



# DISABILITIES LAW PROGRAM

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## MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Recent Legislative & Regulatory Initiatives

Date: February 8, 2016

Consistent with the requests of the SCPD and GACEC, I am providing an analysis of nineteen (19) legislative and regulatory initiatives. Given time constraints, the analysis should be considered preliminary and non-exhaustive.

### 1. DMMA Final EPSDT Inpatient Psychiatric Services Reg. [19 DE Reg. 763 (2/1/16)]

The SCPD and GACEC commented on the proposed version of this regulation in November, 2015. A copy of the November 24 SCPD memorandum is attached for facilitated reference. The Councils endorsed the proposed regulation since the changes were prompted by the need to conform to CMS guidance, increase flexibility, and result in no increase in costs to the General Fund.

The Division has now acknowledged receipt of the SCPD commentary and adopted a final regulation with no further revisions. The November 30 GACEC commentary was not acknowledged which may have been an inadvertent (but harmless) oversight. However, since this is not an isolated oversight, the GACEC may wish to follow up.

### 2. DMMA Final Medicaid Outpatient Drug Reimbursement Reg. [19 DE Reg. 748 (2/1/16)]

The SCPD and GACEC commented on the proposed version of this regulation in November, 2015. A copy of the November 24 SCPD memorandum is attached for facilitated reference. The Councils endorsed the proposed regulation since the proposed regulation would remove an impediment to drug manufacturer rebate payments to the State.

The Division has now acknowledged receipt of the SCPD commentary and adopted a final regulation which adds 2 clarifying words to the proposed version. The November 30 GACEC commentary was not acknowledged which may have been an inadvertent (but harmless) oversight. However, since this is not an isolated oversight, the GACEC may wish to follow up.

3. DMMA Final EPSDT Substance Use Disorder Reg. [19 DE Reg. 759 (2/1/16)]

The SCPD and GACEC commented on the proposed version of this regulation in November, 2015. A copy of the November 24 SCPD memorandum and November 30, 2015 GACEC letter are attached for facilitated reference. The SCPD noted that the changes were highly prescriptive and detailed and shared observations. In contrast, the GACEC letter omitted the observation that the changes were highly prescriptive and detailed while commenting that the "Council did not identify any obvious issues".

The Division of Medicaid & Medical Assistance has now adopted a final regulation with no further amendments. It acknowledged receipt of the SCPD commentary but not the GACEC commentary. This may have been an inadvertent (but harmless) oversight. However, since this is not an isolated oversight, the GACEC may wish to follow up.

4. DMMA Final EPSDT Mental Health Services Reg. [19 DE Reg. 754 (2/1/16)]

The SCPD and GACEC commented on the proposed version of this regulation in November, 2015. A copy of the November 24 SCPD memorandum is attached for facilitated reference.

First, the Councils recommended reconsideration of a provision categorically requiring school- provided services to be included in an IEP/IFSP. DMMA responded that the comments "raised issues that are outside the scope of this regulation" (p. 758) and effected no revision.

Second, the Councils recommended retention of the following authorization to cover "any other medical or remedial care provided by licensed medical providers as authorized under 42 CFR 440.60...". DMMA responded (p. 758) that the deletion "was struck because it is duplicative with another section of the State Plan." No revision was made.

Third, the Councils identified some tension between requirements that services be "face to face" and DMMA "telemedicine" standards. The Division agreed (p. 758) and recited that it inserted the following addendum: "Any Rehabilitative service may be provided via telemedicine consistent with the specifications, conditions, and limitations set by the Department of Medical Assistance (DMAP)". This recital is incorrect since there is no "Department of Medical Assistance". The reference in the actual regulation, however, correctly refers to the "Delaware Medical Assistance Program (DMAP)" so the error is harmless.

Fourth, the Councils observed that limiting providers to those at least 21 years of age would ostensibly violate the federal Age Discrimination Act. DMMA disagreed (p. 758) and effected no amendment.

Since the regulation is final, and DMMA responded to each comment, no further action is warranted apart from the GACEC following up on the lack of acknowledgment of its comments.

5. DPBHS Final Juvenile Mental Health Screeners Reg. [19 DE Reg. 778 (2/1/16)]

The SCPD and GACEC commented on the proposed version of this regulation in December, 2015. A copy of the December 21 SCPD memorandum is attached for facilitated reference.

The Councils endorsed the proposed regulation subject to one amendment to §3.2.3.1. The Division of Prevention & Behavioral Health Services has now adopted a final regulation which incorporates the suggested amendment verbatim.

Since the regulation is final, and the Division adopted the amendment promoted by the Councils, no further action is warranted.

6. DOE Final Instructional Program Regulation [19 DE Reg. 739 (2/1/16)]

The SCPD and GACEC commented on the proposed version of this regulation in December, 2015. A copy of the December 21 SCPD memorandum is attached for facilitated reference.

The Councils endorsed the regulation while noting that allowing any “licensed medical provider” to authorize an exemption from PE was relatively broad.

The Department of Education has now adopted a final regulation with an amendment prompted by the commentary. The DOE substituted “licensed healthcare provider” for “licensed medical provider” and included a definition of the term, i.e., “anyone lawfully authorized to diagnose and prescribe medical treatment or restriction”. This is a somewhat “odd” and ambiguous definition. As the Councils noted in their commentary, the analogous homebound regulation is more precise.

Since the regulation is final, no further action appears warranted.

7. DOE Final Jr. H.S. & Middle School Interscholastic Athletics Reg. [19 DE Reg. 743 (2/1/16)]

The SCPD and GACEC commented on the original proposed version of this regulation in August, 2015. The Department of Education issued a revised proposed regulation in December which attempted to address some of the Councils’ concerns. The Councils submitted comments on the new draft. A copy of the December 21, 2015 SCPD letter is attached for facilitated reference. The Department has now adopted a final regulation with one amendment prompted by the latest commentary.

First, the Councils observed that the DOE had deferred establishment of an age waiver protocol and offered technical assistance in prospectively developing the protocol. The DIAA observed that this, and other issues raised in the commentary “are all very important issues which the DIAA Board of Directors wishes to carefully consider as part of the ongoing comprehensive review of DIAA regulations.”

Second, the Councils recommended adoption of a more accurate definition of “student with a disability”. The DOE adopted the Councils’ suggested language verbatim.

Third, the Councils objected to a requirement that a student with a disability placed in a special school or program be limited to participating in sports at that school or program. Contrary guidance on promoting integrated sports participation was provided. No change was made.

Fourth, the Councils objected to authorizing accommodations to a student with a disability with an IEP but not a student with a disability with a §504 plan. No change was made.

Fifth, the Councils objected to a “hardship” waiver protocol in which decision-making is conducted by the DOE rather than the IEP or §504 team. No change was made.

Sixth, the Councils observed that a revision to the August version of the regulation involving transportation was an improvement. The DOE did not address the comment.

Seventh, the Councils identified many grammatical errors. The DOE essentially acknowledged the errors but declined to correct them based on the rationale that “the usage does not impact the content of the regulation”. At p. 743. This is a disappointing response which underscores a lack of professionalism by the agency charged with adopting high educational standards for the State.

Finally, the State Board of Education “expressed concern that the regulation permits members (sic “member”) schools to determine a policy about transgendered students participating in interscholastic sports, in accordance with the minimum standards designated by DIAA, rather than the Department of Education setting the policy.” The Department opted to accede to the local districts who desired “the decision regarding the participation of transgendered students in interscholastic sports (to) remain at the local level. At p. 744.

The GACEC may wish to informally consult the SBE since the proposed version of the regulation recites that it requires “the consent of the State Board of Education”. It’s unclear if the SBE “consented” to the “transgender” provisions in the regulation.

#### 8. DOE Final High School Interscholastic Athletics Regulation [19 DE Reg. 745 (2/1/16)]

The SCPD and GACEC commented on the original proposed version of this regulation in August, 2015. The Department of Education issued a revised proposed regulation in December which attempted to address some of the Councils’ concerns. The Councils submitted comments on the new draft. A copy of the December 21, 2015 SCPD letter is attached for facilitated reference. The Department has now adopted a final regulation with one amendment prompted by the latest commentary.

First, the Councils observed that §2.1.1 was difficult to interpret. The DOE responded that “the language is clear” and effected no amendment.

Second, the Councils observed that the DOE had deferred establishment of an age waiver protocol and offered technical assistance in prospectively developing the protocol. The DIAA (p. 746) observed that this, and other issues raised in the commentary “are all very important issues which the DIAA Board of Directors wishes to carefully consider as part of the ongoing comprehensive review of DIAA regulations.”

Third, the Councils recommended adoption of a more accurate definition of “student with a disability”. The DOE adopted the Councils’ suggested language verbatim.

Fourth, the Councils objected to a requirement that a student with a disability placed in a special school or program be limited to participating in sports at that school or program. Contrary guidance on promoting integrated sports participation was provided. No change was made.

Fifth, the Councils objected to authorizing accommodations to a student with a disability with an IEP but not a student with a disability with a §504 plan. No change was made.

Sixth, the Councils objected to a “hardship” waiver protocol in which decision-making is conducted by the DOE rather than the IEP or §504 team. No change was made.

Seventh, Sixth, the Councils observed that a revision to the August version of the regulation involving transportation was an improvement. The DOE did not address the comment.

Eighth, the Councils identified many grammatical errors. The DOE essentially acknowledged the errors but declined to correct them based on the rationale that “the usage does not impact the content of the regulation”. At pp. 745-746. This is a disappointing response which underscores a lack of professionalism by the agency charged with adopting high educational standards for the State.

Finally, the State Board of Education “expressed concern that the regulation permits members (sic “member”) schools to determine a policy about transgendered students participating in interscholastic sports, in accordance with the minimum standards designated by DIAA, rather than the Department of Education setting the policy.” The Department opted to accede to the local districts who desired “the decision regarding the participation of transgendered students in interscholastic sports (to) remain at the local level. At p. 746.

The GACEC may wish to informally consult the SBE since the proposed version of the regulation recites that it requires “the consent of the State Board of Education”. It’s unclear if the SBE “consented” to the “transgender” provisions in the regulation.

9. DOE Proposed Parent Councils Regulation [19 DE Reg. 714 (2/1/16)]

Senate Concurrent Resolution 63 of the 147<sup>th</sup> General Assembly established an IEP Improvement Task Force which issued a final report in January, 2015. The report is available at [http://legis.delaware.gov/LIS/TaskForces.nsf/113411bdd5de74d385257b3b005e343c/7c3d3ee3db3b9f7b85257d23004ffacd/\\$FILE/IEP%20Task%20Force%20Report%20FINAL.pdf](http://legis.delaware.gov/LIS/TaskForces.nsf/113411bdd5de74d385257b3b005e343c/7c3d3ee3db3b9f7b85257d23004ffacd/$FILE/IEP%20Task%20Force%20Report%20FINAL.pdf). The report (p. 5) recommended that public schools encourage establishment of parent councils:

2. Parent Councils. The task force saw great value in schools facilitating communication between parents of students with special needs new to the IEP process and parents who have more experience with the process. Therefore, the task force recommends that the state require school districts and charter schools to facilitate the creation of parent councils for the parents of students with disabilities. These parent councils would have two purposes: first, to advocate generally for children with disabilities within their school districts, and second, to provide person-to-person support for individual parents and children attempting to navigate the IEP process.

This recommendation was incorporated into S.B. No. 33 which was enacted in June, 2015. The legislation contained the following provision:

Each school district and charter school enrolling any child with disabilities shall, on an annual basis, contact parents of each such child to attempt to facilitate the creation and maintenance of a parent council for the parents of students with disabilities. Parent councils will advocate generally for students with disabilities and provide person-to-person support for individual parents and children. The charter schools and school districts shall collaborate and coordinate with existing parent groups and other information and support groups to facilitate creation, maintenance, and effectiveness of the Parent Councils.

The Department of Education is now proposing to adopt an implementing regulation. The preamble recites that “the Department of Education has met and received preliminary input from the Governor’s Advisory Council for Exceptional Citizens regarding the amendments to this regulation.” I was unable to obtain a copy of any written input from the GACEC prior to completion of this memo.

I have the following observations.

First, in §25.1, I recommend substituting “child with a disability” for “child with disabilities” to conform to 14 DE Admin Code 922.3.0.

Second, in §25.1, I recommend substituting “in September of each year” for “on an annual basis”. This change is still consistent with S.B. No. 33 but is preferable for multiple reasons. September is the beginning of the school year when parents are acclimating to new schools. Having a uniform time frame should also facilitate compliance and DOE monitoring.

Third, the DOE regulation “parrots” the statutory language with no embellishment. It would be preferable to include some “prompts” to encourage districts and charter schools to consider various forms of support. They could be encouraged to consider the following: 1) provision of meeting space; 2) posting of agendas and minutes on school/district websites; 3) appointing at least one staff liaison (preferably from special education staff); and 4) offering or facilitating access to training (e.g. from Parent Information Center). This could be achieved by adding the following sentence to §25.3:

Facilitation may include provision of meeting space, appointment of at least one special education staff liaison, posting agendas and minutes on district and charter school websites, and offering or promoting access to training on special education and IEPs.

The Councils may wish to share the above observations with policymakers.

#### 10. DOE Prop. Meeting Minutes & Prior Notice Regulation [19 DE Reg. 721 (21/16)]

The Department of Education proposes to revise its procedural safeguards standards in two contexts: 1) meeting minutes; and 2) prior notice.

I have the following observations.

##### Meeting Minutes

First, the first sentence of existing §1.5 is revised as follows:

A parent, a parent’s authorized representative, or any public agency conducting a meeting, review or conference may take minutes of the meeting, review or conference concerning a child with a disability’s free and appropriate public education.

The underlined limitation is problematic since the regulation is “underinclusive”. State law contemplates maintenance and access to records not only related to “a free, appropriate, public education” but also “the identification, evaluation and educational program and placement” of a child. See 14 Del.C. §3130(a). For example, if a school conducts a child study team meeting to review results of an initial evaluation of a student, the parents or school may wish to take minutes of the meeting. Since the child is not yet identified, the meeting does not relate to a “FAPE” but does relate to an evaluation to determine eligibility.

The underlined limitation is also inconsistent with 14 DE Admin Code 926.1.3 which is does not limit the subject of meetings to a “FAPE”:

1.3. Parent participation in meetings. The parents of a child with a disability shall be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

The DOE should either: 1) delete the underlined language; or 2) conform the regulation to encompass both prongs of 14 Del.C. §3130(a). Since §1.3 already describes the subjects of a meeting, it would be preferable to simply delete the underlined language in §1.5.

Second, the DOE proposes to add the following sentence to §1.5:

If initiated by the public agency parents must be offered a digital copy.

This sentence presents two (2) concerns.

A. Since there should be no cost in providing a digital copy, it would be preferable to revise the reference to “...offered a free digital copy”.

B. State law (14 Del.C. §3130) and §1.5 authorize minutes to be taken by stenographer. If a school opts to have a stenographer take minutes, or the school prepares a “paper” copy of the minutes based on an electronic record, the parent could opt to solicit a “paper” copy. The implication of the underlined sentence is that parents would be exclusively limited to a digital copy.

The DOE could consider the following revision:

If initiated by the public agency, parents must be offered a [free] digital copy [or, subject to §1.2, a copy in written format].

“Written format” envisions a “paper” copy. See Title 1 Del.C. §302(23).

#### Prior Notice

First, the revision to §3.2.8 is grammatically infirm and narrower than the applicable statute. Consistent with 14 Del.C. §3134(1), consider the following: “a full, written explanation of all of the procedural safeguards available to parents under state or federal law and regulations.” It is not sufficient to recite that a summary is “available” when the State statute requires the notice to include the explanation of procedural safeguards.



Second, §3.2.6 is “underinclusive” since it is limited to IEP teams. See 14 Del.C. §3134(2). The term “agency” should be substituted for “IEP team”.

Third, the “authority” section at the end of §3.0 should be amended to include 14 Del.C. §§3130, 3133, and 3134.

The Councils may wish to share the above observations with the DOE, SBE, and policymakers.

#### 11. DOE Proposed IEP Regulation [19 DE Reg. 718 (2/1/16)]

The Department of Education proposes to amend standards related to IEPs. Some of the changes are prompted by enactment of S.B. No. 33 in 2015.

I have the following observations.

First, the grammar in §20.2.2.2 should be corrected since there is a plural pronoun (their) with a singular antecedent (child). This is easily corrected by substituting “the child’s” for “their”. Compare §22.3.1.

Second, there is some “tension” between §22.2.3 and 14 Del.C. §3134(1). The statute requires the prior notice to include “a full explanation of procedural safeguards” while the regulation defers the provision of the “full explanation” to the meeting AND only “offers” a copy of the “full explanation”. The regulation should be amended to conform to the statute, i.e., the written “full explanation” should be provided in advance of the IEP meeting with the prior notice.

Third, to improve grammar, consider substituting “through the following” for “by”.

Otherwise, the regulation generally tracks the content of S.B. No. 33. The Councils may wish to share the above observations with the DOE, SBE and policymakers.

#### 12. DOE Proposed Charter School Staff Training Regulation [19 DE Reg. 716 (2/1/16)]

The Department of Education proposes to amend its special education standards to add a charter school training requirement established by S.B. 33 (codified at 14 Del.C. §3125A).

I identified only one (1) concern with the new §9.0. The legislation (signed 6/18/15) required charter school compliance by January 1, 2016 while the regulation is ostensibly effective on September 1, 2016. Since the regulation is being proposed in February, it cannot become final until Spring. Hopefully, the DOE has alerted charter schools to the need to attend training (scheduled per §9.4.2) rather than deferring such an alert until adoption of the final regulation. The statute was effective on January 1 and does not require adoption of an implementing regulation to be binding on charter schools.

The Councils may wish to share the above observations with the DOE, SBE, and policymakers.

13. DOE Proposed New Teacher Hiring Data Reporting Reg. [19 DE Reg. 712 (2/11/6)]

The Department of Education proposes to adopt some discrete revisions to its standards covering district reporting of information on hiring of teachers. The original version of the proposed regulation was published in November. The new version is based on comments received on the November version. At 713.

The underlying statute, 14 Del.C. §1725, is rather general in its terms. It contemplates uniform reporting by districts of hiring information and encourages early hiring based on the estimated unit count.

The proposed regulation is more prescriptive and requires districts to report hiring and vacancy information based on a DOE form. The DOE contemplates compilation of data into an annual report issued by March 31.

I have only two (2) observations.

First, the title of the regulation refers to “775 New Teacher Hiring Date Reporting”. Since the title of the report has changed to “an Educator Hiring Practices and Needs Report” (§3.0) from “New Teacher Hiring Date Report”, the DOE could consider a revised title. Perhaps “Data” could be substituted for “Date” based on §1.0.

Second, if the DOE form includes positions apart from teachers, the title and §1.0 could be revised to refer to “educator” hiring data. This would conform to the reference in §3.0 to “Educator Hiring Practices and Needs Report”.

The Councils may wish to share the above observations with the DOE, SBE, and policymakers.

14. H.B. No. 234 (School-based Health Centers)

This legislation was introduced on January 14, 2016. As of February 1, it awaited action by the House Education Committee.

As background, school-based health centers currently operate in connection with twenty-nine (29) Delaware public high schools. See attached table compiled by Division of Public Health (DPH). Consistent with DPH regulations (16 DE Reg. 4102), the centers offer the following services:

3.1 School-based health centers (SBHC) are designed to reduce risk behaviors and improve health among children and adolescents through health promotion and education, early intervention, and preventive care. These service include physical examinations, treatment of minor acute medical conditions, counseling and community referrals. ...

Other sections (4.0) note that the centers offer immunizations, healthy eating and weight management, and individual and group mental health counseling.

In 2012, legislation (H.B. No. 303) was enacted to require State-regulated health insurers to reimburse centers for services rendered as if those services were provided by a network provider. This has facilitated funding for center operations from the private sector. The preamble to H.B. No. 303 observed that students accessing centers were less likely to be hospitalized for acute illnesses and more likely to seek assistance for conditions such as depression and obesity.

H.B. No. 234 has two (2) purposes: 1) requiring all public secondary schools (excluding charters) to have a center; and 2) authorizing State funding for “start-up” costs for the three (3) high schools currently lacking a center. Start-up funding for at least one of the three high schools (Conrad; St. Georges; Appoquinimink) is contemplated per fiscal year. Consistent with the attached fiscal note, this would result in an aggregate cost of approximately \$600,000 over three years.

The legislation would enhance student access to diagnostic screening, preventative and remedial health care, and health education. The Councils may wish to consider endorsement.

#### 15. H.B. No. 240 (After-school Programs)

This legislation was introduced on January 14, 2016. As of February 1, it awaited action by the House Appropriations Committee.

Background is provided by the attached January 7, 2016 News Journal article. Consistent with the attached fiscal note, there are 147 Title I (low-income) schools in Delaware with an aggregate enrollment of 78,950 students. The bill would authorize grants to these schools to operate after-school programs. The programs would have to operate 4-5 days/week during the school year, have at least 1 certified teacher for every 10 participating students, and offer at least 1 hour of homework assistance and 1 hour of enrichment daily. Provision of an after-school meal is also encouraged (lines 8 and 49). The list of authorized services (lines 11-16) is quite varied and includes tutoring, counseling, physical fitness, financial literacy, and apprenticeship programs. An assessment of the benefits of the program is required on an annual basis (lines 65-76). An advisory council is established (lines 21-42).

The program is expected to enhance student achievement, attendance, wellness, and nutrition.

I have the following observations.

First, there is an extraneous word in line 23, i.e. the “of” between “designee” and “appointed” should be deleted.

Second, the after-school program would be “available to students in kindergarten through tenth grade” (line 53). It’s unclear why 11<sup>th</sup> and 12<sup>th</sup> graders would be categorically ineligible to participate. For example, the bill contemplates participation in “internship and apprenticeship” initiatives which are generally correlated with older students. Likewise, the attached article touts the goal of crime diversion - “kids who are in school in the afternoon aren’t on the streets where they might run afoul of the law”. Academic classes, including math and science, are more challenging in 11<sup>th</sup> and 12 grade making “tutorial services” (lines 9-10) particularly valuable. Finally, “financial literacy instruction” (line 13) would be of enhanced value to 11<sup>th</sup> and 12<sup>th</sup> graders close to completing school and entering adulthood. For these reasons, the sponsors may wish to reconsider the categorical exclusion of 11<sup>th</sup> and 12<sup>th</sup> graders from program eligibility.

Third, the Statewide Afterschool Initiative Learning Council omits representation of special education interests. Council membership could be enhanced to include a representative of the Governor’s Advisory Council for Exceptional Citizens (14 Del.C. §3111).

The Councils may wish to share the above observations with policymakers, including the Attorney General.

#### 16. H.B. No. 229 (School Choice Priority)

This legislation was introduced on January 7, 2016. As of February 1, it awaited action by the House Education Committee.

The bill would amend the statute defining priority categories for school choice. The current law (lines 10-26) creates the following preferences, in descending order of priority:

1. returning students;
2. students residing in feeder pattern;
3. students with siblings in the school;
4. (discretionary) students living in district, children of school employees, or students who designated as first, second, or third choice; and
5. random lottery.

H.B. No. 229 would create a new preference category between “2” and “3” above:

(3) Third, to students who have a permanent medical condition or disability that is accompanied with an ongoing risk of a medical emergency who are seeking enrollment in the school based upon the ability of the student’s parents, guardian, relatives or designated caregivers to respond to an emergency.

The synopsis offers the following rationale:

This Bill adds a new priority consideration for students who have a medical condition or disability that carries an ongoing risk of a sudden medical emergency. If the parent, relative, guardian or caregiver can demonstrate that they would be able to respond quicker to an emergency at the selected school, the student will receive a priority consideration.

I have the following observations.

The notion of seeking parental appearance to treat a child with a medical emergency is not intuitive. Each public school is required to have a school nurse. See 14 Del.C. §1310(b) and pending H.B. No. 12. Moreover, 29 out of 32 high schools have a school-based health center. See attached Division of Public Health table and fiscal note to H.B. No. 234. By DPH regulation, such centers provide “treatment of minor acute medical conditions”. See 16 DE Admin Code 4102.3.1. Schools are authorized to administer emergency medications for allergic reactions and anaphylaxis. See 14 DE Admin Code 817.7.0. In the event of a “sudden medical emergency”, it would ostensibly be more prudent to solicit on-site nursing or medical assistance and/or call 911. Calling a parent in lieu of immediately seeking emergency medical assistance may not be the preferred approach. The sponsors may wish to consult the Division of Public Health for input and guidance.

Subject to guidance from DPH, the Councils may wish to otherwise support the concept of authorizing the new preference since it may, in conjunction with other emergency health care planning, enhance the health interests of at-risk students.

The Councils may wish to share the above observations with policymakers, including the Division of Public Health.

#### 17. H.B. No. 250 (Choice & Charter School Enrollment: Bullying)

This legislation was introduced on January 20, 2016. As of February 1, it awaited action by the House Education Committee.

#### Current Law

As background, schools must accept a “late” choice application based on “good cause” which includes “a reported and recorded instance of ‘bullying’”. See 14 Del.C. §407( c) and line 8.

Likewise, a student accepted into a “choice” school is expected to maintain enrollment in the school for at least 2 years unless an exception applies. One of the exceptions (lines 14-15) is a parent option to terminate enrollment “due to a reported and recorded instance of ‘bullying’”.

Finally, a student accepted at a charter school is expected to maintain enrollment for at least 1 year unless there is “good cause”. “Good cause” is defined as including “a reported and recorded instance of ‘bullying’” (lines 24-25).

#### Effect of H.B. No. 250

H.B. No. 250 would amend both the choice and charter school laws so the exceptions would apply only if the bullying is “substantiated” (lines 8, 15, and 25).

The synopsis implies that some parents may be exploiting the exception. This is possible since the applicable law requires schools to “record” all bullying allegations and report them to the Department of Education. See 14 Del.C. §4112D. Thus, the mere report of bullying, by itself, is sufficient to qualify for special treatment under the above choice and charter school enrollment standards. Limiting the exceptions to “substantiated” bullying may therefore have some merit.

However, there are countervailing considerations.

First, bullying is ostensibly “underreported” in Delaware. National statistics indicate that “about one in four kids in the U.S. are bullied on a regular basis.” See attached NAAAS article. The latest statistics are generally corroborative, i.e., “in 2013, about 22 percent of students reported being bullied during the school year.” See attached National Center for Education Statistics article (May 1, 2015). In contrast, there were 1,706 alleged bullying incidents reported in Delaware in the 2014-15 school year. See attached DOE report. If 22% of Delaware’s 131,000+ public school students were to report bullying (based on the national average), there would be 28,820 reports.

Second, some districts “substantiate” bullying reports at very low rates. For example, the attached DOE report reveals that Delmar substantiated only 5% (3/58) of bullying reports; Appoquinimink substantiated 14% (32/237) of bullying reports; and Lake Forest substantiated 18% (6/34) of bullying reports. Other districts substantiated 100% of bullying reports (Brandywine; 37/37); 83% of bullying reports (NCC Vo-Tech; 10/12); and 78% of bullying reports (Colonial; 63/81).

Given these statistics, the sponsors could consider expanding the exception by adopting either of the following amendments:

“a reported, recorded, and substantiated instance of ‘bullying against their child as defined in §4112D of this title or clear and convincing evidence of such bullying”

OR

“a reported, recorded, and substantiated instance of ‘bullying against their child as defined in §4112D of this title or written confirmation of such bullying by a mental health professional”.

Either amendment would still deter exploiting the exception based on a mere report. However, either revision would offer a parent an option of proffering clear and convincing evidence or therapist confirmation in districts with very low substantiation rates.

The Councils may wish to share the above observations with policymakers. A courtesy copy of comments should be shared with the DPBHS and Victim Rights Task Force since they may be predisposed to endorse the second optional revision.

18. H.B. No. 243 (Accountability: 95% Student Participation Standard)

This legislation was introduced on January 19, 2016. As of February 1, it awaited action by the House Education Committee.

As background, a new federal education law was enacted in December, 2015, the “Every Student Succeeds Act (ESSA)”. For a summary of key components, see attached U.S. News & World Report article, “Proposed New Education Law Shrinks Federal Footprint” (December 3, 2015). As the article notes, “the law preserves the requirement that school districts test no less than 95 percent of its students, but it gives states leeway in deciding how to handle school districts where large number of students opt out of annual testing.”

That “leeway” is manifestly limited. The U.S. Department of Education issued the attached December 22, 2015 guidance which outlines possible steps states can take if a school or district fails to meet the 95% standard, including “lowering an LEA’s or school’s rating in the State accountability system”. At p. 2.

Recurrent failure to meet the 95% standard will result in financial repercussions:

If a State with participation rates below 95% in the 2014-2015 school year fails to assess at least 95% of its students on the statewide assessment in the 2015-2016 school year, ED will take one or more of the following actions: (1) withhold Title I, Part A State Administrative funds; (2) place the State’s Title I, Part A grant on high-risk status and direct the State to use a portion of its Title I State administrative funds to address low participation rates; or (3) withhold or redirect Title VI State assessment funds.

At p. 2. [emphasis supplied]

An informative discussion of the “95%” standard is contained in the attached Education Week article, “Test-Participation Mandate Puts States on Spot” (January 27, 2016). The article notes that the new federal law (ESSA) requires states to “provide a clear and understandable explanation of how the State will factor the requirement...into the statewide accountability system.” At p. 1. Experts vary on how much leeway states have in addressing non-compliance in their accountability systems.

H.B. No. 243 would create a statute barring the Delaware Department of Education from using the 95% participation rate “as a factor in determining ratings for accountability”:

(k) The Department shall not use the percentage of students in any district or school that participated in state assessment as a factor in determining ratings for accountability or progress or as a basis for qualification for any safe harbor provision.

Since the federal law requires states to “factor the (95% participation rate) into the statewide accountability system”, passing a contrary State law holding that the 95% participation rate cannot be a factor in accountability ratings is ill-conceived. Enactment may jeopardize federal funding and place the State DOE in an untenable position of potentially violating either federal or State law. Moreover, recent efforts to reduce test-taking by Delaware students should result in less antipathy for the remaining assessments. See attached articles. At a minimum, it would be prudent to await further guidance from the U.S. Department of Education before considering the bill.

#### 19. H.B. No. 261 (Alternative Schools)

This legislation was introduced on January 28, 2016. As of February 1, it awaited action by the House Education Committee.

As background, current law disallows a student expelled from a public school from enrolling in another public school until the term of the expulsion has expired. See lines 4-8. A public school is expected to contact the prior public school to determine if an applicant is under a current expulsion order (lines 9-14).

H.B. No. 261 suggests that some districts do not respond to charter school requests for information about an applicant’s expulsion status. As a result, the synopsis says the student is enrolled and the charter school is barred from disenrolling the student if it later discovers the student is under an expulsion order. This is characterized as a “loophole” from which districts benefit financially.

H.B. No. 261 would authorize “disenrollment” of expelled and “students subject to placement in an alternative school without expulsion” and impose financial responsibility on the non-responding school (lines 4-5 and 14-18).



I have the following observations.

First, I am aware of no statutory or regulatory bar on “disenrollment” of a student based on the post-enrollment discovery that the student is under an expulsion order. Since the existing statute bars enrollment of an expelled student, it would be logical for a “without-fault” school to disenroll a student.

Second, if an “enrolling” school is not receiving a timely response from the former school, it could ostensibly obtain expulsion status from the State Department of Education. See attached excerpt from DOE Powerpoint Presentation published at [http://www.doe.k12.de.us/cms/lib09/DE01922744/Centricity/Domain/156/Summer\\_2013\\_RegReview\\_Updates.pdf](http://www.doe.k12.de.us/cms/lib09/DE01922744/Centricity/Domain/156/Summer_2013_RegReview_Updates.pdf). Expelled students are reported to the DOE.

Third, while omitted from the synopsis, the bill greatly expands the scope of students who cannot enroll in other schools. While the current law bars enrollment of expelled students, H.B. No. 261 expands the bar to any student “subject to placement in an alternative school for discipline without expulsion” (line 5) and characterizes such students as under a “placement order” (lines 12, 13, and 21). State law (14 Del.C. §1604) authorizes, but does not require, students who “have serious violations of the local school district conduct code” to be served in an alternative school. There may be many circumstances in which the parent of a student manifesting behavioral problems may wish to try a different school, including availability of a better Positive Behavioral Supports program, availability of a school health center with counseling, availability of an after-school program, or separation of student from peers who are a “bad influence”. Indeed, there are charter schools which ostensibly specialize in addressing students with behavioral profiles. This bill would categorically prevent unexpelled students with serious violations of a discipline code from enrolling in charter schools specializing in troubled or challenged youth. See, e.g., Positive Outcomes, <http://www.positiveoutcomescs.org/> and Prestige Academy, <http://www.prestigeacademycs.org/> Parents of troubled or challenged children would benefit from options to meet their children’s unique needs. Alternative schools should not be made the exclusive placement for students with behavioral difficulties.

The Councils may wish to share the above observations with policymakers.

#### Attachments

E:leg/216bils  
F:pub/bjh/leg/2016/216bils



STATE OF DELAWARE  
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MEMORANDUM

DATE: November 24, 2015

TO: Glyne Williams  
Planning, Policy and Quality Unit

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

RE: 19 DE Reg. 380 (DMMA Proposed EPSDT Inpatient Psych. Hospital Services 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 amend the Medicaid State Plan in the context of coverage and reimbursement methodology for psychiatric residential treatment facilities. The proposed regulation was published as 19 DE Reg. 380 in the November 1, 2015 issue of the Register of Regulations. SCPD has the following observations.

As background, the Division notes that federal EPSDT standards require State Medicaid programs to offer a comprehensive array of services for individuals under age 21. In the mental health and substance abuse contexts, such services include "rehabilitative services" and "inpatient psychiatric services for individuals under age 21". On February 23, 2011, CMS sent DMMA a letter sharing concerns with the Division's monthly bundled rates for rehabilitative child mental health and substance abuse services under the EPSDT program. Moreover, CMS issued the attached bulletin in 2012 which increased flexibility in covering costs of services to persons under age 21 in inpatient psychiatric facilities.

DMMA is now implementing the CMS guidance by adopting a Medicaid State Plan Amendment based on a CMS template. The amendment results in no increase in costs to the General Fund.

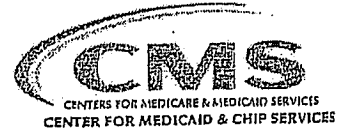
SCPD endorses the proposed regulation since the changes are prompted by the need to conform to CMS guidance, increases flexibility, and results in no cost in GF to the State.

Thank you for your consideration and please contact SCPD if you have any questions or comments

regarding our observations or position on the proposed regulation.

cc: Mr. Stephen Groff  
Mr. Brian Hartman, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council  
19reg380 dmma-EPSDT inpatient psych. hospital services 11-25-15

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



Center for Medicaid and CHIP Services  
*CMCS Informational Bulletin*

**DATE:** November 28, 2012  
**FROM:** Cindy Mann, Director  
Center for Medicaid and CHIP Services (CMCS)  
**SUBJECT:** Inpatient Psychiatric Services for Individuals under age 21

This Informational Bulletin clarifies that states may structure coverage and payment for the benefit category of inpatient psychiatric hospital or facility services for individuals under age 21 (hereinafter referred to as inpatient psychiatric facility benefit) to ensure that children receiving this benefit obtain all services necessary to meet their medical, psychological, social, behavioral and developmental needs, as identified in a plan of care. This clarification is intended to describe flexibility currently available to states to ensure the provision of medically necessary Medicaid services to children in inpatient psychiatric facilities.

**Background**

Under section 1905(a) of the Social Security Act (the Act), there is a general prohibition on Medicaid payment for any services provided to any individual who is under age 65 and who is residing in an Institution for Mental Diseases (IMD) unless the payment is for inpatient psychiatric hospital services for individuals under age 21 pursuant to section 1905(a)(16) of the Act, as defined in section 1905(h) of the Act. Implementing regulations at 42 Code of Federal Regulation 440.160 and 441 Subpart D define these inpatient psychiatric hospital services as services furnished by a psychiatric hospital, a general hospital with a psychiatric program that meets the applicable conditions of participation, or an accredited psychiatric facility that meets certain requirements. These requirements include that the services must be provided under the direction of a physician, pursuant to a certification of need and plan of care developed by an interdisciplinary team of professionals, and must involve "active treatment" designed to achieve the child's discharge from inpatient status at the earliest possible time.

The Centers for Medicare and Medicaid Services (CMS) has historically prohibited states from claiming expenditures under the inpatient psychiatric facility benefit unless the expenditures were made to qualified providers of such services. This had the effect of denying coverage for other medically necessary Medicaid items and services, such as prescription drugs or practitioner services that were not included by the state as part of the rate paid to the facility for care. These items and services would be available under other benefit categories for individuals who did not reside in an IMD, such as the benefit for Early and Periodic Screening, Diagnostic and Treatment (EPSDT), and states had separate payment methodologies for such items and services.

Recently, several Departmental Appeals Board decisions have clarified that other covered services can be furnished as part of the inpatient psychiatric facility benefit even when payment was made to an individual practitioner or supplier other than the inpatient psychiatric facility itself, when such services are furnished to a child residing in such a facility, authorized under the child's plan of care, and provided under an arrangement with the facility. In essence, the Departmental Appeals Board indicated that payment for such services does not need to be bundled into a single per diem rate for

the IMD facility, but could be authorized under the approved State plan to be paid directly to the treating practitioner. In light of these decisions, CMS is currently applying this flexibility in the approval of State Plan amendments, and seeks to clarify the ability that states have in covering and paying for a more robust benefit for children receiving the inpatient psychiatric facility benefit.

#### **Services Provided under Arrangement**

The inpatient psychiatric facility benefit is defined in part to include a needs assessment and the development of a plan of care specific to meet each child's medical, psychological, social, behavioral and developmental needs. In some cases a psychiatric facility may wish to obtain services reflected in the plan of care under arrangement with qualified non-facility providers. Such services would be components of the inpatient psychiatric facility benefit when included in the child's inpatient psychiatric plan of care and furnished by a qualified provider that has entered into a contract with the inpatient psychiatric facility to furnish the services to its inpatients. To comply with the requirement that services be "provided by" a qualified psychiatric facility, the psychiatric facility must arrange for and oversee the provision of all services, must maintain all medical records of care furnished to the individual, and must ensure that all services are furnished under the direction of a physician. Services being furnished under arrangement do not need to be provided at the psychiatric facility itself if these conditions are met.

#### **Payment for Services Provided under Arrangement**

States have a number of options in electing a methodology in their Medicaid State plans to pay for the inpatient psychiatric facility benefit. Traditionally, many states make a direct payment to the facility through either an all-inclusive per diem rate or a base per diem rate with add-on payments. Under this direct payment method, if the facility obtains services under arrangement with outside providers, the facility would be responsible for paying the providers of the arranged services.

An option that may be more flexible, and has been approved in State Plan amendments, is to directly reimburse individual practitioners or suppliers of arranged services using payment methodologies that are applicable when the services are otherwise available under the State plan. States electing this option would pay the same fees to such practitioners or suppliers as would otherwise be applicable when the services are furnished to Medicaid beneficiaries outside the inpatient psychiatric facility benefit. This option would allow states greater ability to capture potential efficiencies, and monitor the quality of care, through the use of existing delivery and billing processes. States electing to make separate payments under this option will need to assure there is no duplication of payment between the inpatient facility rate and the items paid for separately using existing State plan fees. It is important to note that while the state may directly reimburse individual providers, CMS will require expenditures for all services provided to individuals receiving services through the inpatient psychiatric facility benefit to be reported and claimed on the Mental Health Facility Services line item of the CMS 64 form, and not under the line item applicable to the furnished Medicaid service.

We are ready to work with states to provide assistance in implementing this benefit, and we look forward to our continuing collaboration. If you have questions, please contact Ms. Barbara Edwards, Director, Disabled and Elderly Health Programs Group, at 410-786-7089, or at [Barbara.Edwards@cms.hhs.gov](mailto:Barbara.Edwards@cms.hhs.gov).



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MEMORANDUM

DATE: November 24, 2015

TO: Mr. Glyne Williams  
Planning, Policy and Quality Unit

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

RE: 19 DE Reg. 369 (DMMA Proposed Medicaid Outpatient Drug Reimbursement 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 some discrete changes to its reimbursement standards for prescription drugs. The proposed regulation was published as 19 DE Reg. 369 in the November 1, 2015 issue of the Register of Regulations. SCPD has the following observations.

As background, federal law authorizes states to negotiate rebate agreements with drug manufacturers. Federal law (340B program) also requires drug manufacturers to enter into agreements with HRSA to provide discounts on drugs to covered entities. The interplay of these laws is complicated. However, State Medicaid agencies must exclude from State rebate requests drugs that have already been discounted under the 340B program:

State Medicaid agencies should exclude claims for 340B purchased drugs (340B claims) from Medicaid rebate requests to prevent subjecting drug manufacturers to duplicate discounts (i.e. selling 340B-purchased drugs to covered entities at the discounted ceiling prices and providing Medicaid rebates on the same drugs).

In practice, drug manufacturers are contesting State rebate requests based on their perception that the drugs have already been discounted under the 340B program. DMMA recites as follows:

Drug manufacturers use the potential for a 340B discounted price to dispute rebate payments.

DMMA has determined that its providers do not generally use 340B discounted drugs for Medicaid patients:

To date, with few exceptions, every contracted entity listed on the 340B participating providers' file has responded in writing that they do not use these products for Delaware Medicaid patients.

To obviate drug manufacturer argument, DMMA is amending the State Plan to categorically bar providers from using 340B discounted drugs for Medicaid patients:

Entities that purchase Section 340B of the Public Health Services products are prohibited from using their stock for DMAP patients either directly or through coverage of the Managed Care Organization.

SCPD endorses the proposed regulation since the proposed regulation should remove an impediment to drug manufacturer rebate payments to the State.

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

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

19reg369 dmma-medicare outpatient drug reimbursement 11-25-15



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MEMORANDUM

DATE: November 24, 2015

TO: Glyne Williams  
Planning, Policy and Quality Unit

FROM: Daniese McMullin-Powell, *DM-P/22* Chairperson  
State Council for Persons with Disabilities

RE: 19 DE Reg. 377 (DMMA Proposed EPSDT Substance Use Disorder 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 amend the Medicaid State Plan in the context of coverage and reimbursement methodology for Medicaid rehabilitative substance use disorder services. The proposed regulation was published as 19 DE Reg. 377 in the November 1, 2015 issue of the Register of Regulations. SCPD has the following observations.

As background, the Division notes that federal EPSDT standards require State Medicaid programs to offer a comprehensive array of services for individuals under age 21. On February 23, 2011, CMS sent DMMA a letter sharing concerns with the Division's monthly bundled rates for rehabilitative child mental health and substance abuse services under the EPSDT program. In response, DMMA proposes to add clarifying language to the Medicaid State Plan in through the following:

- 1) defining the reimbursable unit of service;
- 2) describing payment limitations;
- 3) providing a reference to the provider qualifications; and
- 4) publishing the location of State fee schedule rates.

The changes are highly prescriptive and detailed. The scope of covered practitioners is bewildering. The regulation includes standards covering the following, among others:

Licensed Clinical Social Workers (LCSWs);  
Licensed Professional Counselors of Mental Health (LPCMHS);



Licensed Marriage and Family Therapists (LMFTs);  
Licenced Chemical Dependency Professionals (LCDPs);  
Certified Recovery Coaches;  
Credentialed Behavioral Health Technicians;  
Certified Alcohol and Drugs Counselors (CADCs);  
Internationally Certified Alcohol and Drug Counselors (ICADCs); and  
Certified Certified Co-occurring Disorders Professionals (CCDPs).

In general, reimbursement rates will be the same for public and private providers and not be less than the maximum allowable rate under the Medicare program.

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

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

19reg377 dmma-EPSDT substance use disorder 11-25-15

ATTACHMENTS  
OMITTED



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MEMORANDUM

DATE: November 24, 2015

TO: Glyne Williams  
Planning, Policy and Quality Unit

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

RE: 19 DE Reg. 373 (DMMA Proposed EPSDT Mental Health Services 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) proposal to amend the Medicaid State Plan in the context of coverage and reimbursement methodology for rehabilitative mental health services. The proposed regulation was published as 19 DE Reg. 373 in the November 1, 2015 issue of the Register of Regulations. As background, the Division notes that federal EPSDT standards require State Medicaid programs to offer a comprehensive array of services for individuals under age 21. In the mental health and substance abuse contexts, such services include "rehabilitative services". On February 23, 2011, CMS sent DMMA a letter sharing concerns with the Division's monthly bundled rates for rehabilitative child mental health and substance abuse services under the EPSDT program. In response, DMMA proposes to add clarifying language to the Medicaid State Plan through the following:

- 1) defining the reimbursable unit of service;
- 2) describing payment limitations;
- 3) providing a reference to the provider qualifications; and
- 4) publishing the location of State fee schedule rates.

For unlicensed providers, DMMA proposes to adopt the same rate setting methodology applied to the PROMISE program.

The Division anticipates "no increase in cost on the General Fund" but a significant federal budget impact, i.e., \$837,865.32 in FFY17. The logical inference is that the changes will result in drawing down considerable federal matching funds.

SCPD has the following observations.

First, in §4.b., Attachment 3.1-A, Page 2c Addendum, the text categorically requires school provided services to be included in an IEP/IFSP. SCPD has the following two concerns in this context:

A. Many students with disabilities have Section 504 plans, not an IEP or IFSP. If CMS standards do not categorically require Medicaid services in schools to be listed in an IEP/IFSP, it would be preferable to remove this limitation.

B. There may be students with acute, but short-term disabilities (e.g. PTSD from child abuse) who will not qualify for classification under the IDEA. However, the school may wish to provide mental health services given the acute nature of the disability. It would be preferable to allow Medicaid billing under these circumstances.

Second, in Attachment 3.1-A, Page 2d Addendum, DMMA proposes to strike an authorization to cover "any other medical or remedial care provided by licensed medical providers as authorized under 42 CFR 440.60...." No rationale is provided for striking the provision. SCPD recommends retention.

Third, several sections require a covered service to be "face to face". See e.g. Attachment 3.1-A, Page 2e.5 Addendum, Psychosocial Rehabilitation; Attachment 3.1-A, Page 2e.7 Addendum, Crisis Intervention; Attachment 3.1-A, Page 2e.9 Addendum, Crisis Intervention and Family Peer Support. There is some "tension" between these categorical limitations and the DMMA State Plan Amendment authorizing any Medicaid-funded services to be provided via telemedicine. See 18 DE Reg. 227 (September 1, 2014).

Fourth, there are multiple sections requiring a provider to be at least 21 years old. See e.g. Attachment 3.1-A, Page 2e.6 Addendum, Psychosocial Rehabilitation; Attachment 3.1-A, Page 2e.7 Addendum, Crisis Intervention; Attachment 3.1-A, Page 2e.10 Addendum, Family Peer Support; Attachment 3.1-A, Page 2e.16 Addendum, Direct Care Staff. This ostensibly violates the regulations to the federal Age Discrimination Act, 45 CFR Part 91, which limits age discrimination in federally funded programs. If an adult meets licensing, degree, or skill-set standards, age is not a sustainable basis to bar qualifying as a federally funded provider.

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

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

19reg373 dmma-EPST mental health services 11-25-15



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MEMORANDUM

DATE: December 21, 2015

TO: Mr. Stephen Perales  
Division of Prevention & Behavioral Health Services

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

RE: 19 DE Reg. 473 [DPBHS Proposed Juvenile Mental Health Screeners Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Services for Children, Youth and Their Families/Division of Prevention and Behavioral Health Services (DPBHS) proposed regulation which creates qualifications for Juvenile Mental Health Screeners. The proposed regulation was published as 19 DE Reg. 473 in the December 1, 2015 Register of Regulations. SCPD has the following observations.

The Division proposes to adopt a regulation controlling the following aspects of juvenile mental health screeners: 1) who can become a screener; 2) the application process; 3) training process; 4) performance oversight; 5) suspensions/revocation of screener status; 6) appeals; and 7) related issues, as authorized by H.B. 346 of the 147th Delaware General Assembly.

The Department is seeking to expand the pool of individuals who can currently screen and detain juveniles. Presently only psychiatrists, board certified emergency physicians, and physicians can screen and detain individuals under the age of 18. This creates problems for youths with mental health disabilities, as they often must add a stop to the emergency room, to be screened by a qualified screener, in order to be admitted to a psychiatric hospital.

With this regulation, the Department is expanding the scope of Juvenile Mental Health Screeners to include some discrete classes of professionals: certain licensed non-physician mental health professionals who have completed DPBHS's juvenile mental health screener training or DSAHM's mental health screener training who have a current employment or contract relationship with a DSCYF operated facility, DPBHS crisis services, or a Delaware licensed mental health hospital under contract with the Department.

DPBHS will monitor the use of detainment of youths via multiple provisions of the regulation:

- 6.2.2: DPBHS will collect and monitor all DPBHS Emergency Detainment Request Forms for detainments paid in whole or in part by DPBHS.
- 6.2.3: For youth who are not presently involved with DPBHS, the Division will collect aggregate data from the psychiatric facilities in a monthly report. DPBHS can request a redacted copy of the Emergency Detainment Request form for specific juveniles, or in aggregate.
- 6.3: Record keeping compliance monitoring will occur.
- 6.3.1: DPBHS aggregate data of juvenile mental health screener detentions will be available to the public.
- 6.3.2: Review for anomalies in detainment rates will occur.
- 7.1.5 and 7.1.6: Suspension of juvenile mental health screener status is authorized due to concerns with performance, including overuse of emergency detainments, or concerns identified in a complaint or appeal submitted to DPBHS's Quality Assurance Department.
- 7.1.6: DPBHS's psychiatrist will review any complaints or appeals having to do with a juvenile mental health screener.

SCPD has the following recommendation:

For enhanced clarity, the first sentence of 3.2.3.2. could be revised as follows: "Current employment or contract relationship required with one of the following: DSCYF operated facility, DSCYF crisis services, or a Delaware licensed mental health hospital under contract with DSCYF."

SCPD endorses the proposed regulation subject to inclusion of the aforementioned amendment since it should remove an impediment to quickly accessing emergency mental health services, and creates mechanisms for DPBHS to monitor the use of detainments of juveniles.

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.

cc: Ms. Susan Cychk, DPBHS  
Mr. Brian Hartman, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council



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December 21, 2015

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

RE: 19 DE Reg. 455 [DOE Proposed Instructional Program Requirements Regulation]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to adopt some discrete changes to its instructional program standards. The proposed regulation was published as 19 DE Reg. 455 in the December 1, 2015 issue of the Register of Regulations. SCPD endorses the proposed regulation and has the following observations.

First, § 5.4 allows any "licensed medical provider" to authorize an exemption from physical education. This would include an OT, PT, ST or licensed practical nurse. The analogous "homebound" regulation (14 DE Admin Code 930.2.2.) is somewhat more restrictive, referring to physicians, advanced practice nurses, physician assistants, and psychologists. SCPD has no preference in approach. On the one hand, authorizing a speech/language therapist to exempt a student from PE could be perceived as "overbroad". On the other hand, there are many mental health practitioners apart from psychologists who would have the background to authorize an exemption based on psycho-social reasons. See Title 24 Del.C. Ch. 39 (licensed clinical social worker); Title 24 Del.C. Ch. 30 (professional counselor of mental health; family therapist).

Second, the availability of career and technical education programs of study is expanded in §7.0. For example, §7.2 recites as follows:

7.2. All public school students in grades 9 through 12 in local school districts, and charter schools when consistent with the charter school's approved program, shall be provided with the opportunity to enroll in and complete a career and technical education program of study.

SCPD endorses this provision.

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

Sincerely,



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

cc: The Honorable Steven Godowsky, Ed.D, 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. Iona Kirshon, Esq., Department of Justice  
Mr. Brian Hartman, Esq.  
Developmental Disabilities Council  
Governor's Advisory Council for Exceptional Citizens

19reg455 doe-instructional program requirements 12-21-15

ATTACHEDMENTS  
OMITTED



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December 21, 2015

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

RE: 19 DE Reg. 461 [DOE Proposed Jr. High School & Middle School Interscholastic Athletics Regulation]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to adopt revisions to the Delaware Interscholastic Athletic Association (DIAA) regulation covering school-sponsored sport and athletic activities at the Jr. High School & Middle School level. SCPD commented on an earlier version of this proposed regulation in August. The DOE is now publishing a revised proposed regulation which attempts to address some of the concerns raised by the Council. The proposed regulation was published as 19 DE Reg. 461 in the December 1, 2015 issue of the Register of Regulations. SCPD has the following observations on the latest version of the proposed regulation.

First, the Council noted in their August commentary that an attempt to create an age waiver protocol for students with disabilities was well intentioned but problematic in several respects. The age waiver protocol (former proposed §2.1.3) has been stricken from the revised proposed regulation to allow further analysis. The DOE provided the following rationale:

There was also a comment regarding the age waiver protocol for students with disabilities being limited to an IEP and not expanded to cover 504 Plans, and the involvement of the IEP team. After considering public comment, the DIAA Board voted to remove this proposed change for further consideration and analysis at this time. Due to the fact that this is a substantive change, the regulation is being republished for comment at this time.

SCPD would be happy to offer technical assistance to the DOE in this context.

Second, in the August commentary the Council noted that use of a definition of "student with a disability" which covered only IDEA-identified students to the exclusion of §504-identified students was ill-conceived. The DOE has attempted to address this observation by adopting the



following revised definition of “student with a disability” in §1.1:

“Student with a Disability” means a “child with a disability” as that term is defined in 14 DE Admin Code 922 or Section 504 of the Rehabilitation Act of 1973.

There is one problem with the new definition, i.e., Section 504 of the Rehabilitation Act does not define “student with a disability”. Consider the following revision:

“Student with a Disability” means a “child with a disability” as defined in 14 DE Admin Code 922 or a qualified person with a disability under Section 504 of the Rehabilitation Act.

Compare 14 DE Admin Code 930.1.3.

Third, §2.3.2.2.1 remains unchanged from the August version of the regulation. Therefore, SCPD is reiterating of the following italicized comment:

*§2.3.2.2 provides as follows:*

*2.3.2.2. A student with a disability who is placed in a special school or program shall be eligible to participate in interscholastic athletics as follows:*

*2.3.2.2.1. If the special school or program sponsors the interscholastic sport in question, the student shall be eligible to participate only at the school or program.*

*This violates federal and State law since it categorically bars a student with a disability from any opportunity to participate in a non-segregated team. It rigidly limits a student with a disability to participate in a team exclusively comprised of students with disabilities of the special school (e.g. Delaware School for the Deaf). The DOE has an affirmative obligation to promote opportunities for participation in integrated extracurricular activities. See 14 DE Admin Code 923.17.0; 34 C.F.R. §§104.34(b) and 104.37(c)(2); and 34 C.F.R. §300.117.*

For example, 14 DE Admin Code 923.17.0 recites as follows:

In providing or arranging for the provision of nonacademic and extracurricular services and activities, ...each public agency shall ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child”.

The sponsors of the “unified sports” bill (H.B. 175) recently stressed that public policy and federal law support integrated athletics:

The General Assembly recognizes that unified sports offer benefits to all students and serve as a potential tool for schools that are required to meet Section 504 of the federal

Rehabilitation Act of 1973, 29 U.S.C. §794, regarding providing extracurricular activities, and 14 Del. Admin. C. §923-7.1 and 7.2.

Fourth, §2.6.1.1 remains unchanged from the August version of the regulation. Therefore, SCPD is reiterating the following variation of its earlier comment:

Section 2.6.1.1 authorizes an accommodation for a student with a disability with an IEP but not a student with a disability with a Section 504 Plan. The section should be modified to also cover students with a Section 504 Plan. Consistent with the attached 2013 federal guidance, footnote 8, Section 504-identified students are entitled to similar protections and accommodations. The DOE has provided assurances that it does not discriminate based on “disability”, not simply IDEA-identified disability. See 14 DE Admin Code 225.1.0.

Fifth, §2.7 remains substantively unchanged from the August version of the regulation. Therefore, SCPD is reiterating the following comment:

Sixth, §2.7 bars a student from participating in athletics after 4 consecutive semesters from the date of the student’s first entrance into the 7<sup>th</sup> grade. It also bars a student who has had more than 2 “opportunities” to participate in sports. The regulation authorizes the DIAA to issue a “hardship” waiver. The standards place the “burden of proof” on the student and the DIAA considers disability-related factors such as illness, injury, and accidents. For a student with a disability, the decision of whether a student should participate in extracurricular activities such as athletics is the province of the IEP or Section 504 team. Such decision-making does not involve a “burden of proof”. The team would decide if such participation is appropriate as part of a FAPE. In addition, SCPD understands that some covered schools have three (3) years of enrollment (e.g. grades 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup>) and the regulation does not appear to address this situation.

Sixth, based on the Council’s August “Special Olympics” commentary, the DOE added the following section:

6.6.2.6 Nothing in this regulation shall be construed as prohibiting schools from providing transportation or school supplied assistive technology and equipment to or for non-school activities for students with disabilities.

This represents an improvement from the August version.

Seventh, the new regulation is rife with a common grammatical error which did not appear in the August version. The DOE has substituted a plural pronoun (“their”; “they”; “them”) with a singular antecedent (“student”; “child”) throughout the regulation. The following sections are illustrative: §§2.2.1; 2.2.1.1; 2.2.1.2; 2.2.1.3; 2.2.1.7; 2.3.1; 2.3.3; 2.3.4; 2.2.7; 2.4.2; 2.4.2.3.1; 2.5.1; 2.5.1.5; 2.5.1.7; 2.5.2; 2.5.3; 2.6.1.1; 2.6.2.2; 2.6.2.3; 2.6.3; 2.6.5; 2.7.1.; 2.7.1.2; 2.7.1.2.2; 2.7.1.2.3; 2.7.1.2.3; and 2.7.2. To correct the error, the DOE could substitute “student” or “student’s”. Alternatively, consistent with the Delaware Administrative Code Style Manual, §7.2 and Title 1 Del.C. §304, the masculine version of the pronoun could be used.

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 Steven Godowsky, Ed.D, 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. Kevin Charles, DIAA  
Mr. Brian Hartman, Esq.  
Developmental Disabilities Council  
Governor's Advisory Council for Exceptional Citizens

19reg461 doe-jr high school & middle school interscholastic athletics 12-21-15

ATTACHMENTS  
OMITTED



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

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

December 21, 2015

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

RE: 19 DE Reg. 462 [DOE Proposed High School Interscholastic Athletics Regulation]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to adopt revisions to the Delaware Interscholastic Athletic Association (DIAA) regulation covering school-sponsored sport and athletic activities at the high school level. SCPD commented on an earlier version of this proposed regulation in August. The DOE is now publishing a revised proposed regulation which attempts to address some of the concerns raised by the Council. The proposed regulation was published as 19 DE Reg. 462 in the December 1, 2015 issue of the Register of Regulations. SCPD has the following observations on the latest version of the regulation.

First, one section which remains unchanged is §2.1.1. Therefore, SCPD is reiterating the following comment:

§2.1.1 is difficult to interpret. It recites that a student turning 19 on or after June 15 immediately preceding the student's year of participation shall be eligible for all sports provided all other eligibility requirements are met. There is no definition of "student's year of participation". Moreover, there is no comparable guidance for a student who becomes age 20 or 21 on or after June 15. Students are generally eligible to attend school at least through age 20. See 14 Del.C. §202(a). An IDEA-classified student is often eligible for education past his/her 21st birthday. See 14 Del.C. §3101(1). The implication of §2.1.1 is that 19 year olds can play all sports but 20 year olds are barred from all sports. If this is accurate, it reflects a rather "brittle" approach to eligibility which deters participation in athletics.

Second, the Council noted in its August commentary that an attempt to create an age waiver protocol for students with disabilities was well intentioned but problematic in several respects. The

age waiver protocol (former proposed §2.1.1.2) has been stricken from the revised proposed regulation to allow further analysis. The DOE provided the following rationale:

There were also comments regarding the age waiver protocol for students with disabilities being limited to students with an IEP and not covering students with 504 Plans, and the involvement of the IEP team. After considering these public comments, the DIAA Board voted to remove this proposed change for further consideration and analysis at this time. Due to the fact that this is a substantive change, the regulation is being republished for comment.

SCPD would be happy to offer technical assistance to the DOE in this context.

Third, in the August commentary the Council noted that use of a definition of "student with a disability" which covered only IDEA-identified students to the exclusion of §504-identified students was ill-conceived. The DOE has attempted to address this observation by adopting the following revised definition of "student with a disability" in §1.1:

"Student with a Disability" means a "child with a disability" as that term is defined in 14 DE Admin Code 922 or Section 504 of the Rehabilitation Act of 1973.

SCPD believes there are two problems with the new definition:

A. Section 2.3.3.1 contains a definition of "Student with a Disability" which is limited to IDEA-identified students. Since the definition in §1.1 covers the entire regulation, the inconsistent definition in §2.3.3.1 should be stricken.

B. Section 504 of the Rehabilitation Act does not define "student with a disability". Consider the following revision:

"Student with a Disability" means a "child with a disability" as defined in 14 DE Admin Code 922 or a qualified person with a disability under Section 504 of the Rehabilitation Act.

Compare 14 DE Admin Code 930.1.3.

Fourth, §2.3.3.2.1 remains unchanged from the August version of the regulation. Therefore, SCPD is reiterating the following italicized comment:

*§2.3.3.2 provides as follows:*

*2.3.3.2. A student with a disability who is placed in a special school or program shall be eligible to participate in interscholastic athletics as follows:*

*2.3.3.2.1. If the special school or program sponsors the interscholastic sport in question, the student shall be eligible to participate only at the school or program.*

*This violates federal and State law since it categorically bars a student with a disability from any opportunity to participate in a non-segregated team. It rigidly limits a student with a disability to participate in a team exclusively comprised of students with disabilities of the special school (e.g. Delaware School for the Deaf). The DOE has an affirmative obligation to promote opportunities for participation in integrated extracurricular activities. See 14 DE Admin Code 923.17.0; 34 C.F.R. §§104.34(b) and 104.37(c)(2); and 34 C.F.R. §300.117.*

For example, 14 DE Admin Code 923.17.0 recites as follows:

In providing or arranging for the provision of nonacademic and extracurricular services and activities, ...each public agency shall ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child”.

The sponsors of the “unified sports” bill (H.B. 175) recently stressed that public policy and federal law support integrated athletics:

The General Assembly recognizes that unified sports offer benefits to all students and serve as a potential tool for schools that are required to meet Section 504 of the federal Rehabilitation Act of 1973, 29 U.S.C. §794, regarding providing extracurricular activities, and 14 Del. Admin. C. §923-7.1 and 7.2.

Fifth, §2.6.1.1 remains unchanged from the August version of the regulation. Therefore, SCPD is reiterating the following comment:

Section 2.6.1.1 authorizes an accommodation for a student with a disability with an IEP but not a student with a disability with a Section 504 Plan. The section should be modified to also cover students with a Section 504 Plan. Consistent with the attached 2013 federal guidance, footnote 8, Section 504-identified students are entitled to similar protections and accommodations. The DOE has provided assurances that it does not discriminate based on “disability”, not simply IDEA-identified disability. See 14 DE Admin Code 225.1.0.

Sixth, §2.7 remains substantively unchanged from the August version of the regulation. Therefore, SCPD is reiterating the following comment:

§2.7 bars a student from participating in athletics after 4 consecutive years from the date of the student’s first entrance into the 9th grade. It also bars a student who had more than 4 “opportunities” to participate in sports. The regulation authorizes the DIAA to issue a “hardship” waiver. The standards place the “burden of proof” on the student and the DIAA considers disability-related factors such as extended illness, debilitating injury, and emotional stress. For a student with a disability, the decision of whether a student should participate in extracurricular activities such as athletics is the province of the IEP or Section

504 team. Such decision-making does not involve a "burden of proof". The team would decide if such participation is appropriate as part of a FAPE.

Seventh, based on the Council's August "Special Olympics" commentary, the DOE added the following section:

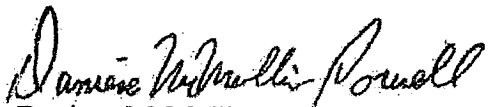
6.6.2.6 Nothing in this regulation shall be construed as prohibiting schools from providing transportation or school supplied assistive technology and equipment to or for non-school activities for students with disabilities.

This represents an improvement from the August version.

Eighth, the new regulation is rife with a common grammatical error which did not appear in the August version. The DOE has substituted a plural pronoun ("their" or "they") with a singular antecedent ("student") throughout the regulation. The following sections are illustrative: §§2.2.1; 2.2.1.1; 2.2.1.2; 2.2.1.3; 2.2.1.7; 2.3.1; 2.3.2; 2.6.1.1; 2.6.2.2; 2.7.1.2; and 2.7.1.2.3. To correct the error, the DOE could substitute "student" or "student's" as done in §§2.2.1. and 2.2.1.8. Alternatively, consistent with the Delaware Administrative Code Style Manual, §7.2 and Title 1 Del.C. §304, the masculine version of the pronoun could be used.

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 Steven Godowsky, Ed.D, 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. Kevin Charles, DIAA  
Mr. Brian Hartman, Esq.  
Developmental Disabilities Council  
Governor's Advisory Council for Exceptional Citizens

19reg462 doe-high school interscholastic athletics 12-21-15

Your Search...



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Delaware Health and Social Services » Division of Public Health

**HOME**

**SERVICES**

- A-Z Services
- Air & Water Quality
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- Clinics
- Health Data & Statistics
- Emergency Preparedness
- Health & Wellness
- Healthy Homes
- Healthy Workplaces
- Laboratory
- Restaurant Inspections
- Screening and Testing
- WIC
- Additional Services

**INFORMATION**

**School-Based Health Center Locations  
Contracted by the Division of Public Health**

Center	Address	City	State	Zip	Telephone	High School	School District	County
A.I. DuPont	50 Hillside Road	Wilmington	DE	19807	302-651-2640	Alexis I DuPont	Red Clay Consolidated	New Castle
Brandywine	1400 Foulk Road	Wilmington	DE	19803	302-477-6750	Brandywine	Brandywine	New Castle
Caesar Rodney	219 Old North Road	Camden	DE	19934	302-698-4280	Caesar Rodney	Caesar Rodney	Kent
Cape Henlopen	1250 Kings Highway	Lewes	DE	19958	302-644-2946	Cape Henlopen	Cape Henlopen	Sussex
Christiana	190 Salem Church Road	Newark	DE	19713	302-454-5421	Christiana	Christina	New Castle
Concord	2501 Ebright Road	Wilmington	DE	19810	302-477-3960	Concord	Brandywine	New Castle
Delcastle	1417 Newport Road	Wilmington	DE	19804	302-892-4460	Delcastle Technical	New Castle County Votech	New Castle
Delmar	200 N. Eighth Street	Delmar	DE	19940	302-846-0303	Delmar Senior	Delmar	Sussex
Dickinson	1801 Milltown Road	Wilmington	DE	19808	302-892-3270	John Dickinson	Red Clay Consolidated	New Castle
Dover	1 Dover High Drive	Dover	DE	19904	302-241-2439	Dover	Capital	Kent
Glasgow	1901 South College Avenue	Newark	DE	19702	302-369-1501	Glasgow	Christina	New Castle
Hodgson	2575 Glasgow Avenue	Newark	DE	19702	302-832-5400	Paul M. Hodgson Votechnical	New Castle County Votech	New Castle
Howard	401 E. 12th Street	Wilmington	DE	19801	302-576-8080	Howard of Technology	New Castle County Votech	New Castle
Indian River	112 Clayton Avenue	Frankford	DE	19945	302-732-3680	Indian River	Indian River	Sussex
Lake Forest	5407 Killen's Pond Road	Felton	DE	19943	302-284-3800	Lake Forest	Lake Forest	Kent
Laurel	1133 S. Central Avenue	Laurel	DE	19956	302-875-6164	Laurel Senior	Laurel	Sussex
McKean	301 McKennan's Church Road	Wilmington	DE	19808	302-636-5330	Thomas McKean	Red Clay Consolidated	New Castle
Middletown	122 Silver Lake Road	Middletown	DE	19709	302-378-5775	Middletown	Appoquinimink	New Castle
Milford		Milford	DE	19963			Milford	Kent



	1019 N. Walnut Street				302-424-6120	Milford Senior		
Mt. Pleasant	5201 Washington Street Ext.	Wilmington	DE	19809	302-765-1100	Mount Pleasant	Brandywine	New Castle
Newark	401 East Delaware Avenue	Newark	DE	19711	302-369-1606	Newark	Christina	New Castle
Polytech	823 Walnut Shade Road P.O. Box 97	Woodside	DE	19980	302-697-8402	Polytech	Polytech	Kent
Seaford	399 N. Market Street	Seaford	DE	19973	302-629-0884	Seaford Senior	Seaford	Sussex
Smyrna	500 Duck Creek Parkway	Smyrna	DE	19977	302-653-2399	Smyrna	Smyrna	Kent
Sussex Central	26026 Patriots Way	Georgetown	DE	19947	302-934-5962	Sussex Central Senior	Indian River	Sussex
Sussex Tech	17099 County Seat Highway, P.O. Box 351	Georgetown	DE	19947	302-856-4360	Sussex Technical	Sussex Technical	Sussex
William Penn	713 E. Basin Road	New Castle	DE	19720	302-324-5740	William Penn	Colonial	New Castle
Wilmington Campus	100 N. duPont Road	Wilmington	DE	19807	302-651-2113	Cab Calloway School of the Arts	Red Clay Consolidated	New Castle
Woodbridge	14712 Woodbridge Road	Greenwood	DE	19950	302-232-3372	Woodbridge	Woodbridge	Sussex

For more information concerning all SBHCs contact the Division of Public Health School-Based Health Center Central Office .

- [House Bill 303 which added SBHC to Title 18](#)
- [School-Based Health Center Regulations](#)
- Application to Become a State Recognized School-Based Health Center  
**Please note:** Both documents are required to be submitted together.  
 Submittal information is found on page 3 of Attachment A.
  - [Cover Sheet and Attachment A](#)
  - [Attachment B](#)
- [School-Based Health Centers \(SBHC\) homepage](#)



Please note: Some of the files available on this page are in Adobe PDF format which requires Adobe Acrobat Reader. A free copy of Adobe Acrobat Reader can be downloaded directly from [Adobe](#). If you are using an assistive technology unable to read Adobe PDF, please either view the corresponding text only version (if available) or visit Adobe's [Accessibility Tools page](#).

Last Updated: Thursday August 28 2014

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148TH GENERAL ASSEMBLY

FISCAL NOTE

BILL: HOUSE BILL NO. 234  
SPONSOR: Representative K. Williams  
DESCRIPTION: AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SCHOOL-BASED HEALTH CENTERS.

ASSUMPTIONS:

1. This Act is effective upon signature of the Governor.
2. This Act requires all secondary public high schools, not including charter schools, to have a school-based health center. The Act requires the State to fund start-up costs for each center as well as fund the operational costs of each center for at least one school per fiscal year until all secondary public high schools have a school-based health center.
3. One-time start-up costs per center are \$5,000 and the operational budget for a 1,000 pupil high school is \$170,000 plus \$100 per student over the 1,000 student population threshold.
4. There are three high schools that do not have a school-based health center:
  - a. Conrad School of Science: 1,195 students
  - b. St. Georges Technical High School: 1,069 students
  - c. Appoquinimink High School: 1,589 students
5. This Act does not specify the order in which the remaining schools will receive a school-based health center. For purposes of the fiscal note, it's assumed the school based health centers will be phased over the next three fiscal years as follows with the following operating budget:
  - a. Conrad School of Science: \$189,500
  - b. St. Georges Technical High School: \$176,900
  - c. Appoquinimink High School: \$228,900

Cost:

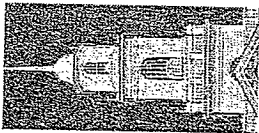
	<u>One Time</u>	<u>Base Cost</u>	<u>Total Cost</u>
Fiscal Year 2017: Conrad	\$5,000	\$189,500	\$194,500
Fiscal Year 2018: St. Georges	\$5,000	\$366,400	\$371,400
Fiscal Year 2019: Appoquinimink	\$5,000	\$595,300	\$600,300

Office of Controller General  
January 21, 2016  
MJ: MJ  
0271480027

(Amounts are shown in whole dollars)

# Lawmakers want to boost after-school programs

**DELAWARE LEGISLATIVE SESSION**  
**MATTHEW ALBRIGHT**

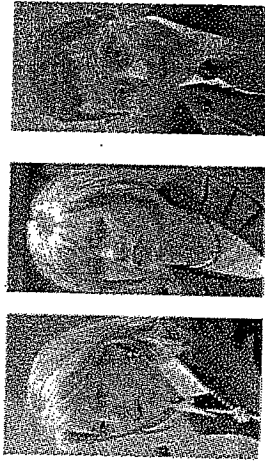


*This is one in a series of stories examining issues confronting the Delaware General Assembly in the session that starts Jan. 12. Visit [delawareonline.com](http://delawareonline.com) for continuing coverage of the Legislature.*

A top state lawmaker wants to make funding available to every high-needs school in Delaware to create after-school programs, hoping to give kids from low-income families a safe, constructive place for academic help and healthy meals. House Majority Leader Valerie Longhurst, D-Bear, announced Wednesday that she will propose a bill next week to create the Statewide Afterschool Initiative Learning program, or SALL, which would offer grants to schools under the federal Title I program for low-income youth.

"We have a great core of organizations in our communities that have spent years showing us these outcomes," Longhurst said, pointing to better literacy, attendance and dropout rates among existing after-school programs. "And it's time for the state and our school districts to step up and bring these proven practices to even more kids throughout Delaware."

To qualify for SALL grants, school programs would have to offer at least three hours on four to five days a



From left, House Majority Leader Valerie Longhurst, Sen. Nicole Poore and Attorney General Matt Denn.

week for students in kindergarten through 10th grade. Those programs would have to have one teacher for every 10 kids and would need to offer at least one hour of homework help, one hour of enrichment activities — things like music, art or book clubs — and a healthy meal.

Longhurst cites a 2014 survey by the Afterschool Alliance that suggests more than 26,000 students participate in aftercare but about 48,000 would be likely to participate if they had the opportunity.

She pointed to Booker T. Washington Elementary School, a high-poverty Dover elementary school that saw test scores soar by more than 30 points in only a few years, partially because of programs that kept kids learning after the end of the school day.

The program has a price tag of about \$10 million.

The state might not be facing a budget crisis, as previously feared, but it also doesn't have a huge surplus.

And, in the education arena alone, there are plenty of

other places where lawmakers want to allocate more funds.

Sen. Nicole Poore, D-New Castle, is slated to be a co-sponsor and says many of her colleagues have already said they support the bill. Longhurst is the second-highest ranking member of the House, and a third planned co-sponsor, Sen. Harris McDowell, D-Wilmington North, co-chairs the legislative committee that writes the state budget.

"It's definitely going to sail through — no pun intended — the House and the Senate," Poore said. "This is something we know works."

Attorney General Matt Denn, the state's top-ranking law enforcement official, supports the bill.

"From a short-term perspective, we have statistics that show us that kids who are in these sorts of programs are less likely to get in trouble," he said, noting that kids who are in school in the afternoon aren't on the streets where they might run afoul of the law.

In the long term, Denn believes after-school programs will prevent dropouts and other academic problems that can derail a young person's life.

Colonial School District Superintendent Dusty Blakey said school leaders think after-school programs are smart investments but often struggle to find a funding source.

"We are very thankful these state leaders recognize the opportunity we can provide," Blakey said.

Contact Matthew Albright at (302) 324-2428.

**148TH GENERAL ASSEMBLY**

**FISCAL NOTE**

BILL:	HOUSE BILL NO. 240
SPONSOR:	Representative Longhurst
DESCRIPTION:	AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO AFTERSCHOOL PROGRAMS.

ASSUMPTIONS:

1. This Act is effective upon signature of the Governor.
2. This Act establishes the Statewide Afterschool Learning Program whereby schools that meet the State approved indicator for low socioeconomic status are eligible to receive grants to support after-school homework and enrichment programs.
3. The grants support at least 3 hours of after-school programs that operate 4-5 days per week during the school year. The programs are staffed by a certified teacher at a ratio of 1 teacher for every 10 students.
4. The grants support students enrolled in grades Kindergarten through 10<sup>th</sup> grade.
5. There are a total of 147 Title I schools that may be eligible to participate in the program where the total enrollment in these schools, based on the September 30, 2015 enrollment count, is 78,950 students. Title I schools are schools that receive federal funds for supplemental educational services for students considered low-income.
6. It is assumed the additional compensation teachers would receive is equivalent to the starting teachers' salary on the State teacher pay scale, prorated for the minimum hours worked in the program plus other employment costs. As such, a \$50,000 grant per school would serve 10% of the eligible population of students 4 days per week.
7. This Act does not require a local match of program funds. However, participating local school districts have the ability to utilize their existing match tax for Extra Time programs to supplement State program funds.
8. Inflation is assumed at 2.0% to account for growth in enrollment and personnel costs.

Cost:

Fiscal Year 2017:	Every 10% of students participating is projected to cost \$7,400,000 (equivalent to a \$50,000 grant per school & a 4 day/week program)
Fiscal Year 2018:	Every 10% of students participating is projected to cost \$7,548,000 (equivalent to a \$50,000 grant per school & a 4 day/week program)
Fiscal Year 2019:	Every 10% of students participating is projected to cost \$7,699,000 (equivalent to a \$50,000 grant per school & a 4 day/week program)

Office of Controller General  
January 13, 2016  
MJ:MJ  
0271480025

(Amounts are shown in whole dollars)

## Bullying Statistics

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#### School Bullying Statistics

School bullying statistics in the United States show that about one in four kids in the U.S. are bullied on a regular basis. Between cyber bullying and bullying at school, the school bullying statistics illustrate a huge problem with bullying and the American school system.



In a recent SAFE survey, teens in grades sixth through 10th grade are the most likely to be involved in activities related to bullying. About thirty percent of students in the United States are involved in bullying on a regular basis either as a victim, bully or both. These school bullying statistics show what a problem bullying of all kinds in the United States has become. The recent school bullying statistics show that cyber bullying is becoming increasingly prevalent on school property as well as involving students even when they are not at school. Because of this growing number of kids affected by bullying, more and more schools throughout the country are cracking down on the measures taken to stop bullying.

##### School Bullying Statistics:

When it comes to verbal bullying, this type of bullying is the most common type with about 77 percent of all students being bullied verbally in some way or another including mental bullying or even verbal abuse. These types of bullying can also include spreading rumors, yelling obscenities or other derogatory terms based on an individual's race, gender, sexual orientation, religion, etc. Out of the 77 percent of those bullied, 14 percent have a severe or bad reaction to the abuse, according to recent school bullying statistics. These numbers make up the students that experience poor self-esteem, depression, anxiety about going to school and even suicidal thoughts (bullycide) as a result of being bullied by their peers. Also as part of this study, about one in five students admitted they are responsible for bullying their peers. Almost half of all students fear harassment or bullying in the bathroom at school, according to these school bullying statistics. As a result of this fear and anxiety of being bullied, many students will make excuses or find ways around going to school. School bullying statistics also reveal that teens ages 12-17 believe they have seen violence increase at their schools. In fact, these numbers also show that most violent altercations between students are more likely to occur on school grounds than on the way to school for many teens.

One of the most unfortunate parts of these school bullying statistics is that in about 85 percent of bullying cases, no intervention or effort is made by a teacher or administration member of the school to stop the bullying from taking place. However, now that more and more schools are taking an active approach to cut down on the number of students that live in fear of being bullied, the numbers will go down.

##### Cyberbullying Statistics:

As social networking and online social interaction becomes more and more popular with sites like Facebook and Twitter, cyberbullying has become one of the most prevalent types of bullying that occurs between teens. About 80 percent of all high school students have encountered being bullied in some fashion online. These growing numbers are being attributed to youth violence including both homicide and suicide. While school shootings across the country are becoming more and more common, most teens that say they have considered becoming violent toward their peers, wish to do so because they want to get back at those who have bullied them online. About 35 percent of teens have been actually threatened online. About half of all teens admit they have said something mean or hurtful to another teen online. Most have done it more than once.

##### Putting an End to Bullying:

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These numbers are too high, and parents and teachers need to do something to stop it. Teens also need to stand together and put an end to bullying. When teens see their peers being bullied, they need to report the incident or get help. If teens band together to address these issues, they really don't have to worry about being the target of a bully since most bullies really only attack those that are weaker than them. By standing together to prevent bullying in every school, the number of depressed and suicidal teens can drop along with those who fear for their life while attending school.

Sources: naaas.org

← GAY BULLYING STATISTICS

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### Measuring student safety: Bullying rates at school (</blogs/nces/post/measuring-student-safety-bullying-rates-at-school/>)

📅 May 1, 2015 👤 NCES Blog Editor

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*By Lauren Musu-Gillette, Rachel Hansen, Kathryn Chandler, and Tom Snyder*

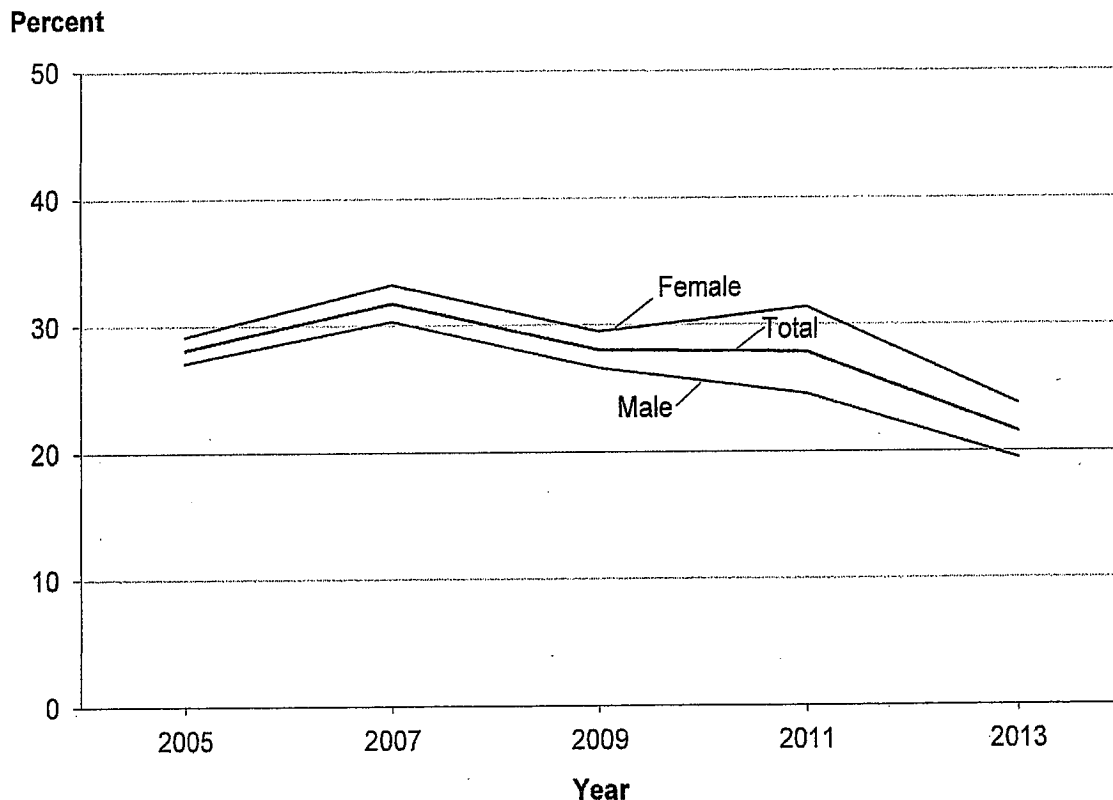
Bullying remains a serious issue for students and their families, and efforts to reduce bullying concern policy makers, administrators, and educators. Measuring the extent of the problem, as well as tracking any progress towards reducing the prevalence of bullying, is of utmost importance and why NCES is committed to providing reliable and timely data on important topics such as bullying. NCES provides additional context for understanding this issue in our schools by publishing comparative data on different student groups, as well as data on changes over time in students' reports of being bullied at school.

The School Crime Supplement (SCS) to the National Crime Victimization Survey collects data on bullying by asking a nationally representative sample of students ages 12–18 if they had been bullied at school. In 2013, about 22 percent of students reported being bullied at school during the school year. This percentage was lower than the percentage reported in every prior survey year in which these data were collected ([http://nces.ed.gov/programs/digest/d14/tables/dt14\\_230.45.asp](http://nces.ed.gov/programs/digest/d14/tables/dt14_230.45.asp)) (28 percent each in 2005, 2009, and 2011 and 32 percent in 2007).



Similarly, lower percentages of students reporting being bullied in 2013 were observed across some student characteristics. For example, in 2013 about 24 percent of female students reported being bullied at school, compared with 29 to 33 percent in prior survey years. The pattern for males was similar. The percentage of students who reported being bullied in 2013 was also lower than the percentages in all prior survey years for White and Black students. For Hispanic and Asian students, the percentage of students who reported being bullied in 2013 was lower than the percentages in both 2007 and 2009.

**Percentage of students ages 12–18 who reported being bullied at school during the school year, by gender: Selected years, 2005 through 2013**



NOTE: "At school" includes the school building, on school property, on a school bus, or going to and from school.

SOURCE: U.S. Department of Justice, Bureau of Justice Statistics, School Crime Supplement (SCS) to the National Crime Victimization Survey, 2005 through 2013.

In 2013, a higher percentage of females than of males ages 12–18 reported being bullied at school during the school year (24 vs. 19 percent). A higher percentage of White students (24 percent) than of Hispanic students (19 percent) and Asian students (9 percent) reported being bullied at school. In addition, higher percentages of Black students (20 percent) and Hispanic students than of Asian students reported being bullied at school. Higher percentages of students in grades 6 through 11 than of students in grade 12 reported being bullied at school during the school year. In 2013, about 14

percent of 12th-graders reported being bullied at school, compared with 28 percent of 6th-graders, 26 percent of 7th-graders, 22 percent of 8th-graders, 23 percent of 9th-graders, 19 percent of 10th-graders, and 20 percent of 11th-graders.

Additional data from the 2013 School Crime Supplement are available in the Student Reports of Bullying and Cyberbullying: Results from the 2013 School Crime Supplement to the National Victimization Survey (<http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2015056>). Tables in this report contain further information on bullying-related topics such as frequency and types of bullying, cyber-bullying, and fear and avoidance behaviors at school.

Additional information on the definition of bullying, risk factors for bullying, and bullying prevention can be found on [stopbullying.gov](http://www.stopbullying.gov) (<http://www.stopbullying.gov/>). The Department of Education, along with other federal agencies, sponsored [stopbullying.gov](http://www.stopbullying.gov) (<http://www.stopbullying.gov/>) to provide resources on bullying to school administrators, teachers, parents, and children.

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# Delaware Department of Education

Teaching & Learning Branch  
Exceptional Children Resources Workgroup

## 2014-15 Bullying Reports in Delaware Public School Districts And Charters\*

As required under 14 Del Code 4112D (C) (4)

**Contact:**

John Sadowski, Education Associate  
School Climate & Discipline Program  
Delaware Department of Education  
[John.sadowski@doe.k12.de.us](mailto:John.sadowski@doe.k12.de.us)  
302.735.4210

\*2011 - 2014 reports can be found at: <http://www.doe.k12.de.us/domain/156>  
Additional school level substantiated bullying incident and offense data can be found at the Delaware Department of Education School Profiles:  
<http://profiles.doe.k12.de.us/SchoolProfiles/State/Default.aspx>. Click on the "student" tab and view the "details" link under suspensions/expulsions.

# Bullying Reports in Delaware Public School Districts and Charters

Delaware Department of Education  
School Year: 2014-15

Number of <i>Alleged</i> Bullying Incidents Reported to DOE	
District/Charter	2014-15
Academia Antonia Alonso	3
Academy of Dover	8
Appoquinimink	237
Brandywine	37
Caesar Rodney	75
Campus Community	16
Cape Henlopen	77
Capital	51
Charter School of Wilmington	0
Christina	183
Colonial	81
Del Academy Public Safety	0
Delaware College Prep Acad	5
Delaware Military Academy	0
Delmar	58
Early College HS @ DSU	1
East Side Charter	4
Family Foundation	12
First State Montessori Acad	0
Gateway Lab	33
Indian River	92
Kuumba	1
Lake Forest	34
Las Americas Aspira Academy	1
Laurel	28
Milford	37
MOT	28
Moyer Academy	8
NCC Votech	12
Newark Charter	22
Odyssey Charter	0
POLYTECH	6
Positive Outcomes	6
Prestige Academy	7
Providence Creek	22
Reach Academy	6
Red Clay	415
Seaford	34
Smyrna	57
Sussex Academy	1
Sussex Tech	0
Thomas Edison	4
Woodbridge	4
<b>Total all Districts/Charters</b>	<b>1706</b>

Number of <i>Substantiated</i> Bullying Incidents Reported to DOE	
District/Charter	2014-15
Academia Antonia Alonso	3
Academy of Dover	8
Appoquinimink	32
Brandywine	37
Caesar Rodney	14
Campus Community	8
Cape Henlopen	26
Capital	18
Charter School of Wilmington	0
Christina	65
Colonial	63
Del Academy Public Safety	0
Delaware College Prep Acad	3
Delaware Military Academy	0
Delmar	3
Early College HS @ DSU	1
East Side Charter	4
Family Foundations	12
First State Montessori Acad	0
Gateway Lab	8
Indian River	21
Kuumba	1
Lake Forest	6
Las Americas Aspira Academy	1
Laurel	12
Milford	15
MOT	8
Moyer Academy	4
NCC Votech	10
Newark Charter	3
Odyssey Charter	0
POLYTECH	0
Positive Outcomes	4
Prestige Academy	7
Providence Creek	7
Reach Academy	4
Red Clay	102
Seaford	8
Smyrna	20
Sussex Academy	0
Sussex Tech	0
Thomas Edison	4
Woodbridge	1
<b>Total all Districts/Charters</b>	<b>543</b>

Number of Bullying <i>Offenses</i> within Total Number of <i>Substantiated</i> Incidents	
District/Charter	2014-15
Academia Antonia Alonso	3
Academy of Dover	11
Appoquinimink	39
Brandywine	44
Caesar Rodney	16
Campus Community	8
Cape Henlopen	35
Capital	23
Charter School of Wilmington	0
Christina	74
Colonial	75
Del Academy Public Safety	0
Delaware College Prep Acad	3
Delaware Military Academy	0
Delmar	5
Early College HS @ DSU	2
East Side Charter	6
Family Foundations	16
First State Montessori Acad	0
Gateway Lab	8
Indian River	25
Kuumba	1
Lake Forest	11
Las Americas Aspira Academy	1
Laurel	12
Milford	15
MOT	8
Moyer Academy	5
NCC Votech	15
Newark Charter	4
Odyssey Charter	0
POLYTECH	0
Positive Outcomes	5
Prestige Academy	8
Providence Creek	7
Reach Academy	5
Red Clay	127
Seaford	8
Smyrna	27
Sussex Academy	0
Sussex Tech	0
Thomas Edison	7
Woodbridge	1
<b>Total all Districts/Charters</b>	<b>660</b>

Disaggregated Offenses data by school can be viewed at the School Profile web pages: [State of Delaware - School Profiles](#)  
Choose the district/charter and then school. Click on the "Student" tab, scroll down to "Suspensions and Expulsions" and click on "Details."

**Alleged Bullying** is defined as any report of an incident of perceived bullying to school administration regardless of whether or not the school could substantiate the incident as bullying.

**Substantiated Bullying** is defined as any alleged bullying incident or reported discipline incident in which the school administration investigated and concluded that bullying behaviors were exhibited as defined in 14 Del Code §4112D.

**Bullying Offenses** represents the total number of offenders involved in substantiated bullying incidents. A bullying incident may involve one or more offenders.

## Results of Random Audits

Under 14 Del Code §4112D (d)(4) the Delaware Department of Education shall conduct random audits of schools to ensure compliance with paragraphs (b)(2)j and (b)(2)k of the section . The Department shall report the results of these audits annually. During the 2014-15 school year the following schools were randomly selected to be audited for compliance with the required sections in addition to other audit criteria as determined by the DDOE.

School 1 - Fairview E.S., Capital S.D.

School 2 - Harlan E.S., Brandywine S.D.

School 3 - Selbyville M.S., Indian River S.D.

School 4 - Marshall E.S., Christina S.D.

School 5 - Gunning Bedford M.S., Colonial S.D.

School 6 - North Smyrna E.S., Smyrna S.D.

School 7 - Carrcroft E.S., Brandywine S.D.

School 8 - Pulaski E.S., Christina S.D.

School 9 - New Castle E.S., Colonial S.D.

School 10 - DE Academy of Public Safety & Security

School 11 - B.T. Washington E.S., Capital S.D.

School 12 - Delmar H.S., Delmar S.D.

AUDIT CRITERIA	PERCENT COMPLIANT
Percentage of schools audited whose district or charter bullying prevention policy included a procedure for a student and parent, guardian, relative caregiver pursuant to § 202(f) of Title 14, or legal guardian to provide information on bullying activity.	100%
Percentage of schools audited whose district or charter bullying prevention policy included a requirement that all reported incidents of bullying, regardless of whether the school could substantiate the incident be reported to the Department of Education within 5 working days pursuant to Department of Education regulations.	91.7%
Percentage of schools audited whose district or charter bullying prevention policy (or separate cyberbullying policy) prohibited cyberbullying by students directed at other students and included the definition of cyberbullying as defined in <u>14 Del. Admin. Code 624</u> .	91.7%
Percentage of <i>alleged</i> bullying incidents which were reported to the DOE within five working days.	59.5%
Percentage of <i>substantiated</i> bullying incidents which were reported to the DOE within five working days.	86.5%
Percentage of schools audited whose district or charter school bullying prevention policy included a requirement that a parent, guardian or relative caregiver pursuant to § 202(f) of Title 14, or legal guardian of any target of bullying or person who bullies another as defined herein, be notified.	100%
Percentage of parents, guardians, relative caregivers, or legal guardians which were required to be notified regarding a substantiated incident of bullying and the school report indicated that contact was made.	73.5%
Percentage of schools audited in which the School Ombudsman phone number was included on the school's website.	100%
Percentage of schools audited who submitted a signed assurance statement that their bullying prevention policy was distributed to all students, parents, faculty, and staff.	100%
Percentage of schools audited who submitted a signed assurance statement that the School Ombudsman phone number was distributed to all students, parents, faculty, and staff and that the phone number was prominently displayed in the school.	100%

## Enumerated Reasons for Substantiated Incidents of Bullying

Under 14 Del Code §4112D (b)(2)(f), school district and charter school bullying prevention policies shall include a requirement that each school have a procedure for the administration to promptly investigate in a timely manner and determine whether bullying has occurred, and that such procedure include investigation of such instances, including a determination of whether the target of the bullying was targeted or reports being targeted wholly or in part due to the target's race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity or expression, or national origin. This subsection does not preclude schools from identifying other reasons or criteria why a person is a target of bullying.

Description	Total
Age	57
Ancestry	1
Creed	2
Dating Violence	2
Disability	20
Gang(s)	0
Gender Identity/Expression	8
Hate Crime	0
Marital Status	0
National Origin	3
Other	118
Peer Attention	238
Physical Appearance	76
Race/Color	13
Religion	1
Sexual-Orientation	3
Socio-Economic Status	4
No Reason	1
<b>Total</b>	<b>547</b>

NOTE: An incident may have had more than one reason selected.



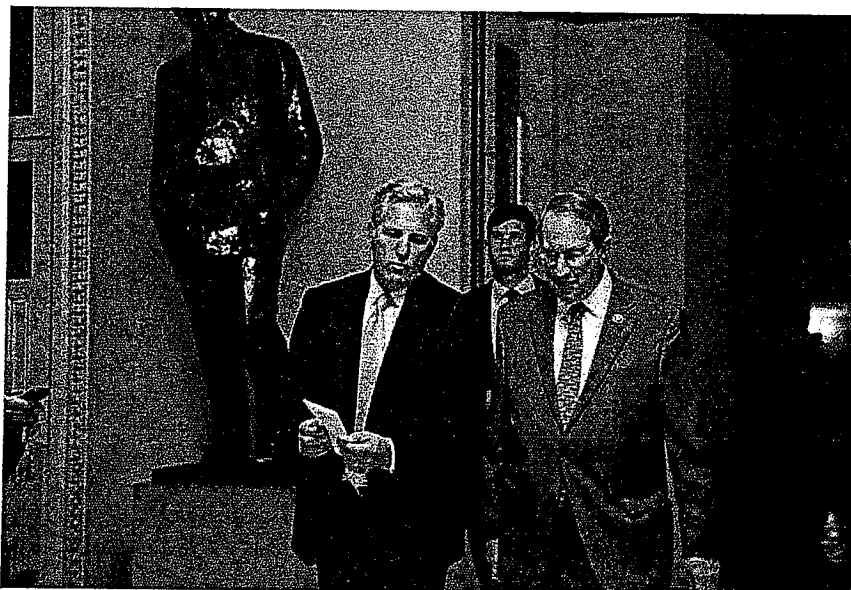


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# Proposed New Education Law Shrinks Federal Footprint

The Every Student Succeeds Act will replace the much-maligned No Child Left Behind.



House Majority Leader Kevin McCarthy, left, and Rep. Bob Goodlatte, R-Va., walk to the chamber as the House votes on a rewrite of the No Child Left Behind law on Wednesday.

By Lauren Camera | Dec. 3, 2015, at 9:35 a.m.

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The House of Representatives passed a bill Wednesday evening that would replace the No Child Left Behind law, and in doing so, significantly shrink the footprint of the federal government and hand over much of the decision-making power to states and school districts.

The legislation's biggest hurdle was garnering enough votes in the House, where GOP members tried to scuttle a previous version of the rewrite earlier this year. But the Every Student Succeeds Act passed with big bipartisan support, 359-64. Every vote against the bill came from a Republican.

The Senate is set to vote on the bill next week, where Sen. Lamar Alexander, a Republican from Tennessee who was a key architect of the legislation, said he expects the measure to receive "huge bipartisan support."



The White House officially backed the bill Wednesday evening after the House vote, ensuring the legislation will become law when it hits the president's desk before the end of the year.

Here's what you need to know about the Every Student Succeeds Act:

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**Democrats Push to Maintain No Child Left Behind's Civil Rights Roots**

The Every Student Succeeds Act would replace No Child Left Behind: The new law would eliminate the much-maligned No Child Left Behind Act, which hadn't been updated since Congress passed it in 2001. Gone would be its punitive accountability system, which sacked states if not enough students were proficient in reading and math – a pillar of the old law that is largely blamed

for creating a culture of over-testing.

The Every Student Succeeds Act would void the administration's NCLB waivers: The Department of Education began issuing waivers to states from the most burdensome parts of NCLB in 2012. In exchange for reprieve, states promised to adopt and implement a number of significant education policy changes, including more rigorous academic standards and matching assessments and new teacher evaluations based in part on student test scores. Currently 43 states and the District of Columbia operate their K-12 system according to their waiver. The new law would replace those waivers.

The Every Student Succeeds Act would roll back the role of the federal government: No Child Left Behind introduced in the K-12 system a robust role for the federal government, one that ESSA would largely undo. The law would allow states to create their own accountability systems, their own teacher evaluation systems, and would give them new flexibility in deciding how to fix failing schools and close achievement gaps. There were initially concerns that the bill would not provide enough guardrails to ensure the most underserved populations – poor students, racial minorities, students with disabilities and those still learning English – are keeping pace. But a slate of provisions added to the law at the last-minute aimed at better protecting those subgroups of students got the backing of even the civil rights community.

The Every Student Succeeds Act would keep in place the most important aspects of No Child Left Behind: The law would keep the federal testing schedule, which requires states to test students annually in grades 3 through 8 in reading and math, and once in high school. The new law would also maintain the requirement that schools annually report the achievement scores of students and break down that data by race, economic status, disability, and English learner status – the only universally touted aspect of No Child Left Behind that for the first time shined a spotlight on achievement gaps. In addition, the law preserves the requirement that school districts test no less than 95 percent of its students, but it gives states leeway in deciding how to handle school districts where large numbers of students opt out of annual testing.



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The Every Student Succeeds Act would expand the law to address, for the first time, early childhood education: The new law would make permanent an Obama administration competitive grant that awards federal dollars to states to beef up their preschool offerings for low-income students. The law would authorize \$250 million for the program, which would be run out of the Department of Health and Human Services, where programs like Head Start are housed, in partnership with the Department of Education.

TAGS: No Child Left Behind, K-12 education, education, education policy, Congress, legislation

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

DEC 2 2 2015

Dear Chief State School Officer:

Before the spring 2016 test administration, I would like to take this opportunity to remind you of key assessment requirements that exist under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA). These requirements will remain in place for the 2015–2016 school year, and similar requirements are included in the recently signed reauthorization of the ESEA, known as the Every Student Succeeds Act (ESSA).

A high-quality, annual statewide assessment system that includes all students is essential to provide local leaders, educators, and parents with the information they need to identify the resources and supports that are necessary to help every student succeed in school and in a career. Such a system also highlights the need for continued work toward equity and closing achievement gaps among subgroups of historically underserved students by holding all students to the same high expectations.

Section 1111(b)(3)<sup>1</sup> of the ESEA requires each State educational agency (SEA) that receives funds under Title I, Part A of the ESEA to implement in each local educational agency (LEA) in the State a set of high-quality academic assessments that includes, at a minimum, assessments in mathematics and reading/language arts administered in each of grades 3 through 8 and not less than once during grades 10 through 12; and in science not less than once during grades 3 through 5, grades 6 through 9, and grades 10 through 12. Furthermore, ESEA sections 1111(b)(3)(C)(i) and (ix)(I) require State assessments to “be the same academic assessments used to measure the achievement of *all* children” and “provide for the participation in such assessments of *all* students” (emphasis added). These requirements do not allow students to be excluded from statewide assessments. Rather, they set out the legal rule that all students in the tested grades must be assessed.

In applying for funds under Title I, Part A of the ESEA, your State assured that it would administer the Title I, Part A program in accordance with all applicable statutes and regulations (*see* ESEA section 9304(a)(1)). Similarly, each LEA that receives Title I, Part A funds in your State assured that it would administer its Title I, Part A program in accordance with all applicable statutes and regulations (*see* ESEA section 9306(a)(1)). Please note that the portions of the ESEA referenced above have not been waived for States, including States that received ESEA flexibility.

Over the last several months, many States have released 2014–2015 State assessment data. A few States did not assess at least 95 percent of students in the “all students” group or individual ESEA subgroup(s)

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<sup>1</sup> Please note that all statutory citations in this letter refer to the Elementary and Secondary Education Act of 1965, as amended in 2001 by the No Child Left Behind Act. This law remains in effect during the remainder of the 2015-2016 school year and the requirements discussed in this letter continue under the ESSA.

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*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

statewide. Additionally, in some states, LEAs within some States did not assess at least 95 percent of their students. ED has asked each of these States to submit information on the steps it is taking to immediately address this problem and meet its assessment obligations under the ESEA. Each SEA was provided 30 days to submit its response to the Office of State Support (OSS), and ED is currently reviewing information submitted by these SEAs. As additional States release assessment results, ED will request such information if the State or its LEAs do not assess at least 95 percent of their students. If a State's response does not adequately address this problem and meet the State's assessment obligations under the ESEA, ED may take enforcement action.

In each request for information, the SEA was asked to demonstrate that it has taken or will take appropriate actions to enforce the requirements of the ESEA, describe how such actions will specifically address the problem that occurred in 2014–2015, and ensure that all students will participate in statewide assessments during the 2015–2016 school year and each year thereafter, recognizing that the extent of the non-participation and other relevant factors should inform the SEA's actions. Some examples of actions an SEA could take, alone or in combination, include:

- Lowering an LEA's or school's rating in the State's accountability system or amending the system to flag an LEA or school with a low participation rate.
- Counting non-participants as non-proficient in accountability determinations.
- Requiring an LEA or school to develop an improvement plan, or take corrective actions to ensure that all students participate in the statewide assessments in the future, and providing the SEA's process to review and monitor such plans.
- Requiring an LEA or school to implement additional interventions aligned with the reason for low student participation, even if the State's accountability system does not officially designate schools for such interventions.
- Designating an LEA or school as "high risk," or a comparable status under the State's laws and regulations, with a clear explanation for the implications of such a designation.
- Withholding or directing use of State aid and/or funding flexibility.

In addition, an SEA has a range of other enforcement actions at its disposal with respect to noncompliance by an LEA, including placing a condition on an LEA's Title I, Part A grant or withholding an LEA's Title I, Part A funds (*see, e.g.*, section 440 of the General Education Provisions Act).

If a State with participation rates below 95% in the 2014–2015 school year fails to assess at least 95% of its students on the statewide assessment in the 2015–2016 school year, ED will take one or more of the following actions: (1) withhold Title I, Part A State administrative funds; (2) place the State's Title I, Part A grant on high-risk status and direct the State to use a portion of its Title I State administrative funds to address low participation rates; or (3) withhold or redirect Title VI State assessment funds.

For all States, ED will consider the appropriate action to take for any State that does not assess at least 95 percent of its students in the 2015–2016 school year — overall and for each subgroup of students and among its LEAs. To determine what action is most appropriate, ED will consider SEA and LEA participation rate data for the 2015–2016 school year, as well as action the SEA has taken with respect to any LEA noncompliance with the assessment requirements of the ESEA.

We look forward to working with you to ensure that all students participate in statewide assessments during the 2015–2016 school year and each year thereafter, and in supporting implementation of the

Every Student Succeeds Act, which includes a new focus on auditing and reducing unnecessary State and local assessments and providing parents and families with better information about required testing. Additionally, States may find other useful information regarding assessments in the Administration's Testing Action Plan, released in October 2015. As the Plan describes in greater detail, all tests should be worth taking, offer students an opportunity to learn while they take them, and allow them to apply real-world skills to meaningful problems. Tests must accommodate the needs of all students and measure student success in a fair, valid, and reliable way. In the coming months, ED will release additional resources and guidance to support your efforts to eliminate duplicative local or State assessments and continue to develop new and innovative approaches to using assessments effectively to support and inform classroom instruction.

Please do not hesitate to contact your State's program officer in the Office of State Support if you need additional information or clarification. Thank you for your continued commitment to enhancing education for all of your State's students.

Sincerely,

/s/

Ann Whalen

Delegated the authority to perform the functions  
and duties of Assistant Secretary for Elementary  
and Secondary Education

cc: State Title I Directors  
State Assessment Directors

## EDUCATION WEEK

Published Online: January 26, 2016

Published in Print: January 27, 2016, as **States Exploring Ways to Meet Test-Participation Mandate**

# Test-Participation Mandate Puts States on Spot

## How to deal with opt-outs remains tricky under ESSA

By Andrew Ujifusa

As states prepare for the transition to the new federal education law passed last month, one of the thornier policy questions is how they'll consider test-participation rates in their accountability systems, after a year in which the testing opt-out movement rose to national prominence.

States are considering various approaches to try to ensure schools meet the requirement under the Every Student Succeeds Act (the newest iteration of the federal Elementary and Secondary Education Act) that 95 percent of eligible students take state exams in English/language arts and math.


The plans to deal with high opt-out numbers in at least a few states follow suggestions from the U.S. Department of Education about how to respond to relatively low participation numbers. The department also notified 13 states that, according to data, the 95 percent participation requirement was not met either by districts in their state or statewide for the 2014-15 academic year. But even those plans could shift once states' ESEA waivers end and life under ESSA gets under way.

### Within the Margins

The key ESSA language regarding test participation says that in addition to reporting the percentage of students participating in mandatory state exams, states must "provide a clear and understandable explanation of how the State will factor the requirement ... into the statewide accountability system."

But what it means to "factor" participation rates into accountability, or what it should mean, depends on whom you talk to.

It's unclear whether the opt-out movement will grow in stature and number this spring, or fade away as parents and schools become more used to tests aligned to the Common Core State Standards. Most states administered such tests for the first time last year.

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But in guidance issued to states last month, the U.S. Department of Education laid out options for how states might respond to high opt-out rates, such as withholding money from schools, or flagging a district or school as "high risk," along with an explanation for accountability purposes. (Since that guidance, the department has not otherwise publicly addressed states' opt-out policies.) At the same time, the federal department can't directly dictate to states how they handle opt-out with respect to school ratings—that's ultimately up to states.

Chad Aldeman, an associate partner with Bellwether Education Partners who used to work in the Obama administration, thinks those and similar actions are appropriate. But less stringent options, such as notifying parents and the general public about low participation rates (an option not specified in the Education Department's guidance) is insufficient, Aldeman said. That's because not going beyond such a notification would leave a state's accountability system vulnerable to schools gaming their ratings, for example, by preventing some students who might perform poorly from taking exams.

And under ESSA, he said, states still have to use assessments that provide "valid, reliable, and transparent" information on student performance, something he said is impossible without high participation rates.

"There's a balance to this. There's no formula that has a magic rule for it. That's why it's on states," Aldeman said.

He also added that the federal department's warning in its guidance to states that failure to address opt-out appropriately could mean they could lose Title I funding, among other possible actions, is "pretty heavy-handed," but is within the bounds of the law and gives the 95 percent requirement real teeth.

But while a letter notifying parents about low test-participation rates would be "at the margins" of an acceptable response by states, it's still a valid statement about accountability and shouldn't be automatically dismissed, said Monty Neill, the executive director of the National Center for Fair and Open Testing, which opposes high-stakes testing. "I don't read any mandate other than the states have to factor it in. But what does that mean? It doesn't say anything about weighting it or making it important," Neill said, referring to ESSA.

And nothing in the new law, Neill added, would explicitly allow coercing parents into having their children take the state exams.

### **Warnings and Ratings**

When the federal department notified 13 states about test-participation issues last year, the department also asked for the states' responses to the situation.

Rhode Island Education Commissioner Ken Wagner **told the Education Department in a letter** that with respect to accountability, the state would attach an "alert," or essentially a warning, to the rating for any school that failed to meet the 95 percent test-participation requirement. (That warning, however, would not mean a letter would be sent to parents about test participation.)

In addition, any school that missed the participation requirement would not be eligible to receive a "Commendable School" rating, the highest classification in the state's K-12 accountability system.

Fewer than half of Rhode Island's districts had at least 95 percent of students take the Partnership for Assessment of Readiness for College and Careers exams in English/language arts and math in the 2014-15 school year, according to the state.

Elliot Krieger, a spokesman for the Rhode Island department, said the state plans to apply this plan for accountability to school ratings from the 2014-15 school year, which the agency plans to release later this year. However, Krieger didn't specify that the plan will continue for ratings for school years after 2014-15.

The Rhode Island department had yet to receive a response from federal officials to its accountability plans for opt-out, Krieger said, and added, "I'm not sure that we're waiting, necessarily."

Meanwhile, Connecticut Commissioner of Education Dianna Wentzell **told the federal department in a letter** last month that her state will administer the SAT for its 11th graders beginning this school year, after using the Smarter Balanced test in 2014-15. Wentzell wrote that "it is anticipated that participation in the state assessment will improve significantly" for those students. (Overall, the state met the 95 percent requirement, but some districts did not.)

The switch from the Smarter Balanced test to the SAT is part of "an effort to eliminate duplicative testing, reduce overtesting, mitigate student stress and address parental concerns," a spokeswoman for the Connecticut education department, Abbe Smith, wrote in an email.

Wentzell also identified an array of responses for schools that escalate the margins by which districts that miss the 95 percent requirement grow. The most serious consequences for districts include a potential loss of some federal funding beginning in the 2016-17 school year (based on 2015-16 data), and the need for districts to submit plans on how to increase participation rates.

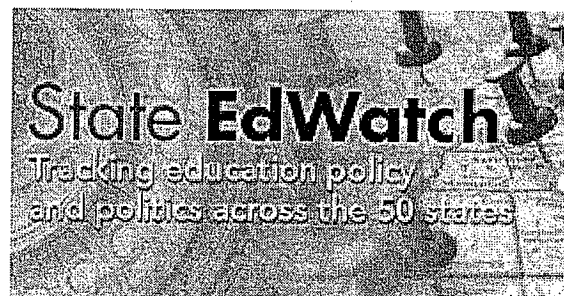
### 'May Have to Adjust'

And it's also not clear to what extent states' plans for addressing opt-outs will change once the transition from ESEA waivers to the new law takes place later this year.

Colorado's plan, which interim Commissioner of Education Elliott Asp outlined to the department earlier this month, would also require schools and districts to show how they would address low test participation rates. Test participation will also count in reviews of programs at Title I schools and low-performing schools under federal law.

However, in its letter to the federal department, the Colorado education agency said its strategy for incorporating test participation into accountability

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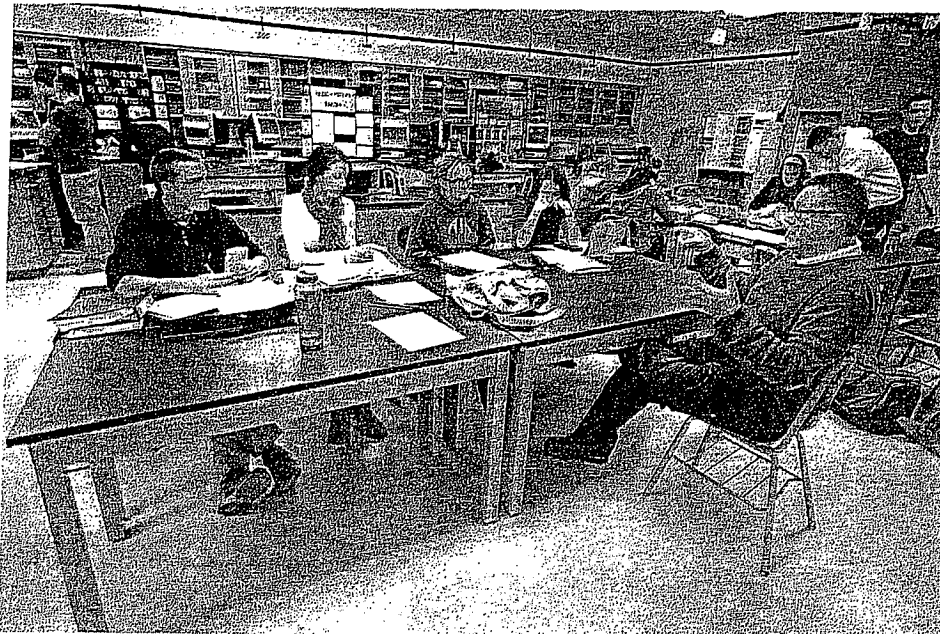
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was part of the state's ESEA waiver, which expires Aug. 1, along with the rest of the states' waivers.

A spokeswoman for the state education department, Dana Smith, said the waiver will be replaced by a new state accountability plan, and that as this plan is developed, Colorado "may have to adjust some elements."

Vol. 35, Issue 19, Pages 17,22



JENNIFER CORBETT/THE NEWS JOURNAL

Then-juniors Max Holdsworth, 16, his lab partner Julia Samworth, 17, and Megan Townsend, 16, and her lab partner Haley Waites, 16, get help from teacher John Scali in honors chemistry class at Concord High School in 2012. Delaware officials on Wednesday said high school juniors will not have to take the Smarter Balanced Assessment this year.

# Juniors won't have to take Smarter Balanced exam

MATTHEW ALBRIGHT  
THE NEWS JOURNAL

Delaware high school juniors will not have to take the controversial Smarter Balanced Assessment this year, the state Department of Education announced Wednesday.

Instead, the state will use the SAT college entrance exam, which is already offered in-class to every Delaware public school student. Students in grades three to eight will continue to take the test.

"This is a smart solution that ensures our educators, students and families get the information they need while mitigating the over-testing concern many share," Secretary of Education Steven Godowsky said in a statement.

Smarter Balanced, which students took for the first time last spring, is at the heart of Delaware's sometimes fierce debate over standardized testing.

The test is much harder than previous state exams — less than half of the state's students scored proficient in reading and less than 40 percent scored proficient in math, down 30 to 40 percentage points from the previous test. It takes juniors about eight hours over several days to complete the test.

Gov. Jack Markell and his Department of Education say Smarter Balanced gives a deeper, more nuanced picture of a student's academic skills than previous exams. But some parent and teacher activists have argued the test is too stressful, takes too much time out of class to prepare for and administer and doesn't give them any useful information.

The Delaware Parent Teacher Association spearheaded a campaign last year to pass a bill protecting parents who "opt out" of Smarter Balanced. That bill passed by overwhelming margins in both houses, but Markell vetoed it. The stage is set for an override vote of that veto when the Legislature goes in session next week.

Smarter Balanced is particularly controversial when it comes to high school juniors, who are already taking the SAT and ACT college entrance exams; finals; and other tests, like Advanced Placement exams.

"Our community was clear that this was in the best interest of our high school juniors and the sooner we could make the switch the better," Godowsky said.

About 10 percent of juniors did not take the test in the first administration last year. That was the only grade in which the state fell below the 95 percent participation

"Our community was clear that this was in the best interest of our high school juniors and the sooner we could make the switch the better."

STEVEN GODOSWKY, SECRETARY OF EDUCATION

rate bar set by the U.S. Department of Education.

Last month, Delaware was one of about a dozen states that received letters from federal officials that pointed to lower-than-expected participation rates. In the letter, the feds asked the state to make efforts to bring those rates up or face consequences, like the loss of federal funding. Delaware is rare in that it pays for public school students to take the SAT in school. Some state education and political leaders said it didn't make sense for juniors to take both that exam, widely accepted by colleges as a measure of academic achievement, and also take Smarter Balanced.

"By substituting a widely accepted standardized test that juniors already take, your administration could alleviate many of the concerns students and parents have raised about the additional burden Smarter Balanced places on high school juniors," 10 Democratic lawmakers wrote in a letter to Markell last month.

Markell created a task force that is looking at all the tests taken to see if any can be eliminated. Those who are concerned about testing have said that may be a good idea, but many maintain that Smarter Balanced is still a problem and the opt-out bill should be made law over Markell's objections.

Terri Hodges, president of the state PTA, called the move "common sense."

"It's a good thing for the juniors because they really were over-tested," Hodges said, but noted that the change does not "speak to the heart of the issue" because the other grades still will have to take Smarter Balanced and the PTA has problems with that exam itself.

Contact Matthew Albright at [malbright@delawareonline.com](mailto:malbright@delawareonline.com) or (302) 324-2426.

1-7-16  
JJ

DELAWARE EDUCATION

# Only SAT for juniors pushed

## State urged to end Smarter Balanced

MATTHEW ALBRIGHT

THE NEWS JOURNAL

Some Delawareans are calling for the state to stop giving high school juniors the controversial Smarter Balanced Assessment and instead rely on the SAT college entrance exam.

"The SAT is a proven, reliable test," said Terri Hodges, president of the state Parent Teacher Association. "Everyone is talking about reducing testing, and this seems a place you could do that."

Unlike most other states, Delaware already offers the SAT to every student, Hodges and others point out. And because students use SAT scores to apply to college, that test matters more to them than Smarter Balanced.

Delaware is in the midst of a heated debate over the number of tests students take and the role their scores should play in schools.

Smarter Balanced, a tough new test

See TESTING, Page 6A

# Testing

Continued from Page 1A

the state's students took for the first time in the spring, has been at the center of that controversy. The PTA, teachers union and other groups have said the test gives parents and teachers little useful information but soaks up valuable class time and puts undue pressure on kids.

The Legislature overwhelmingly passed a bill that would let parents "opt their kids out" of the test, but Gov. Jack Markell vetoed it. His administration says Smarter Balanced provides invaluable information on students' skills that help make smart decisions in schools.

Criticism of Smarter Balanced is fiercest when it comes to juniors. That's because those students already take a slew of other exams - Advanced Placement tests, SAT and ACT entrance exams and end-of-class finals, to name a few.

About 10 percent of Delaware juniors declined to take the Smarter Balanced reading test and 11 percent didn't take the math test. It was the only grade for which the state's participation rate dropped below the 95 percent mark required by federal rules.

By comparison, virtually every Delaware student took the most recent round of SATs.

For juniors, the Smarter Balanced test is expected to take as long as eight and a half hours, in total, though students take it in segments over a few days.

The SAT, by contrast, is taken in one day and takes about three hours and 45 minutes.

Smarter Balanced is computer-adaptive, meaning the questions get harder or easier depending on how the student is doing.

Smarter Balanced is also a much tougher test than previous tests because many of its questions require kids to do more than pick a multiple-choice answer, instead writing explanations or doing tasks to show how deeply they understand the concept.

State leaders say that gives a more realistic and detailed picture of a student's skills. But some parents have complained that students "stress out" taking the test because of its difficulty and complexity.

Acknowledging growing dissatisfaction with testing, Markell tasked the Department of Education with creating an inventory of every test students in each district take and working with local lead-

ers to eliminate any that were redundant.

Department spokeswoman Alison May said the results of that study, due in January, would help the state decide whether to make the SAT the test for juniors. No official decision has been made yet, she said.

Yet state leaders are clearly considering it. At the most recent State Board of Education meeting, board members wondered whether switching to the SAT would reduce the number of students "opting out."

"I think the fact that there's 100 percent [participation] shows there's perceived value in the test," said board member Pat Heffernan.

Secretary of Education Steven Godowsky said switching to the SAT "has been discussed some, but not at the level it takes to make those decisions."

Hodges, who opted her daughter out last school year, said she believes parents would be less likely to pull kids out of the SAT than from Smarter Balanced.

"SAT is part of the educational culture. Students know it; parents know it," she said. "All of the resources, all of the processes are already in place and very well-established."

One reason the timing may be right for a switch to the SAT is that the test is undergoing a major redesign this year to better fit the Common Core State Standards. Those are the academic expectations for Delaware's classrooms, and Smarter Balanced is designed to measure them.

"College and career readiness is what we're all about in Delaware, and I think the SAT is a really good tool to measure that," said Merv Daugherty, superintendent of the Red Clay Consolidated School District. "I think there's buy-in from the schools, the teachers and the parents."

State Rep. Kim Williams opted her son, a junior, out of the Smarter Balanced test. She advised him to focus instead on the SAT and ACTs, because better scores could open up better college opportunities.

Williams, a former school board member, said it would be good to take one big test out of juniors' already crazy schedules.

But she said picking a different test wouldn't necessarily address some larger questions, like the extent to which test scores should be used to evaluate teachers and assess the quality of schools.

"I'd leave it up to the experts to decide whether the SAT is a good test for us to use," Williams said. "My only concern is that, because we tie all these things to the test, how is that going to affect how we measure teachers and schools?"

# Veto override on testing opt-out fails in House

Matthew Albright, The News Journal 11:20 p.m. EST January 14, 2016



Opt out rally at Legislative Hall



(Photo: JASON MINTO/THE NEWS JOURNAL)

The campaign to override Gov. Jack Markell's veto of a bill allowing parents to "opt out" of the state standardized test foundered in the state House of Representatives on Thursday. But lawmakers passed a resolution that might lead to some of the same protections advocates who supported an override sought.

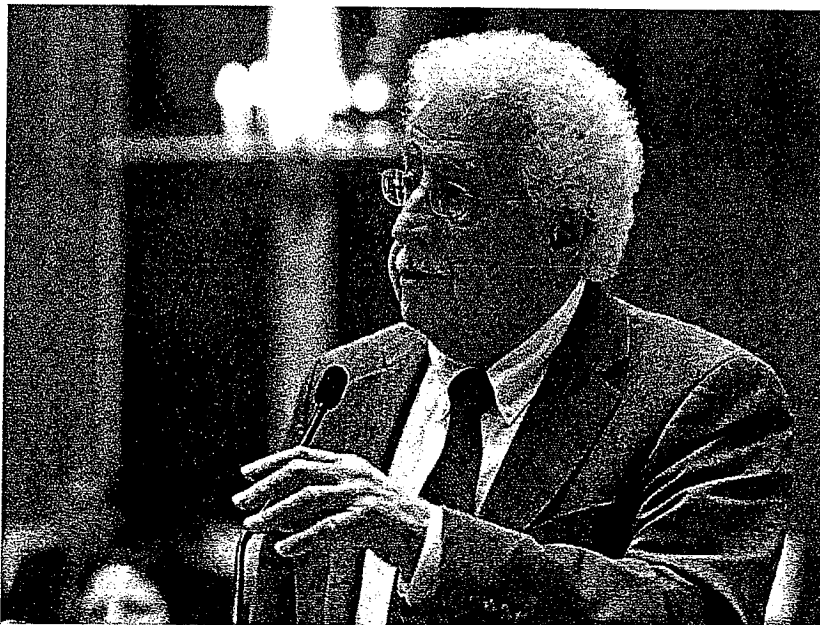
Rep. John Kowalko, D-Newark, needed a majority of representatives to vote to "suspend the rules" so they could debate and vote on an override. But his attempt failed, 13-26.

"I cannot understand how someone would say, 'I won't even allow myself to vote on it,' " Kowalko said afterward. "They will have to answer to their constituents."

Kowalko has asked that House leaders put the bill on the regular agenda, but was not optimistic that would happen.

"I think it should. I hope it does," he said. "Do I undoubtedly think it will? No."

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Rep. John Kowalko, D-Newark South, speaks at the Statehouse in Dover on Thursday. Lawmakers rejected a veto override vote on a school test bill. (Photo: JASON MINTO/THE NEWS JOURNAL)

Some Delaware parents already chose to opt out of Smarter Balanced last year. About 10 percent of juniors did not take the test.

Kowalko said his bill, which would explicitly state parents' rights to opt out, was necessary to bar schools from doing anything to coerce parents from pulling their kids out of the test.

It was one of the most hotly debated bills of last session, and Markell vetoed it after that session was over. Kowalko made his override attempt on only the third day of the new session, which started Monday.

The Delaware Parent Teacher Association, which has supported the bill, held a rally on the steps of Legislative Hall before Thursday's vote.

While supporters held signs calling for less testing and urging lawmakers to override the veto, parents and teachers gave speeches about their concerns with testing.

"My son is not a test score," said Kevin Ohlandt, a parent and blogger who has been one of the most vocal opt-out supporters. "He is not data. He is a human being."

After the vote, PTA leaders were left shaking their heads.

"There are a lot of representatives whose votes were about power-playing and not about the substance of the bill," said Teri Hodges, the PTA's president.

"I think it will be an interesting November," she added, referencing the fact that House members are up for re-election this year.



DELAWAREONLINE

Delaware's testing opt-out bill ignites firestorm

(<http://www.delawareonline.com/story/news/education/2015/06/10/opt-bill-ignites-firestorm/71038852/>)

The opt-out debate has been at the center of Delaware's debate over the role of standardized testing. Some education advocates argue the state unfairly uses tests to judge teachers and schools – and say testing is taking too much time out of the classroom without giving parents and educators any useful information.

They are particularly unhappy with the Smarter Balanced Assessment, which is significantly harder and takes longer than previous state exams.

Markell and his administration have said Smarter Balanced is a vital tool to making smart school policy, and some civil rights and business leaders had said the state needs an objective way to hold the education system accountable. Officials also have said letting students opt out could risk millions of dollars in vital federal funding.

A group of 10 House members recently sent Markell a letter asking his administration to swap Smarter Balance with the SAT.

Markell's administration did make some concessions after last year's debate, like starting a statewide inventory of testing to find exams to eliminate and letting juniors use the SAT college entrance exam instead of Smarter Balanced.

Those efforts placated some lawmakers who voted for the bill the first time, while others said they didn't want to rebuff their governor. Other lawmakers said they didn't think it was appropriate to suspend the House rules and go outside the regular process bills follow.

Still, some lawmakers want to see action taken to protect parents who opt-out.

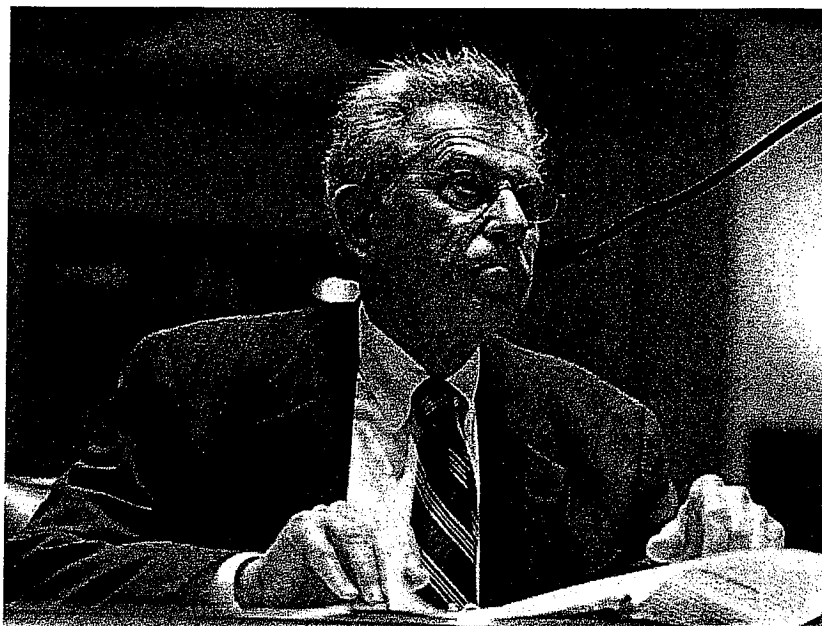
After the override failed, Rep. Joseph Miro, R-Pike Creek Valley, introduced a resolution, which the House passed, that would ask the Department of Education to provide lawmakers with options for a system that would make opt-out policies more consistent across districts and create a uniform way to inform parents of their opt-out rights.

Rep. Earl Jaques, D-Glasgow, pointed out that resolutions don't have the force of law. And Rep. Sean Lynn D-Dover, said he's not aware that department officials have even acknowledged parents have the right to opt out.

State Secretary of Education Steven Godowsky would not say after the meeting that parents had the right to opt out, but did say there are no penalties in place for parents or students should they do so.

## Veto override on testing opt-out fails in Delaware House

Godowsky said the department was "going to have to look" at Miro's resolution before saying what he might recommend.



Delaware Education Secretary Steven Godowsky speaks at the Statehouse in Dover on Oct. 28. Some parents and teachers say the Smarter Balance test takes up too much class time to prepare for and administer. (Photo: JASON MINTO/THE NEWS JOURNAL)

Yvonne Johnson, the PTA's vice president of advocacy, said she was upset that Kowalko's bill failed, but said Miro's resolution could end up protecting some of the same rights.

"I believe that, if the resolution is really treated seriously, it could be a good compromise," she said. "We're happy that they've come up with something to please parents, but we need to follow through."

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

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SCHOOL TESTS

**National leader talks tests**

**Acting Secretary of Education visits Del.**

MATTHEW ALBRIGHT

THE NEWS JOURNAL

Standardized tests are important for teachers and vital to policymakers, but states need to listen to parents' and teachers' concerns about over-testing, Acting U.S. Secretary of Education John King said in a visit to Wilmington on Friday.



“Assessments are an essential tool,” King said. “But they have to be smart. And we have to be smart about how we use them.”

King visited the three charter schools that are housed in the Community Education Building, the former Bank of America building in downtown that was donated to create an education mecca. After the visits, he joined a roundtable discussion led by Gov. Jack Markell and U.S. Sen. Tom Carper that included school superintendents, legislators and other influential education leaders.

“The bottom line is we need to be smart and find a balance,” Markell said.

Delaware, like many other states, has seen growing backlash against the amount of tests students are taking and what test scores are used for. That debate flared up last week when the state House of Representatives declined to override Markell's veto of a bill designed to protect parents and students who 'opt out' of the state testing, despite passionate lobbying from the Delaware Parent Teacher Association and other advocates.

See EDUCATION, Page 9A

**“I think this work you've started as a state around smart assessments is vitally important.”**

**JOHN KING**

ACTING U.S. SECRETARY OF EDUCATION

**U.S. Secretary of Education John King visited Kady Taylor's first-grade class at Kuumba Academy on Friday morning before a roundtable discussion in Delaware**

JENNIFER CORBETT/THE NEWS JOURNAL

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## **Education**

Continued from Page 1A

The panel talked at length about an effort Markell's administration started last year to create an inventory of tests kids take at both the state and district level. King praised that process, saying it was ongoing in many states.

“I think this work you've started as a state around smart assessments is vitally important,” King said, saying Delaware is one of the leading states on the testing front.

The testing inventory has not placated the most ardent testing critics. They say the biggest problem is the Smarter Balanced Assessment, the big, difficult state exam kids take at the end of the year, not tests that schools or districts give.

Rep. Earl Jaques, D-Glasgow, is chair of the House Education Committee, and was one of the few representatives who voted against the opt-out bill when it first passed through the legislature. But he asked King to address the concerns he hears from constituents about the Smarter Balanced Assessment, the big, difficult state exam kids take at the end of the year.

“What I'm hearing is that the results come back so late, the teachers can't alter their lesson plans,” Jacques said. “The question I'm hearing from parents is, how is this helping my children?”

King acknowledged that Smarter Balanced could be improved, and said he hopes technological improvements will make the test more responsive. He also said, however, that there's a tension between creating a test that gives a sophisticated picture of students' academic skills and one that is quick to return results.

Some panelists said the state can do a better job explaining to parents what different tests are used for. “Some tests are used to give immediate feedback to change instruction,” said Elizabeth Farley-Ripple, a University of Delaware professor working with the test inventory task force. “Sometimes we need a system check to make larger decisions.”

Smarter Balanced, the education leaders said, is the most powerful tool the state has ever had for the latter purpose. While testing dominated the discussion Friday, some side issues did come up. Sen. Greg Lavelle, R-Sharples, pressed King to make sure “the federal government is sensitive to how much they're telling us to do.”

King replied that Congress's action to approve a new over-arching education law, called the Every Student Succeeds Act, will remove some of the top-down pressure from the feds. “But in some ways, that just moves the challenges to the state level,” he said.

King, who President Barack Obama named as Education Secretary Arne Duncan's successor in October, has been visiting schools across the country to highlight their good work during his Opportunity Across America tour. This was his sixth stop. King on Friday followed Duncan's footsteps and praised Delaware's education system. When King was Commissioner of education for the state of New York, he remembered watching Delaware beat his state out for the first round of federal Race to the Top grants.

“I think Delaware is really a leading state when it comes to providing opportunity to kids,” he said.

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**Delaware Department of Education  
School Climate &  
Discipline Program  
Regulation Review & Updates**

Summer 2013

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## 611 - Updates/Reminders

- ▶ Correct reporting is done through the eSchool discipline tracker, not the attendance tracker.
- ▶ Students placed in a CDAP program in lieu of an expulsion must be coded as 10A - Suspension - Out of School w/CDAP Placement.
- ▶ Students placed in a CDAP program due to expulsion must be coded as 07A - Expulsion w/CDAP Placement.
- ▶ You must include duration.

# 611 Consortium Discipline Alternative Programs (CDAP)

- ▶ An administrator cannot arbitrarily “administratively place” a student in a CDAP program.
  - ▶ You must have an Alternative Placement Team in place to decide on the student placement.
  - ▶ If an expelled student is not placed in a CDAP, you must send written notice within five days to DOE stating the reason why and include the age, race, and SPED status of the student.
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