



UNITED STATES DEPARTMENT OF EDUCATION

TO: State Assessment Directors
State Title I Directors
State Special Education Directors

FROM: Ruth E. Ryder
Acting Director, Office of Special Education Programs
Office of Special Education and Rehabilitative Services

Patrick Rooney
Deputy Director, Office of State Support
Office of Elementary and Secondary Education

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SUBJECT: Requirements for the Cap on the Percentage of Students who may be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards

States have requested information about the implementation of a new provision in Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA) regarding alternate assessments for students with the most significant cognitive disabilities.^[1] In response to these requests, this memorandum provides information regarding procedures for a State that wishes to seek a waiver of the 1.0 percent cap in ESEA section 1111(b)(2)(D)(i)(I) on the number of students who participate in alternate assessments aligned with alternate academic achievement standards (AA-AAAS).

A. General Provisions for States Regarding the Number of Students with the Most Significant Cognitive Disabilities Who Take Alternate Assessments Aligned with Alternate Academic Achievement Standards (AA-AAAS)

ESEA section 1111(b)(2)(D) and 34 CFR 200.6(c) and (d) contain requirements for the participation of students with the most significant cognitive disabilities in the AA-AAAS. ESEA section 1111(b)(2)(D)(i)(I) limits the total number of students with the most significant cognitive disabilities who are assessed Statewide with an AA-AAAS to 1.0 percent of the total number of students in the State who are assessed in that subject. As described in 34 CFR 200.6(c)(3), a State may not prohibit an LEA from assessing more than 1.0 percent of its assessed students with an AA-AAAS. However, a State must require an LEA that assesses more than 1.0 percent of its assessed students in any subject with an AA-AAAS to submit information to the State justifying the need to exceed the 1.0 percent threshold. States must provide appropriate oversight of each LEA that is required to submit such a

^[1] See <http://www2.ed.gov/documents/essa-act-of-1965.pdf>

justification and must make the justification publicly available, provided that it does not reveal personally identifiable information about an individual student.

B. Requirements for States that Seek a Waiver of the 1.0 Percent Cap on Participation on an AA-AAAS

If a State anticipates that it will exceed the 1.0 percent cap for any subject, the State may request that the Department waive the cap for that subject, pursuant to ESEA section 8401, for one year. The requirements for such waiver requests are summarized below.

In accordance with 34 CFR 200.6(c)(4), a State waiver request must:

- Be submitted at least 90 days prior to the start of the State’s testing window for the relevant subject;
- Provide State-level data, from the current or previous school year, to show—
 - The number and percentage of students in each subgroup of students who will take or took the AA-AAAS; and
 - That the State has measured the achievement of at least 95 percent of all students and 95 percent of students in the children with disabilities subgroup who are enrolled in grades for which the assessment is required;
- Include assurances from the State that it has verified that each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject using an AA-AAAS—
 - Followed the State’s guidelines for participation in the AA-AAAS;^[2] and
 - Will address any disproportionality in the percentage of students in any subgroup taking an AA-AAAS.

A State’s waiver request must include a plan and timeline by which—

- The State will improve the implementation of its guidelines for participation in the AA-AAAS, including by reviewing and, if necessary, revising its definition of students with the most significant cognitive disabilities (see 34 CFR 200.6(d)(1)), so that the State meets the 1.0 percent cap in each subject for which assessments are administered in future school years;
- The State will take additional steps to support and provide oversight to each LEA that the State anticipates will exceed the 1.0 percent threshold to ensure that only students with the most significant cognitive disabilities take an AA-AAAS. The State must describe how it will monitor and regularly evaluate each such LEA to ensure that the LEA provides sufficient training such that school staff who participate as members of an individualized education program (IEP) team or other placement team understand and implement the guidelines established by the State for participation in AA-AAAS so that all students are appropriately assessed; and
- The State will address any disproportionality in the percentage of students taking an AA-AAAS as identified through the data provided.^[3]

If a State requests to extend a waiver for an additional year, it must demonstrate substantial progress towards achieving each component of the plan and timeline.

^[2] 34 CFR 200.6(d), consistent with section 612(a)(16)(C) of the Individuals with Disabilities Education Act (IDEA).

^[3] 34 CFR 200.6(c)(4)(iv)

As required annually for all States, a State must report separately to the Department the number and percentage of children with disabilities taking: (1) general assessments; (2) general assessments with accommodations; and (3) AA-AAAS.^[4]

C. Procedures for States that Seek a Waiver of the 1.0 Percent Cap on Participation on an AA-AAAS

States that anticipate that they will need a waiver from the 1.0 percent cap on AA-AAAS participation should submit the request to the Department at least 90 days prior to the beginning of the testing window for the AA-AAAS.^[5] Each waiver request must be made in accordance with ESEA section 8401(b)(3), which explains that a State must provide the public and any interested LEA in the State with notice and a reasonable opportunity to comment and provide input on the request, in the manner in which the State customarily provides similar notice and opportunity to comment to the public.

In its request, the State must include:

- Information regarding each requirement in 34 CFR 200.6(c)(4) (see section B), and
- Evidence that the State provided notice and a reasonable opportunity for the public and LEAs to comment and provide input on the request. This evidence must include:
 - Evidence or a description of the manner in which that the State provided such notice to the public and interested LEAs;
 - Copies of all comments that the State received from LEAs in response to this notice, with a description of how the State addressed the comments; and
 - Evidence that the State also provided notice and a reasonable opportunity to comment to the public and LEAs in the manner in which the State customarily provides similar notice and opportunity to comment.

As an additional resource, the National Center on Educational Outcomes (NCEO) recently hosted a webinar on strategies for meeting the 1.0 percent cap on participation in an AA-AAAS. Martha Thurlow and Sheryl Lazarus reviewed ESSA requirements regarding the 1.0 percent cap on participation in AA-AAAS, described the provisions in the regulation for requesting a waiver from the 1.0 percent cap, and suggested strategies for meeting the 1.0 percent cap. They also highlighted a new NCEO Brief on this topic. Both the [webinar](#) and the [brief](#) are available through NCEO's website.^[6]

States with questions about this request should contact their Office of State Support contacts at: OSS.[State]@ed.gov (e.g., OSS.Nebraska@ed.gov) and/or their Office of Special Education Programs State Lead. Thank you for your continued commitment to our nation's students.

^[4] 34 CFR 200.6(c)(5)

^[5] 34 CFR 200.6(c)(4)(i)

^[6] The reference to these materials is not intended to reflect their importance, nor is it intended to endorse any views expressed, or products or services offered. The opinions expressed in any of these materials do not necessarily reflect the positions or policies of the Department. The Department does not control or guarantee the accuracy, relevance, timeliness, or completeness of any outside information included in these materials.