

CHAPTER 300
FORMERLY
SENATE BILL NO. 229
AS AMENDED BY
SENATE AMENDMENT NOS. 2 & 3

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE EDUCATION OF STUDENTS WITH DISABILITIES

WHEREAS, under current Delaware law as interpreted by the Department of Education, all students are required to take a standardized assessment at regular intervals regardless of the nature of their cognitive disability, unless the student is suffering from extreme illness or injuries or has recently experienced severe trauma; and

WHEREAS, this requirement of state law often compels students who in the opinion of medical experts are literally unable to produce valid results on these tests to nevertheless sit for the tests; and

WHEREAS, some Delaware students with severe cognitive disabilities are currently required to take statewide standardized assessments over the objections of their own parents and teachers; and

WHEREAS, mandating that students with severe cognitive disabilities who are clinically incapable of producing valid results on standardized assessments can be harmful to those students; and

WHEREAS, teachers who now attempt to prepare such students for standardized assessments would prefer to use their classroom time to convey skills or information that their students could put to use in a vocational setting; and

WHEREAS, a limited number of young students in Delaware have dyslexia and other disabilities that severely limit or prevent them from decoding text; and

WHEREAS, the state should ensure that school districts and charter schools are being appropriately diligent about providing early, evidence-based interventions to these students so that they can learn to read;

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 1, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 151 State assessment system; rules and regulations.

(j) Notwithstanding any other language in this Title, a student who has been formally classified as having one of the following four conditions, and whose parent, IEP team, and school district superintendent or charter school leader believe will not produce valid results on either the standard or alternate assessment despite accommodations and adjustments, shall receive his or her alternate assessment through consideration of work samples, projects and portfolios, which facilitate authentic and direct gauges of student performance with respect to both relevant state standards and the student's IEP (a "portfolio assessment"). The definition of each of the following four conditions shall be the same that is in effect on the date of passage of this Act in Title 14, Sections 922 and 925 of the Delaware Administrative Code:

(i) Moderate Intellectual Disability

(ii) Severe Intellectual Disability

(iii) Autism, accompanied by intellectual functioning equivalent to Moderate or Severe Intellectual Disability

(iv) Multiple Disabilities, accompanied by intellectual functioning equivalent to Moderate or Severe Intellectual Disability.

The parents of a student classified as having one of these four conditions shall be informed of their child's rights under this section, but no IEP team, school or school district shall advocate that parents exercise those rights. Only a student's parents may initiate a portfolio assessment request under this Section, and when such a request is made, the student's IEP team and school district superintendent or charter school leader shall make their determinations regarding the portfolio assessment within 60 days of said request. The Department of Education shall promulgate regulations establishing a procedure for the design and evaluation of portfolio assessments requested under this subsection and for further reviews of individual schools and/or school districts that request an unusual number of portfolio assessments. The Department of Education shall also promulgate regulations providing

for a method of measuring academic progress by students receiving a portfolio assessment under this section, which (i) shall provide objective criteria by which student progress can be planned and measured, (ii) shall be developed in consultation with the Governor's Advisory Council on Exceptional Citizens, and (iii) shall satisfy the requirements of 20 U.S.C. § 1412, 20 U.S.C. § 6311, and any other applicable federal laws or regulations. Students who are granted a portfolio assessment under this subsection shall be included in the participation rate calculation for schools and school districts. Nothing in this subsection shall be construed to limit the authority of the Department to approve exemptions from assessments for students not covered by this subsection.

Section 2. Amend Section Chapter 31, Title 14 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3110 Rules and regulations.

(e) With respect to any child with a disability who is not beginning to read by age seven, each IEP prepared for such student until that student is beginning to read shall (a) enumerate the specific, evidence-based interventions that are being provided to that student to address the student's inability to read, and (b) provide for evidence-based interventions through extended year services during the summer absent a specific explanation in the IEP as to why such services are inappropriate.

Section 3. It is the intention of the General Assembly that \$500,000 of the funds appropriated by Section 189 of House Bill 200 of this General Assembly shall, if such funds are reappropriated by a subsequent General Assembly, be specifically designated beginning July 1, 2015 for the annual provision of regional evidence-based summer reading instruction for students who are not beginning to read by age seven.

Section 4. The provisions of this Act are severable, and a finding that any individual provisions or sections are unenforceable shall not prevent enforcement of all other provisions.

Section 5. All regulations required by this Act shall be promulgated by the Department of Education within 90 days of enactment into law, and shall be subject to the approval of the State Board of Education and any entities required by federal law. The process authorized by Section 1 of this Section shall not begin until it is approved pursuant to this Section, and the Secretary of Education shall report to the General Assembly every 90 days beginning 90 days after enactment of this Act into law with respect to the Department's progress in fulfilling its obligations under this Act.

Approved July 15, 2014