



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 2025-26 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

Introduction

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 your State's 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)).

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

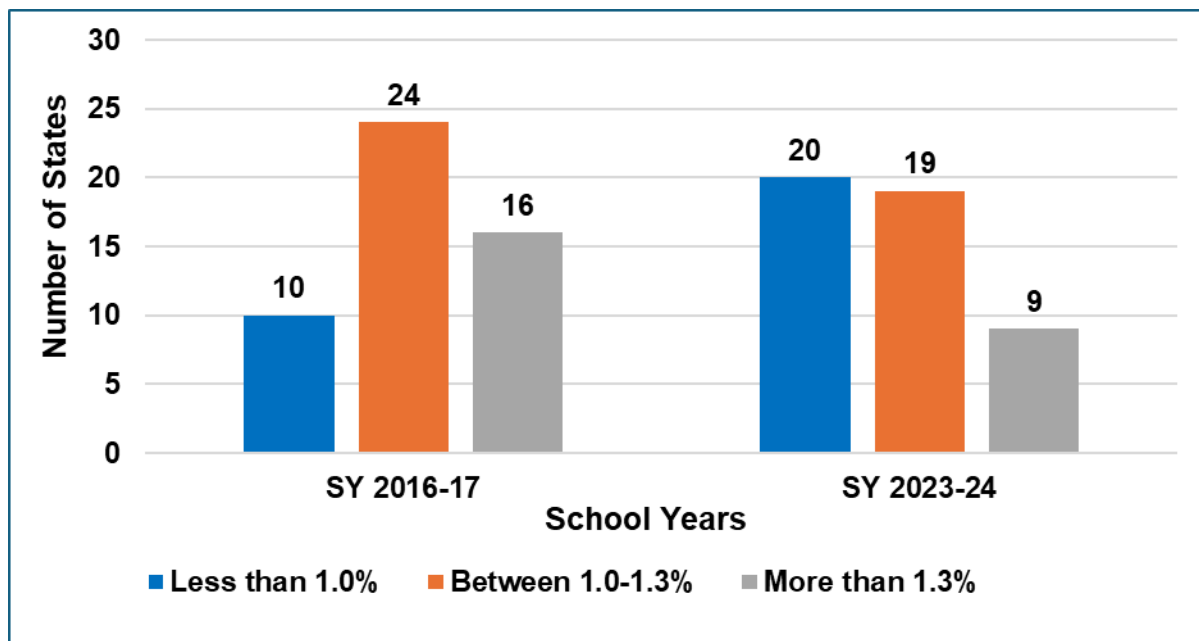
Nearly all students with disabilities should be expected to make academic progress measured against grade-level achievement standards. Alternate academic achievement standards are appropriate for only a very small number of students – those with the most significant cognitive disabilities – who comprise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

Background on the 1.0 Percent Cap on Alternate Assessment Participation

The Elementary and Secondary Education Act of 1965 (ESEA) permits a State to assess not more than 1.0 percent of students with an AA-AAAS (ESEA section 1111(b)(2)(D)(i)(I)). ESEA section 1111(b)(2)(D)(ii)(IV) affords an opportunity for States to request a waiver of the 1.0 percent cap, consistent with ESEA section 8401. The purpose of this memorandum is to remind States about the requirements for requesting such a waiver. The Department has issued a similar memorandum each year since 2017 (see: <https://www.ed.gov/laws-and-policy/laws-preschool-grade-12-education/esea/standards-and-assessments>). The Department has also posted all waiver requests and the Department's response to each (see: <https://www.ed.gov/grants-and-programs/formula-grants/school-support-accountability/state-requests-for-waivers-of-esea-provisions-for-ssa-administered-programs>).

Since the cap on AA-AAAS participation first went into effect in the 2017-18 school year, we are pleased to note that there has been marked improvement across the country. For example, as shown in Figure 1 below, in mathematics, the number of States that are now below 1.0 percent doubled and the number of States over 1.3 percent decreased from 16 to 9 States. A similar trend occurred with reading/language arts (R/LA).

Figure 1. State AA-AAAS Participation Rates for Mathematics



Requirements for Requesting a Waiver

A State seeking a waiver to assess more than 1.0 percent of all students assessed with an AA-AAAS must submit certain information to the Department. This includes the requirements for a waiver set forth in ESEA section 8401 as well as the regulations in 34 CFR § 200.6(c)(4). Below we describe the requirements for a State submitting a new waiver, seeking to extend a waiver granted last year, seeking to request a new waiver after having its request denied last year, or a combination of a new waiver and an extension.

A. States Applying for a New Waiver in SY 2025-26

A State requesting a new waiver must:

1. Demonstrate that it provided the public and any interested local educational agency (LEA) in the State with notice and a reasonable opportunity to comment. The State must make available for public comment **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.
 - a. Submit the comments and input to the Department with a description of how the State addressed the comments and input it received.
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 following data:
 - 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 2024-25 in each subject for which the State is seeking a waiver (see Table 2 in Appendix B).
 - b. Overall assessment participation rates for all students and students with disabilities during SY 2024-25 (see Table 1 in Appendix B).
 - i. **If a State does not meet the 95 percent assessment participation requirement in a particular subject during SY 2024-25, then the State is ineligible to receive a waiver from the 1.0 percent cap requirement for that subject in SY 2025-26 (34 CFR § 200.6(c)(4)(ii)(B)).**
 - c. AA-AAAS participation numbers and rates for SYs 2017-18 through 2024-25 (including estimates for SY 2025-26, if available) in each subject for which the State is seeking a waiver (see Table 3 in Appendix B).

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 *EDFacts* 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 the data the State reported to *EDFacts*. **If there are differences, the Department will request**

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

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 using an AA-AAAS in each subject for which the State is seeking a waiver 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 2025-26 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 with an AA-AAAS in each subject for which the State is seeking a waiver has submitted 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 of all students assessed 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 with an AA-AAAS in each subject for which the State is seeking a waiver. 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 State's data (see 34 CFR § 200.6(c)(4)(iv)(C)).
7. Demonstrate that the State **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 2024-25 compared to SY 2023-24. A State with relatively high rates of AA-AAAS participation should demonstrate a greater reduction in its AA-AAAS participation rates compared to States near the 1.0 percent cap.

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.

B. States Applying to Extend a Waiver from SY 2024-25

A State requesting an extension of the 1.0 percent cap waiver it received in SY 2024-25 must:

1. Complete steps 1-7 as described in section A above.
2. Provide information demonstrating that the State 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.
 - c. Addressing any disproportionality in the percentage of students taking an AA-AAAS.

For this item, note that a State must describe both of the following items:

- a. Progress implementing the plan it provided last year.
- b. Plan to improve or expand on its plan this year.

C. States Denied a Waiver in SY 2024-25

A State that wishes to request a waiver in SY 2025-26 after being denied such a waiver in SY 2024-25 must:

1. Follow steps 1-7 to request a new waiver as described in section A above on "States Applying for a New Waiver in SY 2025-26."
 - With respect to the plan and timeline (item 6), if a lack of progress in reducing its AA-AAAS participation 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 participation 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).

D. States Seeking a Combination New Waiver in SY 2025-26 and an Extension of a Waiver Granted in SY 2024-25

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 2024-25 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 2024-25, that has been coupled with a request for an extension of a waiver granted in SY 2024-25, 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 2025-26") 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 from SY 2024-25”).

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 State Assessment Team at ESEA.Assessment@ed.gov.

All requests for a 1.0 percent cap waiver should be submitted to 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 (including the plan and timeline)**, in the manner in which the State customarily provides similar notice and opportunity to comment to the public.
- 34 CFR § 200.6(c)(4)(i) requires the State to **submit** its waiver/waiver extension **request at least 90 days prior** to the start of its AA-AAAS testing window.
- 34 CFR § 200.6(c)(4)(ii) requires the State to submit data showing the **number and percentage** of students in each required student group who took the AA-AAAS during SY 2024-25 in each subject for which the State is seeking a waiver.
- 34 CFR § 200.6(c)(4)(ii) also requires the State to demonstrate that it assessed **at least 95 percent of all students and 95 percent of all students with disabilities** during SY 2024-25 in each subject for which the State is seeking a waiver.
- 34 CFR § 200.6(c)(4)(iii) requires the State to provide assurance that it has **verified** that each LEA the State anticipates will assess more than 1.0 percent of its assessed students with an AA-AAAS has:
 - (A) **Followed the State's AA-AAAS participation guidelines;** and
 - (B) **Will address any disproportionality** in AA-AAAS participation for any student group.
- 34 CFR § 200.6(c)(3)(ii) and (iv) requires the State to verify that each LEA that it 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 1.0 percent cap and to make these justifications available to the public.
- 34 CFR § 200.6(c)(4) requires the State to provide a current plan and timeline by which:
 - (A) 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 the most significant cognitive disabilities so that the State assesses fewer than 1.0 percent of its assessed students with an AA-AAAS in each subject for which the State is seeking a waiver in future school years);
 - (B) 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; and
 - (C) The State will **address any disproportionality** in the percentage of students taking an AA-AAAS as identified through the data provided in accordance with paragraph (c)(4)(ii)(A) of this section.
- In addition, the State **must demonstrate that it reduced its AA-AAAS participation during SY 2024-25 when compared to prior years in each subject for which the State is seeking a waiver.**

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 each State to describe its plan for SY 2025-26, and report on the work performed on the plan that was submitted for SY 2024-25. This progress report should **clearly demonstrate and explain how the State's plan has evolved and improved given the milestones achieved in SY 2024-25 and next steps for SY 2025-26**. 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 **took 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.
 - (C) How the State **addressed any disproportionality** in the percentage of students taking an AA-AAAS.

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 2024-25

(Note: The values 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)

Group	All Students Grades 3-8 and High School R/LA	Students with Disabilities Grades 3-8 and High School R/LA
Students Assessed	288,005	41,004
Students Enrolled	296,099	42,210
Assessment Participation Rate	97.27%	97.14%
Group	All Students Grades 3-8 and High School Math	Students with Disabilities Grades 3-8 and High School Math
Students Assessed	289,003	41,009
Students Enrolled	296,092	42,226
Assessment Participation Rate	97.61%	97.12%
Group	All Students Grades 3-8 and High School Science	Students with Disabilities Grades 3-8 and High School Science
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 2024-25

(Note: The values 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)

Group	Total Number in Grades 3-8 and HS	Number Taking AA-AAAS in Grades 3-8 and HS	Percent Taking AA-AAAS in Grades 3-8 and HS
R/LA			
All Students	288,005	3,030	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	1,460	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%

Mathematics			
All Students	289,003	3,040	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	1,475	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%
Science			
All Students	288,011	3,079	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	1,520	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: The values 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
2017-18	1.42%	1.44%	1.48%
2018-19	1.35%	1.37%	1.38%
2020-21	1.31%	1.33%	1.30%
2021-22	1.21%	1.23%	1.22%
2022-23	1.18%	1.19%	1.14%
2023-24	1.09%	1.10%	1.09%
2024-25	1.05%	1.05%	1.07%
2025-26 (estimate)			