



## DISABILITIES LAW PROGRAM COMMUNITY LEGAL AID SOCIETY, INC.

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### MEMORANDUM

To: SCPD Policy & Law Committee  
From: Brian J. Hartman  
Re: Recent Legislative & Regulatory Initiatives  
Date: April 6, 2015

In anticipation of the April 8 meeting, I am providing my analysis of ten (10) legislative and regulatory initiatives supplemented by an analysis of one bill (H.B. No. 64) authored by Laura Waterland. Given time constraints, the commentary should be considered preliminary and non-exhaustive.

#### 1. DMMA Final Medicaid Inpatient Rehabilitation Hospital Reg. [18 DE Reg. 784 (4/1/15)]

The SCPD and GACEC commented on the proposed version of this regulation in January, 2015. A copy of the January 30, 2015 SCPD memo is attached for facilitated reference.

In a nutshell, the Councils endorsed the regulation which adopted Medicare payment standards and rates for Medicaid payments to freestanding inpatient rehabilitation hospitals. The Division of Medicaid and Medical Assistance has now acknowledged the endorsements and adopted a final regulation which conforms to the proposed version.

Since the regulation is final, I recommend no further action.

#### 2. DLTCRP Proposed Financial Capability Reporting Regulation [18 DE Reg. 761 (4/1/15)]

The attached Title 11 Del.C. §1104, which covers licensing of long-term care facilities, requires applicants for a new or renewed license to submit evidence of "financial capability". The statute also authorizes the Division of Long-term Care Residents Protection to issue regulations defining the scope and timetable of submissions of financial information. The Division is now issuing regulations implementing §1104.

In general, the standards appear to be well written and understandable. However, I have the following observations.

First, the standards only apply to facilities with 4 or more residents. Given the comprehensive requirements in the regulations, this appears appropriate. Facilities with 3 or fewer residents would be subject to less prescriptive obligations. See §2.2.

Second, there is some “tension” between the statute and regulation in the context of the “look-back” period. Title 16 Del.C. §1104(d) contains a 5-year “look-back” for a “satisfactory compliance history” from operations in other states:

(d) In making the evaluation described in subsection ( c) of this section, the Department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the Department to substantiate a satisfactory compliance history and any other information required by the Department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant operated a facility at any time during the 5 year period preceding the date on which the application is made.

Assuming a “satisfactory compliance history” would include a lack of financial problems (e.g. bankruptcy; insolvency; judgments), the statute envisions a 5-year “look-back”. In contrast, the regulation does not contemplate submission of information dating back 5 years. The Division may wish to reassess its proposed standards in this context.

Third, §5.3.5 refers to a “local financial institution”. The term is undefined. I surmise it would include an Artisans Bank or some credit unions which only operate in Delaware. However, it’s unclear if it would cover a national entity with a branch in Delaware (e.g. Bank of America). Moreover, query whether a financial institution with an office location in Elkton, Salisbury, or West Chester is “local”. It would be preferable to clarify the term.

Fourth, I assume the State of Delaware has financial safeguards and auditing protocols in place to cover State-owned long-term care facilities (e.g. Stockley; DHCI; Bissell; Governor Bacon). Literally, they would be required to comply with all of the requirements in the regulations. Some of the requirements may not “match” OMB or other auditing timetables and standards. The Division may wish to assess whether to exempt State or DHSS-owned facilities from the regulations, in whole or part.

Fifth, in §14.2, the Division could consider adding a second supporting citation, i.e., to Title 16 Del.C. §1104(e).

I recommend sharing the above observations with the Division.

### 3. DOE Prop. School Transportation Regulation [18 DE Reg. 759 (4/1/15)]

The Department of Education proposes to adopt some discrete amendments to its regulation covering school transportation. The synopsis (p. 760) indicates that the amendments are prompted by changes in the Delaware Code in the following contexts: 1) maximum age of school bus; 2) criminal background checks for drivers and aides; 3) in-service training for drivers and aides; 4) annual physical for school bus aids; and 5) district disbursements.

I have the following observations.

First, it is difficult to determine which standards apply to charter schools. For example, §2.1 indicates that charter schools and districts are responsible for implementing a list of responsibilities. However, the list in some cases literally only applies to districts. See, e.g., §§2.1.7, 2.1.8, 2.1.13, 2.1.17. Criminal background checks and/or in-service training are ostensibly not required for charter school bus aides (§§2.1.8, 7.1.2.2, 7.1.3, 7.1.5, 7.1.6, 7.1.7, and 7.2.) This conflicts with 14 DE Admin Code 745.3.1. Criminal background checks are ostensibly not required for charter school bus drivers (§§6.8.4 and 6.8.6). This also conflicts with 14 DE Admin Code 745.3.1. Safety standards (§9.1) do not apply to charter schools. Transportation benefit standards sometimes only refer to districts (§§11.1, 11.3, 11.6.1) and sometimes include charter schools (§§11.9, 12.2.1.1, and 12.6.2). Standards requiring bi-annual reinspections by DMV do not apply to charter school buses (§21.0).

Second, there is some tension between §§5.3.2 and 5.5.2. The former requires new applicants for CDSBD trainers to “not have more than three (3) points in the past three years”. The latter requires renewing CDSBD trainers to have “no more than three (3) points on their driving record”. Thus, the standard for recertification is more liberal than the standard for initial qualification. It is possible that this is intentional but the DOE may wish to evaluate the justification for maintaining different standards.

Third, the regulation periodically capitalizes “district”. See, e.g., §§6.8.6 and 9.1. The DOE may wish to review the regulation to ensure uniformity in references.

Fourth, the grammar in §7.1.2.2 is incorrect. In the first sentence, consider deleting “be sent”.

Fifth, the regulation is inconsistent in sometimes authorizing supports based on an IEP or Section 504 plan and sometimes only authorizing supports based on an IEP (excluding a Section 504 plan). Compare §§9.16, 17.1.7, and 22.1. Transportation is a related service under Section 504 and includes transportation to and from residential programs. See 34 C.F.R. §§104.33(c).

I recommend sharing the above observations with the DOE.

#### 4. DFS Prop. Early Care & Education & School-Age Centers Reg. [18 DE Reg. 778 (4/1/15)]

The SCPD and GACEC commented on earlier proposed versions of this regulation published in June [17 DE Reg. 1156 (6/1/14)] and December, 2014 [18 DE Reg. 438 (12/1/14)]. A copy of the GACEC’s June 26 and December 30 letters (minus appendices) are attached for facilitated reference. Rather than adopt a final regulation, the Division of Family Services has incorporated changes into a new proposed regulation.

I have the following observations.

1. Section 3.3.7 identifies certain school-based programs as exempt. However, §7.2 requires school-based programs operated by non-employees of the school to be licensed. For clarity, a reference to §7.2 should be included in §3.3.7. Otherwise, someone reviewing the exemption section could interpret §3.3.7 as exempting school-based programs regardless of operation by non-employees of the school. For example, the reference to “(t)his exclusion shall include all programs operated by these schools” could be interpreted as covering a situation in which the school contracts with a third party to provide the child care program.

2. In §4.0, definition of “Section 504 Plan”, I recommend inserting “with a disability” between “child” and “to”.

3. Section 13.3.2 requires a licensee to notify OCCL if a child is injured “while in the care of the center when the center is informed the child required medical/dental treatment”. See also §61.3. I have a few concerns with this standard.

A. It provides an incentive to “hide” or “not treat” an injury since reporting is not required if the child does not receive medical treatment. Concomitantly, it provides an incentive not to ask a parent if a child were treated “off-site” since that would “trigger” the reporting requirement.

B. The term “medical treatment” is unclear and a licensee who wishes to avoid attention/scrutiny may interpret the reference to only apply to treatment by a physician. The regulations note that some centers will have a registered nurse (§55.0). If the R.N. treats a wound or injury, does this qualify as “medical treatment” triggering the reporting requirement? Licensees are required to provide “first aid” (§§34.0 and 61.0). Does provision of “first aid” qualify as “medical treatment”? Section 61.1.2 appears to differentiate between “first aid” and “medical care”.

4. Sections 13.3.5 and 60.5 require licensees to report medication errors (including administering drug to wrong child or administering the wrong dose) only if the error “results in medical treatment”. This is an imprudent approach. Comparable regulations require reporting of errors which result in discomfort or jeopardize health. See, e.g. 16 DE Admin Code 3310.2.0 (definition of “reportable incident”); 16 DE Admin Code 3301, 2.0 (definition of “reportable incident”). Adopting a “medical treatment” “trigger” for reporting also provides a licensee with a disincentive to refer a child for medical treatment to avoid attention/scrutiny. By analogy, §60.5 requires immediate reporting of medication errors to a parent regardless of manifest harm or need for medical treatment. Finally, §§13.3.5 and 60.5 are not consistent. The former requires a written report within 3 business days while the latter does not.

5. In its June and December commentary, the Councils recommended adding extended physical restraint to the list of reportable “events”. This has not been incorporated into the latest proposed regulation and could be reiterated. For example, while mechanical restraint is banned (§65.5.6), there are no standards for “physical” restraint which could theoretically last for extended periods without triggering a report to the OCCL. Obviously, some immediate physical restraint to prevent injury or elopement may be appropriate. However, use of physical restraint for extended periods should be reportable.

6. There is no limit on certain forms of physical restraint. By analogy, IBSER regulations ban prone (face-down) restraint and seated basket holds. See 16 DE Admin Code 3320.20.11. Some limits could be included in §65.0.

7. DFS added a reference to the ADA and DEAL to §14.2 per the Councils' earlier recommendations. This merits endorsement.

8. Section 27.3.3 refers to the "GED Test". The Department of Education changed its "GED" regulation and the current reference is "secondary credential assessment" which encompasses a GED and alternatives. See 17 DE Reg. 469 (11/1/13) (proposed); 17 DE Reg. 724 (1/1/14) (final). In other sections the regulation refers to "high school diploma or equivalent recognized by Delaware Department of Education". See, e.g., §§27.7.1 and 77.2.1.

9. Section 27.10.1 has a plural pronoun (they) with a singular antecedent (intern). Consider substituting "the intern is" for "they are".

10. Section 28.6 merits endorsement since it deters staff participating in "personal activities which would interfere with providing care to children". One of the most prevalent sources of "inattention" may be cell phone use. At a minimum, the regulation could be amended to explicitly require licensees to adopt a policy on cell phone use. For example, the following third sentence could be added to §28.6: "Without limitation, each licensee shall adopt and implement a written policy on direct-care staff cell phone use during hours of operation."

11. Section 36.13 categorically bans use of "portable wading pools". The rationale for such a ban is not intuitive. If it's hot, toddlers and pre-schoolers would ostensibly benefit from playing in a small inflatable or soft-sided pool.

12. In §36.17, last sentence, the reference should be to "below 60 degrees F and above 90 degrees F".

13. The Councils previously objected to allowing children to ride bikes with wheels below 20 inches in diameter without a helmet. Section 41.0 could still be interpreted as exempting children from wearing a helmet if the wheels are less than 20 inches in diameter. This would violate Title 21 Del.C. §4198K.

14. The Councils previously objected to the ratio of toilets to children/staff. The new regulation (§43.2) is worse than the December version. For school age children the December regulation had a toilet to child ratio of 1:15. The latest regulation has a toilet to child ratio of 1:25. As noted in Par. 6 of the attached December 30 GACEC comments, the ratio should be lowered.

##### 5. H.B. No. 52 (Cursive Writing)

This bill was introduced on March 17, 2015. As of April 6, it awaited action by the House Education Committee.

Background is contained in the attached articles. In a nutshell, Common Core standards do not require students to learn cursive writing. Several states have reacted by adopting legislation requiring cursive instruction, including California, Georgia, Massachusetts, and Tennessee. Legislation is pending on other states. For example, in March, 2015, the New Hampshire Senate voted to require students to be taught cursive and multiplication tables.

Opponents argue cursive proficiency is unnecessary given the prevalent use of electronic keyboards on computers, phones, and pad devices.

Proponents argue that learning cursive enhances brain function, increases fine motor dexterity, allows students to read handwritten and historic documents, and is artistic. I've attached a few articles which address writing by hand and brain functioning.

The debate is reminiscent of that over Braille instruction for individuals who are blind or have visual impairments. With screen reader software, text can be read to such individuals. With software such as Dragon Dictate, individuals' verbal dictation is printed on a screen. Thus, detractors of Braille instruction argue it's unnecessary. To the contrary, studies confirm that instruction in Braille increases brain function and is correlated with higher educational and vocational achievement. See attached articles. Although the Delaware Department of Education has proposed regulations omitting Braille instruction, it has been prompted to reinstate standards when reminded that Delaware law requires instruction in Braille. See Title 14 Del.C. §206.

Weighing the pros and cons of requiring cursive instruction, the Councils may wish to endorse the bill.

#### 6. H.B. No. 46 (Children in DSCY&F Custody Bill of Rights)

This legislation was introduced on March 12. It passed the House unanimously on March 24. As of April 6, it awaited action by the Senate Children, Youth & Families Committee.

As background, children determined dependent, neglected, or abused may be placed by the Family Court in the custody of the Department of Services for Children, Youth & their Families. Such children are deemed "wards of the State". See Title 13 Del.C. §2501(c). The terms "dependent", "neglected" and "abused" are generally defined in Title 10 Del.C. §901. The legislation does not cover youth determined "delinquent".

The rights guaranteed to defined children "cover the waterfront" and include basic provision of food, shelter and clothing; assistance in accessing medical, vision, and dental care; and visitation with relatives.

I did not identify any significant shortcoming in the legislation. I recommend endorsement.

## 7. H.B. No. 63 (Guardian Sale of Ward's Real Estate)

This legislation was introduced on March 24, 2015. The bill was released from the House Judiciary Committee on April 1. As of April 6, it awaited action by the full House.

As background, a guardian of the property of a person with a disability may wish to sell real estate. For example, if the person with a disability can no longer live in a home due to lack of accessible features, dementia, or distance from supportive relatives, a sale of real estate may be quite appropriate. However, since real estate transactions generally involve large sums of money and potential for sales at less than fair market value, the Court of Chancery scrutinizes the sale process. Indeed, the Court recently adopted the attached amended Rule 113 which outlines safeguards, including judicial appointment of an independent appraiser, judicial review of the proposed sales contract, and notice to interested parties to identify objections. The Court rule overlaps with the legislation but will need to be amended if the legislation passes. For example, the bill (line 14) allows 20 days to object after issuance of notice while the rule allows 13 days to object after receipt of notice.

I recommend endorsement subject to the sponsors' consideration of a few amendments.

First, the references to "deed" and "land" in line 29 are "underinclusive" since the sale may involve leases or other interests (lines 9-11) and the property may be something other than "land". Compare reference to "property" rather than "land" at line 39. The bill could therefore be improved by amending line 29 as follows:

"...authorized to execute a deed or other conveyance of interest for the benefit of the purchaser which may convey as full a title or interest of the person with a disability to the property as the person..."

Second, in line 13, the sponsors could consider adding the following after "Guardian": "and other persons with a legal or equitable interest in the property". Cf. Brown v. Federal National Mortgage Association, Del. Supr., 359 A.2d 206 (1976); Gelof v. First National Bank of Frankford, Del. Supr., 373 A.2d 206 (1977).

I recommend sharing the above observations with policymakers.

## 8. H.B. No. 5 (E-Cigarettes)

This legislation was introduced on March 17, 2015. It was reported out of the House Health & Human Development Committee on April 1. There are seventeen (17) House sponsors and seven (7) Senate sponsors.

I have the following observations.

Similar legislation (H.B. No. 309) was introduced in 2014. It passed the House but was not released from the Senate Executive Committee. Consistent with the attached May 29, 2014 memorandum, the SCPD endorsed the predecessor bill. The new bill is an improvement and I have no recommended amendments.

H.B. No. 5 would add e-cigarettes to Delaware's Clean Indoor Air Act. Use of an "electronic smoking device" would be barred from "any indoor enclosed area to which the general public is invited or in which the general public is permitted" (lines 29-30) on the same basis as lighted cigarettes, pipes, and cigars.

The rationale for the legislation is compelling. E-cigarette marketing is pervasive and growing, especially among teens and young adults. There are 466 brands and 7,700 flavors. See attached August 25, 2014 News Journal article. Use among high schoolers has tripled in only 2 years. See attached November 14, 2014 USA Today article. The Delaware Division of Public Health Director recently published an excellent article on the danger of exposure to vapors and emissions from e-cigarettes. See attached April 2, 2015 News Journal article. Two amendments have been placed with the bill. H.A. No. 1 would exempt tobacco smoking and e-cigarette use in both "tobacco businesses" and "vapor businesses". H.A. No. 2 would "grandfather" existing vapor shops to allow on-premises consumption of electronic cigarettes for 2 years after enactment of H.B. No. 5. The prime sponsor, Rep. Heffernan, does not support either amendment. See attached April 3, 2015 News Journal article.

Given the health dangers to innocent bystanders from second-hand smoke and emissions, I recommend a strong endorsement of the legislation. The ban should also make highly addictive e-cigarette use less attractive to individuals considering use.

I recommend opposing both amendments.

H.A. No. 1 is the most harmful since it would totally exempt tobacco businesses and vapor businesses from the entire Indoor Clean Air Act. Therefore, such sites could be pumping tobacco smoke and cancer-linked emissions into indoor areas with aplomb. The attached November 14, 2014 USA Today article notes that e-cigarettes are frequently sold in kiosks in malls. Thus, the amendment would allow kiosks and covered businesses within malls to issue pervasive emissions throughout the entire indoor mall. Nearby businesses would suffer through exposure to their employees and deterrence of customers. Apart from malls, "tobacco businesses" and "vapor businesses" could open as kiosks or small contractors within bowling alleys, supermarkets, theaters, etc. and undermine the entire Indoor Clean Air Act. The April 3, 2015 News Journal article notes that the Delaware Restaurant Association supports H.B. No. 5. It's simply "bad business" to allow the proliferation of vendors emitting second-hand smoke and toxic vapors affecting the public.

H.A. No. 2 is similarly problematic since it would exempt the operation of vapor shops for another 2 years. It would predictably result in a rush to open new shops prior to June 15 to take advantage of the exemption. The reference to "indoor enclosed area" provides insufficient protection to others since air conditioning and heating ducts may be shared within malls and multi-unit commercial establishments.

I recommend sharing the above observations with policymakers.



#### 9. S.B. No. 38 (“Right to Try” Act)

This legislation was introduced on March 24, 2015. As of April 6, it awaited action by the Senate Health & Social Services Committee.

Background to this legislation is included in the attached articles. In a nutshell, it would allow a terminally ill individual to acquire an investigational drug, biological product, or device which has successfully completed Phase One of a clinical trial but not yet received FDA approval. There are several safeguards in the bill, including a determination of the patient’s treating physician that the patient lacks comparable or satisfactory treatment options approved by the FDA (lines 19-21). Informed consent is comprehensively defined (lines 34-55). A parent may consent for a minor; a guardian may consent for a ward (lines 24-26). According to the attached February 13, 2015 article, similar “Right to Try” legislation has been introduced in 26 other states and enacted in Arizona, Colorado, Louisiana, Michigan, and Missouri.

There are a few potential adverse consequences to the bill. For example, query whether manufacturers of the investigational drugs, products, and devices will be motivated to “market” them at high cost to desperate individuals despite a lack of proven benefit. Since insurers are not required to cover the costs of investigational drugs, products, and devices, it may also result in greater access by the affluent to remedies in short supply (lines 47-48).

On the other hand, the articles note that FDA approval is an extended process which can result in lack of access to promising drugs. Moreover, only a very small percentage of patients are eligible to participate in clinical trials. Finally, positive and negative results may facilitate the approval review process.

Balancing the potential pros and cons of the legislation, I recommend endorsement. The advantages of access by terminally ill patients to products which have successfully passed Phase One of a clinical trial outweigh negative considerations.

#### 10. H.B. No. 50 (Smarter Balanced Assessment “Opt-out”)

This legislation was introduced on March 12, 2015. As of April 6, it awaited action by the House Education Committee. Background is compiled in the attached articles.

In a nutshell, the legislation would allow parents to exempt their children from participation in the statewide assessment. No reason would be required. There would be no repercussions on the student (lines 8-9). The Department of Education would maintain a data system to record “opt outs” (line 10).

Proponents of a universal “opt out” right are concerned that too much time is spent on test preparation, the tests place too much stress on children, and the tests are discouraging since a significant percentage of students are expected to generate poor results. Opponents of a universal “opt out” right stress federal penalties for low test participation rates, the value of an objective measure of achievement, and the value of identifying academic weaknesses upon which teachers can focus remedial instruction.

Given concerns about perceived “over-assessment” of students, the public school system is undertaking an inventory of testing with a goal of eliminating duplicative or marginally valuable testing. See attached March 12, 2015 News Journal article. This approach merits endorsement.

Establishing a universal “opt out” right raises several concerns.

First, consistent with the attached February 28, 2015 and March 26, 2015 articles, the federal Department of Education requires states to have a 95% participation rate or face sanctions. Sanctions could include loss of funds for programs that serve low income, rural, and migrant students.

Second, public schools will have an incentive to “discourage” students who they anticipate will perform poorly on the test (special education students; minorities) from participation.

Third, students benefit from some experience in taking standardized tests. Performance on SATs and similar tests may be compromised if students are “protected” from the stress and experience of periodically taking standardized tests.

Fourth, the validity of overall test results will be undermined if large numbers of students do not participate in the assessment. For example, if test takers are predominantly high-achieving students, the results may “paint a rosy picture” of achievement with little basis in reality.

Fifth, the reality is that Delaware students lack basic skills. Only a quarter of graduating students score high enough on the SAT college entrance exam to be considered ready for college. See attached October 8, 2014 News Journal article. Authorizing mass exemption from testing will “mask” but not change poor performance. “Ostrichism” is not a viable response to relatively poor overall performance by Delaware students.

Weighing the positive and negative aspects of the legislation, I recommend not supporting the bill.

#### Attachments

E:leg/reg:415bils  
F:pub/bjh/leg/p&l2015/415bils



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**MEMORANDUM**

DATE: January 30, 2015

TO: Ms. Sharon L. Summers, DMMA  
Planning & Policy Development Unit

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 18 DE Reg. 509 (DMMA Prop. Medicaid Inpatient Rehabilitation Hospital Reg.)

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposal to amend the Medicaid State Plan in the context of Freestanding Inpatient Hospital Services. The proposed regulation was published as 18 DE Reg. 509 in the January 1, 2015 issue of the Register of Regulations.

As background, the Division published a notice of proposed amendment to the standards governing reimbursement methodology for freestanding inpatient rehabilitation hospitals in November, 2014. It is now publishing a conforming Medicaid State Plan amendment in the Register with a December 1, 2014 effective date. The standards would apply to patients discharged on or after December 1, 2014. DMMA is adopting the Medicare payment standards and rates. The Medicare system classifies patients into distinct groups based on their clinical characteristics and what each patient's expected resource needs will be. The Division notes that "Medicare rates are updated annually to reflect changes in local wages using the hospital wage index."

SCPD endorses the proposed regulation, but notes that covered facilities may benefit from using a similar reimbursement system for both Medicaid and Medicare patients.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or comments on the proposed regulation.

cc: Mr. Stephen Groff  
Mr. Brian Hartman, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

**§ 1104 License and renewal application.**

- (a) An application for a license or renewal of a license shall be submitted to the Division on forms provided by the Division and must be accompanied by the applicable license fee.
- (b) In addition to the general information requested on the application forms, the applicant or license holder must furnish evidence to affirmatively establish the applicant's or license holder's ability to comply with:
- (1) Minimum standards of medical care, and/or nursing care, as applicable by type of facility;
  - (2) Financial capability; and
  - (3) Any other applicable state and federal laws and regulations for that category of facility.
- (c) The Department shall consider the background and qualifications of the applicant or license holder and it may also consider the background and qualifications of the following:
- (1) Any partner, officer, director or managing employee of the applicant or license holder;
  - (2) Any person who owns or controls the physical plant in which the facility operates or is to operate; and
  - (3) Any controlling person with respect to the facility for which a license or license renewal is requested.
- (d) In making the evaluation described in subsection (c) of this section, the Department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the Department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant operated a facility any time during the 5 year period preceding the date on which the application is made. The Department by regulation shall define what constitutes a satisfactory compliance history. The Department may also require the applicant to file information relating to its financial condition during the 5 year period preceding the date on which the application is made. The Department may also request any of the above-described information about any other person described by subsection (c) of this section.
- (e) Financial Disclosure Requirement. As part of the license and annual renewal application, or when the Department determines that conditions exist which threaten the health or safety of a resident or residents, each facility licensed under this chapter shall disclose the following financial information notwithstanding Chapter 100 of Title 29, the Department may promulgate regulations identifying which, if any, part of such financial information shall be available to the public:
- (1) Audited annual financial statements;
  - (2) Annual financial reports;
  - (3) Other financial reports regularly filed with state or federal agencies;

(4) Any other information relative to the financial health of the facility.

(f) The license shall terminate if and when there is a transfer of a nursing facility or similar facility to another person or controlling person or the business ceases legal existence or discontinues operation. No license granted by the Department shall be assigned or otherwise transferred to another person or controlling person except upon such conditions as the Department may specifically designate and then only pursuant to written consent from the Department. Application for transfer of a license shall be submitted at least 90 days before the proposed transfer and shall contain the same information and be subject to the same criteria for approval as contained in this section.

(g) The Department shall grant a provisional license to any newly established or newly transferred nursing facility or related facility, provided that the requirements of this section are met. The term of such provisional license shall be 90 days, and thereafter the nursing facility or similar facility shall be entitled to an annual license, provided that the requirements of this section are met.

71 Del. Laws, c. 488, § 2; 72 Del. Laws, c. 305, § 1.;

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS**

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516 WEST LOOCKERMAN STREET  
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June 26, 2014

Elizabeth Timm  
Office of Childcare Licensing  
1825 Faulkland Road  
Wilmington, DE 19805

**RE: DFS Proposed Early Care and Education and School-Age Centers Regulation [17 DE Reg. 1156 (June 1, 2014)]**

Dear Ms. Timm:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Family Services proposal to adopt a comprehensive revision of its standards applicable to early care and education and school-aged centers. Council would like to share the following observations.

First, Council was unable to identify any general non-discrimination provision, including a provision barring discrimination based on disability. Only isolated and indirect references (e.g. §25.1.3) were noted. Compare 14 DE Admin Code 225 for DOE equivalent. In the 1990s regulations proposed by the Division routinely contained such provisions. See, e.g., attached excerpts from former regulations.

Council feels that the current regulation would benefit from an affirmative requirement that providers comply with the ADA and Equal Accommodations law in their programs. Concomitantly, there are a number of provisions in the proposed regulation which do not appear to align with the opinion from the Attorney General and the ADA. See attachments. See, e.g., §§59.1 (children excluded if unspecified illness limits child's comfortable participation or extra care needs compromise health and safety of other children); 17.4.1 (implication that programs may discourage enrollment based on special needs).

Second, §13.0 lists several "events" requiring reporting to DFS. There is no mention of reporting extended physical restraint which is apparently not limited by §§64.4 and 65.4. Compare Title 16 Del.C. §5162(a)(2) and 17 DE Reg. 1133, 1137, §6.1.2 (June 1, 2014). DFS may wish to consider requiring the reporting of physical restraint above a certain threshold (e.g. 10 minutes).

Third, §41.0 requires children to wear helmets if riding a bike with wheels of 20 or more inches. State

law requiring children to wear helmets [Title 21 Del.C. §4198K] does not exempt children riding on bikes with smaller wheels. The "20 inch" standard for bikes should be deleted.

Thank you in advance for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss should you have questions or concerns.

Sincerely,



Terri A. Hancharick  
Chairperson

TAH:kpc

Attachments

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS**

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December 30, 2014

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Office of Childcare Licensing  
1825 Faulkland Road  
Wilmington, DE 19805

**RE: DFS Revised Proposed Early Care and Education and School-Age Centers Regulation [18 DE Reg. 438 (December 1, 2014)]**

Dear Ms. Timm:

The Governor's Advisory Council for Exceptional Citizens (GACEC) commented on the proposed version of this regulation in June, 2014. A copy of the GACEC June 26, 2014 letter is enclosed for your reference. The Division of Family Services (DFS) has now issued a revised proposed set of regulations. Council would like to share the following observations on the 69 pages of revised proposed standards.

1. The GACEC promoted the incorporation of more robust non-discrimination language than the brief reference in §25.1.3. Section 35.1.2 has been amended to include an assurance of non-discrimination based on disability and other protected classes. This could still be improved by including a specific reference to the Americans with Disabilities Act (ADA) and Delaware equal accommodations statutes consistent with the opinion of the Attorney General (p. 4) included with the GACEC June commentary.
2. In the June commentary, Council objected to authorization for children to ride bikes without helmets if the bike has wheels of less than 20 inches in diameter. Section 41.0 remains unchanged and Council would like to reiterate the comment.
3. In the June commentary, the GACEC recommended adoption of a requirement of notification to DFS for each administration of extended physical restraint. No change to §13.0 has been made; therefore, Council would like to reiterate this comment.
4. In §3.0, the definition of IEP recites that it covers the educational program "for a child three (3) years of age or older". This is not entirely accurate. Children with certain classifications are eligible



under IDEA-B for an IEP at birth. See Title 14 Del.C. §3101(3) and §1703(k)(l)(m).

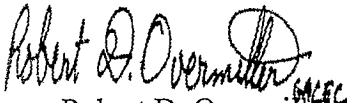
5. In §19.1, there is an extraneous "129".

6. Section 43.2 allows a provider to have one toilet for 15 school-age children plus staff. For younger children, the standard is one toilet for every 10 children aged 24 months through preschool plus staff. Council recommends consideration of a lower ratio. Ready access to a toilet is not provided under this arrangement. The Council recently criticized continuation of a 1-8 individual-toilet ratio for family care homes in commenting on a proposed regulation published at 18 DE Reg. 282 (10/1/14). Other regulations require one toilet for every four individuals. See the neighborhood home regulation [requiring 1 toilet for every four (4) individuals (16 DE Admin Code 3310, §9.0)]. See also 16 DE Admin Code 3230, §5.9, and 16 DE Admin Code 3301, §5.9. Moreover, toddlers and children may need assistance in toileting and "turnover" may not be quick.

7. DFS may wish to review the proposed DOE regulation published this month [18 DE Reg. 419 (12/1/14)] regarding emergency administration of medications in the event of allergic reactions. The DOE regulation covers pre-kindergarten programs in schools. See §2.0, definition of "school". There may be overlapping jurisdiction with DFS over some programs. Compare §§3.2 and 3.3 (DFS regulation covers early care and school age centers within schools). DFS may wish to promote compatibility between its standards (e.g. §§60-61) and the DOE standards in the context of emergency interventions related to allergic reactions. Section 61.2 generally authorizes staff to "take appropriate emergency action" in response to allergic reactions.

Thank you in advance for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss should you have questions or concerns.

Sincerely,

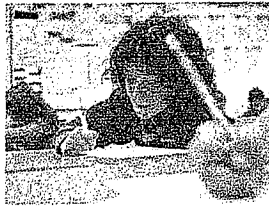
  
Robert D. Overmiller  
Chairperson

RDO:kpc

Attachments

# Some teachers haven't written off cursive yet

Cathryn Creno, The Arizona Republic 3:01 a.m. EDT July 27, 2014



(Photo: Charlie Leight, The Arizona Republic)

PHOENIX — With eyebrows furrowed and fingers holding pencils in clawlike grips, third graders at Lowell Elementary School in Mesa were tackling an assignment involving one of the most controversial topics in American education: cursive writing.

Minutes ticked by and most of the students, 9-year-olds in teacher Brittney Chapman's class last spring, had formed only a few words or a single sentence on a lined worksheet.

"It's hard because you have to keep the pen down and connect the letters," said Luis Carlos Miranda, whom Chapman described as one of the better writers in her class of 23.

Another student, Angel Guerra, said he thinks cursive is important because "there is a lot more writing in life than there is typing."



USA TODAY

Ind. lawmaker won't give cursive bill a writing chance

[\(http://www.usatoday.com/story/news/nation/2014/01/30/indiana-senator-wants-cursive-writing-return/5053267/\)](http://www.usatoday.com/story/news/nation/2014/01/30/indiana-senator-wants-cursive-writing-return/5053267/)

Lowell students are the poorest in Mesa Public Schools, and many do not have access to computers outside of school.

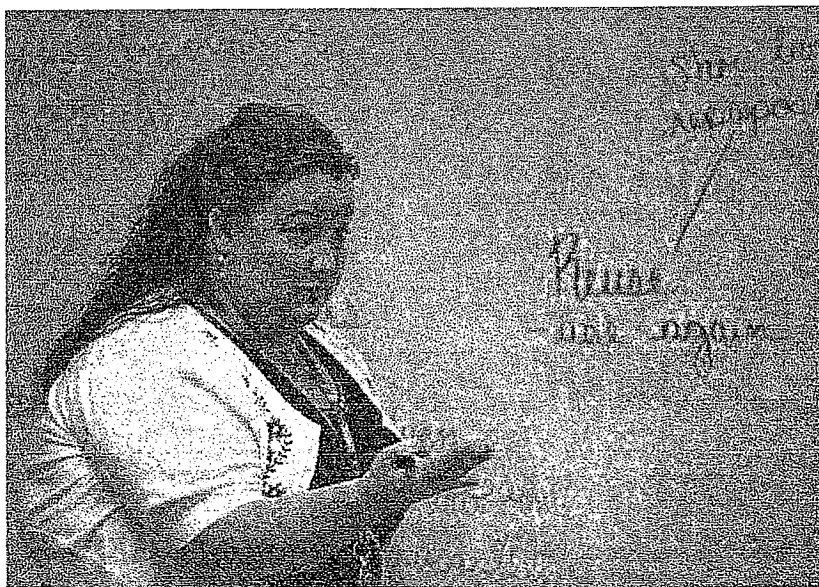
Chapman frequently requires her students to write in cursive. They also need to know how to read her cursive writing on a whiteboard to understand their daily homework assignment.

But many teachers nationwide no longer teach students the curlicue script that older generations once viewed as the hallmark of a well-educated person.

The Arizona College and Career Ready Standards, which are based on the Common Core State Standards Initiative, do not mandate that students learn cursive. Nor did Arizona's previous standards, which the state AIMS assessments are based on.

Forty-four states now follow Common Core. Arizona's version was fully implemented in public-school classrooms last year.

The standards require that students master keyboarding and a form of handwriting, either print or cursive, said Kathryn Hrabluk, who was an associate superintendent for the Arizona Department of Education until she retired this month.



Brittney Chapman brainstorms ideas in her class at Lowell Elementary School. She often makes her students write in cursive, and she writes assignments in cursive on

The standards also require that teachers show students how to organize concepts, choose the right words and write correctly spelled words and grammatical sentences.

"The goal is to have students be able to successfully articulate their thoughts, learning and ideas so others can clearly understand," Hrabluk said.

But some states that bought into Common Core are reconsidering the position. Seven states — California, Idaho, Kansas, Massachusetts, North Carolina, South Carolina and Tennessee — are either debating or have recently mandated that cursive be brought back to the classroom.

Arizona has not joined the debate, possibly because many schools still teach cursive despite the lack of a state requirement.

"Kids love to learn how to write in cursive," said Suzan DePrez, Mesa schools assistant superintendent of curriculum and instruction.

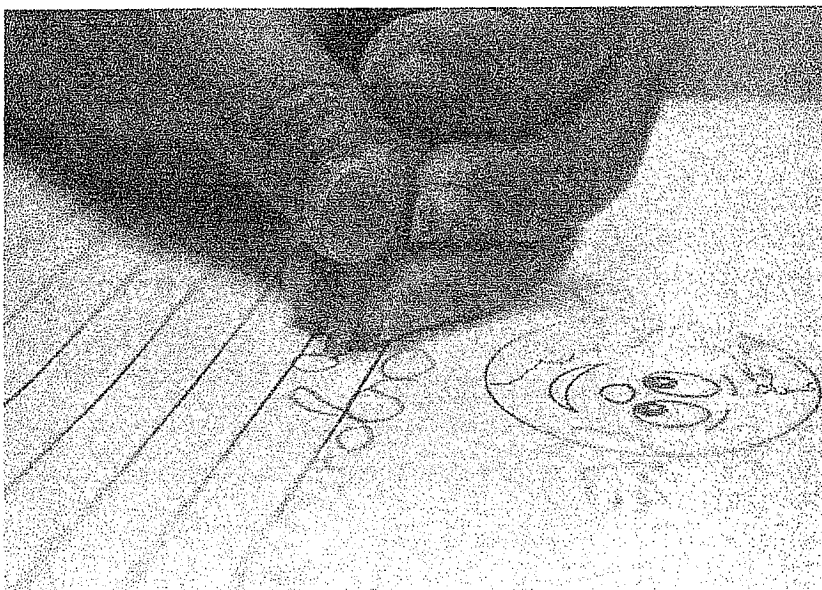
"It is a sort of rite of passage. I think there is artistic value in cursive ... also knowing how to read communication in cursive is something we should be able to do."

Officials in other districts also said that they require students to learn cursive, but a few said informally they don't spend much time teaching cursive because they know their students will enter a world where keyboarding is a more important skill.

"Are you expected to publish your stories in cursive handwriting?" DePrez asked an *Arizona Republic* reporter, rhetorically. "The real question is when, beyond elementary school, is one expected or asked to produce in cursive writing?"

Cursive advocates, such as Ahwatukee Foothills parent Lonna Henderson, say that question misses the point.

"I would love to see cursive come back," said Henderson, whose son enters ninth grade and whose daughter enters second next month.



Melissa Gutierrez carefully writes out cursive words on an assignment for teacher Brittney Chapman. Proponents say learning to write with in cursive aids in brain development; anti-cursive educators say the script is obsolete. (Photo: Charlie Leight, *The Arizona Republic*)

Henderson, 44, said her son learned cursive basics in third grade but did not spend the hours that she did in school perfecting legible script and an attractive signature. Her daughter has not been introduced to cursive yet.

Henderson said she would like to see both of her kids be able to write quickly and neatly in cursive. For several afternoons this summer, she had them practice D'Nealian — a form of printing said to be a precursor to cursive.

"I would love to see an emphasis on pretty handwriting again," she said.

Although many schools teach cursive only in the third grade, Chandler Traditional sixth-grade teacher Jennifer Pawlik said she continues to give her students time to practice and improve their handwriting.

Another cursive advocate is conservative-radio personality Glenn Beck. He argues that people must be able to at least read cursive if they want to appreciate America's Declaration of Independence and other hand-written historical documents.

Beck is also a Common Core critic who believes the standards "dumb down" school curricula.

"Why are they no longer teaching cursive writing?" he asked in one broadcast.

"The easiest way to make someone a slave is to dumb them down. They don't teach them how to read and write."

Some academic researchers advocate teaching cursive to students in the first three years of elementary school, saying research shows cursive helps brain development.

A year ago, *Psychology Today* published an article by Texas A&M University neuroscientist William Klemm that argues that cursive makes kids smarter.

"Cursive writing, compared to printing, is even more beneficial because the movement tasks are more demanding, the letters are less stereotypical, and the visual-recognition requirements create a broader repertoire of letter representation," he wrote.

Around the same time, the National Association of State Boards of Education issued a report stating that cursive helps develop memory, fine motor skills and better expression.

But an Arizona State University educational-leadership professor considered one of the nation's experts in how children learn handwriting says schools no longer need to teach cursive.

"Cursive handwriting does not make people more intelligent," Steve Graham said. "That is the kind of stuff that floats around but has no basis scientifically."



USA TODAY

Tenn. students may be required to learn cursive

[\(http://www.usatoday.com/story/news/nation/2014/03/10/tennessee-cursive-penmanship-bill-vote/6260613/\)](http://www.usatoday.com/story/news/nation/2014/03/10/tennessee-cursive-penmanship-bill-vote/6260613/)

Graham said before computers were commonplace, adults valued cursive because they could write it faster than they could print. Today, e-mails, text messages and documents created in systems like Microsoft Word take the place of handwritten pages, he said.

Printed signatures are acceptable today, as are electronic signatures, he said. A scrawling John Hancock is no longer needed in today's world. Electronic signatures are legal under Arizona law.

Graham noted that it is still important for children to learn to print clearly, because even at the high-school level only about half of students' work is typed. Fast, accurate keyboarding skills also are important, he said.

"If a student has to constantly think about where the key is, that is going to have an impact on their ability to write well," he said.

Graham said far more important than whether students are printing or writing in cursive is that they are being given assignments that encourage them to write well-thought-out sentences and paragraphs. Far too often, he said, kids are simply asked to fill in the blanks on worksheets.

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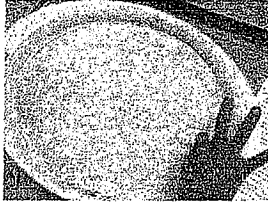
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# Is cursive's day in classroom done?

Denise Smith Amos, The Cincinnati Enquirer 8:17 a.m. EDT August 12, 2013



(Photo: Leigh Taylor, The Cincinnati Enquirer)

As schools swap out old state standards for new Common Core academics (</article/20130812/NEWS0102/308120006>), educators are warning about an overlooked casualty of progress -- cursive handwriting.

They say that, because Common Core standards don't call for cursive instruction, public schools are more likely to drop or, at least, de-emphasize it. Their fears are not unfounded.

-- At least 41 states do not require public schools to teach cursive reading or writing.

-- Common Core is silent on cursive, but it prioritizes computer use and keyboarding skills because its tests are taken on computers. Even before Common Core, many schools, in response to No Child Left Behind laws, had already narrowed their curricula mostly to the subjects being tested by their states. Even in the 1990s, cursive writing got less and less instructional time, teachers said.

Earlier this year, bills were introduced in state legislatures in North and South Carolina, Indiana and Idaho mandating cursive instruction. In some cases, the bills were supported by companies that sell writing materials.

Jeffrey Mims Jr., a longtime educator who represents Butler and several other counties on the state school board, said closing the book on cursive could limit some children's futures. "I don't understand the need to eliminate it," he said.

"I think it's a basic element of students' control and peace of mind. You pay attention to what you're doing when you're writing in that format."

## Cursive helps coordination, motor skills, backers say

The cursive question has become a national one recently.

In the murder trial of George Zimmerman, who shot and killed Florida teen Trayvon Martin, Trayvon's 19-year-old friend, Rachel Jeantel, testified to being on a cellphone talking with him just before his death. Many in the courtroom were shocked, though, when Jeantel admitted on the stand that she could not read a document a lawyer handed to her -- because it was written in cursive.

Experts have said handwriting training helps small children develop hand-eye coordination, fine motor skills, and other brain and memory functions. Mims said cursive writing could be important for children who grow to be a surgeon, a painter or some other professional requiring laser-like precision with their hands.

Even educators who like cursive admit they are of two minds about whether it should remain a classroom staple.

When Lockland Elementary's third-grade teacher Cheryl Adams saw that Common Core lacked a cursive requirement, she quietly celebrated, believing she'd have more time to teach other essentials, such as reading. But her principal at the time informed her she'll still be teaching cursive, mandatory or not.

Adams doesn't mind, she said, because her students like cursive writing. "It's not art, but it is artistic," she said. "I think it's just a time when they can sit and copy this letter over and over and practice it. I think it's restful for them."

Catholic schools, long known for emphasizing penmanship, are still teaching it but are using less class time, said Kathy Mears, the National Catholic Education Association's executive director of elementary schools. Instead of getting it a half hour or so a day, she said, students may get 15 minutes' practice three times a week.

"I would not drop it, because I do think it's important for the development of children, but ... I realize we've given teachers more to teach but not more time," Mears said.

An online poll by Harris Interactive in June showed 79 percent of adult respondents and 68 percent of kids, ages 8-18, think cursive should still be taught. Nearly 49 percent of adults and 35 percent of youth say practicing reading and writing in cursive improves literacy.

The poll, paid for by pencil maker Mega Brands America, is neither random nor representative of the entire country. It does hear out some biases against <http://www.usatoday.com/story/news/nation/2013/08/12/is-cursives-day-in-classroom-done/2642071/> 4/1/2015

When asked what they assume about people who can't read or write cursive, 30 percent of adults polled and 25 percent of children judged the person as less literate, and 7 percent of adults and 11 percent of children assumed they are "just not smart."

Steve Moore, a retired chemical engineer who consults with businesses, said cursive was not essential in his 30-plus years at Proctor & Gamble. "You have to be able to express yourself in writing," he said. "But in today's world all the critical writing is being done on a keyboard."

Many of today's teens are more comfortable texting on cellphones, touch-typing on iPads or tapping on laptop keys.

"A lot of children ... can't really read cursive right now," Mears said. "I don't think it's life-altering, that you won't survive in the world if you can't read cursive."

But they may be missing out on some intangible benefits, said Cincinnati Country Day's Shanna Morarity, a second-grade teacher who teaches cursive. For some kids, she said, it's a rite of passage to be able to write like grown-ups.

"Children like it, and it promotes perseverance," she said. "Because they enjoy it, they are determined to write full words and they love writing their names."

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Mar. 5, 2015 6:06 PM ET

# New Hampshire bill requires cursive, multiplication tables

By KATHLEEN RONAYNE, Associated Press (http://www.ap.org/newsvalues/index.html)

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CONCORD, N.H. (AP) — As schools adopt new education standards and rely more on computers in the classroom, a group of New Hampshire senators want to make sure the basics of learning cursive and multiplication tables don't get left behind.

"You definitely need to teach typing and keyboarding and all of that, but kids do need to be able to sign their names, they do need to be able to read the Founding Fathers documents," said Republican Sen. Nancy Stiles, the main sponsor of a bill that would require public schools to keep teaching both. "(Cursive) is an art and a skill that shouldn't be lost."

The push to keep cursive in the classroom has become a nationwide movement as schools adopt the Common Core education standards, which omit mention of the handwriting style. The K-12 standards, adopted by most states, have drawn widespread criticism. Among other objections, opponents say, the standards complicate math education and take away local and state control over school instruction.

New Hampshire senators on Thursday passed the state bill on a voice vote and sent it on to a finance committee to assess any possible costs. North Carolina previously passed legislation on cursive and multiplication, and several other states have taken up bills to require cursive.

Stiles said she submitted the bill at the request of two constituents, and opponents of Common Core say the legislation only begins to scratch the surface of problems with the standards.

"The legislators are now hearing from parents who are finding flaw after flaw after flaw," said Ann Marie Banfield, education liaison for Cornerstone Action, a conservative advocacy group.

But opponents of the measure say it's unnecessary and misguided because curriculum decisions in New Hampshire have always been made at the local level. State Board of Education Chairman Tom Raffio said the state has no plans to move schools away from teaching cursive or multiplication tables, but noted that cursive has never been required by New Hampshire standards.

"How you learn to write, how you learn to multiply, is decided at the local level, as is all curriculum and instructional practices, as it has always been," Raffio said.

Sharon McCrone, acting chair of the University of New Hampshire's math and statistics department, said knowing multiplication tables is an important building block for students to learn advanced math, but said it's critical that students have good "number sense" and understand how to arrive at answers in the tables. She said that understanding helps students apply math to everyday life, like figuring out how much to pay for 1 pound of grapes if a sign says "5 pounds for \$2," McCrone said.

Democratic Sen. Molly Kelly, the only lawmaker to speak against the bill, said she opposes it because nothing in state law prohibits schools from teaching either skill. "I think that sometimes we go too far in what we legislate," she said. "I think this is one of those bills that is not necessary."

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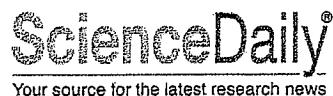
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Better learning through handwriting

Date: January 24, 2011

Source: The University of Stavanger

Summary: Writing by hand strengthens the learning process. When typing on a keyboard, this process may be impaired. Neurophysiologists have examined research which goes a long way in confirming the significance of these differences. When writing by hand, our brain receives feedback from our motor actions, together with the sensation of touching a pencil and paper. These kinds of feedback is significantly different from those we receive when touching and typing on a keyboard.

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Writing by hand strengthens the learning process. When typing on a keyboard, this process may be impaired.

Associate professor Anne Mangen at the University of Stavanger's Reading Centre asks if something is lost in switching from book to computer screen, and from pen to keyboard.

The process of reading and writing involves a number of senses, she explains. When writing by hand, our brain receives feedback from our motor actions, together with the sensation of touching a pencil and paper. These kinds of feedback is significantly different from those we receive when touching and typing on a keyboard.

Learning by doing

Together with neurophysiologist Jean-Luc Velay at the University of Marseille, Anne Mangen has written an article published in the Advances in Haptics periodical. They have examined research which goes a long way in confirming the significance of these differences.

An experiment carried out by Velay's research team in Marseille establishes that different parts of the brain are activated when we read letters we have learned by handwriting, from those activated when we recognise letters we have learned through typing on a keyboard. When writing by hand, the movements involved leave a motor memory in the sensorimotor part of the brain, which helps us recognise letters. This implies a connection between reading and writing, and suggests that the sensorimotor system plays a role in the process of visual recognition during reading, Mangen explains.

Other experiments suggest that the brain's Broca's area is discernibly more activated when we read a verb which is linked to a physical activity, compared with being read an abstract verb or a verb not associated with any action.

"This also happens when you observe someone doing something. You don't have to do anything yourself. Hearing about or watching some activity is often enough. It may even suffice to observe a familiar tool associated with a particular physical activity," Mangen says.

Since writing by hand takes longer than typing on a keyboard, the temporal aspect may also influence the learning process, she adds.

The term 'haptic' refers to the process of touching and the way in which we communicate by touch, particularly by using our fingers and hands to explore our surroundings. Haptics include both our perceptions when we relate passively to our surroundings, and when we move and act.

A lack of focus

There is a lot of research on haptics in relation to computer games, in which for instance vibrating hand controls are employed. According to Mangen, virtual drills with sound and vibration are used for training dentists.

But there has been very little effort to include haptics within the humanistic disciplines, she explains. In educational science, there is scant interest in the ergonomics of reading and writing, and its potential significance in the learning process.

Mangen refers to an experiment involving two groups of adults, in which the participants were assigned the task of having to learn to write in an unknown alphabet, consisting of approximately twenty letters. One group was taught to write by hand,

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while the other was using a keyboard. Three and six weeks into the experiment, the participants' recollection of these letters, as well as their rapidity in distinguishing right and reversed letters, were tested. Those who had learned the letters by handwriting came out best in all tests. Furthermore, fMRI brain scans indicated an activation of the Broca's area within this group. Among those who had learned by typing on keyboards, there was little or no activation of this area.

"The sensorimotor component forms an integral part of training for beginners, and in special education for people with learning difficulties. But there is little awareness and understanding of the importance of handwriting to the learning process, beyond that of writing itself," Mangen says.

She refers to pedagogical research on writing, which has moved from a cognitive approach to a focus on contextual, social and cultural relations. In her opinion, a one-sided focus on context may lead to neglect of the individual, physiological, sensorimotor and phenomenological connections.

**Interdisciplinary collaboration**

Within the field of psychology, there is an awareness of the danger of paying too much attention on mentality. According to Mangen, perception and sensorimotor now play a more prominent role.

"Our bodies are designed to interact with the world which surrounds us. We are living creatures, geared toward using physical objects -- be it a book, a keyboard or a pen -- to perform certain tasks," she says.

Being a media and reading researcher, Anne Mangen is a rare bird within her field of study. And she is very enthusiastic about her collaboration with a neurophysiologist.

"We combine very different disciplines. Velay has carried out some very exciting experiments on the difference between handwriting and the use of keyboards, from a neurophysiologic perspective. My contribution centres on how we -- as humans with bodies and brains -- experience the writing process, through using different technologies in different ways. And how these technologies' interfaces influence our experience," she concludes.

**Story Source:**

The above story is based on materials provided by The University of Stavanger. The original article was written by Trond Egil Toft; translation by Astri Sivertsen. *Note: Materials may be edited for content and length.*

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Does good handwriting lead to good grades?

## Pre-K through 2nd grade

Math & Reading Test Scores

A  
B  
C  
D  
E  
F

Good Penmanship      Poor Penmanship

## Good handwriting and good grades: FIU researcher finds new link

Posted by [jprenaud](#) × 01/18/2012 at 2:40 pm

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*Who cares about handwriting, anyway? It's the 21<sup>st</sup> century, after all. We have iPads and iPhones, computers that spell check and fonts that go from French script to Freestyle and back to Times New Roman.*

*But to Laura Dinehart, an assistant professor at Florida International University's College of Education, handwriting matters. A lot.*

By Jean-Paul Renaud MPA '11

In research funded by the Children's Trust and soon to be published in the Journal of Early Childhood Education and Development, Dinehart discovered that 4-year-olds who demonstrate strong handwriting skills are more likely to excel academically in elementary school. Research on the

importance of handwriting is just beginning to emerge, and Dinehart's findings establish a new link in understanding how penmanship plays a role in a child's academic development.

"We talk about reading, we talk about math, but no one talks about handwriting," Dinehart said. "It's not even a subject area in many classrooms anymore. We don't ask kids to spend time on their handwriting, when in fact, the research is clear that kids who have greater ease in writing have better academic skills in 2nd grade in both reading and math."

Dinehart took a sample of 1,000 2<sup>nd</sup> grade students in Miami-Dade County Public Schools and linked their grades and academic scores back to the information gathered from them when they were still in pre-kindergarten.

Students who received good grades on fine motor writing tasks in pre-k had an average GPA of 3.02 in math and 2.84 in reading – B averages. Those who did poorly on the fine motor writing tasks in pre-k had an average GPA of 2.30 in math and 2.12 in Reading – C averages.

More impressively, those who did well on the fine motor writing tasks in pre-k scored in the 59<sup>th</sup> percentile on the Reading SAT in second grade (just above average) and in the 62<sup>nd</sup> percentile on the Math SAT. Kids who did poorly on the fine motor writing tasks in pre-k scored in the 38<sup>th</sup> percentile on the Reading SAT in second grade and in the 37<sup>nd</sup> percentile on the Math SAT.

There is still much research to be done, and many questions to answer. What exactly is happening when a child's academic performance improves when his or her handwriting is practiced? Exactly how much practice is necessary before results are seen?

Dinehart will attempt to answer those questions in the second part of her research. However, one thing is clear.

"People should take a second look at how important handwriting might actually be," she said. "And public schools should rethink how much they focus on handwriting in the classroom and how those skills can really improve reading and math."

For tips on how parents can encourage their children to practice their handwriting, click [here](#).

If you're new here, you may want to subscribe to our [newsletter](#). Thanks for visiting!

Tags: [College of Education](#) × [Laura Dinehart](#) × [President's Council](#) × [Research](#)


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Last reply was 02/25/2012


1.  [Evelyn Perez](#)  
View [01/17/2012](#)

Great article! I truly enjoyed reading it. I'm glad I'm not the only one that was O.C.D. about my handwriting as a child!

2.  [Your Therapy Source](#)  
View [01/17/2012](#)

This is excellent research to support pediatric occupational therapy. Children who exhibit fine motor delays can qualify for school based occupational therapy services to improve their skills.

Although I agree with the author of this article regarding the importance of teaching handwriting, I do not understand where the title of the article holds true. The research indicates higher scores in fine motor skill development had an undetermined relationship to higher grades. I did not see where any handwriting analysis was evaluated or reviewed.

-  [Laura Dinehart](#) replied:  
View [01/17/2012](#)

Glad you like the research... I agree that it supports pediatric occupational therapy and I hope it furthers your endeavors. In response to you final thought, I want to note that children's fine motor writing skills at age 4 were evaluated using a standardized instrument that provided parameters by which to score their writing skills. I hope that clarified a bit and take care!

-  [Celina Fabrizio](#) replied:  
View [01/18/2012](#)

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## **Research Study: Early Braille Education Vital**

by Ruby Ryles, Ph.D.

An exhaustive study has cast aside some erroneous stereotypes while underscoring the importance of Braille education at an early age. The study has revealed that literacy rates of blind high school students who began their Braille education at an early age are consistent with those of their sighted peers. The study further disclosed that legally blind children who received infrequent or no Braille training, or who began their Braille education later in life, exhibit noticeably lower literacy rates.

The study was conducted by Ruby Ryles, Ph.D., founding coordinator of the master's program in Orientation and Mobility at Louisiana Tech University/Louisiana Center for the Blind. Ryles performed the study for her University of Washington doctoral dissertation in special education, titled "Relationship of Reading Medium to Literacy Skills of High School Students Who Are Visually Impaired." Results from that and a preliminary study suggest that partially sighted children may be at greater risk of literacy deficiencies than children who are totally blind. The study was intended to establish correlations between present literacy rates and the early reading education of high school students from 45 cities, towns, and rural communities in 11 eastern and southern states. Of 60 students in the study, 45 were legally blind from birth, had no other disabilities, spoke English as a first language, were of average intelligence, and attended public rather than residential schools.

The study also included a comparative group of 15 sighted students attending the same schools as the legally blind subjects. The 45 legally blind students were divided into three groups of 15 students each, corresponding with the initiation and consistency of their Braille instruction: Early Braille—students who received Braille instruction four to five days per week while in the first, second, and third grades. Infrequent Braille—students who received Braille instruction fewer than four days per week during the first three grades; Non-Braille—legally blind students who received no instruction in reading Braille, instead using print material and optical aids.

Ryles administered comprehension, vocabulary, and other subtests of the Stanford Achievement Test and the Woodcock Johnson R (revised) assessment tests. In comprehension tests, there was no significant difference between the mean scores of the sighted students and the group of blind students who received early frequent instruction in Braille. Nor was there a significant difference between the mean scores of the infrequent Braille group and the non-Braille group on the two comprehension tests. However, the

students who received instruction in Braille fewer than four days a week during the first three grades of school (infrequent Braille group) and the non-Braille group posted mean scores on both tests significantly lower than those of the sighted and early Braille groups.

In vocabulary, early Braille readers outperformed sighted students by a 5 percent margin on the Stanford test and nearly matched their sighted classmates on the Woodcock Johnson R test. The infrequent Braille learners, producing a mean score of 45 percent, registered significantly below the early Braille and sighted groups on the Stanford test. Legally blind students who received no Braille instruction posted a mean score 6 percentage points lower than the infrequent Braille group on the same test. The infrequent and non-Braille groups also scored significantly lower than the early Braille and sighted groups on the Woodcock Johnson R vocabulary test.

Spelling, punctuation, and capitalization scores shattered stereotypes. In the capitalization and punctuation portion of the Woodcock Johnson R test, early Braille readers produced a mean score that was 7 percentage points higher than their sighted peers, 25 percentage points higher than the infrequent Braille group, and 42 percentage points higher than their legally blind peers in the non-Braille group. In the spelling portion of the Woodcock Johnson R test, early Braille learners averaged 1 percent point higher than fully sighted readers, 32 percentage points higher than infrequent Braille learning, and 38 percentage points higher than the non-Braille group.

Before beginning work on the project, Ryles conducted a preliminary study in the state of Washington evaluating the correlation between adult literacy skills and employment. There, she studied 74 adults who were born legally blind and were patrons of the Library for the Blind. Ryles discovered that 44 percent of the study participants who had learned to read in Braille were unemployed, while those who had learned to read using print had a 77 percent unemployment rate. Those results prompted her to conduct an in-depth study exploring the childhood reading education of legally blind high school kids.

The two studies led Ryles to an inescapable conclusion: □Low-vision kids need to be taught Braille,□ she asserts. □Early Braille education is crucial to literacy, and literacy is crucial to employment.□

*The article above first appeared in the Spring, 1998, edition of HumanWare□s publication, Star Student. It was later reprinted in Future Reflections.*

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## Proponents Say the Decline in Braille Instruction Is Leading to Illiteracy

by John Faherty



**From the Editor:** The following excellent article about the importance of Braille and the literacy crisis still facing blind Americans first appeared in the *Arizona Republic* on June 1, 2006. The reporter interviewed Arielle Silverman, president of the Arizona Association of Blind Students and a member of the boards of directors of both the NFB of Arizona and the National Association of Blind Students. While exploring the crisis facing blind Americans, the article also illustrates what Braille users can accomplish. Here is the story:

Can't read this? [a collection of Braille dots printed on the page] Neither can nearly 90 percent of blind schoolkids, and proponents say

the decline in Braille instruction is leading to illiteracy

Arielle Silverman has always loved to read. From *Little Women* in fourth grade to *Jane Eyre* in high school, books were a constant companion. She could slide her fingers across the page and feel the world. Those words, however, have done more than make her well read. They have secured her place in society.

Silverman, blind since birth, has now finished her junior year at Arizona State University with a double major in biology and psychology and a grade-point average of 3.9. The Scottsdale native is ambitious, thoughtful, and well-spoken. And the twenty-one-year-old is convinced she couldn't have achieved this without her fluency in Braille.

A generation ago 50 percent of blind schoolchildren used Braille, according to William M. Raeder, president of the National Braille Press in Boston. Now, he said, it's less than 12 percent. Young blind students today are still instructed in Braille, but in the past few

decades more students have been mainstreamed and no longer receive daily instruction. That is significant, because reading and writing Braille is a skill that needs maintenance. The less often a student uses it, the more likely it is those skills will diminish or even disappear.

The reduction in Braille literacy has been mollified by the fact that there are now more ways than ever for the blind to acquire information. Much of the world is moving away from words on a page and toward electronic/digital information. The proliferation of books on tape means blind people no longer have to wait to read the latest bestseller. Talking computers have brought the blind to the world and the world to the blind. These advances have placed a generation of blind young adults and children in an information paradox: they have more knowledge at their disposal, while their ability to read and write declines.

But proponents of Braille always fall back on the same argument: if reading and writing are important to the sighted, they are important to the blind. "If the literacy rate for sighted people was 10 percent, that would be a huge issue," Silverman said. "I think kids aren't being taught Braille, and they aren't being given enough time to practice."

### **Congenital Disease**

Silverman is sightless because of Leber's Congenital Amaurosis, an inherited retinal degenerative disease. But her parents never considered not teaching her to read and write.

"I grew up thinking reading is one of the greatest joys of life," said Sharona Silverman, Arielle's mother. "Having a book in your lap is an incredible gift, and I was going to introduce that gift to both of my children." Arielle's sister is sighted. "Arielle had such a love of the written word early on. So she just flew with [Braille]," her mother said.

Because of her parents' commitment to literacy, Arielle Silverman was sent as a child to the Foundation for Blind Children in Phoenix to learn Braille. She could read by age five. Silverman then was mainstreamed into the Scottsdale schools and graduated from Chaparral High. She is now president of the Arizona Association of Blind Students.

In that role Silverman has pushed for better education for the blind, particularly an increased emphasis on Braille instruction. "Braille does not mean more than a sighted person's ability to read and write," Silverman said. "It's exactly the same. It's just the way we read what we read."

### **Law Debated**

Arizona law starts with the presumption that blind students should learn Braille. But that law is not seen as necessarily valid by the person in charge of implementing it. "Just because there is a presumption does not mean it is not an archaic presumption," said



Joanne Phillips, deputy associate superintendent for exceptional student services with the state Department of Education.

Arizona Revised Statutes Section 15-214, regarding the teaching of the blind, states that "proficiency in Braille is essential for that student to achieve satisfactory educational progress." The law is based on the fact that Braille still is the only way blind people can read and write. But it stops short of mandating Braille instruction. "There is no statutory mandate where every child who is blind must learn Braille," Phillips said.

You can argue that it does not matter how you read *War and Peace*, as long as you know the story and the genius of Leo Tolstoy. "There is no correlation between Braille literacy and educational achievement," Phillips said.

Karen Wolfe of the American Foundation for the Blind strongly disagrees. "You can't be literate just listening," she said. "Literacy helps us think and communicate our thoughts. You will never be truly literate without Braille."

The AFB says the employment rate for the blind in this country is 32 percent. And Blindinc.org says that 93 percent of the employed blind read and write Braille. Still the rate of Braille literacy is dropping across the country. The reasons for the national decline are many, but the primary reasons are:

Mainstreaming of blind students.

Increased technology, such as talking computers and electronic books.

More books on tape.

Increased number of blind children born with additional physical or mental handicaps, often the result of premature birth.

The state of Arizona requires that the Department of Education evaluate each blind student to determine whether he or she can learn Braille, but it does not require the retention of those records. So no one knows how many students in Arizona are learning Braille.

### **Rehabilitation Act**

The beginning of the decline of Braille literacy can be traced to a 1973 federal decision called the Rehabilitation Act--Nondiscrimination Under Federal Grants and Programs. It mandated that public schools make accommodations for children with disabilities. For many blind students it meant the ability to come home. Prior to 1973 students who wanted an education had to travel to a school for the blind. In Arizona the school was in Tucson. The education was first rate, but it was segregation for blind students.

The new law allowed children to return to their communities, to sit every day with their peers in schools that were mandated to accommodate them. But one significant flaw was with Braille instruction. Braille teachers suddenly had to travel from school to school or district to district to introduce Braille to blind students one or two at a time. It was far more practical for districts with a few blind students to get by putting textbooks on tape and allowing test-reading aids for blind students.

The prevalence of books on tape meant they no longer had to wait for Braille publications to read the latest bestseller. All blind people, not just Braille readers, could take part in a cultural phenomenon like Harry Potter. Eventually, computers with voice capabilities came on the market. Braille began to be seen as a luxury more than a necessity. Knowledge was available without Braille. Literature was available without Braille. The irony is that as Braille literacy dropped, new printing technology made Braille much more accessible.

### **High-tech Aids**

Silverman lives in an apartment on the ASU campus. Her course load includes such classes as organic chemistry with Professor Seth Rose, in which he says things like "Heterocyclic aromatic amines are weaker bases than heterocyclic aliphatic amines."

When she gets to class, she sits with a BrailleNote laptop that allows her to take notes and review them later. From a distance the BrailleNote looks exactly like the standard laptop computer used by her peers, but instead of the twenty-six letters of the alphabet, six keys represent the six-dot system of Braille. Each letter of the alphabet is represented by a combination of the six dots.

Silverman points to this machine and others like it as an example of Braille working hand-in-hand with technology. "They are not mutually exclusive," Silverman said. "If I didn't know Braille, I couldn't use my computers to the level I need them."

But the teaching of organic chemistry is very visual. Formulas and models are used, and Silverman can see none of them. Rose helps translate some of his teaching material into a digital format that will have meaning to Silverman. If a class focuses on a particular compound, he will build a model that she can "see" with her hands. He expresses colors with different textures. He is glad to do it, he said. "It gives me a great feeling to know that when I hand a model to a student, that she can 'see' exactly what I've been talking about."

### **Literacy Vital**

With her intelligence and work ethic, could Silverman have made it this far without the ability to read and write? "I doubt it," she said. "Would a sighted person be well-educated if they are illiterate?"

Silverman reads, writes, and takes rapid-fire notes in Braille. "I have a feeling the way our brains are designed, learning how to read opens up parts of your brain," she said. She adds that math and science notations are possible only for people fluent in Braille. They could not be replicated by books on tape or by talking computers. Silverman will occasionally listen to a book on tape, but only if she is traveling or if the book is not readily available in Braille. In high school she read *Seventeen* magazine in Braille, but now she is more likely to read a medical journal.

The American Foundation for the Blind celebrates independence and learning. It is the organization to which Helen Keller dedicated her life. So it is not a surprise how much it advocates the teaching and learning of Braille. The foundation says literacy is vital to a successful education, career, and quality of life in today's world. Whether in the form of curling up with a good book, jotting down a phone number, making a shopping list, or writing a report, being literate means participating effectively at home and in society. "If our value system expects sighted people to be literate," Silverman said, "we need to expect blind people to be literate."

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: AMENDMENT TO COURT OF CHANCERY RULES, SECTION XIII, RULE 113

This 15<sup>th</sup> day of December 2014, IT IS HEREBY ORDERED that Court of Chancery Rules, Section XIII, Rule 113 shall be amended effective January 1<sup>st</sup>, 2015.

**Rule 113 shall be amended as follows:**

Rule 113. Application to sell real estate of disabled person.

~~When a guardian of the property or trustee makes an application to the Court to sell real estate, there shall be produced with the application a valuation of the real estate by at least one disinterested person familiar with the value of real estate in the vicinity of the subject property.~~

~~If the real estate is offered at public sale, such approval shall be obtained prior to the sale. If the real estate is offered at private sale, then approval by the Court shall be a condition of such offer, and such approval shall be obtained before the delivery of the deed to the property.~~

(a) Appointment of Appraiser. When a guardian of the property makes an application to the Court to sell real estate, the guardian shall first file a motion to appoint an appraiser pursuant to 12 Del. C. § 3951(b). The motion shall be accompanied by a proposed order for the appointment of an appraiser by the Court. The appraiser appointed shall be appointed by the Court and shall be independent of the parties and disinterested in the transaction. The appraiser so appointed shall provide the appraisal report to the guardian or trustee within thirty (30) days of the appointment.

(b) Petition to Sell Real Estate.

(1) The guardian shall be authorized to market the real estate of the disabled person for a price equal to or in excess of the appraised value, with the final terms of sale subject to further order of the Court. Thereafter, after obtaining a written contract offer for sale of the real estate, the guardian shall submit a petition to the Court providing a copy of the proposed contract, a copy of the appraisal by the Court appointed appraiser, and any other relevant information regarding the proposed sale. If the guardian seeks to sell the real estate for less than the appraised value, the guardian's petition shall be accompanied by an affidavit explaining why such sale is in the disabled person's best interests, including information regarding the carrying costs of the property, whether the property is vacant, how the property was advertised and marketed, how long the property was marketed, the number of showings and offers received, and whether the proposed sale is an arms-length transaction.

(2) Notice of the petition shall be sent to interested parties identified in the petition to appoint a guardian and to the Office of the Attorney General as counsel for Medicaid in

the case of any disabled person who is approved for and receiving Medicaid benefits at the time of the petition. Persons receiving notice shall be required to file any objection within thirteen days of the receipt of such notice. If no objection is filed within the required time period, the Court may, in its discretion, set the matter down for a hearing or consider the proposed sale based on the documents submitted. In considering the petition, the Court shall consider the provisions of 12 Del. C. § 3951 and may approve the sale of the real estate for such price as it finds to be fair and reasonable and in the best interest of the disabled person.



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES

MARGARET M. O'NEILL BUILDING  
410 FEDERAL STREET, SUITE 1  
DOVER, DE 19901

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MEMORANDUM

DATE: May 29, 2014

TO: All Members of the Delaware State Senate  
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: H.B. 309 (Clean Indoor Air Act & Electronic Cigarettes)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 309 which would add e-cigarettes to the Clean Indoor Air Act and would prohibit the operation of e-cigarettes in all public places where smoking is prohibited under current law. As background, see the attached May 1, 2014 News Journal article. It notes that 3 other states ban indoor e-cigarette usage and 9 other states ban use in certain buildings and other venues such as public transportation. The attached American Lung Association Statement on E-Cigarettes observes that e-cigarette vapors include carcinogens. The attached Consumer Reports article describes both pros and cons to usage. SCPD endorses the proposed legislation subject to the following suggestions.

First, consistent with the attached February 27, 2014 industry article, many states are proposing taxes on e-cigarettes. Delaware could consider a similar initiative.

Second, lines 19-20 of the legislation contain an exemption for "any product that has been approved by the United States Food and Drug Administration for tobacco cessation or other medical purpose." The problem with this exemption is that even a very limited FDA approval of e-cigarettes would result in a wholesale exemption from the State law. For example, the FDA could potentially approve e-cigarettes as transitional smoking cessation devices for chronic smokers. Some states do not include an FDA reference in their legislation. See, e.g., the attached enacted N.J. legislation. Other states include an FDA exemption. See, e.g., the attached enacted Kentucky legislation. The sponsors may wish to consider whether the sentence should be deleted.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: The Honorable Jack Markell  
Mr. Brian Hartman, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

HB 309 clean indoor air act 5-29-14

# Heart group calls on FDA to regulate e-cigarettes

Liz Szabo  
USA TODAY

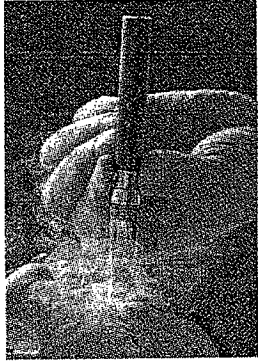
Electronic cigarettes need to be strongly regulated — and quickly — to prevent another generation of young people from becoming addicted to nicotine, according to the American Heart Association's first policy statement on the products.

In its statement, the heart association pointed to studies suggesting that e-cigarettes, which contain nicotine but no tobacco, could serve as a "gateway" drug to addict young people, who

may go on to regular cigarettes or smokeless tobacco. The association pointed to flavors in e-cigarettes, such as bubble gum, arguing that these are intended to attract kids.

"We are fiercely committed to preventing the tobacco industry from addicting another generation of smokers," said Nancy Brown, CEO of the heart association, in a statement.

An April proposal from the Food and Drug Administration would require most e-cigarettes to undergo an agency review. The proposed rules would ban sales of e-cigarettes to minors and re-



TORIN HALSEY/AP

A smoker puffs on an e-cigarette.

quire warning labels.

In its new statement, the heart association calls on the FDA to put the proposed rules — three years in the making — in place before the end of the year.

"Any additional delay of these new regulations will have real, 'continuing public health consequences,'" Brown said.

The e-cigarette has grown dramatically in the past decade. There are 466 brands and more than 7,700 flavors on the market, the policy report says.

Use among teens nearly doubled from 2011 to 2012, and nearly 7% of teens have tried them. About 24 million young people have seen e-cigarette marketing, according to a recent paper in the journal *Pediatrics*.

"Electronic cigarettes should be classified as tobacco products

and subject to the same laws and regulations as other tobacco products," says Vince Willmore, spokesman for the Campaign for Tobacco-Free Kids.

Cynthia Cabrera, executive director of the Smoke-Free Alternatives Trade Association, which represents e-cigarette makers, distributors and retailers, says e-cigarettes can reduce the harm from tobacco by helping people quit or smoke less. Willmore says research doesn't clearly show whether e-cigarettes help people to quit or not. Cabrera argues that e-cigarettes are much safer than tobacco.

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+ 1.23M

# E-CIGARETTE USE TRIPLES AMONG HIGH SCHOOLERS

Liz Szabo  
USA TODAY

Use of electronic cigarettes by high-school students tripled in two years, according to a new report from the Centers for Disease Control and Prevention.

About 4.5% of high schoolers used e-cigarettes regularly in 2013, according to a report released Thursday. Nearly 12% of high schoolers and 3% of middle schoolers had tried them at least once.

Cigarette use among teens has been cut in half since 2000, falling from 28% of high schoolers in 2000 to 12.7% in 2013, said Peter Hamm, a spokesman for the Campaign for Tobacco-Free Kids.

But kids are experimenting with a variety of tobacco products beyond cigarettes — from cigars to hookahs, chewing tobacco and pipes. Nearly 23% of high-school students use some sort of tobacco product, according to the CDC.

Scientists don't yet know the

full health effects of e-cigarettes, but the Surgeon General has said the nicotine they deliver is addictive and can harm adolescent brain development.

E-cigs are often sold in kiosks at places frequented by teens, such as shopping malls.

Public health researchers such as Stanton Glantz of the University of California-San Francisco worry that e-cigarettes could serve as a gateway drug to cigarettes.

"We must do more to prevent our youth from using tobacco products, or we will see millions of them suffer and die prematurely as adults," said Tim McAfee, director of the CDC's Office on Smoking and Health.

The Food and Drug Administration has proposed regulating e-cigarettes and other tobacco products, but it has not yet issued a final rule. The proposed rule would ban sales of e-cigs to people under age 18. Manufacturers of e-cigs would have to register any new products with the FDA.

11-14-14 25



## COMMENT

## Ban e-cigarettes from bars and restaurants



**DELAWARE VOICE**  
DR. KARYL RATTAY

More than a decade ago, Delaware was the second state, after California, to pass a law against smoking in indoor workplaces and public places, the Clean Indoor Air Act. The law was hailed as revolutionary and is credited with reducing smoking rates in our state.

It was also celebrated as protecting children, nonsmokers, and restaurant workers and patrons from the dangers of secondhand smoke. Ten years later, a new tobacco product — which also exposes people to toxins and carcinogens — is on the market and is currently legal to use in restaurants, bars, and public places.

We must add e-cigarettes to the Clean Indoor Air Act.

Rep. Deborah Heffernan has introduced legislation, House Bill 5, to add e-cigarettes to the list of tobacco products banned in public places. This proposal has extremely important implications for protecting the public from toxic emissions and sending a message that nicotine exposure is not safe. E-cigarettes are marketed as an alternative to smoking tobacco that produces harmless water vapor.

However, a growing number of studies shows that e-cigarette emissions are not harmless. They contain nicotine, particles, heavy metals and other carcinogens, and toxic chemicals.

After the user inhales, the residual emissions are exhaled into the surrounding air. This visible vapor from e-cigarettes contains many chemicals that are

known to be toxic to humans, including nicotine. In fact, one study demonstrated that people passively exposed to e-cigarette emissions absorb nicotine in levels comparable to passive smokers. Nicotine deposits from e-cigarettes can remain on indoor surfaces for weeks to months. Nicotine exposure in fetuses and infants has been shown to cause preterm births, SIDS, and to have detrimental effects on brain and lung development.

Children and adolescents exposed to nicotine also can suffer lasting brain effects. Nicotine poisoning is another consequence of the rising use of e-cigarettes. Data from American Poison Control Centers show a rapid increase in exposures to liquid nicotine from 12 in 2010 to 3,808 in 2014.

In addition to nicotine, studies have shown numerous other chemicals are emitted in indoor air from e-cigarettes including: ultrafine particles; toxic metals (nickel, chromium, lead, cadmium and zinc); carbonyls (acetic acid, acetone, isoprene, formaldehyde and acetaldehyde); volatile organic compounds (toluene); polycyclic aromatic hydrocarbons (carcinogens); tobacco-specific nitrosamines (carcinogens); and glycols (found in antifreeze).

While tests on e-cigarette emissions do show lower levels of some of these toxicants compared to conventional cigarettes, the heat used to produce vapor in e-cigarettes can reach temperatures that produce carcinogens as well as toxic heavy metals not found in or even at higher levels than conventional cigarettes. Those exposed to vapors have reported irritations similar to regular cigarettes such as sore throats and headaches.

E-cigarette use is becoming the norm among adults

and youth. According to results from the Delaware Youth Tobacco Survey, the percentage of Delaware high school students who reported ever using e-cigarettes jumped from 4.7 percent in 2011 to 10 percent in 2012 up to 14.3 percent in 2014. One in five youth using e-cigarettes was not previously a tobacco user.

Also, among students first smoking cigarettes, e-cigarette users are far more likely to continue smoking cigarettes than non e-cigarette users. Including e-cigarettes in the Clean Indoor Air Act can help so their use does not become even more “normal,” similar to the impact the smoking ban had on de-normalizing and decreasing rates of smoking regular cigarettes.

We understand that the main argument of e-cigarette users is that these products may help them “quit” conventional cigarette smoking. Evidence may indicate the opposite; recent research shows that users of e-cigarettes are 30 percent less likely to quit smoking compared to smokers who do not use e-cigarettes.

And, make no mistake about it, e-cigarettes are a growth industry. Big tobacco will make sure of that. The three big tobacco companies are investing heavily in e-cigarettes, creating their own product lines and buying up e-cigarette companies, and then marketing aggressively.

This means that without preventive measures similar to that which have been put into place for traditional cigarettes, Delawareans will increasingly be exposed to harmful e-cigarette emissions in places we all frequently visit.

Dr. Karyl Rattay is director of Delaware's Division of Public Health.

4-3-15  
N/S

# Bill banning indoor use of e-cigs passes in committee

JON OFFREDO THE NEWS JOURNAL

A measure that adds e-cigarettes to Delaware's Clean Indoor Air Act, which bans smoking in restaurants, bars and other indoor public places, was largely passed out of the House Health and Human Development Committee.

Lawmakers on the committee released the legislation Thursday, 9-3, for a full hearing on the floor of the House of Representatives.

The move comes after an over hour-long public hearing Wednesday. During the hearing many vape shop owners testified that the bill, which would not allow customers to smoke in the shops, would hurt their businesses. Others testified that the ban would adversely affect their ability to quit smoking.

Oscar Gonzalez, a disabled veteran who testified during the hearing, said that vaping helped him kick a 12-year smoking habit. E-cigarettes are his substitute, he said.

"Let the stores do what they want," he said. "This is not prohibition."

"Don't take us backwards."

Chair of the health committee, Rep. Mike Barbieri, D-Newark, said Thursday that he thought the legislation was important, but is a bill that needs an amend-

ment.

When House lawmakers return from a two week recess they could consider a possible amendment that would exempt vape shops from the legislation.

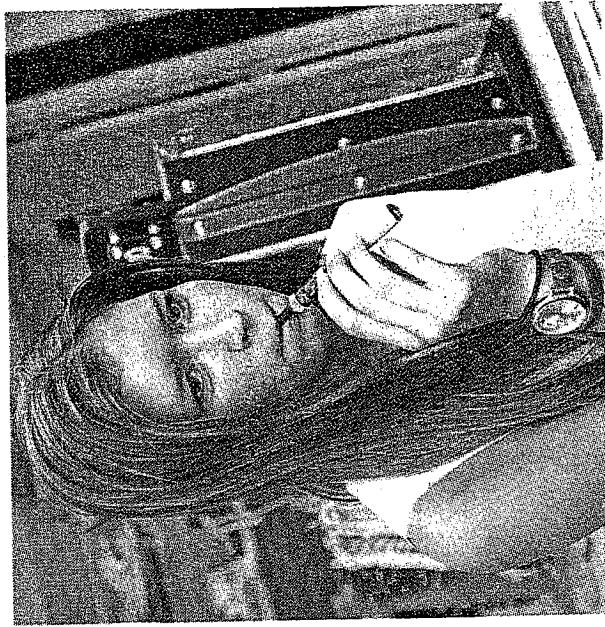
The bill's sponsor, Rep. Debra Heffernan, D-Bran-dywine Hundred South, said she would prefer the measure move through the House unamended, but would not stand in the way if the majority lawmakers wanted to exempt vape shops.

Last year, a similar bill stalled in the Senate. But lawmakers passed a bipartisan piece of legislation that treats the sale and purchase of electronic cigarettes in Delaware the same as regular tobacco when it comes to minors.

The battery-powered cigarettes heat a cartridge of nicotine-mixed liquid, which produces an aerosol that can be inhaled by smokers instead of smoke. The devices are not regulated by the U.S. Food and Drug Administration.

House Bill 5 is also supported by the Delaware Restaurant Association, which represents hundreds of restaurant owners and operators throughout the state.

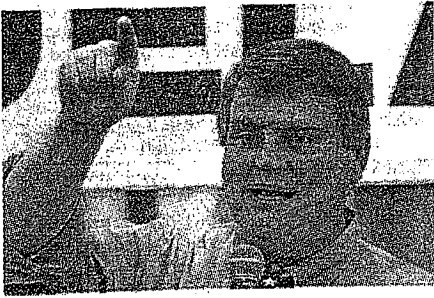
Contact Jon Offredo at (302) 678-4271, on Twitter @jonoffredo or at joffredo@delawareonline.com



ROBERT CRAIG/THE NEWS JOURNAL

In this 2014 photo, UD student Taylor Mackenzie, 20, samples a flavored nicotine e-cigarette.

2-12-15 NJ



WILLIAM BRETZGER/THE NEWS JOURNAL

State Sen. Colin Bonini, Dover Republican, plans to introduce a "Right to Try" law.

# Bonini: Allow trial meds

JEN RINI  
THE NEWS JOURNAL

Terminally ill Delawareans will be able to use experimental drugs not fully approved by the U.S. Food and Drug Administration for treatment under a bill proposed by state Sen. Colin Bonini.

With the blessing of their physicians and the drug company, patients would be able to sample drugs, products or devices that have passed the first phase of FDA clinical trials, Bonini explained, but are still far from being marketed

See TREATMENT, Page A9

will not be able to have their licenses revoked based on their recommendation and prevents state interference in implementing the policy.

"There's immunity for all parties involved," Bonini said. The FDA has not taken a position on any state's "Right to Try" law, said Sandy Walsh, an FDA spokeswoman.

Walsh said the FDA has allowed more than 99 percent of the requests the agency received from fiscal years 2010-2014 to proceed. In 2014, the FDA received 1,882 applications and approved 1,873. But, as in the "Right to Try" law, the drug company ultimately needs to provide the drug.

"In some cases in which patients were unable to secure a drug, it was due to the company's refusal to provide the drug, not FDA's failure to allow the use of the drug to proceed under expanded access," she said in a statement.

"It is critical for the public to understand that the FDA is not a barrier to accessing experimental drugs or medical devices."

Bonini will unveil the bill officially Thursday at noon in the Senate Hearing Room at Legislative Hall.

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similar to how some states have bypassed federal regulations by legalizing marijuana.

"One of the things I can see it (the legislation) doing is providing a modicum of hope," says Sean Hebbel, program director for Cancer Support Community Delaware.

Hebbel said patients often know there is a drug out there that can potentially help them, but there are just so many hoops to jump through.

People will do anything for a sliver of hope, he said, but they are often stuck waiting for years as a drug goes through clinical trials. The anxiety can be debilitating.

"I think that can be kind of cruel to be waiting for that," Hebbel said.

Bonini said there are safeguards built into the legislation. For instance, drug manufacturers are not required to provide the experimental drug or equipment at a patient's request and the patient's insurance company does not have to foot the bill.

Patients must have written documentation that their physicians recommend the treatment for their specific illness and include a clause that states that the patient is liable for all expenses and treatment for any adverse side effects.

The proposal states that physicians

## Treatment

Continued from Page A1

and sold to the public.

"I think it just makes sense. It is a terrible situation people are facing and if we can perhaps save a life or two I think it will be well worth it," the Dover Republican said.

Delaware is among one of the 21 states including New Jersey, poised to consider "Right to Try" legislation this year, according to the National Conference of State Legislatures. In 2014, five states, Arizona, Colorado, Louisiana, Michigan and Missouri, passed similar measures. Bonini worked with the Goldwater Institute, a right-wing advocacy group based in Arizona, on his bill.

The FDA has had an "expanded access" application process in place since 2009 to help patients and physicians gain access to such experimental drugs. And last week, it introduced new guidelines intended to simplify that process.

But Bonini said the FDA's process is "very lengthy and complicated."

The proposed state law, as with the other proposals, effectively ignores the jurisdiction of the federal government,

## DELAWARE STATE SENATE REPUBLICAN CAUCUS



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### A Word To Our Constituents

**Editor's Note:** *The following message is from Senate Republican Leader Gary Simpson.*



*Sen. Colin Bonini introduces his "Right to Try" legislation at a press conference Thursday in Legislative Hall.*

## Sen. Bonini Announces 'Right To Try' Legislation

### Bill Would Enable Terminally Ill Patients To Access Life-saving Treatments

**DOVER** - Bipartisan legislation announced this week by Sen. Colin Bonini (R-Dover South) would allow terminally ill patients to access safe investigational medications that could save their lives, even if those medicines are years away from hitting the market.

More than 500,000 Americans die each year of cancer alone, and thousands more of other terminal illnesses. Currently it takes more than a decade and a billion dollars to bring life-saving treatments to market. While there are over 20,000 safe drugs currently winding their way through the Food and Drug Administration approval process, only 3 percent of the sickest patients are eligible for clinical trials.

This means that the vast majority of patients die knowing that there may be a drug in development that could help them, but they are not allowed to have it.

"Nothing's more fundamental than the right to save one's life," Sen. Bonini said at a press conference Thursday in Legislative Hall. "This bill is fairly simple, it basically says that if you are facing the horrible situation of terminal illness and there is a drug that has passed at least Phase 1 of the FDA approval process, on the advice of your physician, you can get access to

those potential life-saving drugs."

Currently the FDA has a process that allows people to ask permission to access investigational medicines, a process that takes hundreds of hours of paperwork and months to navigate. While many people ultimately receive FDA permission, there are dozens of documented cases of people dying while waiting on their approval.

The proposed legislation takes the federal government out of the equation, potentially shortening wait times from months to days.

"What this bill should do is create a fast lane, if you will, and expedite the possibility of folks getting these life-saving drugs," Sen. Bonini said. "The bottom line is with this legislation we have the potential, if we're fortunate enough to get this passed, to save some lives. Hopefully this will be something that folks on both sides of the aisle and the governor will get on board with."

The measure is co-prime sponsored by two Democrats, Andria Bennett (D-Dover East) in the House and Karen Peterson (D-Stanton) in the Senate. Sen. Peterson joined Sen. Bonini at the press conference.

"I think it's a great bill," Sen. Peterson said. "I think all of us probably know somebody who could have availed themselves of this opportunity given the chance, I personally know several people. I think it's commendable and I'm glad to be supporting it."

Added co-sponsor Sen. Dave Lawson (R-Marydel), who also spoke at the press conference: "We've got to attack this insidious disease of cancer. This at least allows folks to try it and move it forward. And even if it doesn't directly benefit them it gives data to improve those drugs. We've got to get a handle on cancer; Delaware is one of the top states for it. So I think this bill certainly leads the way."

Delaware becomes the 27th state this year to introduce the law. Last year five states adopted Right to Try laws with overwhelming bipartisan support: Arizona, Colorado, Louisiana, Michigan, Missouri.

The Right to Try Act requires patients to be supervised by their own doctors and applies only to drugs that have already been deemed safe by the Food and Drug Administration.

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### Republican Message

Let's Leave Seniors  
Out Of The Equation

# 'Right to Try' bill offers hope to terminally ill

2-23-15  
NJ



**DELAWARE VOICE**  
COLIN BONINI

Mikaela and Keith Knapp were high-school sweethearts who should have been enjoying the bloom of young love and marriage. Instead, at the start of 2014, they were desperately fighting to gain access to a promising new medicine that had the potential to save Mikaela from certain death.

In October 2013, Mikaela was diagnosed at age 24 with renal cell carcinoma, a deadly form of kidney cancer that migrated into her bones. She exhausted all approved treatments in just a matter of months – but nothing worked. The Knapps learned about a new medicine being developed by three companies, but under the archaic rules of the U.S. Food and Drug Administration, the companies could only provide the medicine to patients enrolled in a clinical trial. The FDA denied her entry to every trial because of the advanced stage of her cancer.

Two years into their marriage, Keith launched a social media campaign to convince the FDA to relax its rules enough to give Mikaela a fighting chance. He posted videos on YouTube, started Facebook and Twitter campaigns, and began online petitions that brought in more than 400,000 signatures.

It wasn't enough. The FDA didn't help. Mikaela died on April 24, 2014. Five months later, on September 4, the FDA gave final approval to the drug that could have saved her.

Mikaela's tragic story has been repeated too many times in the United States. Medical researchers who develop promising new treatments typically spend a decade and \$1 billion to maneuver through the FDA's approval process. While a promising medicine is under review, only 3 percent of all patients who could benefit ever gain access through a clinical trial.

The FDA does have a process that allows patients to seek permission to access investigational medicines. But this "Compassionate Use" process requires a massive amount of paperwork and hundreds of hours to navigate. There are dozens of documented

cases of people dying while waiting for approval.

But Americans shouldn't have to ask the government for permission to try to save their own lives. They should be able to work with their doctors directly to decide what potential treatments they are willing to try.

An effort to make sure sick and dying Americans have access to the medications that could save them is sweeping the country. Last year, five states passed "Right To Try" laws that give terminally ill patients access to medicines that have passed FDA safety tests but are not yet on pharmacy shelves. This year, 27 states, including Delaware, are considering Right To Try laws.

When I heard about Right To Try, I knew it was right for Delaware. That's why I am proud to sponsor this bipartisan bill alongside two Democrats, Karen Peterson in the Senate and Andria Bennett in the House.

All across the country, Right To Try laws are winning bipartisan support. State legislatures adopted the law with nearly unanimous votes in Colorado, Louisiana, Michigan, and Missouri. The Right To Try was also approved by voters in Arizona by a margin of almost 4-1.

Right To Try is also having an impact on Washington. Just a few weeks ago, in response to this national movement, the FDA announced plans to revise the paperwork that doctors must submit to request permission to treat a terminally ill patient with an investigational medicine. The FDA said its goal is reduce a doctor's time to apply from 100 hours to 45 minutes.

That's a great move in the right direction, but it's not enough. Even though the forms in the first step of the process will be shorter, patients will still be required to submit an application asking the federal government for permission to try to save their own lives.

We need to remove barriers that prevent doctors from providing the care they are trained to give. And that's exactly what Right To Try will do. People should have access to the medications that could save them with no exceptions and no permission slip required.

Sen. Colin Bonini represents the 16th District, Delaware.

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HIGH-STAKES TESTING

# Should parents be able to pull kids out of testing?

10-2-4435

By **Matthew Albright** The News Journal

Fed up with how schools are relying on standardized tests, some parents say they should be allowed to pull their students out of them.

They argue the tests are too taxing on students, don't fully or accurately measure how students and teachers are performing, and soak up valuable time administering and preparing.

Schools are gearing up to give the Smarter Balanced test for the first time in the spring. The test is tougher than the tests taken previously in schools by design, aiming to more accurately judge how deeply students understand concepts.

See TESTS, Page A5

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# Tests: An opt-out could put federal grants at risk

Continued from Page A1

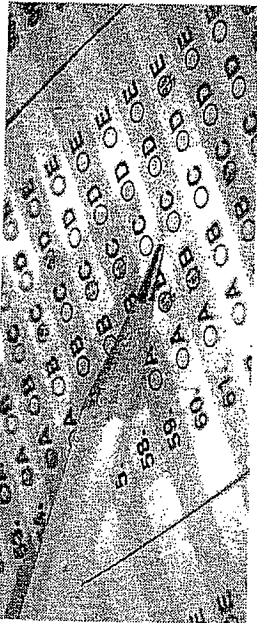
The percentage of students scoring high enough to be considered proficient is expected to plunge, not because students or teachers are performing worse but because the bar is higher.

Parents are currently not allowed to have their children "opt out" of tests, and education officials say doing so would deprive parents and teachers of valuable information about how their children are progressing, which would make it difficult to address their learning needs.

Caught in the middle is the state Parent Teacher Association. While the group supports the state's moves to the Common Core State Standards and the new Smarter Balanced Assessment, it has also heard concerns from "a number of parents and educators."

PTA president Teri Hodges said a small but vocal number of parents have been asking the group to support "opt-outs" for months now. But recently, more parents have started to ask about it.

"Over the last couple of weeks, we have received several requests from our general membership to bring this idea to the table," Hodges said. "Right now, there are too many unknowns, so as an organization we cannot take a position yet. But we know there is



GETTY IMAGES/STOCKPHOTO  
The percentage of students scoring at a proficient level is expected to plunge with a tougher test in the spring.

interest, so we are gathering information."

The group has put questionnaires for parents and teachers on its website asking whether they believe in "high-stakes testing," whether they think the tests take too much time away from other important activities, and whether the tests actually help teachers in the classroom.

Hodges said the group has gotten an "overwhelming response" to the questionnaires, and also received plenty of e-mails from teachers.

"Just from what I've seen, the feelings are really mixed," she said. "I've got some parents and educators

who support it, but I also have some who don't think it's a good idea at all."

State leaders say the law currently requires districts to administer the test unless a student has an extreme medical incident, or there are mental health reasons to exempt them. Both require approval from a doctor.

That's necessary, they argue, because test scores are a vital tool for administrators, teachers and parents.

"This is the primary way we know if schools are making appropriate progress towards educating children on academic standards," Department of Education spokeswoman Alison May said in an e-mail. "And state testing helps parents understand how their child is doing in comparison to students in other schools. This is important, as grading policies are different across the state and are difficult to use as a comparison."

Allowing Delaware parents to exempt their kids from the standardized tests could run afoul of federal rules that require every student be tested, Hodges said. That could cause major problems, including the loss of federal funds.

"We don't want to take a stance saying parents should be able to opt out without knowing all of the possible consequences," Hodges said.

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# OPINION

Susan D. Leath President and Publisher  
David F. Ledford Executive Editor  
John Sweeney Editorial Page Editor



Online Friday: Religious extremism's ugly comeback. [delawareonline.com/opinion](http://delawareonline.com/opinion).

## OUR VIEW

# WHAT ARE SCHOOL TESTS TEACHING US?

Just what is it that we Americans don't like about school testing? Is it too tough on our children? Is it too tough on the education establishment, especially teachers? Or is it a plot to totally federalize our school system, report cards and all?

The answer probably is: All of the above. Delaware students will be hit with major-league testing in the spring. This is a new test, one shaped by national standards. The scores are expected to dip, at least for a few years. The official reasoning is that the students are not really doing worse. It is just that the bar has been raised.

Now, as in other states, some parents and organizations are expressing concern about the effect of the tests on the students. Some are raising objections to the Smarter Balanced Assessment, as the test is called, and to the Common Core Standards, with which the test is aligned.

Standardized testing is coming under attack around the country.

Parents in Texas are objecting to it because it is seen as a national takeover of the schools. Parents in New York have objected to it because they see it as hard on the children and embarrassing to the teachers.

Both states have long histories of standardized testing. Now that consequences are being tied to the tests though, the mood is changing. In the 1990s, then-Gov. George W. Bush was a strong supporter of testing. He continued to be so when he became president. President Clinton was a supporter of testing, as is President Obama. It now appears we have bipartisan opposition to testing.

The current round came out of the Race To The Top program under President Obama. Some observers say the crystallizing moment for the Obama administration was the release of the 2009 Programme for International Student Assessment, or PISA, test. It showed the United States' students were mediocre, at best, in mathematics. Shanghai students, however,

performed stunningly better. President Obama's advisers compared the shock of the test to the shock of the Russians putting the Sputnik satellite into space in the 1950s.

The Race To The Top program that followed was built upon the No Child Left Behind Act from the Bush administration. That act was the first big money education law that came with consequences for failing to improve the outcomes for children. The Race To The Top money and the waiver from meeting the NCLB goals prompted many states, including Delaware, to go along with the new testing regimen. So here we are.

The arguments about conspiracies and feelings do not matter if it can be clearly shown that the testing will give parents and schools a reliable measure of a student's progress. As the testing season approaches, the state and the schools would be advised to clearly demonstrate to parents and any doubters the advantages of the test.

**Wilmington News Journal 10/08/2014, Page A03**

**SAT report: Too few kids college ready**

**Delaware figures skewed because all students take test, but other states more selective**

**By Matthew Albright**

The News Journal

Only about a quarter of Delaware students who graduated last year scored high enough on the SAT college entrance exam to be considered ready for college, virtually the same as last year.

The report issued Tuesday from the College Board, which administers the test, suggests the state has a long way to go before its students are ready for education after high school. That's important, it says, because the specialized jobs of the future will require more workers with degrees.

Some 27.7 percent of Delaware students from both private and public schools made an overall score of 1550, which is considered the benchmark for college readiness. A student who makes that score has a 65 percent chance of earning a grade point average of B- or better in their first year at a four-year college.

The class of 2014's average composite score was a 1497. A perfect score is a 2400.

"This shows why we have to continue the hard work of implementing the Common Core [State Standards]," said Michael Watson, the state's chief academic officer. Watson said the state's years-long effort to transition to the new standards, which set more ambitious academic expectations for students, is being "actualized" this year. Higher expectations in the classroom hopefully will mean moving the bar on college readiness.

Though the percentage of students has remained largely the same, a growing population and better test participation means the number of students scoring proficient has actually grown by 5.7 percent over the past two years, Watson said.

The report shows that minority students are still far less likely to score college-ready, another persistent problem. Only 7.7 percent of the state's black students and only 12.7 percent of Hispanic students met the benchmark.

Nationally, 42.6 percent of students met the benchmark, also about the same as last year, but that number is not comparable to Delaware's.

Delaware administers the SAT test to every student in class, which means its scores are more representative of the entire student population than most. Only Idaho and Washington D.C. do that, though Maine pays for its students to take the test during one of the regular administrations.

Most states have much lower participation rates – nationally, only 47.5 percent of high school grads took the exam. Scores are generally better when the participation rate is lower because more of the students included are prepared for and interested in college, the report said.

Watson pointed to several individual schools that have seen big gains on the SAT recently. Dickinson High School has seen its average total score leap by 101 points over the past two years, while Cape Henlopen High has increased its score by 27.

The SAT is undergoing a major redesign that will first be administered in the spring of 2016. College Board officials say the new test will better reflect what students learn in high school.

The College Board also has said it is working with Khan Academy, a website that provides online lessons, to provide free test prep. That's an effort to reduce the gap between low-income students and affluent kids whose parents can pay for them to have tutors and other preparation.

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Delaware students did not see a significant change in their performance on the SAT in 2014. About a quarter of the students taking the test were considered college ready based on their test scores

# Lower scores expected on new state test

MATTHEW ALBRIGHT  
THE NEWS JOURNAL

Parents and students should brace for scores on the state standardized test to plunge this year as Delaware moves to a much more difficult national exam, with fewer than half — and, in some cases, fewer than a third — of students taking it likely to score proficient.

Delaware is one of 17 states giving its students the Smarter Balanced Assessment, designed to measure the new, tougher Common Core State Standards. Just as the Common Core aims to set higher expectations for what students should know and be able to do academically, state officials say Smarter Balanced is much tougher than the old test, the Delaware Comprehensive Assessment System.

That's because it requires more in-depth answers, with writing sections and "performance tasks" that require students to more deeply understand the concepts they learn in school.

The group devising the test is projecting that a relatively small number of stu-

"We have schools and

educators who are dedicated to better instruction, and we are confident the scores will start to show that."

BRIAN TOUCHETTE,  
STATE DEPARTMENT OF EDUCATION

dents will score well enough to be considered academically proficient. Like with the DCAS, students can score on one of four levels. They must score a three or a four to be considered Common Core proficient.

In math, fewer than a third of eighth- and 11th-graders are expected to meet that bar. In third grade, 39 percent of students are expected to meet it.

Students are expected to do better on reading. About 38 percent of third-grad-

ers and 44 percent of fifth-graders are projected to score proficient.

Under the DCAS, about 70 percent of students scored proficient in both math and reading. So, in some grades, the number of students "passing" the new test could be cut in half. School officials are telling parents not to panic.

"Because the new content standards set higher expectations for students and the new tests are designed to assess student performance against those higher standards, the bar has been raised," said Joe Willhoft, Smarter Balanced's executive director, in a news release. "It's not surprising that fewer students could score at Level 3 or higher. However, over time, the performance of students will improve."

State officials say the projected scores more accurately represent how likely students are to succeed in college and more closely mirror performance as measured by the National Assessment of Educational Progress.

"We think this is a more realistic representation of what we are seeing after high school," said Brian Touchette, di-

rector of assessment at the state Department of Education.

Touchette emphasized scores on the test will probably improve steadily as teachers and students begin to more fully implement Common Core.

"We have schools and educators who are dedicated to better instruction in classrooms, and we are confident the scores will start to show that," he said.

The state has taken steps to blunt the shock parents will likely feel when many students who had previously performed well come home with scores telling them they are not meeting the standards set for them. The state worked with several education organizations to create DelExcells.com, which includes information about Common Core and the test designed to measure it.

"What we are really trying to emphasize here is that students and teachers are not doing any worse," Touchette said. "We are just asking them to meet a higher bar."

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# Parents, teachers push back against Delaware testing



Matthew Albright, The News Journal 3:15 a.m. EST February 28, 2015



(Photo: SUCHAT PEDERSON/THE NEWS JOURNAL)

The stress that Delaware's high-stakes standardized tests place on students, teachers and schools is leading a small, but vocal contingent of parents to say, "Keep my child out of it."

At their backs are educators, advocates and lawmakers who want to see enough parents pull their kids from the exams that the results are rendered invalid and the state is forced to grapple with the possibility it is overtesting kids.

The opt-out movement could, if more parents join, strike at the heart of a school-reform movement that has steered education policy in Delaware and many other states in recent years, especially since federal Race to the Top grants were awarded.

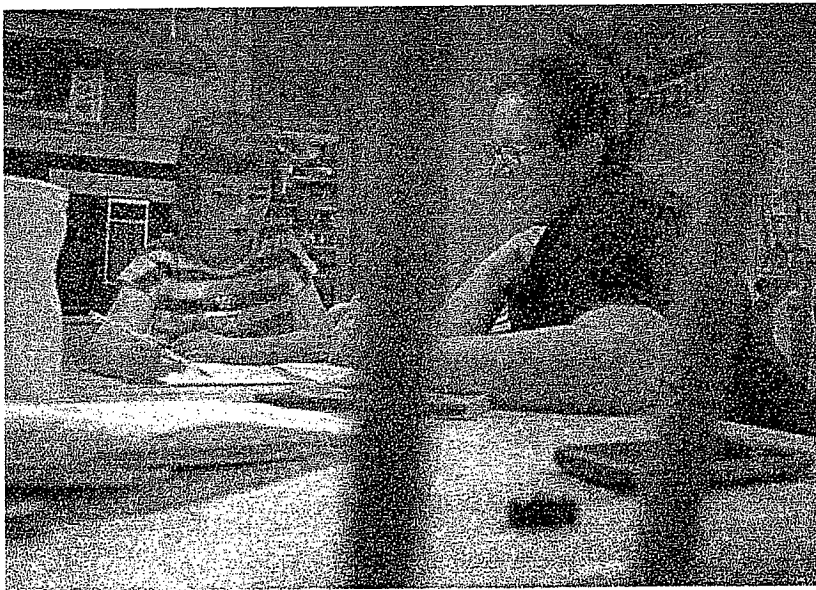
State education leaders are trying to halt the opt-out movement before it gets off the ground. They say data from tests are invaluable tools for educators, policymakers and parents and point out that schools risk potentially painful federal sanctions if too many students don't take the tests.

That has not convinced parents like Jackie Kook.

Kook, who teaches in the Christina School District, has told her daughter's school in the Red Clay district not to give her the test.

"Part of it for me is protecting my own child and removing her from that environment of high-stakes pressure," Kook said. "But the other part is that I see what all this testing is doing in the classroom, and I just don't want my daughter to be part of it."

Buy Photo



Jackie Kook works on a reading exercise with her daughter Caitlin, 9. Kook, a Christina School District teacher, is opting to take Caitlin out of state standardized testing. (Photo: SUCHAT PEDERSON/THE NEWS JOURNAL)

Kook sees her daughter sometimes spending an hour a night at home doing math homework and worries that standardized tests' focus on math and reading is driving schools to prioritize those subjects over everything else.

She sees test scores being used to judge teachers and label schools and sees the state make policy without much consideration of other factors, such as the poverty students face. And she sees students spending time preparing for the test and spending hours in computer labs that she thinks should be better spent learning in the classroom.

it, the system could change."

Kook and parents choosing to opt out their kids are in largely uncharted territory.

The Department of Education does not acknowledge the ability for parents opt out, saying state law requires schools to test kids and provides for only rare exemptions for severe disabilities and emergencies. But parent advocates like those in the state Parent Teacher Association point out that state law also does not explicitly prevent parents from pulling out their kids.

There is no official form to fill out, so parents are submitting form letters found on the Internet.

DELAWAREONLINE

Parents' concerns surround tough new Delaware testing

(<http://www.delawareonline.com/story/news/education/2015/02/27/parents-concerns-surround-tough-new-delaware-testing/24154719/?from=global&sessionKey=&autologin=>)

The federal Department of Education requires states and school districts to test at least 95 percent of students. They also require that 95 percent participation rate for every "subgroup," whether it's black students or low-income students or students learning English.

Should the state or districts fall below that figure, they could face sanctions, the worst being loss of funds for programs that serve low-income, rural and migrant students.

That gives districts a strong incentive to keep as many students as possible taking the test. Several parents who asked to opt out received letters from district officials citing the department's stance, that state and federal laws require testing.

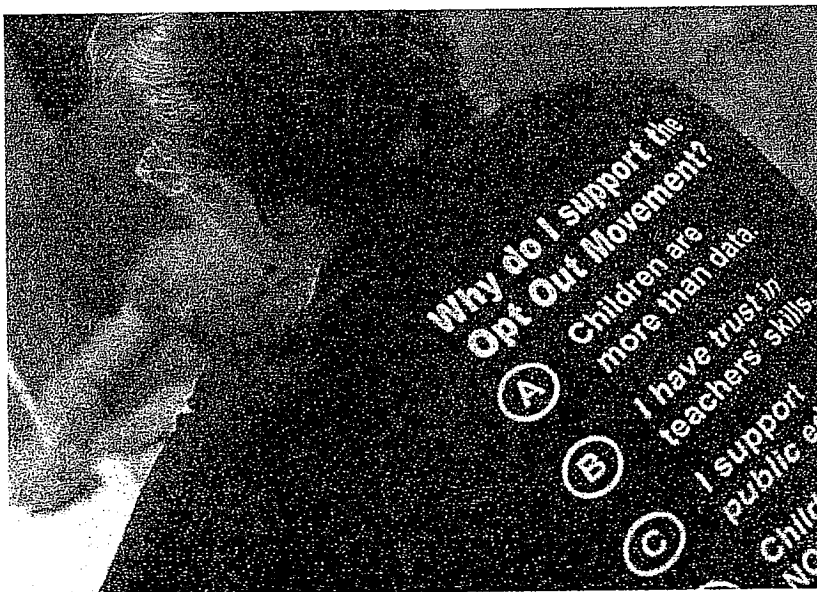
But the opt-out movement does have some influential supporters.

The Capital school board passed a rule requiring its schools to accept parents' decision to opt-out. A bill in the Legislature would explicitly give parents the option and prevent the state from penalizing schools when students skip the test.

The Delaware PTA and Delaware State Education Association education union both say parents have a right to opt out, though neither has yet officially voted to endorse doing so.

"Our view is that every parent should have to right to make that decision on behalf of their child if that's what they think is best," said Teri Hodges, the state PTA president, who is opting her daughter out. "I personally don't feel that the Smarter Balanced in its current form offers any individual value for me as a parent regarding my daughter's growth in school."

Buy Photo



Jackie Kook's T-shirt offers several reasons for opting out of the new standardized tests. (Photo: SUCHAT PEDERSON/THE NEWS JOURNAL)

Using testing data to drive decisions has been one of the hallmarks of the Department of Education during the tenure of Gov. Jack Markell and Secretary of Education Mark Murphy.

Some of the biggest investments the state made using its \$118 million federal Race to the Top grant involved work with data. One of Markell's favorite Race to the Top initiatives is Professional Learning Communities, in-school groups where teachers work with each other and with data coaches. They comb through student scores to find what specific areas each student needs help with.

Tests are more than just abstract figures on a chart, state officials say.

"For our educators, parents and community at large, state testing is an important part of understanding how schools, districts and the state are doing in educating and preparing students for college and careers," spokeswoman Alison May wrote. "This is the primary way we can know if we are making appropriate progress toward educating students on the academic standards."

Testing data help the state figure out if it is closing the gap between white and black students and rich and poor students. Parents can look at testing data to see if their children are proficient at the same level as students in other schools.

That has not convinced all parents of testing's value.

David Brenton has a son who excels in his day-in, day-out classwork. But when he has brought home the results of state tests, they said he's underperforming.

"When it comes time for testing, he just struggles," Brenton said. "There's something about the testing environment that short-circuits his thought process and breaks his focus. The whole testing thing has not been helpful to my son's earlier education."

This year, Brenton's daughter is in the third grade, and is supposed to take Smarter Balanced the next few weeks. He has read online about how the new test will take hours and that most students are not expected to pass.

He hears officials talk about how important the data that standardized tests gather is to education. But, though he's asked questions of his school, district and the state Department of Education, he has yet to be convinced the test is worth it.

So he has opted his daughter out.

Parents are not the only ones supporting opt-outs. They are backed by teacher advocates and others who are fed up with a Department of Education and "school reform" movement they believe are test-obsessed.

"Teachers are not against tests," said Frederika Jenner, president of the DSEA education union. "But tests are being used for things they were never intended."

Test scores are now used to judge how teachers are performing, though the state has put a hold on that policy for a year as it moves to the new test. Test scores are used to measure which schools are good and which schools are bad.

Department officials have cited sagging scores when closing charter schools. When the state picked six Wilmington schools for its controversial Priority Schools plan, it chose the schools based on their low test scores.

Big end-of-the-year tests might be seen as useful for policies like those but aren't nearly as useful for day-in, day-out education, Jenner said. Teachers are trained to keep tabs on where each student stands and tweak their work accordingly.

State Reps. Sean Matthews and John Kowalko, who sponsored the bill that would allow parents to opt-out, hope enough parents will pull kids out of testing that Delaware is forced to have a conversation about whether tests are being overused.

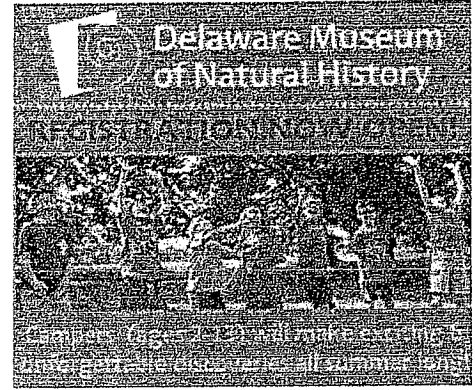
"There are teachers and parents who are crying for us to stop this test-and-punish mentality, but no one is listening," Matthews said. "Representative Kowalko and I are hoping that enough parents are getting out of the test that the data becomes invalid, and we have no choice but to have the discussion over what's really best for our kids."

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Feb. 28, 2015, 6:02 p.m.



# Delaware may eliminate some school testing

 Matthew Albright, The News Journal 11:50 p.m. EDT March 12, 2015



(Photo: Getty Images/Stockphoto)

The state, districts and individual schools will take an inventory of all the different tests students take and attempt to eliminate those that are redundant or ineffective.

Gov. Jack Markell on Thursday re-affirmed his belief that good tests are a vital part of the education system but acknowledged that some parents and teachers have complained that students are spending too much time on them.

"Our educators, our students, and their parents all deserve the benefits of effective assessments that show when students are excelling and when they need extra support," Markell said. "At the same time, tests that don't add meaningfully to the learning process mean less time for students to receive the instruction and support they need."

Secretary of Education Mark Murphy said the state would give districts financial support to review all of the tests students are given. Some tests might be attempting to measure the same standards as the statewide assessment, he said, and others might have outlived their usefulness.

"We want to be proud of every assessment we ask our students to take," Murphy told a group of William Penn High School students. "We want you to know what you learned, what you didn't learn, and what you've got to do next."



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Other than tests required by the state or federal governments, Murphy said it would be up to districts to determine which exams they might eliminate.

The Delaware State Education Association, the state's largest education union, endorsed the elimination of redundant tests.

"Too much testing, and the high-stakes often attached to the results, has diminished our students' love of learning and our educators love of teaching," Frederika Jenner, the group's president, said in a statement. "We will support efforts to eliminate redundant, ineffective, and unnecessary tests as long as educators are directly and fully involved in the review of these tests and testing procedures."

State leaders made clear that the [Smarter Balanced Assessment \(/story/news/education/2015/02/27/parents-concerns-surround-tough-new-delaware-testing/24154719/\)](#), the big, tough new statewide test students are taking for the first time this year, will remain in use across Delaware.

Smarter Balanced asks students to have an in-depth knowledge of material, and is structured to go beyond multiple-choice answers and, in some cases, demand written responses. Because the test is more difficult and will students longer to complete, scores are expected to plunge — fewer than half or only a third of students are projected to score "proficient."

Students are expected to spend seven or eight hours over a few days to complete the exam. State officials point out that because Smarter Balanced is administered only once a year, it will actually take up less time than the previous state test, the Delaware Comprehensive Assessment System.



Schools forum brings energy for change

<http://www.delawareonline.com/story/news/education/2015/03/09/schools-forum-brings-energy-change/24680565/?from=global&sessionKey=&autologin=>

Citing the stress that Smarter Balanced will put on their kids and schools, a small but vocal group of parents — some of them teachers — have chosen to "opt their students out" of the new exam.

Rep. Earl Jaques, who chairs the House Education Committee, said the state's effort to eliminate tests should hopefully ease parents' and teachers' concerns. But he joined Markell in saying opting out isn't the answer for students.

"Is there too much testing? Absolutely," Jaques said. "And this shows we're trying to do something about that. But to me, opt-out is admitting failure, and that's not the American way."

Many teachers have also expressed concerns about how the new test will be used in their personnel evaluations. This year's scores on Smarter Balanced will not factor into those evaluations, but many educators have called for an extra year on top of that to transition to a regime for students.

Both Markell and Murphy both said they were "having positive conversations" with federal officials about that possibility.

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# Opting Out Is Not A Viable Option

Earl Jaques 12:09 p.m. EDT March 15, 2015



(Photo: .)

I will come right out and say it: I do not agree with the movement for parents to opt their children out from standardized testing. I have several reasons for that, but I want to acknowledge that while I don't agree, I understand why some parents, teachers and advocates are pushing for this. They are frustrated by a system that does not function as well as it should, with different versions of tests seemingly being rolled out every couple years and students and schools being labeled as failing when that might not reflect the entire picture.

These are all valid concerns, and whether you believe that opt-out is viable or not, we all share the same common goals: We want our children to be successful, and for that to happen, we need to ensure that our schools are functioning well and our teachers have the resources they need to educate their students. I believe that standardized testing plays an important role in this.

Is there too much testing? Absolutely. But while much of the focus on standardized testing is on the federally required tests, a sizable amount is state- or district-administered. That is why I joined with Governor Markell Thursday calling for a comprehensive review of all state/district testing and assessment. I have asked Rep.

Stephanie T. Bolden, a former teacher, and Rep. Sean Matthews, a current teacher, to be part of that study group. I believe this could result in the biggest change and eliminate much of the pressure our teachers, students and parents are feeling today regarding testing.

I recently had the pleasure to attend a forum of the past Teacher of the Year winners. During that forum, I was able to ask several of them what they thought of the Smarter Balanced test. Each one stated that they like the test and believe we should keep it. That is not to say there aren't teachers who are frustrated with the assessment, but it is not a universally held opinion.

We must remember that the Smarter Balanced assessment is supposed to be a measuring stick – not a whip to induce pain on our children and teachers. When I graduated from high school I had to compete with children from within our state. But today, our children compete against children across our nation – and even globally – for jobs and schooling opportunities.

We need a means to see how we compare with others. If we use this measuring stick correctly, then we can make the necessary changes to our educational system, ensure that we provide the necessary resources, and above all provide the best opportunities for each and every child to succeed. One way to improve upon the existing system is to create a method to evaluate these results to make them more informative.

That is how we should be addressing the concerns we are facing with standardized testing – by tackling the problems we perceive head-on.

The idea of "opting out" sounds appealing to some parents. Removing their child from testing is a form of protest and a way for them to take ownership of the situation. But consider the side effects. Imagine a class of 25 students where five opt out of the tests. What message does that send to the other 20 children who have to take the test?

How does that teacher convince students that the tests are important if a segment of the class has said they're not worth taking? It becomes that much more difficult to keep students focused on taking the assessment, which also will be part of that teacher's evaluation process. Fewer children taking the test means other children will need to do better to reflect positively on the teacher. That's not fair to our hard-working teachers.

To be clear, I do not support test scores being part of the teacher evaluation system. I have joined my colleagues in requesting an additional year be added before we allow test scores to be part of the teacher evaluation system as part of our state's ESEA waiver process.

Lastly, the consequences of opt-out policies remain largely unknown. In other states where opt-out policies are in place, opt-out rates are far from uniform across demographic groups, which could compromise the data we receive from the tests and jeopardize our federal Title I funding.

I sympathize with those parents, teachers and advocates who have grievances with our current standardized testing system, and I am committed to working with all stakeholders to tackle this problem to benefit our children and grandchildren. We disagree on the opt-out method, but we are heading toward the same goal.

Earl Jaques chairs the House Education Committee and represents the 27th District in the Delaware House of Representatives, which includes Glasgow and surrounding communities.

# Standardized Testing Divides Us, Let's Unite

Sean Matthews 12:07 p.m. EDT March 15, 2015



(Photo: Submitted)

There are many ways to talk about the role standardized testing plays in our public schools, but there's one question that we have to answer before we can debate the issue: Do these tests make our students smarter, more capable and more prepared to lead successful lives?

After decades of testing at all levels, with different standards, methods, benchmarks and outcomes, the answer to that question is not what we thought it would be. Overwhelming numbers of scholars, parents, statisticians and legislators are starting to realize, with evidence, that standardized testing and the policies that flow from testing are doing more harm than good.

Over the next three months, students in Delaware's charter and traditional community schools will be asked to take a standardized test called the Smarter Balanced Assessment. The stated goal of this test is to pinpoint strengths and weaknesses in our educational system.

But that's not the whole story. Most standardized tests are designed by for-profit companies that market their materials to states, which are required by federal law to test public school students in return for federal funding. Under this business relationship, the best interests of the testing firm are not aligned with the best interests of students, teachers and schools. Instead, there is great incentive to make students and their educators look like they're "failing" so that these same firms can offer their own branded "reforms" and "solutions" to states and districts, for a worthy fee.

It's a marvel of modern marketing. The testing firms control both the supply and demand for their products. These companies win when more students "fail" the test. Our students, schools, districts and state education agencies have become profit centers for these corporations.

In turn, those companies put some of their profits to work in Washington, D.C., hiring lobbyists to make sure the federal government doubles down on standardized testing requirements.

How did we get here? In the aftermath of the economic collapse of 2008, the federal Department of Education approached cash-strapped states with a proposition: We'll offer you federal money to keep your education budgets solvent, but only if you agree to the conditions set forth in our newest federal program, Race to the Top (RTTT).

After Delaware "won" a substantial RTTT grant, local districts immediately raised concerns about the strings attached to the money when it came to achievement standards, evaluation of teachers, and local control over schools. In the years since Delaware implemented its RTTT policies statewide, we have seen these concerns deepen and multiply, with standardized testing at the heart of them all.

Look at the Red Clay and Christina school districts, which both cover larger geographic areas. Their suburban elementary schools "excel" at the tests, while their city schools "struggle." The teachers in these districts go to the same specialized trainings, use the same high-quality instructional and technology resources, and are overseen by the same district administrators, yet the vastly different outcomes persist.

Unless we choose to believe that the hundreds of teachers who work in city schools care less about their students than their colleagues in the suburbs, we must acknowledge that poverty, not personnel, is creating the divide in these school systems.

Standardized tests widen this divide, labeling poor students and their schools as "failing" without offering a real solution to the underlying problem that causes the division.

It's easy to label a school "failing" based solely on test scores. It's easy to create new schools that use enrollment preferences and "counseling out" techniques to weed out at-risk students. But it's difficult to fix endemic poverty and lagging parental involvement. We need to do the hard work.

Lastly, I ask that you talk to a teacher or principal you know, someone who works in schools each day. Ask them if the manner in which standardized tests are used today is best for students. Many of these teachers will tell you that the path we are on is wrong for kids. We want our teachers to teach and our students to learn, free from the threat of being branded as failures, losing their jobs or losing their schools.

It's time for a change and that change starts with two things: 1) Parents need to force a conversation by exercising their right to opt their students out of  
<http://www.delawareonline.com/story/opinion/contributors/2015/03/15/standardized-testing-divides-us-...> 3/15/2015

Sean Matthews is a teacher and represents the 11th District in the Delaware House of Representative, which includes the communities of Claymont and Talleyville.

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March 15, 2015, 12:06 p.m.

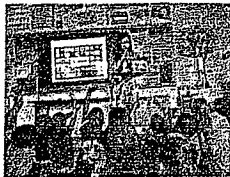


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# Delaware PTA: Parents should have say in standardized test

Matthew Albright, The News Journal 12:20 a.m. EDT March 26, 2015



(Photo: JENNIFER CORBETT/THE NEWS JOURNAL)

The Delaware Parent Teacher Association is joining teacher unions and several school boards in saying parents should have a right to opt their children out of taking the state standardized test.

The PTA's Board of Managers, made up of the local leaders for each school, passed a resolution urging parental choice. Teri Hodges, the group's president, said the resolution is about parents having control over their child's education.

"We feel that a parent should have a right to make this decision on behalf of their students and, if they feel that the test is not in the best interest of their students, they should have the option to act on that," Hodges said.

About 100 representatives were there for the vote this week; one opposed the motion and two abstained, Hodges said.

PTA leaders emphasize that the vote does not mean PTA thinks parents should pull their students out of testing, only that they should have a right to.

"It's not our place to tell parents what to do," said Yvonne Johnson, the group's immediate past president. "What we're saying is that parents have a right to make the decision that they think is best for their child."

PTA leaders say the decision means they will support a bill in the Legislature explicitly allowing parents to opt out and work to make sure students who don't take the test have some kind of meaningful academic activity while it is being administered to others.

Delaware is moving to a tough new standardized this year called the Smarter Balanced Assessment. Because it is designed to measure the "higher bar" for academics set by the Common Core State Standards, the test requires more thorough answers than multiple-choice questions.

State leaders have tried to discourage parents from [pulling their children out of the test \(/story/news/education/2015/02/27/parents-teachers-push-back-testing/24148775/\)](#), saying state law requires students to be tested and does not provide a mechanism for those who aren't sick or severely disabled to be exempted.

Gov. Jack Markell's administration says testing helps teachers figure out how to best help students and is an invaluable tool for district and state leaders to make smart decisions. They also point out that federal law requires 95 percent of students to be tested and say the state, districts or schools could face consequences, like a loss of funding, if they fall below that figure.

"Students and parents deserve the benefits of knowing how they are doing and where they may need extra support to be prepared for college or a career when they graduate," said Jonathon Dworkin, a spokesman for Markell.

Dworkin pointed to statements made by groups like the Urban League that have argued testing is a key way communities know whether minority and low-income students are being educationally under-served.

Those arguments have not swayed a small group of vocal parents who have told their schools not to give their children the tests. Those parents, many of them teachers, say too much time is being spent testing and preparing. They say tests place too much stress on kids and testing is being used for purposes they don't like, such as judging schools and teachers.

Officials in several districts say they have received a handful of opt-out requests from parents, but it does not appear any district so far is at risk of falling below that 95 percent figure.

The Delaware State Education Association passed a similar resolution last year supporting parents' right to pull their student out of the test. School boards in the Christina and Capital school districts have passed resolutions saying parents can opt out.

The Red Clay School Board is scheduled to vote on a similar resolution at its next meeting.

Despite these groups' stances, state officials have not retreated from their position that every student capable of taking the test should do so.

"We have received positive feedback from many educators and parents about the new test," Dworkin said. "We expect that our schools will continue to follow state law and administer the test to students who should take it."

Markell's administration says it is taking steps to [limit the impact of standardized testing \(/story/news/education/2015/03/12/delaware-look-number-tests-students-take/70214422/\)](#). The governor recently announced that the state was taking an inventory of all tests students take and would work with districts to eliminate any tests that are redundant or not useful, though he emphasized that Smarter Balanced will continue to be administered.

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"While we do agree that we need to reduce the amount of statewide testing, adopting this singular approach to the exclusion of acknowledging a parent's right to opt out, ignores the fact that parent and teacher concerns with the Smarter Balanced Assessment go far beyond the amount of testing," it said.

Contact Matthew Albright at malbright@delawareonline.com, 324-2428 or on Twitter @TNJ\_malbright

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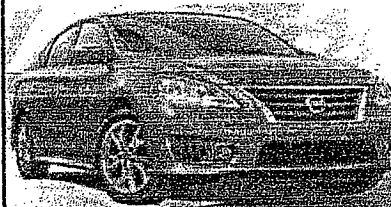
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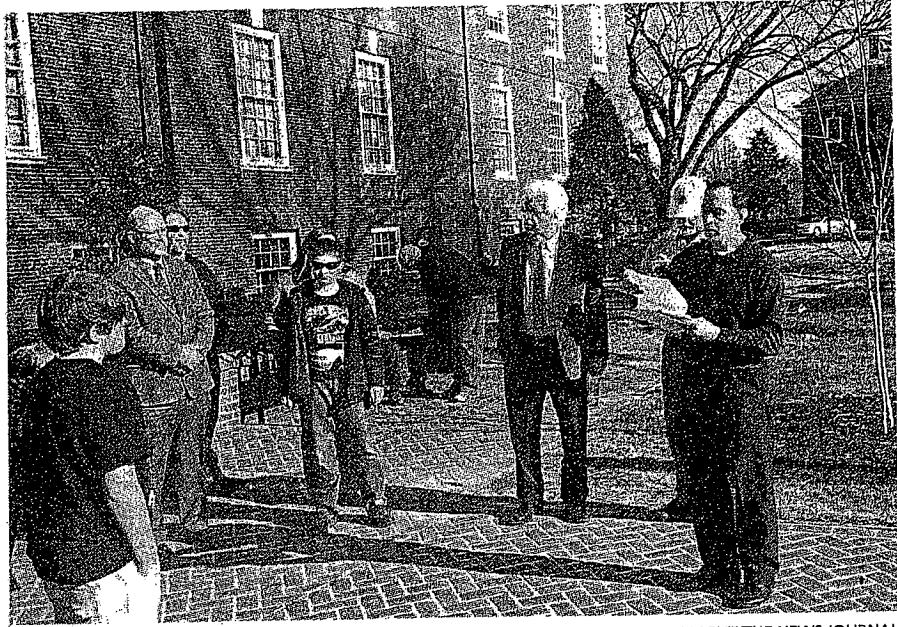


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March 26, 2015 12:21 a.m.



MATTHEW ALBRIGHT/THE NEWS JOURNAL

Kevin Ohlandt (right) speaks to a group of about 20 parents about standardized testing while Rep. John Kowalko listens on. Kowalko has sponsored a bill explicitly allowing parents to pull their kids out of state standardized tests.

## Parent group protests standardized testing

MATTHEW ALBRIGHT  
THE NEWS JOURNAL

About 20 parents protested in front of Legislative Hall in Dover on Wednesday afternoon about how the state is using standardized tests.

The group voiced their support for a bill that would explicitly allow parents to remove their children from those tests.

"We need to stop fooling ourselves that standardized testing is the answer the educational problems we face," said Kevin Ohlandt, a Dover parent who has tried to organize parents to opt-out.

The group represented a small but vocal number of parents who have told their districts that their students will not take the state standardized test.

They worry that students are spending too much time preparing for and taking tests when they should be learning, that the tests place too

much stress on kids, and that teachers and schools are being unfairly judged based only on test scores.

Because of those concerns, they have decided to "opt their kids out."

State officials have tried to discourage parents from doing so, saying state law requires kids to take the test and doesn't provide a way to exempt them except for rare cases. They say test scores provide invaluable information to help improve schools.

But some parents, backed by the state Parent Teacher Association and the Delaware State Education Association union, say they have a right to pull their kids from the tests if they choose.

Rep. John Kowalko, a frequent and vocal critic of Gov. Jack Markell and the Department of Education, agrees parents already have that right, but has sponsored legislation

that would explicitly allow opting out.

"How many of you think parents have a sacrosanct right to protect themselves from government intrusion?" Kowalko asked the parents. "We have the government intruding in public education to the disdain of teachers."

Rep. Earl Jaques, chair of the House Education Committee, said Kowalko's bill will be heard at an April 22 committee meeting and urged any parents who have opinions on opting out to attend and speak.

"It's the only thing we have on the agenda right now," said Jaques, who personally opposes opt-outs. "I expect we're going to have a lot of public debate, and I encourage that."

Contact Matthew Albright at malbright@delawareonline.com, (302) 324-2428 or on Twitter @TNJ\_malbright.