

DEPARTMENT OF EDUCATION
14 DE Admin. Code 101
Statutory Authority: 14 Delaware Code,
Section 220 (14 Del.C. §220)

REGULATORY IMPLEMENTING ORDER

FINAL

101 Delaware Student Testing Program

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 101 Delaware Student Testing Program in order to correct section 9.2.4.2 as per the requirements of No Child Left Behind. Section 9.2.4.2 has been amended to state that “students who are granted a special exemption shall be included in the participation rate calculation”. This change aligns this regulation with 14 **DE Admin Code** 103.2.4. Amendments to this section of 14 **DE Admin. Code** 103 were approved in May 2004.

Amendments were also made so that all references made to a student’s parent or guardian also includes a Relative Caregiver. In 1.0 grade K was changed to grade 2 and in 4.1.1 grades K and 1 were removed because they are no longer part of the State Assessment program.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 22, 2004, in the form hereto attached as *Exhibit “A”*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 101 in order to bring the regulation in line with 14 **DE Admin. Code** 103 and to make technical corrections.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 101. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 101 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 101 amended hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 101 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 19, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of August 2004.

DEPARTMENT OF EDUCATION
Valerie A. Woodruff, Secretary of Education

Approved this 19th day of August 2004

STATE BOARD OF EDUCATION

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101 Delaware Student Testing Program

1.0 Definition:

The Delaware Student Testing Program (DSTP) shall include the assessments of all students in grades ~~K~~ 2-10 in the areas of reading, writing and mathematics and the assessments of all students in grades 4, 6, 8, and 11 in the areas of science and social studies. The DSTP shall also include the participation of Delaware students in the National Assessment of Educational Progress (NAEP) as determined by the Department of Education. All districts and charter schools shall participate in all components of the DSTP including field test administrations.

1.1 All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

1.2 The Department of Education shall determine the dates upon which the DSTP will be administered, and will advise the school districts and charter schools of those dates.

2.0 Levels of Performance:

There shall be five levels of student performance relative to the State Content Standards on the assessments administered to students in grades 3, 5, 8 and 10 in reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in social studies and science. In reading, writing and mathematics at grades 3, 5, 8 and 10 and science and social studies at grades 4, 6, 8 and 11 the cut points for Exceeds the Standard and Meets the Standard shall be determined by the Department of Education with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation. Beginning with the 2006 assessments, there shall be the same five levels of performance for students in grades 4, 6, 7 and 9 in reading, mathematics and writing. Said levels are defined and shall be determined as follows:

2.1 Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education.

2.2 Exceeds the Performance Standard (Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond what is expected at the grade level. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good". The cut points for Exceeds the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.3 Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be classified as "good". The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.4 Below the Performance Standard (Level 2): A student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards.

Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically “deficient”. The cut points for Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.5 Well Below the Performance Standard (Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Well Below the Performance Standard have demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as “very deficient”. The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

7 DE Reg. 51 (7/1/03)

3.0 Other Indicators of Student Performance

3.1 Local school districts and charter schools may consider other indicators of student performance relative to the state content standards pursuant to 14 Del.C. §153(b) when determining the placement of students who score at Level 1 or Level II on a mandated retake of a portion of the DSTP. Pursuant to 14 Del.C. §153(d)(2) and §153(d)(12), local school districts and charter schools may also consider other indicators of student performance relative to the state content standards when determining if a student may advance to the next grade level without attending summer school. The only other indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 Del.C. §153(e)(1); student performance on end-of-course assessments; student classroom work products and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 Del.C. §153(a).

3.2 Any local school district or charter school planning to use other indicators of student performance shall submit the proposed indicators to the Department of Education by September 1st of each year.

3.2.1 Any such submission must include a demonstration of how an indicator of student performance aligns with and measures state content standards and the level of performance required to demonstrate performance equivalent to meeting state content standards.

3.2.2 Any proposed indicators of student performance must be approved by the Department of Education following consultation with the Student Assessment and Accountability Committee and the State Board of Education.

3.3 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the other indicators of student performance as approved by the Department of Education.

3.3.1 The academic review committee shall be composed of two classroom teachers from the student's tested grade, one classroom teacher from the grade to which the student may be promoted, one guidance counselor or other student support staff member and two school building administrators.

3.3.2 The supervisor of curriculum or instruction for the school district or charter school or his/ her designee shall chair the committee.

3.3.3 Placement of students with disabilities who are eligible for special education and related services is determined by the student's IEP team.

7 DE Reg. 325 (9/1/03)

4.0 Individual Improvement Plan (IIP)

4.1 The following students are required to have an Individual Improvement Plan:

Students who score below Level 3 Meets the Standard, on the reading portion of the 3rd, 5th or 8th grade Delaware Student Testing Program or the mathematics portion of the 8th grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and ~~a parent or legal guardian of the student.~~ the student's parent, guardian or Relative Caregiver.

4.1.1 Students assessed on the DSTP in grades ~~K-1~~, 2, 4, 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in reading shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student. Students assessed on the DSTP in grades 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in mathematics shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and ~~a parent or legal guardian of the student.~~ the student's parent, guardian or Relative Caregiver.

4.2 The Individual Improvement Plan shall be on a form adopted by the student's school district or charter school. The IIP shall be placed in a student's cumulative file and shall be updated based on the results of further assessments. Such assessments may include further DSTP results as well as local assessments, classroom observations or inventories. For students with an Individualized Education Program (IEP), the IEP shall serve as the

Individual Improvement Plan (IIP).

4.3 The Individual Improvement Plan shall at a minimum identify a specific course of study for the student that the school will provide and the academic improvement activities that the student shall undertake to help the student progress towards meeting the standards. Academic improvement activities may include mandatory participation in summer school, extra instruction and/or mentoring programs.

4.4 Individual Improvement Plan shall be prepared by school personnel and signed by the teacher(s), principal or designee and ~~the parent or legal guardian of the student.~~ the student's parent, guardian or Relative Caregiver who ~~A parent or the student's legal guardian~~ must sign and return a copy of the student's Individual Improvement Plan to the student's school by the end of the first marking period.

4.5 Disputes initiated by a student's parent or legal guardian concerning the student's IIP shall be decided by the academic review committee. Any dispute concerning the content of a student's IEP is subject to resolution in conformity with the Regulations, Children with Disabilities.

7 DE Reg. 51 (7/1/03)

5.0 Summer school programs for students in grades 3, 5, and 8 as required pursuant to 14 Del.C. §153.

5.1 Summer school programs shall be provided by the student's district of residence with the following exceptions:

5.1.1 Where a student attends another district as a result of school choice or attends a charter school the district of choice or charter school shall provide the summer school program.

5.1.2 Where by mutual agreement of both districts or a charter school and ~~the parent or guardian of the student~~ the student's parent, guardian or Relative Caregiver another district provides services.

5.1.3 Where by mutual agreement of the student's school district or a charter school and the student's ~~parent or guardian~~ parent, guardian or Relative Caregiver, ~~the parent or guardian~~ the parent, guardian or Relative Caregiver arranges for summer school instruction to be provided outside the public school system. Under such conditions ~~the parent or guardian~~ the parent, guardian or Relative Caregiver shall be responsible for the cost of providing non-public school instruction unless the districts or the charter school and parents or guardian agree otherwise. Requirements for secondary testing shall be met.

5.1.4 Where a student has been offered admission into a vocational technical school district or charter school that district or charter school may provide summer school services.

6.0 High School Diploma Index As Derived from the 10th Grade Assessments Pursuant to 14 Del.C. §152.

6.1 Students who graduate from a Delaware public high school, as members of the class of 2004 and beyond shall be subject to the diploma index as stated herein.

6.1.1 Beginning in 2002 for the graduating class of 2004, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, and mathematics.

6.1.2 Beginning in 2005 for the graduating class of 2006, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.

6.2 A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.

6.3 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight and summing the results.

6.3.1 Beginning with the year 2002, the assigned weights shall be .40 for reading, .40 for mathematics, and .20 for writing for the graduating class of 2004 and 2005.

6.3.2 Beginning with the year 2005, the assigned weights shall be .20 for reading, .20 for mathematics, .20 for writing, .20 for science and .20 for social studies for the graduating class of 2006 and beyond.

6.4 Students shall qualify for State of Delaware High School diplomas as follows:

6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to 4.0 provided that the student has attained a Performance Level 3 or higher in each content area and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.2 A student shall be awarded a Standard State Diploma upon attainment of a diploma index greater

than or equal to 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.3 A student shall be awarded a Basic State Diploma upon attainment of a diploma index less than 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.5 ~~Parent or Guardian Notification~~ Parent, Guardian or Relative Caregiver Notification: Within 30 days of receiving student performance levels and/or diploma indices, school districts and charter schools shall provide written notice of the same and the consequences thereof to ~~the student's parent or legal guardian.~~ the student's parent, guardian or Relative Caregiver.

7 DE Reg. 51 (7/1/03)

7.0 Security and Confidentiality:

In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook, as the same, may from time to time be amended hereafter.

7.1 Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the certification provided by the Department of Education regarding test security before, during and after test administration.

7.2 Violation of the security or confidentiality of any test required by the Delaware Code and the Regulations of the Department of Education shall be prohibited.

7.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials in 14 Del.C. §170 through §174.

7.4 Procedures for Reporting Security Breaches

7.4.1 School Test Coordinators shall report any questionable situations to the District Test Coordinators immediately.

7.4.2 District Test Coordinators shall report all situations immediately to the State Director of Assessment and Analysis.

7.4.2.1 Within 5 days of the incident the District Test Coordinator shall file a written report with the State Director of Assessment and Analysis that includes the sequence of events leading up to the situation, statements by everyone interviewed, and any action either disciplinary or procedural, taken by the district.

7.4.2.2 Following a review of the report by the State Director of Assessment and Analysis and the Associate Secretary of Education for Assessment and Accountability, an investigator from the State Department of Education will be assigned to verify the district report.

7.4.2.3 Within 10 days of the receipt of the report from the District Test Coordinator, the assigned investigator shall meet with the district personnel involved in the alleged violation. The meeting will be scheduled through the District Test Coordinator and the investigator shall be provided access to all parties involved and/or to any witnesses.

7.4.2.4 The investigator shall report the findings to the Associate Secretary for Assessment and Accountability. Following the review the Associate Secretary shall make a ruling describing any recommendations and or required actions.

7.4.2.5 The ruling shall be delivered within 10 days of the receipt of all reports and information and records shall be kept of all investigations.

8.0 Procedures for reviewing questions and response sheets from the Delaware Student Testing Program (DSTP)

8.1 School personnel, local school board members and the public may request to review the Delaware Student Testing Program (DSTP) questions. In order to review the DSTP questions individuals shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education.

8.1.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.1.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.1.3 In cases where more than one individual is requesting to view the DSTP questions, the local school district shall send a representative to sit in on the review.

8.2 ~~Parent/guardian(s)~~ **[The A]** student's parent, guardian or Relative Caregiver may request to view the test

questions and ~~[their that]~~ student's responses. In order to review the DSTP questions and ~~[their that]~~ student's responses, ~~parents/ guardian(s)~~ the student's parent, guardian or Relative Caregiver shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education. The Department shall be allowed sufficient time to secure a copy of student responses from the test vendor.

8.2.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.2.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.2.3 In the case of the stand-alone writing response, ~~the parent/guardian(s)~~ the student's parent, guardian or Relative Caregiver may go to the local school district or charter school to view the test responses.

4 DE Reg. 464 (9/1/00)

5 DE Reg. 620 (9/1/01)

9.0 Invalidations and Special Exemptions

9.1 Invalidations for students in grades 3, 5, 8 and 10 for reading, writing and mathematics and grades 4,6,8 and 11 for science and social studies: Invalidations are events or situations that occur during the administration of the DSTP assessments which may result in a statistically unreliable score report for a student. Invalidations may occur as a result of either: intentional student conduct, including but not limited to cheating and disruptive behavior; or unforeseen and uncontrollable events, including but not limited to onset of illness.

9.1.1 Reporting of situations that occur during testing.

9.1.1.1 The school building principal or designee shall notify the District Test Coordinator in writing within 24 hours of events or situations that the principal reasonably believes may result in an invalid score report for a student(s).

9.1.1.2 The District Test Coordinator shall notify the Department of Education staff person assigned to the district for test security purposes as soon as the Coordinator learns of events or situations which may result in invalidation(s).

9.1.1.2.1 The District Test Coordinator shall submit a DSTP Incident Report Form within three business days of the events. Written reports from the building principal or designee and any staff must be included with the DSTP Incident Report Form.

9.1.1.3 The Director of Assessment for the Department of Education shall determine whether the reported events warrant invalidating a student(s) score and such decision shall be final.

9.1.1.3.1 If the Director determines that the events also warrant a security investigation the matter will be referred to the Department of Education staff person assigned to the district for test security purposes.

9.1.2 Consequences of invalidations.

9.1.2.1 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an intentional act of the student, the student will be assigned a performance level 1 (well below standard) for that assessment and will be subject to such consequences as may otherwise be imposed pursuant to law for students who score at performance level 1 of the assessment; the assessment test score of any such student shall be reported and counted in the test scores of the student's school for all purposes, including school and district accountability.

9.1.2.2 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an event which is unforeseen and beyond the control of the student and if the student is unable to participate in a regularly scheduled test make-up, the student shall not be subject to any of the consequences as would otherwise be imposed pursuant to law; the assessment score of any such student shall not be reported or counted in the test scores of the student's school for any purpose, including school and district accountability.

9.2 Special Exemptions for students in grades 3, 5, 8, and 10 for reading, writing and mathematics and grades 4, 6, 8 and 11 for science and social studies: A special exemption may be available when a student's short-term, physical or mental condition prevents the student from participating in the DSTP assessments even with accommodations, or when an emergency arising before the start of the test prevents the student's participation.

9.2.1 Special exemptions for students who are tested according to the Department of Education's Guidelines for Inclusion of Students with Disabilities and Students with Limited English Proficiency are also

available as provided in the Guidelines.

9.2.2 Requests for special exemptions based on physical or mental condition.

9.2.2.1 Special exemptions based on a student's physical or mental condition may be available for students suffering from terminal illnesses or injuries or receiving extraordinary short-term medical treatment for either a physical or psychiatric condition. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which; describes the nature of the terminal condition or extraordinary treatment; confirms that the terminal condition or the extraordinary treatment arose more than 60 calendar days before the test administration for which the exemption is requested and has substantially prevented the student from accessing educational services since its inception ; and confirms that the condition or treatment is expected to be resolved or completed within 12 months of the test administration.

9.2.2.2 The District Test Coordinator shall submit a completed Request for Special Exemption Form to the Director of Assessment for the Department of Education at least 60 calendar days before the first day of testing. A copy of the physician's statement required in the preceding subsection will accompany the request.

9.2.2.2.1 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.2.2.2 The Associate Secretary shall decide whether a request for a special exemption based on physical or mental conditions should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.3 Request for special exemptions based on emergency.

9.2.3.1 Emergencies are unforeseen events or situations arising no more than 60 calendar days before the start of the test administration. They may include, but are not limited to, death in a student's immediate family, childbirth, accidents, injuries and hospitalizations.

9.2.3.2 Special exemptions due to an emergency may be requested for the entire test or for one or more content areas, as the district determines appropriate.

9.2.3.3 The District Test Coordinator shall notify the Director of Assessment for the Department of Education as soon as the Coordinator learns of events or situations which may result in a request for a special exemption due to an emergency.

9.2.3.3.1 The District Test Coordinator shall submit a completed DSTP Request for Special Exemption Form to the Director of Assessment for the Department of Education within 7 calendar days of the last day for make up testing. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which describes the nature of the situation.

9.2.3.3.2 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions due to an emergency. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.3.3.3 The Associate Secretary shall decide whether a request for a special exemption based on an emergency should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.4 Consequences of Special Exemptions.

9.2.4.1 Any special exemption granted by the Department of Education is limited to the testing period for which it was requested and does not carry forward to future test administrations.

9.2.4.2 ~~Students who are granted a special exemption shall not be reported or counted in the school's test scores for any purpose, including school and district accountability.~~ Students who are granted a special exemption shall be included in the participation rate calculation for school and district accountability pursuant to 14 DE Admin Code 103.2.4 unless their medical condition prevents them from being in school during the testing period.

9.2.4.3 Students who are granted a special exemption shall not be subject to any of the student testing consequences for students in grades 3, 5, or 8 for the testing period to which the exemption applies.

5 DE Reg. 2215 (5/1/02)

8 DE Reg. 425 (9/01/04)