

Comment and Response Form for N.J.A.C. 6A:8-1.3, 4.1, 5.1, and 5.2

The following is the accessible version of the comments received from State Board of Education (State Board) members and the Department's responses concerning N.J.A.C. 6A:8-1.3, 4.1, 5.1, and 5.2. The proposal level document includes two sections: [comment and response form memo](#) and [summary of comments and agency responses](#).

**STATE BOARD OF EDUCATION
ADMINISTRATIVE CODE
COMMENT/RESPONSE FORM**

This comment and response form contains comments from and since the October 2, 2019, meeting of the State Board of Education when the rulemaking was discussed.

Topic: Proposed Notice of Substantial Changes **Meeting Date:** October 21, 2019

Code Citation: N.J.A.C. 6A:8-1.3, 4.1, 5.1 and 5.2 **Level:** Proposal

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

Summary of Comments and Agency Responses:

The following is a summary of the comments received from State Board of Education (State Board) members and the Department's responses. Each commenter is identified at the end of the comment by a letter that corresponds to the following list:

- A. Kathy A. Goldenberg, President
State Board of Education
- B. Andrew J. Mulvihill, Vice President
State Board of Education
- C. Arcelio Aponte, Member
State Board of Education
- D. Mary Beth Berry, Member
State Board of Education
- E. Elaine Bobrove, Member
State Board of Education
- F. Fatimah Burnam-Watkins, Member
State Board of Education
- G. Dr. Ronald Butcher, Member

State Board of Education
- H. Sylvia Sylvia-Cioffi, Member
State Board of Education
- I. Dr. Ernest Lepore, Member
State Board of Education
- J. Dr. Joseph Ricca, Member
State Board of Education

1. **Comment:** The commenter asked the Department to explain the proposed amendments that will facilitate the changes requested by the State Board, namely the State Board's approval of cut scores for the menu of options and the level of rigor for the State graduation proficiency test. **(A)**

Response: Based on State Board input in September, the Department in N.J.A.C. 6A:8-1.3 clarified the level of rigor of the State graduation proficiency test. In the notice of substantial changes (“Notice”) presented at the October 2, 2019, State Board meeting, the proposed definition for “State graduation proficiency test” indicates the test’s level of rigor will be aligned to, at a minimum, the New Jersey Student Learning Standards (NJSLS) in ELA 10 and Algebra I. In response to State Board discussions at the October 2, 2019, meeting, the Department has included Geometry.

Additionally, at the Department included in the Notice presented at the October 2, 2019, State Board meeting at proposed N.J.A.C. 6A:8-5.1(g) that the passing score on a substitute competency test would be “determined by the Commissioner and approved by the State Board of Education.” The Department also amended the Notice at proposed N.J.A.C. 6A:8-5.1(a)6 to provide all students in the class of 2023 the ability to demonstrate proficiency through the State graduation proficiency test or through the portfolio appeals process pursuant to N.J.A.C. 6A:8-5.1(g)2. This was meant to clarify that students who did not demonstrate proficiency on the State graduation proficiency test must take that test before they can use the substitute competency test. However, students are not required to take the State proficiency test before they can access the portfolio appeals process.

2. **Comment:** The commenter stated the State Board members received the Notice and related documents at 5 p.m. the day before the meeting, which is problematic. The commenter suggested the Department create a timeline or goal to provide documentation to the State Board at least 48 hours in advance of a meeting. **(B)**

Response: The Department aims to send embargoed agenda items one week prior to any State Board meeting. The Department is committed to providing documents as early as possible, following all necessary agency reviews. In this situation, embargoed documents were sent to the State Board on September 16, 2019. The final documents reflecting two amendments requested by State Board members were provided on October 1, 2019.

3. **Comment:** The commenter asked if the November 5, 2019, deadline for filing the Notice is firm as that date is a State holiday and whether the deadline can be extended to the November 6, 2019, meeting. **(I)**

Response: Per N.J.A.C. 1:1-1.4, the sunset of the proposal would extend until noon on November 6, 2019, since November 5, 2019, is a State holiday.

4. **Comment:** The commenter asked what happens if the State Board does not take action on the Notice and the original proposal expires. **(B)**

Response: If the October 2018 proposal expires, the Department will not be able to propose the Notice. The Department would have to initiate the rulemaking process from the beginning for the State Board to consider amendments to N.J.A.C. 6A:8.

If the State Board does not take action on this Notice, the Department would continue to rely on the provisions of N.J.A.C. 6A:8-4.1 to implement the Statewide assessment system. For graduation assessment requirements, N.J.S.A. 18A:7C-6 requires a State graduation proficiency test to be administered to all 11th grade students. Therefore, a State graduation proficiency test would have to be administered to students in the 11th grade beginning with the class of 2021, but they would not have a clear graduation assessment pathway established in regulations.

Regardless of State Board action, the classes of 2019 through 2022 can meet the graduation assessment requirement through the following pathways:

- In English language arts (ELA), students must demonstrate proficiency:
 1. On New Jersey Student Learning Assessment (NJSLA)/PARCC ELA 10; or
 2. By meeting the designated cut score on one of the alternative assessments, such as high school-level NJSLA/PARCC assessments, the SAT, ACT, or ACCUPLACER, as defined in the [graduation assessment requirements](#) chart; or
 3. By submitting, through the school district, a student portfolio appeal to the Department.
- In mathematics, students must demonstrate proficiency:
 1. On NJSLA/PARCC Algebra I; or
 2. By meeting the designated cut score on one of the alternative assessments, such as high school-level NJSLA/PARCC assessments, the SAT, ACT, or ACCUPLACER, as defined in the [graduation assessment requirements](#) chart; or
 3. By submitting, through the school district, a student portfolio appeal to the Department.

5. **Comment:** The commenter asked if the compromise made last year, which was to administer State assessments in ninth and 10th grades, would be in effect if the notice of proposed substantial changes is not approved before the expiration date. **(D)**

Response: If the October 2018 proposal expires, the compromise would also expire.

6. **Comment:** The commenter asked for confirmation that Federal law requires one test in high school and State law requires one graduation requirement as a junior. **(A)**

Response: Yes, the Federal Every Student Succeeds Act (ESSA) requires that states administer annual statewide assessments to all students in reading/language arts and mathematics in grades three through eight and once in high school. The ESSA also requests states to administer one science assessment in each grade span (grades three through five, six through nine, and 10 through 12) in science for all students and annual English language proficiency assessments in kindergarten through grade 2 for all English language learners (ELLs).

State law (N.J.S.A 18A:7C-6) requires a State graduation proficiency test to be administered to all 11th grade students and to any 11th or 12th grade student who has previously failed to demonstrate mastery of State graduation proficiency standards on the test.

7. **Comment:** The commenter stated that the State Board has an obligation to meet again before November 6, 2019, to act on the notice of substantial change if the expiration date is not extended due to the State holiday. The commenter stated holding another meeting is not ideal, but it is the duty of the State Board and they need to reach consensus. **(I)**

Response: The Department thanks the commenter for the continued consideration of the Notice.

8. **Comment:** The commenters asked whether the Department can present the same proposal to the State Board at the November 6, 2019, meeting even if the original proposal has expired. **(F, J)**

Response: If the October 2018 proposal expires, the Department will not be able to propose the Notice. The Department would have to initiate the rulemaking process from the beginning for the State Board to consider amendments to N.J.A.C. 6A:8.

9. **Comment:** The commenter stated the State Board occasionally has skipped a discussion level when reviewing proposed rulemakings, which could be an option if a new proposal for N.J.A.C. 6A:8 were to be proposed. **(C)**

Response: The Department thanks the commenter for the continued consideration of the Notice.

10. **Comment:** The commenter agreed that a new proposal for N.J.A.C. 6A:8 could be reviewed in two months rather than the customary three months for first and second discussions and proposal level because the rulemaking is too important to not get right. **(B)**

Response: While the State Board has skipped a discussion level for previous rulemakings, the Department maintains that it has struck the right balance with the Notice. If the Department initiated, from the beginning, a new rulemaking with amendments to N.J.A.C. 6A:8, the process would take at least five additional months.

11. **Comment:** The commenter stated the State Board has been discussing the issue of State assessments for quite some time now. The commenter also said the documents provided to the State Board the day before the meeting were not all that different from what previously has been discussed and, in fact, the revised documents included some of the compromises put forward. The commenter further stated this is a compliance situation where perfection is elusive, and the State Board needs to act. The commenter also stated students of New Jersey deserve to know their high school graduation requirements. **(J)**

Response: The Department thanks the commenter for the support and continued consideration of the Notice.

12. **Comment:** The commenter expressed concern that data indicate only 32 percent of students have passed the State assessment in Geometry in the past three years, which means 68 percent of students have failed. The commenter stated Geometry is a required course in high school and the State assessment does not harm students, teachers, or school districts yet it provides important data and gives a glimpse as to where to provide supports and where across the State to focus in a consistent manner. The commenter expressed concern that not administering State assessments in 10th grade would eliminate the data point for Geometry, even though restoring end-of-course State assessments in 10th grade was agreed on in October 2018. The commenter also stated consent order and the need for a State graduation assessment with a rigor aligned to Algebra I and ELA 10 may mean that students will be tested in their junior year on the same Algebra I content tested in eighth or ninth grade. The commenter further stated that the State assessment system is not a perfect system, but Geometry is an important data point. **(A)**

Response: The Department is committed to reducing the number of assessments in high school. In November 2018, the State Board proposed to reduced testing in high school to two years instead of three. In spring 2019, the State administered ELA and mathematics assessments in grades nine and 10 in high school. The Notice reflects that proposal, while proposing additional amendments to comply with State law that requires a State graduation proficiency test to be administered in 11th grade (re-established through the New Jersey Superior Court Appellate Division's decision on December 31, 2018, which invalidated existing N.J.A.C. 6A:8-5.1(a), (f), and (g) for students beyond the class of 2022). 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 NJSLs for ELA 10, Algebra I, and Geometry and administered pursuant to State law.

13. **Comment:** The commenter asked how many students in 10th grade take Geometry. **(A, J)**

Response: The Department reported that in spring 2019, 53,131 10th grade students took the NJSLA in Geometry (or received a valid test score), which means 62.8 percent of students took Geometry in 10th grade.

14. **Comment:** The commenter stated that students who do not meet proficiency on State assessments do not fail. The commenter also stated that Geometry is not a great predictor in terms of a student's overall success and readiness for college and career. **(J)**

Response: The Department thanks the commenter for the support and consideration of the Notice.

15. **Comment:** The commenter stated that the State Board voted last year to administer four assessments and now is being presented with a proposal that includes three assessments. The commenter also stated an assessment in 10th grade for mathematics is necessary and that the data is important to have. **(B)**

Response: The Department will retain four data points on students in high school, while complying with State law to deliver a comprehensive assessment of ELA and mathematics in grade 11. In grade nine, students will continue to take two end-of-course assessments -- one in mathematics and one ELA. Students then will take the State graduation proficiency assessment in grade 11, which will be a comprehensive assessment delivering data points on both mathematics and ELA.

16. **Comment:** The commenter stated that assessments have been de-emphasized in regard to teacher evaluations since the median student growth percentile (mSGP) was once set at 30 percent and now is at 5 percent. The commenter stated that it is interesting that the mSGP was lowered this past year and, for the first time, standardized test scores have flatlined and, in some cases, decreased. The commenter stated that the State Board is seeing the effect of deemphasizing State assessments in teacher evaluations. **(B)**

Response: Although Statewide assessment results from 2015 through 2019 have generally trended upward and recent fluctuations are typical after the first few years of administering a State assessment system, the Department agrees that even slight decreases in proficiency rates are concerning, especially in mathematics. The Department has no evidence to support the commenter's proposed correlation between any fluctuations observed in the spring 2019 Statewide assessment results and the weighting of mSGP scores in teacher evaluations for the 2018-2019 school year. Additionally, approximately 20 percent of all teachers receive an mSGP. Only teachers of ELA in grades four through eight and teachers of mathematics in grades four through seven receive an mSPG score; high school teachers do not receive an mSGP score in their evaluation.

17. **Comment:** The commenter commended the Department for moving ahead with the proposal and for including changes recommended by State Board members, especially the State Board's approval of cut scores for substitute competency tests and setting the minimum level of rigor for the State graduation proficiency test at ELA 10 and Algebra I. **(C)**

Response: The Department thanks the commenter for the support and consideration of the Notice.

- 18. Comment:** The commenter stated that Geometry is one of the courses that students in science, technology, engineering, and mathematics (STEM) fields need to master to be successful in college and in a career. The commenter also stated that the State may be missing an opportunity to do something bold for 10th grade students and in terms of a commitment to ensuring success in STEM fields. The commenter suggested the State also could be bold in ensuring that a greater percentage of students improve in end-of-course exams in Geometry, Algebra II, and science. **(C)**
Response: The Department remains committed to ensuring all students have access to a high-quality education, particularly in the areas of high school mathematics and science. By providing tools, such as instructional units, the Department is building the capacity of educators to create standards-based curriculum and to deliver standards-based instruction and assessment across the State.
- 19. Comment:** The commenter suggested that additional data regarding student performance on Geometry can be gathered from school districts directly based on locally selected or developed tests rather than collecting data from a standardized assessment that is stressful and can be time consuming. The commenter also stated that students are being tested on content even if they are not being tested by the State. **(H)**
Response: The Department agrees with the commenter that schools and school districts have multiple opportunities beyond State assessments to gather feedback about how students make progress toward the NJSLs in Geometry.
- 20. Comment:** The commenter stated that a vote at proposal level is not to codify the regulations; instead, a vote is to move forward with publication of the proposal and the public's review. The commenter also stated that a 60-day public comment period can be extended. The commenter expressed support for moving the proposal forward at the October or November meeting to gather public input and to see if related State laws change in the next few months. **(G)**
Response: The Department thanks the commenter for the support and consideration of the Notice.
- 21. Comment:** The commenter asked whether the 60-day public comment period would begin immediately if the State Board postponed the vote with a motion to table and approved the notice of substantial change at the November 6, 2019, meeting. **(G)**
Response: The formal 60-day public comment period would begin the day the Notice is published in the New Jersey Register. A vote to publish the Notice would have needed to occur in the morning of November 6, 2019, to allow time for the Notice to be filed with the Office of Administrative Law by noon on the same day. The Department thanks the State Board for considering the Notice at a special meeting on October 21, 2019.
- 22. Comment:** The commenter asked if the Commissioner can eliminate State assessments in any grade he chooses. **(B)**
Response: The Department is bound by Federal and State laws and, accordingly, must administer an assessment in ELA and mathematics in grades three through eight and at least once in high school. Per State law, the Commissioner must administer an 11th grade State graduation proficiency test. Accordingly, State law provides the Commissioner discretion to set the high school assessment schedule.

23. **Comment:** The commenter asked the Department to describe the different kinds of tests and why the tests are administered (for example, to take a snapshot of the State at a particular point or to determine whether an individual student understands Geometry). The commenter stated the State Board cannot make a judgement whether a test is necessary at a particular grade without understanding the test and its purpose. **(E)**

Response: New Jersey's Statewide assessment system allows the Department to meet Federal and State accountability requirements, as well as to comply with State law. ESSA requires states to administer statewide standardized assessments to students in grades three through eight and once in high school in ELA and mathematics. The assessments must meet the rigorous standards of the Federal peer review process, which ensures that states are administering high-quality assessments aligned to each state's academic standards. School and school district aggregate proficiency and growth results, along with other metrics, are used to help the Department identify what schools and school districts require the most concentrated support and resources.

Separately, State law (N.J.S.A 18A:7C-6) requires that students be administered a graduation proficiency test in grade 11. Currently the Department utilizes summative assessments for both State and Federal accountability. However, the Department remains committed to exploring innovative assessment opportunities as it continues transitioning to the next generation of State assessments.

24. **Comment:** The commenter stated that the conversation regarding the Notice is connected to the future of assessments, and whatever decision the State Board makes on the notice could foreshadow the future. The commenter stated that even though the current proposal is very narrow, it puts a stake in the ground regarding where the State is turning in terms of assessments. **(F)**

Response: The Notice only applies to the classes of 2023 through 2025. The Department maintains that State assessments are a valuable tool for educators, students, and families, but are one snapshot of student learning. Therefore, the Department is working with educators to build capacity across the State to develop State, school district, and classroom assessment systems that provide high-quality feedback on each student's progress toward the State's high standards.

The Department is committed to continuing important conversations with all stakeholders, including the State Board, to evolve the State assessment system. Collaboratively, New Jersey will need to re-envision high school requirements and expectations to ensure all students have access to real-life experiences and on-ramps to careers beyond high school, as well as multiple opportunities to demonstrate their readiness.

25. **Comment:** The commenter stated the Department will be missing critical data points if State end-of-course assessments in mathematics (i.e., Geometry or Algebra II) are not administered in 10th grade. The commenter stated the data points also indicate a gap in the access to quality education, particularly in Geometry and Algebra II. The commenter stated the State has historically had a large gap in assessment scores between African-American and Hispanic students and their white peers. The commenter questioned how these gaps will be exposed without the data points. The commenter stated that even if the State Board ends up supporting the proposal, the State needs to do more to ensure students are receiving high-level instruction and are proficient in the areas of mathematics and science. **(C)**

Response: The Department remains committed to ensuring all students have access to a high-quality education, particularly in the areas of high school mathematics and science. By providing tools, such as instructional units, the Department is building the capacity of educators to create standards-based curriculum and to deliver standards-based instruction and assessment across the

State. While the Department acknowledges that removing the end-of-course mathematics assessment in grade 10 would result in the loss of the end-of-course Geometry data point for many students, there still will be seven years of State ELA and mathematics data (in grades three through nine) leading up to grade 10 and one year of data after. From the seven years of State data, the Department can identify gaps in proficiency and growth of subgroups within schools and school districts and among schools, school districts, and subgroups of students across the State. The Department remains committed to supporting school districts that need the most help and by building the capacity of all educators across the State. Targeted professional learning based on New Jersey's high standards will most directly lead to more students, particularly historically disadvantaged subgroups of students, having equitable access to a high-quality education.

Finally, the Department is also amending the Notice so the mathematics portion of the grade 11 State graduation proficiency test will be aligned to Algebra I and Geometry to ensure school districts and the Department continue to have a window into students' progress toward mastery of the NJSLS in Geometry.

26. **Comment:** The commenter asked if the Department has the information on what career- and college-ready graduates should have when leaving high school. **(A)**

Response: New Jersey's graduation requirements clearly define a menu of criteria that are associated with college and career readiness. The NJSLS define what students know and should be able to do by the time they graduate. New Jersey has high-quality academic standards and they continue to evolve based on demands of post-secondary opportunities.

27. **Comment:** The commenter asked if a student is career or college ready if he or she passes Algebra I but is unable to pass higher-level mathematics. The commenter also noted that a prior State report on redesigning high schools recommended Algebra II as a graduation requirement, yet the proposed standard is Algebra I for the State graduation assessment. The commenter also expressed concern that if Algebra I is the ceiling for students in 11th grade, Algebra I content will be taught in ninth, 10th, and 11th grades in disadvantaged school districts. **(B)**

Response: In response to the concerns raised by the State Board, the Department is amending the Notice so the mathematics portion of the grade 11 State graduation proficiency test will be based on the NJSLS in Algebra I and Geometry. This will ensure school districts and the Department continue to have a window into students' progress toward mastery of the NJSLS in Geometry.

Importantly, no single measure can college readiness and, in fact, research shows that student grade point average (GPA) remains one of the most accurate predictors of college grades. For mathematics, a student cannot graduate high school without taking Algebra 1, Geometry, and a third year of mathematics that builds on the concepts of Algebra 1 and Geometry and prepares students for college and 21st century careers.

28. **Comment:** The commenter questioned how school districts will be held accountable if the Department does not have the additional State assessment data to compare high-performing and lower-performing schools and to provide lower-performing with evidence that improvement is needed. **(D)**

Response: New Jersey's Statewide assessments are part of the multiple measures used by the public and the Department to highlight opportunities, access, and achievement for all groups of students across the State. New Jersey's publicly available School Performance Reports provide information on hundreds of school and school district factors that include student participation

and achievement on PSATs, SATs ACTs, and Advanced Placement courses. This information provides the Department and school community members with rich information on high school academics, including student access to and performance in courses that support student learning, in ELA and mathematics.

Additionally, the Department monitors and supports schools and school districts through Federal and State accountability systems (New Jersey's State ESSA Plan and the Quality Single Accountability Continuum (QSAC), respectively) to ensure that all students have access to high-quality instruction. The sources of data allow for a more comprehensive view of where gaps may exist and provide for a starting point in determining how a plan tailored to each school district's unique circumstances.

- 29. Comment:** The commenter asked why the Department is not proposing to administer an end-of-course assessment in the ELA and mathematics courses a student takes up through 11th grade or at the end of 10th grade. **(A)**

Response: The December 31, 2018, Superior Court of New Jersey Appellate Division issued a decision that N.J.A.C. 6A:8-5.1(a)6, (f), and (g) are contrary to the intent of State law and that the current regulations, as enacted, are stricken. State law (N.J.S.A. 18A:7C-6) requires the Department to deliver an ELA and mathematics State graduation proficiency test in grade 11.

- 30. Comment:** The commenter asked what percentage of students take Algebra 1 in sixth, seventh, eighth, ninth, 10th, and 11th grades. **(A)**

Response: The following percentages of students take Algebra 1 in each grade:

- Grade 6: 0.06
- Grade 7: 4.3
- Grade 8: 29.7
- Grade 9: 58.7
- Grade 10: 6.5
- Grade 11: 0.7

- 31. Comment:** The commenter stated that the Department previously administered end-of-course assessments in ninth, 10th, and 11th grades, then pared back to ninth and 10th grades, and is now proposing testing for only ninth grade in the ELA and mathematics courses students take in that year. The commenter asked if the courses a student takes would be what he or she is tested on predominantly. **(A)**

Response: The Department has worked collaboratively with the State Board over the past 18 months to develop the proposed revisions to N.J.A.C 6A:8. The Notice represents the continued collaboration with the State Board of Education and aligns with the New Jersey superior court decision dated December 31, 2018. The Notice honors the spirit of the proposed revisions agreed upon in fall 2018 by including State ELA and mathematics tests in two grades in high school. The Department will continue to administer end-of-course mathematics assessments (Algebra I, Geometry, and Algebra II) to any middle or high school student who takes the corresponding courses.

- 32. Comment:** The commenter stated that the State’s standards in high school are Geometry, Algebra I, and Algebra 2 or other courses such as computational skills, computer science, or statistics. The commenter stated that there are other courses all New Jersey students must take to graduate high school, yet the Department does not test students on all course content in 11th grade. **(A)**

Response: Students must take and pass certain courses in high school to graduate, pursuant N.J.A.C. 6A:8-5.1. In mathematics, a student cannot graduate high school without taking Algebra 1, Geometry, and a third year of mathematics that builds on the concepts of Algebra 1 and Geometry and prepares students for college and 21st century careers. Students are provided flexibility regarding the third mathematics course so students can take a course relevant to their post-secondary goals (college and/or career).

- 33. Comment:** The commenter stated that standards are critical and the alternative means to graduation, other than the portfolio appeals process, was temporary and set to expire. The alternative means of taking the SAT, PSAT, or Accuplacer was originally established to provide teachers and students the opportunity to become familiar with PARCC because PARCC was new and had a much higher degree of rigor. At the same time, the State Board and Department recognized that the SAT does not test the NJSLs. The commenter questioned why the Department would want to continue with something that was supposed to be temporary, especially when there is another alternative via the portfolio appeals process. **(B)**

Response: First, as New Jersey transitions its State assessment system, maintaining alternative means are critical options for current seventh, eighth, and ninth graders, who still do not have a clear regulatory pathway to meeting the graduation assessment requirement. Additionally, the Department continues to prioritize affording students in New Jersey with multiple pathways to fulfill the graduation assessment requirement, with the Statewide assessment system as the primary pathway.

- 34. Comment:** The commenter asked whether the portfolio appeals process would remain in place if the State Board does not approve the notice of substantial changes. **(B)**

Response: The portfolio appeals process will remain in place as it is defined in N.J.S.A. 18A:7C.

- 35. Comment:** The commenter asked how students with disabilities would be affected if the State Board does not approve the notice of substantial changes. **(A)**

Response: Students with disabilities whose individualized education programs (IEPs) specify an alternative way to demonstrate proficiencies will continue to follow the graduation assessment requirements set forth in their IEPs.

- 36. Comment:** The commenter asked for clarification that the State Board will have the authority to approve cut scores for the substitute competency tests under the new proposal. The commenter also asked why the State Board will be asked to approve cut scores for the substitute competency tests for class of 2023 and not starting next year. **(B)**

Response: The Notice has added language that provides the State Board the authority to adopt the proficiency cut score on each of the alternative assessments that could be utilized to satisfy the State graduation assessment requirement. The consent orders that went into place on June 5, 2019, mandated that the graduation requirements for the classes of 2017 and 2018 stay in place for the classes of 2019 through 2022. The newly proposed regulations would apply to the classes of 2023 through 2025 who are current seventh, eighth, and ninth grade students.

37. Comment: The commenter stated it is not being considered that Algebra I is a course that makes students think in different way. The commenter stated that most students seem to have issues with word problems and figuring out the meaning of particular words. Administering an Algebra I assessment in 11th grade recognizes that individuals' cognitive abilities mature in different ways at different times. **(E)**

Response: The Department agrees that demonstrating proficiency on Algebra I standards is important for all students and that educators may benefit from an additional check for student mastery and retention of the Algebra I standards since they will be assessed, along with Geometry, as part of the 11th grade State graduation proficiency test.

38. Comment: The commenter asked for confirmation that the Appellate Division has determined, through the amended consent order, the Department's course of action for the next two years even if the State Board does not approve the Notice. **(B)**

Response: Yes, students in the classes of 2020 through 2022 have clear pathways for meeting the graduation assessment requirement per the consent order dated June 5, 2019. However, the class of 2023 (current freshmen) has no clear regulatory pathway to meeting the graduation assessment requirement.