



## UNITED STATES DEPARTMENT OF EDUCATION

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

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SUBJECT: Requirements to Request a Waiver or Waiver Extension for the 2024-25 School Year from the 1.0 Percent Cap on the Percentage of Students with the Most Significant Cognitive Disabilities Who May Be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards

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The U.S. Department of Education (Department) appreciates your continued work to provide a high-quality education for all students. These efforts include regularly examining the expectations for children with disabilities, including English learners with disabilities and children with the most significant cognitive disabilities. Holding high expectations for these students is key to helping all students meet or exceed challenging academic standards.

Crucial to this work is the inclusion of all children with disabilities in State- and district-wide assessments as determined by their respective individualized education programs (IEPs), as required under section 612(a)(16) of the Individuals with Disabilities Education Act (IDEA) – either in a general grade-level assessment with or without accommodations or, for those students with the most significant cognitive disabilities, an alternate assessment aligned with alternate academic achievement standards (AA-AAAS). IDEA requires that if an IEP Team determines that the student must take an alternate assessment instead of a particular regular State or district-wide assessment of student achievement, the IEP Team must include a statement in the student's IEP of why the student cannot participate in the regular assessment; and why the particular alternate assessment selected is appropriate for the student (34 CFR § 300.320(a)(6)(ii)).

Nearly all students with disabilities should be expected to make academic progress measured against grade-level achievement standards. Alternate academic achievement standards are appropriate for only a very small number of students – those with the most significant cognitive

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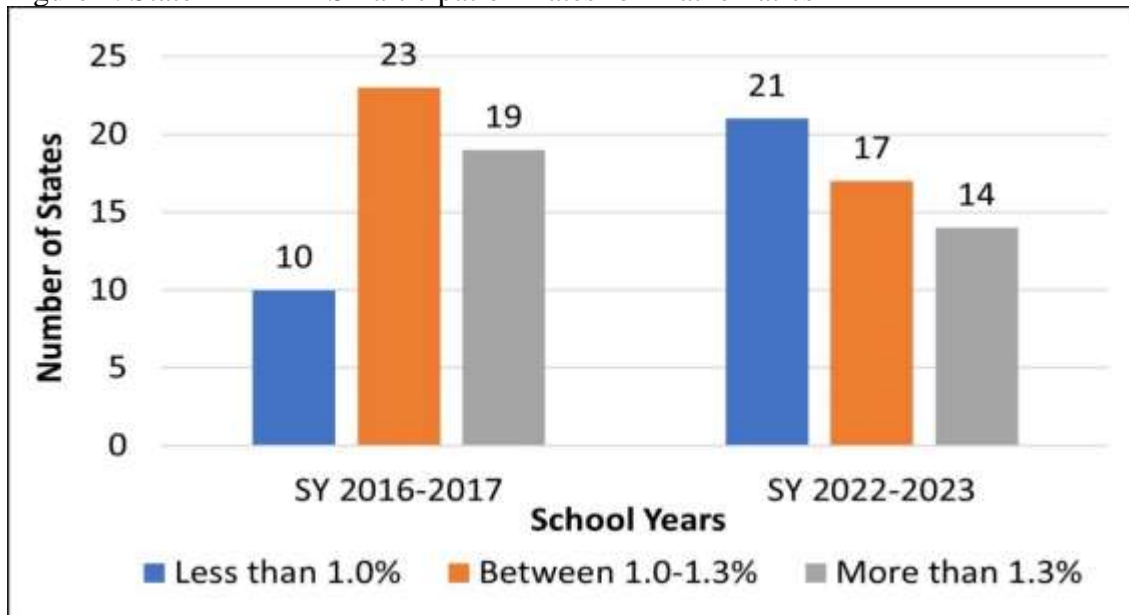
disabilities – who comprise no more than 1.0 percent of all students assessed. It is critical that students with disabilities are not inappropriately included in an AA-AAAS if such assessment does not meet their individual needs as determined by the IEP Team or other placement team (e.g., 504 placement team).

In this memorandum, we are providing information regarding the submission of waiver requests for the 1.0 percent cap on AA-AAAS participation in the school year (SY) 2024-25 assessment administration. With the passage of the Every Student Succeeds Act (ESSA) of 2015, which amended the Elementary and Secondary Education Act of 1965 (ESEA), a State may not assess more than 1.0 percent of students with an AA-AAAS in the grades assessed (ESEA section 1111(b)(2)(D)(i)(I)).

On December 8, 2016, the Department published final regulations (see: <https://www.govinfo.gov/content/pkg/FR-2016-12-08/pdf/2016-29128.pdf>), based on the consensus reached through negotiated rulemaking, related to academic assessments under Title I, Part A of the ESEA. These regulations included the requirements for a State to request a waiver if it anticipates exceeding the 1.0 percent cap (34 CFR § 200.6(c)(4)). This requirement was first in effect for SY 2017-18. The Department may grant a one-year waiver to a State to assess more than 1.0 percent of students with an AA-AAAS, provided the State meets certain statutory and regulatory requirements. The Department previously issued guidance to States on applying for 1.0 percent cap waivers in May 2017, August 2018, June 2020, October 2021, September 2022, and September 2023 (which are all available at: <https://www.ed.gov/laws-and-policy/laws-preschool-grade-12-education/esea/standards-and-assessments>). The Department also posted all waiver requests and the Department's responses for SYs 2017-18 through 2023-24 (see: <https://www.ed.gov/grants-and-programs/formula-grants/school-support-accountability/state-requests-for-waivers-of-esea-provisions-for-ssa-administered-programs>).

This is the seventh year that the Department will be considering new waivers or extensions of existing waivers of the 1.0 percent cap on AA-AAAS participation. Over this time, there has been a decrease in the number of States that assessed more than 1.3 percent of their students with an AA-AAAS, and many States are assessing fewer than 1.0 percent of their students with an AA-AAAS. For example, as shown in Figure 1 below, in mathematics, in the year before the implementation of the 1.0 percent cap requirement (SY 2016-17), 19 States exceeded 1.3 percent of students taking an AA-AAAS in mathematics, and 23 States had rates between 1.0 and 1.3 percent. By SY 2022-23, only 14 States exceeded 1.3 percent of students taking an AA-AAAS in mathematics, with another 17 reporting rates between 1.0 and 1.3 percent. The number of States below 1.0 percent more than doubled. A similar trend occurred with reading/language arts.

Figure 1. State AA-AAAS Participation Rates for Mathematics



### States Applying for a New Waiver in SY 2024-25

For a State to be eligible to receive a 1.0 percent cap waiver for a subject area, it must:

1. Fulfill the requirements in section 8401 of the ESEA regarding public comment. In this context, “public comment” means that a State seeking a waiver:
  - a. provided the public and any interested local educational agency (LEA) in the State with notice and a reasonable opportunity to comment and provide input on the entire waiver request (including the plan and timeline described below), in the manner in which the State customarily provides similar notice and opportunity to comment to the public; and
  - b. submitted the comments and input to the Department with a description of how the State had addressed the comments and input it received.

The comments should be made on the State’s *entire* intended submission of the waiver request, including the State’s plan and timeline described below. The Department must determine that the State has demonstrated that approval of the waiver request is in the public interest as required in 8401(d)(2)(B) of the ESEA.

2. Submit the waiver request at least 90 days before the beginning of the State’s AA-AAAS testing window. The Department encourages each State to submit its waiver request as soon as possible. If a State does not have all the required information, it should still submit its waiver request to meet the 90-day requirement. However, the Department is unable to fully evaluate and provide a response to the waiver request until all the required information has been provided.
3. Provide the data described in steps a, b, and c below. The State should make every effort to ensure that the data it provides in the waiver request match the data that the State submitted to the Department’s ED*Facts* reporting system. In cases where the State knows that the data do not match, the State should provide an explanation for the discrepancy. To the extent practicable, the Department will verify the data provided in the State’s waiver request by comparing it to data the State reported to ED*Facts*. If there are

differences, the Department will request information to explain the discrepancy, which will likely delay our response to the waiver request.

- a. Number and percentage of students in each required student group (race/ethnicity, economic disadvantage status, English learner status) who took the AA-AAAS during SY 2023-24 in each subject for which the State is seeking a waiver (see Table 2 in Appendix B).
  - b. Overall assessment participation rates to demonstrate that the State had assessed at least 95 percent of all students and 95 percent of all students with disabilities during SY 2023-24 in each subject for which the State is seeking a waiver (see 34 CFR § 200.6(c)(4)(ii)(B)). See Table 1 in Appendix B. If a State does not meet the 95 percent assessment participation requirement in a particular subject during SY 2023-24, the State is ineligible to receive a waiver from the 1.0 percent cap requirement for that subject for SY 2024-25.
  - c. AA-AAAS participation rates for SYs 2017-18 through 2023-24 (including estimates for SY 2024-25, if available) in each subject for which the State is seeking a waiver (see Table 3 in Appendix B).
4. Include a statement of assurance in the waiver request that the State has verified that each LEA the State anticipates will assess more than 1.0 percent of all students assessed in any subject using an AA-AAAS has:
- a. Followed the State's guidelines for participation in the AA-AAAS; and
  - b. Will address any disproportionality in the percentage of students in any student group taking the AA-AAAS.

This verification can occur in SY 2024-25 but must occur before submission of the waiver request so that the State can provide the necessary assurance.

5. Require that each LEA that the State anticipates will assess more than 1.0 percent of all students assessed in any subject with an AA-AAAS submit information to the State justifying the need to exceed the 1.0 percent cap. States must show where these justifications are made publicly available, and that this information is easily accessible (see 34 CFR § 200.6(c)(3)(iv)). For example, the State could include a URL link to these justifications (or a URL link to a summary of these justifications) in the waiver request.
6. Provide a current plan and timeline by which the State will do the following:
- a. Improve the implementation of the State's 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(c)(4)(iv)(A)) so that less than 1.0 percent take an AA-AAAS.
  - b. Take additional steps to support and provide appropriate oversight to each LEA that the State anticipates will assess more than 1.0 percent of all students assessed in any subject with an AA-AAAS. This should include describing how the State 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 IEP Team or other placement team understand and implement the guidelines established by the State for participation in an AA-AAAS so that all students are appropriately assessed (see 34 CFR § 200.6(c)(4)(iv)(B)).
  - c. Address any disproportionality in the percentage of students taking an AA-AAAS as identified through the data provided (see 34 CFR § 200.6(c)(4)(iv)(C)).

The Department strongly recommends that the State's current plan and timeline be posted and easily accessible on its website and encourages the State to provide the URL location of the current plan and timeline in its submitted waiver request.

### **States Applying to Extend a Waiver Granted or Extended in SY 2024-25**

A State requesting an extension of the 1.0 percent cap waiver it received in SY 2023-24 must:

1. Complete steps 1-6 as described in the section above on "States Applying for a New Waiver in SY 2024-25."
2. Provide information demonstrating it made substantial progress towards achieving each component of the prior year's plan and timeline with regards to:
  - a. Improving the implementation of the State's guidelines for participation in the AA-AAAS;
  - b. Supporting and providing appropriate oversight to each LEA that the State anticipates will assess more than 1.0 percent of all students assessed with an AA-AAAS; and
  - c. Addressing any disproportionality in the percentage of students taking an AA-AAAS.

With respect to the plan and time (item 2 here and item 6 in the prior section), a State that requested a waiver extension must describe its progress implementing the plan it provided last year as well as its plan to improve or expand on its plan this year.

3. Demonstrate that the State has reduced its AA-AAAS participation rates in each subject for which the State is seeking a waiver. The Department expects that a State requesting to extend a waiver will have decreased its AA-AAAS rates in SY 2023-24 compared to SY 2022-23. A State with relatively high rates of AA-AAAS participation should demonstrate a greater reduction in its AA-AAAS rates compared to States near the 1.0 percent cap.

To approve an extension of a waiver of the 1.0 percent cap on AA-AAAS participation, the Department must determine that the State's waiver in SY 2023-24 has been effective in enabling the State to carry out its AA-AAAS system for students with the most significant cognitive disabilities and has contributed to improved achievement for those students. Given that some States have already received multiple extensions and the continued importance of appropriately assessing students with the most significant cognitive disabilities, the Department determined that public comment is highly relevant to the question of whether a State's request to extend its waiver of the 1.0 percent cap is in the public interest. This public comment provides critical information on whether the waiver has been effective, has contributed to improved student achievement, and is in the public interest. Public comment also helps the Department evaluate whether the State has demonstrated substantial progress towards achieving each component of the State's prior year's plan and timeline.

To that end, the Department will continue to use a rebuttable presumption that waiver extension requests that do not include public comment have not met the public interest threshold in section 8401(d)(2)(B) of the ESEA. The comments should be made on the State's entire waiver extension request, including the State's current plan and timeline and its progress implementing the prior year's plan and timeline. States may rebut the presumption with sufficient evidence to illustrate the extension is in the public interest.

### **States Denied a Waiver in SY 2023-24**

A State that wishes to request a waiver in SY 2024-25 after being denied such a waiver in SY 2023-24 must:

1. Follow steps 1-6 to request a new waiver as described in the section above on “States Applying for a New Waiver in SY 2024-25.”
  - With respect to the plan and timeline (item 6), if a lack of progress in reducing its AA-AAAS rates was part of the reason for the Department’s denial, the State must update its plan from the prior submission (i.e., since the prior plan did not result in a decrease in AA-AAAS rates, it was not sufficient to bring the State into compliance with the requirement to assess no more than 1.0 percent of students with an AA-AAAS).
2. Ensure that the State has addressed any other issues that led to the denial which are listed in the Department’s decision letter to the State (e.g., failure to assess at least 95 percent of all students and/or all students with disabilities in each required subject).

### **States Seeking a Combination New Waiver in SY 2024-25 and an Extension of a Waiver Granted in SY 2023-24**

Some States were denied or did not request a 1.0 percent cap waiver in a particular subject area (typically due to assessment participation rates below 95 percent) in SY 2023-24 but were granted a waiver in other subject areas. As in previous years, a request for a 1.0 percent cap waiver in a subject area for which the State did not receive or request a waiver in SY 2023-24, that has been coupled with a request for an extension of a waiver granted in SY 2023-24, will be treated as a combination new/extension waiver request and all applicable requirements apply to each subject area included in the State’s request. That is, the State must provide the required information for new waiver requests (see the section above on “States Applying for a New Waiver in SY 2024-2025”) for the new subject area request and the required information for waiver extension requests (see the section above on “States Applying to Extend a Waiver Granted or Extended in SY 2023-2024”).

### **Resources and Procedures for Completing Waiver/Waiver Extension Requests**

Two appendices are attached to this memorandum to assist States in organizing their 1.0 percent cap waiver requests. Appendix A provides the statutory or regulatory requirements that each waiver request is evaluated against. Appendix B provides a suggested format for organizing the assessment participation data tables in the waiver request. States with questions about submitting a 1.0 percent cap waiver request should contact the Department’s Office of Elementary and Secondary Education’s (OESE) Assessment Team at [ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov).

All requests for a 1.0 percent cap waiver should be submitted to [ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov). Thank you for your continued commitment to our Nation’s students.

## **Appendix A: Statutory and Regulatory Requirements for Requesting Waivers or Waiver Extensions from the 1.0 Percent Cap on AA-AAAS Participation**

### **All New and Extension 1.0 Percent Cap Waiver Requests**

- Each **new request and each extension request** for a waiver of the 1.0 percent cap on AA-AAAS participation 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 entire waiver/waiver extension request**, in the manner in which the State customarily provides similar notice and opportunity to comment to the public.
- States are required in 34 CFR § 200.6(c)(4)(i) to submit their AA-AAAS waiver request (or extension request) **at least 90 days prior** to the start of the relevant subject testing windows.
- States are required in 34 CFR § 200.6(c)(4)(ii) to submit data showing the **number and percentage** of students in each subgroup of students who took AA-AAAS in each required subject.
- 34 CFR § 200.6(c)(4)(ii) also requires that States demonstrate that they have assessed **at least 95 percent of all students and 95 percent of all students with disabilities** in each required subject.
- 34 CFR § 200.6(c)(4)(iii), requires assurances from the SEA that it **verified** that each district with more than 1.0 percent participation in the alternate assessment has:
  - (A) **Followed participation guidelines**; and
  - (B) **Will address any disproportionality** in participation in the alternate assessment.
- 34 CFR § 200.6(c)(3)(ii) and (iv), requires that the State verify that each LEA the State anticipates will assess more than 1.0 percent of its assessed students with an AA-AAAS has submitted information to the State justifying the need to exceed the cap and these justifications have been made available to the public.
- 34 CFR § 200.6(c)(4) requires 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 children with significant cognitive disabilities so that the State is under the cap in each subject in future school years).
    - (A) The State will take **additional steps to support and provide appropriate oversight to each LEA** that the State anticipates will assess more than 1.0 percent of its assessed students with an AA-AAAS 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 IEP Team or other placement team understand and implement the guidelines established by the State so that all students are appropriately assessed.
    - (B) The State will **address any disproportionality** in the percentage of students taking an alternate assessment aligned with alternate academic achievement standards as identified through the data provided in accordance with paragraph (c)(4)(ii)(A) of this section;

### **Extension Requests Only**

- As required in 34 CFR § 200.6(c)(4)(v), the State must demonstrate substantial progress towards achieving each component of the prior year's plan and timeline. The Department expects States to describe the plan for the SY 2024-2025, and report on the work performed

on the plan that was submitted for SY 2023-2024. This progress report **should clearly demonstrate and explain** how the State's plan **evolved and been improved given the milestones achieved in SY 2023-24 and next steps for SY 2024-25**. This progress report must address each of the following areas:

- (A) How the State **improved the implementation of its guidelines for participation** in the AA-AAAS.
  - (B) How the State **supported and provided appropriate oversight to each LEA** that the State anticipates will assess more than 1.0 percent of its assessed students with an AA-AAAS to ensure that only students with the most significant cognitive disabilities take an AA-AAAS.
  - (C) How the State is **addressing any disproportionality** in the percentage of students taking an AA-AAAS.
- In addition, the State **must demonstrate how it reduced the rate of AA-AAAS participation in SY 2023-2024 compared to prior years**.



**Appendix B: Suggested Format for Organizing the Assessment Participation Data Tables in a 1.0 Percent Cap Waiver Request**

**Table 1: Overall Rates of Assessment Participation for SY 2023-24**

*(Note: figures in this table are fictitious and do not represent any single State's data; R/LA means reading/language arts; include data for all subject areas to which the waiver request pertains)*

<b>Group</b>	<b>All Students Grades 3-8 and High School R/LA</b>	<b>Students with Disabilities Grades 3-8 and High School R/LA</b>
Students Assessed	288,005	41,004
Students Enrolled	296,099	42,210
Assessment Participation Rate	97.27%	97.14%
<b>Group</b>	<b>All Students Grades 3-8 and High School Math</b>	<b>Students with Disabilities Grades 3-8 and High School Math</b>
Students Assessed	289,003	41,009
Students Enrolled	296,092	42,226
Assessment Participation Rate	97.61%	97.12%
<b>Group</b>	<b>All Students Grades 3-8 and High School Science</b>	<b>Students with Disabilities Grades 3-8 and High School Science</b>
Students Assessed	288,011	41,018
Students Enrolled	296,079	42,230
Assessment Participation Rate	97.28%	97.13%

**Table 2: AA-AAAS Participation Rates by Subgroup for SY 2023-24**

*(Note: figures in this table are fictitious and do not represent any single State's data; R/LA means reading/language arts; include data for all subject areas to which the waiver request pertains)*

<b>Group</b>	<b>Total Number in Grades 3-8 &amp; HS</b>	<b>Num. Taking AA-AAAS in Grades 3-8 &amp; HS</b>	<b>Percent Taking AA-AAAS in Grades 3-8 &amp; HS</b>
<b>R/LA</b>			
All Students	288,005	2,400	1.05%
Hispanic	41,082	346	0.84%
American Indian/Alaskan Native	1,705	19	1.11%
Asian	48,001	76	0.16%
Black	54,091	598	1.11%
Hawaiian/Pacific Islander	2,965	23	0.78%
White	143,134	1,401	1.02%
Two or More Races	7,698	98	1.27%
Male	144,030	1,680	1.17%
Female	141,001	904	0.64%
English Learner	22,908	261	1.14%
Econ. Disadvantaged	182,309	1,789	0.98%

<b>Mathematics</b>			
All Students	289,003	2,390	1.05%
Hispanic	41,072	336	0.82%
American Indian/Alaskan Native	1,700	10	0.59%
Asian	48,000	70	0.15%
Black	54,089	590	1.09%
Hawaiian/Pacific Islander	2,955	19	0.64%
White	143,130	1,399	1.03%
Two or More Races	7,688	92	1.20%
Male	144,020	1,675	1.16%
Female	140,090	900	0.64%
English Learner	22,899	254	1.11%
Econ. Disadvantaged	182,307	1,776	0.97%
<b>Science</b>			
All Students	288,011	2,410	1.07%
Hispanic	41,092	350	0.85%
American Indian/Alaskan Native	1,715	20	1.17%
Asian	48,100	79	0.16%
Black	54,011	601	1.11%
Hawaiian/Pacific Islander	2,972	25	0.84%
White	143,140	1,410	1.06%
Two or More Races	7,700	100	1.30%
Male	144,032	1,691	1.17%
Female	141,010	914	0.65%
English Learner	22,900	271	1.18%
Econ. Disadvantaged	182,304	1,790	0.98%

**Table 3: AA-AAAS Rates by Subject, by Year**

*(Note: figures in this table are fictitious and do not represent any single State's data; R/LA means reading/language arts; include data for all subject areas to which the waiver request pertains)*

School Year	R/LA	Mathematics	Science
2017-2018	1.42%	1.44%	1.48%
2018-2019	1.35%	1.37%	1.38%
2020-2021	1.31%	1.33%	1.36%
2021-2022	1.21%	1.24%	1.27%
2022-2023	1.10%	1.13%	1.14%
2023-2024	1.05%	1.05%	1.07%
2024-2025 (estimate)			