



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable Susan Bunting  
Secretary of Education  
Delaware Department of Education  
The Townsend Building  
401 Federal Street, Suite 2  
Dover, DE 19901-3639

July 17, 2020

Dear Secretary Bunting:

I am writing regarding the Delaware Department of Education's (DDOE) percentage of students taking the alternate assessment based on alternate academic achievement standards (AA-AAAS). The Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), limits the percentage of students that a State may assess with an AA-AAAS to no more than 1.0 percent of all assessed students in the grades assessed in a State for each subject. The U.S. Department of Education (Department) recognizes that this is a new requirement starting in the 2017-2018 school year and that most States previously assessed more than 1.0 percent of students with the AA-AAAS. We understand that a State may need time to adjust its systems to reduce its AA-AAAS participation rate. The ESEA and the Department's regulations lay out the requirements for a State seeking a waiver as it works to meet this new requirement, as laid out in a memorandum to States on August 27, 2018 (available at: <https://oese.ed.gov/files/2020/02/ossstateassessmentltr.pdf>).

While there is a limit on the percentage of students statewide who may take the AA-AAAS, there is no such limit among local educational agencies (LEAs). However, 34 CFR 200.6(c)(3)(ii) and (iv) requires that an LEA submit information justifying the need to assess more than 1.0 percent of its students in any subject with an AA-AAAS and the State must make that information publicly available, provided that such information does not reveal personally identifiable information about an individual student.

DDOE submitted information to the Department via *EDFacts*, as of April 9, 2020, that indicated the percentage of all tested students assessed with an AA-AAAS in 2018-2019 statewide:

**Reading/language arts:** 1.45% **Mathematics:** 1.44% **Science:** 1.48%

### Consequences for Exceeding the Cap

Because DDOE had rates of AA-AAAS participation that were relatively high in reading/language arts, mathematics, and science (i.e., rates greater than 1.3 percent) without a waiver, the Department will be placing a grant condition on the State's fiscal year 2020 Title I, Part A award. The Department recognizes that DDOE had a waiver covering reading/language arts and mathematics for school year 2018-2019; therefore, this condition applies only to science. This condition will require that the State submit must submit a plan for reducing your rate of AA-AAAS participation in future years in order to come into compliance with the 1.0 percent requirement. Please submit this plan by email to the Department at [ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov) by October 1, 2020.

The condition will read as follows:

The Delaware Department of Education (DDOE) reported alternate assessment based on alternate academic achievement standards (AA-AAAS) data for the 2018-2019 school year indicating rates of AA-AAAS participation that were relatively high in science (i.e., rates greater than 1.3 percent). DDOE is therefore out of compliance with the requirement of Title I of the Elementary and Secondary Education Act of 1965

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(ESEA), as amended by the Every Student Succeeds Act (ESSA), that limits the percentage of students that a State may assess with an AA-AAAS to no more than 1.0 percent of all assessed students in the grades assessed in a State for each subject.

The DDOE's grant award is subject to the following requirements:

- By no later than October 1, 2020, the DDOE must provide a plan for how the State will come into compliance with the 1.0 percent requirement.

If this condition is not resolved in a timely manner, the Department may request additional information, revise this condition to require further action, or provide notice of its intent to take further administrative action.

Please note that consequences in future years may be more severe if the State continues to have an AA-AAAS participation rate over 1.0 percent. Based on the State's context and information, the Department may consider taking one of the following actions:

1. Imposing high risk status on the State's Title I, Part A grant award. A State with such a high-risk status would be required to submit a plan to come into compliance with the 1.0 percent cap and to participate in joint monitoring calls with the Office of Special Education and Rehabilitation Services (OSERS) and the Office of Elementary and Secondary Education (OESE) while the State works to meet the requirement.
2. Withholding Title I, Part A State administrative funds. If the Department withholds funds, a State would be required to submit a plan to come into compliance with the 1.0 percent cap and participate in joint OESE/OSERS monitoring calls while they work to come into compliance.

#### Technical Assistance

The Department continues to support Delaware and all States to ensure all students are being assessed using the right assessments. Over the past two years, the National Center on Educational Outcomes has facilitated a variety of technical assistance activities for States working to meet the 1.0 percent threshold. I note that DDOE has participated in some of these activities. You may find resources from these activities available at [https://nceo.info/Assessments/alternate\\_assessments](https://nceo.info/Assessments/alternate_assessments).

I appreciate the work you are doing to improve your schools and provide a high-quality education for students. If you have any questions, please contact Don Peasley of my staff at [ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov).

Sincerely,

/s/

Frank T. Brogan  
Assistant Secretary  
for Elementary and Secondary Education

cc: Theresa Bennett, Director, Office of Assessment