



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

May 17, 2021

The Honorable Daniel M. French
Secretary of Education
Vermont Agency of Education
1 National Life Drive, Davis 5
Montpelier, VT 05620-2501

Dear Secretary French:

I am writing in response to the Vermont Agency of Education's (VAE's) request on January 6, 2021, 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. VAE requested this waiver because, based on State data for the 2018-2019 school year, TEA has concluded that it will need to assess more than 1.0 percent of students using an AA-AAAS in mathematics in the 2020-2021 school year.

After reviewing the VAE's waiver request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, for school year 2020-2021, 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 mathematics.

As part of this waiver, VAE 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 in the most recent years for which data was available, 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.
- 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 AAAAAS.
- 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) – excluding (d)(6) 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 VAE’s waiver request, system improvements and will monitor future administrations of the AA-AAAS to avoid exceeding the 1.0 percent cap.

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 VAE, 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.

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). In 2019, NCEO had 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
Deputy Assistant Secretary for Policy and Programs
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary
Office of Elementary and Secondary Education

cc: Amanda Gorham, Director, Assessment

STATE OF VERMONT 1% THRESHOLD WAIVER REQUEST

December 15, 2020

Submitted by the Vermont Agency of Education



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Introduction

Title 1 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act of 2015 ([ESSA](#)) [[ESEA §111\(b\)\(2\)\(D\)](#) and [34 CFR 200.6 \(c\) and \(d\)](#)], modifies the provision that students with the most significant cognitive disabilities may participate in alternate assessments based on alternate academic achievement standards. ESSA places a 1% threshold statewide on the number of students who may participate in alternate assessments. States that anticipate exceeding the 1.0% threshold must submit a waiver request, for more than one year, to the U.S. Department of Education.

The Vermont Agency of Education's alternate assessment (VTAA) is based on the Common Core State Standards (CCSS) for English language arts and mathematics, and the Next Generation Science Standards (NGSS) for science. Vermont Agency of Education, the State Education Agency (SEA), adopted the CCCS in 2010 and the NGSS in 2013. Soon after adoption, Vermont joined the Smarter Balanced Assessment Consortium (SBAC) for the general education assessment in English language arts (ELA) and mathematics (MA). Vermont administered the first operational Smarter Balanced Assessment in the spring of 2015. During that same time, Vermont also joined the Dynamic Learning Maps (DLM) and administered the first operational DLM assessment in 2015. DLM is aligned to the CCCS in ELA and MA. At that time, NGSS was not represented in DLM's assessment, so Vermont kept the legacy Vermont Alternate Assessment Portfolio (VTAAP) for science. In 2017, Vermont was unable to remain with DLM, and in 2018 administered an alternate portfolio assessment as a place holder for reporting while the new Vermont Alternate Assessment (VTAA) was being developed. In 2019, Vermont administered for the first time, as an operational field test, the newly developed VTAA, which assesses ELA and MA in grades 3-9, and science in grades 5, 8 and 11.

As a consequence of administering multiple versions of an alternate assessment for 2017 (DLM), 2018 (Alternate Portfolio), and 2019 (VTAA operational field test), Vermont's alternate assessment numbers have been unstable. Although the SEA exceeded the 1% threshold in 2018, the SEA did not proceed with a waiver due to the instability of the numbers. In 2018, the alternate assessment was a portfolio functioning as a placeholder while the VTAA was being developed and the Science assessment was an operational field test with a participation rate below 95%.

In 2019, Vermont administered the VTAA as an operational field test. Although Vermont was unable to get total student participation due to missing information in the annual census, the SEA was able to calculate the percentage of students who took the VTAA against the total number of students who took the Smarter Balanced Assessment and the Vermont Science Assessment (VTSA) for the purpose of determining the 1% threshold.

On March 21, 2020, The Agency of Education requested and was granted an [ESEA waiver](#), pursuant to section 8401(b) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended of the assessments, accountability and school identification, and reporting requirements due to COVID-19. For the purpose of the 2020-21 1% Waiver Request, Vermont will be using 2019 participation data and 2020-21 student enrollment projections from the state's testing platform.

For the following reasons, Vermont feels it prudent to move forward with requesting a 1% waiver for the 2020-21 academic school year;

1. The SEA exceeded the 1% state threshold in 2019 (See table 4),
2. The SEA was granted an assessment waiver for the 2020 administration, and
3. The total number of students scheduled to assess in 2021, amidst the COVID-19 pandemic, is uncertain.

Requirement 1 (200.6(c)(4)(i) Submit test 90 days prior to start of assessment window

The SEA's assessment window for all academic assessments, including the VTAA, is open from March 16, 2021 to June 11, 2021. Because the state delayed opening of schools in 2020-2021 and LEAs were advised to not tend to statewide assessment-related work until the end of the reopening process (October 1, 2020), the SEA will not meet the 90-day requirement. The SEA will submit a waiver request to the United States Department of Education for assessment of ELA, math and science at least 60 days prior to the start of the assessment window to accommodate a two-week period for public comment. Areas where suppression is necessary due to small N-size are noted with (++) . Information being suppressed (++) will not be included in the waiver in order to safeguard student privacy. The SEA does not report numbers less than eleven. Moreover, the AOE occasionally has to perform complementary suppression (i.e., suppression that occurs if more than one piece of public information would enable others to discern the identity of individual students in a report).

Requirement 2 (200.6(c)(4)(ii) Provide state-level data

(A) Data on participation in VTAA in subject area by subgroup

The SEA reviewed and analyzed alternate assessment participation rate data for ELA, MA and science for the 2018-19 Academic year.

Table 1, Table 2 and Table 3 illustrate SEA's state-level data for the number and percentage of students in each subgroup who participated in the alternate assessment in ELA, MA and Science for the 2018-19 academic year.

Table 1: Participation Rates for ELA in 2018-19

Student Sub-Group	# of Students participating in General Assessment	# of Students Participating in VTAA	Total # of Students assessed	Percentage Participating in VTAA
All Students	41160	431	41591	1.04%
American Indian or Alaska Native	++	++	++	1.83%
Asian	++	++	++	0.82%
Native Hawaiian or Other Pacific Islander	++	++	++	1.69%
Black or African American	974	11	985	1.12%
Hispanic or Latino	++	++	++	0.70%

Student Sub-Group	# of Students participating in General Assessment	# of Students Participating in VTAA	Total # of Students assessed	Percentage Participating in VTAA
All Students	41160	431	41591	1.04%
American Indian or Alaska Native	++	++	++	1.83%
White	36855	382	37237	1.03%
Two or More Races	1327	21	1348	0.00%
Limited English Proficient (LEP)	++	++	++	0.89%
Economically Disadvantaged students	15176	222	15398	1.44%
Male	21223	282	21505	1.31%
Female	19937	149	20086	0.74%

Table 2: Participation Rates for MA in 2018-19

Student Sub-Group	# of Students participating in General Assessment	# of Students Participating in VTAA	Total # of Students assessed	Percentage Participating in VTAA
All Students	41,213	437	41,650	1.05%
American Indian or Alaska Native	++	++	++	1.83%
Asian	++	++	++	0.80%
Native Hawaiian or Other Pacific Islander	++	++	++	1.67%
Black or African American	1008	12	1020	1.18%
Hispanic or Latino	++	++	++	0.79%
White	36847	386	37233	1.04%

Student Sub-Group	# of Students participating in General Assessment	# of Students Participating in VTAA	Total # of Students assessed	Percentage Participating in VTAA
Two or More Races	1327	21	1348	0.00%
Limited English Proficient (LEP)	++	++	++	0.83%
Economically Disadvantaged students	15216	223	15439	1.44%
Male	21258	285	21543	1.32%
Female	19955	152	20107	0.76%

Table 3: Participation Rates for science in 2018-19

Student Sub-Group	# of Students participating in General Assessment	# of Students Participating in VTAA	Total # of Students assessed	Percentage Participating in VTAA
All Students	17,154	177	17,331	1.02%
American Indian or Alaska Native	++	++	++	4.44%
Asian	++	++	++	0.56%
Native Hawaiian or Other Pacific Islander	++	++	++	0.00%
Black or African American	++	++	++	1.17%
Hispanic or Latino	++	++	++	0.76%
White	15458	154	15612	0.99%
Two or More Races	455	11	466	0.00%
Limited English Proficient (LEP)	++	++	++	0.67%

Student Sub-Group	# of Students participating in General Assessment	# of Students Participating in VTAA	Total # of Students assessed	Percentage Participating in VTAA
Economically Disadvantaged students	5772	88	5860	1.50%
Male	8811	111	8922	1.24%
Female	8343	66	8409	0.78%

Some cells in the tables contain material that has been suppressed to protect student privacy. Data are suppressed in cells that represent fewer than 11 students. In addition, cells must be redacted where any total is available, in order to prevent any cell required for suppression to be derived.

(B) Data showing 95% participation overall and for students with disabilities subgroup

The SEA is unable to calculate the participation requirement for all students and for students with disabilities in MA and ELA in 2018-19 academic year due to missing census data. For the purposes of this waiver, the SEA has determined the percentage based on students who took the assessment. It should be noted that total student population has not been determined when looking at Table 4.

Table 4: Participation Rate of All Students and Students with Disabilities

Content Area	Students Tested	Students required to test	Percent Assessed	Student with disabilities tested	Students with disabilities required to test	Percentage of Student with Disabilities assessed
English Language Arts	41591	42637	97.55%	7325	7710	95.01%
Math	41650	42698	97.55%	7333	7710	95.11%
Science	17331	18221	95.12%	2837	3139	90.38%

Requirement 3 (200.6.(c)(4)(iii): Assurances

The SEA has developed a plan to ensure that moving forward, each LEA will be accountable for monitoring its eligibility process and account for any disproportionate representation in socio-economic status, race and English learner status of those students taking the VTAA.

The SEA will put forth the following assurances that each LEA will follow the SEA eligibility criteria in identifying students who are eligible to take the VTAA;

1. The student has an active individual education program (IEP). In the Test Information Distribution Engine (TIDE), the IEP or 504 indicator needs to be set in order to administer the VTAA. The test will not launch without this assurance.
2. All IEP Teams followed the SEA's [Alternate Assessment Student Eligibility Criteria](#), which includes the SEA's definition of a significant cognitive disability, excluded considerations not allowed in determinations and completed the criterion checklist. As part of the Learner Characteristic Inventory (LCI) embedded within the test.
3. Student's program includes extensions from grade-level standards in ELA, MA and science.
4. Student requires extensive direct individualized instruction and supports to make measurable gains in grade and age appropriate curriculum.
5. The IEP team, which includes parent input, have identified a need for an alternate assessment.
6. The students participating in the VTAA have been instructed in the VTAA Alternate Academic Achievement Standards derived from the CCCS and the NGSS.
7. Parents of students who will be taking the VTAA have been informed participants in the decision-making process and any consequences of taking the state alternate assessment have been disclosed. Additionally, any parent whose primary language is not English will have this information provided to the parent in the family's primary language.

In addition to the Justification Form, all District Test Administrators will submit a [District Test Administrator's Certification of Proper Test Administration](#) form to ensure that all special educators have had access to, and participated in, SEA's required trainings on the VTAA selection process and the VTAA eligibility criteria.

Lastly, all Test Administrators will complete a Learner Characteristic Inventory (LCI), with fidelity, which identifies the student's attributes and contains the state's definition of a significant cognitive disability (provided in the LCI).

The SEA will assist the LEA in meeting their assurances by providing trainings in:

- Alternate Assessment Criteria
- Overview of the Alternate Assessment Academic Achievement Standards for each content area being assessed
- General Education Assessment Accommodations
- Selection of appropriate supports on the general education assessment
- Cultural Nuances
- English Learners with disabilities;
- Minority population representation (disproportionality)
- Providing a technical assistance line, monitored by the special education division to handle technical questions

(B) Addressing Disproportionality in students taking the VTAA

Disproportionate representation seeks to measure whether any racial or ethnic group is identified for the alternate assessment at a higher rate than other groups. A challenge for Vermont in identifying disproportionate representation is the homogeneity of Vermont's

student population. In both regular education and special education settings, more than 90 percent of the total student population has historically been reported as white.

Vermont is currently working on a systematic process for determining Significant Disproportionality for the general assessments and the VTAA.

Disproportionality for the purposes of state assessments and this waiver pertain to these student sub-groups:

- American Indian or Alaska Native
- Asian
- Native Hawaiian or Other Pacific Islander
- Black or African American
- Hispanic or Latino
- White
- Two or More Races
- Limited English Proficient
- Economically Disadvantaged students
- Male
- Female

Requirement 4 (200.6 (c)(4)(iv)) Submit a plan and timeline

The SEA will work to ensure appropriate participation in the VTAA with the goal of ensuring that only eligible students are participating in the VTAA and reducing the number of students participating to less than 1%.

Rationale:

Using data collected from Child Count and the LCI, we are provided with a general picture of most students with significant cognitive disabilities, and a benchmark for determining whether it is possible that students are participating in the alternate assessment who do not have significant cognitive disabilities. The LCI collected information on those students participating in the alternate assessment will prove valuable in exploring the characteristics of students participating in the alternate assessment in certain LEA's, schools or even grades. LCI's have been submitted by special educators for the students that will be taking the alternate assessment by October 31, 2020. Because all of our LEAs are small in student population the SEA will address the overage by disability category and not base it on the LEA data, as this data may be inflated due to small N-sizes.

As part of our general supervision and monitoring system, the SEA examines Special Education and IEP's focusing on the following objectives:

- IEPs include appropriate interventions, accommodations, technology/devices, or other program modifications for students to have equitable access and opportunity in the regular education classroom.
- Students' needs for specific assessment accommodations to participate in classroom or statewide testing.
- Evidence that students with the most significant cognitive disabilities, who participate in the alternate academic achievement standards (AAAS), learn content aligned to state academic standards.

The SEA will continue to provide and implement new professional development for IEP team members and other educators on the nature of the alternate assessment and who should participate. The SEA currently provides ongoing support through technical assistance, which includes our TA hotline, assistance through email and website resources. The [Alternate Assessment webpage](#) through the Agency of Education provides resources and training materials about the Alternate Assessment as well as the Student Eligibility Criteria, as does the [Vermont Common Assessment Portal \(VTCAP\)](#). As part of the plan of ensuring that only eligible students are participating in the VTAA and reducing the number of students participating to less than 1%, the SEA will create guidance regarding eligibility and criteria for students assessing using an alternate assessment.

Plan:

The SEA will create a webinar for determining who should participate in the Alternate assessment, with the target audience being Special Educators, District Administrators, Special Education Coordinators and parents/guardians. The proposed webinar would focus on the eligibility and possible consequences of taking an alternate assessment, making clear the definition for Specific Learning Disability, examining the new criteria checklist, discuss possible diminishing access to Least Restrictive Environments.

The SEA will provide Professional Development Modules for Special Educators, District Administrators, Special Education Coordinators and Parents/Guardians focusing on the following objectives:

- Using the eligibility checklist and participation to make assessment participation decisions.
- Differentiating instruction and providing better access to academic content.
- Examining all accommodations in the General Assessment by reviewing selection, implementation and evaluation of accessibility features and accommodations for instruction and assessments.
- Reviewing the Alternate Achievement Standards.
- Discussing Alternate Assessment in an IEP meeting and how to discuss effects of student participation in the alternate assessment such as student's post-secondary and career readiness.
- Addressing ELL's with disabilities and appropriate assessment.

The SEA will provide information for parents and guardians of students with disabilities so that they can participate in the IEP-decision-making process about the assessment in which their child participates. Along with the [VTAA brochure](#) that was created in 2019, that accompanies students' school reports for parents, the SEA will create an insert for IEP meetings including disclaimers and the Justification Form.

The Every Student Succeeds Act (ESSA) requires annually each LEA to submit a justification when it anticipates testing more than 1% of students using the Alternate Assessment for Students with Significant Cognitive Disabilities. The SEA will require LEAs to submit a justification form for students taking the Alternate Assessment. The Justification Form will have LEAs disclose if they will exceed the 1% threshold for the LEA and provide a rationale.

The SEA will provide regional trainings on assessment with the assessment vendor. This training will include guidance on submitting district justifications.

In year two, as part of a more intensive intervention for LEAs exceeding the 1% cap, the SEA will assist LEA's with a high number of students taking the VTAA by addressing any overage and having LEA's create an improvement plan. The SEA will hold private discussion to examine the reasons for the overage with the LEA representatives to include, but not be limited to, the Special Education Director and Superintendent. The SEA would provide in-person trainings at the LEA to help decide who should participate in the VTAA while giving professional development to special educators on how to provide accommodations to the general assessment. LEA's will complete a self-review and LEAs will create an improvement plan including submitting verification of professional development addressing general education accommodations and the eligibility criteria of the VTAA. The SEA will give access to LEA's exceeding the 1% cap to a webinar for completing a self-review.

Timeline:

Table 5: Plan for meeting 1% State-Level cap

Proposed Date(s)	Proposed Title	Proposed Description	Format
November 2020	Participating in VTAA	High-level introduction on accessing the Learner Characteristic Inventory (LCI) and the test selection process. This brief training is not intended to replace the comprehensive Alternate Test Administrator (ATA) certification course found on the Vermont Common Assessment Portal. All educators will need to complete the TA Certification Course to access the LCI and the ATA Certification Course to launch the VTAA.	Webinar
Fall 2020	LEA Notice of VTAA Registration and 1% Justification Form	LEA's to submit a VTAA Registration Notice and Justification Form for addressing exceeding 1% participation rate (if applicable).	PDF / Fillable / Online
January/February 2021	VTAA Professional Development Modules	Eligibility Checklist, Justification Form, all accommodations in General Assessment Overview of AAAS Standards, addressing in IEP meetings, addressing ELL's with disabilities and appropriate assessment	Face to Face/ Online
August 2021	VTAA resource for IEP Meetings	Including disclaimers and Justification Form	PDF / Online
Fall (recurring)	VTAA & Vendor Training	Vendor Regional Assessment Training with VTAA specific policy and implementation guidance.	In-Person /Video Recording

Public Comment

The SEA provided direct information to stake holders via the agency's [Weekly Field Memo](#), and a Memorandum from the Special Education Director send via the Special Education Director listserv.

To ensure public access, a copy of the Vermont 1% Cap Waiver Request and guidelines for providing comment were posted on the SEA website. The SEA allowed two weeks for public comment, beginning on Monday, December 14, 2020 and closing at 5 p.m. on Tuesday, December 29, 2020. No comments were received.

Appendices

Appendix A

1. [State of Vermont, Agency of Education, Alternate Assessments web page](#)
2. [Comprehensive Assessment Program Portal](#)
3. [Alternate Assessment Resources - Comprehensive Assessment Program Portal](#)
4. [Tools and Documents for School Leaders – Comprehensive Assessment Program Portal](#)