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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

TO: State Assessment Directors
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SUBJECT: Additional Information Regarding the Requirements to Request a Waiver from the One Percent Cap on the Percentage of Students Who May Be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)

The purpose of this memorandum is to provide an update on the requirement, in Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), related to participation on an alternate assessment aligned with alternate academic achievement standards (AA-AAAS) for the 2018-2019 school year (SY). As a reminder, the ESEA requires that only students with the most significant cognitive disabilities may take an AA-AAAS and limits the number of students that a State may assess with an AA-AAAS to no more than 1.0 percent of all students in the grades assessed in a State.¹ However, a State that is able to meet a number of requirements may apply to the U.S. Department of Education (the Department) for a one-year waiver from the 1.0 percent participation requirement. On May 16, 2017, the Department posted information regarding the procedures for a State to apply for such a waiver for SY 2017-2018.² The Department granted the waiver to States that demonstrated compliance with the waiver requirements.³

For a State that was not granted this waiver last year, the same requirements apply. In addition, any State that was approved for a waiver of this requirement in SY 2017-2018 and that needs to extend the waiver

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

² See <https://www2.ed.gov/admins/lead/account/saa/onepercentcapmemo51617.pdf>

³ See <https://www2.ed.gov/admins/lead/account/stateplan17/waivers/index.html>.

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for SY 2018-2019 is required to demonstrate substantial progress towards achieving each component of the prior year's plan and timeline to ensure that the State is making progress towards meeting the 1.0 percent cap and assessing only students with the most significant cognitive disabilities with an AA-AAAS. The requirements associated with demonstrating substantial progress are described in more detail below.

Information for States Applying for a Waiver for the First Time in SY 2018-2019

The letter on May 16, 2017, describes the requirements and procedures to request a waiver from the 1.0 percent cap. States applying for a waiver should ensure that their request addresses **each** requirement.

Among waiver requests submitted in 2017-2018, the Department noted that some States did not provide:

- Data from the **current or previous school year**⁴ to show the number **and** percentage of students **overall and from each subgroup of students** who will take or took the AA-AAAS with respect to each subject for which the State seeks a waiver;

Example (this is sample data only, it does not represent any single State's data):

Group	Total Grades 3-8 and 10 ELA	# Taking State ELA AA AAAS Gr. 3-8 and 10	% Taking State ELA AA AAAS Gr. 3-8 and 10
<i>All Students</i>	475,611	7,453	1.57% (=7,453/475,611)
<i>English learners</i>	41,232	911	2.21%
<i>Black</i>	46,258	1,116	2.41%
<i>Hispanic/Latino</i>	95,464	2,168	2.27%
<i>Asian</i>	31,956	432	1.35%
<i>White</i>	260,701	3,919	1.50%
<i>Econ. Disadv.</i>	172,190	4,754	2.76%

- Data to show that the State has assessed the achievement of at least 95 percent of **all students** and 95 percent of **children with disabilities** who are enrolled in grades for which the assessment is required (note: include data separately for each requested subject – reading/language arts (R/LA), mathematics and/or science). This percentage must include all students assessed with the general assessment and the AA-AAAS for each applicable subject;

Example (this is sample data only, it does not represent any single State's data):

Subject Area/Group	Enrolled	Assessed	% Assessed
<i>R/LA–All Students Total Gr. 3-8, 10</i>	424,382	409,439	96.5%
<i>R/LA–Children With Disabilities (CWD) Totals Gr. 3-8, 10</i>	93,121	89,369	96.0%

⁴ A State applying for a waiver for the 2018-2019 school year could submit data from either 2018-2019 (current school year) or 2017-2018 (previous school year).

<i>Math–All Students Totals Gr. 3-8, 10</i>	424,653	409,978	96.5%
<i>Math–CWD Totals Gr. 3-8, 10</i>	92,745	89,745	96.8%
<i>Science–All Students Totals Gr 4, 7, 10</i>	141,460	138,957	98.2%
<i>Science–CWD Totals Gr. 4, 7, 10</i>	30,528	29,852	97.8%

- Evidence that the **SEA 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-AAAS⁵; **and**
 - **will address any disproportionality** in the percentage of students in any subgroup taking an AA-AAAS.
- A **plan and timeline** with clear, actionable steps and milestones that includes:
 - A clear description of how 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;
 - A clear description of how it will **monitor and regularly evaluate each 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 an AA-AAAS so that all students are appropriately assessed; and
 - A clear description of how the State will **address any disproportionality** in the percentage of students taking an AA-AAAS as identified through the data provided.⁶

Information for States Applying to Extend a Previously Granted Waiver

A State that wishes to request an extension of a waiver that they received in SY 2017-2018 should provide **updated** information regarding **each requirement in the previous year’s submission**, as outlined in the May 16, 2017, memorandum. In preparing a waiver renewal request, States must continue to meet each requirement associated with a first-year waiver. **Additionally**, a State must demonstrate **substantial progress** towards achieving **each component of the prior year’s plan and timeline**. As noted above, in creating a plan and timeline, a State must address three areas within its plan and timeline:

- How 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;
- How the State will **monitor and regularly evaluate each 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

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

⁶ 34 CFR 200.6(c)(4)(iv)

- in an AA-AAAS so that all students are appropriately assessed; and
- How the State will **address any disproportionality** in the percentage of students taking an AA-AAAS as identified through the data provided.⁷

The Department will base decisions about extensions of any 1.0 percent cap waivers by evaluating whether the State met the requirements as well as the degree to which it has demonstrated progress against the previous year's plan for improvement.

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

⁷ 34 CFR 200.6(c)(4)(iv)