



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
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September 29, 2015

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

RE: 19 DE Reg. 162 [DOE Proposed Accountability Regulation]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to adopt a revision of its school and district accountability standards. The impetus for changes include the Department's recently approved ESEA Flexibility application and the attached §364 from the epilog to the FY16 budget bill. The resulting regulation was published as 19 DE Reg. 162 in the September 1, 2015 issue of the Register of Regulations. SCPD has the following observations.

First, enabling legislation contemplates that the accountability system applies to charter schools. See, e.g. Title 14 Del.C. §§124A(a) and 154(a). Section 1.1 also applies the accountability regulation to charter schools. In contrast, references to charter schools are explicitly stricken in some of the regulations (e.g. §§7.4.3.3.1 and 7.4.3.4.1.1) and other references only mention "districts" or schools within districts. See, e.g. §§ 7.4.3 and 9.2. The DOE may wish to review such references to ensure consistency in application of standards.

Second, §1.0 replaces the "DCAS" reference and renames the assessment system as the "Delaware System of Student Assessment System (DeSSA). See §1.0, definition of Delaware System of Student Assessment System". SCPD suspects that the second reference to "System" should be deleted as redundant. It should read "Delaware System of Student Assessment".

Third, it is unclear whether the standards apply to the prison education program. It would be useful to include the prison education program in the assessment system for evaluative purposes. The DOE may wish to clarify the application of the regulation to the program.

Fourth, the standards for demonstrating "success" in the "College and Career Readiness" category are ostensibly very liberal. See §2.4.4.3. It is "counterintuitive" that some of the qualifying achievements equate to demonstrated success in college/career readiness. For example, achieving a grade of B or above in a single non-elective course qualifies as demonstrating success in overall college/career readiness. Achieving a score of three or above in any Advanced Placement exam (e.g. foreign language) qualifies as demonstrating overall success in college/career readiness. These relatively low benchmarks could be reconsidered.

Fifth, consistent with the attached September 3, 2015 News Journal article, federal standards require a 95% participation rate in the assessment. Given the “opt-out” movement, some districts and schools do not have 95% participation. Section 2.5 contains an “in terrorem” recital that school ratings will be reduced based on low participation rates: “Any school with fewer than 95% of the students in the aggregate or within each subgroup participating in the State assessments of English language arts or mathematics shall have its accountability rating reduced, as determined by the Department.” This may provide schools with an incentive to encourage student participation in the assessment system.

Sixth, §4.2 recites that a student who answers at least 6 items but does not complete at least 60% of questions in a content area will not be assigned an achievement level. This could be reconsidered. A parent may prefer to receive at least some rating. Moreover, even if a student answers less than 60% of questions, the responses may be “diagnostic” or helpful to teachers in assessing strengths and weaknesses.

Seventh, the regulations contemplate development of remedial plans and submission of periodic reports for low-achieving schools. See, e.g., §7.1, 7.2, 7.3, 7.4, and 7.4.3. It would be preferable to explicitly require publication of the reports on school or district websites.

Eighth, the “1 school year” time period for “focus schools” and “focus plus” schools to develop a remedial plan (§§7.2.2.2 and 7.3.2) is ostensibly too long. “Action list” schools must develop a plan by December 1 (§7.1.2). The “1-school year” timetable is consistent with a laissez faire approach rather than reflecting the urgency of revamping a failing system. Schools will know their ratings in September (§10.1). Alternatively, the DOE could require development of an interim plan by January 1 and final plan by July 1 of the following year.

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

Sincerely,



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

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

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1 application to the Department of Education no later than January 31 of the current fiscal year. The Department of  
2 Education shall provide a report on the use of said cash/contractual options to the Office of Management and Budget  
3 and the Controller General by May 1 of each fiscal year.

4 **Section 361.** Pursuant to provisions of 14 Del. C. § 1902(b), all local districts shall be authorized to assess  
5 a local match for Fiscal Year 2010 Reading Resource Teachers and Mathematics Resource Teachers/Specialists and  
6 Fiscal Year 2008 Extra Time.

7 **Section 362.** Notwithstanding any provision of the Delaware Code or this Act to the contrary, and in order  
8 to pilot the sharing of certain expenses of public education between school districts, any school district which  
9 receives funding under the provisions of 14 Del. C. is authorized to enter into a memorandum of understanding with  
10 another school district or school districts for the sharing of central services within such school districts which may  
11 use, without limitation, the combining of similar unit funded positions to pay for a shared position to perform the  
12 services agreed to and payments between the districts for such shared services, provided that the memorandum of  
13 understanding is also approved by the Secretary of the Department of Education, with the concurrence of the  
14 Director of the Office of Management and Budget and the Controller General.

15 **Section 363.** To ensure that districts and charter schools are implementing the needs based funding system  
16 appropriately, the Department of Education shall, in cooperation with the Governor's Advisory Council for  
17 Exceptional Citizens, create a Certification of Earned Staff Units protocol. The results of all monitoring shall be  
18 reported at least annually on the department's website.

\* 19 **Section 364.** The provisions of 14 Del. C. ~~e-1~~ § 124A, § 154 and § 155, and any implementing regulations  
20 in 14 DE Admin Code that the Delaware Department of Education determines to be inconsistent with the  
21 Department's ESEA Flexibility Request as approved by the U.S. Department of Education shall not be applicable to  
22 Delaware Public Schools and School Districts, ~~during the flexibility waiver period, and the department is authorized~~  
23 ~~to promulgate interim regulations consistent with said application and approval which shall be effective during the~~  
24 ~~flexibility waiver period.~~ Upon approval by the U.S. Department of Education, the department shall publish updated  
25 regulations to be consistent with the approved ESEA Flexibility Request within 60 days. Pursuant to Delaware  
26 Code, the regulations shall be subject to the State Board of Education approval.

27 **Section 365.** Notwithstanding any language to contrary, for any appropriate purpose, the Department of  
28 Education may use an alternative measure to determine low socio-economic status in lieu of the eligibility for free

# Tough new test: Fewer students meet standards



Matthew Albright, The News Journal 9:39 a.m. EDT September 3, 2015



(Photo: SUCHAT PEDERSON/THE NEWS JOURNAL)

The state's tough new standardized test paints a bleaker picture of student performance than previous years, but education leaders say that's only because Delaware is ratcheting up expectations.

Only half of the state's students are proficient in English and fewer than four in 10 are proficient in math, according to results (<http://php.delawareonline.com/news/2015/2015-test-scores/>) of the controversial new Smarter Balanced Assessment released Wednesday.

"The Smarter Assessment is harder and different from any of our past state assessments," said Gov. Jack Markell. "Although we raised the bar considerably, our students performed better than anticipated."

Delaware adopted the Common Core State Standards in 2010, hoping to set a higher academic bar for children and make them more competitive with other states and countries. Smarter Balanced is supposed to judge whether students are reaching that higher bar.

[DELAWAREONLINE](#)

[2015 Delaware School Test Scores](#)

(<http://php.delawareonline.com/news/2015/2015-test-scores/>)

The computerized test features writing sections and performance tasks that require students to do more than just fill out bubble-sheets. That theoretically means the test shows whether students have really mastered a subject, rather than just knowing enough to guess.

"The main thing here is that we're being honest," Markell said. "We're saying that our students need to have higher standards to be competitive, and I'm confident our educators will rise to that challenge."

The scores are higher than the predictions that came out of a massive, nationwide field test of the exam last year.

"The immediate takeaways was that the results were better than projected by the national field test, but show that we still have areas to grow and improve," wrote State Board of Education Vice President Jorge Melendez, in a statement.

The Department of Education will present more detailed test results, including how minorities and low-income students performed, at the Board's meeting on Sept. 17.

Frederika Jenner, president of the Delaware State Education Association education union, said nobody should rush to draw conclusions from the scores. It will take time for educators at the classroom, school and district level to comb through the figures and see what they can learn.

"As a teacher with 39 years' experience, I know the value of tests," Jenner said. "However, teachers rightfully use a number of other measures and indicators of student progress and learning. [A test] is not a complete picture of a child's level and progress."

Despite enthusiasm from state officials, Smarter Balanced has become a lightning rod for parents and teachers worried about how much Delaware and the rest of the country use, or overuse, test scores.

A bill that would codify a parent's right to remove their children from Smarter Balanced smashed through the Legislature this year after some of the fiercest education debates Delaware has seen in years.

The state Parent Teacher Association and DSEA emphatically supported the bill, saying Smarter Balanced placed too much stress on kids, took too much time out of the classroom, and gave teachers and parents little useful information.

Markell vetoed the bill, but he could be overruled when the Legislature resumes in January.



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