



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

April 28, 2022

The Honorable Penny Schwinn  
Commissioner of Education  
Tennessee Department of Education  
710 James Robertson Parkway  
Nashville, TN 37243-0375

Dear Commissioner Schwinn:

I am writing in response to the Tennessee Department of Education's (TDOE's) request on December 22, 2021, for a waiver of section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965 (ESEA) which stipulates 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 who are assessed in the subjects of reading/language arts (R/LA), mathematics, and science.

After reviewing TDOE's waiver request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, for school year 2021-2022, 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 R/LA, mathematics, and science.

As part of this waiver, TDOE assured that it:

- Will continue to meet all other requirements of section 1111 of the ESEA and implement 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.
- Had assessed in 2020-2021 at least 95 percent of all students and 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 AA-AAAS.
- Will provide appropriate oversight of an LEA that is required to submit such information to the State.
- 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 TDOE’s waiver request, system improvements and will monitor future administrations of the AA-AAAS to avoid exceeding the 1.0 percent cap.

Under 34 CFR § 200.6(c)(4)(iii)(B), the State must require any LEA that will assess more than 1.0 percent of students on the AA-AAAS to address any disproportionality in the percentage of students in any subgroup (i.e., economically disadvantaged students, students from major racial and ethnic groups, and English learners) taking the AA-AAAS. TDOE must require LEAs to address disproportionality in LEA verifications and justifications moving forward for the Department to consider further extensions of this waiver.

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. I would also like to remind you that this waiver does not alleviate any of the State’s obligations in meeting all of the requirements found in section 612(a)(16) of the Individuals with Disabilities Education Act (IDEA) which address assessment participation, assessment accommodations, alternate assessments, and reporting for children with disabilities.

Given the workplan submitted by TDOE, I expect to see positive results of this plan in the 2021-2022 school year and beyond. I note that the rate of AA-AAAS participation has been reduced in your State. Thank you for your hard work in achieving this reduction. Future requests for an extension of this waiver will continue to expect both continued progress implementing your plan and in particular, demonstrated progress in reducing the percentage of students taking the AA-AAAS in all tested subjects.

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](mailto:ESEA.Assessment@ed.gov).

Sincerely,

/s/

James F. Lane, Ed.D.  
Senior Advisor, Office of the Secretary  
Delegated the Authority to Perform the  
Functions and Duties of the Assistant Secretary  
Office of Elementary and Secondary Education

cc: Jennifer Jordan, TDOE Assistant Commissioner of  
Special Education and Intervention Programs

December 22, 2021

Patrick Rooney  
Director, School Support and Accountability  
Office of Elementary and Secondary Education | U.S. Dept of Education  
400 Maryland Ave, SW | 3W118| Washington, DC 20202

Dear Director Rooney,

The *Every Student Succeeds Act* (ESSA) amended a provision of Title I of the Elementary and Secondary Education Act of 1965 related to students participating in alternate assessments of each State Education Agency's (SEA's) statewide assessment. The ESSA requires SEAs to submit waiver requests to the United States Department of Education in the event they have more than 1.0 percent of their students participating in the alternate assessment. 20 U.S.C. 6311(b)(1)(E) and 34 CFR 200.6(c)-(d) contain requirements for the participation of students with the most significant cognitive disabilities in the alternate assessment based on alternate academic achievement standards (AA-AAAS). 20 U.S.C. 6311(b)(2)(D)(i) limits the total number of students with the most significant cognitive disabilities who are assessed statewide with an AA-AAAS to 1.0 percent of the total number of students in the State who are assessed in that subject. As described in 34 CFR 200.6(c)(3), a State may not prohibit an LEA from assessing more than 1.0 percent of its assessed students with an AA-AAAS. However, a State must require an LEA that assesses more than 1.0 percent of its assessed students in any subject with an AA-AAAS to submit information to the State justifying the need to exceed the 1.0 percent threshold. States must provide appropriate oversight of each LEA that is required to submit such a justification and must make the justification publicly available, provided that it does not reveal personally identifiable information about an individual student.

The Tennessee Department of Education (TDOE) conducted an extensive review of data from the Tennessee statewide assessment system for the 2020-21 school year and determined that the anticipated participation rates of students taking the AA-AAAS exceeded one (1.0) percent of the total tested population. Specifically, Tennessee expected to assess 1.28% of students on the AA-AAAS for the 2020-21 school year based on enrollment data, but could not fully predict the impact of COVID. Therefore, the TDOE applied for a waiver of section 111(b)(2)(D)(i)(I) of the ESEA for 2018-19 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 and mathematics. The state is still awaiting a response to the wavier submitted January 11, 2021.

The TDOE then reviewed actual participation rates from the 2021-21 school year. The purpose of the review was to determine if the participation rates of students taking the AA-AAAS exceeded 1.0 percent of the total tested population. Based on the data analyzed, the state, in fact, exceeded the one percent state cap enacted by the ESSA for school year 2020-21. In particular, Tennessee assessed 1.35 percent of students in English language arts, 1.36 percent in math, and 1.33 percent in science.

Analysis of current individualized education program (IEP) data specific to AA-AAAS eligibility was completed to project the 2021-22 statewide participation rate. Tennessee anticipates a participation rate of 1.11% for the 2020-21 school year using enrollment data. This rate may be underestimated given the LEAs reported decline in enrollment. Given the ever-changing landscape of the pandemic, it is difficult to

predict the number of students who will return to their LEAs in the coming months and school year.. To mitigate the impacts to school enrollment and student participation virtual schools have been approved in accordance with state and local policies and IEP teams have been diligent in meeting with parents during closures, completing evaluations/re-evaluations, and addressing learning loss and/or the need for compensatory services.

In accordance with 34 CFR 200.6(c)(4), a State waiver request must:

- Be submitted at least 90 days prior to the start of the State's testing window for the relevant subject;
- Provide State-level data, from the current or previous school year, to show—
  - The number and percentage of students in each subgroup of students who will take or took the AA-AAAS; and
  - That the State has measured the achievement of at least 95 percent of all students and 95 percent of students in the children with disabilities subgroup who are enrolled in grades for which the assessment is required;
- Include assurances from the State that it 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-AAAS; and
  - Will address any disproportionality in the percentage of students in any subgroup taking an AA-AAAS.

**34 CFR 200.6(c)(4) Requirement 1: Be submitted at least 90 days prior to the start of the State's testing window for the relevant subject**

The Tennessee statewide alternate assessment testing window for 2021-22 is March 14-April 29, 2022. The draft waiver request must be posted for 30 days and then submitted 90 days prior to the assessment window. In a commitment to complete the waiver as expeditiously as possible, the draft was completed and posted for public comment on November 14, 2021.

**34 CFR 200.6(c)(4) Requirement 2: Provide State-level data, from the current or previous school year, to show:**

- **The number and percentage of students in each subgroup of students who will take or took the AA-AAAS; and**

2020-21 Subgroup Data			
Percent of Overall Subgroup Population in State Taking AA-AAAS			
Subgroup	Total Percent Taking ELA	Total Percent Taking Math	Total Percent Taking Science
Gender: Female	0.93%	0.93%	0.91%
Gender: Male	1.72%	1.72%	1.73%
Economically Disadvantaged	1.28%	1.25%	1.26%
English Learner	1.25%	1.19%	1.17%
Race/Ethnicity: African American	1.79%	1.77%	1.81%
Race/Ethnicity: American Indian	0.99%	0.50%	0.86%
Race/Ethnicity: Asian	1.19%	1.25%	1.15%
Race/Ethnicity: Hispanic	1.10%	1.08%	0.79%
Race/Ethnicity: Pacific Islander	0.91%	0.91%	0.83%
Race/Ethnicity: White	1.17%	1.18%	1.20%

- **That the State has measured the achievement of at least 95 percent of all students and 95 percent of students in the children with disabilities subgroup who are enrolled in grades for which the assessment is required.**

In accordance with the *Letter to State Assessment Directors, Title I Directors, and Special Education Directors*, (OESE/OSERS 10/29/21),<sup>1</sup>

Therefore, for this year only, a State may meet this requirement by requesting a waiver to the 95 percent participation rate requirement found in 34 CFR 200.6(c)(4)(ii)(B), and then providing its SY 2018-2019 participation rate along with all the other information necessary for a waiver of the 1.0 percent AA-AAAS requirement as outlined in the Department documents noted above from May 2017, August 2018, and June 2020.

On March 27, 2020, TDOE requested and was granted a waiver for statewide assessment, accountability and reporting requirements in the Elementary and Secondary Education Act (ESEA) for the 2019-2020 school year due to widespread school closures related to the novel Coronavirus disease (COVID-19).<sup>2</sup>

<sup>1</sup> *Letter to State Assessment Directors, Title I Directors, and Special Education Directors*, (OESE/OSERS 10/29/21) [121 LRP 36460](#)

<sup>2</sup> <https://oese.ed.gov/files/2020/04/TN-Covid19-WaiverResponse.pdf>

In a [letter to chief state school officers dated February 22, 2021](#), the Office of Elementary and Secondary Education invited states to submit a waiver related to assessment participation if needed. In addition, in Tennessee, [Chapter 2 of the Public Acts of 2021 \(PC 2\)](#), passed during the 1st Extraordinary Session of the 112th General Assembly, amended laws regarding educator, student, school, and school district accountability. Specifically, PC 2 offered LEAs the opportunity to remove negative consequences associated with accountability. School districts with at least 80% of eligible students (grades 3-12) participating in the TCAP tests administered in the 2020-2021 school year were held harmless from standard state accountability measures. This allowed school districts and schools to focus on understanding the learning needs of their students, while relieving any negative stress associated with accountability.

The department agrees, “holding high expectations is key to helping all students meet or exceed State challenging academic standards”.<sup>3</sup> The [2021 Spring TCAP Assessment Support: Guidance to Support Student Participation](#) provided LEAs with multiple strategies to ensure student participation in the accountability assessments including:

- expanded testing window
- proctors' flexibility
- flexible testing locations
- scheduling considerations
- communication resources for parents
- solutions for unique testing situations

The efforts and messaging of the department effectively engaged a large portion of the student population, far exceeding the 80% rate set by [Chapter 2 of the Public Acts of 2021 \(PC 2\)](#). The participation rates for school years 2018-19 and 2020-21 are provided in the chart below.

<b>2020-21 Participation Rates by Assessment Subject and Subgroup</b>		
	<b>All students</b>	<b>All students with disabilities</b>
<b>English language arts</b>	98.29%	96.52%
<b>Math</b>	98.93%	97.69%
<b>Science</b>	99.21%	98.59%

Tennessee follows the federal participation requirements for assessment and requires all students enrolled in public K-12 schools to be assessed with accommodations, without accommodations, or with AA-AAAS. The only exception to participation for any student is to receive a medical exemption due to a medical necessity.

**34 CFR 200.6(c)(4) Requirement 3: Include assurances from the State that it 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-AAAS; and

<sup>3</sup> Letter to State Assessment Directors, Title I Directors, and Special Education Directors, (OESE/OSERS 10/29/21) [121 LRP 36460](#)

- **Will address any disproportionality in the percentage of students in any subgroup taking an AA-AAAS.**

Using the 2018-19 assessment results, TDOE sent notices to each district that contributed to the state exceeding 1.0 percent participation in the AA-AAAS. The districts were required to submit a justification for their participation rate exceeding 1.0 percent and assurances that the district would adhere to the state guidelines for participation. The justification included a plan to address disproportionality. All districts submitted the justification as required. They were publicly available for a year in accordance with 34 CFR 200.6(c)(3).

For 2020-21, all districts were asked to complete assurances of adherence to the alternate assessment criteria and efforts to support the state's reduction of participation to under 1 percent. (Attachment 5). The LEA responses are publicly available in accordance with 34 CFR 200.6(c)(3).<sup>4</sup>

LEAs will receive notices of contributing to the state exceeding 1.0 percent in 2020-21 and asked to complete a justification and assurances. The submissions are due to the state January 31, 2022. Upon receipt, the department will review the justifications and determine technical assistance and/or guidance needed to reduce participation.

### **State Waiver Plan and Timeline**

- 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 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.**

### **Guidelines for Participation on the AA-AAS**

The TDOE engaged stakeholders in training and technical assistance using the criterion guidance documents<sup>5</sup>, file reviews, and technical assistance resources. A portion of the technical assistance provides additional in-depth guidance related to the difference between a significant cognitive disability and *the most* significant cognitive disability. TDOE reviewed the criteria and determined that the criteria are appropriate; however more training is needed in the field in order to adhere to the criteria. Specifically, the technical assistance requires districts and IEP teams to consider the full body of data including but not limited to normative assessments when determining the student's eligibility. Guidance has been provided to LEAs to distinguish between learning loss and eligibility for the alternate assessment following the extended school closures and potential impact of virtual or hybrid instruction. This requires the IEP team to engage in a full conversation.

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<sup>4</sup> 2020-21 Alternate Assessment Justifications <https://www.tn.gov/education/assessment/alternate-assessment.html>

<sup>5</sup> <https://www.tn.gov/education/assessment/alternate-assessment.html>  
[https://www.tn.gov/content/dam/tn/education/testing/alt/Criterion\\_1\\_Considerations.pdf](https://www.tn.gov/content/dam/tn/education/testing/alt/Criterion_1_Considerations.pdf)  
[https://www.tn.gov/content/dam/tn/education/testing/alt/Criterion\\_2\\_Considerations.pdf](https://www.tn.gov/content/dam/tn/education/testing/alt/Criterion_2_Considerations.pdf)  
[https://www.tn.gov/content/dam/tn/education/testing/alt/Criterion\\_3\\_Considerations.pdf](https://www.tn.gov/content/dam/tn/education/testing/alt/Criterion_3_Considerations.pdf)

## Data Quality

The state review of the findings led to three critical discoveries relevant to the waiver request:

1. Inconsistent use of course codes for state identification of students participating in the AA-AAAS
2. Minimal data available at the district level to inform change
3. Incorrect linkage between the assessment, LRE, and diploma options

### ***Inconsistent use of course codes for state identification of students participating in the AA-AAAS***

In accordance with the 20 U.S.C. 7801, Tennessee has adopted an alternate academic diploma (AAD).<sup>6</sup> New high school course codes for the AAD were developed in order to ensure that students are provided rigorous instruction aligned to the general education graduation requirements and to assist schools in the tracking of students who are earning the AAD. This addition of the course codes required the TDOE to pull the data for the assessment pre-population in a new manner. Instead of pulling student data for the three course codes assigned to the AA-AAAS, the TDOE identified all students who were in a required grade level and enrolled in at least one of the AAD courses.

As a result of the change, more high school students were identified for the AA-AAAS than any prior year, thus increasing the statewide total of students.

Statewide Count of Students Participating in the AA-AAAS			
	2017-18	2018-19	Difference
ELA	7395	7624	229 ↑
Math	7384	7631	247 ↑

A thorough review of the data revealed that the reliance on the three assessment codes, Alternate Assessment ELA II, Alternate Assessment Algebra I, and Alternate Assessment Biology I, allowed for students to inadvertently not be identified or assessed. This was the result of three main circumstances:

1. Students' course schedule did not include the assessment code assigned to that grade level.
2. Students' assigned grade was not progressing annually as would be expected. For example, student were reported to be in ninth grade for two year and tenth grade for two years.
3. Students' who were intending to stay through the age of 21 were retained within the ninth grade (a non-tested grade) and therefore did not appear on the tenth and eleventh grade lists as a student who should be assessed.

The use of new course codes assisted the state and districts in identifying all students who should be assessed and in addressing systemic policies, to ensure all students are assessed annually in accordance with the accountability requirements.

Statewide Count of Students Participating in the AA-AAAS			
	2018-19	2020-21	Difference
ELA	7624	7212	412 ↓
Math	7631	7191	440 ↓

<sup>6</sup> <https://www.tn.gov/content/dam/tn/stateboardofeducation/documents/2019-sbe-meetings/november-15%2c-2019-sbe-meeting/11-15-19%20III%20D%20High%20School%20Policy%20.103%20Attachment%20Clean%20Copy.pdf>

The 2020-21 participation data indicates a reduction of total students. There are three highly possible reasons for the reduction:

1. The initial course codes change identified students who had not participated in any state assessments resulting in additional students for the single, corrective year.
2. The reduction in students could be a result of overall reduction in the number of students participating in the state assessments due to Chapter 2 of the Public Acts of 2021 (PC 2).
3. Overall state participation in AA-AAAS is declining.

Ongoing monitoring and analysis of projected participation will continue to appropriately plan next steps.

### ***Incorrect linkage between the AA-AAAS, LRE, and diploma options***

Technical assistance and engagement with LEAs on the use of the AAD course codes identified an additional root cause of exceeding 1.0 percent participation. TDOE will provide additional guidance and oversight to ensure that IEP teams correctly understand eligibility for AA-AAAS, so that eligibility decisions are not based on incorrect assumptions regarding the relationship between LRE, diploma pathway, and assessment. TDOE will provide training and technical assistance to ensure that eligibility decisions for the AA-AAAS are not based on a student's need for a more restrictive LRE (and that placing a student in a more restrictive LRE should not automatically result in an AAD). Guidance, training, and technical assistance materials were revised to clarify the independence of each decision. Additionally, an AAD template was created to assist schools in planning course work independently of the LRE. (Attachment 6)

### ***Minimal data available at the district level to inform change***

In 2017-18, the first notifications to districts who contributed to the state exceeding the 1.0 percent participation were disseminated. The majority of districts reached out to the TDOE for support in understanding their data, identifying local district data sources, and identifying resources for completing the required justification form. This was critical to informing the TDOE of the data needed by districts to reduce the AA-AAAS participation rate.

In response to the district requests, the TDOE utilized the resources available through the National Center on Educational Outcomes (NCEO) Professional Learning Groups to develop a data tool for districts that provides the disability distribution for the district compared to state averages. This data was included within the newly designed notice to districts in 2018-19. (Attachment 1) The notice also includes the formulas for calculating AA-AAAS participation rates to guide districts in self-monitoring and training. An example is provided as Attachment 2. LEA response to the newly designed notices and justification was an increased use of data, fewer claims of data error, and targeted data analysis for students whose eligibility conflicts with the criteria (e.g., specific learning disability indicates the student should not have met criterion 1).

The stakeholder engagement facilitated a revision to the statewide electronic IEP document. Previously, if an IEP team determined that a student met the three criteria during the eligibility process, the IEP would automatically mark the alternate assessment within the student's IEP accommodations section. An IEP team could not change this selection unless they went back to the eligibility page and stated that the student did not meet the eligibility. This functionality was in answer to the question, "does the student

meet the eligibility requirements.” However, there is a second important question IEP teams must also consider, “is the alternate assessment the most appropriate assessment for the student at this time?” A student may meet eligibility requirements for the AA-AAAS, but the IEP team may agree the regular assessment is in fact, the most appropriate one for the student. In response, the electronic functionality was changed to allow for teams to indicate yes or no on each of the three eligibility requirements and then answer an additional question to determine if the AA-AAAS is also the most appropriate. A copy of this form is included as Attachment 3.

### **Informed Parental Consent**

The electronic IEP has historically included a statement for parents to sign that they are aware of the decision for their student to participate in the AA-AAAS. Stakeholders, including parents, advocacy agencies, and schools expressed concerns regarding the implications of participating in the AA-AAAS, specifically regarding the student’s diploma. In response, additional language was provided to the Informed Parental Consent specific outlining the implications of participation in the AA-AAAS as related to graduation. Furthermore, a low incidence website<sup>7</sup> was created and includes implication of participation in the alternate assessment and a Diploma Decision Guide<sup>8</sup> to inform IEP teams during decision-making and provide parents with additional information regarding postsecondary options.

- b. The State will take additional steps to support and provide oversight to each LEA that the State anticipates will exceed the 1.0 percent threshold 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 individualized education program (IEP) team or other placement team understand and implement the guidelines established by the State for participation in AA-AAAS so that all students are appropriately assessed; and**

The TDOE work to reduce the statewide AA-AAAS participation rate is focused on ensuring that students are appropriately identified. Multiple sources of data are utilized by the TDOE to monitor the IEP decisions and inform technical assistance and/or guidance needed by IEP teams including a review of the participation data, district submitted justifications, and information provided by stakeholders, and review of individual student IEP documents.

The review of the 2018-19 participation data indicated that students with unexpected disabilities were identified by several districts. Technical assistance was designed to focus on each criterion and clarify the intent as well as critical questions to consider when making decisions as an IEP team. The data also indicated that majority of districts contribute to the state exceeding 1.0 percent and therefore continued universal support is needed. Furthermore, within the past two years, approximately half of the LEAs special education directors have retired or moved to other positions in the district. This has resulted in about half of the LEAs having a new special education director and, therefore, continued universal training is necessary to maintain capacity.

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<sup>7</sup> <https://www.tn.gov/education/student-support/special-education/low-incidence-.html>

<sup>8</sup> Diploma Decision Guide, [https://www.tn.gov/content/dam/tn/education/special-education/low-incidence-files/Diploma%20Decision%20Guide\\_FINAL.pdf](https://www.tn.gov/content/dam/tn/education/special-education/low-incidence-files/Diploma%20Decision%20Guide_FINAL.pdf)

The TDOE continued to work on the root cause of the high participation rate and used the district justification letters and stakeholder input to guide the monitoring process. As a result, the TDOE reviewed student IEP files including all eligibility and evaluation documents. The IEP monitoring revealed the following priority findings:

- Evaluations and assessments inadequately addressed the factors that may have influenced the assessment results. The use of a highly verbal assessment when evaluating a student with a language deficit was the most common example.
- The common misunderstanding that the student's state assessment defined the least restrictive environment (LRE) and that LRE defines the state assessment. IEP teams needed clarification that a student may require a significantly modified curriculum and more restrictive LRE but may still participate in the regular state assessments. Likewise, a student may attend the general education environment for all or a great portion of the school day and still participate in the alternate assessments.

These findings were shared with the districts and informed the technical assistance provided:

### **Universal Support**

Technical assistance was developed for all districts and has been provided in multiple venues and locations for access to special education leadership and teachers. This included the state sponsored conference for all special education directors, regional conferences, and online resources<sup>9</sup>.

### **Targeted Support**

The TDOE has offered eight virtual regional communities of practice for special education or general education teachers who provide core instruction to students with significant cognitive disabilities in an effort to reduce the AA-AAAS participation rate. Each community of practice engaged in seven topics.

1. Engagement: strategies for students with low communication competence skills.
2. Assessment and grading: strategies for formative assessment in virtual or hybrid settings.
3. Progress monitoring: strategies for monitoring student progress in virtual or hybrid settings and linking progress monitoring data to the development of the annual IEP.
4. Integrating life skills: using a planning tool to integrate life/ functional skills authentically in standards-aligned instruction.
5. Work/ community-based learning: activities to define work as a set of skills and competencies rather than a location in order to support learning of work skills in virtual or hybrid settings.
6. Building independence: activities to identify the impact of mindset on the outcomes of students and reflect on personal mindset.
7. Bridging: using a tool to effectively plan for bridging students to a new grade, teacher, school, or setting.

The seven topics were selected to proactively address AA-AAAS participation rates. If a student with a significant cognitive disability is not provided high-quality instruction, it is highly unlikely they will make noticeable academic gains. Their low performance then leads an IEP team to determine that the student will participate in the AA-AAAS. Once this decision is made, it becomes a cyclical problem of reduced

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<sup>9</sup> Low incidence webpage, <https://www.tn.gov/education/student-support/special-education/low-incidence-.html> Alternate assessment webpage, <https://www.tn.gov/education/assessment/alternate-assessment.html>

instruction due to the student not participating in the general education assessment and therefore even smaller gains with each year that the student is in school. The targeted technical assistance is designed to break this cycle of eligibility and provide students the greatest opportunities for access to general education, integrating individualized student needs and standards.

### **Intensive Support**

Additionally, the TDOE identified twelve districts with:

- the highest rates of participation;
- significant disproportionality; and/or
- a large rate of students participating with unexpected disabilities. (For example, a student identified as having a specific learning disability would be highly unexpected to participate in the AA-AAAS.)

In 2020-21, the identified districts were provided with intensive, focused technical assistance, nine in a virtual format, and one in-person at the district. This training has been conducted in prior years for identified LEAs and has effectively reduced the AAS-AAAS participation rate.

For each training, the district special education director was asked to invite those individuals who are primarily involved in the AA-AAAS decision-making training, IEP discussions, or auditing. The technical assistance included three hours of intensive review of the district data report of student participation by disability in relation to the state data (see Attachment 1 for example), the three criteria for participation in the AA-AAAS, the implications and potential impact of student participation in the AA-AAAS, and a review of the district files using a rubric based on the criterion considerations.<sup>3</sup>

The remaining two districts identified for intensive technical assistance are engaged in ongoing technical assistance provided monthly. This technical assistance includes a custom-designed integration of multiple technical assistance sources based on the annually submitted district plan, current instructional practices, school improvement plans, and the identification as a contributor to the state exceeding the 1.0 percent threshold. Technical assistance has included:

- guidance and support in development of district planning;
- child find practices including assessment, reevaluation, and eligibility;
- IEP development and compliance;
- master scheduling and course codes;
- instructional practices;
- aligning modified instruction to state standards;
- developing school policies including special education, extended school year, and access to general education;
- alternate academic diploma; and
- eligibility and participation in the AA-AAAS

**c. The State will address any disproportionality in the percentage of students taking an AA-AAAS as identified through the data provided.**

The 2020-21 data was analyzed to determine the risk ratio within student subgroups. TDOE uses a risk ratio of 2.0 to determine significant disproportionality. Using this same risk ratio for one year of data, no subgroup was determined to be disproportionately represented in participation on the AA-AAAS. The TDOE, did, however, work with districts to identify potential disproportionality, specifically by disability category, including those that would be highly unexpected, such as specific learning disability.

**2020-21 Subgroup Disproportionality Data**

Risk Ratios by Subgroup Population in State Taking AA-AAAS

Subgroup	ELA Risk Ratio	Math Risk Ratio	Science Risk Ratio
Gender: Female	0.54	0.54	0.53
Gender: Male	1.86	1.84	1.90
Economically Disadvantaged	0.94	0.91	0.92
English Learner	0.93	0.88	0.87
Race/Ethnicity: African American	1.55	1.52	1.60
Race/Ethnicity: American Indian	0.75	0.38	0.67
Race/Ethnicity: Asian	0.91	0.95	0.89
Race/Ethnicity: Hispanic	0.82	0.80	0.58
Race/Ethnicity: Pacific Islander	0.70	0.70	NA
Race/Ethnicity: White	0.77	0.79	0.85

**Requirement C: Procedures for States that Seek a Waiver of the 1.0 Percent Cap on Participation on an AA-AAAS**

In its request, the State must include

- Information regarding each requirement in 34 CFR 200.6(c)(4) (see section B), and
- Evidence that the State provided notice and a reasonable opportunity for the public and LEAs to comment and provide input on the request. This evidence must include:
  - Evidence or a description of the manner in which that the State provided such notice to the public and interested LEAs;
  - Copies of all comments that the State received from LEAs in response to this notice, with a description of how the State addressed the comments; and
  - Evidence that the State also provided notice and a reasonable opportunity to comment to the public and LEAs in the manner in which the State customarily provides similar notice and opportunity to comment.

**Requirement 1: Information regarding each requirement in 34 CFR 200.6(c)(4) (see section B), and**

The TDOE has met the requirements outlined in accordance with 34 CFR 200.6(c)(4) and provided the evidence in the narrative of this request.

**Requirement 2: Evidence that the State provided notice and a reasonable opportunity for the public and LEAs to comment and provide input on the request. This evidence must include:**

- Evidence or a description of the manner in which that the State provided such notice to the public and interested LEAs;
- Copies of all comments that the State received from LEAs in response to this notice, with a description of how the State addressed the comments; and
- Evidence that the State also provided notice and a reasonable opportunity to comment to the public and LEAs in the manner in which the State customarily provides similar notice and opportunity to comment.



The TDOE has posted the drafted request for a waiver on TDOE website for public comment for 30 days. No public comments were received. (Attachment 7)

Please contact Jennifer Johnson at [Jennifer.Jordan@tn.gov](mailto:Jennifer.Jordan@tn.gov) or via phone (615) 238-1401 to discuss the content of this waiver request or to get any questions addressed. We look forward to working with the U.S. Department of Education staff to achieve a positive response to the request.

Sincerely,

Penny Schwinn  
Commissioner of Education

## Attachment 1

TO: (District Special Education Director)  
FROM: Theresa Nicholls, assistant commissioner special populations  
DATE: December 9, 2019  
SUBJECT: **Notice of District Alternate Assessment Participation Exceeding One Percent**

Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA) limits the total number of students with the most significant cognitive disabilities who are assessed statewide with an alternate assessment to one percent of the total number of students in the state who are assessed in that subject.<sup>10</sup> Tennessee's alternate assessment participation rates for the 2019-20 school year were 1.45% in English language arts and 1.47% in math. Science was a field test in the 2019-20 school year and therefore participation rates were not calculated.

LEA NAME has contributed to the state exceeding the cap of one percent alternate assessment participation during the 2019-20 school year.

English language arts alternate assessment participation rate: x.xx%  
Math alternate assessment participation rate: x.xx%

As a result of contributing to the state exceeding the one percent cap, your district must submit the TDOE the provided justification form and assurances to [Alison.Gauld@tn.gov](mailto:Alison.Gauld@tn.gov) by December 20, 2019. Justification letters will be publicly posted in accordance with the Office of Special Education and Rehabilitative Services (OSERS) memo, [Requirements for the Cap on the Percentage of Students who may be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards, May 16, 2017](#).

Department staff will review the district justification forms, data, and LEA policies and practices related to student eligibility and participation in the alternate assessment. After review, the department will provide differentiated technical assistance to identified districts. Technical assistance will be available to all districts through webinars, guidance documents, and regional trainings. Districts with the most intensive needs and/or highest rates of participation will be identified for onsite technical assistance including file reviews and will be notified by Alison Gauld.

### Participation rate calculation rules

All students in grades 3-8 and high school are expected to participate in the state accountability assessments, TNReady/EOC or the alternate assessments (MSAA/TCAP-Alt). However, each year there are students who, while expected to participate, do not complete the assessments for a variety of reasons. Therefore, in order to calculate the participation rate, students who were assessed and received a score for their performance are included within the participation rate calculation.

### English language arts participation rate calculation:

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<sup>10</sup> 20 U.S.C. § 6311(b)(2)(D)(i)

$$\frac{\text{\# of MSAA Tested Students (ELA)}}{\text{\# of students assessed in ELA TNReady, EOC, and MSAA grades 3-8 and ELA II}} \times 100$$

“MSAA tested students” is the number of students in grades 3-8 and 11 who were assessed on the MSAA **and** received a performance level score (1-4).

“Assessed in ELA TNReady” is the number of students in grade 3-8 who were assessed on the TNReady **and** received an ELA performance score.

“Assessed in ELA EOC” is the number of students who were assessed on the ELA II EOC **and** received a performance score.

**Math participation rate calculation:**

$$\frac{\text{\# of MSAA Tested Students (math)}}{\text{\# of students assessed in math TNReady, EOC, and MSAA grades 3-8 and Algebra I or Integrated Math I}} \times 100$$

“MSAA tested students” is the number of students in grades 3-8 and 11 who were assessed on the MSAA **and** received a performance level score (1-4).

“Assessed in math TNReady” is the number of students in grade 3-8 who were assessed on the TNReady **and** received a math performance score.

“Assessed in math EOC” is the number of students who were assessed on the Algebra I **or** Integrated Math I EOC **and** received a performance score.

***The science assessments were field tests and therefore, science participation rates for the 2018-19 school year will not be reported.***

The statewide data and your district data are summarized in the following two charts. One shows the participation rate since 2017 and the other is a disaggregation of the data by disability category. This data should support you in the development of a plan for reducing participation rates to include only those students who meet [the three eligibility criteria](#) and for whom participation in the alternate assessment is the most appropriate assessment.

Disability Category	State Count	State Alt. Distribution	District X Count	District X Alt. Distribution
Autism	1978	24.67%	62	26.05%
Blind				
Deaf-Blindness				
Deafness		0.10%		1.26%
Developmental Delay	76	0.95%		
Emotional Disturbance	37	0.46%		
Functional Delay	110	1.37%		
Hearing Impairments		0.11%		
Intellectual Disability	4289	53.49%	143	60.08%
Language Impairments	130	1.62%		
Multiple Disabilities	906	11.30%	12	5.04%
Orthopedic Impairments	34	0.42%		
Other - Health Impairments	343	4.28%	11	4.62%
Specific Learning Disability	20	0.25%		

<b>Speech Impairments</b>				
<b>Traumatic Brain Injury</b>	53	0.66%		2.94%
<b>Visual Impairments</b>		0.11%		
<b>(Incomplete or Error)</b>				
<b>(blank)</b>				
<b>Grand Total</b>	<b>8019</b>	<b>100%</b>	<b>238</b>	<b>100%</b>

<b>Assessment Year</b>	<b>State Rate</b>	<b>District X Rate</b>
<b>2017-2018</b>	ELA 1.42% Math 1.43% Science 1.36%	ELA x.xx% Math x.xx% Science x.xx%
<b>2018-2019</b>	ELA 1.45% Math 1.47%	ELA x.xx% Math x.xx%

**Attachment 2**

<b>Disability Category</b>	<b>State Count</b>	<b>State Alt. Distribution</b>	<b>District X Count</b>	<b>District X Alt. Distribution</b>
<b>Autism</b>	1978	24.67%	62	26.05%
<b>Blind</b>				
<b>Deaf-Blindness</b>				
<b>Deafness</b>		0.10%		1.26%
<b>Developmental Delay</b>	76	0.95%		
<b>Emotional Disturbance</b>	37	0.46%		
<b>Functional Delay</b>	110	1.37%		
<b>Hearing Impairments</b>		0.11%		
<b>Intellectual Disability</b>	4289	53.49%	143	60.08%
<b>Language Impairments</b>	130	1.62%		
<b>Multiple Disabilities</b>	906	11.30%	12	5.04%
<b>Orthopedic Impairments</b>	34	0.42%		
<b>Other - Health Impairments</b>	343	4.28%	11	4.62%
<b>Specific Learning Disability</b>	20	0.25%		
<b>Speech Impairments</b>				
<b>Traumatic Brain Injury</b>	53	0.66%		2.94%
<b>Visual Impairments</b>		0.11%		
<b>(Incomplete or Error)</b>				
<b>(blank)</b>				
<b>Grand Total</b>	<b>8019</b>	<b>100%</b>	<b>238</b>	<b>100%</b>

### Attachment 3

Tennessee Alternate Assessment (entered by IEP Team):

Tennessee Alternate Assessments

Sheryn Ann Test

[New Mail!](#)

#### Participation Decision Documentation

##### Completion of Alternate Assessment

- The team has agreed that the student has met all requirements and has completed the TN Alternate Assessment

 To meet the criteria for the Tennessee Alternate Assessment, the student must meet all eligibility criteria descriptors.

Participation Criteria	Participation Criteria Descriptors	Sources of Evidence [check if used]
<p><b>1. The student has a significant cognitive disability.</b></p> <p><input checked="" type="radio"/> Yes <input type="radio"/> No</p>	<p>Review of student records indicate a disability or multiple disabilities that significantly impact intellectual functioning and adaptive behavior.</p> <p><i>*Adaptive behavior is defined as essential for someone to live independently and to function safely in daily life.</i></p>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Results of Individual Cognitive Ability Test</li> <li><input type="checkbox"/> Results of Adaptive Behavior Skills Assessment</li> <li><input type="checkbox"/> Results of individual and group administered achievement tests</li> <li><input type="checkbox"/> Results of informal assessment</li> <li><input type="checkbox"/> Results of individual reading assessments</li> <li><input type="checkbox"/> Results of district-wide alternate assessments</li> <li><input type="checkbox"/> Results of language assessments including English language learner (ELL) language assessment if applicable</li> </ul>
<p><b>2. The student is learning content linked to (derived from) the state content standards.</b></p> <p><input checked="" type="radio"/> Yes <input type="radio"/> No</p>	<p>Goals and instruction listed in the IEP for this student are linked to the enrolled grade-level standards and address knowledge and skills that are appropriate and challenging for this student.</p>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Examples of curriculum, instructional objectives and materials including work samples</li> <li><input type="checkbox"/> Present levels of academic and functional performance, goals and objectives from the IEP</li> <li><input type="checkbox"/> Data from scientific research-based interventions</li> <li><input type="checkbox"/> Progress monitoring data</li> </ul>
<p><b>3. The student requires extensive direct individualized instruction and substantial supports to achieve measurable gains in the grade-and-age-appropriate curriculum.</b></p> <p><input checked="" type="radio"/> Yes <input type="radio"/> No</p>	<p>The student (a) requires extensive, repeated, individualized instruction and support that is not of a temporary or transient nature and (b) uses substantially adapted materials and individualized methods of accessing information in alternative ways to acquire, maintain, generalize, demonstrate and transfer skills across academic content.</p>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Examples of curriculum, instructional objectives, and materials including work samples from both school and community based instruction</li> <li><input type="checkbox"/> Teacher collected data and checklists</li> <li><input type="checkbox"/> Present levels of academic and functional performance, goals, and objectives, and post school outcomes from the IEP and the Transition Plan for students age 14 and older</li> </ul>

The student is eligible to participate in the Tennessee Alternate Assessment if all responses above are marked Yes.

**Additional Considerations Not to Use in Reviewing Evidence**

1. A disability category or label
2. Poor attendance or extended absences
3. Native language/social/cultural or economic difference
4. Expected poor performance on the general education assessment
5. Academic and other services received
6. Educational environment or instructional setting
7. Percent of time receiving special education
8. English Language Learner (ELL) status
9. Low reading level/achievement level
10. Anticipated disruptive behavior
11. Impact of test scores on accountability system
12. Administrator decision
13. Anticipated emotional duress
14. Need for accommodations, e.g., assistive technology/AAC to participate in assessment process.

Based on consideration of the student's eligibility, the IEP team has determined that the alternate assessment is the most appropriate assessment for this student AND evidence shows that the decision for participating in the Tennessee Alternate Assessment was not based on the above list of Exclusionary factors.

Yes    No

**Attachment 4**

Student Name: Sheryn Ann Test  
 DOB: 05/01/2003

**Tennessee Reference System**  
 IEP Meeting Date: 12/12/2019

**Informed Parental Consent**

Please select 'Yes' or 'No' for each statement below:

- Yes  No I certify that I am the legal parent(s)/guardian(s)/surrogate(s) of this child.
- Yes  No I have been informed of and understand my rights as a parent, and have received a copy of the notice of procedural safeguards.
- Yes  No I have been involved in the IEP Team meeting and/or the development of this IEP, and give permission for the proposed program described in this IEP for my child.
- Yes  No My child and I have been informed of his/her right to represent himself/herself upon his/her eighteenth birthday. (Note: This information must be provided beginning at least one year prior to the student's 18th birthday.)
- Yes  No I understand that participation in the alternate assessment means my student is participating in a curriculum that **may hinder his/her ability to obtain** a regular diploma. I understand that my child **may instead receive** an alternate academic diploma, occupational diploma, and/or special education diploma.

Please select one of the following options:

- A draft IEP was developed and a copy was provided at least 48 hours prior to my child's IEP team meeting.
- A draft IEP was developed, but a copy was not provided at least 48 hours prior to my child's IEP team meeting.
- A draft IEP was developed, but a copy was declined.
- A draft IEP was not developed prior to the IEP team meeting.

\_\_\_\_\_  
 Parent/Guardian/Surrogate Signature      Date      Student Signature      Date

Date IEP was given to parent(s):

If the parent(s) did not attend, the person responsible for forwarding and explaining the contents of the IEP to the parents along with their rights is:  
 Judy Test

**Documentation of IEP Review by Other Teachers not in Attendance:**

\_\_\_\_\_  
 Signature      Date      Signature      Date

**District Name\***

  
**Name\***

<input type="text"/>	<input type="text"/>
First Name	Last Name

**Contact email\***

  
**Role, Position, or Title\***  
**Please Acknowledge: \***  
 Option1The district is committed to ensuring all students participate in the appropriate assessments. Students determined eligible for the alternate assessment will meet the three criteria: 1. The student has a significant cognitive disability. Only students with the most significant cognitive disability should be considered for the alternate assessment, 2. The student is learning content linked to (derived from) state content standards. 3. The student requires extensive direct individualized instruction and substantial supports to achieve measurable gains in the grade- and age-appropriate curriculum.  
**Please Acknowledge: \***  
 The district recognizes that the 1% threshold is a state-wide cap, not a district cap. If the state exceeds 1% participation, the department will require justification from each district contributing to the state exceeding 1%.

Submit Form

**Alternate Academic Diploma Planning Guide**

**Total Credits Required: 22**

<b>Math: 4 credits required</b>			
<i>Algebra I, II, Geometry and a fourth higher level math course (Students must be enrolled in a mathematics course each school year)</i>			
Date completed		(Indicate one)	Replacement Course (review policy for options)
	Algebra I	(General or AAD)	or
	Geometry I	(General or AAD)	or
	Algebra II	(General or AAD)	or
	Applied Math	(General or AAD)	or
<b>Science: 3 credits required</b>			
<i>Biology, Chemistry or Physics (or a replacement lab science), and a third lab course</i>			
Date completed		(Indicate one)	Replacement Course (review policy for options)
	Biology I	(General or AAD)	or
	Chemistry or Physics	(General or AAD)	or
	Additional Lab Science	(General or AAD)	

<b>English Language Arts (ELA): 4 credits required</b>		
Date completed		(Indicate one)
	ELA I	(General or AAD)
	ELA II	(General or AAD)
	ELA III	(General or AAD)
	ELA IV	(General or AAD)

<b>Social Studies: 3 credits required + Personal Finance: 0.5 credit required</b>		
Date completed		(Indicate one)
	U.S. History and Geography	(General or AAD)
	World History and Geography	(General or AAD)
	U.S. Government and Civics	(General or AAD)
	Economics	(General or AAD)

### Alternate Academic Diploma Planning Guide

**Total Credits Required: 22**

	Personal Finance	(General or AAD)
--	------------------	------------------

PE and Wellness: 1.5 credits required		
Date completed		(Indicate course name and credits earned)
	Wellness	
	PE	

World Language: 2 credits required (policy allows waiving world language for electives)		
Date completed		(Indicate course name and credits earned)

Fine Arts: 1 credit required (policy allows waiving fine arts for elective(s))		
Date completed		(Indicate course name and credits earned)

Elective Focus: 3 credits required Math and Science, Career and Technical Education, Fine Arts, humanities, Advanced Placement (AP) or International Baccalaureate (IB)		
Date completed		(Indicate course name and credits earned)

Assessment and Additional Requirements	
Date completed	
	Alternate Assessment—Biology (grade 10)
	Alternate Assessment—ELA (grade 11)
	Alternate Assessment—Math (grade 11)
	Civics assessment (must score $\geq 70\%$ )
	Transition assessment—employment
	Transition assessment—education and training
	Transition assessment—community involvement
	Transition assessment—independent living



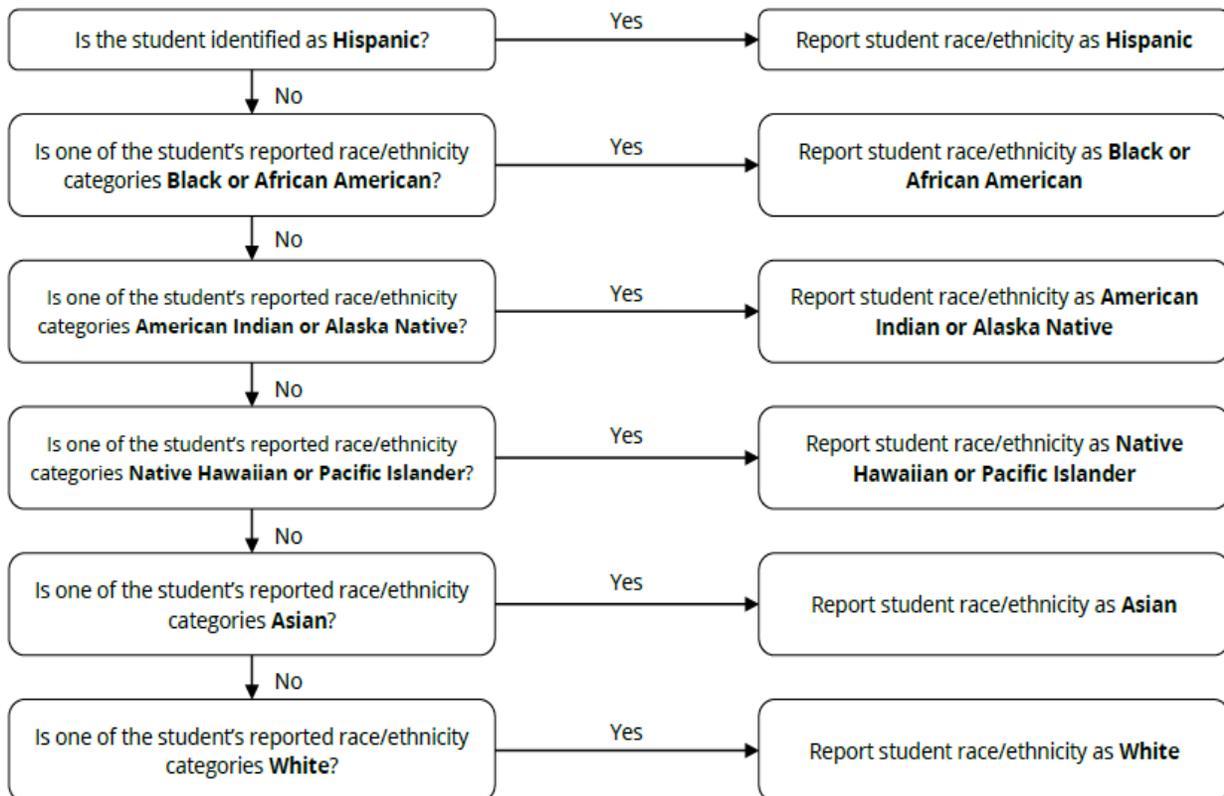
**Attachment 7**

No public comments received

## Participation rate calculation rules

All students in grades 3-8 and high school are expected to participate in the state accountability assessments, TNReady/EOC or the alternate assessments (MSAA/TCAP-Alt). However, each year there are students who, while expected to participate, do not complete the assessments for a variety of reasons. Therefore, in order to calculate the participation rate, students who were assessed and received a score for their performance are included within the participation rate calculation.

For school/district accountability and TCAP assessments, we apply the hierarchy rule to classify the student into one race group.



### 1. English language arts participation rate calculation:

$$\frac{\text{\# of MSAA Tested Students (ELA)}}{\text{\# of students assessed in ELA TNReady, EOC, and MSAA grades 3-8 and ELA II}} \times 100$$

“MSAA tested students” is the number of students in grades 3-8 and 11 who were assessed on the MSAA and received a performance level score (1-4).

“Assessed in ELA TNReady” is the number of students in grade 3-8 who were assessed on the TNReady and received an ELA performance score.

“Assessed in ELA EOC” is the number of students who were assessed on the ELA II EOC and received a performance score.

Group	Total # of Students in Grades 3-8 and High School R/LA 2020-21	# of Students Taking State AA-AAAS Grades 3-8 and High School R/LA 2020-21	% of Students Taking State AA-AAAS Grades 3-8 and High School R/LA 2020-21
All Students	496099	6477	1.31%
Asian	12652	150	1.19%
Black or African American	117783	2111	1.79%
Hispanic or Latino	63959	705	1.10%
Two or More Races	N/A	N/A	N/A
White	298581	3481	1.17%
Children with Disabilities	59584	6477	10.87%
Limited English Proficient (LEP)	24780	309	1.25%
Economically Disadvantaged	154708	1973	1.28%
Males	253859	4276	1.68%
Females	242240	2201	0.91%

**2. Math participation rate calculation:**

$$\frac{\text{\# of MSAA Tested Students (math)}}{\text{\# of students assessed in math TNReady, EOC, and MSAA grades 3-8 and Algebra I or Integrated Math I}} \times 100$$

“MSAA tested students” is the number of students in grades 3-8 and 11 who were assessed on the MSAA **and** received a performance level score (1-4).

“Assessed in math TNReady” is the number of students in grade 3-8 who were assessed on the TNReady **and** received a math performance score.

“Assessed in math EOC” is the number of students who were assessed on the Algebra I **or** Integrated Math I EOC **and** received a performance score

Group	Total # of Students in Grades 3-8 and High School Math 2020-21	# of Students Taking State AA-AAAS Grades 3-8 and High School Math 2020-21	% of Students Taking State AA-AAAS Grades 3-8 and High School Math 2020-21
All Students	493240	6462	1.31%
Asian	11883	148	1.25%

Black or African American	118748	2103	1.77%
Hispanic or Latino	65250	703	1.08%
Two or More Races	N/A	N/A	N/A
White	294267	3478	1.18%
Children with Disabilities	60203	6462	10.73%
Limited English Proficient (LEP)	26066	309	1.19%
Economically Disadvantaged	157081	1971	1.25%
Males	253064	4264	1.68%
Females	240176	2198	0.92%

### 3. Science participation rate calculation:

$$\frac{\text{\# of students assessed in TCAP Alt science \& biology}}{\text{\# of students assessed in science, EOC biology, and TCAP Alt.science \& biology}} \times 100$$

“TCAP Alt science & biology tested students” is the number of students in grades 3-8 and 11 who were assessed on the MSAA **and** received a performance level score (1-4).

“Assessed in math TNReady” is the number of students in grade 3-8 who were assessed on the TNReady **and** received a math performance score.

“Assessed in math EOC” is the number of students who were assessed on the Algebra I **or** Integrated Math I EOC **and** received a performance score

Group	Total # of Students in Grades 3-8 and High School Science 2020-21	# of Students Taking State AA-AAAS Grades 3-8 and High School Science 2020-21	% of Students Taking State AA-AAAS Grades 3-8 and High School Science 2020-21
All Students	488170	6495	1.33%
Asian	12276	141	1.15%
Black or African American	115776	2093	1.81%
Hispanic or Latino	63606	699	1.10%
Two or More Races	N/A	N/A	N/A
White	293459	3536	1.20%
Children with Disabilities	58829	6319	10.74%

Limited English Proficient (LEP)	25443	298	1.17%
Economically Disadvantaged	152542	1920	1.26%
Males	250178	4330	1.73%
Females	237992	2165	0.91%

## Banks, Kathleen

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**From:** Alison Gauld <Alison.Gauld@tn.gov>  
**Sent:** Friday, April 8, 2022 5:04 PM  
**To:** OESE.ESEA.Assessment; Jennifer Jordan; Banks, Kathleen  
**Subject:** RE: TDOE's 1% waiver requests, 2021 and 2022

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Mr. Peasley,

Again, I am happy to set up a call, but it was my understanding that because we were not disproportionate as a state for A, B, or D, we did not need to have each district address these subcategories. We have not done so in the past either. However, I am also happy to begin to ask them next year should we exceed 1% again.

Please advise,  
Alison

---

**From:** OESE.ESEA.Assessment <ESEA.Assessment@ed.gov>  
**Sent:** Friday, April 8, 2022 12:15 PM  
**To:** Alison Gauld <Alison.Gauld@tn.gov>; OESE.ESEA.Assessment <ESEA.Assessment@ed.gov>; Jennifer Jordan <Jennifer.Jordan@tn.gov>; Banks, Kathleen <kathleen.banks@ed.gov>  
**Subject:** [EXTERNAL] RE: TDOE's 1% waiver requests, 2021 and 2022

Thanks for responding, I would like to follow up regarding other sub-groups.

These waivers require disproportionality analysis/review for sub-groups defined in 1111(c) (2) of the ESEA, specifically categories A, B and D below.

SUBGROUP OF STUDENTS.—In this subsection and subsection (d), the term “subgroup of students” means—

- A. economically disadvantaged students;**
- B. students from major racial and ethnic groups;**
- C. children with disabilities; and
- D. English learners.**

Your response mentions that category B is considered, but what about categories A and D?

Thanks

Don Peasley [Donald.peasley@ed.gov](mailto:Donald.peasley@ed.gov)  
Kathleen Banks [kathleen.banks@ed.gov](mailto:kathleen.banks@ed.gov)  
Clayton Hollingshead [clayton.hollingshead@ed.gov](mailto:clayton.hollingshead@ed.gov)

State Assessment Team, School Support and Accountability (SSA),

Office of Elementary and Secondary Education (OESE)

US Department of Education

Email the OESE Assessment team at [ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)

---

**From:** Alison Gauld <[Alison.Gauld@tn.gov](mailto:Alison.Gauld@tn.gov)>

**Sent:** Friday, April 8, 2022 11:05 AM

**To:** OESE.ESEA.Assessment <[ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)>; Jennifer Jordan <[Jennifer.Jordan@tn.gov](mailto:Jennifer.Jordan@tn.gov)>; Banks, Kathleen <[kathleen.banks@ed.gov](mailto:kathleen.banks@ed.gov)>

**Subject:** RE: TDOE's 1% waiver requests, 2021 and 2022

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Mr. Peasley,

I believe the response and the attached addresses both of your questions. However, I am more than happy to set up a phone call should the following not sufficiently address your concerns.

ED follow up question-

1. Did justifications provided by LEAs in 2020-21 include plans to address disproportionality, as they did in 2018-19? If yes, can you provide examples of such justifications? If no, can you explain why the 2020-21 justifications did not request disproportionality plans? We are trying to understand how the State met the requirement to verify that each district that exceeded 1% has will address any disproportionality in participation in the alternate assessment.

ED follow up question-

2. From the paragraph on page 10 (above) it seems that the State has made the case that no sub-group disproportionality exists State wide using the risk ratio criteria. However, TDOE indicates that it did work with LEAs to identify potential disproportionalities. Can TDOE describe in details how it did this work, or provide evidence of this work in some fashion?

Yes, the TDOE did require districts to address disproportionality. While we do not have any disproportionality by race findings, we do have disproportionate practices by disability eligibly. The annual review of the LEA data has already resulted in significant decrease of participation by those students for whom the primary eligibility would indicate that it is highly unlikely the student meet the alternate assessment criteria. For example, we have reduced the number of students whose eligibility is SLD to only 21, a drop to less than 30% of the number participating a few years ago. To assist LEAs in this analysis, the receive a letter, like the example attached. Please note the data table at the end of the notice. It provides the LEA with the state-wide data compared to their LEA data. As a result, the LEA is able to think critically about their disproportionality, such as the response also attached (question 3).

Alison Gauld

---

**From:** OESE.ESEA.Assessment <[ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)>

**Sent:** Monday, April 4, 2022 10:12 AM

**To:** Alison Gauld <[Alison.Gauld@tn.gov](mailto:Alison.Gauld@tn.gov)>; Jennifer Jordan <[Jennifer.Jordan@tn.gov](mailto:Jennifer.Jordan@tn.gov)>; Banks, Kathleen

<[kathleen.banks@ed.gov](mailto:kathleen.banks@ed.gov)>; OESE.ESEA.Assessment <[ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)>

**Subject:** [EXTERNAL] RE: TDOE's 1% waiver requests, 2021 and 2022

Thanks for this additional information. In reading the waiver request, we have some additional questions, which I am sharing below. I am copying part of the State's request (with a page reference) to provide the context for our questions. Our specific questions are highlighted below. Please review and respond to us as soon as your team is able to do so. If it's helpful, we could have a call to discuss these questions with you.

**(page 5) Will address any disproportionality in the percentage of students in any subgroup taking an AA-AAAS.**

Using the 2018-19 assessment results, TDOE sent notices to each district that contributed to the state exceeding 1.0 percent participation in the AA-AAAS. The districts were required to submit a justification for their participation rate exceeding 1.0 percent and assurances that the district would adhere to the state guidelines for participation. The justification included a plan to address disproportionality. All districts submitted the justification as required. They were publicly available for a year in accordance with 34 CFR 200.6(c)(3).

For 2020-21, all districts were asked to complete assurances of adherence to the alternate assessment criteria and efforts to support the state's reduction of participation to under 1 percent. (Attachment 5). The LEA responses are publicly available in accordance with 34 CFR 200.6(c)(3).<sup>4</sup>

LEAs will receive notices of contributing to the state exceeding 1.0 percent in 2020-21 and asked to complete a justification and assurances. The submissions are due to the state January 31, 2022. Upon receipt, the department will review the justifications and determine technical assistance and/or guidance needed to reduce participation.

**ED follow up question-**

1. Did justifications provided by LEAs in 2020-21 include plans to address disproportionality, as they did in 2018-19? If yes, can you provide examples of such justifications? If no, can you explain why the 2020-21 justifications did not request disproportionality plans? We are trying to understand how the State met the requirement to verify that each district that exceeded 1% has will address any disproportionality in participation in the alternate assessment.

**(page 10)c. The State will address any disproportionality in the percentage of students taking an AA-AAAS as identified through the data provided.**

The 2020-21 data was analyzed to determine the risk ratio within student subgroups. TDOE uses a risk ratio of 2.0 to determine significant disproportionality. Using this same risk ratio for one year of data, no subgroup was determined to be disproportionately represented in participation on the AA-AAAS. The TDOE, did, however, work with districts to identify potential disproportionality, specifically by disability category, including those that would be highly unexpected, such as specific learning disability.

**ED follow up question-**

2. From the paragraph on page 10 (above) it seems that the State has made the case that no sub-group disproportionality exists State wide using the risk ratio criteria. However, TDOE indicates that it did work with LEAs to identify potential disproportionalities. Can TDOE describe in details how it did this work, or provide evidence of this work in some fashion?

Thanks

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State Assessment Team, School Support and Accountability (SSA),

Office of Elementary and Secondary Education (OESE)

US Department of Education

Email the OESE Assessment team at [ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)

TO: Joyce Keohane  
FROM: Jennifer Jordan, Assistant Commissioner of Special Education and Intervention Programs  
DATE: January 13, 2022  
**SUBJECT: Notice of District Alternate Assessment Participation Exceeding One Percent**

Collierville MSD has contributed to the state exceeding the cap of one percent alternate assessment participation during the 2020-21 school year. The Every Student Succeeds Act (ESSA) limits statewide participation rates to one percent of the total students assessed. Tennessee's statewide alternate assessment participation rates for the 2020-21 school year were 1.35% in English language arts, 1.36% in math, and 1.33% in science. The alternate assessment participation rates for your district are as follows:

English language arts alternate assessment participation rate: 1.16%  
Math alternate assessment participation rate: 1.23%  
Science alternate assessment participation rate: 1.07%

As a result of contributing to the state exceeding the one percent cap, your district must submit a justification and assurances form to [Alison.Gauld@tn.gov](mailto:Alison.Gauld@tn.gov) by **January 28, 2022**. Justification letters will be publicly posted in accordance with the Office of Special Education and Rehabilitative Services (OSERS) memo, [Requirements for the Cap on the Percentage of Students who may be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards, May 16, 2017](#).

Department staff will review the data, completed district justification forms, and LEA policies and practices related to student eligibility and participation in the alternate assessment. After review, the department will provide differentiated technical assistance to identified districts. Technical assistance will be available to all districts through webinars, guidance documents, and regional trainings. Districts with the most intensive needs and/or highest rates of participation will be identified for onsite technical assistance including file reviews and will be notified by Alison Gauld.

### **Participation rate calculation rules**

All students in grades 3-8 and high school are expected to participate in the state accountability assessments, TNReady/EOC or the alternate assessments (MSAA/TCAP-Alt). However, each year there are students who, while expected to participate, do not complete the assessments for a variety of reasons. Therefore, in order to calculate the participation rate, students who were assessed and received a score for their performance are included within the participation rate calculation.

### **English language arts participation rate calculation:**

$$\frac{\text{\# of MSAA Tested Students (ELA)}}{\text{\# of students assessed in ELA TNReady, EOC, and MSAA grades 3-8 and ELA II}} \times 100$$

"MSAA tested students" is the number of students in grades 3-8 and 11 who were assessed on the

MSAA **and** received a performance level score (1-4).

“Assessed in ELA TNReady” is the number of students in grade 3-8 who were assessed on the TNReady **and** received an ELA performance score.

“Assessed in ELA EOC” is the number of students who were assessed on the ELA II EOC **and** received a performance score.

**Math participation rate calculation:**

$$\frac{\text{\# of MSAA Tested Students (math)}}{\text{\# of students assessed in math TNReady, EOC, and MSAA grades 3-8 and Algebra I or Integrated Math I}} \times 100$$

“MSAA tested students” is the number of students in grades 3-8 and 11 who were assessed on the MSAA **and** received a performance level score (1-4).

“Assessed in math TNReady” is the number of students in grade 3-8 who were assessed on the TNReady **and** received a math performance score.

“Assessed in math EOC” is the number of students who were assessed on the Algebra I **or** Integrated Math I EOC **and** received a performance score.

**Science participation rate calculation:**

$$\frac{\text{\# of TCAP-Alt Tested Students (Science)}}{\text{\# of students assessed in science TNReady, EOC, and TCAP_Alt grades 3-8 and Biology I}} \times 100$$

“TCAP-Alt tested students” is the number of students in grades 3-8 and 10 who were assessed on the TCAP-Alt **and** received a performance level score (1-3).

“Assessed in science TNReady” is the number of students in grade 3-8 who were assessed on the TNReady **and** received a science performance score.

“Assessed in science EOC” is the number of students who were assessed on the Biology I **and** received a performance score.

The statewide data and your district data are summarized in the following two charts. One is a disaggregation of the data by disability category and the other is the participation rate over time. This data should support you in the development of a plan for reducing participation rates to include only those students who meet the three eligibility criteria and for whom participation in the alternate assessment is the most appropriate assessment.

Disability Category	State Count	State Alt. Distribution	Collierville MSD Count	Collierville MSD Alt. Distribution
Autism	2307	27.94%	32	55.17%
Deaf-Blindness				
Deafness				
Developmental Delay	160	1.94%		
Emotional Disturbance	32	0.39%		
Functional Delay	76	0.92%		
Hearing Impairments	14	0.17%		
Intellectual Disability	4335	52.49%	18	31.03%
Language Impairments	88	1.07%		5.17%
Multiple Disabilities	749	9.07%		5.17%
Orthopedic Impairments	26	0.31%		1.72%
Other - Health Impairments	323	3.91%		1.72%
Specific Learning Disability	21	0.25%		
Speech Impairments				
Traumatic Brain Injury	62	0.75%		
Visual Impairments				
(Incomplete or Error)	48	0.58%		
<b>Total</b>	<b>8258</b>	<b>100.00%</b>	<b>58</b>	<b>100.00%</b>

Assessment Year	State Rate	Collierville MSD Rate
<b>2017-2018</b>	ELA 1.42% Math 1.43% Science 1.36%	ELA 1.45% Math 1.48% Science 1.39%
<b>2018-2019</b>	ELA 1.45% Math 1.47% Science <i>*field test*</i>	ELA 1.50% Math 1.51% Science <i>*field test*</i>
<b>2020-2021</b>	ELA 1.35% Math 1.36% Science 1.33%	ELA 1.16% Math 1.23% Science 1.07%

**2020-21 Alternate Assessment Justification**

*The following must be completed by districts that contribute to the state exceeding the 1% cap for students participating in the alternate assessment and will be posted on the department website upon receipt.*

District Name: Collierville Schools

	% of Alternative Assessments 2017-18 Administration	% of Alternate Assessments 2018-19 Administration	% of Alternate Assessments 2020-21 Administration	Projected % of Alternate Assessments 2021-22 Administration
MSAA ELA	1.45%	1.50%	1.16%	1.16%
MSAA Math	1.48%	1.51%	1.23%	1.20%
TCAP-Alt Science	1.39%	<i>*Field test year, no data available</i>	1.07	1.1%

1. **Eligibility Determination Process:** Describe the policies, training and supports in place to ensure IEP teams appropriately identify students for participation on the alternate assessments related to each of the three criteria. *Completing the form in EasyIEP is not sufficient justification. The description should include training or processes to ensure the IEP team is carefully considering both the student's data and the implication of participation in the alternate assessment.*
  - a. Criterion One: The student has a significant cognitive disability. Only students with the most significant cognitive disabilities should be considered for the alternate assessment.
  - b. Criterion Two: The student is learning content linked to (derived from) state content standards.
  - c. Criterion Three: The student requires extensive direct individualized instruction and substantial supports to achieve measurable gains in the grade- and age-appropriate curriculum.

Special Education Teachers, Related Service Providers, School Administrators and School Psychologist receive training at the start of the school year regarding the Alternate Assessment and criteria to consider when making the decision for a student to participate in the alternate assessment.

**Criteria for the team to consider includes:**

IQ scores that are 60 or below

Adaptive scores that are 60 or below

Student requires extensive direct instruction that is well below grade level standards

History of students unable to make progress toward prerequisite skills in the areas of reading and math with extensive supports.

Parent understands and agrees that student will not be working for a general education diploma

Prior to an IEP meeting where alternative assessment is going to be proposed, the Director of DEC is notified to review student data with school psychologist and teacher. This group will collaborate about what is required for a FAPE for specific students.

Before the end of the first semester, teachers and school psychologist will review current data, performance of students who are currently alternately assessed, fill out a chart and send to DEC for review. If there has been a change and it appears the student no longer appears to require alternate assessment for a FAPE, an IEP team will be scheduled to discuss.

Teachers note in PWN that parent understands students who are assessed with alternate assessment are not working toward a general education diploma.

2. **Disproportionality:** Using your data by primary eligibility, describe your district data, including disproportionate participation on the alternate assessment and a plan for reducing/eliminating disproportionality.

Collierville Schools is above the state average in the alternate distribution of students with autism. State distribution is 27.94% versus the district 55.17%. At the same time we are below the state average distribution in the area of Intellectual Disability with the state at 52.49% and the district 31.03%. I'm not sure that this is an area of disproportionality as Collierville Schools does have a large population of students with autism. The district currently has 209 students with an eligibility of autism. And 35 of these students are assessed alternately. This translates to 16.7% of students with

autism are alternately assessed. The district currently has 43 students with identification as Intellectually Impaired and 22 of these students are alternately assessed. This translates to 51% of students who are intellectually disabled are alternately assessed.

IEP teams will continue to gather all data necessary to determine eligibility of students with disabilities.

3. **Informed Parent Participation:** Describe the process and practices used to adequately inform parents of the eligibility requirements and implications of participation to ensure active parent participate in the IEP team discussion.

Parents are actively involved in all programming decisions ad detailed in minutes, prior written notices. During IEP meetings teams review all data available to make informed decisions and if additional data is required, teams meet to make that determination. The decision for alternate assessment is considered and reconsidered at least at the annual IEP meeting.

4. **Support Requested:** Please detail any support needed from the department. (All reasonable requests for supports will be considered.)  
None needed at this time

**Assurance:** The district is committed to ensuring all students are participating in the most appropriate assessments. Students determined eligible for the alternate assessment will meet the three criteria.

Signed: 

Date: 2/18/2022