



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

March 26, 2021

The Honorable James F. Lane
Superintendent of Public Instruction
Virginia Department of Education
P.O. Box 2120
Richmond, VA 23218

Dear Superintendent Lane:

I am writing in response to the Virginia Department of Education's (VDOE's) request on December 16, 2020, for a waiver of section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965 (ESEA) of the requirement that a State may not assess using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS) more than 1.0 percent of the total number of students in the State. VDOE requested this waiver because, based on State data for the 2018-2019 school year, VDOE has concluded that it will need to assess more than 1.0 percent of students using an AA-AAAS in the 2020-2021 school year.

After reviewing VDOE's request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, for school year 2019-2020, a one-year waiver of section 1111(b)(2)(D)(i)(I) of the ESEA so that the State may assess with an AA-AAAS more than 1.0 percent of the total number of students in the State who are assessed in reading/language arts, mathematics, and science.

As part of this waiver, VDOE assured that it:

- Will continue to meet all other requirements of section 1111 of the ESEA and implementing regulations with respect to all State-determined academic standards and assessments, including reporting student achievement and school performance, disaggregated by subgroups, to parents and the public.
- Assessed at least 95 percent of all students and 95 percent of students with disabilities who are enrolled in grades for which an assessment is required in 2018-2019, the most recent year for which data are available.
- Will require that a local educational agency (LEA) submit information justifying the need of the LEA to assess more than 1.0 percent of its assessed students in any such subject with an AA-AAAS.
- Will provide appropriate oversight of an LEA that is required to submit such information to the State, and it will make such information publicly available.
- Will verify that each LEA that is required to submit such information to the State is following all State guidelines in 34 CFR § 200.6(d) (with the exception of incorporating principles of universal design) and will address any subgroup disproportionality in the percentage of students taking an AA-AAAS.

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<http://www.ed.gov/>

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

- Will implement, consistent with the plan submitted in VDOE’s waiver request, system improvements and will monitor future administrations of the AA-AAAS to avoid exceeding the 1.0 percent threshold.

I want to remind you of the requirement in 34 CFR § 200.6(c)(3)(iv) that the State must make publicly available the information submitted by an LEA justifying the need of the LEA to assess more than 1.0 percent of its students on the AA-AAAS, provided that such information does not reveal personally identifiable information about an individual student. I also encourage you to make available your State’s plan and timeline and your progress to date in reducing the percentage of students taking the AA-AAAS.

Given the workplan submitted by VDOE, I expect to see positive results of this plan in the 2020-2021 school year and beyond. Any future requests for an extension of this waiver will be contingent on both continued progress implementing your plan and progress in reducing the percentage of students taking the AA-AAAS in all tested subjects.

By letter of June 4, 2019, the Department placed a condition on the State’s Fiscal Year 2019 Title I grant award because the State had assessed in reading/language arts more than 1.0 percent of the total number of students with an AA-AAAS in 2017-2018 without receiving a waiver. By way of letter on July 17, 2020, the Department extended the condition for another year because the State was still above the 1.0 percent limit in the subject area of reading/language arts. In granting this waiver for 2020-2021, I am removing that condition.

Finally, in order to help all States support implementation of the 1.0 percent participation threshold for AA-AAAS participation, the Department is supporting work by the National Center on Educational Outcomes (NCEO). I note that Virginia has participated in several of these efforts and encourage your State’s continued involvement. In 2019, NCEO has published several resources that may be helpful to stakeholders in your State. They may be found online at https://nceo.info/Assessments/alternate_assessments.

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

Sincerely,

/s/

Ian Rosenblum
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary
Office of Elementary and Secondary Education

cc: Julie Molique, Director of Accountability

Virginia's Request for a Waiver from the One Percent Limit of Students Participating in the Alternate Assessments aligned with Alternate Academic Achievement Standards (AA-AAAS)

The Every Student Succeeds Act (ESSA) 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 Alternate Assessment aligned with Alternate Academic Achievement Standards (AA-AAAS) to 1.0 percent of the total number of students in the state who are assessed in that subject; however, if a state anticipates that it will exceed the 1.0 percent cap for any subject, the state may request that the United States Department of Education (USED) waive the cap for that subject, pursuant to the Elementary and Secondary Education Act (ESEA) section 8401, for one year. The four basic requirements in a state's initial 1.0 percent cap waiver are detailed below. Please consider this waiver request for the 2020-2021 school year for reading, mathematics, and science.

Requirement 1 (§200.6(c)(4)(i)): *Submit the waiver request at least 90 days before testing window starts for the relevant subject.*

The assessment window for the Virginia Alternate Assessment Program (VAAP) for students with the most significant cognitive disabilities is open from March 22, 2021 through May 12, 2021 in all tested subjects.

Requirement 2 (§200.6(c)(4)(ii)): *Provide state-level data, from the current or previous year, to show: (A) the number and percent in each subgroup who took the AA-AAAS in the subject area; and (B) the state has measured the achievement of at least 95% of all students and students with disabilities enrolled in the grades for which the AA-AAAS is required.*

An additional requirement to provide a credible estimate of the number and percentage of students who would have taken the AA-AAAS in school year 2019-2020, if testing had been conducted, was added by way of an USED memo dated June 9, 2020.

Data on participation in AA-AAAS in subject area by subgroup

Alternate Assessment Participation Rates for English Reading 2018-2019 by Student Group

Student Group	# Students Participating in Regular Assessment	# Students Participating in Alternate Assessment	Total # Students Assessed	Percent Participating in Alternate Assessment
All Students	663,877	7,937	675,532	1.17%
Asian	48,365	489	49,487	0.99%
Black or African American	145,917	2,644	148,829	1.78%
Hispanic or Latino	107,136	1,211	110,713	1.09%
Two or more races	38,240	383	38,645	0.99%
White	321,395	3,172	324,979	0.98%
Children with Disabilities	81,581	7,937	89,550	8.86%
Limited English Proficient (LEP)	47,858	1,172	52,748	2.22%
Economically Disadvantaged	275,688	4,248	282,168	1.51%
Male	337,993	5,170	345,175	1.50%
Female	325,884	2,767	330,357	0.84%

NOTE: Data submitted to EDFacts

Projected Assessment Participation Rates for English/Reading 2019-2020 for All Students

# Students in Membership at Grades 3-8 and 11 in Fall of 2019	# Students Projected to Participation in the Alternate Assessment in 2019-2020*	Percentage Projected to Participate in the Alternate Assessment
680,993	8,224	1.21%

*Data was derived from a participation survey sent from the VDOE Department of Special Education to Local Education Agency (LEA) staff in October of 2019 as part of the planned monitoring process. This survey did not require specific student information from all divisions therefore, the projected values are not able to be disaggregated to the student group level.

Alternate Assessment Participation Rates for Mathematics 2018-2019 by Student Group

Student Group	# Students Participating in Regular Assessment	# Students Participating in Alternate Assessment	Total # Students Assessed	Percent Participating in Alternate Assessment
All Students	747,861	7,918	755,779	1.05%
Asian	54,008	489	54,497	0.90%
Black or African American	164,727	2,633	167,360	1.57%
Hispanic or Latino	125,450	1,209	126,659	0.95%
Two or more races	42,487	375	42,862	0.87%
White	358,026	3,174	361,200	0.88%
Children with Disabilities	90,598	7,918	98,516	8.04%
Limited English Proficient (LEP)	58,685	1,179	59,864	1.97%
Economically Disadvantaged	311,163	4,249	315,412	1.35%
Male	379,050	5,159	384,209	1.34%
Female	368,811	2,759	371,570	0.74%

NOTE: Data submitted to EDFacts

Projected Assessment Participation Rates for Mathematics 2019-2020

# Students in Membership at Grades 3-8 and 11 in Fall of 2019	# Students Projected to Participation in the Alternate Assessment in 2019-2020*	Percent Projected to Participate in the Alternate Assessment
680,993	8,131	1.19%

*Data was derived from a participation survey sent from the VDOE Department of Special Education to LEA staff in October of 2019 as part of the planned monitoring process. This survey did not require specific student information from all divisions therefore, the projected values are not able to be disaggregated to the student group level.

Alternate Assessment Participation Rates for Science 2018-2019 by Student Group

Student Group	# Students Participating in Regular Assessment	# Students Participating in Alternate Assessment	Total # Students Assessed	Percent Participating in Alternate Assessment
All Students	279,290	3,468	282,758	1.23%
Asian	20,835	211	21,046	1.00%
Black or African American	61,040	1,171	62,211	1.88%
Hispanic or Latino	45,622	490	46,112	1.06%
Two or more races	15,329	168	15,497	1.08%
White	135,303	1,415	136,718	1.03%
Children with Disabilities	45,113	3,468	48,581	7.14%
Limited English Proficient (LEP)	22,769	477	23,246	2.05%
Economically Disadvantaged	152,246	1,829	154,075	1.19%
Male	142,295	2,233	144,528	1.55%
Female	136,995	1,235	138,230	0.89%

NOTE: Data submitted to EDFacts

Projected Assessment Participation Rates for Science 2019-2020

# Students in Membership at Grades 5, 8, and 11 in Fall of 2019	# Students Projected to Participation in the Alternate Assessment in 2019-2020*	Percentage Projected to Participate in the Alternate Assessment
287,104	3,780	1.31%

*Data was derived from a participation survey sent from the VDOE Department of Special Education to LEA staff in October of 2019 as part of the planned monitoring process. This survey did not require specific student information from all divisions therefore, the projected values are not able to be disaggregated to the student group level.

(B) Data showing 95% participation overall and for the students with disabilities student group

Content Area	All Students Tested	All Students in the Tested Population	Participation Percent by Content Area	Students with Disabilities Tested	Students with Disabilities in the tested Population	Participation Percent by Content Area
Reading	675,532	680,696	99.24%	90,550	92,040	98.38%
Math	755,779	760,660	99.36%	98,516	99,400	99.11%
Science	282,756	284,392	99.42%	37,688	38,062	99.02%

Requirement 3 (§200.6(c)(4)(iii)): Provide assurances that the state has verified that each LEA that the state anticipates will assess more than 1.0 percent of its assessed students in a subject using the AA-AAAS did the following: (A) followed the state’s participation guidelines; and (B) will address any disproportionality in the students taking the AA- AAAS.

(A) Assurance that districts over 1.0 percent followed the state’s participation guidelines.

To meet the above stated requirement, school divisions who anticipate exceeding the one percent cap on participation in the VAAP had to provide to the VDOE assurances the division followed the states participation guidelines for the upcoming spring assessment window opening March 22, 2021, including that:

- Individualized Education Program (IEP) teams will correctly identified students with the most significant cognitive disabilities following state criteria and participation guidelines;
- Students participating in the VAAP have been instructed according to the Aligned Standards of Learning (ASOL), the state’s alternate curriculum aligned to the Standards of Learning;
- Student IEPs will include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the child meets the criteria for the alternate assessment; and how the child’s participation in VAAP will impact the child’s promotion and/or graduation with a standard, or advanced studies diploma; or other matters; and
- The division will measure the achievement of at least 95 percent of all students, including students with disabilities in all grades for which assessment is required.

(B) Assurance that any disproportionality in students taking the AA-AAAS will be addressed.

To meet the above stated requirement, school divisions who anticipate exceeding the one percent cap on participation in the VAAP had to disaggregate the division’s demographic data for students participating in the VAAP by primary disability, race/ethnicity, gender, placement/classroom, social-economic status, and English learners (ELs) and provide a narrative summary of trends discovered, both expected and

unexpected.

The VDOE will continue to address disproportionality in the percentage of students in any student group taking the VAAP through multiple activities as described below. In particular, the following steps address disproportionality concerns:

- Calculate and analyzing participation rates among student groups at the State Education Agency (SEA) and LEA levels;
- Identifying student groups over-represented in the VAAP participation counts;
- Reviewing LEA narrative trend data to identify unusual patterns and high participation rates across student groups;
- Analyzing student group data over time to identify trends in student group participation with the goal of decreasing disproportionality;
- Continuing to provide resources and support to LEAs on appropriately identifying students with the most significant cognitive disabilities for inclusion in the VAAP;
- Engaging with stakeholder groups to address disproportionalities and ensure only students with the most significant cognitive disabilities are participating in the VAAP;
- Maintaining and updating VAAP; and
- Reporting assessment data publicly.

Requirement 4 (§200.6(c)(4)(iv)): *Submit a plan and timeline by which the following will be accomplished: (A) state will improve the implementation of its participation guidelines, including if necessary, revising its definition of “students with the most significant cognitive disabilities”; (B) 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 with the AA-AAAS to ensure that only students with the most significant cognitive disabilities take the AA-AAAS (this must include a description of how the state will monitor and regularly evaluate each of these LEAs to ensure that the LEA provides sufficient training for IEP team members); and (C) state will address any disproportionality in the percentage of students taking the AA-AAAS.*

(A) State will improve the implementation of its participation guidelines, including if necessary, revising its definition of “students with the most significant cognitive disabilities”.

To meet the above stated requirement, the following steps will be taken:

- VDOE staff members will continue to participate bi-weekly in the 1% Community of Practice (CoP) offered by The National Center on Educational Outcomes (NCEO) in accordance with P.L. 108-446 Sec. 617(a) – Participant since December 2017;
- VDOE staff members participated in the Peer Learning Group (PLG) PLG #2 - *Guiding and Evaluating District Justifications for Exceeding the 1% Cap* from June through August, 2019 offered by The National Center on Educational Outcomes (NCEO) in accordance with P.L. 108-446 Sec. 617(a);
- VDOE staff members will continue to participate in the Peer Learning Group (PLG) PLG #3 - *Building Capacity of IEP Teams and Parents in Making Decisions about Assessment Participation* offered by The National Center on Educational Outcomes (NCEO) in

- accordance with P.L. 108-446 Sec. 617(a) - offered October through December, 2019; and
- VDOE staff members will annually review and revise, if appropriate, state level policies, procedures, and practices pertaining to Virginia's AA-AAAS based on information gathered from the above listed CoP, PLGs, and the data disaggregation in accordance with 34 CFR § 200.6(d).

(B) 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 with the AA-AAAS to ensure that only students with the most significant cognitive disabilities take the AA-AAAS (this must include a description of how the state will monitor and regularly evaluate each of these LEAs to ensure that the LEA provides sufficient training for IEP team members).

To meet the above stated requirement, the following steps will be taken:

- VDOE staff members will annually disaggregate the reading/language arts AA-AAAS participation data by LEA, primary disability, gender, race/ethnicity, and grade level to reveal trends in disproportionality in accordance with 34 CFR § 200.6(c)(4)(ii)(A);
- VDOE staff members will monitor LEAs exceeding 1.0 percent of its students in any subject with an AA-AAS and provide technical assistance to LEAs in area(s) of identified need(s) as required under 34 CFR § 200.6(c)(3)(iii); and
- Based on the results of the student records review by the LEAs, a VDOE monitor will be assigned to oversee timely correction of self-reported non-compliance in accordance with The United States Office of Special Education Programs (OSEP) Memo 09-02 Timely Correction.

(C) State will address any disproportionality in the percentage of students taking the AA-AAAS.

To meet the above stated requirement, the following steps will be taken:

- Require LEAs to provide the VDOE student level documentation and justification for each student included in the AA-AAAS with a primary disability not typically associated with a significant cognitive disability under 34 CFR § 200.6(c)(4)(iii); and
- Require LEAs to submit information justifying the need to assess more than 1.0 percent of its students in any subject with an AA-AAAS in accordance with 34 CFR § 200.6(c)(3)(ii).

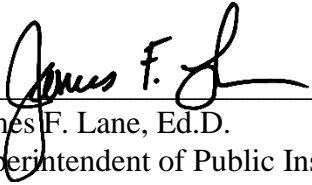
The plan includes:

- Identifying districts with more than one percent of its students taking the AA-AAAS;
- Providing training and technical assistance to districts to ensure appropriate decisions for participation in the AA-AAAS are made by IEP teams;
- Identifying districts with student groups that disproportionately participate in the AA-AAAS; and
- Monitoring districts with more than one percent of their students participating in the AA-AAAS.

Prior to the submission of this waiver request, input was solicited from a variety of stakeholders, including the State Special Education Advisory Committee (SSEAC). Information about the waiver was provided and a request for public comment was announced via Superintendent's Memoranda #248-20. The Superintendent's Memoranda are posted on the VDOE website, and the request for public comment was posted to the Virginia Alternate Assessment Program webpage. Consistent with the manner in which similar notices and public comment opportunities are provided, school division personnel and multiple stakeholder groups were also informed of the opportunity via email. A Committee of Practitioners meeting was held to discuss and receive feedback on the waiver. All comments received were in support of the waiver submission.

Please contact Julie Molique at Julie.Molique@doe.virginia.gov or by phone at (804) 225-2102 if there are any questions or to discuss the content of this waiver request.

We look forward to working with United States Department of Education staff to achieve a positive response to the request.



James F. Lane, Ed.D.
Superintendent of Public Instruction
Virginia Department of Education

December 11, 2020
Date

To meet the requirement 4 (§200.6(c)(4)(iv)), the following steps will be taken:	
Steps Taken	Timeline
<ul style="list-style-type: none"> VDOE staff members will continue to participate bi-weekly in the 1% Community of Practice (CoP) offered by The National Center on Educational Outcomes (NCEO) in accordance with P.L. 108-446 Sec. 617(a) 	– Ongoing (December 2017 – Present)
<ul style="list-style-type: none"> VDOE staff members participated in the Peer Learning Group (PLG) PLG #2 - Guiding and Evaluating District Justifications for Exceeding the 1% Cap offered by The National Center on Educational Outcomes (NCEO) in accordance with P.L. 108-446 Sec. 617(a) 	– Completed (August 2019)
<ul style="list-style-type: none"> VDOE staff members participated in the Peer Learning Group (PLG) PLG #3 - Building Capacity of IEP Teams and Parents in Making Decisions about Assessment Participation offered by The National Center on Educational Outcomes (NCEO) in 7 accordance with P.L. 108-446 Sec. 617(a) 	– Completed (December 2019)
<ul style="list-style-type: none"> VDOE staff members will annually review and revise, if appropriate, state level policies, procedures, and practices pertaining to Virginia’s AA-AAAS based on information gathered from the above listed CoP, PLGs, and the data disaggregation in accordance with 34 CFR § 200.6(d) 	– Ongoing
<ul style="list-style-type: none"> VDOE staff members will annually disaggregate the reading/language arts AA-AAAS participation data by LEA, primary disability, gender, race/ethnicity, and grade level to reveal trends in disproportionality in accordance with 34 CFR § 200.6(c)(4)(ii)(A) 	– Ongoing
<ul style="list-style-type: none"> VDOE staff members will monitor LEAs exceeding 1.0 percent of its students in any subject with an AA-AAS and provide technical assistance to LEAs in area(s) of identified need(s) as required under 34 CFR § 200.6(c)(3)(iii) 	– Ongoing
<ul style="list-style-type: none"> Based on the results of the student records review by the LEAs, a VDOE monitor was assigned to oversee timely correction of self-reported non-compliance in accordance with the United States Office of Special Education Programs (OSEP) Memo 09-02 Timely Correction 	– Ongoing
<ul style="list-style-type: none"> Require LEAs to provide the VDOE student level documentation and justification for each student included in the AA-AAAS with a primary disability not typically associated with a significant cognitive disability under 34 CFR § 200.6(c)(4)(iii) 	– Ongoing
<ul style="list-style-type: none"> Require LEAs to submit information justifying the need to assess more than 1.0 percent of its students in any subject with an AA-AAAS in accordance with 34 CFR § 200.6(c)(3)(ii) 	– Ongoing
<p>Results of the Steps taken above:</p> <p>Based on information learned in the PLGs offered by NCEO and the information gathered through the disaggregation of the reading/language arts AA-AAAS participation data the VDOE is in the process of revising the AA-AAAS participation criteria, including the guidance on the determination of significant cognitive disabilities. In addition, 78 school districts were required to complete a student record review for each student included in the AA-AAAS in 2018-2019 with a primary disability not typically associated with</p>	

a significant cognitive disability. Student records were reviewed to determine if the VDOE's criteria for appropriate determination for VAAP participation were met. Based on the results of the student records review by the LEAs, each of the 23 LEAs that reported non-compliance were assigned a VDOE monitor to oversee timely correction of self-reported non-compliance in accordance with the United States Office of Special Education Programs (OSEP) Memo 09-02 Timely Correction.

Public Comment Summary for Virginia’s Waiver Request from the USED on the Number of Students Being Assessed on the Virginia Alternate Assessment

The Virginia Committee of Practitioners met on September 17, 2020. The group stated that they supported the waiver request.

The State Special Education Advisory Council (SSEAC) met on October 8, 2020. A discussion around the state data and information contained in the waiver was conducted at that time. The official response from the group was submitted during the public comment period.

The opportunity for public comment was available from September 18, 2020 until October 21, 2020. This opportunity was distributed through a Virginia Board of Education announcement for public comment. It was also distributed through direct communication with division superintendents, directors of testing, special education directors, federal programs staff, and equity leads. The proposed waiver and public comment announcement was posted on the Virginia Alternate Assessment Program website during this time. The public comment opportunity yielded the following comments:

A special education teacher submitted the following comment “The rule that you can only have 1% of your student population tested using an alternative assessment like VAAP seems to be undermining the progress we are making with our students”.

A division director of special education submitted the following comment: “Criteria for eligibility for the assessment is totally reasonable. A cap on how many kids can meet the criteria is not reasonable”.

An anonymous contributor commented that: “To say only 1% of the population can participate (or be considered) for VAAP testing is not fair to those localities that have more special education students with disabilities, including autism”.

The State Special Education Advisory Council submitted the following formal response: “On behalf of the State Special Education Advisory Committee (SSEAC), we support the request being made by the Virginia Department of Education for a waiver from the one percent of students participating in the Alternate Assessments aligned with Alternate Academic Achievement Standards (AA-AAAS)”.

A parent submitted a request to eliminate assessments for this year due to COVID.

A resource teacher submitted the following response: “Our special education department can agree and comply with all that is stated in the proposal, and holding districts accountable for the 1% overage has reminded us all to be very aware and carefully explain to parents what is meant by the lingo on the VAAP criteria worksheet, as well as having provided further training and information to our educators.”