Draft of parent opt out request for formal opinion from the Attorney General.

To Matthew Denn

I am respectively asking you to render an opinion regarding a parent’s right to opt out their child from the Smarter Balanced state assessments. Parents that have requested to opt their child out of the spring assessment have received responses that are intimidating and hostile. There is no doubt that our local school districts have been instructed by the Delaware Department of Education to respond with a form letter that quotes the ESEA (NCLB) act of 1965, that requires a participation rate of 95% within 36 cells to remain compliant with the terms of NCLB, and therefore eligible for federal funding. The Delaware Department of Education has manipulated the language from NCLB to state that this statute requires ***all*** students to participate in the assessment, thereby prohibiting them from opting their child out of the state assessment, when in fact the language merely refers to the requirements for states/LEAs to receive federal funding. The language does not refer to a parent’s right to opt their child out of the state assessment. This is coercive and is a scare tactic that most parents will easily succumb to and is completely inappropriate.

When questioned regarding the parent’s right to opt out The State Board of Education has referred to following language and made the following statement:

“... The language is very specific and includes the use of the words “all children” as well as the word “shall” with respect to administration of the assessment.”

State Code: §151 <http://delcode.delaware.gov/title14/c001/sc03/index.shtml> and Regulation 101 section 3.1 - <http://regulations.delaware.gov/AdminCode/title14/100/101.shtml#TopOfPage>

Federal code: ESEA, Subpart 1, Subsection 1111(b)(3): <http://www2.ed.gov/policy/elsec/leg/esea02/pg2.html> This is also clearly referenced in the language of the ESEA Flexibility Application in Principle 1, where it specifies all students must be assessed by annual statewide, high quality assessments aligned to college and career.”

This clearly is the interpretation of the State Board of Education. It is my conclusion that it is the parent’s choice whether or not to have their child tested. Furthermore, it has been publically announced that there are no consequences for students that do not take the state assessment, and if a parent opts their student out of the state assessment, the student will receive alternate academic instruction during the testing window. This is contradictory to the contents of the response letter drafted by the Delaware Department of Education.

I firmly believe that the code is being interpreted to suit the needs of the Delaware Department of Education and there is no merit to these allegations.

On behalf of my constituents, I respectfully ask that the Attorney General give his opinion on the language in the code and to give an opinion if it is legal for a parent to choose to opt out of the state assessment. I respectively ask that an opinion is rendered as soon as possible as the testing window is imminent and many school districts have given parents five business days to respond to this coercive letter drafted by the Delaware Department of Education.