



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

January 27, 2022

The Honorable Eric Mackey
State Superintendent of Education
Alabama State Department of Education
50 North Ripley Street
P.O. Box 302101
Montgomery, Alabama 36104

Dear Superintendent Mackey:

I am writing in response to the Alabama State Department of Education (ALSDE's) request on November 30, 2021, for a one-year extension of the State's 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 ALSDE'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 extension of the State's 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, ALSDE 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 the 2018-2019 at least 95 percent of all students and 95 percent of all students with disabilities who are enrolled in grades for which an assessment is required. I note that while the State did not assess at least 95 percent of all students and 95 percent of students with disabilities in 2020-2021 due to disruptions caused by the COVID-19 pandemic, it assessed students with disabilities at about the same rate as all students in 2020-2021. Therefore, consistent with information provided in the guidance to States on October 29, 2021¹, I am also approving a one-year waiver of the requirement in 34 CFR § 200.6(c)(4)(ii)(B) that a State must have assessed at least 95 percent of students in the prior year.
- 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.

¹ See: <https://oese.ed.gov/files/2021/10/Memo-to-States-re-One-Percent-Waiver-Requirements-2021-2022.pdf>.

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

I want to remind you of the requirement in 34 CFR § 200.6(c)(3)(iv) that the State must make publicly available the information submitted by an LEA justifying the need of the LEA to assess more than 1.0 percent of its students on the AA-AAAS, provided that such information does not reveal personally identifiable information about an individual student. I also encourage you to make available your State’s plan and timeline and your progress to date in reducing the percentage of students taking the AA-AAAS. 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 ALSDE, 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 declined in your State; and I want to thank you for your continued efforts in achieving this. Future requests for an extension of this waiver will continue to expect both continued progress implementing your plan and 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.

Sincerely,

/s/

Ian Rosenblum
Deputy Assistant Secretary for Policy and Programs
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary

cc: Maggie Hicks, Director – Office of Assessment



STATE OF ALABAMA
DEPARTMENT OF EDUCATION



Eric G. Mackey, Ed.D.
State Superintendent of Education

November 30, 2021

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Dr. Donald Peasley
Assessment Team Lead, School Support and Accountability
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue Southwest
Room 3C112
Washington, D.C. 20202

Dear Dr. Peasley:

Please find enclosed with this letter Alabama's request for a waiver extension pursuant to 34 C.F.R. 200.6(c)(4). The Alabama State Department of Education is seeking a waiver extension of 34 C.F.R. 200.6(c)(4) for the 2021-2022 school year from the Secretary for the United States Department of Education (USDOE). This regulation limits the number of students assessed in a subject area using an alternate assessment to no more than one percent (1.0%) of the total number of students assessed in the state. Alabama is requesting a waiver in the subjects of reading/English language arts, math, and science.

Please contact Mrs. Maggie Hicks, Student Assessment, by email at mhicks@alsde.edu to discuss the contents of this extension waiver request or to address questions. We look forward to working with staff at the USDOE to achieve a positive response to the request.

Sincerely,

Eric G. Mackey
State Superintendent of Education

EGM/MH

Alabama State Department of Education
Waiver Extension Request Pursuant to 34 C.F.R 200.6(c)(4)
AA-AAAS 1.0 percent Cap
November 30, 2021



Alabama State Department of Education
AA-AAAS 1.0 percent Cap Waiver Extension
Request Pursuant to 34 C.F.R 200.6(c)(4)

Pursuant to 34 C.F.R. 200.6(c)(4), the Alabama State Department of Education (ALSDE) is seeking a waiver extension of 34 C.F.R. 200.6(c)(4) for the 2021-2022 school year from the Secretary for the United States Department of Education (Department). This regulation limits the number of students assessed in a subject area using an alternate assessment to no more than one percent (1.0 percent) of the total number of students assessed in the state. Alabama is requesting a waiver in the subjects of reading/English language arts, math, and science.

The ALSDE is actively engaged in following the guidance outlined in the Department memo titled, *Requirements for the Cap on the Percentage of Students Who may be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards* at the time of its release dated May 16, 2017, the memo dated June 9, 2020 titled *Additional Information Regarding the Requirements to Request a Waiver for the 2020-2021 School Year (SY) from the One Percent Cap on the Percentage of Students With the Most Significant Cognitive Disabilities Who May Be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)*, and the memo dated October 29, 2021 titled *Information Regarding the Requirements to Request a Waiver for the 2021-2022 School Year (SY) from the One Percent Cap on the Percentage of Students with the Most Significant Cognitive Disabilities Who May Be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)*.

Requirement 1 (200.6(c)(4)) Submission 90-Days Prior to State Testing Window Opening

- (i) *Be submitted at least 90 days prior to the start of the State's testing window for the relevant subject.*

The ALSDE is submitting a waiver extension request to the Department 90 days prior to the start of the *Alabama Comprehensive Assessment Program (ACAP) Alternate* testing window. The *ACAP Alternate* testing window start date for each subject will begin on March 1, 2022.

Requirement 2 (200.6(c)(4)) State Level Data

- (ii) *Provide State-level data, from the current or previous school year, to show:*

(A) The number and percent of students in each subgroup who took the alternate assessment aligned with alternate academic achievement standards in 2020-2021 and students who are projected to take the alternate assessment in 2021-2022; and

Alabama follows the federal participation requirements for assessments and requires all students enrolled in public schools to be assessed with the general assessment, the general assessment with accommodations, or with an alternate assessment.

The ALSDE has conducted an extensive review of the data from Alabama’s statewide alternate assessment, *ACAP Alternate*, for school year 2020-2021. The purpose of the review was to determine the participation rates of students participating in the alternate assessment. For the school year 2020-2021, the data revealed that just over 1.0 percent of Alabama students participated in each of the content areas included on the *ACAP Alternate*. Based on the data, the state anticipated and exceeded the 1.0 percent threshold enacted by ESSA for school year 2020-2021. Tables One, Two, and Three display participation rates by subject area for the 2020-2021 school year.

TABLE ONE:

2020-2021 School Year AA-AAAS Participation by Subject: Reading/English Language Arts

Group	Total # of Students in Grades 3-8 and HS R/LA 2020-21	Total # of Students w/ Disabilities Grades 3-8 and HS R/LA 2020-21	# of Students Taking State R/LA AA-AAAS Grades 3-8 and HS 2020-21	% of Students Taking State R/LA AA-AAAS Grades 3-8 and HS 2020-21
All students	388662	56820	4476	1.15
English learners	19301	2850	207	1.07
Black	126689	20977	1777	1.4
Hispanic	37958	4544	424	1.12
Asian	5946	373	65	1.09
White	203529	29027	2068	1.02
American Indian/Alaskan Native	3867	478	23	0.59
Native Hawaiian/Pacific Islander	471			0.85
Two Or More Races	10202	1383	97	0.95
Econ. Disadv.	201934	36342	2671	1.32
Male	199119	36839	2909	1.46
Female	189543	19981	1567	0.83

TABLE TWO:

2020-2021 School Year AA-AAAS Participation by Subject: Math

Group	Total # of Students in Grades 3-8 and HS Math 2020-21	Total # of Students w/ Disabilities Grades 3-8 and HS Math 2020-21	# of Students Taking State Math AA-AAAS Grades 3-8 and HS 2020-21	% of Students Taking State Math AA-AAAS Grades 3-8 and HS 2020-21
All students	388618	56817	4463	1.15
English learners	19272	2847	205	1.06

Black	126679	20977	1773	1.4
Hispanic	37936	4542	422	1.11
Asian	5944	373	65	1.09
White	203521	29027	2061	1.01
American Indian/Alaskan Native	3866	478	23	0.59
Native Hawaiian/Pacific Islander	473			0.85
Two Or More Races	10199	1382	97	0.95
Econ. Disadv.	201902	36340	2665	1.32
Male	199099	36840	2899	1.46
Female	189519	19977	1564	0.83

**TABLE THREE:
2020-2021 School Year AA-AAAS Participation by Subject: Science**

Group	Total # of Students in Grades 3-8 and HS Science 2020-21	Total # of Students w/ Disabilities Grades 3-8 and HS Science 2020-21	# of Students Taking State Science AA-AAAS Grades 3-8 and HS 2020-21	% of Students Taking State Science AA-AAAS Grades 3-8 and HS 2020-21
All students	163550	22193	1887	1.15
English learners	6831	968	75	1.1
Black	52530	8270	743	1.41
Hispanic	15315	1682	160	1.04
Asian	2566	146	31	1.21
White	87344	11386	892	1.02
American Indian/Alaskan Native	1622	188	11	0.68
Native Hawaiian/Pacific Islander	180			1.11
Two Or More Races	3993	502	39	0.98
Econ. Disadv.	81008	13853	1104	1.36
Male	83591	14438	1225	1.47
Female	79959	7755	662	0.83

According to the Department’s October 29, 2021, memo, *the Department encourages a State to use the most current year’s IEP or test registration data to make a credible estimate of the number and percentage of students (including by subgroup, if possible) who may take the AA-AAAS in SY 2021-2022.* Tables Four, Five, and Six reflect the 2021-2022 projected participation by subject.

**TABLE FOUR:
2021-2022 School Year AA-AAAS Projected Participation by Subject: Reading/English Language Arts**

Group	Total # of Students in Grades 3-8 and HS R/LA 2021-22 Est (YTD)	Total # of Students w/ Disabilities Grades 3-8 and HS R/LA 2021-22 Est (YTD)	# of Students Taking State R/LA AA-AAAS Grades 3-8 and HS 2021-22 Est (YTD)	% of Students Taking State R/LA AA-AAAS Grades 3-8 and HS 2021-22 Est (YTD)
All students	383274	51778	4783	1.25
English learners	19853	2580	189	0.95
Black	122828	18652	1921	1.56
Hispanic	39076	4203	420	1.07
Asian	5941	362	69	1.16
White	200052	26699	2232	1.12
American Indian/Alaskan Native	3586	385	24	0.67
Native Hawaiian/Pacific Islander	437			0.92
Two Or More Races	11209	1445	113	1.01
Econ. Disadv.	175149	29438	2436	1.39
Male	197679	33675	3117	1.58
Female	185594	18103	1666	0.9

**TABLE FIVE:
2021-2022 School Year AA-AAAS Projected Participation by Subject: Math**

Group	Total # of Students in Grades 3-8 and HS Math 2021-22 Est (YTD)	Total # of Students w/ Disabilities Grades 3-8 and HS Math 2021-22 Est (YTD)	# of Students Taking State Math AA-AAAS Grades 3-8 and HS 2021-22 Est (YTD)	% of Students Taking State Math AA-AAAS Grades 3-8 and HS 2021-22 Est (YTD)
All students	383274	51778	4783	1.25
English learners	19853	2580	189	0.95
Black	122828	18652	1921	1.56
Hispanic	39076	4203	420	1.07

Asian	5941	362	69	1.16
White	200052	26699	2232	1.12
American Indian/Alaskan Native	3586	385	24	0.67
Native Hawaiian/Pacific Islander	437			0.92
Two Or More Races	11209	1445	113	1.01
Econ. Disadv.	175149	29438	2436	1.39
Male	197679	33675	3117	1.58
Female	185594	18103	1666	0.9

**TABLE SIX:
2021-2022 School Year AA-AAAS Projected Participation by Subject: Science**

Group	Total # of Students in Grades 3-8 and HS Science 2021-22 Est (YTD)	Total # of Students w/ Disabilities Grades 3-8 and HS Science 2021-22 Est (YTD)	# of Students Taking State Science AA-AAAS Grades 3-8 and HS 2021-22 Est (YTD)	% of Students Taking State Science AA-AAAS Grades 3-8 and HS 2021-22 Est (YTD)
All students	163325	20787	2075	1.27
English learners	7559	954	78	1.03
Black	51718	7620	820	1.59
Hispanic	16216	1660	181	1.12
Asian	2624	150	34	1.3
White	86371	10632	981	1.14
American Indian/Alaskan Native	1584	169	11	0.69
Native Hawaiian/Pacific Islander	191			1.05
Two Or More Races	4519	538	46	1.02
Econ. Disadv.	70852	11402	1012	1.43
Male	83650	13482	1341	1.6
Female	79675	7305	734	0.92

According to the 2021-2022 school year projected participation, ALSDE will be over the 1.0 percent cap in each subject for those students who take the alternate assessment. Therefore, ALSDE is requesting an extension waiver for school year 2021-2022.

(B) the State has measured the achievement of at least 95 percent of all students and students with disabilities enrolled in the grades for which the AA-AAAS is required.

Due to COVID-19, ALSDE was unable to complete testing for the 2019-2020 school year which disrupted procedures in place to address fulfilling the timeline submitted for the approved extension waiver for the 2019-2020 school year. Alabama requested a waiver from assessments and was granted an extension waiver for school year 2020-2021 also. The Department provided additional guidance on June 9, 2020, encouraging states to use current year IEP or test registration data to make a credible estimate of the number and percentage of students who will take the AA-AAAs in SY 2020-2021 or who would have taken the AA-AAAS in SY 2019-2020 if testing had been conducted. Additional guidance was delivered from the Department on October 29, 2021, stating that due to COVID-related testing disruptions, the State may not have met the 95 percent requirements in SY 2020-2021, the previous year. 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 memo. Table Seven includes the 2018-2019 Alabama Participation Rates by subject.

TABLE SEVEN: 2018-2019 Alabama Participation Rate

2018-2019 Alabama Participation Rate	
Reading	98.91%
Math	99.12%
Science	98.39%

ALSDE is requesting a waiver from the 95 percent participation rate for school year 2020-2021 due to lingering COVID-related testing disruptions. Districts worked through challenges to test as many students as possible to meet this requirement. Unfortunately, Alabama did not meet the federal guidelines set at 95 percent participation rate of all students for 2020-2021 and is requesting a waiver from this requirement. Table Eight includes the 2020-2021 Alabama Participation Rates.

TABLE EIGHT: 2020-2021 Alabama Participation Rate

2020-2021 Alabama Participation Rate	
English Language Arts/Reading	93.65%
Math	93.73%
Science	92.91%

Requirement 3 (200.6(c)(4)) Assurances

(iii) Include assurances from the State that it has verified each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject using AA-AAAS did the following:

- (A) Each LEA will follow the State's participation guidelines;
- (B) How the LEA will address any disproportionality in the students taking the alternate assessment:

After analyzing the 2021-2022 projected enrollment data, ALSDE identified the districts/schools that are over the 1.0 percent cap due to enrollment.

Superintendents of identified districts will be notified no later than November 16, 2021. At this time, ALSDE will make available information about required training including the *Guidance for IEP Teams on Participation Decisions for the ACAP Alternate Assessment and Alternate Achievement Standards*, the documented evidence needed when submitting the justification assurances for each district projected over the 1.0 percent cap, and how to identify disproportionality.

For the 2020-2021 school year, ALSDE implemented intense training addressing three groups:

1. Universal Audience – Any personnel within an LEA, including the Special Education Coordinator and the System Test Coordinator were required to attend the training along with any school personnel for a school that was identified as a Targeted School or an Intensive School. On-demand training included a deep dive into the *ACAP Alternate Participation Manual* and the *Decision-Making Tool* as well as a review of the federal requirements. The participants were required to complete a post-training survey.
2. Targeted Schools – Personnel, to include the Special Education Coordinator, System Test Coordinator, Principal and Lead Special Education Teacher, of any school over the 1.0 percent cap for the first time in either 2019-2020 or 2020-2021. Training included a deep dive into the *ACAP Alternate Participation Decision Worksheet* and with guidance through the process with two sample students. The participants completed a post-training survey.
3. Intensive Schools – Personnel, to include the Special Education Coordinator, System Test Coordinator, Principal and Lead Special Education Teacher, of any school over the 1.0 percent cap for three years consecutive years (2018-2019, 2019-2020, and 2020-2021). Training included a review of the *ACAP Alternate Participation Manual*, the *Learner Characteristics Inventory (LCI)* the *ACAP Alternate Participation Manual* and *Decision-Making Tool*, and the *ACAP Alternate Participation Decision Worksheet*. Schools were given assignments and were required to complete submissions of the assigned work to ALSDE.

The ALSDE will continue to provide professional learning and/or technical assistance on accessibility and accommodation supports available for the general assessments as those supports enable most students with and without disabilities to meaningfully participate in the general assessment.

For the 2021-2022 school year, ALSDE will follow the same training process as was conducted in school year 2020-2021. The only change will be an additional training for the System Test Coordinators and the Special Education Coordinators on the *Guidance for IEP Teams on Participation Decisions for the ACAP Alternate Assessment and Alternate Achievement Standards*. This training will be provided via webinars and training modules.

During the 2020-2021 school year, ALSDE required identified districts who had more than 1.0 percent of students eligible to participate in the *ACAP Alternate* submit information justifying the need to exceed the 1.0 percent cap. Of the submitted justifications, almost exclusively (92 of 98 responses), districts reported the reason for exceeding the one percent cap was due to the demographics of their district; specifically, that they enroll many students with the most significant cognitive disabilities. Five districts responded that they were able to provide superior services to students with the most significant cognitive disabilities and due to the services provided, parents choose to relocate to their district for those special services. One district provided tables showing IQ, achievement, adaptive, and language scores for their students taking the *ACAP Alternate*.

Districts also reported more than 600 combined trainings in which district and school staff participated over the course of the year. These trainings included the following most commonly reported types of training:

1. ALSDE Universal Training via Schoology
2. Mandatory face-to-face training by ALSDE
3. Fall ALACASE conference
4. Annual IEP training
5. Back to School Inservice training
6. Professional development session addressing *Guidance for IEP Teams on Participation Decisions for the Alabama Alternate Assessment Program*
7. Sharing/Review of ALSDE-provided manuals and guidance documents
8. Professional Learning Units
9. Special Education Law for Administrators
10. A compliance module

All districts responded that they notified the parents/guardians at annual IEP team meetings, with many noting that they explained “how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma.” Many districts also reported that they utilized the *ALSDE Guidance for IEP Teams on Participation Decisions for the Alabama Alternate Assessment Program* to structure the conversation.

In addition to annual IEP Team meetings, some districts reported the following additional efforts that were made to fully inform parents/guardians:

1. Notified in writing and/or email
2. Training modules or in-person trainings for parents
3. Sharing *Alabama Course of Study* and *Alabama Alternate Achievement Standards* documents for comparison

One district stood out for its thoroughness by providing a detailed response as to how they notified parents: “*Notifications are sent via email, home with students, callouts conducted and postings on [redacted name of district] Special Education website. Special Education 101 and Q&A was held face to face. The parental engagement session was held for all parents/guardians and other individuals with an interest in the education of a child receiving special education services in [redacted name of district] Schools. Participants are encouraged to provide input and learn more about special education services provided by our school district. Two sessions were held for this topic. Autism 101 was held face to face. The parental*

engagement session was held for all parents/guardians and other individuals with an interest in the education of a child receiving special education services in [redacted name of district] Schools. Participants are encouraged to provide input and learn more about special education services provided by our school district. Two sessions were held for this topic.”

From this data, ALSDE determined the various reasons as to why districts were over the 1.0 percent cap, how members of the IEP team were trained, and how parents were notified of their students’ participation on the alternate assessment. ALSDE will utilize this data to provide strategic guidance as trainings are provided throughout the year. Again, for 2021-2022, all districts projected over the 1.0 percent cap will be required to submit justifications for the projected overage.

In an effort to address disproportionality, districts will be required to analyze their data by subgroup to determine whether disproportionality exists for students participating in the alternate assessment. Analysis will consist of reviewing current and previous years’ alternate assessment participation rates to determine if assessment decisions are consistently made regardless of race, gender, economic status, and English Learner status.

ALSDE will provide training on how to determine if disproportionality exists within the districts. Training will include how to address unusual patterns. In the event the data reveals any disproportionality in the percentage of students participating in the alternate assessment, the ALSDE will address the issues as follows:

- Determine LEAs whose data indicate disproportionality in the percentage of students participating in the alternate assessment.
- Monitor LEAs with the highest rates of disproportionality.
- Provide technical support and guidance.

Requirement 4 (200.6(c)(4))

(iv) Submit a plan and timeline by which the following will be accomplished:

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

ALSDE is working collaboratively with the Special Education section and has updated the guidance tools that will be utilized to provide training and support throughout the year. In conjunction with Special Education, Student Assessment will continue to monitor districts and schools over the 1.0 percent cap.

Alabama introduced a new definition for “students with the most significant cognitive disabilities” in 2018-2019. In Alabama, the definition of a student with the most significant cognitive disability is a student with an intelligence quotient (IQ) of three standard deviations below the mean, which is an IQ score of 55 or below, that significantly impacts intellectual functioning and that exists concurrently with deficits in adaptive functioning (defined as essential for someone to live independently and to function safely in daily life). As a rule, a student having a significant

cognitive disability is not solely determined by an IQ test score, but rather by a holistic understanding of a student. ALSDE is comfortable with the state's definition and will continue to review the integrity of the definition throughout the coming years.

(B) State will take additional steps to support and provide appropriate oversight to each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in a given subject in a school year using an alternate assessment aligned with alternate academic achievement standards to ensure that only students with the most significant cognitive disabilities take an alternate assessment aligned with alternate academic achievement standards. 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 IEP team or other placement team understand and implement the guidelines established by the State so that all students are appropriately assessed; and

ALSDE will annually provide training to each projected district over the 1.0 percent cap in any subject. ALSDE will also provide a survey to all identified districts with specific targeted questions. From this survey, ALSDE will identify districts/schools in need of targeted support. ALSDE will identify areas addressed within the survey to provide deliberate strategic training for those districts identified as needing additional guidance and support.

Alabama continues to provide professional learning and/or technical assistance that includes:

- Using guidance provided to make state assessment participation decisions.
- Selecting, implementing, and evaluating accessibility and accommodation supports for instruction and assessments.
- Differentiating instruction and providing better access to academic content.
- Having high expectations for all students regardless of the category of their disability.
- Ensuring parents are clearly informed that their child's academic achievement will be measured based on alternate achievement standards and participation in an alternate assessment may delay or otherwise affect the student from completing the requirements for a regular high school diploma.

The ALSDE will ensure that informational resources are available to parents of students with disabilities so they can contribute to the IEP decision-making process regarding the assessment in which their child participates. Parent informational resources will include information regarding:

- Accommodations that enable students to participate in the state assessment.
- Components of the definition of a student with a significant cognitive disability.
- Criteria for participation in the alternate assessment.
- Diploma aligned to the alternate achievement standards and its impact on post-secondary outcomes.

(C) The State will address any disproportionality in the percentage of students taking an alternate assessment aligned with alternate academic achievement standards:

ALSDE will evaluate disproportionality, over three years, by analyzing subgroup data such as disability, race/ethnicity, gender, English learner, and poverty and non-poverty to determine unusual patterns within the subgroups. Upon completing this review, ALSDE will provide training to districts/schools on how to analyze the data.

Requirement 5 (200.6(c)(4))

(v) If the State is requesting to extend a waiver for an additional year, the State is to meet the requirements of 200.6(c)(4)(i) – (iv), as well as show substantial progress toward the achievement of each component of the previous year’s plan and timeline. In creating the plan and timeline, the State must address three areas:

(a) how the state will improve implementation of its guidelines for participation in the alternate assessment;

ALSDE completed an extensive monitoring and training schedule during the 2019-2020 school year to enhance awareness of the 1.0 percent cap and for the 2020-2021 school year, ALSDE implemented intense training addressing three groups: Universal Audience; Targeted Schools; and Intensive Schools.

For the 2021-2022 school year, ALSDE will continue to follow the same training process as was conducted in school year 2020-2021. The only change will be an additional training for the System Test Coordinators and the Special Education Coordinators on the *Guidance for IEP Teams on Participation Decisions for the ACAP Alternate Assessment and Alternate Achievement Standards*. This training will be provided via webinars and training modules.

(b) how the state will monitor and regularly evaluate each LEA; and

Alabama will follow an intense monitoring schedule, in conjunction with the Special Education Services section, allowing for in-person monitoring and desk audits to review documentation utilized to evaluate a district/school that is projected to be over the 1.0 percent cap for the 2021-2022 school year. Alabama will also require annual justifications from LEAs and schools that have exceeded the 1.0 percent cap.

(c) any disproportionality in the percentage of students taking the alternate assessment.

The ALSDE has collected LEA and school data on the previous years’ participation rates in each subject of the alternate assessment. It is important for the ALSDE to identify whether students participating in the *ACAP Alternate* are students clustered in “subgroups,” such as category of disability under the *Individuals with Disabilities Education Act (IDEA)*; racial/ethnic groups; gender; English Learners; or poverty and non-poverty. These data will help the ALSDE understand whether there are:

- Districts/schools in which the numbers of students participating in alternate assessments are higher than expected.
- Certain grades in which participation in the alternate assessment is higher than expected.
- Potential disproportionality in specific subgroups and grade levels of students participating in the alternate assessments.

ALSDE will continue to facilitate the requirements addressed within this plan to show that the state is working to have continued progress in reducing the percentage of Alabama students who will be participating in the *ACAP Alternate*.

Documentation can be retrieved from:

<https://www.livebinders.com/b/2761764&present=true>

2021-2022 Documents to Address the Extension Waiver Request:

- 1: Alabama State Department of Education AA-AAAS One Percent Cap Waiver Extension Request Pursuant to 34 C.F.R 200.6(c)(4)
- 2: Alabama Memo to Superintendents
- 3: Alabama Sample Email to Superintendents Over the One Percent Cap Requirement
- 4: *Alabama Justification for Exceeding the One Percent Cap Requirement for Participation on the ACAP Alternate Assessment*
- 5: Alabama Public Notice with Comments/Questions
- 6: Alabama Timeline of Activities for the One Percent Cap Requirement – 2021-2022

Alabama Public Notice/Comment 2021-2022



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Public Comment Page

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We would love to hear from you. Please review our documents up for public review and email us your comments. Thank you

Waiver Extension Request Pursuant to 34 C.F.R 200.6(c)(4) AA-AAAS 1.0 percent Cap

Public Notice and Comment Period Waiver Extension Request Pursuant to 34 C.F.R 200.6(c)(4)AA-AAAS 1.0 percent Cap through November 29, 2021.

Please email studentassessment@alsde.edu with your comments.

[Read more](#)

Comments/Questions received:

1. Please extend the waiver, 1% does not meet expectation for each child.
2. In my experience from 18 years in special education a 1% cap is not realistic for today's children. As a whole we are raising the expectations of what children should and need to learn in an ever changing world. The problem is our children are born the same way they were born 20,30,40 years ago. Their chronological growth stays the same, we as a society ask them to grow up faster and faster. Our 1% children are falling further and further behind. The 1% cap and a 55 IQ score is not realistic anymore. I strongly support an increase in the 1% and a qualifying IQ score of 65.
3. Thank you for seeking this extension from the Secretary for the United States Department of Education. The Russellville City School System has experienced an increase in the number of students with significant disabilities over the past three years that meet the qualifications for alternate achievement standards. I feel that this number will continue to increase. As a school system, we have no control over the students that reside in our district and the severity of their disability.

Alabama Public Notice/Comment

2021-2022

Comments/Questions continued:

4. Do we have data or historical information on how many years ALSDE has requested the 1% waiver?
5. Is there any way to access data charts from the past four years?
6. I would also like data charts from the past four years to have a proper assessment baseline.
7. What specific progress has been made in the last four years compared to the plan-making resubmission of waiver necessary?
8. Are there certain schools exceeding the cap in multiple years?
9. Does the ALSDE analyze the AA participation by disability category?
10. What ALSDE required training and forms do LEAS and IEP teams utilize as eligibility questions to determine whether a student should, in fact, be taking the alternate assessment?
11. I did find the data for the 2018-19 year. This year, they included data on students with disabilities (with a rate of over 9%). This data is not present in the **2020-21-year data** in the letter requesting the extension. **Any reason this data is not part of the request? How would we find this data?**
12. re: The Alabama State Department of Education will seek an extension waiver for the 2021-2022 school year from the Secretary for the United States Department of Education around exceeding 1.0 percent of the total number of students in the State who will be assessed on the *ACAP Alternate*. Pursuant to 34 CFR. §200.6(c)(2), requires State Education Agencies to limit the number of students assessed in a subject area using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS). The limit on the percentage of students assessed by the AA-AAAS is set by the federal regulation, stating the total number of students assessed with the AA-AAAS per subject area shall not exceed 1.0%.
In my professional opinion, this limitation of 1.0 percent fails to take the needs of individual students into consideration. If a student has an Individualized Education Program (IEP), then he or she should receive individualized consideration for assessments as well as services. How is it not a violation of a student's right to a Free and Appropriate Public Education, if we fail to provide a student with appropriate assessments based on the student's needs? Personally, I don't see how we can mandate the number of students in a school needing alternate assessment any more than we can mandate the number of students in a school with brown hair or blue eyes. Each student is an individual and should be treated as such, not as a federal regulation. Thank you for seeking an extension waiver. I hope it is granted.



STATE OF ALABAMA
DEPARTMENT OF EDUCATION



Eric G. Mackey, Ed.D.
 State Superintendent of Education

December 1, 2021

MEMORANDUM

TO: City and County Superintendents of Education

FROM: Eric G. Mackey
 State Superintendent of Education

RE: One Percent (1%) Cap on Alternate Assessments

The *Every Students Succeeds ACT* (ESSA) requires states to ensure that the total number of students assessed in each subject using an alternate assessment (for a student with a significant cognitive disability) does not exceed one percent (1%) of the total number of students in the state assessed with statewide assessments. In Alabama, *the definition of a student with the most significant cognitive disability is a student with an intelligence quotient (IQ) of three standard deviations below the mean which is an IQ score of 55 or below that significantly impacts intellectual functioning and that exists concurrently with deficits in adaptive functioning (defined as essential for someone to live independently and to function safely in daily life).* [AAC 290-4-2-.03]

The Alabama State Department of Education (ALSDE) has compiled projected district data from enrollment of students who will participate in the 2021-2022 *Alabama Comprehensive Assessment Program (ACAP) Alternate* assessment. The ALSDE will notify the superintendent of each district that has exceeded the one percent (1%) projected participation no later than December 6, 2021. The ALSDE will make available information about required training and requirements for the upcoming year.

If you have any questions, please contact Mrs. Maggie Hicks, Student Assessment, at 334-694-4817 or by email at mhicks@alsde.edu.

EGR/MH

cc: City and County System Test Coordinators
 City and County Special Education Coordinators
 Mrs. Angela Martin
 Mrs. Shanthia Washington

FY22-2015

Alabama
 State Board
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Eric G. Mackey, Ed.D.
 Secretary and
 Executive Officer

[REDACTED]

Sent:
Subject:

[REDACTED]
One Percent Cap for Alternate Assessments

Dear

The *Every Student Succeeds Act* (ESSA) requires states to ensure that the total number of students assessed in each subject using an alternate assessment for a student with a significant cognitive disability does not exceed one percent (1%) of the total number of students in the state assessed with Alabama statewide assessments. ESSA also places a 1% threshold on the state participation rate for each content area of the alternate assessment. The One Percent Cap requirement is based on the total number of all students in the state assessed in each content area.

Last year, the U.S. Department of Education (Department) encouraged States to use current year enrollment data to make a credible estimate of the number and percentage of students who will take the *Alabama Comprehensive Assessment Program (ACAP) Alternate* in 2021-2022. From this guidance, the Alabama State Department of Education (ALSDE) compiled a list of schools that are over the One Percent Cap requirement (according to current enrollment) for 2021-2022. When calculating the data, the ALSDE considered only the grade levels (3-8 and 11) factored into federal accountability.

This email serves as notification that either your district has exceeded the One Percent Cap requirement as defined by the Department or you have a school(s) that exceeded the one percent (1%) cap requirement for school year 2021-2022.

The attached information includes your entire district data, which consists of data for the past four years. This will allow you to see trend(s) within your district and/or schools.

In an effort to provide support and guidance for those districts and/or schools over the 1% cap requirement, Assessment and Special Education Services will host a webinar on **December 7, at 11:00 a.m.** to provide district requirements for this school year (**see below for login information to this required training**). System Test Coordinators and Special Education Coordinators are required to attend.

Aggregate data is also included to allow for a review of subgroups, within the alternate population, for over representation or unexpected patterns. In an effort to further support your review of the data, ALSDE will host a webinar on **December 16 at 10:00 a.m.** to provide guidance pertaining to disproportionality. System Test Coordinators and Special Education Coordinators are required to attend.

If you have questions, please do not hesitate to contact me.

Sincerely,

[REDACTED]
Assessment Coordinator
Alabama State Department of Education
[REDACTED]

Webinar Login Information



Alabama State Department of Education
Justification for Exceeding the One Percent Cap Requirement for Participation on the
ACAP Alternate Assessment

The *Every Student Succeeds Act* (ESSA) requires states to ensure that the total number of students with significant cognitive disabilities assessed in each subject using an alternate assessment does not exceed one percent (1%) of the total number of students in the state assessed on state-wide assessments. ESSA requires districts exceeding the cap to submit a justification to the State to justify the need to exceed the One Percent Cap requirement.

DISTRICT: _____

DATE: _____

DISTRICT CONTACT FOR ONE PERCENT CAP REQUIREMENT: _____

JUSTIFICATION

Do not submit any student identifiable information with this form.

1. Identify the factors that contributed to the district exceeding the One Percent Cap requirement on students participating in the ACAP Alternate Assessment (check all that apply):

- The IEP teams lack the necessary knowledge to effectively use the information provided in the *Guidance for IEP Teams on Participation Decisions for the ACAP Alternate Assessment and Alternate Achievement Standards* document when making determinations that identify students as having significant cognitive disabilities.
- A small district enrollment size results in a greater impact on participation rates (for example, a district size of 180 students, with two students with significant cognitive disabilities, results in a higher than 1% participation rate.)
- The district's programmatic decisions result in a more concentrated population of students with the most significant cognitive disabilities housed in one school.
- The district includes school, community, and/or health programs that result in an increase of families with children with the most significant cognitive disabilities.
- Other, please explain: _____

2. Indicate the extent of specialized training of school staff who serve on IEP Teams (check all that apply):

Special Education Facilitator/Special Education Lead Teacher

- Fall ALACASE Conference
- Training provided by ALSDE
- Other, please specify: _____

Regular Education Teachers

- Training provided by ALSDE
- Back-to-School Inservice training
- Professional Development training workshop
- Other, please specify: _____

Special Education Teachers

- Annual IEP Team training
- Training provided by ALSDE
- Back-to-School Inservice training
- Professional Development training workshop
- Other, please specify: _____

IEP Team member(s) who interprets instructional implications of the evaluation results

- Training provided by ALSDE
- Professional Development/Workshop
- Other, please specify: _____

School Administrators

- Training provided by ALSDE
- Other, please specify: _____

3. By what means were parents/guardians informed of their child's participation in the ACAP Alternate Assessment and the implications that may apply (check all that apply):

- Annual IEP Team meeting
- Letter/email
- Training module or in-person trainings for parents/guardians
- Other, please specify: _____

SUPPORT AND TECHNICAL ASSISTANCE

What additional resources or technical assistance does your district need from ALSDE to ensure that students are being assessed using the appropriate state assessment (check all that apply).

- Training to understand and apply the *Guidance for IEP Teams on Participation Decisions for the ACAP Alternate Assessment and Alternate Achievement Standards* document for:
 - Special Education Teachers
 - IEP Team members
 - School leaders/others
- Training to understand and leverage allowable testing accommodations for:
 - Special Education Teachers
 - IEP Team members
 - School leaders/others
- Training to understand the One Percent Cap requirement on the *ACAP Alternate Assessment* participation for:
 - Special Education Teachers
 - IEP Team members
 - School leaders/others
- Other, please specify: _____

ASSURANCES

- This district utilizes the *Guidance for IEP Teams on Participation Decisions for the ACAP Alternate Assessment and Alternate Achievement Standards* document in the development of IEPs for students who will participate on the *ACAP Alternate Assessment*.
- I certify that the information provided is correct to the best of my knowledge.

Signature of Superintendent

Date

Signature of District One Percent Cap Requirement Contact

Date

Alabama Timeline of Activities

One Percent Cap Requirement– 2021-2022

DATE	ACTIVITY
October 20, 2021	One Percent Team Meeting
November 1, 2021	One Percent Team Meeting
November 3, 2021	Public Notice – Will run until November 29, 2021.
November 3, 2021	System Test Coordinator’s Monthly Update Webinar – One Percent Cap Requirement Information and importance of correctly identifying students
November 23, 2021	One Percent Team Meeting
December 1, 2021	Superintendent’s Memo – One Percent Cap Requirement for Alternate Assessments
No later than December 6, 2021	Superintendents notified – those districts/schools over the One Percent Cap Requirement
December 7, 2021	System Test Coordinators and Special Education Coordinators Webinar to provide district requirements for this school year
December 16, 2021	Disproportionality Webinar
Due no later than January 28, 2022	Justification for Exceeding the One Percent Cap Requirement for Participation on the <i>ACAP Alternate</i> Assessment <ul style="list-style-type: none"> • ALSDE will evaluate the Justification Assurances to determine the level of support needed
January 2022	Universal Training for districts/schools over for the first year
January – May 2022	Monitoring
	One Percent Team will meet once every two weeks from November through March
	Parent Resources will be developed and provided to districts in January