



STATE OF DELAWARE  
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MEMORANDUM

DATE: February 29, 2016

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

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

RE: H.B. 243 (Accountability: 95% Student Participation Standard]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 243 relating to education assessment. 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.

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. 243 would create a statute barring the Delaware Department of Education (DOE) 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.

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

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

HB 243 accountability-95 percent student participation standard 2-22-16

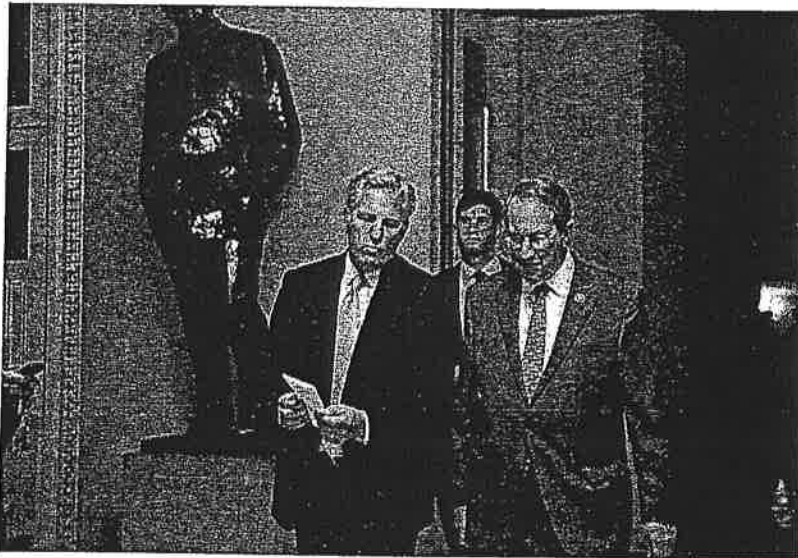


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# Proposed New Education Law Shrinks Federal Footprint

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. [+ More](#)

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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for creating a culture of over-testing.

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

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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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.

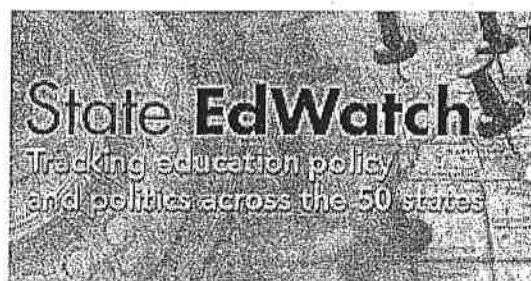
### 'May Have to Adjust'

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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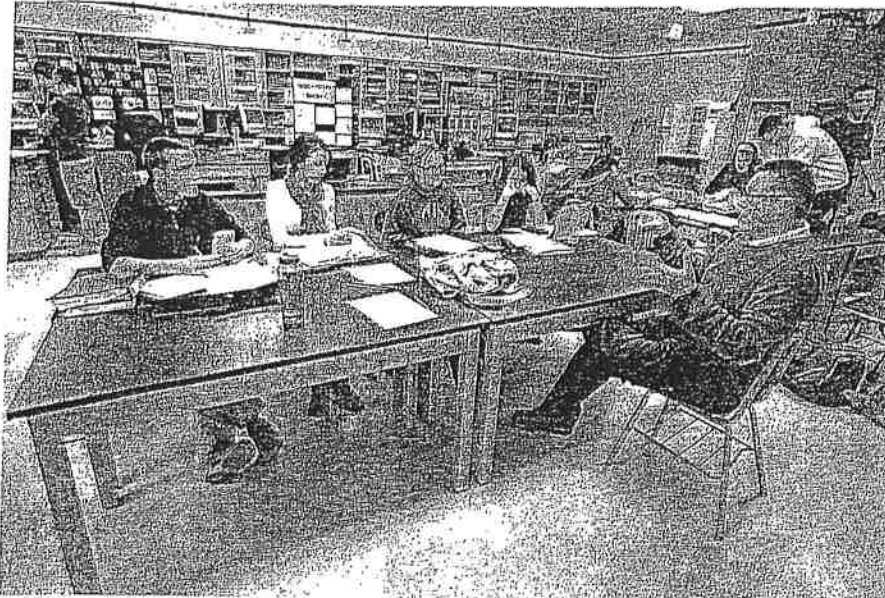


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was part of the state's ESEA waiver, which expires Aug. 1, along with the rest of the states' waivers.

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 Godoswky 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," Godoswky 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 or (302) 324-2428.

1-7-14  
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.

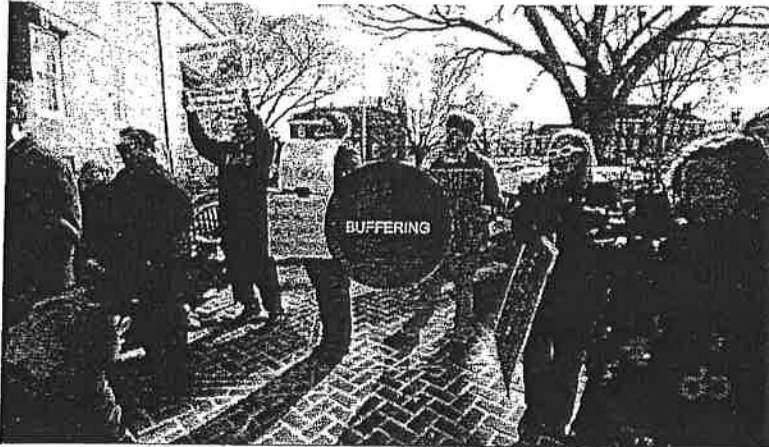
Williams, a former school board member, said it would be good to take one big test out of juniors' already crazy schedules.

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.



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[Delaware's testing opt-out bill ignites firestorm](#)

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



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

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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."

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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.

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**"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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