



Governor's Advisory Council for Exceptional Citizens (GACEC)
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MEMORANDUM

DATE: February 22, 2016

TO: The Honorable Members of the Delaware General Assembly

FROM: Robert D. Overmiller, Chairperson
GACEC

RE: **House Bill No. 243 (Accountability and the 95% Student Participation Standard)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed **House Bill No. 243** which would create a statute barring the Delaware Department of Education from using the 95% participation rate "as a factor in determining ratings for accountability":

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

Council would like to share the following observations.

A new federal education law was enacted in December, 2015, the "Every Student Succeeds Act (ESSA)". For a summary of key components, see 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 distinctly limited. The U.S. Department of Education issued the attached December 22, 2015 guidance which outlines possible steps states can take if a school or district fails to meet the 95% standard, including "lowering an LEA's or school's rating in the State accountability system". At p. 2.

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

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

At p. 2. [emphasis supplied]

An informative discussion of the “95%” standard is contained in an 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.

Since the federal law requires states to “factor the (95% participation rate) into the statewide accountability system”, passing a contrary State law maintaining that the 95% participation rate cannot be a factor in accountability ratings is not practical. Enactment may jeopardize federal funding and place the Delaware DOE in an indefensible position of potentially violating either state or federal law. Furthermore, recent efforts to reduce test-taking by Delaware students should result in less opposition toward the remaining assessments. At a minimum, Council asserts that it would be prudent to await further guidance from the U.S. Department of Education before moving forward with this legislation.

Thank you for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss should you have any questions.

Attachments