



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

July 25, 2022

The Honorable Kari Eakins  
Superintendent of Public Instruction  
Wyoming Department of Education  
2300 Capitol Avenue, Second Floor  
Cheyenne, WY 82002-0050

Dear Superintendent Eakins:

I am writing in response to the Wyoming Department of Education's (WDE's) request on June 14, 2022, 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 in the subject area of science. Based on data from the 2020-2021 school year, WDE concluded that it will need to assess more than 1.0 percent of students using an science AA-AAAS in the 2021-2022 school year.

After reviewing WDE's waiver request, I am declining to exercise my authority under section 8401(b) of the ESEA to grant a one-year waiver, for school year 2021-2022, 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 science. I am declining to grant the State's request because it has not met the requirement in requirement in 34 CFR § 200.6(c)(4)(i) to submit the request (or extension request) at least 90 days prior to the start of the relevant subject testing windows. According to information provided by WDE, the testing window for the AA-AAAS in science began on March 1, 2022. Ninety days prior to this date was December 1, 2021. The Department received the State's request on June 14, 2022.

WDE may revise its waiver request, consistent with section 8401(b)(4)(B)(ii) of the ESEA, to meet the requirements under sections 8401(b)(1)(C) and (F). The revised waiver request must be submitted no later than 60 days from the date of this letter.

I note that the percentage of students taking the AA-AAAS in reading/language arts and mathematics was below 1.0 percent in both 2018-2019 and 2020-2021 and that the percentage in science in 2020-2021 was slightly above 1.0 percent. I applaud your State's efforts to meet the requirement to assess fewer than 1.0 percent of students on the AA-AAAS and hope that such a waiver is not needed in future years. Please note that if WDE wishes to submit a similar waiver request in future years, it must meet the requirement in 34 CFR § 200.6(c)(4)(i) to submit the request at least 90 days prior to the start of the assessment window in Wyoming.

I also 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

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

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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 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: Rebecca Velikaneye, WDE Assessment Consultant



# One Percent Participation Waiver Request for the Alternate Science Assessment

ESEA section 1111(b)(2)(D) and 34 CFR 200.6(c) and (d)  
Submission to U.S. Department of Education

March 29, 2022

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## Introduction

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Title 1 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015 (ESSA), addresses students participating in alternate assessments aligned with alternate academic achievement standards (AA-AAAS) of the statewide assessment system. Each state must submit a waiver request to the U.S. Department of Education if it predicts exceeding 1.0 percent participation in the AA-AAAS in any subject.

Wyoming assesses students each spring using the Wyoming Test of Proficiency and Progress (WY-TOPP) and the Wyoming Alternate Assessment for Students with Significant Cognitive Disabilities (WY-ALT). WY-ALT is aligned with the Wyoming Extended Standards (WYES) as adopted by the state of Wyoming as their alternate academic achievement standards.

After reviewing the 2021–2022 identification data, the Wyoming Department of Education (WDE) has determined that participation in WY-ALT Science in grades 4, 8, and 10 may be over 1.0 percent of the total number of students assessed in that subject area for the 2021–2022 school year. Pursuant to Code of Federal Regulations, Title 34 (34 CFR), Section 200.6(c)(4), the WDE is requesting a federal waiver for exceeding the 1% threshold on AA-AAAS participation in the Science WY-ALT.

## Requirement 1: 90 Day Requirement

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The testing window for the Summative WY-ALT in Spring of 2022 will last from March 1st through April 22nd, 2022. The requirement to submit this request is 90 days prior to the testing window which is December 01, 2022. Due to a lack of evidence prior to January 2022, the WDE had no reason to believe it would exceed the one percent threshold. Wyoming is requesting a waiver at the earliest time possible after receiving data that it may exceed the mandated threshold. Provided is the public publishing of the testing information that can be found on the [WDE public website](#).

## Requirement 2: State-Level Data

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Data has been pulled from our State Summative Assessment given in the Spring of 2021. The following data details the participation in the WY-ALT Science 2021. This data comes from a year where USED granted Wyoming's request for a waiver from federal assessment accountability, and school identification requirements. The Wyoming State Board of Education granted an exception to Wyoming Accountability in Education Act requirements for all schools. Due to this waiver and its possible impacts on assessment participation, the numbers of participants in both the general state-wide content tests and the AA-AAAS were lower than previous years would have allowed us to predict. Based on this data, WDE did not have reason to believe participation would exceed one percent in any content area. Data has also been pulled from our testing system in anticipation of the upcoming 2022 testing season. Based on this data, we now anticipate exceeding the one percent threshold for participation in the AA-AAAS.

**Table 1:** AA-AAAS Participation Rates for 2020-2021 Science

| Group                            | Total # Assessed | # Taking WY-ALT | % Taking WY-ALT  |
|----------------------------------|------------------|-----------------|------------------|
| All Students                     | 20,662           | 215             | 1.04%            |
| American Indian/Alaska Native    |                  |                 | 1.38%            |
| Asian                            |                  |                 | 2.78%            |
| Black                            |                  |                 | 1.09%            |
| Hispanic                         | 2960             | 34              | 1.15%            |
| Native Hawaiian/Pacific Islander |                  |                 | 2.78%            |
| Multiracial                      |                  |                 | 1.23%            |
| White                            | 16035            | 157             | 0.98%            |
| Econ. Disadv.                    | 6066             | 96              | 1.58%            |
| English Learner                  |                  |                 | 1.55%            |
|                                  | Total Enrolled   | Total Assessed  | Total % Assessed |
| All Students Gr. 4, 8, 10        | 21510            | 20662           | 96.058%          |
| SWD Gr. 4, 8, 10                 | 2992             | 2851            | 95.287%          |
| ALT Gr. 4, 8, 10                 | 236              | 215             | 91.102%          |

**Table 2:** Anticipated AA-AAAS Participation Rates for 2021-2022 Science (03/29/2022)

| Group        | Total # Assessed | # Taking WY-ALT | % Taking WY-ALT |
|--------------|------------------|-----------------|-----------------|
| All Students | 21779            | 244             | 1.120%          |

## Requirement 3: Assurances

### LEAs Followed States Guidelines

In analyzing the identification data from the 2021-2022 WY-ALT Science, the Wyoming Department of Education identified 24 out of 48 local educational agencies (LEAs) that are anticipated to exceed the one percent participation threshold for the WY-ALT Science administration in the Spring 2022 assessment window. 11 of these 24 LEAs identified only one student; however, due to the small number of students in the three assessed grades, still exceeded the one percent threshold for participation in the AA-AAAS.

In August 2021, WDE's Special Education Programs Division reviewed the 2020-21 data for WY-ALT administration. LEAs were then placed in Tier 1, 2, or 3 based on this analysis using the tiering criteria matrix (Table 3).

Those districts exceeding one percent participation in one or more content areas of the WY-ALT, and/or show an upward trend, or possible concerns after subgroup analysis did receive a Tier 2 letter. They did receive a letter indicating a request to submit a Letter of Assurance requesting the following assurances:

1. Staff are trained on the WY-ALT participation criteria.
2. IEP's are being reviewed every year to determine participation.
3. The WY- ALT guidance documents have been reviewed on an annual basis.

**Table 3:** Tiering Criteria Matrix

| <b>Tier</b>                  | <b>Determined By</b>  | <b>Requirements</b>  |
|------------------------------|---|--|
| <b>1. Meets Requirements</b> | 100% compliance: no more than 1% of students taking WY ALT for that grade and content area.                                       | District may request and access available training for staff as needed.  |
| <b>2. Needs Assistance</b>   | Exceed 1% of students taking WY-ALT AND/OR up trend or possible concerns after subgroup analysis including population size.       | Required Assurances of staff training, annual IEP review, understanding of WY-ALT guidance documents for participation. Suggested participation in WDE-approved training AND/OR policy review/update. Technical support available for participation determinations.              |
| <b>3. Needs Intervention</b> | Exceed 1% of students taking WY-ALT, 2 year trend of exceeding 1%, significant trend up, and/or concerns after subgroup analysis. | WDE file review of explanation why the student must participate in the AA-AAAS. Required participation in WDE-approved targeted training AND/OR policy review/update. Possible facilitated file review, coaching, direct support analyzing root causes and plan for improvement. |

### LEAs Addressing Disproportionalities

The Wyoming Department of Education collects assurances from districts through the grant application process for Part B Federal Special Education Funds. Currently, we have no districts that have concerns regarding disproportionality.

## Requirement 4: Plans and Timelines

### Improvement of Guidelines and Implementation

Through a review of the current processes, the WDE has identified a need to add a definition related to “students with the most significant cognitive disability”, improve communication, and update guidance for identification of students who participate in the alternate assessment video for all districts.

The first step in our improvement process will be to send a communication to all LEAs with a reminder about and a copy of the guidance and checklist WDE provides to assist IEP teams in determining participation in the AA-AAAS. This Tier 1 support will be sent out twice a year in the fall and spring to help guide the LEAs in their training and decision making processes.

Next, the Special Education Programs Division of WDE will open and amend Wyoming's Chapter 7: Services for Children with Disabilities rules and will have this process completed in the Fall of 2022. Once updates have been made, WDE will communicate updates to Wyoming's Chapter 7 rules that apply to participation in AA-AAAS.

In addition to updating Wyoming's Chapter 7 rules, Wyoming's Assessment Team will revise the WY-ALT Participation Guidance and accompanying video training to align with revisions made to Chapter 7 rules regarding the standard processes for determining participation in the AA-AAAS. After the described revisions, the guidance suite will be re-released to LEAs in January 2023 through a Superintendent's Memo, the public WDE website, and an email to LEA leadership.

All improvements made to Chapter 7 rules and guidance for participation will be included in the annual Alternate Assessment Test Administrator Training administered in the spring of 2023; as well as, included in the weekly Assessment Newsletter and all Special Education Program monitoring visits and all relevant WDE webpages. All future trainings and meetings with Special Education personnel around this topic will include the updated guidance. This will include District Test & Building Coordinator meetings, Test Administrator Trainings, and Special Education Programs Trainings.

The Wyoming Department of Education Assessment Team and Special Education Programs Division will continue to monitor the enrollment of students in the AA-AAAS administration to determine the effectiveness of these changes. If further action is required, both teams will determine future improvements to the guidance and implementation of that guidance as needed.

## LEA Oversight and Monitoring

The Wyoming Department of Education (WDE) Special Education Programs Monitoring Team reviews each district's WY-ALT participation data. For each district exceeding one percent participation in the AA-AAAS, the nature and root causes of the data are analyzed including trends over the past two years, analysis of disability categories, services, environment, other subgroups, and population size of the district. Based on these analyses, districts are placed in Tier 1, 2, or 3 using the tiering criteria matrix (Table 3). After review, WDE contacts districts depending on the nature of their 1% data and according to the assigned Tier.

After districts have been assigned a tier, WDE sends out communication to each district. Each district receives a cover letter explaining the background, purpose, and process for monitoring the one percent participation threshold. This cover letter also includes available resources for training and support. The districts also receive a spreadsheet including their district-level data. Finally, every district is sent a letter that informs them of their tier level.

1. Tier 1, Meets Requirements: Those below 1% in all areas will receive a letter indicating 100% compliance.
2. Tier 2, Needs Assistance: Those exceeding 1% in 1 or more area, and/or an upward trend, or possible concerns after subgroup analysis will receive a Tier 2 letter. WDE will determine whether this was due

to small population size or other contributing factor(s). These districts are not required to submit a file review. They will receive a letter indicating a request to submit a Letter of Assurance:

- a. Staff are trained on the WY-ALT participation criteria.
  - b. IEP's are being reviewed every year to determine participation.
  - c. The WY-ALT guidance documents have been reviewed and WY-ALT decisions are made on an annual basis.
3. Tier 3, Needs Intervention: Those exceeding 1% in 1 or more area and/or a 2 year trend up, or significant concerns after subgroup analysis will receive a Tier 3 letter. Districts will submit requested files to WDE for review based on subgroup analysis of the disability category, service environment, or other subgroup concerns. WDE will review WY-ALT participation explanations and any team discussion and decision making process reported in the IEP or Prior Written Notice.

After WDE receives and reviews requested material, letters are sent to either clarify concerns or move to further requests. Tier 2 districts who have provided sufficient evidence are cleared after assurances. If these assurances are found to be incomplete, WDE may suggest the district provide WDE-approved training or revisit determination policies. Tier 3 districts whose WY-ALT participation explanations were found to be complete are cleared following a file review. If the WDE Special Education Programs Monitoring Team finds these files to be incomplete, WDE may require further training, policy review, or other direct support such as coaching or a facilitated file review. Specific letters and plans are developed for each district as they are deemed necessary by the WDE Special Education Programs division.

## Addressing Disproportionality in State-level Data

After reviewing the data from the 2020-2021 assessment administration, the WDE identified a possible disproportionate number of students of Asian ethnicity participating in the AA-AAAS in all subject areas. Due to the low population of our state, we did not feel it appropriate to post for public review for the additionally small number of students in a particular subgroup of a subgroup of only three grades. The WDE Assessment Team reviewed the number of students in each subgroup that participated in state-wide testing and who participated in the AA-AAAS in order to determine a risk ratio based on the NCEO's guidance. The identified subgroup of AA-AAAS participants of Asian ethnicity (n-size of 4 students statewide) showed an elevated risk-ratio.

WDE will continue to calculate participation rates among subgroups each year and compare them to their general assessment participation rates using risk ratios. WDE will look deeper into the identified subgroup and representative students to address the information revealed by the data from the 2020- 2021 administration. WDE will review the justification documentation provided by any districts with an evident disproportionality and provide those districts with support during monitoring conversations to help look at the facts around those disproportionalities. Plans are also in place to provide state-wide training around data analysis which will include looking carefully at the data of specific subgroups of students in each district.

## Evidence of Public Comment

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Wyoming follows a public notice process as is laid out in statute [W.S. 16-3-103](#) which states that the WDE must "give at least forty-five (45) days notice of its intended action. Notice shall be mailed to all persons making timely requests of the agency." Pursuant to this statute, WDE put out a notice of public comment for this waiver



request on April 11, 2022. This public notice period lasted from April 11, 2022 through May 29, 2022.

## Manner of Provided Notice

The Wyoming Department of Education provided the entirety of this waiver to stakeholders via digital access on the department's website. Stakeholders were given access to a Google Form to provide comments and feedback on the One Percent Participation Waiver Request for the Alternate Science Assessment. Stakeholder groups that provided feedback included educational professionals.

The Wyoming Department of Education also hosted three Public Comment Virtual Open House sessions on Thursday, April 28, 2022; Wednesday, May 4, 2022; and Monday, May 23, 2022. These meetings were hosted at different times of day to give the best opportunity for stakeholders to attend. Stakeholder groups in attendance included educational professionals.

Throughout the digital comment period, WDE staff noted any comments digitally, no changes were necessary during this time. WDE staff members were also on hand during the Public Comment Virtual Open House sessions to respond to comments and questions that the public provided. No recommendations for change were made during these Open House sessions.

## Reasonable and Customary Opportunity for Input

Pursuant to Wyoming Statute [16-3-103](#), WDE gave "at least forty-five (45) days notice of its intended action." The Wyoming Department of Education gave reasonable notice and customary opportunity for input by following the same statutes and processes that are used for public comment on the revision of state standards. LEAs and other interested parties were given the same timeline and opportunity as they are accustomed to for similar actions taken by the Standards and Assessment Division of the WDE.

## Comments and Actions

### Timestamp:

4/20/2022 8:22:04 p.m.

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### Method of Comment:

Digital Form

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### Stakeholder Group:

Wyoming Educator

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### Comment Provided:

As a teacher in a small school district our numbers can vary greatly from year to year just because one family or small group of high needs students coming into our system can quickly and significantly alter our ability to stay under that one percent threshold. It would be very unfair and unnecessary to put a child who has no concept of the testing materials through a situation that would likely cause them stress if they are able to complete it at all. Testing is about collecting data and using that to improve education. Testing a student who is only able to guess and fill in circles does not provide any type of reliable or usable data, where allowing them to complete the WY-ALT does give valuable data about where that student is actually at academically.

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### Action Taken:

No Action Needed

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**Timestamp:**

4/28/22 @12:15 p.m.

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**Method of Comment:**

Virtual Public Comment Live

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**Stakeholder Group:**

Wyoming Educator

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**Comment Provided:**

When we have a student who is considered for ALT assessment, the district uses the guidance document provided by WDE. Even with a clear direction, teams have different interpretations and disagree. Sometimes the district is over the 1% threshold. Is there anything that the WDE can provide that will provide greater direction? The district is doing its best to follow guidelines but would like more support.

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**Action Taken:**

Guidance is given to the teacher. Clarification questions were asked.

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**Timestamp:**

5/23/22 @4:40 p.m.

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**Method of Comment:**

Virtual Public Comment Live

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**Stakeholder Group:**

Wyoming Educator

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**Comment Provided:**

No comments.

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**Action Taken:**

No Action Needed

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## Conclusion

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Based upon the provided information, the Wyoming Department of Education is requesting a federal waiver for exceeding the 1% threshold on AA-AAAS participation in the WY-ALT Science in its Spring 2022 Summative Administration.

This request is an effort to maintain compliance with Title 1 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015 (ESSA), which addresses students participating in alternate assessments aligned with alternate academic achievement standards (AA-AAAS) of the statewide assessment system.

Although the 2020-2021 assessment data did not anticipate an excess of one percent participation in the AA-AAAS, identification data pulled prior to the testing window showed an increase in alternate test takers and a decrease in overall enrollment. Therefore, pursuant to Code of Federal Regulations, Title 34 (34 CFR), Section 200.6(c)(4), the WDE is requesting a federal waiver for exceeding the 1% threshold on AA-AAAS participation in the WY-ALT Science Spring 2022 Summative Administration.