LEGAL ALERT

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New Jersey Appellate Division Invalidates the Use of The PARCC Test as a High School Graduation Requirement

by Joseph L. Roselle, Esq.

In a surprise decision coming just before the end of the year, the New Jersey Appellate Division ruled on December 31, 2018 that the New Jersey Department of Education regulations requiring high school students to pass certain Partnership for Assessment of Readiness for College and Careers ("PARCC") tests as a condition of graduation are illegal. The Court, in *In re N.J.A.C. 6A:8 Standards and Assessment*, Dkt. No. A-0768-16T4, held that such a requirement violated the State Proficiency Standards and Assessments Act ("the Act") because under that law, a proficiency test as a condition of graduation may only be given to eleventh-grade students, and not to students in any other grade.

In 2016, the State Board of Education enacted regulations that required students to demonstrate proficiency in the end-of-course PARCC assessments in ELA10 and Algebra I. Under these regulations, students in the 2016 - 2019 graduating classes who failed those exams or did not take them were able to satisfy the graduation proficiency requirements by passing a substitute competency test in either subject, or by passing another relevant end-of-course PARCC test such as ELA9 or Geometry, or by satisfying a portfolio appeals process. Students in the 2020 graduating class are required to take end-of-course PARCC tests in all of their courses; if they fail the exams, they may demonstrate graduation proficiency through one of the other options available in prior years. Students in the 2021 graduating class and beyond are required to "take all applicable end-of-course PARCC assessments for all courses in which they are enrolled." No substitute competency tests are available for those students.

The Court held that these regulations conflicted with the Legislature's express directive that a high school proficiency examination be given to eleventh-grade students only, because the ELA10 and Algebra I PARCC assessments were not eleventh-grade assessments. Rather, the ELA10 assessment was an end-of-course test for tenth graders, and the Algebra I exam could conceivably be given to students in any grade. Thus, the regulations "violate the Act to the extent they specifically authorize multiple tests administered in grades other than the eleventh grade."

The Court also ruled that the Act required that students be given more than one opportunity to pass the same proficiency test, and the regulations at issue did not allow students in the 2016-2020 graduating classes who failed the PARCC assessment to retake the same test in order to graduate high school.

To avoid disruption to any ongoing testing, and anticipating that the Department of Education will appeal to the New Jersey Supreme Court for definitive guidance on the issue, the Court stayed the implementation of its decision for thirty days and provided no guidance to the State or local Boards of Education with regard to the method of proficiency assessment for students graduating high school this year or in future years. It is anticipated that the State Board of Education will amend the regulations to comply with the Court's decision. In the meantime, if you have any questions regarding the effect of this new decision, please do not hesitate to contact the school law attorneys at Schenck Price.

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