition of “portfolio appeals process” to add “pursuant to N.J.S.A. 18A:7C-3,” after “established by the Commissioner” to reference the State law that requires a comprehensive assessment utilizing techniques and instruments other than standardized tests for 12th grade students who have met all credit, curriculum, and attendance requirements for graduation but have not met State and school district examination standards for graduation. The Department also proposes to replace the proposed reference to “State ELA 10 and Algebra I assessments” with “State graduation proficiency test.” The latter term will be defined (see Agency-initiated Change 2) and will replace all references to “State ELA 10 and Algebra I assessments,” which was the previously proposed graduation assessment requirement.

“Portfolio appeals process” means an alternative assessment of proficiency for graduation established by the Commissioner, **pursuant to N.J.S.A. 18A:7C-3**, utilizing techniques and instruments other than PARCC **English language arts (ELA) 10 or Algebra I**

assessments, the State [[ELA 10 and Algebra I assessments]] **graduation proficiency test**, or substitute competency tests.

2. The Department proposes 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 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 will state: “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.”

Due to the New Jersey Superior Court Appellate Division’s decision, the Department is no longer proposing to establish State assessments in ELA 10 and Algebra I as the high school graduation requirements. Beginning in the 2021-2022 school year, the Department intends to administer the ELA and mathematics components of the State graduation proficiency test in grade 11 as required by State law. Students in the graduating classes of 2019 through 2022 will be held to the graduation assessment requirements in effect for the class of 2019 (see Agency-initiated Change 12 below).

“State graduation proficiency test” means 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, including, but not limited to, the SAT, PSAT, ACT, ACT-Aspire, Armed Services Vocational Aptitude Battery-Armed Forces Qualifying Test (ASVAB-AFQT), or Accuplacer.

3. The Department proposes at N.J.A.C. 6A:8-1.3 to further amend the definition of “substitute competency test” to add “, for students in the classes of 2018 through 2022,” after “means” and to replace the proposed reference to “State ELA 10 or Algebra I assessments” with “ELA or mathematics components of the State graduation proficiency test.”

“Substitute competency test” means, **for students in the classes of 2018 through 2022,**

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, that can be used to demonstrate competency in the NJSLs for students who have not demonstrated proficiency on PARCC **ELA 10 or Algebra I assessments or the ELA or mathematics components of the State** [[ELA 10 or Algebra I assessments]] **graduation proficiency test.**

4. The Department proposes to further amend N.J.A.C. 6A:8-4.1(c)3, which establishes the high school component of the Statewide assessment system, to state the high school component will consist of “, at a minimum, English language arts, mathematics, and science” as in the existing rule rather than the previously proposed references to ELA and mathematics assessments in grade nine and 10 and one assessment in science. The Department also proposes to add “, in accordance with State and Federal law” after “science.”

The revised proposal reflects the Department’s transition plan for high school assessments. Students in the classes of 2020 through 2025 will be administered State assessments as follows*:

	9th Grade	10th Grade	11th Grade	12th Grade
Class of 2020 (current 12 th graders)	State assessment for ELA and mathematics	State assessment for ELA and mathematics		
Class of 2021 (current 11 th graders)	State assessment for ELA and mathematics	State assessment for ELA and mathematics		
Class of 2022 (current 10 th graders)	State assessment for ELA and mathematics	State assessment for ELA and mathematics		
Class of 2023 (current 9 th graders)	State assessment for ELA and mathematics		State graduation proficiency test	
Class of 2024 (current 8 th graders)	State assessment for ELA and mathematics		State graduation proficiency test	
Class of 2025 (current 7 th graders)	State assessment for ELA and		State graduation proficiency test	

	mathematics			
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End of table.

* This chart provides only the ELA and mathematics high school assessment schedule and does not include other assessments such as science, substitute competency tests, portfolio appeals process, or the alternative assessment for students with disabilities.

The Department’s transition plan for high school assessments will allow all students in the classes of 2020 through 2025 to continue to avail themselves of the alternative assessments or portfolio appeals process to demonstrate graduation proficiency. The Department’s transition plan proposes that all students in the classes of 2020 through 2025 be administered two Statewide assessments in ELA and mathematics during their high school careers. This will ensure compliance with State and Federal law, ensure sufficient data to help educators and parents determine whether students are at grade level, and provide stakeholders with data to determine whether instruction is aligned to the New Jersey Student Learning Standards (NJSLS). New Jersey will continue to use the State assessment system as a tool to identify the schools and student subgroups that need the most support from the Department. The transition plan also includes administering the New Jersey Student Learning Assessment-Science (NJSLA-S) to all students in their junior year to comply with Federal law; the NJSLA-S is not a high school graduation requirement.

As the transition plan for high school assessments is being executed, the Department will continue to consult with the State Board, legislators, stakeholders, parents, and students to develop and smoothly implement the next generation of the State assessment system.

3. The Department shall implement a high school [[assessment]] [program] component of the **Statewide assessment of the NJSLS** [that assesses, at a minimum,] **consisting of[:)], at a minimum,**
 - [[i.]] English language arts[, mathematics,] **[[in grades nine and 10;]],** **mathematics, and science, in accordance with State and Federal law.**
 - [[ii.]] **Mathematics in grades nine and 10;** and
 - iii. **One assessment in science.**]] [with the exception of the following:
 - i. Students may receive a waiver from the district board of education from taking the high school end-of-course PARCC assessment in ELA 11 due to the student’s participation in another English language/literature college placement assessment during the same school year.]

5. The Department proposes to delete proposed N.J.A.C. 6A:8-4.1(d)1ii(1), which would have exempted first-year ELLs who substitute a Department-approved English language proficiency test for the State ELA 10 assessment from taking the State ELA 10

assessment, because the “State ELA 10 assessment” will not be administered after the current school year. N.J.A.C. 6A:8-4.1(d)1ii, as previously proposed with amendments, will enable district boards of education to substitute a Department-approved language proficiency test for the ELA component of the Statewide assessment at the elementary, middle, or high school levels for first-year ELLs who entered the United States after June 1 of the calendar year prior to the test administration.

[[(1) First-year ELLs who substitute a Department-approved English language proficiency test for the State ELA 10 assessment in accordance with (d)1ii above are not required to take the State ELA 10 assessment.]]

6. The Department proposes to amend N.J.A.C. 6A:8-4.1(d)4, which 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), by adding cross-references to N.J.A.C. 6A:8-5.1(a)6, (g), (h), and (i).

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.

7. The Department proposes to further amend N.J.A.C. 6A:8-5.1(a)6, which states district boards of education graduation requirements for a State-endorsed diploma must include the requirement that all students demonstrate proficiency in ELA 10 and Algebra I assessments or through the alternate means at existing N.J.A.C. 6A:8-5.1(f) through (i), 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 also proposes N.J.A.C. 6A:8-5.1(a)6i to stipulate that all students in the graduating classes of 2019 through 2022 will be required to demonstrate proficiency by achieving a passing score on the high school end-of course PARCC assessments or New Jersey Student Learning Assessment (NJSLA) in ELA 10 and Algebra I, as applicable, or through the alternative means set forth at N.J.A.C. 6A:8-5.1(f), (h), and (i).

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, 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 [[(f)] (g)1 [[through]] [(i)]

[[(h)] and (i) below;

i. Students in the graduating classes of 2019 through 2022 shall be

required to demonstrate proficiency by achieving a passing score on

the high school end-of course PARCC assessments in ELA 10 and

Algebra I or through the alternative means set forth at (f), (h), and (i)

below.

8. The Department proposes new N.J.A.C. 6A:8-5.1(a)7 to require district boards of education to include in local graduation policies the opportunity for students who have not demonstrated proficiency on the ELA and/or mathematics components of the State graduation proficiency test to access remediation, pursuant to N.J.S.A. 18A:7C-3, and one or more additional opportunities to demonstrate proficiency on the State graduation proficiency test, pursuant to N.J.S.A. 18A:7C-6. The proposed provision will ensure that district boards of education make available remediation and at least one additional opportunity to retake the State graduation proficiency test to students who choose to take advantage of it.

7. For students who have not demonstrated proficiency on the ELA and/or

mathematics components of the State graduation proficiency test, the

opportunity for the following:

i. Remediation, pursuant to N.J.S.A. 18A:7C-3; and

ii. One or more additional opportunities to demonstrate proficiency on

the State graduation proficiency test, pursuant to N.J.S.A. 18A:7C-6.

9. The Department proposes to recodify existing N.J.A.C. 6A:8-5.1(a)7 as new N.J.A.C. 6A:8-5.1(a)8. The Department also proposes to further amend the rule, which establishes

State assessment graduation requirements for students in an adult high school, to replace the reference to “assessments in ELA 10 and Algebra I, such as State ELA and State Algebra I” with “the ELA and mathematics components of the State graduation proficiency test.” The Department also proposes to maintain the cross reference to N.J.A.C. 6A:8-5.1(i).

[[7.]] **8.** Students graduating from an adult high school shall demonstrate proficiency in [the high school end-of-course PARCC] [[assessments in]] **the ELA [[10]] and [[Algebra I, such as State ELA and State Algebra I]] mathematics components of the State graduation proficiency test**, or through the alternative means set forth at (f) through [(i)] **[(h)] (i)** below.

10. The Department proposes to delete all amendments previously proposed at N.J.A.C. 6A:8-5.1(f), which established alternative ways for students to demonstrate proficiency. The Department also proposes at N.J.A.C. 6A:8-5.1(f) to add “in the graduating classes of 2018 through 2022” after “students.” The additional amendments will continue the rule in effect on December 31, 2018, and clarify the classes to whom the rule will apply. Under the amended consent order entered into by the Department, the pathways and standards for graduation applicable to the graduating class of 2019 set forth in N.J.A.C. 6A:8-5.1(a)6, (f), and (f)1 as of December 31, 2018, apply to the graduating classes of 2019 through 2022.

The Department proposes to delete nearly all amendments previously proposed at N.J.A.C. 6A:8-5.1(f)1 and (f)1i and ii to continue the rule in effect on December 31, 2018. The Department proposes at N.J.A.C. 6A:8-5.1(f)1 to maintain the deletion of references to the graduating classes of 2016 and 2017 and to add a reference to classes of 2020 through 2022 to clarify the classes to whom the rule will apply as agreed to under the consent order. The Department also proposes to keep the previous amendment to replace “English language arts and mathematics” with “English language arts and/or mathematics” because students could have passed an end-of-course PARCC assessment or NJSLA in one subject and would need to utilize a substitute competency test or the portfolio appeals process for only either the ELA or mathematics.

- (f) [To ensure adequate transition to the new Statewide assessment system, district] **[[District]] To ensure adequate transition to the new Statewide assessment system, district** boards of education shall provide students **in the graduating classes of 2018 through 2022** who have not demonstrated proficiency on the [high school end-of-course PARCC assessments in] **high school end-of-course PARCC assessments in** ELA 10 and Algebra I **[[assessments with remediation and the opportunity to retake the applicable assessment if the student so**

chooses and]] with the opportunity to demonstrate such competence through one of the alternative means set forth below:

1. For the graduating classes of [2016, 2017,] 2018[,] [[and 2019,]] **through 2022,** students who did not take both the ELA 10 and the Algebra I end-of-course PARCC assessment or who [take,] [[took]] **take** but [do] [[did]] **do** not achieve a passing score on [[one or]] both assessments, as required by [(a)6i]] **(a)6** above, may satisfy the State requirement to demonstrate proficiency in English language arts [and] **and/or** mathematics[[, as **applicable,**]] in one of the following ways:

- i. Achieve a passing score, as determined by the Commissioner, on a corresponding substitute competency test in English language arts and/or mathematics, as applicable[, or substitute a passing score on another end-of-course PARCC assessment, including ELA 9, ELA 11, Geometry, or Algebra II], **or substitute a passing score on another end-of-course PARCC assessment, including ELA 9, ELA 11, Geometry, or Algebra II;** or
- ii. Meet the criteria of the portfolio appeals process[[:]] [and].

11. The Department proposes to delete N.J.A.C. 6A:8-5.1(f)2 and proposed N.J.A.C. 6A:8-5.1(f)3 to align the rules with the terms of the consent order.

[[2. For the graduating [class] **classes** of 2020 **through 2025,** **all** students who **have completed coursework in Algebra I and/or ELA grade 10 aligned to the NJSLS in a New Jersey public school shall** take [all applicable high school end-of-course PARCC assessments for all courses in which they are enrolled, including those students who received a waiver for ELA 11 pursuant to N.J.A.C. 6A:8-4.1(c)3i, as of September 6, 2016, and thereafter, but] **the requisite assessments in ELA 10 and Algebra I in**

furtherance of meeting the requirements of (a)6i above. Beginning in 11th grade, students who [do not achieve] have not yet achieved a passing score on one or both of the [ELA 10 and Algebra I end-of-course PARCC] requisite assessments pursuant to (a)6i above after remediation and being offered multiple opportunities to take the assessments, may satisfy the State requirement to demonstrate proficiency in English language arts and/or mathematics in one of the following ways:

- i. Achieve a passing score, as determined by the Commissioner **in consultation with the State Board of Education**, on a corresponding substitute competency test in English language arts and/or mathematics, as applicable[, or substitute a passing score on another end-of-course PARCC assessment, including ELA 9, ELA 11, Geometry, or Algebra II]; or
- ii. Meet the criteria of the portfolio appeals process[.]; **and**

3. For the graduating classes of 2019 through 2025, students who completed the required coursework at a school that did not offer assessments allowing the student the opportunity to satisfy (a)6i above shall satisfy the State requirement to demonstrate proficiency in ELA and/or mathematics in one of the following ways:

- i. **Take and achieve a passing score on the State ELA 10 and Algebra I; or**
- ii. **Achieve a passing score, as determined by the Commissioner in consultation with the State Board of Education, on a corresponding substitute competency test, as determined by the Commissioner, in ELA and/or mathematics, as applicable;**
or

iii. Meet the criteria of the portfolio appeals process.]]

12. The Department proposes to maintain the deletion of existing N.J.A.C. 6A:8-5.1(g), which was invalidated by the New Jersey Superior Court Appellate Division, and to propose new N.J.A.C. 6A:8-5.1(g) to establish alternative methods of demonstrating proficiency for students in the classes of 2023, 2024, and 2025. To ensure consistency with N.J.S.A. 18A:7C-1, the Department also proposes to require State Board approval of the level of proficiency on each substitute competency test referenced in the definition of “State graduation proficiency test.” The revised proposal reflects the Department’s transition for high school assessments. The Department will continue to consult with the State Board, legislators, stakeholders, parents, and students to develop the next generation of the State assessment system.

The Department also proposes to amend N.J.A.C. 6A:8-5.1(i), which states, as originally proposed for amendment, that students with disabilities who participate in the alternative assessment for students with disabilities are not required to participate in repeated administrations of high school assessment components required in N.J.A.C. 6A:8-4.1(c). The Department proposes to amend the rule to state “[s]tudents, including students with disabilities as defined in N.J.A.C. 6A:14-1.3 or eligible under Section 504 of the Rehabilitation Act who participate in the alternative assessment for students with disabilities, are not required to participate in repeated administrations of high school assessment components required in N.J.A.C. 6A:8-4.1(c). The newly proposed amendments will clarify that no student, including students with disabilities, are required to repeat the high school components of the Statewide assessments.

(g) For students in the classes of 2023, 2024, and 2025, the alternative means referenced in (a)6 above shall be as follows:

- 1. Achieve a passing score, as determined by the Commissioner and approved by the State Board of Education, on a corresponding substitute competency test in English language arts and/or mathematics, as applicable; and/or**
- 2. Demonstrate proficiency through the portfolio appeals process, pursuant to N.J.S.A. 18A:7C-3.**

[(h)] [(g)] **(h)** All ELLs shall satisfy the requirements for high school graduation, except ELLs may demonstrate they have attained State minimum levels of proficiency through passage of the portfolio appeals process in their native language, when available, and passage of a [Department approved] **Department-approved**, English fluency assessment.

[(i)] [(h)] (i) Students, including students with disabilities as defined in N.J.A.C.

6A:14-1.3 or eligible under Section 504 of the Rehabilitation Act who participate in the alternative assessment for students with disabilities, are not required to participate in repeated administrations of high school [end-of-course PARCC] assessment[s] components required in N.J.A.C. 6A:8-4.1(c).

13. The Department proposes new N.J.A.C. 6A:8-5.1(j) to state, for students in the classes of 2019 through 2022, the Department shall consider high school end-of-course State assessments to be equivalent to the corresponding high school end-of-course PARCC assessments. The proposed rule will ensure that any student in in the classes of 2019 through 2022 who may have taken the State assessment, including the NJSLA, in ELA 10 and/or Algebra I rather than the corresponding PARCC assessments will be eligible for graduation. The proposed rule also will provide clarity for graduating students.

(j) For students in the classes of 2019 through 2022, the Department shall consider high school end-of-course State assessments to be equivalent to the corresponding high school end-of-course PARCC assessments.

14. The Department proposes to further amend the first provision in N.J.A.C. 6A:8-5.2(b)2, which permits district boards of education to allow any out-of-school individual to age 20 who has otherwise met all State and local graduation requirements but has failed to pass the State graduation assessments to demonstrate proficiency as set forth in N.J.A.C. 6A:8-5.1(f) pursuant to the standards applicable to the student’s graduating class, to add “through alternative means” after “demonstrate proficiency” and to replace “N.J.A.C. 6A:8-5.1(f)” with “N.J.A.C. 6A:8-5.1(a)6 or (f) through (i), as applicable,” respectively. The Department proposes to further amend the second provision in N.J.A.C. 6A:8-5.2(b)2, which, as previously proposed, establishes alternative methods of demonstrating proficiency for students in graduating classes prior to 2018 to demonstrate proficiency as set forth for the classes of 2018 and 2019 in N.J.A.C. 6A:8-5.1(f)1, to replace “2018 and 2019” with “2018 through 2022” to reflect that N.J.A.C. 6A:8-5.1(f)1 will extend to the class of 2022.

2. District boards of education shall allow any out-of-school individual to age 20 who has otherwise met all State and local graduation requirements but has failed to pass [high school end-of-course PARCC] the State [[assessments in ELA 10 or Algebra I]] proficiency test to demonstrate proficiency through alternative means as set forth in N.J.A.C. 6A:8-5.1(a)6 or (f) [[or (g)]] through (i), as applicable, pursuant to the standards applicable to the student’s graduating class.

Students in graduating classes prior to [2016] **2018** shall demonstrate proficiency as set forth **for the classes of 2018** [[and 2019]] **through 2022** in N.J.A.C. 6A:8-5.1(f)1. Upon certification of passing the test applicable to the student’s class in accordance with this chapter, a State-endorsed diploma shall be granted by the high school of record.

15. The Department proposes to further amend N.J.A.C. 6A:8-5.2(e)1, which allows district boards of education to award a State-endorsed high school diploma to any currently enrolled student, regardless of grade level, who has demonstrated proficiency in ELA 10 and Algebra I or as set forth in N.J.A.C. 6A:8-5.1(f), to replace “in ELA 10 or Algebra I as set forth in N.J.A.C. 6A:8-5.1(f)” with “the State graduation proficiency test, pursuant to N.J.A.C. 6A:8-5.1(a)6, or as set forth in N.J.A.C. 6A:8-5.1(g).” The proposed amendments will specify that students using the provisions of N.J.A.C. 6A:8-5.2(e) to earn a State-endorsed high school diploma must pass the State graduation proficiency test or the alternative means established for students in the classes of 2023 through 2025. The Department also proposes N.J.A.C. 6A:8-5.2(e)1i to require students in the classes of 2019 through 2022 using the provisions of N.J.A.C. 6A:8-5.2(e) to earn a State-endorsed high school diploma must pass the high school end-of-course PARCC assessments in ELA 10 and Algebra I, or as set forth in N.J.A.C. 6A:8-5.1(f).

1. Has demonstrated proficiency in [the high school end-of-course PARCC assessments in] [[ELA 10 and Algebra I]] [, or] **the State graduation proficiency test, pursuant to N.J.A.C. 6A:8-5.1(a)6, or** as set forth in N.J.A.C. 6A:8-

[[5.1(f)]]**5.1(g)**;

- i. District boards of education shall award a State-endorsed high school diploma to any currently enrolled student in the graduating classes of 2019 through 2022 who has demonstrated proficiency in the high school end-of-course PARCC assessments in ELA 10 and Algebra I, or as set forth in N.J.A.C. 6A:8-5.1(f).**

16. The Department proposes to further amend N.J.A.C. 6A:8-5.2(f)6, which requires the chief school administrator or lead person of a charter school to report annually by September 30 to the district board of education or the charter school board of trustees at a public meeting and to the Commissioner the number of students denied graduation from the 12th grade class solely because of failure to pass the graduation assessment requirements, substitute competency tests, or portfolio appeals process based on the chapter’s provisions. The Department proposes to maintain the existing reference to “high school end-of-course PARCC assessments” since students in the classes of 2019

through 2022 will be able to use those assessments to graduate. The Department also proposes to replace the previously proposed reference to “State ELA 10 or State Algebra I assessments” with “the State graduation proficiency test.”

6. The number of students denied graduation from the 12th grade class solely because of failure to pass the [high school end-of-course PARCC] **high school end-of-course PARCC assessments**, [[State ELA 10 or State Algebra I assessments]] **the State graduation proficiency test**, substitute competency tests, or portfolio appeals process based on the provisions of this chapter.