



Requirement to Test Students on Statewide Assessments

ISSUE: The ability to refuse to participate in statewide assessments has come under question. This document provides the legal requirements for districts/charters and schools to test all students.

CURRENT SITUATION: Standardized student assessments are required to be administered in Delaware public schools under both state and federal law for purposes of school and district/charter accountability and measuring student achievement.

STATE STATUTES:

Delaware Code requires that students be assessed in grades 3–8 and high school and that school districts/charters cannot exclude students from the state assessment.

Title 14, Subchapter III: State Public Education Assessment and Accountability System
(relevant excerpts)

14 *Del. C.* § 151 State assessment system; rules and regulations.

(b) The Department shall administer both accountability and growth assessments of student achievement for students in grades 3 through 8, provided that additional grades may be added by the Department.

(c) The assessments referred to in subsection (b) of this section shall measure achievement in English language arts and mathematics for students in a minimum of grades 3 through 8 and high school, provided additional grades may be added by the Department. Science and social studies shall be assessed for students at least once in the elementary grades, at least once in the middle grades, and at least once in high school.

14 *Del. C.* § 173 Data reporting violations (relevant excerpts).

School districts and individuals shall not:

(3) Exclude a student from participation in the state assessment except in accordance with the regulations of the Department;

STATE REGULATIONS:

Delaware regulations require that school districts/charters test all students and do not allow a school or district/charter to systematically exclude students:

Regulation 101 (14 DE Admin C. 101) (relevant excerpts)

2.0 Delaware System of Student Assessments (DeSSA)

2.2 All LEAs shall administer all applicable, required components of the DeSSA, including field test administrations.

3.0 General and End of Course Assessments

3.1 The General Assessments shall be administered to all students in grades 3 through 8 and 11 in the areas of English Language Arts/Literacy and Mathematics; all students in grades 5, 8, 10 in Science; and all students in grades 4 and 7 in Social Studies; and high school students taking U.S. History (EOC).

FEDERAL LAW:

Federal law requires states that receive funds under Title I, Part A of the Elementary and Secondary Education Act (ESEA) to implement assessments in each school district/charter that include math, reading or language arts, and science. Assessments must be implemented in grades 3–8 and in at least one high school grade in grades 10–12 for reading/language arts and math. A science assessment must be administered at least once in grades 3–5, 6–9, and 10–12. To comply with the federal law, Delaware administers science assessments in grades 5, 8, and 10. In accordance with state law, Delaware also administers Social Studies in grades 4, 7, and once in high school.

The act requires that the state assessments must provide for the participation of all students in the tested grades. Districts/charters and schools that do not receive Title I funds are still required to administer assessments to all of their students.

POTENTIAL US ED ACTION:

If a state education agency (SEA) fails to comply with the assessment requirements in ESEA, the U.S. Department of Education (US ED) has a range of enforcement actions it can take.

These include:

- sending a letter to the SEA requesting that it come into compliance;
- increasing monitoring;
- placing a condition on the SEA's Title I, Part A grant award or its ESEA flexibility request;
- placing the SEA on high-risk status (34 C.F.R. § 80.12);
- issuing a cease and desist order (GEPA section 456 (20 U.S.C. § 1234e));
- entering into a compliance agreement with the SEA to secure compliance (GEPA 457 (20 U.S.C. § 1234f));
- withholding all or a portion of the SEA's Title I, Part A administrative funds (ESEA section III(g)(2) (20 U.S.C. § 6311(g)(2)));
- and suspending, and then withholding, all or a portion of the state's Title I, Part A programmatic funds (GEPA section 455 (20 U.S.C. § 1234d)).

An SEA, such as the Delaware Department of Education (DDOE), has similar enforcement actions available to it with respect to noncompliance by a school district/charter school, including withholding a district's/charter's Title I, Part A funds. See, e.g., GEPA section 440 (20 U.S.C. § 1232c(b)).

In addition, DDOE or a school district/charter school could find itself out of compliance with a wide range of additional federal programs that rely on statewide assessment results, putting additional funds at risk.

These additional programs include, but are not limited to:

- the School Improvement Grants (SIG) program;
- ESEA Title III (language instruction for English language learners);
- Part B of the Individuals with Disabilities Education Act (IDEA);
- programs for rural schools under ESEA Title VI;
- migrant education under ESEA Title I, Part C;
- and programs focused on professional development and other supports for teachers, such as ESEA Title II.