



# DISABILITIES LAW PROGRAM

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## MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Recent Regulatory Initiatives

Date: July 16, 2015

At the request of the SCPD, I am providing an analysis of eleven (11) regulations which appear in the July issue of the Register of Regulations. Given time constraints, the analysis should be considered preliminary and non-exhaustive.

### 1. DOE Final Vaccination Regulation [19 DE Reg. 43 (7/1/15)]

The SCPD and GACEC commented on the proposed version of this regulation in May, 2015. A copy of the May 18 SCPD letter is attached for facilitated reference. The Department of Education has now adopted a final regulation which incorporates amendments prompted by each of the Councils' comments.

First, the Councils recommended reconsideration of the reference to "or other" in §2.1. The DOE amended the reference which is now renumbered §3.1.

Second, the Councils recommended revising a reference to school districts in §4.4 since it would omit charter schools. The DOE agreed and inserted "and charter schools" in renumbered §5.4.

Third, the Councils recommended consideration of adding a recommended meningococcal booster at ages 16-18. The Department added a conforming recommendation to §3.1.6.

Fourth, the Councils recommended consulting DMMA to ensure that the listed immunizations and schedules would be covered by Medicaid. The DOE checked and included the following recital: "The Department has confirmed that the listed immunizations are covered by Medicaid." At 44, Par. (10).

Since the DOE incorporated revisions based on all comments, I recommend issuing a "thank you" communication.

## 2. DOE Final School Transportation Regulation [19 DE Reg. 51 (7/1/15)]

The SCPD and GACEC commented on the proposed version of this regulation in April, 2015. A copy of the April 29, 2015 SCPD letter is attached for facilitated reference.

The Department of Education has now adopted a final regulation. However, it erroneously recites that it amended only 1 section in response to the comments. At 52. This is inaccurate.

First, the Councils recommended that the DOE clarify the application of the standards to charter schools. The DOE amended its definition of “local school district” to include Vo-Tech districts and modified §1.0 to clarify the broad application of the standards to even nonpublic schools. However, the balance of the regulation has many inconsistent references districts and schools.

Second, the Councils identified an anomaly in the “points” which a CDSBS trainer could have. The DOE amended new §6.3.2 to achieve consistency.

Third, the Councils observed that the regulation was inconsistent in capitalizing the term “district”. The DOE modified many references within the regulation.

Fourth, the Councils recommended an amendment to §7.1.2.2 to correct grammar. The grammar was corrected in new §8.1.2.2.

Fifth, the Councils observed that the DOE sometimes referred to an “IEP or Section 504 plan” and sometimes only referred to an IEP. The DOE added a reference to “Section 504 Plan” in new §18.1.7.

Since the regulation is final, and the DOE effected several revisions based on Council commentary, I recommend no further action.

## 3. DOE Final Gifted or Talented Education Plan Regulation [19 DE Reg. 48 (7/1/15)]

The SCPD and GACEC commented on the initial proposed version of this regulation in February, 2015. The Department of Education then issued a revised proposed regulation in May which corrected the three concerns raised by the Councils. The Councils issued an additional set of comments on the revised proposed regulation. A copy of the May 18 SCPD letter is attached for facilitated reference. The Department has now adopted a final regulation incorporating some amendments prompted by the commentary.

First, the Councils questioned the deletion of charter schools from the regulation. The DOE effected no revisions based on the following rationale:

The Department's rationale for not including charter schools in this regulation was that, pursuant to 14 Del.C., Ch. 5, charter schools are provided the opportunity to use different or innovative school environments and teaching/learning methods. Additionally, the charter school application process includes a review of the proposed programs.

At 48.

Second, the Councils recommended an amendment to §3.1. The DOE adopted the recommended amendment verbatim.

Third, the Councils recommended reconsideration of a requirement that all teachers assigned to instruct students identified as gifted or talented by certified since this could limit the pool of instructors for truly exceptional students. The DOE declined to effect any change. At 48.

Fourth, the Councils recommended inserting a minimum review timetable. The DOE agreed and inserted "but not less than every five years" in §4.2.

Since the regulation is final, and the DOE responded to each Council suggestion, I recommend no further action.

#### 4. DOE Final Administrator Evaluation System (DPAS II) Regulation [19 DE Reg. 41 (7/1/15)]

The SCPD and GACEC commented on the proposed version of this regulation in May, 2015. A copy of the May 21 GACEC letter is attached for facilitated reference. The Department of Education is now adopting a final regulation with minor edits.

First, the Councils recommended adoption of more explicit language if federal approval were obtained by the time of issuance of the final regulation. The DOE made no change and suggested that federal approval is still pending.

Second, the Councils suggested a revision to the definition of "credentialed evaluator". No change was made. I misinterpreted "(s)" in the proposed regulation to mean that "(s)" was being stricken. Instead, the DOE only intended to strike the parenthesis.

Third, the Councils recommended linking the improvement plan to conferences. The DOE effected no amendment, suggesting that such detail would be outlined in sub-regulatory guidance.

Fourth, the GACEC recommended that the DOE define the chart in §7.0. The DOE responded that the chart was already preceded by a heading which was deemed sufficient.

Fifth, the Councils identified some grammatical errors. Four edits were effected.

Since the regulation is final, and the DOE responded to each Council concern, I recommend no further action.

5. DOE Final Specialist Appraisal Regulation [19 DE Reg. 38 (7/1/15)]

The SCPD and GACEC commented on the proposed version of this regulation in May, 2015. A copy of the May 18 SCPD letter and May 21 GACEC letter are attached for facilitated reference. The Department of Education is now adopting a final regulation with one amendment prompted by the commentary.

First, the SCPD noted that the term “specialist” would include occupational, physical and speech therapists. The Council did not recommend any revision. The DOE acknowledged the observation and clarified that the term “specialist” would include occupational, physical and speech therapists.

Second, both Councils recommended adoption of more explicit language if federal approval were obtained by the time of issuance of the final regulation. The DOE made no change and suggested that federal approval is still pending.

Third, both Councils suggested deletion of the definition of “Interim Assessment” since the term was not used in the body of the regulation. The DOE agreed and deleted the definition.

Fourth, the GACEC questioned whether certain definitions were essentially the same. The DOE responded that the definitions were different.

Fifth, the GACEC recommended that the DOE define the chart in §7.0. The DOE declined to further define the chart.

Since the regulation is final, and the DOE responded to each Council comment, I recommend no further action.

6. DOE Final Teacher Appraisal Regulation [19 DE Reg. 35 (7/1/15)]

The SCPD and GACEC commented on the proposed version of this regulation May, 2015. A copy of the May 18 SCPD letter and May 21 GACEC letter are attached for facilitated reference. The Department of Education is now adopting a final regulation with one amendment prompted by the commentary.

First, both Councils recommended adoption of more explicit language if federal approval were obtained by the time of issuance of the final regulation. The DOE made no change and suggested that federal approval is still pending.

Second, both Councils suggested deletion of the definition of “Interim Assessment” since the term was not used in the body of the regulation. The DOE agreed and deleted the definition.

Third, the GACEC questioned whether certain definitions were essentially the same. The DOE responded that the definitions were different.

Fourth, the GACEC recommended that the DOE define the chart in §7.0. The DOE declined to further define the chart.

Fifth, both Councils recommended the inclusion of more detailed improvement plan standards. The DOE declined to include more detail in the regulation based on the rationale that specifics are contained in sub-regulatory guidance.

Since the regulation is final, and the DOE responded to each Council comment, I recommend no further action.

#### 7. DMMA Final Medicaid Plan Drug Rebate Regulation [19 DE Reg. 57 (7/1/15)]

The SCPD and GACEC commented on the proposed version of this regulation in May, 2015. A copy of the May 18 SCPD letter is attached for facilitated reference.

The Councils endorsed the proposed regulation which would benefit Delaware financially by expanding eligibility for drug rebates. The Division of Medicaid & Medical Assistance has now acknowledged the endorsements and adopted a final regulation which conforms to the proposed version.

I recommend no further action.

#### 8. DMMA Final Medicaid Rehabilitation Services Regulation [19 DE Reg. 60 (7/1/15)]

The SCPD and GACEC commented on the proposed version of this regulation in December, 2014. A copy of the June 25, 2015 memo from DMMA to the SCPD is attached for facilitated reference. It contains the Councils’ commentary and the Division’s response.

The Councils observed that DMMA was deleting the “Community Support Service Program” from the Medicaid State Plan based on the rationale that the new PROMISE program made the Community Support Service Program obsolete. The Councils objected to deletion of the Community Support Service Program since it had broader eligibility in contrast to PROMISE. For example, the Councils noted that the PROMISE program omitted coverage for persons with the following diagnoses: TBI, intermittent explosive disorder, conduct disorder, neurocognitive disorder, and trauma-and stressor-related disorders apart from PTSD.

The Division has now adopted a final regulation with no changes. The Division did not address the exclusion of individuals with diagnoses of intermittent explosive disorder, conduct disorder, neurocognitive disorder, and trauma-and stressor-related disorders apart from PTSD. It cryptically implied that a person with an ABI diagnosis could be covered by PROMISE if the person had a second, qualifying diagnosis. This belabors the obvious, i.e., a person with any diagnosis qualifies for the PROMISE program if the person has one of the narrow, qualifying diagnoses.

I recommend no further action.

9. DLTCRP Final Financial Capability Reporting Regulation [19 DE Reg 52 (7/1/15)]

The SCPD and GACEC commented on the proposed version of this regulation in April, 2015. A copy of the April 29, 2015 SCPD memo is attached for facilitated reference. The Division of Long Term Care Residents Protection is now adopting a final regulation with some amendments prompted by the commentary.

First, the Councils endorsed the adoption of more comprehensive standards for facilities with 4 or more residents. The Division acknowledged the endorsement.

Second, the Councils noted that the statute contemplates a 5-year “look-back” period for a satisfactory compliance history while the regulation envisioned submission of 3 years of financial information. No change was made.

Third, the Councils recommended inclusion of a definition of “local financial institution”. The Division added a definition.

Fourth, the Councils suggested that the Division consider exempting DHSS-owned facilities. The Division agreed and exempted “state owned/operated facilities” in §2.2.

Fifth, the Councils recommended adding a citation to §14.2. The Division agreed and added the citation.

Since the regulation is final, and the Division incorporated amendments consistent with most of the Councils’ comments, I recommend no further action.

10. DMMA Prop. Telemedicine Originating Site Regulation [19 DE Reg. 20 (7/1/15)]

The Division of Medicaid and Medical Assistance (DMMA) proposes to adopt a State Medicaid Plan amendment to define an approved originating site as including a patient’s place of residence.

As background, DMMA has covered telemedicine in its Medicaid program on a statewide basis since July, 2012. At 21. The State has generally been expanding use of telemedicine in recent years. For example, the Legislature passed H.B. 69 in the Spring of 2015 to promote health insurer support of telemedicine. The synopsis to the bill suggests that it is also intended to “encourage all state agencies to evaluate and amend their policies and rules to foster and promote telemedicine services”.

The Councils could consider endorsement of this initiative since it clarifies that an approved originating site can include a patient's place of residence. However, potential amendments could be shared. First, the reference to place of residence could be construed to mean that other non-traditional sites are excluded. By solely citing "place of residence", application of interpretive guidance (inclusio unius est exclusio alterius) could result in limiting the scope of other settings. At a minimum, it would therefore be preferable to amend the reference as follows: "Without limitation, (A)an approved originating site may include the DMAP member's place of residence." Second, H.B. No. 65 broadly defines "originating site" to include "a site in Delaware at which a patient is located at the time health care services are provided....". This would include anywhere the patient is physically present, including non-residential settings such as day programs (e.g. Easter Seal; Elwyn). If desired, DMMA could consider the following more expansive standard: "An approved originating site may include the DMAP member's place of residence, day program, or alternate location in which the member is physically present and telemedicine can be effectively utilized."

I recommend sharing the above observations with the Division.

#### 11. DFS Camp Employee & Volunteer Background Check Emergency Reg [19 DE Reg. 6 (7/1/15)]

The Division of Family Services (DFS) is providing notice of adoption of an emergency regulation amending its 'Rules for Early Care and Education and School-Age Centers'.

As background, a Delaware Background Checks Task Force issued a report on December 31, 2014. In pertinent part, the Task Force recommended that background checks be required for employees and volunteers in youth camps. DFS is implementing the recommendation through an emergency regulation to ensure that background checks are conducted by summer camps operating in 2015. Legislation (S.B. No. 144) to require background checks for camps was recently enacted but will not be effective for 240 days.

A general endorsement of the regulation could be considered. However, it may be overbroad in categorically barring the employment of anyone with a felony conviction within the past 7 years (§3.4.2.3). I recognize that this provision is similar to §309(d) in S.B. No. 144. There is some "tension" between categorically barring employment of individuals with a felony conviction and federal EEOC guidance which discourages consideration of convictions unless the conduct is "job related and consistent with business necessity". See [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm) For example, if the conviction were for issuing a single \$1,500 "bad check" (11 Del.C. §900) six years ago, such conduct would ostensibly have little bearing on whether an applicant could safely be employed in a summer camp.

I recommend sharing the above observations with the Division.

#### Attachments

E:leg/715bils  
F:pub/bjh/legis/2015p&l/715bils



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May 18, 2015

Ms. Tina Shockley, Education Associate  
Department of Education  
401 Federal Street, Suite 2  
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RE: 18 DE Reg 832 [DOE Proposed Vaccination 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 standards for vaccinations of public school students. Background is compiled in the attached February 27, 2015 News Journal article. The proposed regulation was published as 18 DE Reg. 832 in the May 1, 2015 issue of the Register of Regulations. SCPD has the following observations.

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 (DPH) 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).

SCPD endorses the concept underlying this initiative subject to the following observations and recommendations.

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.



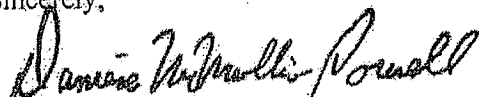
Second, in §1.0, the definition of "school enterer" includes students being admitted to any public school. In contrast, §4.4 only refers to "school districts" which would exclude charter schools.

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 DPH in this context. Even if a booster were only "recommended", the regulation addresses "recommended" immunization in §3.1.

Fourth, the DOE and/or DPH may wish to consult with DMMA to ensure that the listed immunizations and schedules are covered by Medicaid.

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

Sincerely,



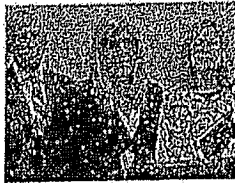
Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

cc: The Honorable Mark Murphy, Secretary of Education  
Mr. Chris Kenton, Professional Standards Board  
Dr. Karyl Rattay, Division of Public Health  
Ms. Deborah Harvey, Division of Public Health  
Dr. Teri Quinn Gray, State Board of Education  
Ms. Mary Ann Mieczkowski, Department of Education  
Ms. Kathleen Geiszler, 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

18rcg 832 doc-vaccination regulation 5-18-15.doc

## 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 (<http://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?

Can the Meningococcal Vaccine Cause Meningococcal Disease?

Are Both Meningococcal Vaccines Equally Effective?

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

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:

PRINT PAGE

### 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



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April 29, 2015

Ms. Tina Shockley, Education Associate  
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RE: 18 DE Reg. 759 [DOE Proposed School Transportation 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 covering school transportation. The proposed regulation was published as 18 DE Reg. 759 in the April 1, 2015 issue of the Register of Regulations. The synopsis indicates that the amendments are prompted by changes in the Delaware Code in the following contexts: 1) maximum age of school bus; 2) criminal background checks for drivers and aides; 3) in-service training for drivers and aides; 4) annual physical for school bus aides; and 5) district disbursements. SCPD has the following observations.

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

Second, there is some tension between §§5.3.2 and 5.5.2. The former requires new applicants for CDSBD trainers to "not have more than three (3) points in the past three years". The latter requires renewing CDSBD trainers to have "no more than three (3) points on their driving record". Thus, the standard for recertification is more liberal than

the standard for initial qualification. It is possible that this is intentional, but the DOE may wish to evaluate the justification for maintaining different standards.

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

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

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

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 759 doe-school transportation 4-29-15





STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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DOVER, DE 19901

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FAX: (302) 739-6704

May 18, 2015

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

RE: 18 DE Reg. 836 [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*. The proposed regulation was published as 18 DE Reg. 836 in the May 1, 2015 issue of the Register of Regulations. The SCPD commented on the initial proposed version of this regulation in February, 2015. The Department of Education has now issued a new proposed regulation. SCPD has 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. SCPD 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." SCPD recommends 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 Council's 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).

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations 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  
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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

18reg836 doe gifted talented education plan 5-18-15

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

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May 21, 2015

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

**RE: 18 DE Reg. 828/14 DE Admin. Code 108A [DOE Proposed Administrator Evaluation System (DPAS II) Regulation (May 1, 2015)]**

Dear Ms. Shockley:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education (DOE) proposal to revise its standards for the evaluation of administrators. Council would like to share 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 the performance appraisal for an administrator 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.

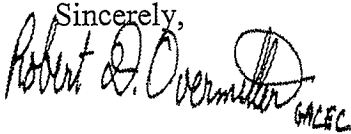
Third, there appears to be a "disconnect" between the Goal Setting and Mid-Year Conferences and any Improvement Plan. The DOE could consider amending the definition of "Goal-Setting Conference" by adding the following sentence: "If an Improvement Plan is in effect, the Conference participants should 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, Council requests the DOE define the chart in §7.0.

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

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

Sincerely,



Robert D. Overmiller  
Chairperson

RDO:kpc

CC: The Honorable Mark Murphy, Secretary of Education  
Dr. Teri Quinn Gray, State Board of Education  
Mr. Chris Kenton, Professional Standards Board  
Mary Ann Mieczkowski, Department of Education  
Matthew Korobkin, Department of Education  
Kathleen Geiszler, Esq.  
Terry Hickey, Esq.  
Ilona Kirshon, Esq.

Enclosure

EDUCATION

**Delaware may eliminate some school testing**

**MATTHEW ALBRIGHT THE NEWS JOURNAL**

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

See **TESTS, Page A5**

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**Gov. Jack Markell on Thursday said some parents and teachers have complained students spend too much time on tests.**

**Tests**

Continued from Page A1

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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.”

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 it clear that the Smarter Balanced Assessment, 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 take 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.

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

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

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

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

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

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



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May 18, 2015

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

RE: 18 DE Reg 823 [DOE Proposed Specialist Appraisal Regulation]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to revise the DPAS II standards for appraisal of specialist performance. The proposed regulation was published as 18 DE Reg. 823 in the May 1, 2015 issue of the Register of Regulations. SCPD has the following observations.

First, 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.

Second, §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".

Third, §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.

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. Kathleen Geiszler, Esq., Department of Justice  
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Developmental Disabilities Council  
Governor's Advisory Council for Exceptional Citizens

18reg 823 doe-specialist appraisal 5-18-15



Delaware may eliminate some school testing

# Delaware may eliminate some school testing

Matthew Albrecht, 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.

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"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=](http://www.delawareonline.com/story/news/education/2015/02/27/parents-teachers-push-back-testing/24146775/)



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 (story/news/education/2015/02/27/parents-concerns-surround-tough-new-delaware-testing/241547180), 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 take 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.

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# Delaware may eliminate some school testing

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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](mailto:malbright@delawareonline.com), 324-2428 or on Twitter @TNJ\_malbright.

DELAWAREONLINE



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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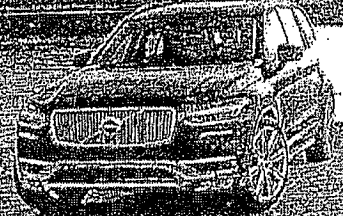
Scores to plunge on new standardized test

<http://www.delawareonline.com/story/news/local/2014/11/23/scores-plunge-new-standardized-test/19348591/>

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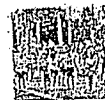
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**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS**

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May 21, 2015

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

**RE: 18 DE Reg. 823/14 DE Admin. Code 107A [DOE Proposed Specialist Appraisal Regulation (May 1, 2015)]**

Dear Ms. Shockley:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education (DOE) proposal to revise its DPAS II standards for the 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. Council would like to share the following observations.

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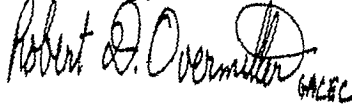
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Third, Council would like the DOE to review the descriptions of Effective, Ineffective and Needs Improvement in §6.0. It appears that the description of Effective in §6.2.2.1 is the same as the description of Ineffective in §6.2.4 and the description of Needs Improvement in §6.2.3.2.

Fourth, Council requests the DOE define the chart in §7.0.

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

Sincerely,



Robert D. Overmiller  
Chairperson

RDO:kpc

CC: The Honorable Mark Murphy, Secretary of Education  
Dr. Teri Quinn Gray, State Board of Education  
Mr. Chris Kenton, Professional Standards Board  
Mary Ann Mieczkowski, Department of Education  
Matthew Korobkin, Department of Education  
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Enclosures

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See TESTS, Page A5

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**Tests**

Continued from Page A1

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

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May 18, 2015

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401 Federal Street, Suite 2  
Dover, DE 19901

RE: 18 DE Reg. 817 [DOE Proposed Teacher Appraisal Regulation]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to revise the DPAS II standards for appraisal of teacher performance. The proposed regulation was published as 18 DE Reg. 817 in the May 1, 2015 issue of the Register of Regulations.

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 2, 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.

SCPD has 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. SCPD endorses this provision. 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.

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. Kathleen Geiszler, 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

18reg817 doe teacher appraisal 5-18-15



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

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

May 21, 2015

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

**RE: 18 DE Reg. 817/14 DE Admin. Code 106A [DOE Proposed Teacher Appraisal (DPAS II) Regulation (May 1, 2015)]**

Dear Ms. Shockley:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education (DOE) proposal to revise its DPAS II standards for the appraisal of teacher performance.

The DPAS II system has been the focus of considerable attention in recent years. 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 seemingly 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.

Council would like to share 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 the performance appraisal of a teacher 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 of this definition.

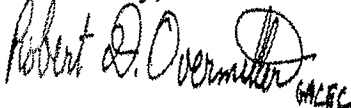
Third, Council would like the DOE to review the descriptions of Effective, Ineffective and Needs Improvement in §6.0. It appears that the description of Effective in §6.2.2.1 is the same as the description of Ineffective in §6.2.4 and the description of Needs Improvement in §6.2.3.2.

Fourth, Council requests the DOE define the chart in §7.0.

Fifth, §8.1 requires the 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. Council endorses this requirement. 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 inflexible 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.

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

Sincerely,

Handwritten signature of Robert D. Overmiller in cursive, with the initials "RDO" and "GACEC" written below it.

Robert D. Overmiller  
Chairperson

RDO:kpc

CC: The Honorable Mark Murphy, Secretary of Education  
Dr. Teri Quinn Gray, State Board of Education  
Mr. Chris Kenton, Professional Standards Board  
Mary Ann Mieczkowski, Department of Education  
Matthew Korobkin, Department of Education  
Kathleen Geiszler, Esq.  
Terry Hickey, Esq.  
Ilona Kirshon, Esq.

Enclosures

P-21-14  
ADJ

# 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 longtime 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.

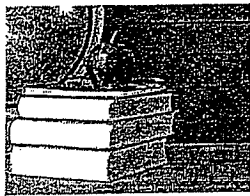
Watson said that's good news for Delaware students because the new test will more closely match what students are learning.

"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.

## 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.delawarequestocollege.org](http://www.delawarequestocollege.org) (<http://www.delawarequestocollege.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

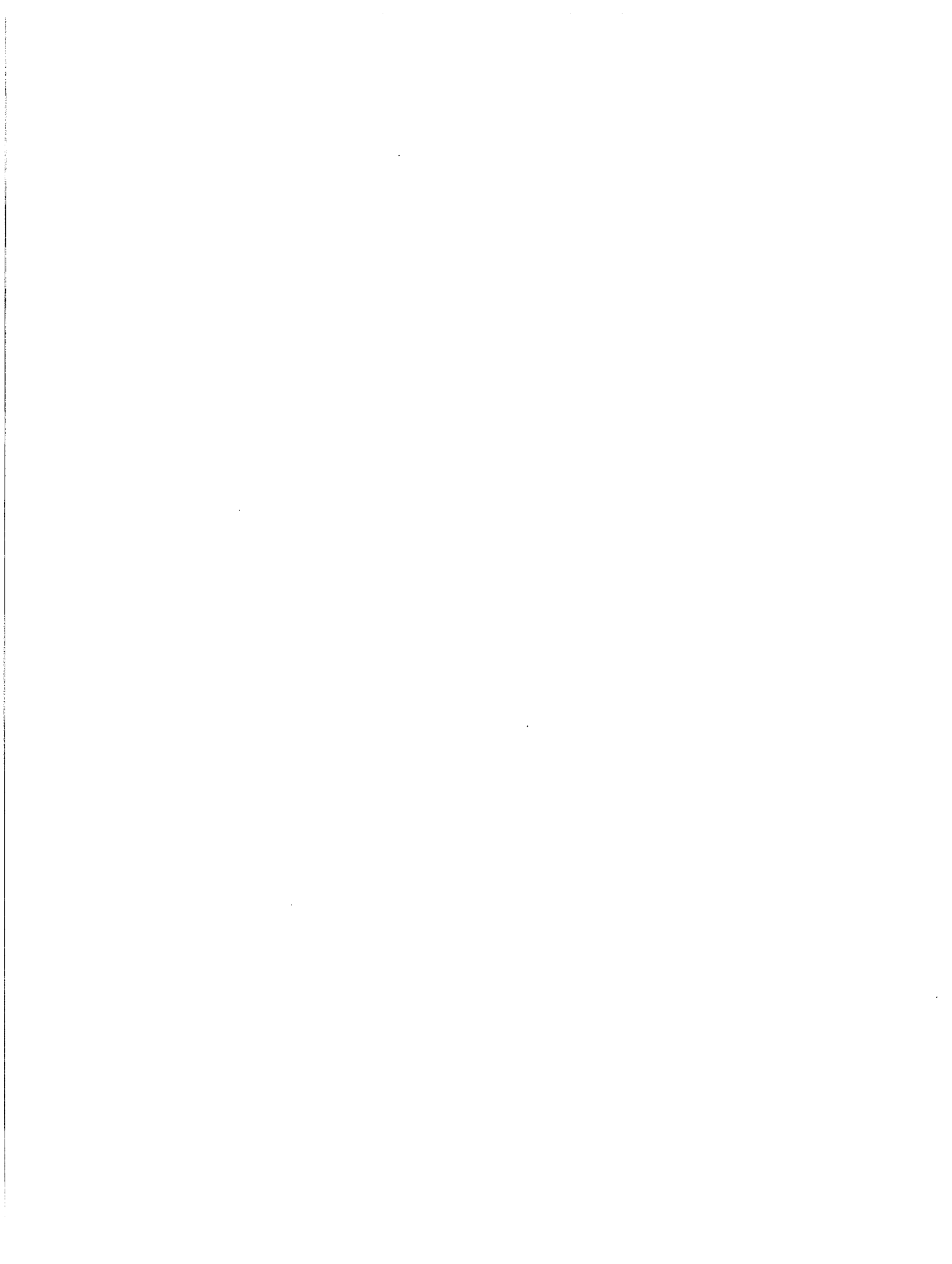
We hope to share our lessons learned and successes with policymakers, district leaders and charter leaders to the benefit of students statewide.

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.



4-1-15





# 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.

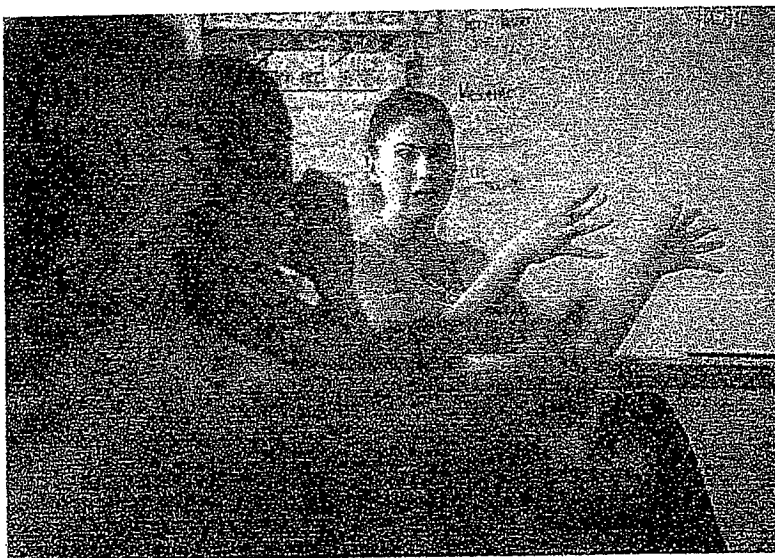
Ask Hepburn what led to such rapid growth in her skills and she'll point to Samantha Connell, her instructional coach.

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.

[Buy Photo](#)



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)

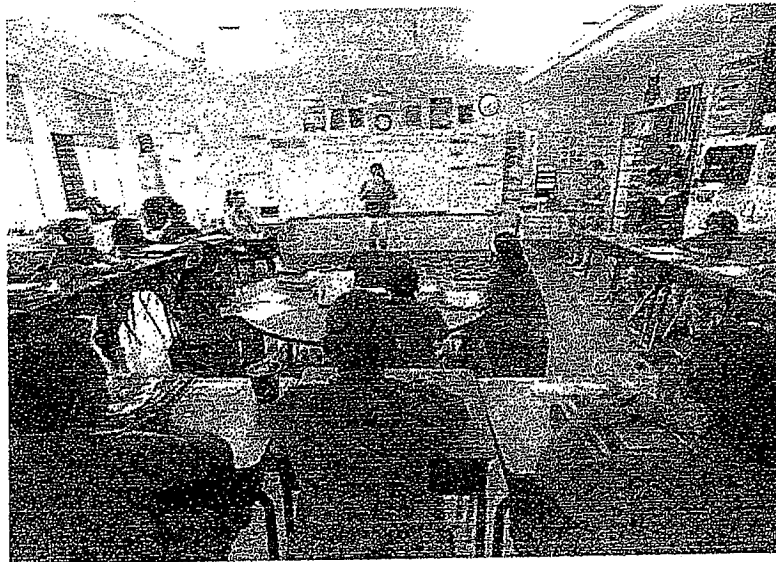
Many educators say a new teacher evaluation process is sorely needed because the statewide system most schools use now, the Delaware Performance Appraisal System-II, is widely distrusted by teachers and principals.

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.

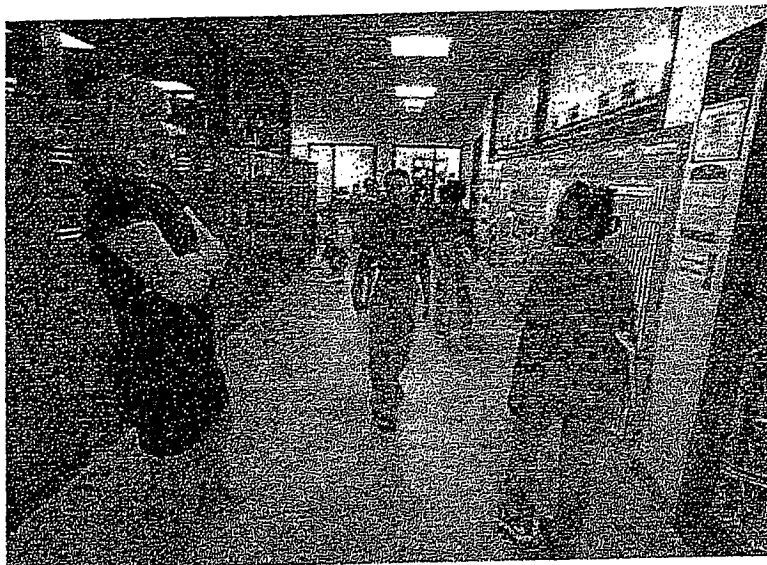
"We are trying to encourage our district and school administrators to think of other ways to approach evaluations," said Frederika Jenner, the DSEA union president. "We are looking at this as one available model of an alternative."

<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 improve."

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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.

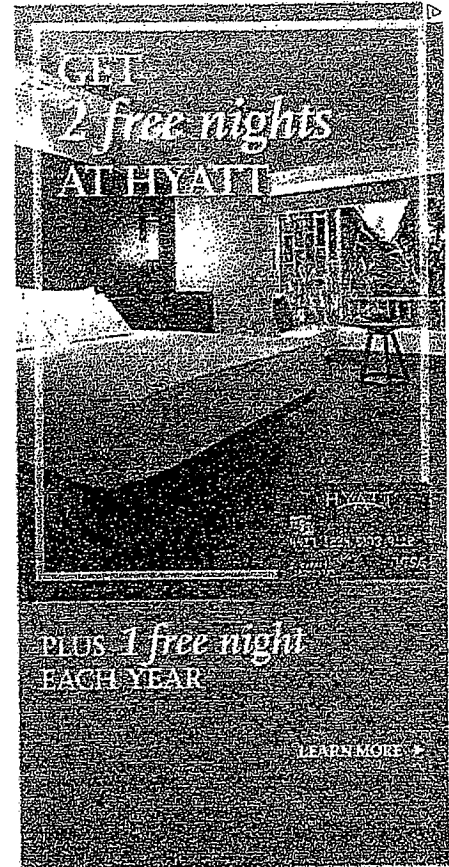


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[Delaware Senate passes Wilmington charter moratorium](#)

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EDUCATION

**Delaware may eliminate some school testing**

**MATTHEW ALBRIGHT** THE NEWS JOURNAL

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

See **TESTS, Page A5**

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**Gov. Jack Markell on Thursday said some parents and teachers have complained students spend too much time on tests.**

**Tests**

Continued from Page A1

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.”

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 it clear that the Smarter Balanced Assessment, 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 take 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.

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

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

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

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

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

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



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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MEMORANDUM

DATE: May 18, 2015

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

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

RE: 18 DE Reg. 838 (DMMA Prop. Medicaid Plan Drug Rebate Regulation)

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposal to adopt a Medicaid State Plan amendment regarding the *Multi-State Purchasing Pool Supplemental Rebate Agreement (SRA)*. The proposed regulation was published as 18 DE Reg. 838 in the May 1, 2015 issue of the Register of Regulations.

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.

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, the 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.

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

18reg838 dmma-medicaid plan drug rebate 5-18-15



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MEMORANDUM

DATE: January 30, 2015

TO: Mr. Thomas Murray, Deputy Director  
Division of Long Term Care Residents Protection

FROM: Daniese McMullin-Powell, Chairperson  
*DMP/pj*  
State Council for Persons with Disabilities

RE: 18 DE Reg. 497 (DLTCRP Financial Capability Reporting Regulation)

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Long Term Care Residents Protection's (DLTCRPs) proposal to adopt regulations covering the financial "soundness" of licensed long-term care facilities with three (3) or more residents. The proposed regulation was published in the January 30, 2015 issue of the Register of Regulations. SCPD has the following grammatical and formatting observations.

First, in §3.0, definition of "Affiliate", SCPD recommends deleting the forward slash between "directly" and "indirectly". Council also recommends substituting a comma for the semicolon after "indirectly".

Second, in §3.0, insert a period at the end of the definitions of "Department" and "Division".

Third, in §3.0, definition of "Facility", SCPD recommends substituting "which" for "and" between "§1102(4)" and "is".

Fourth, in §4.1.2, SCPD recommends substituting a comma for the semicolon before "including".

Fifth, the term "home of record" is used in §§4.1.6 - 4.1.9. SCPD is not familiar with this term. It is a term used in the military to denote the location from which one enlisted. It does not appear to be a "term of art" in corporate or financial contexts. To avoid confusion, the Division may wish to adopt a different term or provide a definition.



Sixth, in §7.3, delete the “s” in “Departments”.

Seventh, in §13.1.6, consider inserting “of the” between “any)” and “facility”.

Eighth, in §13.1.9, last “sentence”, the grammar is somewhat awkward. Consider substituting the following sentence: “Prior to the expiration of the emergency order, and any extension of such order, the Department will make a final determination regarding the facility’s ongoing licensure status.”

Ninth, §14.2 recites as follows:

Financial documents submitted pursuant to these regulations are not departmental records and are not subject to 29 Del.C. Chapter 100.

This is inaccurate and could adversely impact the Department’s ability to introduce the documents in any hearing. The financial documents are Departmental records which are acquired in the Department’s ordinary course of business. They qualify as a “record” but they are not a “public” record by operation of Title 29 Del.C. §10002(1)(2) which exempts the following:

(2) Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature; ...

Consider the following substitute sentence:

14.2 The Department will consider financial documents submitted pursuant to these regulations as exempt from public disclosure consistent with Title 29 Del.C. §10002(1)(2).

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

cc: Ms. Mary Peterson  
Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

18reg497 dlcrp-finances 1-30-15