



# DISABILITIES LAW PROGRAM

COMMUNITY LEGAL AID SOCIETY, INC.

100 W. 10th Street, Suite 801

Wilmington, Delaware 19801

(302) 575-0660 TTY (302) 575-0696 Fax (302) 575-0840

www.declasi.org

## MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Legislative & Regulatory Initiatives

Date: May 13, 2015

I am providing my analysis of twelve (12) legislative and regulatory initiatives in anticipation of the May 14 SCPD P&L Committee meeting. Given time constraints, the commentary should be considered preliminary and non-exhaustive. In addition to the initiatives covered in this memo, I forwarded a critique of draft long-term care legislation to Kyle yesterday which I could briefly describe at the meeting. I was unable to review all of the initiatives referred by the Councils.

### 1. DOE Final Evaluation, Eligibility & IEP Reg. [18 DE Reg. 861 (5/1/15)]

The SCPD and GACEC commented on the initial proposed version of this regulation in October, 2014. The Department of Education then issued a final regulation in January, 2015 which incorporated two amendments prompted by the commentary. However, the DOE declined to adopt a third Council-recommended amendment to add a reference to extended school year services for children not beginning to read by age 7. The Councils engaged in further discussion with the DOE resulting in the publication of a new proposed regulation in February which added the Council-recommended language. The Councils endorsed that proposed regulation. A copy of the SCPD's February 26, 2015 letter is attached for facilitated reference. The DOE has now acknowledged the endorsements and adopted a final regulation which conforms to the proposed version.

Since the DOE has adopted a final regulation which conforms to the Councils' recommendation, I recommend no further action.

### 2. DOE Final Extended School Year Reg. [18 DE Reg. 859 (5/1/15)]

The SCPD and GACEC commented on the initial proposed version of this regulation in October, 2014. The SCPD and GACEC issued a negative analysis of the proposed regulation since it did not conform to the letter or spirit of S.B. No. 229. The Department of Education then issued a final regulation in January, 2015 with one minor amendment prompted by the commentary.

The Councils and other policymakers engaged in further dialog with the Department resulting in issuance of a new proposed regulation in February, 2015. The Councils criticized the new proposal since it omitted a provision which the DOE had agreed to adopt. The DOE responded that the omission was an inadvertent oversight. See attached February 19, 2015 GACEC letter. The DOE has now adopted a final regulation which incorporates the omitted provision. The DOE also added the following sentence: "The parent may decline reading-based extended school year services." Although it would have been preferable to share that sentence with the Councils in advance, I do not regard the sentence as objectionable.

I recommend no further action.

### 3. DOE Prop. Gifted or Talented Education Plan Reg. [18 DE Reg. 836 (5/1/15)]

The SCPD and GACEC commented on the initial proposed version of this regulation in February, 2015. A copy of the February 26, 2015 SCPD letter is attached for facilitated reference. The Department of Education has now issued a new proposed regulation.

I have the following observations.

First, the new version corrects the three concerns outlined in the Councils' earlier commentary. It provides more time to submit plans to the DOE, no longer requires all instructors to be "certified in gifted and talented education, and deletes extraneous language.

Second, the new regulation does not require charter schools to develop and submit plans. The rationale for deleting charter schools from the regulation is not offered. There is some "tension" between authorizing "each public school in the state" to apply for "accelerated academic program" grants for academic and non-academic programming while omitting charter schools from gifted and talented education planning. See 14 DE Admin Code 917.2.1 and 917.2.5. Moreover, Delaware statutory law does not exclude charter schools from offering gifted or talented education. See 14 Del.C. §§3101(6) and 3126. The Councils may wish to question the exclusion of charter schools in the new regulation.

Third, the new regulation includes multiple references to "professionally qualified persons". This is acceptable since identical language is contained in 14 Del.C. §§3101(6).

Fourth, §3.1 merits amendment since: 1) it omits the concept of an "identification process" in contrast to §2.0, definition of "Gifted or Talented Education Plan"; and §3.1.3; and 2) the term "educational services for identified gifted or talented students" is superfluous since this language is part of the definition of the Plan. It could be amended to read as follows: "3.1 Each school district shall have a Plan which, at a minimum, shall:".

Fifth, §3.1.6 requires all teachers assigned to instruct students identified as gifted or talented to be “certified in accordance with the applicable Professional Standards Board regulations.” I recommend deletion of this subsection since it actually limits the use of instructors. For example, if a student is a virtuoso of the piano or violin, a district may wish to contract with an exceptional expert who may not have a teaching certificate. A brilliant swimmer who appears to be of Olympic caliber may benefit from a contracted instructor without a certificate. It is my impression that public school teachers, apart from student teachers, are predominantly certified so the provision may add very little to the regulation.

Sixth, in §4.2, “periodic” review by the DOE is a rather obtuse standard. The DOE may wish to include a minimum timetable (e.g. at least every 4 years).

I recommend sharing the above observations with the DOE and SBE.

#### 4. DMMA Prop. Medicaid Plan Drug Rebate Regulation [18 DE Reg. 838 (5/1/15)]

The Division of Medicaid & Medical Assistance proposes to adopt a Medicaid State Plan amendment.

As background, prescription drug manufacturers are required to enter into rebate agreements for drugs purchased through the Medicaid program. Both the federal government and state governments benefit from the rebates. Effective March 23, 2010, the Affordable Care Act extended the application of the prescription drug rebate program to drugs provided to Medicaid beneficiaries enrolled in Medicaid Managed Care Organizations (MCOs). In 2014, CMS approved Delaware’s participation in a multi-state drug rebate program known as “TOP\$” for fee for service drugs. Qualification for drug rebates under “TOP\$” is available for drugs provided to MCO participants contingent upon Delaware adopting a Medicaid State Plan amendment. Based on the “Fiscal Impact Statement” on p. 840, it appears that Delaware would benefit from the extension of the rebate program to drugs provided to MCO participants.

Further background is contained in the attached CMS policy letter (SMDL#0-019) and the following report: Office of the Inspector General, “States Collection of Offset and Supplemental Medicaid Rebates” (December, 2014) available at <http://oig.hhs.gov/oei/reports/oei-03-12-00520.pdf>.

Since qualifying for drug manufacturer rebates for Medicaid beneficiaries participating in the Delaware Medicaid managed care system should result in financial benefit to the State, I recommend endorsement.

#### 5. DOE Proposed Vaccination Regulation [18 DE Reg. 832 (5/1/15)]

The Department of Education proposes to amend its standards for vaccinations of public school students. Background is compiled in the attached February 27, 2015 News Journal article.

In a nutshell, medical experts are recommending that entering ninth graders be required to receive a tetanus, diphtheria, and pertussis (Tdap) booster shot and meningococcal vaccine for high school entry. Delaware is one of only four states which do not require the above immunizations.

The proposed regulation (§3.1) would add the above requirement for entering ninth grade students in school year 2016-17. Compliance would be “strongly recommended, but not required” for entering ninth grade students in school year 2015-16. Schools would be required to coordinate with the Division of Public Health if there are students who have not received the immunizations (§3.2). Exemptions for religious and medical reasons can be granted by the Division of Public Health (§6.1.1).

I recommend endorsing the concept underlying this initiative subject to the following observations.

First, in §2.1.1, first sentence, the term “or other” should be reviewed. The superseded version referred to “other approved vaccine”. A simple reference to “or other” makes little sense. Moreover, there is some “tension” between allowing “other” vaccines in §2.1.1 and omitting “other” vaccines in §3.1.1.

Second, in §1.0, the definition of “school enterer” includes students being admitted to any public school. In contrast, §4.4 only refers to “school districts” which would exclude charter schools.

Third, the attached article recommends a meningococcal vaccine at ages 11-12 with a booster at ages 16-18. The regulation (§3.1.2) contemplates a single vaccine for entering ninth graders with no booster. In other contexts (e.g. §2.1.4.1), the regulation does address immunization of chronologically “older” students. The DOE may wish to consult the Division of Public Health in this context. Even if a booster were only “recommended”, the regulation addresses “recommended” immunization in §3.1.

I recommend sharing the above observations with the DOE and DPH.

#### 6. DOE Proposed Administrator Evaluation System (DPAS II), 18 DE Reg. 828 (5/1/15)]

The Department of Education proposes to revise its standards for the evaluation of administrators.

I have the following observations.

First, per §1.1, the regulation is effective “beginning with the 2015-16 school year”. Section 2.0, definition of “Student Achievement”, recites that certain student test results will not be considered in an administrator’s performance appraisal which “may be extended by the Department for the 2015-2016 school year.” Consistent with the attached March 12, 2015 News Journal article, the DOE Secretary and Governor have solicited federal approval to not count statewide assessment scores to evaluate educators in the 2015-16 school year. If the DOE obtains federal approval prior to publication of a final regulation, it would be preferable to explicitly clarify the exemption in Section 2.0, definition of “Student Achievement”.

Second, in §2.0, the DOE may wish to consider a revision to the definition of “credentialed evaluator”. The proposed regulation includes the following third sentence:

A superintendent or head of charter school shall be evaluated by member(s) of the Board who shall also have successfully completed the evaluation DPAS II foundational training and credentialing assessment in accordance with 10.0.

Consider the following:

A. If the sentence is retained, insert “a” before “member(s)”.

B. The amendment would preclude the option of a board using more than one evaluator for a superintendent of a charter school. Some boards might prefer to have a pair or team of evaluators with different expertise (fiscal expert; instructional expert). The amendment would foreclose that option. Restricting charter school board discretion in this context may be imprudent.

Third, there appears to be a “disconnect” between the Goal Setting and Mid-Year Conferences and any Improvement Plan. The DOE could consider amending the definition of “Goal-Setting Conference” by adding the following sentence: “If an Improvement Plan is in effect, the Conference participants should include consideration of Plan content to ensure the alignment of annual goals and supports with the Plan.” The DOE could consider amending the definition of “Mid-Year Conference” by adding the following sentence: “If an Improvement Plan is in effect, the Conference shall include a review of progress towards benchmarks in the Plan.”

Fourth, in §10.2.1, third sentence, and §10.2.3, there are multiple instances of use of plural pronouns with singular antecedents (e.g. administrator (they; their); administrator (their)). The DOE may wish to correct the references.

I recommend sharing the above observations with the DOE and SBE.

7. DOE Proposed Teacher Appraisal Regulation [18 DE Reg. 817 (5/1/15)]

The Department of Education is proposing to revise the DPAS II standards for appraisal of teacher performance.

As background, the DPAS II system has been the focus of considerable attention in recent years. On the one hand, the assessment is viewed as weak in discriminating between effective and ineffective teachers. In the latest assessment zero percent of teachers were rated “ineffective” and only one percent were rated “needs improvement”. See attached August 21, 2014 News Journal article. Despite the ostensibly generous ratings, only 47% of teachers characterized the evaluation system as “fair and equitable”. In contrast to the overwhelmingly positive teacher rating results, the students they teach are performing poorly on national tests. Approximately three quarters of graduating students do not score high enough on SATs to be considered ready for college. See attached October 7, 2014 article. See also attached October 3, 2014 News Journal article noting that 53% of Delaware high school graduates entering Delaware colleges are required to take remedial, non-credit courses. Finally, some educators are touting an alternate evaluation system focusing on the “Teaching Excellence Framework”. See attached September 7, 2014 and May 6, 2015 News Journal articles.

I have the following observation on the proposed DPAS II revisions.

First, Section 2.0, definition of “Student Achievement”, recites that certain student test results will not be considered in a teacher’s performance appraisal which “may be extended by the Department for the 2015-16 school year.” Consistent with the attached March 12, 2015 News Journal article, the DOE Secretary and Governor have solicited federal approval to not count statewide assessment scores to evaluate educators in the 2015-16 school year. If the DOE obtains federal approval prior to publication of a final regulation, it would be preferable to explicitly clarify the exemption in Section 2.0, definition of “Student Achievement”.

Second, §2.0 contains a definition of “Interim Assessment”. The term does not appear in the body of the regulation. The DOE may wish to consider deletion.

Third, §8.1 requires development of an “Improvement Plan” for any teacher with a “Needs Improvement” or “Ineffective” rating on either the summative evaluation or any of its appraisal components. This merits endorsement. However, the regulations do not describe the plan or its potential components. For example, it could be helpful to clarify that it may include more frequent observations than the minimum contemplated by §6.1. Moreover, although the plan should not be based on a “rigid” or “brittle” template, it may be helpful to include a list of common supports or interventions as “prompts” for consideration in developing the plan. Alternatively, this could be accomplished at the sub-regulatory level. The comparable specialist appraisal regulation includes more specifics about the “Improvement Plan”. See 14 DE Admin Code 107A.8.3.

I recommend sharing the above observations with the DOE and SBE.

8. DOE Proposed Specialist Appraisal Regulation [18 DE Reg. 823 (5/1/15)]

The Department of Education is proposing to revise the DPAS II standards for appraisal of specialist performance. A “specialist” includes a school counselor, media specialist, school psychologist, and school nurse [§2.0, definition of “Specialist”]. Based on the definition, it should also include an occupational, physical, and speech therapist.

I have the following observations.

First, §2.0, definition of “Student Achievement”, recites that certain student test results will not be considered in a specialist’s performance appraisal which “may be extended by the Department for the 2015-16 school year.” Consistent with the attached March 12, 2015 News Journal article, the DOE Secretary and Governor have solicited federal approval to not count statewide assessment scores to evaluate educators in the 2015-16 school year. If the DOE obtains federal approval prior to publication of a final regulation, it would be preferable to explicitly clarify the exemption in Section 2.0, definition of “Student Achievement”.

Second, §2.0 contains a definition of “Interim Assessment”. The term is not used in the body of the regulation. Moreover, it only refers to “academic” standards which may have little relevance to the performance of some specialists (e.g. nurse; physical therapist). The DOE may wish to consider deletion of the definition.

I recommend sharing the above observations with the DOE and SBE.

9. H.B. No. 117 (Low-Income Student Unit Funding)

This legislation was introduced on April 28, 2015. As of May 11, it awaited action by the House Education Committee. The bill is earmarked with the attached fiscal note which includes an FY16 State share of \$12.3 million.

I have the following observations.

First, a number of community leaders have expressed support for additional funding targeting the education of low-income students. See, e.g., former Mayor James Baker’s commentary in attached October 15, 2014 News Journal article. The bill would implement this concept by providing roughly \$66,072 in additional State funding for each unit of 250 low-income students. I recommend endorsement of the basic concept underlying the bill subject to three (3) significant concerns.

First, the synopsis highlights that 98% of the units would be presumptively directed towards the schools generating the units. However, this ignores the flexible funding initiative contained in §353 of the FY16 budget epilog. Consistent with the attached April 21, 2015 letter, districts participating in the flexible funding initiative are authorized to use funds “(n)otwithstanding any sections of the Delaware Code to the contrary” (epilog lines 14-15). Therefore, they could simply ignore the “98% safeguard” touted in H.B. No. 117.

Second, apart from the “flexible funding initiative”, low-income unit funds could be used for purposes with little value to the instruction of low-income students. The bill (line 12) authorizes funds to be used for any “supplemental school and educational services and programs”. Consider lines 17-18 which define the scope of use of the low-income unit funds:

(d) Funds appropriated in support of a unit for low-income students may be used for expenditures for any Division III purpose pursuant to §§1304, 1707(h), and 1710 of this title.

A. The first cited section (1304) consists of a 1-sentence authorization for districts to offer additional compensation and pay raises to personnel (ostensibly including administrators):

§1304 Salaries in excess of state supported uniform salary schedules.

*Nothing contained in this chapter shall prevent any local board from paying an additional amount of salary to any employee when such additional amount is derived from local funds or from Division III appropriations.*

B. The second cited section [1707(h)] authorizes districts to use Division III appropriations to pay legal costs associated with collective bargaining:

*Section 1707(h) Division III funds shall be utilized to supplement funds appropriated under Division I, including legal expenses associated with collective bargaining, and Division II for the purpose of advancing education beyond the level authorized through the basic appropriations in Divisions I and II or through any other state or federal appropriation.*

C. The use of Division III funds is not prescriptive. Title 14 Del.C. §1709 provides as follows:

*§1709 Use of appropriation for purpose other than that designated.*

*No part of any amount appropriated to any district shall be transferred from 1 subdivision of Division I to any other such subdivision of Division I or to Division II, or from Division II to any subdivision of Division I. But nothing contained in this matter shall prohibit the transfer of Division III funds to Division I to comply with §§1304, 1705 and 1712 of this title or Division II.*

Third, lines 21-22 recite, using passive voice, that “(t)he units for low-income students are covered under the 98% rule as defined in §1704(4) of this title and returned to the buildings that generate them.” This is an odd recital since §1704(4) is explicitly limited to Division I appropriations, not Division III appropriations.

The Councils should review the above analysis and options for communicating any reservations to policymakers.



10. H.B. No. 116 (DSCY&F Education System)

This bill was introduced on April 28, 2015. As of May 12, it awaited action by the House Education Committee.

As background, the Governor established a Youth Re-entry Education Task Force in 2014 through Executive Order 45. The Order included disturbing statistics. For example, of 184 juveniles in state custody in 2013, only 11 returned to a traditional school setting, 91 withdrew or failed to return to school, and 42 were in alternate placements. The Task Force was charged with making recommendations to improve educational outcomes for youth in the DSCY&F system. The synopsis to H.B. No. 116 indicates that the bill implements the recommendations of the Task Force.

The bill would explicitly characterize the Education Unit of the DSCY&F as a "local education agency" for certain purposes: 1) educator eligibility for loan forgiveness programs; 2) eligibility for grants; and 3) authority to issue academic credits to students.

I have the following observations.

First, the DSCY&F operates education programs in several behavioral health and youth rehabilitation settings. See attached descriptive list from pp. 44 - 45 from the MOU between the DOE, LEAs, and the DSCY&F (December 19, 2013). It is arguable whether State law already grants DSCY&F the power to offer credits in its "training schools". See Title 31 Del.C. §§5106(a)(1), 5106(a)(4), and 5107(a)7). However, a Department of Education regulation contemplates districts and charter schools awarding credits upon review of DSCY&F transcripts. See 14 DE Admin Code 505.10.2. The MOU (attached pp. 17-18) envisions essentially automatic approval by the districts:

3. LEAs shall:

...e. The receiving school shall immediately apply full credits and is encouraged to accept partial credits to benefit the student. The receiving and sending schools should determine, for transferring seniors, which school will provide the diploma.

It would be highly preferable to allow DSCY&F to issue credits independent of a district or charter school. If a student leaving DSCY&F custody does not immediately enroll in a Delaware school, it may be very difficult to later acquire credits for schoolwork performed in a DSCY&F setting since the process is cumbersome. Moreover, the DSCY&F can encourage an exiting student to continue education since it can present the student with a precise overview of remaining credits needed to obtain a diploma.

The Councils may wish to consider endorsement.

11. H.B. No. 111 (Administration of Medications)

This legislation was introduced on April 23, 2015. It was released from the House Health & Human Development Committee on April 29. H.A. No. 1, authored by the prime sponsor, was placed with the bill on April 29. As of May 12, it awaited action by the full House. I have the following observations which were previously submitted to the SCPD to facilitate timely receipt by policymakers prior to a House vote. On May 8, Kyle and I sent emails to the DOE and DHSS highlighting aspects of the legislation affecting their constituents.

First, the sponsors may wish to reconsider the amendment which substitutes the term "Delacare" regulations for "Delaware" regulations at line 11. The term "Delacare" regulations has historically referred to DSCY&F regulations applicable to the following facilities: 1) family child care homes; 2) large family child care homes; 3) early care and education and school-age centers; and 4) residential and day treatment program. These 4 facilities are subject to 4 corresponding sets of regulations, 9 DE Admin Code Parts 101, 103, 104 and 105. The term is used in the DSCY&F website to refer to regulations in the above contexts. See attachment. The term also appears sporadically in the actual regulations. See, e.g., 9 DE Admin Code 103.7.1. Administration of medications for 3 of the 4 entities covered by the Delacare regulations is covered by lines 27-32 of the bill. The only "Delacare" entity covered by new §1932 is "residential child care facilities and Day Treatment Programs" defined at 9 DE Admin Code 105 (line 90). None of the other entities described in §1932 (lines 91-98) are covered by the Delacare regulations. The conflict is that the amended definition of "Limited Lay Administration of Medications (LLAM)" appears to limit it to conformity with Delacare regulations while the actual LLAM statute authorizes administration in 4 of 5 entities not covered by the Delacare regulations.

Second, lines 62-65 authorize trained individuals to assist with medications on field trips and off-campus activities. This provision was added to the Code through S.B. No. 257 in 2012. The sponsors may wish to consult the Department of Education to assess the value of an amendment at line 62. The authorization to have staff "assist" (but not administer) medications is ostensibly limited to schools serving students "in kindergarten through grade 12". While some students with disabilities are eligible for public education at birth (e.g. deaf-blind; blind), most are eligible upon their third birthday. See Title 14 Del.C. §1703(d)(1) and §3101(1). Students with disabilities have a right to participate in field trips with accommodations. See e.g., attached Delaware Attorney General's Opinion, "Nurse in Attendance on Field Trips" (January 20, 1994). Therefore, it may be beneficial to amend line 62 to cover pre-kindergarten students. The sponsors could simply amend line 62 by substituting "pre-kindergarten" for "kindergarten".

Third, I note that the renumbering of §1921(a)(18) and (19) at lines 66-71 could affect an overlapping reference in H.B. No. 110, line 52. Hopefully, the Code Revisers would identify the overlap and conform the references.

Fourth, the following description (lines 93-95) of settings in which LLAM can occur is problematic:

(3) Foster homes, group homes or adult day habilitation centers for individuals who are developmentally disabled regulated by the State under Chapter 55 of Title 16.

There are multiple problems with this reference:

A. The term “developmentally disabled” is inconsistent with Title 29 Del.C. §608(b).

B. Title 16 Del.C. Chapter 55 does not regulate foster homes, group homes or adult day habilitation centers.

C. The term “adult day habilitation centers” is limiting. This is a major concern. Consistent with the attached January, 2015 DDDS census, of 2,152 clients with day services, only 787 are in day habilitation. The balance are served in pre-vocational and supported employment settings. As a result, LLAM will only be available in day-hab settings which provides a disincentive for individual to be served in pre-vocational settings and supported employment. Providers will be deterred from allowing clients to be employed off-site if they need medication during the work-day. This is inconsistent with Title 16 Del.C. §§743-744 which requires that policies support vocational opportunities in integrated settings.

D. The terms “foster homes” and “group homes” are limiting. They would not encompass “supported living” settings. See attached DDDS census listing 34 individuals in such settings. Some clients may benefit from “drop-in” support consisting of assistance with administration of medication at least during a transition period upon initial residency.

E. Although children served in AdvoServ (regulated by DSCY&F) would be covered by line 90, adults served in AdvoServ (regulated by DLTCRP under 16 DE Admin Code 3320) may not be covered by the reference.

I recommend consideration of the following substitute and renumbering of Pars. (4) and (5) as (5) and (6) respectively:

(3) Group homes, foster homes, or supported living settings for individuals with developmental disabilities either regulated by the State under Chapter 11 of Title 16 or operating through contractual arrangement with the Division of Developmental Disabilities Services.

(4) Supported employment, vocational, pre-vocational, and day habilitation settings regulated or operating through contractual arrangement with the Division of Developmental Disabilities Services.

In assessing the above substitute, I note that the terms "supported living, supported employment, foster care, vocational, and day habilitation are used in the DDDS enabling statute [29 Del.C. §7909A]. I also note that foster homes with only 1 DDDS client are not licensed pursuant to 16 Del.C. §1102(4) but would be under contractual arrangement with DDDS. The term "group home" is broader than "neighborhood home" in recognition of AdvoServ using some group homes that are not licensed as neighborhood homes. I used the term "regulated by the State under Chapter 11 of Title 16" since that is the language used in lines 90, 96, and 97. The sponsors could consider amending all references to "licensed by the State under Chapter 11 of Title 16". Finally, I note there are very few [e.g. 16 DE Admin Code 3320.3.0, definition of "resident"] published DHSS regulations applicable to day programs but, I surmise, there are some unpublished regulatory or contractual standards imposed by DDDS.

I recommend sharing the above observations with policymakers.

## 12. H.B. No. 105 (Absentee Ballots)

This bill was introduced on April 21, 2015. It was released from the House Administration Committee on April 29. As of May 12, it awaited action by the full House. Since it amends the Delaware Constitution, the legislation would have to be adopted by a 2/3 vote in successive General Assemblies to take effect.

I have the following observations.

First, the Delaware Constitution is somewhat prescriptive in authorizing absentee ballots. For example, it contemplates use of absentee ballots based on "sickness or physical disability" but omits any reference to "mental disability". This bill would remove limitations and allow the General Assembly to enact laws covering qualifications for the use of absentee ballots.

Second, the bill is identical to H.B. No. 20 from the 147<sup>th</sup> General Assembly. The SCPD and GACEC endorsed H.B. No. 20. See attached February 27, 2013 GACEC memo. H.B. No. 20 did not pass. A 27-14 vote in the House was one vote short of the 2/3 benchmark. Background is contained in the attached April 17, 2013 News Journal article. It quotes the prime sponsor's comment that "it's wrong that Delaware law currently allows a disabled person to vote absentee but could bar that person's full-time caregiver from doing the same." The article also notes that twenty-seven (27) states allow "no excuse" absentee voting.

The Councils could consider endorsement.

### Attachments

F:pub/bjh/legis/2015p&l/hb111  
E:leg/515bils



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES  
MARGARET M. O'NEILL BUILDING  
410 FEDERAL STREET, SUITE 1  
DOVER, DE 19901

VOICE: (302) 739-3620  
TTY/TDD: (302) 739-3699  
FAX: (302) 739-6704

February 26, 2015

Ms. Tina Shockley, Education Associate  
Department of Education  
401 Federal Street, Suite 2  
Dover, DE 19901

RE: 18 DE Reg. 621 [DOE Proposed IEP Reading Interventions Regulation]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend its regulation regarding *Children with Disabilities Subpart D*. The proposed regulation was published as 18 DE Reg. 621 in the February 1, 2015 issue of the Register of Regulations. SCPD has the following observations.

In October, 2014, the DOE issued a proposed regulation amending multiple provisions within its regulations covering evaluations, eligibility, and IEPs [18 DE Reg. 281 (10/1/14)]. The SCPD and Governor's Advisory Council for Exceptional Citizens (GACEC) submitted comments on the regulation resulting in two amendments.

However, the DOE declined to adopt a third Council-recommended amendment to add a reference to extended school year services for children not beginning to read by age seven. Representatives of the Legislature, Councils, DLP, Attorney General's Office, and DOE met in January to discuss the Councils' concerns. The Councils shared the attached "Supplemental Analysis of Regulations Implementing S.B. 229" to clarify their view that the regulation did not fully implement recent legislation. As a result, the DOE agreed to issue a new proposed regulation incorporating the amendment reflected in the Supplemental Analysis.

The DOE has now formally issued the proposed regulation. It mirrors the version proposed by the Councils. SCPD endorses the proposed regulation.

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

Sincerely,

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

cc: The Honorable Mark Murphy, Secretary of Education  
Mr. Chris Kenton, Professional Standards Board  
Dr. Teri Quinn Gray, State Board of Education  
Ms. Mary Ann Mieczkowski, Department of Education  
Ms. Paula Fontello, Esq., Department of Justice  
Ms. Terry Hickey, Esq., Department of Justice  
Ms. Ilona Kirshon, Esq., Department of Justice  
Mr. Brian Hartman, Esq.  
Developmental Disabilities Council  
Governor's Advisory Council for Exceptional Citizens

18reg 621 doe-IEP reading intervention 2-27-15.doc

STATE OF



DELAWARE

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

GEORGE V. MASSEY STATION  
516 WEST LOOCKERMAN STREET  
DOVER, DELAWARE 19904  
TELEPHONE: (302) 739-4553  
FAX: (302) 739-6126

February 19, 2015

Tina Shockley  
Education Associate – Policy Advisor  
Department of Education  
401 Federal Street, Suite 2  
Dover, DE 19901

**RE: 18 DE Reg. 618/14 DE Admin. Code 923 [DOE Proposed Extended School Year Services Regulation (February 1, 2015)]**

Dear Ms. Shockley:

On February 16, 2015, Wendy Strauss, executive director of the Governor's Advisory Council for Exceptional Citizens (GACEC) shared the following e-mail message with you, Mary Ann Mieczkowski and Sarah Celestin:

"Mitch, Tina and Sarah, I am writing in regard to the DOE Extended School Year Service Regulation. As you recall, in October, 2014, the Department of Education published a regulation amending its extended school year standards to implement recently enacted S.B. No. 229. The GACEC issued an analysis of the proposed regulation since it did not conform to the letter or spirit of S.B. No. 229. In January, the DOE adopted a final regulation with one minor amendment prompted by the commentary.

In January GACEC brought together representatives of the DOE, Legislature, other Councils, DLP, and the Attorney General's Office, to discuss the Councils' concerns. The Council shared the DLP "Supplemental Analysis of Regulations Implementing S.B. No. 229" to clarify their view that the regulation did not fully implement recent legislation. As a result, the DOE agreed to issue a new proposed regulation incorporating the amendment reflected in the Supplemental Analysis.

The DOE has now formally published its regulation which, with one exception, mirrors the version reflected in the Supplemental Analysis. The Department omitted the following amendment:

6.2. Extended school year services shall be provided only if a child's IEP Team determines, on an individual basis, in accordance with 14 DE Admin Code 925.20.0

through 925.24.0, that the services are necessary for the provision of FAPE to the child or are otherwise specifically authorized by statute.

The omission is problematic. In the Supplemental Analysis, the DLP stressed that the legislative history of S.B. No. 229 supported presumptive summer services even if their provision might exceed a minimum FAPE. The omission of the amendment to §6.2 creates some "tension" within the regulation: 1) §6.2 literally bars ESY unless necessary for a FAPE; 2) §6.7 creates a presumption of ESY eligibility with no reference to FAPE. IEP teams may be confused and attempt to justify denial of ESY based on minimum FAPE standards. This "tension" would have been obviated if the agreed-upon revision to §6.2 were included in the regulation.

We would like to request that the DOE include the proposed amendment to §6.2 in the final regulation. We would also like to know if the omission was inadvertent or intentional. Please let us know by tomorrow morning, Tuesday, February 17, 2015 so we can inform our Policy Law Committee.

Thank you in advance for your time and consideration. Wendy"

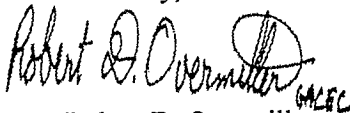
You responded to the message from Ms. Strauss with the following message:

*"Wendy – I truly do believe this was an oversight on DOE's part. Immediately upon receiving your comments, I contacted our staff to confirm that it was an oversight. Please accept my personal apologies. I assure you that I would never purposefully omit information that would have the potential to adversely affect children. We will work to ensure their edit gets in the final, published version. Thank you for bringing it to our attention, as we certainly want the final regulation to be accurate."*

On behalf of the GACEC, we would like to thank you for your response that this was an oversight on the part of the Department of Education and reiterate our request that this proposed amendment be included in the final regulation in order to fully implement the provisions of Senate Bill No. 229. We thank you for your consideration of our concerns and look forward to continuing to work with you to provide quality educational services for our children with special needs and their families.

Please contact me or Wendy Strauss at the GACEC office if you have any questions.

Sincerely,



Robert D. Overmiller  
Chairperson

RDO:kpc

CC: The Honorable Matthew Denn, Attorney General  
The Honorable Mark Murphy, Secretary of Education  
The Honorable Nicole Poore, Delaware Senate  
The Honorable Bethany Hall-Long, Delaware Senate  
The Honorable Valerie Longhurst, Delaware House of Representatives  
The Honorable Quinton Johnson, Delaware House of Representatives  
The Honorable Michael Ramone, Delaware House of Representatives



The Honorable Melanie Smith, Delaware House of Representatives  
Dr. Teri Quinn Gray, State Board of Education  
Mr. Chris Kenton, Professional Standards Board  
Susan Haberstroh, Department of Education  
Michael Watson, Department of Education  
Mary Ann Mieczkowski, Department of Education  
Michelle Whalen, Department of Education  
Mary Kate McLaughlin, Esq.  
Paula Fontello, Esq.  
Terry Hickey, Esq.  
Ilona Kirshon, Esq.



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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

VOICE: (302) 739-3620  
TTY/TDD: (302) 739-3699  
FAX: (302) 739-6704

February 26, 2015

Ms. Tina Shockley, Education Associate  
Department of Education  
401 Federal Street, Suite 2  
Dover, DE 19901

RE: 18 DE Reg. 616 [DOE Proposed Gifted or Talented Education Plan Regulation]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to adopt a *Gifted or Talented Education Plan* regulation. The proposed regulation was published as 18 DE Reg. 616 in the February 1, 2015 issue of the Register of Regulations. SCPD has the following observations.

There is little statutory law concerning programs for gifted or talented students. Title 14 Del.C. §3101(6) defines the qualifications for a "gifted or talented child". Title 14 Del.C. §3126 contains a one-sentence authorization for the DOE to issue regulations defining program standards:

§3126 Rules and regulations.

The extent of programs and facilities provided for children determined to be gifted or talented shall be in accordance with the rules and regulations of the Department as approved by the State Board of Education.

The Department is now proposing to require each district and charter school to develop and maintain a "Gifted or Talented Education Plan". Initial plans would be submitted to the Department by July 15, 2015 for implementation no later than the 2015-16 school year. Districts and charter schools could request an extension for implementation to occur no later than the 2016-17 school year.

SCPD has the following observations.


First, the Department may wish to reconsider the July 15, 2015 deadline for submission of the initial plan. The earliest the regulation could become "final" is April 1, 2015. This would provide districts and charter schools with only 2 ½ months to obtain input from stakeholder groups (including parents) [§3.2] and develop a final plan. Schools would not even be "open" during the latter part of this period. If districts and charter schools are "rushed" into submission of plans, plan content may suffer.

Second, §3.1.3 is problematic. It requires "each teacher assigned to teach gifted or talented students to be certified in gifted and talented education". This is "overbroad". A student who is gifted in psychomotor ability or the performing arts may not need a certified gifted or talented teacher for academics. Literally, a "gifted or talented child" could not take a world language course unless the foreign language or ASL instructor was certified in gifted or talented education. If a student were gifted in "psychomotor ability", the student's coaches and physical education instructors would have to be certified in gifted or talented education.

Third, in §3.1.8, the term "Gifted or Talented Education" should be deleted. The term "Plan" should suffice. See definition of "Gifted or Talented Education Plan (Plan)" and compare references to "Plan" in §§3.1, 3.2, 3.3, and 3.4.

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

Sincerely,



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

cc: The Honorable Mark Murphy, Secretary of Education  
Mr. Chris Kenton, Professional Standards Board  
Dr. Teri Quinn Gray, State Board of Education  
Ms. Mary Ann Mieczkowski, Department of Education  
Ms. Paula Fontello, Esq., Department of Justice  
Ms. Terry Hickey, Esq., Department of Justice  
Ms. Ilona Kirshon, Esq., Department of Justice  
Mr. Brian Hartman, Esq.  
Developmental Disabilities Council  
Governor's Advisory Council for Exceptional Citizens

18reg 616 doc-gifted or talented education plan 2-27-15.doc

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-26 12  
Baltimore, Maryland 21244-1850



**Center for Medicaid, CHIP and Survey & Certification**

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SMDL#10-019  
ACA# 9

September 28, 2010

**Re: Medicaid Prescription Drugs**

Dear State Medicaid Director:

This letter is one of a series intended to provide guidance on the implementation of the Patient Protection and Affordable Care Act (P.L. 111-148), enacted on March 23, 2010, as revised by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), enacted on March 30, 2010, together known as the Affordable Care Act.

Specifically, this letter revises the previous instructions concerning the Federal offset of Medicaid prescription drug rebates, and further specifies the process we will use for the estimation and collection of these offsets. It also provides information on rebates for Medicaid managed care organization (MCO) drugs, MCO formularies, and the treatment of MCO physician-administered drugs. Finally, this guidance addresses manufacturer reporting requirements, the treatment of discounts under the Medicare Coverage Gap Discount Program for purposes of the determination of best price (BP), and the changes to the excluded drug provisions in Medicaid.

**Revised Policy on Federal Offset of Rebates**

Section 2501 of the Affordable Care Act increased the amount of rebates that drug manufacturers are required to pay under the Medicaid drug rebate program, with different formulas for single source and innovator multiple source drugs (brand name drugs), noninnovator multiple source drugs (generic drugs), and drugs that are line extensions of a single source drug or an innovator multiple source drug, effective January 1, 2010. The Affordable Care Act also required that amounts "attributable" to these increased rebates be remitted to the Federal government.

In the April 22, 2010 State Medicaid Director (SMD) letter, #10-006, CMS indicated that we were planning to offset the non-Federal share of the entire difference between the minimum rebate percentages in effect on December 31, 2009, and the new minimum rebate percentages in effect under the Affordable Care Act, regardless of whether States received a rebate amount based on the difference between the average manufacturer price (AMP) and best price (BP). For a drug that is a line extension of a brand name drug that is an oral solid dosage form, we planned to offset the entire non-Federal share of the increase in the minimum, as well as the additional rebate for those drugs. However, after further consideration of the offset provisions in section

2501 of the Affordable Care Act, we have decided to reconsider our instructions regarding the calculation of the offset provisions to reflect the lesser of the difference between the increased minimum rebate percentage and the AMP minus BP. We plan to offset the amount equal to the increased amount of rebates resulting from the Affordable Care Act.

In light of this reconsideration, we plan to calculate the offset as described below.

Brand name drugs other than blood clotting factors and drugs approved by the Food and Drug Administration (FDA) exclusively for pediatric indications<sup>1</sup> are subject to a minimum rebate percentage of 23.1 percent of AMP:

- If the difference between AMP and BP is less than or equal to 15.1 percent of AMP, then we plan to offset the full 8 percent of AMP (the difference between 23.1 percent of AMP and 15.1 percent of AMP).
- If the difference between AMP and BP is greater than 15.1 percent of AMP, but less than 23.1 percent of AMP, then we plan to offset the difference between 23.1 percent of AMP and AMP minus BP.
- If the difference between AMP and BP is greater than or equal to 23.1 percent of AMP, then we do not plan to take any offset amount.

Brand name drugs that are blood clotting factors and drugs approved by the FDA exclusively for pediatric indications are subject to a minimum rebate percentage of 17.1 percent of AMP:

- If the difference between AMP and BP is less than or equal to 15.1 percent of AMP, then we plan to offset the full 2 percent of AMP (the difference between 17.1 percent of AMP and 15.1 percent of AMP).
- If the difference between AMP and BP is greater than 15.1 percent of AMP, but less than 17.1 percent of AMP, then we plan to offset the difference between 17.1 percent of AMP and AMP minus BP.

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<sup>1</sup> Guidance and list of blood clotting factors and drugs approved by the FDA exclusively for pediatric indications are posted on the CMS website at [http://www.cms.gov/Reimbursement/08\\_MedicaidPrescriptionDrugsundertheAffordableCareAct.asp](http://www.cms.gov/Reimbursement/08_MedicaidPrescriptionDrugsundertheAffordableCareAct.asp).

- If the difference between AMP and BP is greater than or equal to 17.1 percent of AMP, then we do not plan to take any offset amount.

For a drug that is a line extension of a brand name drug that is an oral solid dosage form, we plan to apply the same offset calculation as described above to the basic rebate. Further, we plan to offset only the difference in the additional rebate of the reformulated drug based on the calculation methodology of the additional rebate for the drug preceding the requirements of the Affordable Care Act and the calculation of rebates for the reformulated drug, if greater, in accordance with the Affordable Care Act. If there is no difference in the additional rebate amount in accordance with the Affordable Care Act, then we do not plan to take any offset amount.

We have not reconsidered our guidance with respect to generic drugs, given that rebates are not calculated based on best price. Thus, we plan to continue to offset an amount equal to two percent of the AMP (the difference between 13 percent of AMP and 11 percent of AMP).

As indicated in our April 22, 2010 guidance, we do not plan to offset the non-Federal share of any supplemental rebates States may receive above the increased Federal rebate percentages.

### **Offset Rebate Methodology**

When determining the best approach to calculating the offset amount, we considered States,' as well as CMS's data and systems capabilities. Some States suggested that it would be more efficient for CMS to perform this offset calculation in a manner similar to the calculation of the unit rebate amount (URA). States also suggested that CMS calculate a second URA identifying the amount of offset to be returned to the Federal Government.

After considering these suggestions and to avoid the potential burden on States, we have decided that it would be more efficient for CMS to determine the offset amount. Accordingly, we plan to calculate a unit rebate offset amount (UROA) that will identify the offset amount per unit of a drug at the 9-digit national drug code (NDC) level on a quarterly basis for States. States will then be able to apply the UROA to the number of units of each drug for which they receive payment from a manufacturer to determine the Quarterly Rebate Offset amount (QROA) for each drug of all manufacturers to determine the total QROA. This amount will be offset and reported on the Quarterly Expenditure reports.

We are in the process of implementing the systems changes necessary to include the UROA with the quarterly rebate data submissions to the States. We believe States will also need more time to modify their respective systems to accept this new UROA data element. Therefore, we are developing an interim process to calculate an estimated quarterly rebate offset amount (EQROA) that will be used to approximate this offset until our UROA systems changes are finalized. We plan to apply the UROA for the basic rebate to an estimation of units for which the State has made payment under the Medicaid State plan and reduce that estimate by the amount of rebates we expect the State would have received in the quarter. We further plan to make this estimate available to the State and record it on behalf of each State on the form CMS-64 as an offset. The

EQROA amount will be reconciled with the total QROA when CMS provides States with the UROAs. Attached to this letter is a detailed description of the methodology we plan to use for the EQROA interim process for estimating the total offset.

Because we do not currently have the capability to systematically identify reformulated drugs, the additional rebate for those drugs is not included for the purpose of this calculation, and no offset will be taken from the States at this point. Once these drugs are identified, we will include them in the EQROA or UROA process, and will make necessary retroactive adjustments.

### **Rebates for Medicaid Managed Care Organization (MCO) Drugs – MCO Formularies and MCO Physician-Administered Drugs**

We have received questions on whether the legislation also requires Medicaid MCOs to revise their current formularies. As noted in the April 22, 2010 SMD letter, the new legislation requires manufacturers to provide rebates for drugs dispensed to individuals enrolled in a Medicaid MCO. The changes made by section 2501(c) of the Affordable Care Act do not specifically revise the requirements concerning the provision of drugs by an MCO to its members, but they do provide that utilization information concerning covered outpatient drugs dispensed by an MCO to its Medicaid enrollees are to be reported to the State. This reporting will enable the State to include MCO utilization data with its fee-for-service utilization data for covered outpatient drugs, so that the manufacturers can pay rebates on these drugs. Accordingly, we do not plan to require that an MCO modify its formulary provisions in light of this provision of the Affordable Care Act. MCOs may continue to have some flexibility in maintaining formularies of drugs regardless of whether the manufacturers of those drugs participate in the drug rebate program. State Medicaid agencies may continue to establish requirements regarding MCOs' formularies.

We also received questions related to State responsibility for collecting rebates for physician-administered drugs provided in an MCO and MCO responsibility for collecting and reporting rebate data on such drugs (e.g., NDCs and number of units of each covered outpatient drug dispensed) for transmission to the State. In light of the requirements of section 1927(a)(7) regarding the collection of information for physician administered drugs, MCOs are responsible for submitting utilization data for these covered outpatient drugs to the State.

### **Exemptions for Discounts under the Medicare Coverage Gap Discount Program from Best Price**

In accordance with section 1927(c)(1)(C)(i)(VI) of the Social Security Act, as revised by section 3301(d) of the Affordable Care Act, effective July 1, 2010, discounts provided by manufacturers under the Medicare Coverage Gap Discount Program under section 1860D-14A of the Act are also exempt from a manufacturer's BP calculation.

### **Reporting Units**

Beginning with October 2010, section 2503(b) of the Affordable Care Act requires manufacturers to report the total number of units that are used to calculate the monthly AMP for each covered outpatient drug no later than 30 days after the last day of the month. We plan to require manufacturers to report these units by the same unit type used to calculate the AMP and we plan to use these units to calculate the weighted AMP-based FULs prices. We plan to have the data field necessary for manufacturers to report this data and will provide instructions to manufacturers regarding the reporting of units to facilitate timely reporting in advance of the deadline.

### **Excluded Drug Provision Changes**

Section 2502 of the Affordable Care Act requires that over the counter (OTC) and prescription smoking cessation drugs, barbiturates, and benzodiazepines be removed from the list of drugs that States may exclude from coverage, effective January 1, 2014. States will generally be required to cover these products to the extent that States provide coverage of prescribed drugs. Please note that because Medicare Part D does not require the coverage of OTC smoking cessation drugs, States are responsible for coverage of such drugs for Medicaid dual-eligible individuals, provided that the State provides a prescription drug benefit under its State plan for such Medicaid beneficiaries.

We intend to issue further guidance and regulations as necessary to ensure the proper and timely implementation of these and related provisions of the Affordable Care Act. We look forward to our continuing work together to implement this legislation. Questions regarding Medicaid drug provisions can be submitted through the drug policy resource mailbox at [RxDrugPolicy@cms.hhs.gov](mailto:RxDrugPolicy@cms.hhs.gov) or may be directed to Larry Reed, Director, Division of Pharmacy, Disabled and Elderly Health Programs Group at (410) 786-3325.

Sincerely,

/s/

Cindy Mann  
Director

cc:

CMS Regional Administrators

CMS Associate Regional Administrators  
Division of Medicaid and Children's Health

Richard Fenton  
Acting Director  
Health Services Division  
American Public Human Services Association



Joy Wilson  
Director, Health Committee  
National Conference of State Legislatures

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Matt Salo  
Director of Health Legislation  
National Governors Association

Debra Miller  
Director for Health Policy  
Council of State Governments

Carol Steckel  
President  
National Association of Medicaid Directors

Christine Evans, M.P.H.  
Director, Government Relations  
Association of State and Territorial Health Officials

Alan R. Weil, J.D., M.P.P.  
Executive Director  
National Academy for State Health Policy

## Enclosure

### **METHODOLOGY FOR CALCULATING THE ESTIMATED QUARTERLY REBATE OFFSET AMOUNT**

Effective January 1, 2010, the Affordable Care Act increased the minimum rebate amounts that drug manufacturers are required to pay under the Medicaid drug rebate program, with different formulas for single source and innovator multiple source drugs (brand name drugs) and noninnovator multiple source drugs (generic drugs). The Affordable Care Act also required that amounts "attributable" to these increased rebates be returned to the Federal Government.

We have provided a detailed description below of CMS' methodology for the estimated quarterly rebate offset amount (EQROA) interim process for estimating the total offset amount that will be remitted to the Federal Government for this provision. The EQROA amount will be reconciled with the total quarterly rebate offset amount (QROA) when CMS provides States with the unit rebate offset amounts (UROAs).

Using the most complete available data, we plan to calculate the EQROA using the following methodology. We note the limitations in using the data for this calculation in the data limitations section at the end of this paper.

#### **ACRONYMS AND ASSOCIATED FORMULA**

UROA = Unit Rebate Offset Amount = Quarterly AMP x Offset Rebate Percentage per NDC  
QROA = Quarterly Rebate Offset Amount = UROA x Average Total Units per NDC  
Total QROA = Sum of the QROA of all NDCs  
EQROA = Estimated Quarterly Rebate Offset Amount = Total QROA x Discount Factor  
Percentage Specified Below

#### **DATA SOURCES**

- Quarterly AMP Data, Begins with 1Q2010 (1<sup>st</sup> quarter of calendar year 2010)
- 3Q2008 – 2Q2009 Total Number of Units Reimbursed by States Obtained from the Medicaid State Drug Utilization Data

#### **METHODOLOGY and EXAMPLE –**

##### **Step 1 – Extract the Units Reimbursed by Each State from the Medicaid State Drug Utilization Data File for 3Q2008 to 2Q2009**

Each State's utilization data file is due to CMS no later than 60 days after the end of each quarter and is posted and updated on the CMS Web site on quarterly basis at: <http://www.cms.gov/MedicaidDrugRebateProgram/SDUD/list.asp>. The data elements included in this file are State, NDC, quarter and year, product name, units reimbursed, number of prescriptions, total amount reimbursed by State, amount reimbursed under Medicaid, and amount reimbursed by non-Medicaid. Although the drug utilization data is due to CMS no later than 60

days after the end of each quarter, it does not appear that this data is reliable until sometime after that since States often initially revise these submissions. Therefore, to better estimate utilization, we plan to use the past quarters' data, 3Q2008 to 2Q2009, in the calculation. Units reimbursed by NDC per State are then downloaded for each of the four quarters from 3Q2008 to 2Q2009.

**Step 2 – Calculate the Average Total Units from 3Q2008 to 2Q2009**

The Average Total Units are calculated by taking the average of the units reimbursed per NDC by State from 3Q2008 to 2Q2009. As with this step and all the following steps in this methodology, we are providing example to highlight the methodology. We are providing the following example for steps 2-9 to highlight the methodology.

NDC	3Q2008	4Q2008	1Q2009	2Q2009	Calculating the Average Total Units = Sum of Units / 4 Quarters	Average Total Units
00001-0001	150	50	90	110	= (150+50+90+110) ÷ 4	100
00002-0111	100	200	250	150	= (100+200+250+150) ÷ 4	175
00003-0222	500	300	100	350	= (500+300+100+350) ÷ 4	312.5

For the purpose of continuing this calculation into future quarters (e.g., 2Q2010 EQROA, 3Q2010 EQROA, and future quarters as necessary), we plan to calculate the average total units using quarters with the best available data on the total number of units reimbursed. Data will be moved forward one quarter for each subsequent EQROA. Thus for 2Q2010 EQROA, the average total units will be calculated using units reimbursed per NDC by State from 4Q2008 to 3Q2009. For 3Q2010 EQROA, the average total units will be calculated using units reimbursed per NDC by State from 1Q2009 to 4Q2009. And for 4Q2010 EQROA, the average total units will be calculated using units reimbursed per NDC by State from 2Q2009 to 1Q2010.

**Step 3 – Identify the Drug Category of Each NDC**

CMS posts the drug product data file on the CMS Web site on a quarterly basis at [http://www.cms.gov/MedicaidDrugRebateProgram/09\\_DrugProdData.asp](http://www.cms.gov/MedicaidDrugRebateProgram/09_DrugProdData.asp). This file can be downloaded to identify whether an NDC is a single source (S) drug, innovator multiple source (I) drug, or noninnovator multiple source (N) drug. The drug product information that goes into this file is based on manufacturer submissions to CMS. This file includes information such as NDC, drug category, DESI indicator, drug type, product name, etc. The most recent file posted on the CMS Web site is for 1Q2010. Please note that we plan to use the most updated drug product data file available for the quarter when we perform the calculation. For the purpose of calculating 1Q2010 EQROA, we are using 1Q2010 drug product data file.

**Step 4 – Match the Drug Product Data File Against the 1Q2010 Quarter AMP File**

Thirty days after the end of each rebate period, manufacturers are required to report to CMS their quarterly AMP and best price (BP) for each NDC on record with CMS. The most complete AMP and BP file that CMS has at this time is for 1Q2010. We plan to use the most updated

AMP and BP data received this quarter and all future quarters, as we believe this best represents the amount manufacturers will use as the basis for their increased rebate payments. Because 1Q2010 quarterly AMP and BP files and the drug product data file are two separate files that include separate information we need for each NDC, we plan to match both files by NDC in order to have both the quarterly AMP and BP and the drug category appear for each NDC to appear on the same file.

<b>1Q2010 Quarterly AMP and BP File:</b>		
NDC	Quarterly AMP	Quarterly BP
00001-0001	0.750000	0.650000
00002-0111	1.000000	0.800000
00002-0222	0.500000	0.000000

<b>1Q2010 Drug Product Data File</b>	
NDC	Drug Category
00001-0001	S
00002-0111	S
00002-0222	N

<b>Matched Quarterly AMP File and Drug Product Data File</b>			
NDC	Drug Category	Quarterly AMP	Quarterly BP
00001-0001	S	0.750000	0.650000
00002-0111	S	1.000000	0.800000
00002-0222	N	0.500000	0.000000

**Step 5 – Determine Where AMP Minus BP Falls**

Once we have matched the 1Q2010 drug product data file against the 1Q2010 quarterly AMP and BP file, we need to determine where the difference between AMP and BP falls. See details and example below.

For brand name drugs other than blood clotting factors and drugs approved by the Food and Drug Administration (FDA) exclusively for pediatric indications:

- A. If the difference between AMP and BP is less than or equal to 15.1 percent of AMP, then we plan to offset the full 8 percent of AMP (the difference between 23.1 percent of AMP and 15.1 percent of AMP).
- B. If the difference between AMP and BP is greater than 15.1 percent of AMP, but less than 23.1 percent of AMP, then we plan to offset the difference between 23.1 percent of AMP and AMP minus BP.
- C. If the difference between AMP and BP is greater than or equal to than 23.1 percent of AMP, then we do not plan to take any offset amount.

For brand name drugs that are blood clotting factors and drugs approved by the FDA exclusively for pediatric indications that are subject to a rebate percentage of 17.1 percent of AMP:

- D. If the difference between AMP and BP is less than or equal to 15.1 percent of AMP, then we plan to offset the full 2 percent of AMP (the difference between 17.1 percent of AMP and 15.1 percent of AMP).
- E. If the difference between AMP and BP is greater than 15.1 percent of AMP, but less than 17.1 percent of AMP, then we plan to offset the difference between 17.1 percent of AMP and AMP minus BP.
- F. If the difference between AMP and BP is greater than or equal to than 17.1 percent of AMP, then we do not plan to take any offset amount.

For generic drugs, we plan to offset an amount equal to two percent of the AMP (the difference between 13 percent of AMP and 11 percent of AMP), since these drugs are unaffected by best price.

Because we currently do not have the capability to systematically identify reformulated drugs, the additional rebate for those drugs is not included for now for the purpose of this calculation and no offset will be taken from the States at this point. Once these drugs are identified, we will include them in the EQROA for future quarters or the UROA process consistent with the provisions of section 2501 of the Affordable Care Act.

NDC	Drug Category	Quarterly AMP	Quarterly BP	AMP-BP	AMP x 15.1%	AMP x 23.1%	Determination of Where AMP-BP Falls
00001-0001	S	0.750000	0.650000	0.100000	0.113250	0.173250	Less than AMPx15.1% - use Step 5A above
00002-0111	S	1.000000	0.800000	0.200000	0.151000	0.231000	Greater than AMPx15.1% and less than AMPx23.1% - use Step 5B above
00002-0222	N	0.500000	0.000000	N/A	N/A	N/A	N/A - Generic drug

**Step 6 – Identify the Offset Rebate Percentage to be Applied to Each NDC**

Based on the identification of where AMP minus BP falls in Step 5, the following offset rebate percentage is applied to each NDC.

NDC	Drug Category	Determination where AMP-BP falls	Offset Rebate Percentage
00001-0001	S – brand	Less than AMPx15.1% - see Step 5A above	8%
00002-0111	S – brand	Greater than AMPx15.1% and less than AMPx23.1% - see Step 5B above	3.1%
00002-0222	N – generic	N/A	2%

### Step 7 – Calculate UROA per NDC

Once AMP minus BP is determined (using the matched file with the 1Q2010 quarterly AMP and BP data and the drug category indicator for each NDC), we calculate the UROA by multiplying AMP by the offset rebate percentage determined in Step 5 for each of the category of drugs where that AMP minus BP is applicable. For generic drugs, the UROA is calculated by multiplying AMP by two percent.

NDC	Drug Category	Quarterly AMP	Offset Rebate Percent Applied	Calculating the UROA = Quarterly AMP x Offset Rebate Percent	UROA per NDC
00001-0001	S – brand	0.750000	8%	= 0.750000 x 8%	0.060000
00002-0111	S – brand	1.000000	3.1%	= 1.000000 x 3.1%	0.031000
00002-0222	N – generic	0.500000	2%	= 0.500000 x 2%	0.010000

### Step 8 – Calculate QROA and Total QROA

To calculate the QROA, the average total units of an NDC are multiplied by UROA of that NDC. The total QROA is then calculated by taking the sum for all NDCs.

NDC	Average Total Units	UROA per NDC	Calculate QROA = Average Total Units x UROA	QROA
00001-0001	100	0.060000	= 100 units x 0.060000	\$6.00
00002-0111	175	0.031000	= 175 units x 0.031000	\$5.425
00002-0222	312.5	0.010000	= 312.5 units x 0.010000	\$3.125
<b>Total QROA for All NDCs</b>				<b>\$14.55</b>

### Step 9 – Discount Factor on Actual Payment Received from Manufacturers by State

When a State invoices a manufacturer, State may not receive the full payment from the manufacturer based on the amount the State invoices the manufacturer for that quarter in the following quarter. CMS has no current data to estimate the amount States received in payment from the manufacturers. Additionally, because of the zero URAs for 1Q2010, CMS is aware that States and manufacturers are attempting to develop a process to implement the new Affordable Care Act rebate provisions, and that States may have invoiced the manufacturers late, causing States to receive late payments from manufacturers. As a result, we plan to offset 25 percent of

the total QROA for 1Q2010 and 50 percent of the total QROA for 2Q2010, 3Q2010, and 4Q2010. We believe that this is the best estimation that we can propose at this time to avoid over-estimating the offset amount for States and inappropriately reducing rebates not related to this Affordable Care Act provisions. Since the EQROA will be reconciled with the total QROA for these quarters, the accurate offset amount will be determined ultimately.

#### **Step 10 – Calculate EQROA per State**

The EQROA is calculated by multiplying the total QROA by 25 percent for 1Q2010. For 2Q2010, the EQROA will be calculated by multiplying 2Q2010 total QROA by 50%. This will be the same for 3Q2010 and 4Q2010 EQROA.

1Q2010 EQROA = 1Q2010 Total QROA x Discount Factor of 25% = \$14.55 x 25% = \$3.64  
2Q2010 EQROA = 2Q2010 Total QROA x Discount Factor of 50% = \$X x 50%  
3Q2010 EQROA = 3Q2010 Total QROA x Discount Factor of 50% = \$Y x 50%  
4Q2010 EQROA = 4Q2010 Total QROA x Discount Factor of 50% = \$Z x 50%

#### **Step 11 – Delivery of EQROA to State**

We are aware that States are still developing a process to implement the new rebate provisions and adjust their systems to accommodate the new data. To minimize the burden for States, we plan to provide each State with their individual EQROA based on our calculation from the above methodology via a letter for each of the four quarters in 2010.

#### **Step 12 – EQROA on CMS-64**

To minimize the administrative work for States, CMS plans to populate the EQROA that CMS provides to each State on the CMS-64. This amount will be available for the State to view by September 30, 2010. Specific instructions on reporting rebate expenditures, including the line item number in which the EQROA will be populated, will be provided in the near future.

#### **Step 13 – EQROA Reconciliation**

Once CMS is able to provide States with the UROA based on the new rebate percentage, including the identification of the blood clotting factors, drugs approved by the Food and Drug Administration (FDA) exclusively for pediatric indications, and the reformulated drugs, States will be able to reconcile the EQROA with the total QROA based on the units that States actually reimbursed for during the specific quarter.

#### **TIMELINE**

Our proposed timeline for these activities follows below. Please note that the dates and deliverables are only estimated and may be subject to change.

<b>Estimated Date</b>	<b>Estimated Deliverable</b>
September 7, 2010	Run most recently updated 1Q2010 AMP and BP data against most recently updated average units from 3Q2008 to 2Q2009.
September 28, 2010	Provide each State with their 1Q2010 EQROA via a letter.
September 30, 2010	CMS to populate State's 1Q2010 EQROA on the CMS-64.
October 1, 2010	Each State should be able to view their State's 1Q2010 EQROA in the CMS-64. This amount should be the same as the amount provided to the State in the letter.
November 15, 2010	Run most recently updated 2Q2010 AMP and BP data against most recently updated average units from 4Q2008 to 3Q2009.
December 1, 2010	Provide each State with their 2Q2010 EQROA via a letter.
December 30, 2010	CMS to populate State's 2Q2010 EQROA on the CMS-64.
January 1, 2011	Each State should be able to view their State's 2Q2010 EQROA in the CMS-64. This amount should be the same as the amount provided to the State in the letter.
February 15, 2011	Run most recently updated 3Q2010 AMP and BP data against most recently updated average units from 1Q2009 to 4Q2009.
March 1, 2011	Provide each State with their 3Q2010 EQROA via a letter.
March 30, 2011	CMS to populate State's 3Q2010 EQROA on the CMS-64.
April 1, 2011	Each State should be able to view their State's 3Q2010 EQROA in the CMS-64. This amount should be the same as the amount provided to the State in the letter.
May 3, 2011	CMS' systems ready to calculate the updated URAs based on the increased rebate percentage under the Affordable Care Act and the UROAs for 1Q2011.
May 4, 2011	CMS provides States with the 1Q2011 the Affordable Care Act URAs and UROAs.
May 16, 2011	Run most recently updated 4Q2010 AMP and BP data against most recently updated average units from 2Q2009 to 1Q2010 to calculate 4Q2010 EQROA.
June 1, 2011	Provide each State with their 4Q2010 EQROA via a letter. This will be the last EQROA CMS will provide to each State.
June 30, 2011	CMS to populate State's 4Q2010 EQROA on the CMS-64.
July 1, 2011	Each State should be able to view their State's 4Q2010 EQROA in the CMS-64. This amount should be the same as the amount provided to the State in the letter.
July 1, 2011	States may begin to report their 1Q2011 total QROA on the CMS-64.
August 1, 2011	Deadline for States to report their 1Q2011 total QROA on the CMS-64.
August 3, 2011	CMS calculates 2Q2011 URAs and UROAs. States should begin to reconcile the EQROA that CMS sends to States' against the total QROA based on actual units that States have received payment from manufacturers.
August 4, 2011	CMS provides States with the 2Q2011 URAs and UROAs.
October 31, 2011	Deadline for States to report their 2Q2011 total QROA on the CMS-64.



## DATA LIMITATIONS

Please note the following EQROA data limitations:

- We used four quarters of utilization data rather than eight quarters to estimate utilization data as the shorter time period reduced the States' offset liability.
- We excluded S/I NDCs that did not have AMP and BP reported and N NDCs that did not have AMP reported. Despite the fact that the manufacturers did not report their data in a timely manner to CMS, they still are required to pay timely rebates to the States. Because their data are not reflected, the offset amount is underestimated.
- We excluded NDCs that do not have units reported. Similar to late reporting by manufacturers, where there were units billed to the manufacturers, this underestimates the offsets.
- We have identified the blood clotting factors and exclusively approved pediatric drugs with the best available data at the time the calculation is performed; therefore, the offset amount may change as more data become available. We believe this will have a minimal effect on the offsets.
- We have yet to identify reformulated drugs; therefore, we did not apply the increased additional rebate amount to the EQROA. This action underestimates the offsets for those drugs, provided that the manufacturer made reasonable assumptions for reformulated drugs.
- The EQROA does not include rebates and units from MCOs as we do not yet have that utilization data. To the extent that most States have been unable to provide the MCO utilization data to the manufacturers, these data are not accounted for in the estimated offsets. For any States that were able to provide utilization data, the offsets will be underestimated. While more States will be able to report this utilization data for subsequent quarters, we will not include these data until they are included in the States utilization data that we use to calculate the EQROA, or until the QROA process is in place.
- We do not have current estimates of rebates collected by quarter since the rebates reported in any given quarter always include amounts for past quarters. As a result, we are not able to estimate the amount States will actually receive in rebates for 1Q2010 or when they will receive them. We assumed that, in accordance with guidance we provided, manufacturers calculated and submitted their URAs to the States based on the Affordable Care Act rebate percentage. We believe we conservatively estimated a minimal percentage of 25 percent for 1Q2010 EQROA and 50 percent for 2Q2010, 3Q2010, and 4Q2010 EQROA. To the extent that the States receive timely rebates for these quarters at a greater or lesser rate, this approach will underestimate or overestimate the offset.

## Delaware may mandate vaccines for ninth-graders

Jonathan Starkey, The News Journal 11:18 p.m. EST February 27, 2015



(Photo: GARY EMEIGH/THE NEWS JOURNAL)

Delaware state officials are considering new vaccination mandates that would require students to receive shots before entering their freshman year of high school.

Rita Landgraf, Delaware's health secretary, said this week her department is exploring whether to require vaccinations before ninth grade to help prevent the spread of pertussis (whooping cough) and meningitis.

Dr. Karyl Rattay, director of the Delaware Division of Public Health, said in a statement she's been "gathering information and working with partners to assess the pros and cons of mandating vaccinations for adolescents."

Delaware regulations require students entering the state's public school system to receive a suite of immunizations, including shots that protect against diphtheria, tetanus and pertussis; polio; and measles, mumps and rubella.

The new mandates would add immunization requirements for students entering ninth grade.

In a Feb. 19 paper, two Nemours doctors said Delaware should require a tetanus, diphtheria and pertussis, or Tdap, booster shot and the meningococcal vaccine for high school entry to "prevent serious disease."

Nemours operates the Alfred I. du Pont Hospital for Children in Rockland.

Delaware is one of just four states that doesn't require the Tdap booster shot before high school, the report said. The state requires the meningitis vaccine before college, but not for adolescents.

Delaware's vaccination rates are above the national average (</story/news/health/2015/02/06/delaware-vaccination-rates-higher/23011339/>), but the new requirements would further boost community rates of vaccination and prevent the spread of disease, said Dr. Krishna White, chief of Nemours' division of adolescent medicine.

"The diseases these vaccines prevent against are serious life-threatening illnesses," White said.

Delaware already requires, starting in the 2013-2014 school year, health appraisals for incoming ninth-graders. Requiring vaccines that are currently only recommended could be a next step.

The timing of requiring new high school students to receive vaccinations has additional benefits, says Brian McDonough, chairman of the family medicine department at Saint Francis Healthcare.

"They're about to begin high school," McDonough said. "You can talk to them about all kinds of other issues: cigarettes, drugs, sports physicals, sexuality. It's a real important time."

Landgraf, a Cabinet secretary to Gov. Jack Markell, said her office is working with education officials to determine ways students could access the vaccines. It's a careful balance, Landgraf said, to ensure that students don't drop out of school because they do not have required shots.

"We don't want the unintended consequence of students then not being able to get an education," Landgraf said.

Contact Jonathan Starkey at (302) 98-6756, on Twitter @jwstarkey or at [jstarkey@delawareonline.com](mailto:jstarkey@delawareonline.com).

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Article Link: <http://www.webmd.com/children/vaccines/meningococcal-vaccine>

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## Meningococcal Vaccine

### In this article

How Is Meningococcal Disease Spread and Who Is Most at Risk?

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Who Should Get Which Meningococcal Vaccine and When?

What Are the Side Effects From the Meningococcal Vaccines?

What Are the Risks of GBS With the MCV4 Vaccine?

Meningococcal disease is an infection caused by a strain of bacteria called *Neisseria meningitidis*. This nasty bug is one of the leading causes of bacterial meningitis in children aged 2 to 18 in the U.S.

Meningococcal disease can include meningitis -- a serious, potentially life-threatening inflammation of the membranes covering the brain and spinal cord -- and a life-threatening blood infection. Meningococcal disease can cause limb loss through amputation, hearing loss, problems with the nervous system, mental retardation, seizures, and strokes.

Fortunately, meningococcal disease is preventable, and the key to prevention is the meningococcal vaccine. Here is information about the vaccine that you can use to help protect yourself and your family from meningococcal disease.

### How Is Meningococcal Disease Spread and Who Is Most at Risk?

Meningococcal disease is not as contagious as other illnesses, such as a cold or the flu. But it is spread by contact with infected respiratory and throat secretions. That can happen with coughing, kissing, or sneezing.

Because the risk increases with close or prolonged contact with an infected person, family members in the same household and caregivers are at an increased risk. For the same reason, so are college students who live in dormitories.

## Can the Meningococcal Vaccine Cause Meningococcal Disease?

The short answer is no. There are actually two meningococcal vaccines licensed in the U.S. Neither of the vaccines contains live bacteria.

The vaccines contain antigens -- substances that trigger the body's immune system and cause it to make antibodies. These antibodies then protect the body by attacking and killing the bacteria if it should invade.

The first vaccine -- meningococcal polysaccharide vaccine or MPSV4 -- was approved in 1978. It's made with the antigens contained in the outer polysaccharide or sugar capsule that surrounds the bacterium.

The newer vaccine, approved in 2005, is the meningococcal conjugate vaccine or MCV4. It uses antigens taken from the polysaccharide capsule and then bound to a separate protein that targets the body's immune cells. This makes it easier for the body's immune system to see and recognize the antigens.

One type of MCV4, Menveo, is licensed for use in people aged 2 to 55. Another version, Menactra, is approved for those 9 months to 55 years old. MPSV4 is the only vaccine licensed for use in people over 55 as well as people 2 to 55. Both vaccines protect against four types of meningococcal disease.

## Are Both Meningococcal Vaccines Equally Effective?

Both MCV4 and MPSV4 are about 90% effective in preventing meningococcal disease. There are actually several types of *N meningitidis* -- the bacterium that causes meningococcal disease. Both vaccines protect against four of those types, including two types that are the most common in the U.S.

MCV4 has not been available long enough to compare the long-term effectiveness of the two vaccines. But most experts think that MCV4 provides better, longer-lasting protection.


## Is It Possible to Get the Vaccine and Still Get Meningitis?

Because the vaccines do not protect against all causes of meningitis, it is still possible that someone could receive the vaccine and still get meningitis. But the risk of contracting meningococcal meningitis is significantly lower after the vaccine.

Vaccines like the Hib vaccine and the pneumococcal vaccine are very effective at protecting against other causes of meningitis and should be included as part of a routine childhood vaccination schedule. Check with your doctor and your children's doctor to make sure that you and your family are protected against meningitis, as well as other serious illnesses.

## Who Should Get Which Meningococcal Vaccine and When?

Although MCV4 is the preferred vaccine for most people, if it is not available when it's time for the vaccination, MPSV4 can be used.

 Routine immunization with the meningococcal vaccine MCV4 is recommended for children aged 11 or 12, with a booster to be given between ages 16 and 18. It is also recommended for the following groups:

- College freshmen living in a dorm
- Military recruits
- Someone who has a damaged spleen
- Someone whose spleen has been removed
- Someone with terminal complement component deficiency (an immune system problem)
- Microbiologists who are routinely exposed to *meningococcal bacteria*
- Someone traveling to or residing in a country where the disease is common
- Someone who has been exposed to meningitis

Preteens who are 11 and 12 usually have the shot at their 11- or 12-year-old checkup. An appointment should be made to get the shot for teenagers who did not have it when they were 11 or 12.

The vaccine may be given to pregnant women. However, since MCV4 is a newer vaccine, there is limited data about its effect on pregnant women. It should only be used if clearly needed.

Anyone who is allergic to any component used in the vaccine should not get the vaccine. It's important to tell your doctor about all your allergies.

People with mild illness can usually get the vaccine. But people who are moderately or severely ill when it's time for the vaccine should wait until they recover.

Anyone with a history of Guillain-Barre syndrome should discuss it with their doctor before getting a vaccination.

## What Are the Side Effects From the Meningococcal Vaccines?

With any vaccine, there is the potential of a severe allergic reaction within a few minutes to a few hours after the shot. But the likelihood that the meningococcal vaccines would cause a severe reaction is extremely slight.

About one out of every two people who get the shot experience mild reactions such as redness or a mild pain where the shot was given. Those usually go away in one to two days. A small percentage of people develop a mild fever.

There have been reports that a few people have been diagnosed with Guillain-Barre syndrome (GBS) after receiving MCV4. But experts say it occurs so rarely that it's not possible to tell if it's related to the vaccine.

## What Are the Risks of GBS With the MCV4 Vaccine?

Since 2005, more than 15 million doses of MCV4 have been distributed. It's uncertain how many of those have actually been given. In that same time period, there have been 26 confirmed cases of GBS, a serious nervous system disorder, reported within six weeks of the vaccine being taken. There is not enough data at this time to tell whether or not the vaccine was a factor. But analysis of the data suggests that the incidence of GBS is no higher for people receiving the vaccine than the incidence of GBS in the general population.

Still, the timing of the onset of symptoms has raised concern. The CDC is continuing to study the issue and has recommended that people be told about the study when they are considering the vaccine. The current opinion is that even if there is a slight increase in the risk of GBS, it's significantly outweighed by the risk of meningococcal disease without the vaccine.

WebMD Medical Reference

SOURCES:

*Pediatrics*, published online Feb. 1, 2011. CDC web site: "Meningitis Questions & Answers," "Meningococcal Vaccines: What You Need to Know," "Meningococcal Vaccination," "Vaccines and Preventable Diseases: Meningococcal: Who Needs to Be Vaccinated?" "Meningococcal vaccine side-effects," "GBS and Menactra Meningococcal Vaccine."  
VaccineInformation.org: "Meningococcal Disease Vaccine."  
Reviewed by David T. Derrer, MD on August 17, 2014  
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My Notes:

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**Further Reading:**

- What is meningitis?
- Meningococcal Vaccines: What You Need to Know
- Meningococcal Meningitis
- Prevent Meningitis: Tips to Protect Your Teen
- The Meningitis Vaccines: What Parents Should Know
- Adult Meningitis Vaccine: Benefits, Risks, Side Effects, and More
- Adult Meningococcal Vaccine: Guidelines, Side Effects, Benefits
- See All Meningitis Vaccines Topics

**Top Picks**

- The Facts About Measles
- WebMD's Future of Health: 5 Medical Breakthroughs
- Vaccines: What Today's Parents Should Know
- Expert Q&A with the CDC: Vaccine Safety
- Should You Space Out Your Child's Vaccines?
- Who Is Refusing Vaccines? State By State Map

# 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."



DELAWAREONLINE

Parents, teachers push back against Delaware testing

<http://www.delawareonline.com/story/news/education/2015/02/27/parents-teachers-push-back-testing/24146775/?from=global&sessionKey=&autologin=>



DELAWAREONLINE

Delaware teacher unions: no confidence in education leaders

<http://www.delawareonline.com/story/news/local/2015/03/12/delaware-teachers-unions-confidence-education-leaders/70244892/>

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 (<http://www.delawareonline.com/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.



DELAWAREONLINE

Schools forum brings energy for change

<http://www.delawareonline.com/story/news/education/2015/03/09/schools-forum-brings-energy-change/24680565/>

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.

# Delaware may eliminate some school testing

is there too much testing? Absolutely, Jacques 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.

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

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Tough new Delaware testing concerns parents

<http://www.delawareonline.com/story/news/education/2015/02/27/parents-concerns-surround-tough-new-delaware-testing/24154719/>



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Scores to plunge on new standardized test

<http://www.delawareonline.com/story/news/local/2014/11/21/scores-plunge-new-standardized-test/19348591/>

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# Virtually no Del. teachers receive poor evaluations

Even with test score tie-in,  
marks see little variation

By Matthew Albright The News Journal

Zero percent of Delaware teachers were rated ineffective and only one percent were rated "needs improvement" during the last school year, leaving more than half of teachers to be rated effective and almost half to be rated highly effective.

The new evaluation system stirred controversy when the state announced it would be factoring in standardized test scores. Some educators argued test scores don't necessarily measure good teaching and don't account for outside factors like parent involvement. And they worried their evaluations, and job situations, could suffer for circumstances beyond their control.

But in both years when test scores were considered, 99 percent of teachers received passing grades.

Terri Hodges, president of the state PTA, said her organization strongly supports teachers and knows they aren't the only factor that determines student success. But she said the fact that virtually no teachers received low ratings "is a big surprise."

"I think this means we need to take a hard look at this evaluation system," Hodges said. "We support a fair evaluation system, but we can't say that 99 percent of teachers are effective when we look at the number of students we're seeing reaching proficiency or how we stack up to other states."

State leaders say the system, called the Delaware Performance Appraisal System - II, is improving, and say looking at the data more closely will give teachers and schools valuable information about ways teachers can improve.

"At the same time, it's clear that there should be more variation in the final ratings to know when teachers are excelling and when additional support is needed," said Christopher Ruskowski, chief of the teacher and leader effectiveness unit at the Department of Education.

The lack of almost any bad ratings upsets some who are trying to improve schools, arguing it places

See TEACHERS, Page A7

## GRADING TEACHERS

Ratings Delaware teachers received during evaluations last year:

Ineffective: 0 percent

Needs Improvement: 1 percent

Effective: 51 percent

Highly-effective: 48 percent

Here's what ratings looked like on the part of the evaluation some teachers have, which uses how many students met their growth targets on the state standardized test:

Unsatisfactory: 13 percent

Satisfactory: 55 percent

Exceeds Expectations: 32 percent

Note: The categories are different for the overall evaluation and the specific segment that uses test scores.

# Teachers: 'Full picture' not being shown

Continued from Page A1

no pressure on teachers to step up their game.

"Everybody needs to be held accountable. Parents, teachers, schools, decision-makers in the community, everybody needs to be accountable," said New Castle County Councilman Jea Street, a long-time critic of how schools serve urban students in Wilmington. "If you're going to leave any of those out, we're going to continue to miss the mark. And, this does not hold teachers accountable."

Before a school board can fire a teacher based on evaluations, that teacher must have two straight years rated ineffective or three years of ineffective and needs improvement.

"Accountability is part of any evaluation process, but the day-to-day implementation is about supporting educators, not penalizing them," Ruskowski said. "The purpose of DPAS II - and the reason we have made improving the system a high priority - is to help our schools provide the best possible classroom instruction to our children."

Frederika Jenner, president of the Delaware State Education Association teacher's union, said her organization applauds high marks for teachers.

"We think this is a terrific achievement, especially in light of the constant change that educators have experienced over the past few years," Jenner said, pointing to things like a growing number of students in poverty and sweeping new curriculum changes to meet new academic standards.

When asked if results that showed no teachers rated ineffective could be accurate, Jenner said the data was the best available.

"Certainly there are teachers who need to improve instruction," Jenner said. "The approach we need to take is that they need and deserve our assistance. They need the appropriate professional development and training to be successful."

This was the second year in which some teachers saw test scores included in the controversial Component V. Each student receives a growth goal based on their previous test history and how similar students scored, and a teacher is judged based on how many students meet those goals.

While Component V is only one of five parts in

the overall evaluation, a teacher can't get better than a "needs improvement" if they are rated unsatisfactory on Component V.

The decision to include test scores irked teachers who argued those scores could change based on too many factors outside their control.

When only test scores were considered, 13 percent of teachers were rated ineffective, and only 32 percent exceeded expectations.

But only about 30 percent of educators - those who teach math and reading in grades 3-10 - have test scores as part of their evaluations, and the standardized test only makes up half of Component V for them. The other half is growth targets teachers and administrators set.

When teachers and administrators set their growth goals, they are clearly less ambitious than the state goals, state officials say. Only six percent of educators were rated ineffective in those cases. And only one percent were rated ineffective in the job-specific evaluations.

Another reason Component V did not cause many teachers to earn low rankings is because administrators are still overwhelmingly choosing to bump teachers up to satisfactory instead of ineffective when they have the option.

If two few students meet growth targets to be considered satisfactory but not enough miss them to be outright ineffective, administrators can choose to "bump them up" to satisfactory. They chose to do that 72 percent of the time.

In almost 85 percent of cases where teachers earned an unsatisfactory in one part of Component V and a satisfactory on the other, administrators chose to give them an overall satisfactory rating.

Those high rates come after state education lead-

ers urged administrators to get tougher last year.

"We place important decisions in the hands of our educators, school leaders and district leaders," Ruskowski said.

"Parents, educators and school leaders need to know when teachers are excelling and when additional supports are needed. While the system is making progress in some important areas, the way discretion was used these past two years means it's not always possible to get a full picture of what's happening in our students' classrooms."

The other four components of the system are designed to measure teachers' daily practice, like planning and preparation, classroom environment, instruction and professional responsibilities. They are measured through classroom observations and other interactions with administrators, and are less controversial.

All but one percent of educators were labeled satisfactory in all four of those components.

Despite the results, Ruskowski said there is still plenty for teachers to use to improve. The state included more information this year on what specific parts of each component teachers were excelling in, for example.

The number of teachers rated "highly effective" dropped, especially in Component V. That's because the state tweaked the system so that higher-performing students were assigned growth goals that were more similar to lower-performing students.

State officials have said they will place a moratorium on using test scores for evaluations next year because the state is switching to a new standardized test.

Teachers continue to have mixed feelings about the evaluation process, according to an annual survey released alongside the results.

Among the teachers who responded, 47 percent said agreed that the evaluation is "fair and equitable," while 61 percent said the process is one of the five biggest drivers of student achievement gains. Only 28 percent of teachers and 22 percent of administrators agree that the system should be continued in its current form.

Contact Matthew Albright at [malbright@delawareonline.com](mailto:malbright@delawareonline.com) or at 324-2428. Follow him on Twitter @TNL\_malbright.



New Castle County Councilman Jea Street says "everybody needs to be held accountable."



Frederika Jenner, president of the Delaware State Education Association teacher's union.

# SAT report says too few kids college ready



Matthew Albright, The News Journal 3:46 p.m. EDT October 7, 2014



(Photo: Getty Images)

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 this morning 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.



[DELAWAREONLINE](#)

[Most Delaware grads not ready for college math](#)

[\(http://www.delawareonline.com/story/news/education/2014/09/23/delaware-freshmen-unprepared-college-level-math/16124665/\)](http://www.delawareonline.com/story/news/education/2014/09/23/delaware-freshmen-unprepared-college-level-math/16124665/)

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. So higher expectations in the classroom will hopefully 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's – 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.

Watson said that's good news for Delaware students because the new test will more closely match what students are learning.

"We're very excited about the new SAT," he said.

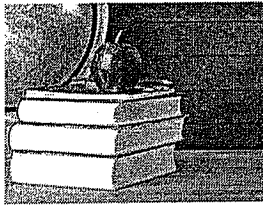
The College Board has also said it is working with Khan Academy, a website that provides online lessons, to provide free test prep. That's an effort to reduce the gap between low-income students and affluent kids whose parents can pay for them to have test tutors and other preparation.

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

<http://www.delawareonline.com/story/news/education/2014/10/07/sat-report-says-kids-college-ready/16...> 5/13/2015

## More work to be done to avoid college remediation

Delaware Voice: Rodman "Rod" Ward III 6:18 p.m. EDT October 2, 2014



(Photo: Getty Images/Stockphoto)

On Tuesday, the Delaware Department of Education released data on the college readiness of our Delaware graduates, and the results are disappointing.

The data showed that more than half – 53 percent – of Delaware's high school graduates that matriculated to Delaware colleges in 2012 needed to take remedial courses. Remedial courses are those that are not credit-bearing, yet still students still bear the burden of paying for them before they can advance in their college classes. The numbers are even more dismal for our highest-need students who required remediation:

- 69 percent of low-income
- 87 percent of special education
- 79 percent of English Language Learners
- 73 percent of African-Americans
- 70 percent of Hispanic/Latinos

These numbers are of great concern, as we know that individuals with more education benefit both personally and improve economic outcomes broadly. The unemployment rate for individuals with a high school diploma or less is nearly double the unemployment rates of a bachelor's degree. And those with a bachelor's degree earn roughly twice as much as those with a high school degree.

Research also tells us that students who begin their college career in remedial courses are less likely to persist through college to earn a bachelor's degree. And, remedial courses cost students hundreds of thousands if not over a million dollars in Delaware each year; some of which is borne by state scholarship funds. So, we as taxpayers are paying twice for education that should have happened once in high school.

The good news is, we can do something about it. The Delaware Department of Education is working with higher education and K-12 schools and districts to ensure alignment; increase standards; ensure more college-ready students are applying and going to college; and offer more college-level courses in high school.

But to truly tackle this problem, we must all come together to support our students in the face of these disappointing results. The world outside our schools is changing, and we have an opportunity to support our schools in meeting 21st-century demands:

- The business community can do more to support students in their career pathways and in obtaining exposure to college and career opportunities. Public-private partnerships like SPaRC, which connects high school students with local business to explore opportunities for internships and future careers, are steps in the right direction.
- Community-based organizations can double down on efforts to develop supports inside and outside the classroom to ensure students have the tools and resources they need to be successful in post-secondary opportunities.
- Individuals across the community can get involved by volunteering during Delaware's College Application month, which begins in October, by visiting [www.delawaregoestocollege.org](http://www.delawaregoestocollege.org) (<http://www.delawaregoestocollege.org/>).

As a Delaware resident, parent, and president and CEO of a company that has been headquartered in Delaware for 115 years, ensuring we have an educated and highly skilled workforce is critical to the long-term economic success of our state. We can do better, and we need to be part of the solution.

*Rodman "Rod" Ward III is president and CEO of Corporation Service Co.*

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# An alternative approach to state's teacher evaluation system



LAMONT W. BROWNE

Data released two weeks ago showing 99 percent of Delaware teachers were rated "effective" or "highly effective" has fueled the need for a better evaluation system. While this is obvious, it misses a major point: teacher evaluation without coaching does not benefit kids.

East Side Charter School – in partnership with Kuumba, Prestige and Thomas Edison – was approved by the Department of Education to use the "Teaching Excellence Framework," an alternative to the state's evaluation system. Focusing on teacher development, we set a goal to observe each of our teachers biweekly, followed by a one-on-one coaching session between a

coach and the teacher between 18 and 20 times annually.

All observations are unannounced, allowing for a real perspective of the teacher's effectiveness and growth. We also digitally record every lesson to guide the teacher's development and promote a better understanding of the teacher's tendencies, strengths and weaknesses. This puts the onus on the school's leadership team, as it is our job to design and deliver a plan that improves teacher performance. In essence, our evaluation/coaching model is an individually customized professional development session every other week.

The relationship between teacher and coach has led to strong teacher buy-in and satisfaction with the TEF. A recent survey of East Side teachers produced the following results:

» 88 percent believed the TEF helped them identify their own

strengths and weaknesses

» 93 percent felt a common vision for teaching efficiency has been established

» 90 percent of teachers felt the feedback and action steps they received helped improve their instruction

» 96 percent believed the feedback from being observed helped them improve student outcomes

» 93 percent felt they received the support necessary to implement the changes suggested by evaluators

» 93 percent felt the school was committed to improving instructional practices

» 100 percent felt their instructional leader was committed to improving their effectiveness

So, what happens when teachers are held to a high standard and leaders are held accountable to helping each teacher improve? ALL students learn.

From 2011 to 2014, East Side Charter School has grown 30 percentage points in reading on the Delaware Comprehensive Assessment System (DCAS) and 26 points in math. Looking solely at each student's fall-to-spring growth, East Side far exceeded the state's average growth in 2014.

**Reading** – East Side: 63 percent; Delaware: 55 percent


**Math** – East Side: 73 percent; Delaware: 57 percent

We hope to share our lessons learned and successes with policymakers, district leaders and charter leaders to the benefit of students statewide.

We all have the power to transform lives, eradicate the achievement gap and produce motivated young people. It is our job to make it happen.

Lamont W. Browne, Ed. D., is head of school/principal at East Side Charter.

# Possible solution to Delaware teacher evaluation issue

 **Matthew Albright**, The News Journal 10:23 p.m. EDT May 6, 2015



(Photo: SUCHAT PEDERSON/THE NEWS JOURNAL)

The first year teaching is tough for pretty much everybody, but it was especially tough for Kelly Hepburn because she started midway through a school year at Kuumba Academy, a charter school in downtown Wilmington.

Hepburn says she struggled at first, especially with managing a classroom full of rambunctious third-graders.

But this year, School Leader Sally Maldonado raves about how well Hepburn is doing.

"Honestly, it almost makes me tear up sometimes when I go in her classroom and see how much she's improved," Maldonado said.

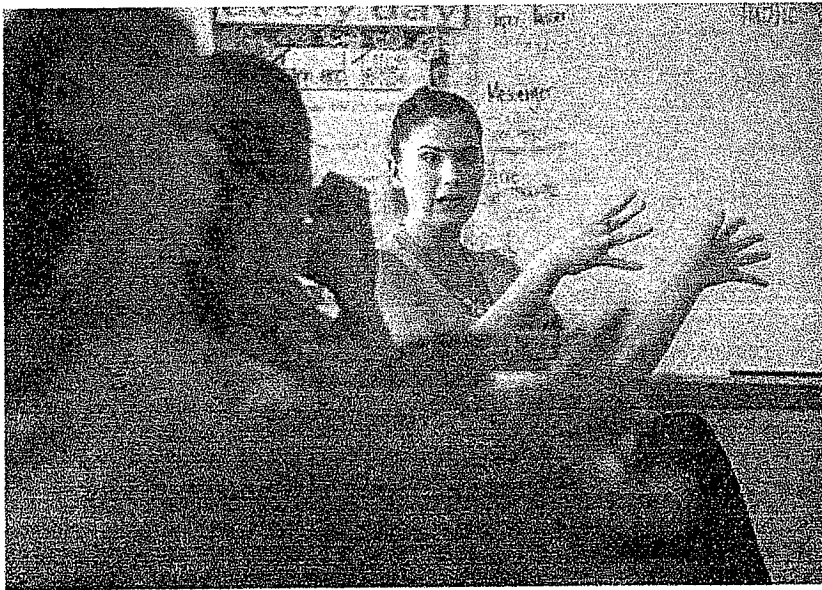
Ask Hepburn what led to such rapid growth in her skills and she'll point to Samantha Connell, her instructional coach.

This coaching is part of Kuumba's new way of evaluating Hepburn's performance, though she seldom sees it that way.

The school is one of four charter schools that is currently implementing the Teaching Excellence Framework, an evaluation system that hinges on frequent classroom observations and coaching sessions. The other schools are EastSide Charter, where the system was pioneered; Thomas Edison; and Prestige Academy.

More charter schools are considering implementing the system, and it has also drawn interest from some traditional schools and the Delaware State Education Association union.

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Kelly Hepburn, third-grade English language arts teacher at Kuumba Academy, asks her students about public service announcements. (Photo: SUCHAT PEDERSON/THE NEWS JOURNAL)

Connell, who was a classroom teacher as recently as last year, spends time in Hepburn's classroom about once a week or so, observing her teaching and measuring it against a written rubric. Once class is finished, the two sit down to discuss ways that Hepburn can improve.

One time, for example, Hepburn remembers Connell telling her that she was not taking full advantage of "turn and talk," when she asks students to turn to a partner and discuss the issue they are learning about.

Rather than using those moments as a way to manage her classroom, Connell said Hepburn should be carefully listening to take stock of how well her  
<http://www.delawareonline.com/story/news/education/2015/05/06/possible-solution-teacher-eval-issue/70...> 5/7/2015

"I credit the coaching with almost all of the improvement I've been able to make," Hepburn said.



Kuumba Academy's school leader, Sally Maldonado, observes Kelly Hepburn's third-grade class. Kuumba Academy is one of the charter schools implementing a new teacher evaluation system that involves less paperwork and more one-on-one observations and mentoring. (Photo: SUCHAT PEDERSON/THE NEWS JOURNAL)

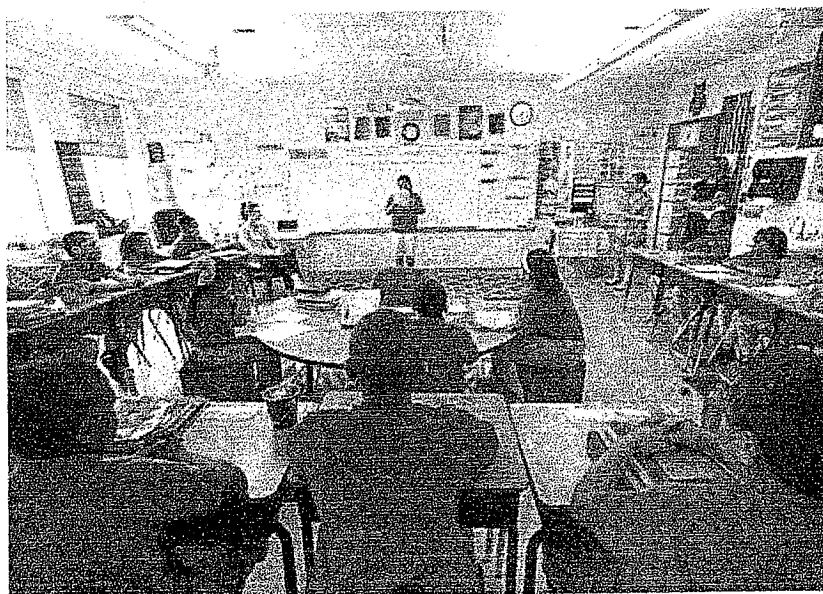
Many educators say a new teacher evaluation process is sorely needed because the statewide system most schools use now, the Delaware Performance Appraisal System-II, is widely distrusted by teachers and principals.

When the Department of Education asked teachers about the system in a 2013 survey, 96 percent of administrators and 86 percent of teachers said the system needed to improve. About three-quarters of teachers and more than 80 percent of administrators said the system "should not continue in its current form."

Many teachers think DPAS-II doesn't give them much concrete advice on how to improve their teaching. They say it requires too much bureaucratic paperwork and form-filling. And, most controversially, it features student test scores as a measure of some teachers' performance.

The theory behind the Framework is relatively simple. Every teacher, no matter how good, can get better. And the best way to improve is regular help from another skilled educator.

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Kuumba Academy's school leader, Sally Maldonado (right), observes Kelly Hepburn's (left) third-grade class. (Photo: SUCHAT PEDERSON/THE NEWS JOURNAL)

While DPAS might see principals observe classes a few times a year, the Framework might have principals or coaches in a classroom a few times a month, depending on the teacher.

Fundamentally, many teachers feel DPAS-II is all about catching and punishing poor performance, and not about helping them improve.

But even if the system is designed to root out bad teachers, it hasn't succeeded. Last year, no teachers were rated ineffective, and only 1 percent were rated "needs improvement." Almost half of teachers earned the "exceeds expectations" rating, the top mark.



DELAWAREONLINE

[A longer reprieve on Delaware teacher evaluations?](#)

<http://www.delawareonline.com/story/news/education/2015/03/18/test-removed-teacher-evaluations-longer/24960485/>

State leaders said there were few low grades because principals almost always "bumped up" a teacher's rating when they had an option, and because the goals principals and teachers were setting for student improvement were far less ambitious than they should have been.

Dissatisfaction with DPAS-II means there's plenty of appetite for an alternative like the Framework.

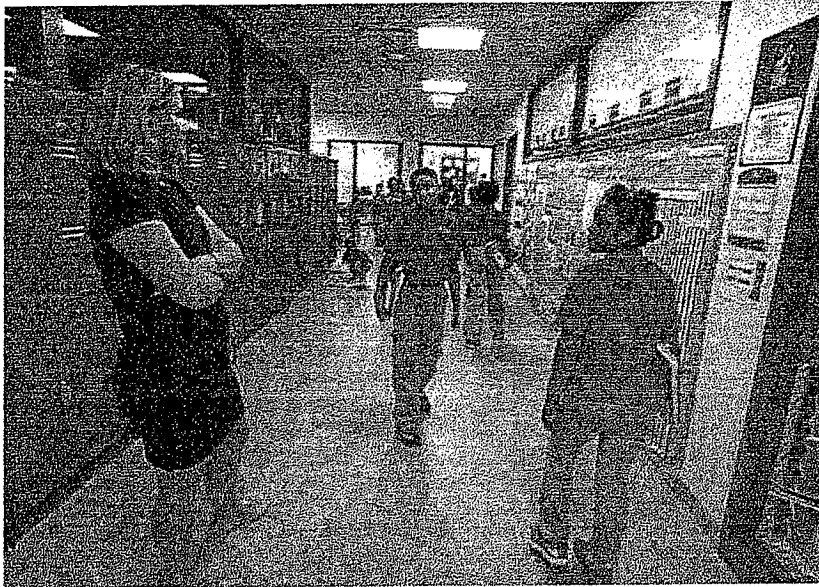
"We are trying to encourage our district and school administrators to think of other ways to approach evaluations," said Frederika Jenner, the DSEA union president. "We are looking at this as one available model of an alternative."

<http://www.delawareonline.com/story/news/education/2015/05/06/possible-solution-teacher-eval-issue/70...> 5/7/2015

Jenner said DSEA has some concerns, like the potential problems of scaling up a system designed for relatively small charter school communities to larger district schools. The union is not promoting the Framework as a replacement for DPAS-II, but Jenner says the group does see some encouraging facets of the system.

"What caused our interest in this was its focus on teaching and continuous improvement," she said. "The best practice in evaluation is one that genuinely and realistically helps educators improved."

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Kuumba Academy's school leader, Sally Maldonado, observes her students in the hallway. (Photo: SUCHAT PEDERSON/THE NEWS JOURNAL)

While the Framework does include test scores as part of the evaluation, Jenner said it looks like the scores are less central to the process than they are for DPAS.

"I don't want people to think that our system doesn't hold people accountable because it is very, very rigorous," said Lamont Browne, school leader at Eastside Charter. "We have set very high expectations for our teachers' performance. But we also have to do everything we can to help our teachers meet these expectations."

Take, for example, what the rubric says about engaging students in lessons. The only way a teacher earns the best rating is if every single student is not just actively participating in the lesson, but "showing evidence of joy, urgency and purpose."

"That's not quite impossible, but it's very, very difficult," said Connell, the Kuumba teaching coach. "What we have to do is set a very high bar but let teachers know that they aren't failing just because they didn't get a perfect score. In fact, they might be doing really well, but we can show them that there's room for improvement."



DELAWAREONLINE

Charter schools' five-mile enrollment under scrutiny

(<http://www.delawareonline.com/story/news/education/2015/05/01/charter-schools-five-mile-enrollment-scrutiny/26735635/>)

Both teachers and their coaches acknowledge that work has to go into maintaining a relationship so that the assessor can be objective and look critically at teaching without the arrangement starting to feel punitive.

Both Browne and Maldonado say the Framework requires schools to make sure the people doing the coaching know what they're talking about. They also have to have specific people whose main responsibility is coaching, which may require some restructuring.

Part of the reason the system avoids putting teachers on edge, Browne argues, is because the person doing the coaching is as accountable as the person being coached.

"If we look and see that a teacher isn't improving, then we obviously have to stop and look at what's going on there. But we also have to look at the  
<http://www.delawareonline.com/story/news/education/2015/05/06/possible-solution-teacher-eval-issue/70...> 5/7/2015



One of the big theories behind charter schools is that they are supposed to be laboratories for new ideas that are then shared through the larger school system. Many groups, like the Wilmington Education Advisory Committee, have argued that exchange of ideas isn't happening nearly as well as it should.

"I don't want people to think that what we're saying is 'our system is so great and everybody has to use it just like we use it,'" Browne said. "I think it's fine for other schools to tweak things to fit the structure they have in place. But I think this idea of coaching and continuous improvement is a powerful one, and my hope is that we'll see more schools try to embrace it."

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



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[Delaware Senate passes Wilmington charter moratorium](#)

[\(http://www.delawareonline.com/story/firststatepolitics/2015/04/28/senate-charter-school-moratorium/26534557/\)](http://www.delawareonline.com/story/firststatepolitics/2015/04/28/senate-charter-school-moratorium/26534557/)

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**148TH GENERAL ASSEMBLY**

**FISCAL NOTE**

**BILL:** HOUSE BILL NO. 117  
**SPONSOR:** Representative Heffernan  
**DESCRIPTION:** AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE CREATION OF A UNIT FOR LOW-INCOME STUDENTS.

ASSUMPTIONS:

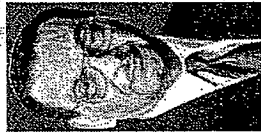
1. This Act shall be effective the fiscal year after its enactment.
2. This Act will create a new funding source for students enrolled in Delaware public schools who are determined low-income according to the Department of Education. State funding will be provided at a rate of 1 unit of funding for every 250 low-income students enrolled.
3. This legislation will create an additional 186.65 state units of funding for students determined to be low-income.
4. A student unit of funding is \$66,072 while the local share of personnel costs is assumed to be \$28,497. A student unit of funding excludes Division II – Energy and All Other Costs funding and Division III – Equalization funding. Other employment costs are assumed at 30.08%.
5. Overall costs are assumed to grow 2.0% annually.

<u>Cost:</u>	<u>State Share</u>	<u>Local Share</u>
Fiscal Year 2016:	\$12,332,500	\$5,319,100
Fiscal Year 2017:	\$12,579,200	\$5,425,500
Fiscal Year 2017	\$12,830,800	\$5,534,000

Office of Controller General  
April 30, 2015  
MSJ:MSJ  
0271480011

(Amounts are shown in whole dollars)

## COMMENT

*It is time for everyone to stand behind Wilmington's schools*

**DELAWARE VOICE**  
JAMES M. BAKER

The future of the City of Wilmington is its children.

The kids who play today on the East Side, in Southbridge, and in the Ninth Ward are the same kids who will be looking for jobs a decade from now.

When that time comes, will Wilmington's children have the education they need to get those jobs? Will they be in a position to apply for college or be ready to enter the workforce?

For too many of Wilmington's children, the answer to those questions is no. For too long, we have accepted that many of our children are not getting the education they deserve.

Having spent a great deal of time in our schools and with disadvantaged families in our city, it's clear that some of the city schools have shown increasingly poor results, leaving our children without the education they need to build successful lives and support families. At the six Priority Schools identified by the Department of Education, fewer than 2 in 5 students can read or do math at grade level. At some of the schools, only a quarter

meet their growth goals each year. But we don't need to rely on test scores to tell us what we see happening at these schools.

Several of the six troubled schools identified by the state operate in half-empty buildings because many parents have moved their children to different settings with dramatically better opportunities — including both charter and other district schools. These schools are revolving doors for staff — Stubbs, for example, has had three principals in four years.

Business as usual in these schools is no longer acceptable for our children. We need to demand better. We need to demand the resources and personnel that can turn this story around. We know the right set of resources and personnel can make a difference. We see success stories every day at schools like Lewis Elementary, Howard High School, Kuumba Academy, and East Side, all of which have similar student bodies, but have shown radically better results.

For decades we have asked the state to invest in the children of the City of Wilmington. We've argued the cycle of poverty demands our less-well-off children receive more financial support and more programming.

The state is now responding by of-

fering the Christina and Red Clay school districts just that — \$6 million to be spent at six Wilmington schools. That is a 10 percent increase in funding per student over state averages.

So the question is, will these school districts develop innovative plans to use this money to improve the education of our children, or will we see more of the same?

If those districts listen to some critics, we'll see more of the same.

Plan opponents claim it doesn't meet the unique needs of each school or that the approach is too top-down. In fact, the state's investment in these schools will fund plans developed by the districts and the schools themselves. Each school will have its own plan and its own programs. If the answer in one school is more after-school tutoring and the answer in another school is a new reading program, this plan can fund those ideas.

Others oppose the plan because Delaware's school funding mechanism doesn't account adequately for poverty. They're right about Delaware's school funding formula. But that isn't any reason to turn our backs on a \$6 million investment in city children. That \$6 million could pay for exactly the smaller class size and critical services that we all agree are needed.

There are fans of the status quo who don't want to see anything change for the children at Wilmington's priority schools because that is what is easiest for the adults involved. For them, the easiest thing to do is not to rock the boat by making the changes that we know can turn around the educational opportunities of city children.

Now is the time to make a difference and change the future for the kids who attend these six Priority Schools. The state is now offering the funding and the flexibility that we have been asking for and that we know can make a difference. City, community and education leaders need to give this model a fair chance because other approaches have not worked.

An excellent education is a right, not a privilege. If our country is going to remain a democratic republic, as a constitutional democracy of free people, we must fix our education system. We cannot continue with some receiving an excellent education and others not.

I urge the Christina and Red Clay school boards not to miss this opportunity for a needed investment in our city and our children.

James M. Baker was Wilmington's mayor from 2001 to 2013.



**Governor's Advisory Council for Exceptional Citizens (GACEC)**  
516 West Loockerman St., Dover, DE 19904  
302-739-4553 (voice) 302-739-6126 (fax) <http://www.gacec.delaware.gov>

April 21, 2015

The Honorable Melanie Smith, Chair  
The Honorable William J. Carson, Jr.  
The Honorable Debra J. Heffernan  
The Honorable James (JJ) Johnson  
The Honorable Harvey R. Kenton  
The Honorable Joseph E. Miro  
Legislative Hall  
411 Legislative Avenue  
Dover, DE 19901

The Honorable Harris McDowell, III, Co-Chair  
The Honorable Brian J. Bushweller  
The Honorable Bruce C. Ennis  
The Honorable Karen E. Peterson  
The Honorable Catherine L. Cloutier  
The Honorable David G. Lawson

Dear Representative Smith, Senator McDowell and members of the Delaware Joint Finance Committee:

The Governor's Advisory Council for Exceptional Citizens (GACEC) is writing to you on behalf of children with disabilities in Delaware's public schools. We urge you to remove language that was inserted into this year's budget bill that would allow for the diversion of money specifically allocated for the education of children with disabilities. We believe that the inclusion of this language has the potential to cause real harm to children with disabilities in our schools and we hope and believe that this is not the intent of the Joint Finance Committee. The following organizations have confirmed their unequivocal support of this letter and its content:

Attorney General of Delaware  
Autism Delaware  
Delaware Family Voices  
Delaware Parent Teacher Association  
Delaware State Education Association  
Developmental Disabilities Council (DDC)  
Disabilities Law Program (DLP)

Easter Seals Delaware and Maryland's Eastern Shore  
Mental Health Association of Delaware  
National Alliance on Mental Illness-Delaware  
Parent Information Center (PIC) of Delaware  
State Council for Persons with Disabilities  
United Cerebral Palsy (UCP) of Delaware  
321Foundation

Last January, a task force established by the budget bill delivered recommendations regarding the provision of 'flexibility' to school districts in the use of their state funds. This task force had no representatives from any group representing students with disabilities, even though the budget epilogue language explicitly recognized that the group would be dealing with issues involving state funds for students with disabilities.

The task force recommended that the state establish a pilot project allowing school districts more discretion to use state funds. As stated, that is a reasonable proposition. But included in this recommendation was a recommendation that school districts be permitted to use basic special education unit funds, which the districts have received only because of the presence of students with disabilities, for purposes other than the education of those students. As you know, the state's formula for funding of school districts provides additional funds to districts based upon how many students with diagnosed disabilities those districts are educating. The reason for these additional funds is apparent: educating students with disabilities is more expensive than educating students who are lucky enough not to have to overcome disabilities. Yet, the task force recommended that school districts have the discretion to divert all of these basic special education funds for purposes having nothing to do with the education of children with disabilities.

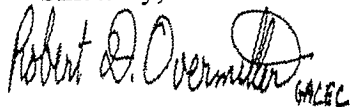
This recommendation is reflected in the language in Section 353 of this year's proposed budget epilogue, which we urge you to amend. Section 353 of the budget epilogue excludes units "earned in Pre-K, Intensive and Complex categories" from the proposed flexible funding pilot. What it therefore allows, however, is the diversion of any unit funds that are designated for "basic" special education students. The majority of students with disabilities in our public schools are designated as "basic," rather than "intensive" or "complex." *What this language means, therefore, is that schools are free to take funds that they have received only because of the presence of these students with disabilities, which were intended by the legislature to be used for the additional expense of educating these students, and use them for virtually any purpose that the school sees fit.*

The language in the budget epilogue requiring districts to "ensure compliance with levels of special education and related services in all approved Individualized Education Programs for all students...." is practically unenforceable and is of no comfort to the parents of students with disabilities. We are all aware (a) that some services students with disabilities receive are not enumerated in their IEPs, and (b) that IEPs are often driven in part by the resources available to the school writing the IEP. The reality is that if school districts take money away from students with disabilities, which this epilogue language authorizes them to do, those students will receive lower levels of service. Thus, this would potentially impact the child and their family for many years because they have not received the level of education they are entitled to and deserve.

*Allowing schools to take funds away from students with disabilities will inevitably harm those students. As advocates for the state's children with disabilities and their parents, who rely on the public schools to treat those students fairly and meet the individualized needs of these students, we urge you to remove this language and ensure that state funds designated for students with disabilities actually serve those students.*

Thank you in advance for your time and consideration of our request. Please feel free to call me or Wendy Strauss at the GACEC office should you have any questions or concerns. If you would like to discuss this further we would be more than willing to assist in scheduling a meeting with you.

Sincerely,



Robert D. Overmiller, Chair  
GACEC

CC: The Honorable Michael L. Morton, Controller General  
Ms. Ann Visalli, Office of Management and Budget

EXCERPT

12/19/13



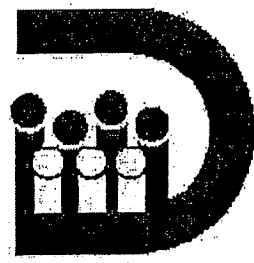
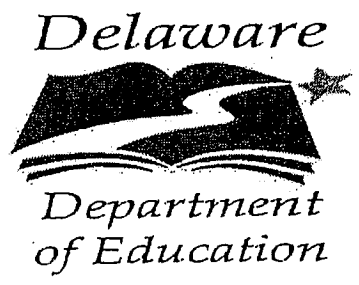
**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE DEPARTMENT OF EDUCATION,**

**LOCAL EDUCATION AGENCIES  
AND THE**


**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR  
FAMILIES-DIVISION OF FAMILY SERVICES, DIVISION OF PREVENTION AND  
BEHAVIORAL HEALTH SERVICES, AND DIVISION OF YOUTH  
REHABILITATIVE SERVICES**



- g. Provide the school with proof of legal custody, with court order appointing the child's legal representative, and an authorized list of contacts and transportation authority.
  - h. Request the assignment of an Educational Surrogate Parent (ESP) for any child in foster care who receives or may be in need of special education services and no parent can be identified; parent/legal guardian/Relative Caregiver cannot be located; parental rights have been terminated and the child has not been adopted; the child is an unaccompanied homeless youth; the child is in the custody of DSCYF; or the parent/legal guardian/Relative Caregiver voluntarily consents to having an ESP appointed. Appointment of ESPs must be approved by DOE. The referral form for an ESP can be found on the Parent Information Center's website at <http://www.picofdel.org/resources/index.asp>.
  - i. Withdraw a child in foster care immediately (24-48 hours) from their original school to facilitate enrollment in a new school, if a decision (at a meeting with the child's school staff and DSCYF) has been made that it is in the best interest of the child to change schools.
  - j. Attend an annual "best interest of the child meeting" at the child's school for educational planning of a child in foster care. This meeting, to be held generally in May or June, shall include the CASA or Guardian ad litem, parent/legal guardian/Relative Caregiver or educational surrogate. If this discussion occurs during an IEP meeting, it may occur from April through June.
  - k. Consider maintaining a child in his or her own community, school or school district when a change in foster care placement is imminent and in the child's best interest.
  - l. Support parents' rights to plan for their child's education.
  - m. Share the cost of transportation for IV-E eligible and qualified foster care students to the school of origin. This responsibility will be managed by the DFS Treatment Program Manager.
  - n. Share the educational stability plan with school staff to include the transition plan for emancipating youth (at least 90 days prior to emancipation date).
3. LEAs shall:
- a. Provide children in foster care placement the benefits of the McKinney-Vento Act for homeless children, i.e. the right to stay in



their school of origin and be provided transportation to the school of origin when a change in foster care placement occurs, when in the best interest of the child.

- b. Enroll a child in foster care (based on the results of the Best Interest Meeting) within two school days of referral in a new school even if DSCYF is unable to produce records, or the sending school has not yet transferred the records, such as previous academic records, medical records, proof of residency, and/or other documentation if all parties (child, school, parent/legal guardian/Relative Caregiver, Guardian ad litem, CASA, and DSCYF staff) agree that it is in the best interest of the child to change schools according to the McKinney-Vento Act.
- c. Ensure that the receiving school promptly obtains school and medical records from the sending school for a newly enrolled child in foster care.
- d. Transfer school and medical records from the sending school immediately (within three school days during the school year, or five working days in the summer) to a new school for a child in foster care who is transferring schools.
-  e. The receiving school shall immediately apply full credits and is encouraged to accept partial credits to benefit the student. The receiving and sending schools should determine, for transferring seniors, which school will provide the diploma.
- f. Accept a DSCYF letterhead statement as proof of residency of a child in foster care with the placement resource identified.
- g. Accept registration materials from DSCYF case managers via fax and schedule a meeting or a teleconference with the caseworker for a later date, within five business days, to discuss other educational information that may not have been shared.
- h. Host meetings with necessary parties to develop the best educational plan for a child or youth in foster care, as may be needed from time to time.
- i. Host a meeting in May or June, with all involved parties (district/school liaison, caseworker, parent, Guardian ad litem, CASA, and child) to determine whether it is in the best interest of the child to remain in the school of origin or be transferred to the district in which they are now living for the subsequent year. The school liaison will schedule the meeting and be responsible for scheduling other school personnel.

children. Services may include in-home services, placement, family reunification, or other permanency options including adoption, guardianship, and independent living.

### Division of Management Support Services (DMSS)

#### Education Programs

1. **Ferris School** - Education is provided on site by certified school personnel to youth in the secure treatment facility. Students transitioning through Mowlds Cottage either continue in the Ferris Program or return to the home school. Regular and special education courses are offered through a schedule which mirrors any local public high school. Electives include art, technology, media literacy, school to work and JDG classes.
2. **New Castle County Detention Center** - All students attend a full day of courses which include all the Core Courses. GED is available to youth meeting criteria for entry into the Program. Special education services are provided in accordance with state and federal law.
3. **Grace and Snowden Cottages** - This program is a residential treatment program for adjudicated males and females. Students are typically between the ages of 12-18. The program, located on the Wilmington Campus, is operated directly by the Division of Youth Rehabilitative Services. Education is provided on site by certified school personnel who are employed by DSCYF.
4. **Terry Children's Psychiatric Center** - This DPBHS program is a Residential Treatment Center providing inpatient and day hospital services for youth under the age of 14. Education is provided on-site by certified school personnel. Special education services are provided in accordance with state and federal law.
5. **Northeast Treatment** - This program is operated by Northeast Treatment Centers, LKEC (Delaware) Inc. under contract to the DPBHS. Students ages 12-17 receive a full day of education by certified teachers. Special education services are provided in accordance with state and federal law.
6. **Silver Lake Treatment Center** - This DPBHS program provides day treatment and educational services to youth ages 12-17. Full complement of core courses is provided by teachers certified by Delaware Department of Education. Special education services are provided in accordance with state and federal law.
7. **Stevenson House Detention Center** - All students attend a full day of courses which include all the Core Courses. GED is available to youth meeting criteria for entry into the Program. Special education services are provided in accordance with state and federal law.
8. **Peoples' Place II** - Peoples' Place II is a non-secure detention environment for non-adjudicated males and females ages 12-18. While in placement youth are required to attend school. The certified educator employed by Department of Services for Children, Youth, and Their Families, Education Unit works closely with the youth's "home-school" to make sure the on-site education provided while in placement is aligned with the child's "home school" class assignments. The DSCYF teacher also ensures compliance with special education regulations as required and assists in arranging a smooth return to a more conventional school environment upon discharge from the non-secure detention placement. Education is provided year round, on site, and in compliance with state and federal regulations. Peoples' Place II is located in Milford, DE
9. **Seaford House Treatment Center** - This program provides day treatment and educational services at the treatment center operated by Children and Families First under contract with DPBHS. Students ages 12-17 receive a full day of education by certified teachers. Special education services are provided in accordance with state and federal law.
10. **Delaware Day Treatment Center** - There are two Delaware Guidance programs: one in Kent County and one in Sussex County. Both programs are operated by Delaware Guidance Inc. under contract to the DPBHS. Students ages 6-15 are provided with day treatment and educational services. Education is provided on site by certified teachers

employed by DSCYF. Special education services are provided in accordance with state and federal law.

## **Division of Youth Rehabilitative Services (DYRS)**

### **1. Secure Detention**

Youth who are eligible to be detained, per Del. C., can be securely detained at New Castle County Detention Center, on the Youth & Family Center campus or at Stevenson House in Milford. The behavioral model utilized at the facilities is the Cognitive Behavior training model.

#### **Residential Alternatives to Secure Detention (RAD)**

Youth eligible to be securely detained are also eligible to be placed by court order into a residential, mix gendered, facility with up to 10 beds located within the State of Delaware.

#### **Pre-trial supervision services**

Youth are placed in the community, under the supervision of a parent/guardian, along with a DYRS probation officer or a provider overseeing the conditions of the youth's bail order. Should electronic monitoring be indicated, the Division provides Global Position Supervision (GPS) to support the pre-trial worker.

### **2. Probation Services**

#### **Level I Administrative Probation**

This level is appropriate for juveniles who have committed minor misdemeanor offenses but do not require supervision by a juvenile probation officer. Level I placements require an adequate family and/or community structure to monitor and notify the Court of violations. Dispositions to this level consist of fines and costs, restitution, counseling, community service, and education programs ordered by the Court and supervision by family or community members. There is no DYRS involvement with these programs.

#### **Level II and Level III Probation**

Youth ordered to Level II will be assessed by the Division's Assessment & Monitoring unit with the Positive Achievement Change Tool (PACT) and if found to be low to moderate risk of reoffending, they will be referred to the appropriate low level provider.

Youth ordered to Level II and Level III who are assessed (PACT) and found to be at moderate-high or high risk of reoffending will be assigned to a probation officer, who will refer as necessary to the umbrella services provider for programs to match the youth's criminogenic needs. Youth and their families will have contact with the probation officer based on their level of risk to reoffend.

### **3. Secure Programs**

Level IV and Level V programs are indicated for juveniles whose adjudicated offenses include at least one of the following offenses:


- Level IV: Violent Felony D, E, and F
- Level V: Felony A, B, and C

DeIAWARE DisABILITY HUB (<http://www.deldhub.com>)

For Centers

# For Centers

Part 101

Click  to view or hide more details.

Regulations

\* Applicants are required to follow DELACARE: Rules for Early Care and Education and School-Age Centers to operate a licensed center.

Delacare: Rules for Early Care and Education and School-Age Centers (/pdfs/occl regulations plain jan 2007.pdf)

- Administrative Code  
(<http://regulations.delaware.gov/AdminCode/title9/Division of Family Services Office of Child Care Licensing/100/101.shtml#TopOfPage>)
- Modifications During Emergencies  
(</pdfs/occl ermodifyrules ECESAC April2010.pdf>)
- Guidance and Technical Assistance Bulletins
  - Bed Covering Items  
(</pdfs/occl gtab ECESAC 2013-2 bedcover.pdf>)
  - Forged Document  
(</occl/pdf/occl gtab ECESAC 2012-1 forgeddocument s.pdf>)
  - Nutrition  
(</pdfs/occl gtab ECESAC 2012-2 nutrition.pdf>)
  - Safe Sleep Environment for Infants  
(</pdfs/occl gtab ECESAC 2013 11 SafeSleepEnvironmentInfants.pdf>)
    - Preventing Sleep-Related Infant Death  
(</pdfs/occl gtab SafeSleepingProviderBrief 2013 .pdf>)
  - Training Hours  
(</pdfs/occl gtab ECESAC 2013-1 traininghours.pdf>)
  - TB Requirement Change (</occl/pdf/bulletin-center-TB-RequirementChange-2013-12.pdf>)

Delacare: Requirements for Day Care Centers  
(</pdfs/occl reqs dcc.pdf>)

Former Requirements - some requirements may still be applicable to Centers licensed prior to January 1, 2007


<a href="#">Division of Family Services(/fs/fs.shtml)</a>
<a href="#">Office of Child Care Licensing(/occl/occl.shtml)</a>
<a href="#">For Providers (/occl/providers.shtml)</a>
<a href="#">Start a Child Care Business (/occl/business.shtml)</a>
<a href="#">Careers in Child Care (/occl/careers.shtml)</a>
<a href="#">Regulations and Exemptions (/occl/regs-exempts.shtml)</a>
<a href="#">For Parents (/occl/parents.shtml)</a>
<a href="#">Search for Child Care (http://www.apex01.kids.delaware.gov:8081/occl/)</a>
<a href="#">Make a Complaint (/occl/complaint.shtml)</a>
<a href="#">FAQs (/occl/faqs.shtml)</a>

DeIAWARE DisABILITY HUB (<http://www.deldhub.com>)


For Family Child Care

# For Family Child Care

Part 103

Click  to view or hide more details.

Regulations

\* Family child care providers are required to follow DELACARE: Rules for Family Child Care Homes to operate a licensed family child care home. 

Delacare: Rules for Family Child Care Homes  
([./pdfs/occl\\_DelacareRule FCC Jan2009 En.pdf](http://occl.pdfs/occl_DelacareRule_FCC_Jan2009_En.pdf))

- Administrative Code  
(<http://regulations.delaware.gov/AdminCode/title9/Division of Family Services Office of Child Care Licensing/100/103.shtml#TopOfPage>)
- Modifications During Emergencies  
([/pdfs/occl\\_ermodifyrules FCCH April2010.pdf](http://occl.pdfs/occl_ermodifyrules_FCCH_April2010.pdf))
- Guidance and Technical Assistance Bulletins
  - Bed Covering Items  
([/pdfs/occl\\_gtab FCCH 2013-2 bedcover.pdf](http://occl.pdfs/occl_gtab_FCCH_2013-2_bedcover.pdf))
  - Household Members  
([/pdfs/occl\\_gtab FCCH 2012-1 householdmembers.pdf](http://occl.pdfs/occl_gtab_FCCH_2012-1_householdmembers.pdf))
  - Training Hours  
([/pdfs/occl\\_gtab FCCH 2013-1 traininghours.pdf](http://occl.pdfs/occl_gtab_FCCH_2013-1_traininghours.pdf))
  - Safe Sleep Environment for Infants  
([/pdfs/occl\\_gtab FCCH 2013 11 SafeSleepEnvironmentInfants.pdf](http://occl.pdfs/occl_gtab_FCCH_2013_11_SafeSleepEnvironmentInfants.pdf))
    - Preventing Sleep-Related Infant Death  
([/pdfs/occl\\_gtab SafeSleepingProviderBrief 2013 .pdf](http://occl.pdfs/occl_gtab_SafeSleepingProviderBrief_2013.pdf))
  - TB Requirement Change ([/occl/pdf/bulletin-fcc-TB-RequirementChange-2013-12.pdf](http://occl.pdf/bulletin-fcc-TB-RequirementChange-2013-12.pdf))

Delacare: Reglas par las guarderías y hogares de cuidados infantiles ([./pdfs/occl\\_DelacareRule FCC Jan2009 Sp.pdf](http://occl.pdfs/occl_DelacareRule_FCC_Jan2009_Sp.pdf))


<a href="#">Division of Family Services(/fs/fs.shtml)</a>
<a href="#">Office of Child Care Licensing(/occl/occl.shtml)</a>
<a href="#">For Providers (/occl/providers.shtml)</a>
<a href="#">Start a Child Care Business (/occl/business.shtml)</a>
<a href="#">Careers in Child Care (/occl/careers.shtml)</a>
<a href="#">Regulations and Exemptions (/occl/regs-exempts.shtml)</a>
<a href="#">For Parents (/occl/parents.shtml)</a>
<a href="#">Search for Child Care (http://www.apex01.kids.delaware.gov:8081/occl/)</a>
<a href="#">Make a Complaint (/occl/complaint.shtml)</a>
<a href="#">FAQs (/occl/faqs.shtml)</a>

DeIAWARE DisABILITY HUB (<http://www.deldhub.com>)


## For Large Family Child Care

# For Large Family Child Care

Part 104

Click  to view or hide more details.

### Regulations

\* Large family child care providers are required to follow DELACARE: Rules for Large Family Child Care Homes to operate a licensed large family child care home. 

Delacare: Rules for Large Family Child Care Homes  
([./pdfs/occl\\_DelacareRule\\_LFCC\\_Jan2009\\_En.pdf](http://occl.pdfs/occl_DelacareRule_LFCC_Jan2009_En.pdf))

- Administrative Code  
(<http://regulations.delaware.gov/AdminCode/title9/Division of Family Services Office of Child Care Licensing/100/104.shtml#TopOfPage>)
- Modifications During Emergencies  
([/pdfs/occl\\_ermodifyrules\\_LFCCH\\_April2010.pdf](http://pdfs/occl_ermodifyrules_LFCCH_April2010.pdf))
- Guidance and Technical Assistance Bulletins
  - Bed Covering Items  
([/pdfs/occl\\_gtab\\_LFCCH\\_2013-2\\_bedcover.pdf](http://pdfs/occl_gtab_LFCCH_2013-2_bedcover.pdf))
  - First Aid  
([/pdfs/occl\\_gtab\\_LFCCH\\_2012-2\\_cprfirstaid.pdf](http://pdfs/occl_gtab_LFCCH_2012-2_cprfirstaid.pdf))
  - Household Members  
([/pdfs/occl\\_gtab\\_LFCCH\\_2012-1\\_householdmembers.pdf](http://pdfs/occl_gtab_LFCCH_2012-1_householdmembers.pdf))
  - Safe Sleep Environment for Infants  
([/pdfs/occl\\_gtab\\_LFCCH\\_2013\\_11\\_SafeSleepEnvironmentInfants.pdf](http://pdfs/occl_gtab_LFCCH_2013_11_SafeSleepEnvironmentInfants.pdf))
    - Preventing Sleep-Related Infant Death  
([/pdfs/occl\\_gtab\\_SafeSleepingProviderBrief\\_2013.pdf](http://pdfs/occl_gtab_SafeSleepingProviderBrief_2013.pdf))
  - Training Hours  
([/pdfs/occl\\_gtab\\_LFCCH\\_2013-1\\_traininghours.pdf](http://pdfs/occl_gtab_LFCCH_2013-1_traininghours.pdf))
  - TB Requirement Change ([/occl/pdf/bulletin-lfcc-TB-RequirementChange-2013-12.pdf](http://occl/pdf/bulletin-lfcc-TB-RequirementChange-2013-12.pdf))

Delacare: Requirements for Large Family Child Care Homes  
([/pdfs/occl\\_reqs\\_lfcc.pdf](http://pdfs/occl_reqs_lfcc.pdf))

Former Requirements - some requirements may still be applicable to Family Child Care Homes licensed prior to January 1, 2009

[Division of Family Services\(/fs/fs.shtml\)](#)

[Office of Child Care Licensing\(/occl/occl.shtml\)](#)

[For Providers \(/occl/providers.shtml\)](#)

[Start a Child Care Business \(/occl/business.shtml\)](#)

[Careers in Child Care \(/occl/careers.shtml\)](#)

[Regulations and Exemptions \(/occl/regs-exempts.shtml\)](#)

[For Parents \(/occl/parents.shtml\)](#)

[Search for Child Care \(http://www.apex01.kids.delaware.gov:8081/occl/\)](#)

[Make a Complaint \(/occl/complaint.shtml\)](#)


[FAQs \(/occl/faqs.shtml\)](#)

DeIAWARE DisABILITY HUB (<http://www.deldhub.com>)

## For Residential and Day Treatment

# For Residential and Day Treatment

For Residential Child Care Facilities and Day Treatment Programs

Click  to view or hide more details.

### Regulations


Applicants are required to follow DELACARE: Requirements for Residential and Day Treatment Programs to operate a licensed facility. 

[Delacare: Requirements for Residential Child Care Facilities and Day Treatment Programs \(/pdfs/occl\\_reqs\\_rccdtf.pdf\)](/pdfs/occl_reqs_rccdtf.pdf)

- [Administrative Code \(http://regulations.delaware.gov/AdminCode/title9/Division of Family Services Office of Child Care Licensing/100/105.shtml#TopOfPage\)](http://regulations.delaware.gov/AdminCode/title9/Division%20of%20Family%20Services%20Office%20of%20Child%20Care%20Licensing/100/105.shtml#TopOfPage)

[Back to top](#)

### Forms

These forms are used for centers and will help you to follow DELACARE Rules. 

### Post a Job Opening

If you wish to hire staff, [create a free job posting \(/forms/occl-jobposting.shtml\)](/forms/occl-jobposting.shtml). Your posting will automatically be deleted after 4 weeks.

### Useful Links

These websites (</occl/useful-links.shtml>) may be used to enhance your program, provide you with information, and help answer questions you may have.

 (</index.shtml>)

[Division of Family Services\(/fs/fs.shtml\)](/fs/fs.shtml)

[Office of Child Care Licensing\(/occl/occl.shtml\)](/occl/occl.shtml)

[For Providers \(/occl/providers.shtml\)](/occl/providers.shtml)

[Start a Child Care Business \(/occl/business.shtml\)](/occl/business.shtml)

[Careers in Child Care \(/occl/careers.shtml\)](/occl/careers.shtml)

[Regulations and Exemptions \(/occl/regs-exempts.shtml\)](/occl/regs-exempts.shtml)

[For Parents \(/occl/parents.shtml\)](/occl/parents.shtml)

[Search for Child Care \(http://www.apex01.kids.delaware.gov:8081/occl/\)](http://www.apex01.kids.delaware.gov:8081/occl/)

[Make a Complaint \(/occl/complaint.shtml\)](/occl/complaint.shtml)

[FAQs \(/occl/faqs.shtml\)](/occl/faqs.shtml)

Part 105

\*

ATTORNEY GENERAL'S OPINION - JANUARY 20, 1994

Letter to Pascale D. Forgiato, Superintendent  
Delaware Department of Public Instruction

Re: Nurse in Attendance on Field Trips

"You have asked whether disabled children must be permitted to participate in school field trips and whether a nurse must be in attendance under any circumstances. You have also asked whether sick children must be permitted to participate in field trips and whether a nurse must be in attendance under any circumstances. The right of a disabled child to receive necessary medical services extends to non-scholastic activities as well as academic activities. If the disabled child requires a nurse to administer medications during the academic day, that same assistance should be afforded as an accommodation to that child while on a field trip. As to the second question, neither federal nor Delaware law specifically outlines the rights of children in school who are simply sick and generally sick children should be allowed on trips except under certain circumstances as discussed below.

As to disabled children, Section 504 of the Rehabilitation Act of 1973 as well as the Americans With Disabilities Act mandates that reasonable accommodations to the physical or mental limitations of any otherwise qualified disabled individual be made for that individual by a public entity, unless the entity can demonstrate the accommodation when imposed is an "undue hardship on the operation of its programs." 45 C.F.R. §84.12 (a).

The case law amply demonstrates that disabled children are entitled to receive necessary medical services while in school. Irving Independence School District v. Tatro, 468 U.S. 883 (1984). Further, other courts have held that schools must provide staff with the training to administer medical services and to assist the disabled child, if the need arises. Department of Education v. D., 531 F. Supp. 517 (D. Hawaii 1982); Department of Education, State of Hawaii v. Catherine D., 727 F. 2d 809 (9th Cir. 1983). Moreover, the right of a disabled child to receive necessary medical services extends to non-scholastic activity as well. 34 C.F.R. §104-37 (a) (2).

If disabled children can participate in field trips when provided with the same accommodations to which they are entitled at school, this accommodation must be offered to them. Quaker Valley (Pa) School District Complaint No. 03861077 Education for the Handicapped Law Report, 352:235 (Supp. 186 February 13, 1987.) A reasonable accommodation includes providing a nurse on school trips and other school outings. 45 C.F.R. §84-12(a).

As to the second question regarding sick children, federal and state law does not deny access to academic and school related activities for sick children but for when they suffer from contagious illnesses such as diphtheria, measles, scarlet fever or smallpox. This raises the question as to whether sick children can be assisted with medication while in school and on field trips by someone other than a licensed nurse. It has been argued that the assistance of medication is the practice of nursing. We do not believe that necessarily to be so. Accordingly, a parent should be permitted to designate a care provider to assist her/his sick child. A parent can also authorize a sick child to care for themselves.



The mere assistance in taking medications is not the practice of nursing under 24 Del. C. Ch. 19. Twenty-four Del. C. §1902 (b) (6) states that a registered nurse execute regimens which include the dispensing and administration of medications. Twenty-four Del. C. §1902 (f) defines the administration of medication as a entire "process" whereby a nurse verifies the prescription drug order, removes the dose from a previously dispensed, properly labeled container; assesses the patient's status to assure it is given as prescribed to the proper patient and that no known contraindications to the drug or the dosage exists; gives a dose to the patient; then records the time and dose given. Further, under this statute the nurse would check the patient following the administration of the medication for possible side effects. *Id.*

If the parent of a sick child consents to that child self-administering medication or designates someone to assist with medications, that child should be allowed to participate in school field trips and a nurse need not be provided as there is no mandate under either federal or state law to accommodate a sick child. However, a parent cannot designate a care giver to act in such a way that the care giver is administering medicine as described above. Parents can consent to a care giver assisting with medications.

Assistance with medications' is defined in the nursing statute as follows:

(g) "Assistance with medications" means the designated care provider assist the patient in the self-administration of a drug, provided that the medication is in the original container, with proper label and direction. The designated care provider must hold the container for the patient, assist patient in taking the medication." 24 Del. C. §1902.

This statute does not include the assistance with medication as a practice to be performed only by nurses.

To conclude, if a child is disabled, the same accommodation afforded in an academic setting must be available on field trips as the child has a right under federal law to participate in non-academic and extracurricular activities. If that accommodation is a nurse, then the nurse must be in attendance on a field trip.

A nurse need not accompany sick children on field trips as parents can consent to self-administration of medication or appoint a designated care giver if necessary. However, the designated care giver must not take up the activities which would be considered administration of medication under the Nursing Act as described above.

Malcolm S. Cobin  
Assistant State Solicitor

Loretta G. LeBar  
Deputy Attorney General

Approved: Michael F. Foster  
State Solicitor

Division of Developmental Services

MONTHLY CENSUS

Source: Division of Developmental Disabilities Services Client Registry System  
January 2015



Number as of the  
last day of the month

A. INSTITUTIONAL PLACEMENTS	NEW CASTLE	KENT	SUSSEX	OUT OF STATE
MARY ANN COVERDALE CENTER	0	0	54	0
102 WAPLES WAY (COTTAGE)	0	0	1	0
PSYCHIATRIC PLACEMENTS	2	0	0	0
NURSING HOMES	49	7	7	1

	54
	1
	2
	64
<b>A.</b>	<b>121</b>

B. COMMUNITY SERVICES/ RESIDENTIAL PLACEMENTS	NEW CASTLE	KENT	SUSSEX
NEIGHBORHOOD (GROUP) HOMES/CLAs	571	144	178
SHARED LIVING	41	32	25
SUPPORTED LIVING	12	5	17
OUT OF STATE	16	0	1
ETLA (Emergency Temporary Living Arrangement)	5	1	3

	893
	98
	34
	17
	9
<b>B.</b>	<b>1051</b>

C. FAMILY SUPPORT	NEW CASTLE	KENT	SUSSEX
	1587	630	677

<b>C.</b>	<b>2,894</b>
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**TOTAL CENSUS (A to C)**

**4066**

Completed: 2/5/15 lc

Revised 8/5/2014



Delaware Division of Developmental Disabilities Services Monthly Census Data



January, 2015

DDDS DAY SERVICES	NEWCASTLE	KENT	SUSSEX	OUT OF STATE	TOTAL	
DAY HABILITATION	368	182	173	164	787	
PRE-VOCATIONAL SERVICE	366	264	65	0	695	
SUPPORTED EMPLOYMENT	394	34	96	0	524	
SUPPORTED EMPLOYMENT AND PV or DH	73	26	47	0	146	
					<b>TOTAL</b>	<b>2152</b>

SPECIAL SCHOOL GRADUATE NEW DAY SERVICE  
ADMISSIONS \*\*

0

\* Please note that these individuals are already counted in the Family Support count.

\*\* Please note that these individuals are already counted in the Day Service totals above.



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904  
302-739-4553 (voice) 302-739-6126 (fax) <http://www.gacec.delaware.gov>

### MEMORANDUM

**DATE:** February 27, 2013

**TO:** The Honorable Members of the Delaware General Assembly

**FROM:** Terri A. Hancharick, Chairperson  
GACEC

**RE:** House Bill No. 20 (Absentee Voting)

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill No. 20 on absentee voting. As background, Senate Bill No. 143 was introduced in 2011 to effect multiple changes in the Delaware Constitution related to voting. That bill passed the Senate in 2012 but not the House. House Bill No. 20 is more reserved. It extracts one section (absentee voting) from the prior legislation (lines 28-32). The GACEC **endorses** the proposed bill.

The Delaware Constitution is somewhat prescriptive in authorizing absentee ballots. For example, it contemplates use of absentee ballots based on "sickness or physical disability" but omits any reference to "mental disability". This bill would remove limitations and allow the General Assembly to enact laws covering qualifications for the use of absentee ballots.

Thank you for your time and consideration of our comments. Please feel free to contact me or Wendy Strauss should you have any questions.

STATE GOVERNMENT

# Mixed day for voting

## Felon limit eased; absentee rules upheld

By Doug Denison

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DOVER — Shortly after one chamber of the General Assembly voted Tuesday to enact a constitutional amendment expanding voting rights for convicted felons, the other chose to reject a proposed amendment that would have allowed more citizens to vote absentee.

Many felons in Delaware now will be able to vote immediately after discharging their criminal sentences, according

to an amendment passed by the Senate removing a constitutional provision barring felons from voting for five years after completing their punishments.

In the House, a Democratic bill to change constitutional limitations on absentee balloting failed by a single vote. The legislation sought to remove all qualifications for casting an absentee ballot, which currently is allowed only because of military service, family illness or disability, travel or religious objections.

Twenty-seven states allow so-called "no excuse" absentee voting.

Amendments to the state constitution require two-thirds majorities in both chambers of the General Assembly in two consecutive legislative sessions separated by a general election. They do not need the governor's signature.

The felon voting-rights measure, introduced last year, cleared its final hurdle in the Senate, 15-6.

Those convicted of murder, public corruption or sex crimes still would be barred from voting for life in Delaware.

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# Voting: Limits on absentee ballots will stay

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one of 12 states that revoke voting rights for certain criminals, according to the nonprofit ProCon.org.

Ben Jealous, president and CEO of the NAACP, was in the Senate for the vote and called the amendment a victory for civil rights.

"This law was one of the last pillars of Jim Crow voter-suppression legislation. In this time, in this country, where so many other states are suppressing the vote, it's heartening to see Delaware take the lead in restoring the vote to people who have made a mistake but paid their price for it and earned the right to have their vote restored," Jealous said.

The amendment was named the Hazel D. Plant Voter Restoration Act in honor of the late Wilmington state representative who pushed for its passage up to her death in 2010. Her husband, the late Rep. Al O. Plant, worked on the measure in the years before his death in 2000.

Wilmington Rep. Helene Keeley sponsored the latest version of the amendment.

"It's very emotional for me to know that Hazel and Al are up in heaven saying 'You know what, we finally got it done.' It was something she really wanted to have before she passed away, and it just never came to fruition," Keeley said.

Two Senate Republicans voted for the amendment Tuesday: Sen. Greg Lavelle, of Sharpley, and Sen. Catherine Cloutier, of Brandywine Hundred.

Sen. Colin Bonini, R-Dover South, voted no and said it is appropriate to bar felons from voting for five years after the fulfillment of their sentences.

"An immediate turnaround makes me a little uncomfortable," he said. "I thought five years was a reasonable waiting period," he said. "I don't see a particular reason to change that now."

## Absentee amendment

No Republicans voted for the absentee balloting amendment, which was



Rep. Helene Keeley

introduced for the first time this year. All 26 House Democrats voted for the measure, one short of the required two-thirds majority.

Minority Leader Dan Short, of Seaford, said his caucus believed the proposed amendment would leave absentee voting rules too "open-ended" and raised the specter of voter fraud.

"Voting is a sacred right in this country, and I think that when we lose sight of the fact that Election Day is the day you go out and vote for candidates, the casting of that absentee ballot is something, I think, that has an opportunity not just for voter fraud, but for immense influence versus actual voting on that particular day," he said.

Majority Leader Valerie Longhurst charged the Republicans with playing politics and said there were at least seven GOP representatives who previously had agreed to vote yes but were told not to by their leaders.

"If you think it's not partisan, it is," she said. "I don't know why they want to suppress votes."

Bill sponsor Rep. Earl Jaques, D-Glasgow, said it's wrong that Delaware law currently allows a disabled person to vote absentee but could bar that person's full-time caregiver from doing the same.

"It's not a party thing; it's just allowing people the opportunity to vote," Jaques said. "We should encourage everybody in this country to vote and make it as easy and accessible as possible."

The only way the absentee voting amendment could be reconsidered this session is if a member of the prevailing side in the vote; in this case a Republican, asks for the roll call to be rescinded and retaken.

Contact Doug Denison at 678-4271, on Twitter @DoverDelDenison or at ddenison@delawareonline.com.