



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

March 7, 2023

The Honorable Michael Rice
Superintendent
Michigan Department of Education
608 West Allegan Street, PO Box 30008
Lansing, MI 48909

Dear Superintendent Rice:

I am writing in response to the Michigan Department of Education's (MDE's) request on January 9, 2023 (with additional information provided on January 27, 2023) 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 more than 1.0 percent of all students in the grades assessed using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS). MDE requested this waiver because, based on State data for the 2021-2022 school year, MDE has concluded that it will need to assess more than 1.0 percent of students using an AA-AAAS in reading/language arts (R/LA), mathematics, and science in the 2022-2023 school year.

After reviewing MDE's waiver request, I am declining to exercise my authority under section 8401(b) of the ESEA for a one-year waiver (school year 2022-2023) of section 1111(b)(2)(D)(i)(I) of the ESEA because MDE did not assess at least 95 percent of all students with disabilities during the 2021-2022 school year.

If the data reported by MDE to the Department's EDFacts system in December 2022 are erroneous and the State can demonstrate that it has met the 95 percent assessment participation requirement in 34 CFR § 200.6(c)(4)(ii), MDE may revise its waiver request, consistent with section 8401(b)(4)(B)(ii) of the ESEA, to meet the requirements under 8401(b)(1)(C) and (F) and 34 CFR § 200.6(c)(4)(ii). The revised waiver request must show how the requirements are being met in 34 CFR § 200.6(c)(4), including the requirement of demonstrating substantial progress towards achieving each component of the prior year's plan and timeline. The revised waiver request must be submitted no later than 60 days from the date of this letter.

400 MARYLAND AVE., SW, WASHINGTON, DC 20202
<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.

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/

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: Jerry Cullum, Special Education Research Consultant, MDE



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

GRETCHEN WHITMER
GOVERNOR

MICHAEL F. RICE, Ph.D.
STATE SUPERINTENDENT

December 15, 2022

Office of Elementary and Secondary Education Assessment Team
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202
ESEA.Assessment@ed.gov

Dear Office of Elementary and Secondary Education Assessment Team:

The federal Every Student Succeeds Act (ESSA) caps the percentage of students who can take the alternate assessment at 1.0 percent of the total students tested. The ESSA also allows states that may exceed the 1.0 percent cap to apply for a one-year waiver. Michigan Department of Education (MDE) applied for and was granted the initial waiver on May 14, 2018. In 2019 and 2021, MDE applied for and was granted an extension to the initial waiver by the U.S. Department of Education (USED). MDE's 2020 waiver request was rescinded when USED waived assessment requirements due to the COVID-19 pandemic and subsequent school closures. In early 2022, MDE applied for a renewed waiver, which on April 22, 2022, was approved by USED.

As part of the approved waivers, MDE agreed to implement a plan to ensure students with disabilities are properly assessed using the state's assessment system programs. MDE's implementation of this plan has resulted in a consistent annual decrease in overall alternate assessment participation rates. Despite this decrease, MDE anticipates exceeding the 1.0 percent cap in 2023. This document serves as MDE's formal request to extend the waiver through Spring 2023. The waiver extension will allow MDE and local education agencies (LEAs) around the state to continue working to ensure appropriate assessment selection for students with disabilities and further reduce participation rates for Michigan's alternate assessment to meet the 1.0 percent cap requirement.

In 2021, MDE reviewed participation data from statewide summative assessments that were completed before and during the pandemic. The purpose of the review was to compare and analyze the participation rates of students taking the state Alternate Assessment aligned with Alternate Academic Achievement Standards (AA-AAAS), better known in Michigan as MI-Access. MI-Access is aligned with the Michigan alternate content expectations in English language arts (ELA), mathematics, science, and social studies. The alternate assessment is designed to allow students with the most significant cognitive disabilities to demonstrate their knowledge and skills.

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The data analysis demonstrates a consistent reduction in the participation rate of students with disabilities, across subject areas, for Michigan's alternate assessment. From 2019 to 2021 (there were no assessments in 2020, and 2021 did not have typical participation counts in statewide assessments), the alternate participation numbers reduced by 2,859 students, from 15,661 in 2019, to 12,802 in 2022. Additionally, the alternate assessment rate in Michigan reduced from 2.1 percent in 2019 to 1.8 percent in 2022 for ELA, from 2.0 percent to 1.8 percent for mathematics, and from 1.9 percent to 1.8 percent for science. Lastly, in 2021, districts were asked to project likely alternate assessment participation rates prior to the assessment window. These projections provided an estimate of what participation rates in 2021 would have looked like if 95 percent of students had tested that year (as is the case in typical, non-pandemic years, rather than the 72 percent observed in 2021). Cumulatively, these projected participation rates stated that had the pandemic not disrupted overall participation in statewide summative assessments, the alternate participation rate for 2021 would have been 1.9 percent in ELA, mathematics, and science. Taken together, the pre-pandemic numbers from 2019 and the projected rates from 2021, had overall participation returned to normal, demonstrate that Michigan is continuing to reduce its elevated alternate participation rates and making progress toward the goals of the ESSA 1.0 percent cap on alternate assessments and instruction.

MDE communicated to the public through the dissemination of the Spotlight, a weekly state assessment newsletter, and to Michigan Alliance for Families, Michigan Parent-Training and Information Center, of its intent to request a waiver extension to exceed the 1.0 percent cap on alternate assessment participation in 2023 and subsequently sought public comment.

MDE gathered public comment through an online questionnaire. The public comment period was open November 4, 2022, and closed November 18, 2022. MDE had 35 total respondents who provided public comment on open-ended prompts in the survey. Not all prompts received responses from all respondents.

Below is the public comment request:

MI-Access is aligned with Michigan's alternate content standards in ELA, mathematics, science, and social studies. The alternate assessment is designed to allow students with the most significant cognitive disabilities to demonstrate their knowledge and skills.

The ESSA caps the percentage of students who can take the alternate assessment at 1.0 percent of the total students tested. The ESSA also allows states that may exceed the 1.0 percent cap to apply for a one-year waiver. Michigan was granted the initial waiver of the 1.0 percent cap on May 14, 2018. In 2019 and 2021, as provided under the ESSA, Michigan applied for and received an extension to the waiver of the 1.0 percent cap on the participation rate for students taking the alternate assessment. As part of the federal waiver, MDE agreed to implement a plan to ensure students are properly assessed using the state assessment system programs. Michigan's 2020 waiver request was rescinded when assessment requirements were waived due to the COVID-19 pandemic and subsequent school closures.

Analysis of the 2021–22 state assessment data, when compared to pre-pandemic data from 2018-19 data, shows a reduction of 2,859 students taking alternate assessments, from 15,661 in Spring 2019 to 12,802 in Spring 2022. Furthermore, the participation rate for the alternate assessment in Michigan

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during this same timeframe was reduced from 2.0 percent in Spring of 2019 to 1.8 percent in Spring of 2022 for mathematics, from 2.1 percent to 1.8 percent in ELA, and from 1.9 percent to 1.8 percent in science.

Although progress has been made, more work needs to be done to ensure appropriate assessment and corresponding curriculum selection and for verifying that students designated by their Individualized Education Program (IEP) team take alternate assessments to meet the criteria for students with the most significant cognitive disabilities. Therefore, Michigan will be applying for a waiver extension for Spring 2023, which will include a plan for continued improvement.

The results from public comment will be posted and summarized here.

Prompt #1

MDE completed the following activities related to alternate assessment selection and the 1.0 percent cap during the 2021–22 academic year:

- Reduced statewide participation in the alternate assessments from 15,661 pre-pandemic, to 12,802 in the Spring of 2022, a reduction of 2,859 students being assessed based on alternate achievement standards.
- Made district and Intermediate School District (ISD) Spring 2022 alternate assessment participation rate data available on the special education electronic monitoring system.
- Provided universal professional development and technical assistance to special education administrators, teachers, related service providers, and parents.
- Directed LEA staff to an online, interactive decision-making tool to assist with appropriate assessment selection and curriculum alignment.

Please provide comment on the activities completed in 2021–22 and suggestions for additional activities for the 2022–23 academic year.

Prompt #1 Comments

- The guidance from MDE was helpful, especially the decision-making flow chart for students in need of an alternative assessment.

Prompt #2

The ESSA requires MDE to collect and submit justification for exceeding the 1.0 percent cap on alternate assessment. In 2022–23, justification forms will be collected electronically using Catamaran, an electronic Individuals with Disabilities Education Act (IDEA) compliance monitoring system. Technical assistance was provided to ISDs and member districts on how to submit data using Catamaran. Additional assistance around compliance recommendations were made and shared between MDE and ISDs using Catamaran. Justification forms from the previous year (2021-22) are available for review online: [ISD with District Justification Forms](#).

Please provide comment on the use of Catamaran to meet justification requirements.

Prompt #2 Comments

- This was fine

Prompt #3

Given the lack of testing in Spring 2020 and lower overall participation in Spring 2021, there is less reliable statewide assessment data available to provide justification to MDE regarding assessment participation rates. For this year's application, projected rates from the 2020-2021 academic year, provided by districts and aggregated by MDE, were used to compare year-over-year progress, as the overall participation rates in 2020-21 were much lower due to roughly 25 percent of students still learning remotely and unavailable for in-person assessments. These projected rates included all publicly enrolled students, remote or otherwise, and provided a more complete picture of what alternate participation rates would have been if all students and schools were meeting in person and available for assessments during the pandemic. For the 2021–22 academic year, Michigan used actual alternate assessment participation information after all testing windows were complete. This data will:

- Aid in the application to extend the USED waiver for the 1.0 percent cap on participation in the alternate assessment, due January 10, 2023.
- Provide current information on participation rates to districts, leading up to the next testing cycle. This information can help districts determine training needs and support the monitoring of participation rates.

Please provide comment on the use of projected participation rates from 2020-21 compared to actual participation rates for Spring 2022.

Prompt #3 Comments:

- For districts that house regional or ISD SXI programs, I think this process should be eliminated.

Prompt #4

MDE's focus regarding participation in the alternate assessment (MI-Access) will continue to use a tiered support system with the ISDs and districts.

- All Districts with alternate assessment rates exceeding 1.0 percent will complete justification forms and receive universal, general guidance on eligibility for alternate assessments. For districts with small student populations where 5 or fewer students taking alternate assessments set them over 1.0 percent, or for districts with alternate assessment rates between 1.1 and 1.5 percent and that have not disproportionately over-assigned demographic subgroups of students to alternate assessments, the universal supports and guidance will be the support they receive from MDE.
- Districts with alternate assessment rates between 1.6 percent to 2.9 percent or between 1.1 and 1.5 percent overall, but who have disproportionately over-designated some sub-group of students to take alternate assessments, will receive Tier II support. These districts will be asked to review with their ISD the IEPs of students who have disability types, general educational placement statuses, or alternate assessment performance statuses that may not be compatible with a designation as a student with the most significant disability.

- For these districts, the flagged student cases will require a review and confirmation of appropriate diagnostic criteria being used to determine that the student also has the most significant cognitive impairment to meet requirements for alternate assessments.
- Furthermore, these districts will have to conduct an educational benefit review for all students surpassing the Functional Independence level of alternate achievement expectations, based on test performance on MI-Access Functional Independence assessments and share the results for approval with their ISD.

Districts with alternate assessment rates of 3.0 percent or higher, or who have both disproportionately over-assigned a demographic subgroup of students to alternate assessments and had overall alternate assessment rates greater than 1.5 percent, will receive Tier III support. These districts will be asked to review and submit directly to MDE for approval, the IEPs of students who have disability types, general educational placement statuses, or alternate assessment performance statuses that may not be compatible with a designation as a student with the most significant disability.

- For these districts, the flagged student cases will require a review and confirmation of appropriate diagnostic criteria being used to determine that the student also has the most significant cognitive impairment to meet eligibility.
- Furthermore, these districts will have to conduct an educational benefit review for all students surpassing the Functional Independence level of alternate achievement expectations, based on test performance on MI-Access Functional Independence assessments and share the results for approval from MDE.
- For these targeted Tier II and III districts, the flagged student cases will require prior verification from either the ISD (Tier II districts) or MDE (Tier III districts) of the appropriateness of alternate achievement standards for these students before justification forms will be approved.
- Additionally, Michigan will be incorporating warnings into the test registration secure site for cases where the students past test performance, educational placement, and disability type are incongruent with the student having a significant cognitive impairment.
- Michigan will also continue to provide technical assistance needed for IEP Teams to make decisions about the appropriate assessment for every student with a disability.
- Determining technical assistance needed for IEP Teams to target instruction to each student's unique needs, encourage high expectations for all students, and understand expectations regarding the use of state content standards and/or alternate content standards.

Please provide comment on MDE's focus regarding participation in the alternate assessment.

- Prompt #4 Comments: I think that it needs to be taken into consideration how many students are taking the test total. If you have less than 100 taking the test, then it will ding you if you have 2 students doing Mi-Access. If they are truly CI and need the alternate assessment, then there should not be an issue.
- This process should be dependent on the number of SXI programs housed in a member district.

Prompt #5

The MDE provided an open-ended space for respondents to provide any additional comments regarding the waiver, justification form, and approval process.

Prompt #5 Comments:

- I do not believe member districts should be required to submit waivers or obtain support from the ISD if they house a center based SXI program as that skews the district's data.
- My concern with the 1% cap is what happens when a student has a significant cognitive disability; however, adaptive skills are not impaired. This student should take the MI-Access but is not allowed due to his classification other than CI.

Public Comment Response:

MDE appreciates the feedback and response to the public comment regarding the waiver for the 1% cap on participation in alternate assessments. We appreciate the concerns over making the Federally required justification forms more streamlined for districts that are small or that target high need populations like students with Severe Multiple Disabilities, who may often have the most significant cognitive disabilities, and for whom alternate assessments are expressly designed and intended. Though justification forms are required under ESSA for any district that tests more than 1.0 percent of their students using alternate assessments, MDE includes in the waiver several standard justifications to expedite the process for these vary types of cases. That is, the justification forms include some simplified response options where districts can signify that they either have a small population of students where less than 5 students could put them over the 1.0 percent cap, or where ISDs run center-based programs that specifically target special education services for high needs populations, like students with Severe Multiple Disabilities, or students with Significant Cognitive Impairments, who often have the most significant cognitive disabilities. While no particular disability automatically means a student has the most significant cognitive disabilities, some programs targeting these high needs populations, will, understandably, have higher rates of appropriate alternate assessment use.

ESSA stipulates several requirements for this waiver. MDE's response to each requirement is found below. Please note the data provided is information from the most recent testing window in which state assessments were administered.

Requirement 1:

Submit the waiver request at least 90 days before the testing window starts for the relevant subject.

The testing window for all state summative assessments in Michigan begins April 10, 2023. Specifically, the seven-week testing window for MI-Access (the state summative AA-AAAS) is from April 10, 2023, through May 26, 2023. This waiver request is being made 90 days prior to this testing window.

Requirement 2 (A): Provide state-level data from the current (A) or previous year that shows the number and percent in each subgroup who took the alternate assessment in the subject area.

For the 2020-21 academic year, the state required all districts to submit a projection of students designated to take the alternate assessment, as assessments were not completed in Spring 2020 and overall participation rates in 2021 were notably lower than normal (95 percent or more vs. 72 percent).

A compilation of the data resulted in a statewide aggregate projection rate for what percent of students taking the alternate assessment would have been, had overall participation levels in state summative assessments reached normal levels (e.g., greater than or equal to 95 percent vs. the 72 percent actually observed during the pandemic). Based on these projected rates the state aggregate alternate assessment rate was 1.9 percent in 2021. Additionally, the overall number of students taking alternate assessments in Michigan has also come down from roughly 15,661 in 2019 (pre-pandemic) to 12,802 in 2022, which is a significant reduction of 2,859 students. As shown in Tables 1 through 3 below, the actual rate of alternate assessment for Spring 2022 was 1.8 percent, and the downward trend remains consistent with the 0.1 percent annual reduction in alternate assessment use observed in Michigan in past years. MDE remains optimistic this trend will continue into future years.

Table 1: 2021-22 English Language Arts (Grades 3-8 and 11) Participation in Alternate Assessment, MI-Access

Demographic Sub-group	Number of Students Tested Using an Alternate Assessment	Total Number of Students Tested	Percent of Students Tested Using an Alternate Assessment
All Students	12,802	698,846	1.8%
Male	8,508	357,520	2.4%
Female	4,294	341,326	1.3%
English Learner	766	47,753	1.6%
Economically Disadvantaged	8,855	380,474	2.3%
Native American	88	3,980	2.2%
Asian	321	25,337	1.3%
African American	3,441	122,231	2.8%
Hispanic	1,054	60,859	1.7%
Pacific Islander		576	
White	7,324	451,900	1.6%
Multi-Racial	560	33,963	1.6%

Table 2: 2021-22 Mathematics (Grades 3-8 and 11) Participation in Alternate Assessment, MI-Access

Demographic Sub-group	Number of Students Tested Using an Alternate Assessment	Total Number of Students Tested	Percent of Students Tested Using an Alternate Assessment
All Students	12,590	699,335	1.8%
Male	8,355	357,767	2.3%
Female	4,235	341,568	1.2%
English Learner	755	48,734	1.5%
Economically Disadvantaged	8,677	380,478	2.2%
Native American	87	3,984	2.2%
Asian	319	25,621	1.2%
African American	3,386	120,075	2.8%

Demographic Sub-group	Number of Students Tested Using an Alternate Assessment	Total Number of Students Tested	Percent of Students Tested Using an Alternate Assessment
Hispanic	1,034	61,089	1.7%
Pacific Islander		575	
White	7,204	452,070	1.6%
Multi-Racial	547	33,921	1.6%

Table 3: 2021-22 *Science (Grades 5, 7, 8 and 11) Participation in Alternate Assessment, MI-Access*

Demographic Sub-group	Number of Students Tested Using an Alternate Assessment	Total Number of Students Tested	Percent of Students Tested Using an Alternate Assessment
All Students	5,421	299,899	1.8%
Male	3,570	153,071	2.3%
Female	1,851	146,828	1.3%
English Learner	755	48,734	1.5%
Economically Disadvantaged	3,678	154,588	2.4%
Native American	32	1,744	1.8%
Asian	122	11,014	1.1%
African American	1,392	49,870	2.8%
Hispanic	444	26,122	1.7%
Pacific Islander		228	
White	3,197	197,345	1.6%
Multi-Racial	227	13,576	1.7%

Requirement 2 (B): Provide state-level data from the current or previous year that shows the overall assessment participation rate for all students and for students with disabilities.

Due to ongoing absences and instability in enrollments during the COVID-19 pandemic, Michigan had fewer students enrolled and tested in Spring 2022 than anticipated (approximately 25,000 fewer). Nevertheless, Michigan had more than 95 percent of all students participate in statewide summative assessments for all subjects, and roughly 95 percent or more of students with disabilities participate in each subject in the Spring of 2022. (See Tables 4 through 6 below).

Table 4: 2021-22 *English Language Arts (Grades 3-8 and 11) Participation in State Summative Assessment (M-STEP, MME, MI-Access), Overall and for Students with Disabilities*

Demographic Sub-group	Number of Students with Valid Tests	Number of Students Expected to Test	Percent of Students Participating in State Tests
All Students	698,846	711,718*	98.2%
Students with Disabilities	93,164	96,452	96.6%

*Table 5: 2021-22 **Mathematics (Grades 3-8 and 11)** Participation in State Summative Assessment (M-STEP, MME, MI-Access), Overall and for Students with Disabilities*

Demographic Sub-group	Number of Students with Valid Tests	Number of Students Expected to Test	Percent of Students Participating in State Tests
All Students	699,335	711,718*	98.3%
Students with Disabilities	92,927	96,452	96.3%

*Table 6: 2021-22 **Science (Grades 5, 8, and 11)** Participation in State Summative Assessment (M-STEP, MME, MI-Access), Overall and for Students with Disabilities*

Demographic Sub-group	Number of Students with Valid Tests	Number of Students Expected to Test	Percent of Students Participating in State Tests
All Students	299,899	305,325*	98.2%
Students with Disabilities	37,987	40,011	94.9%

*Note: Number of students expected is based on enrollment counts in tested grades during the Spring 2021 student counts and data collection window. *EDFacts* tables with enrollments based on test registration time were not yet available in time for this waiver. These two count windows generally provide very similar counts and participation rates.

Requirement 3 (A): Provide assurance that districts over 1.0 percent participation in the alternate assessment followed the state’s participation guidelines.

For the 2022–23 academic year, MDE is continuing to use justification forms as the mechanism to collect individual LEA and ISD participation rate data. Justification forms are also the mechanism for LEAs and Intermediate School Districts (ISDs) to provide justifications for exceeding the 1.0 percent cap and plans for continuous improvement in preparing IEP teams to determine appropriate assessment selection for students with disabilities by following the state’s participation guidelines. MDE will also continue to develop and provide technical assistance through guidance, training, and other resources, specific to alternate assessment selection. Many LEAs have provided training to staff and parents regarding the state guidelines for participation in the alternate assessment. In their comments about training, most LEAs cited resources provided by MDE as being used at the local level, including the assessment selection flowchart, the online assessment selection guidelines training module, and the assessment selection IEP team interactive decision-making tool.

Requirement 3(B): Provide assurance that any disproportionality in students taking the alternate assessment will be addressed.

MDE examined disproportionality in participation on its state alternate assessment (MI-Access) based on the most recent test cycle (Spring 2022) for statewide summative assessments. Disproportionality was examined for the following demographics:

1. Gender
 - Male

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- Female
- 2. Economic Disadvantage (based on poverty risk factors such as free/reduced lunch eligibility, homelessness, migrant status, and direct certification for government food assistance)
 - a. Disadvantaged
 - b. Not Disadvantaged
- 3. Racial/Ethnic Groups
 - a. Native American
 - b. Asian
 - c. African American or Black
 - d. Pacific Islander
 - e. Hispanic
 - f. White
 - g. Two or More Races
- 4. English Language Learners Status
 - a. Participating in an English learner program
 - b. Not participating in an English learner program

To determine whether substantive disproportionality affected any subgroups of students, MDE used a relative risk ratio method to analyze the rate of participation in alternate assessments. For other federal reporting (e.g., in the Annual Performance Report), MDE uses multiple years of data and a threshold risk ratio of 2.5 for each demographic subgroup. For assessments, this threshold means students in one demographic are participating in the alternate assessment 2.5 times more often than students who are not in the same demographic. A relative risk ratio of 1.0 means students in one demographic participate in the alternate assessment at the same rate as students who are not in the same demographic.

As depicted in Tables 7 through 12, Michigan did not identify any sub-group of students who were tested using alternate assessments at a significantly disproportionate rate (i.e., with a relative risk of 2.5 or more) statewide. The sub-group of students with the highest relative risk ratio (economically disadvantaged students), had a relative risk of 1.9 in both ELA and mathematics, and the risk of disproportionately being tested with alternate assessments for this group has decreased since MDE applied for the first waiver. In 2021, it dropped below the elevated risk threshold of 2.0 for the first time and remained at or below that threshold in 2022, suggesting true, equitable improvement over time, and not merely an artifact in 2021, due to decreased overall participation rates from districts with more economically disadvantaged students.

*Table 7: SY 2021-22 for **English Language Arts**, Simple Groups Disproportionate Alternate Assessment Participation by Demography*

Simple Groups	Group Rate Comparison (In-group vs. not)	Risk Ratio
Gender (Male vs Female)	2.4% vs. 1.3%	1.85
Economic Disadvantage	2.3% vs. 1.2%	1.92
English Language Learner	1.6% vs. 1.8%	0.89

* **Note:** Risk ratios between 2.0 and 2.4 are considered elevated risk, and risk ratios ≥ 2.5 are considered disproportionately high representation among students taking the alternate assessment.

Table 8: SY 2021-22 for **English Language Arts**, Multi-Groups Disproportionate Alternate Assessment Participation by Demography

Multi-Groups: Race/Ethnicity	Group Rate Comparison (In-group vs not)	Risk Ratio
Native American	2.2% vs. 1.8%	1.20
Asian	1.3% vs. 1.9%	0.70
African American	2.8% vs. 1.6%	1.72
Hispanic	1.7% vs. 1.8%	0.92
Pacific Islander	2.4% vs. 1.8%	1.31
White	1.6% vs. 2.2%	0.72
Two or More Races	1.6% vs. 1.8%	0.87

* **Note:** Risk ratios between 2.0 and 2.4 are considered elevated risk, and risk ratios ≥ 2.5 are considered disproportionately high representation among students taking the alternate assessment.

Table 9: SY 2021-22 for **Mathematics**, Simple Groups Disproportionate Alternate Assessment Participation by Demography

Simple Groups	Group Rate Comparison (In-group vs. not)	Risk Ratio
Gender (Male vs Female)	2.3% vs. 1.2%	1.92
Economic Disadvantage	2.3% vs. 1.2%	1.92
English Language Learner	1.5% vs. 1.8%	0.83

* **Note:** Risk ratios between 2.0 and 2.4 are considered elevated risk, and risk ratios ≥ 2.5 are considered disproportionately high representation among students taking the alternate assessment.

Table 10: SY 2021-22 for **Mathematics**, Multi-Groups Disproportionate Alternate Assessment Participation by Demography

Multi-Groups: Race/Ethnicity	Group Rate Comparison (In-group vs. not)	Risk Ratio
Native American	2.2% vs. 1.8%	1.22
Asian	1.2% vs. 1.8%	0.66
African American	2.8% vs. 1.6%	1.76
Hispanic	1.7% vs. 1.8%	0.94
Pacific Islander	2.3% vs. 1.8%	1.28
White	1.6% vs. 2.2%	0.73
Two or More Races	1.6% vs. 1.8%	0.88

* **Note:** Risk ratios between 2.0 and 2.4 are considered elevated risk, and risk ratios ≥ 2.5 are considered disproportionately high representation among students taking the alternate assessment.

Table 11: SY 2021-22 for **Science**, Simple Groups Disproportionate Alternate Assessment Participation by Demography

Simple Groups	Group Rate Comparison (In-group vs. not)	Risk Ratio
Gender (Male vs Female)	2.3% vs. 1.3%	1.77
Economic Disadvantage	2.4% vs. 1.2%	2.00*
English Language Learner	1.5% vs. 1.8%	0.83

* **Note:** Risk ratios between 2.0 and 2.4 are considered elevated risk, and risk ratios ≥ 2.5 are considered disproportionately high representation among students taking the alternate assessment.

Table 12: SY 2021-22 for **Science**, Simple Multi-Groups Disproportionate Alternate Assessment Participation by Demography

Multi-Groups: Race/Ethnicity	Group Rate Comparison (In-group vs not)	Risk Ratio
Native American	1.8% vs. 1.8%	1.00
Asian	1.1% vs. 1.8%	0.60
African American	2.8% vs. 1.6%	1.74
Hispanic	1.7% vs. 1.8%	0.94
Pacific Islander	3.1% vs. 1.8%	1.72
White	1.6% vs. 2.2%	0.74
Two or More Races	1.7% vs. 1.8%	0.94

* **Note:** Risk ratios between 2.0 and 2.4 are considered elevated risk, and risk ratios ≥ 2.5 are considered disproportionately high representation among students taking the alternate assessment.

Additionally, for each LEA, MDE examined the Spring 2022 data as well as two most recent years of alternate assessment administrations for participation in mathematics and ELA. Districts that tested the same sub-group of students at 2.5 times more often than students who were not in that sub-group, for two or more years, were flagged for more targeted supports and review, as part of the justification form and review process. These findings have been shared with ISDs and districts as part of their targeted guidance, and ISD staff will be trained to identify and target districts with substantively high disproportionate use of alternate assessments. For districts to be included in the disproportionality analyses and identification process, two minimum N-sizes were employed for each year of data:

1. Districts with 30 or more total students tested using the alternate assessment were examined for over-assignment.
2. Districts with at least 10 students from any demographic subgroup tested using the alternate assessment were evaluated for over-assignment of that subgroup.

Requirement 4 (A): Submit a plan and timeline by which the state will improve the implementation of its participation guidelines, including if necessary, revising its definition of “students with the most significant cognitive disabilities” in future school years.

Each ISD has implemented monitoring procedures and evaluation methods developed by MDE to ensure the standards and criteria related to assessment selection are being achieved by the ISD, their constituent districts.

In addition, MDE established a three-tiered system to provide additional oversight and support to LEAs that assess more than 1.0 percent of students using the alternate assessment. This tiered system originated as part of the plan implemented in 2018-19 and will continue in 2022-23 with the following updated criteria, to further reduce the alternate assessment rates and in response to USED's increased emphasis on verification of alternate assessment appropriateness.

- All Districts with alternate assessment rates exceeding 1.0 percent will complete justification forms and receive universal, general guidance on inclusion criteria for alternate achievement standards in assessment and instruction. For districts with small student populations where 5 or fewer students taking alternate assessments set them over 1.0 percent, or for districts with alternate assessment rates between 1.1 and 1.5 percent and that have not disproportionately over-assigned demographic subgroups of students to alternate assessments, the universal supports and guidance will be the primary form of support they receive from MDE.
- Districts with either alternate assessment rates between 1.6 percent to 2.9 percent or between 1.1 and 1.5 percent overall—but who also have disproportionately over-designated some subgroup of students to take alternate assessments—will receive Tier 2 support. This tier 2 threshold was reduced from 1.8 percent last year to 1.6 percent for Spring 2023. These districts will be asked to review with their ISD the IEPs of students who have disability types, general educational placements, or alternate assessment performance statuses that may not be compatible with a designation as a student with the most significant disability.
 - For these districts, the flagged student cases will require a review and confirmation of appropriate diagnostic criteria being used to determine that the student also has the most significant cognitive impairment to meet requirements for alternate assessments.
 - Furthermore, these districts will have to conduct an educational benefit review for all students surpassing the Functional Independence level of alternate achievement expectations, based on test performance on MI-Access Functional Independence assessments and share the results for approval with their ISD.
- Districts with either alternate assessment rates of 3.0 percent or higher, or who have both disproportionately over-assigned a demographic subgroup of students to alternate assessments and had overall alternate assessment rates greater than 1.5 percent, will receive Tier III support. These districts will be asked to review and submit directly to MDE for verification, the IEPs of students who have disability types, general educational placements, or alternate assessment performance statuses that may not be compatible with a designation as a student with the most significant disability.
 - For these districts, the flagged student cases will require a review and confirmation of appropriate diagnostic criteria being used to determine that the student also has the most significant cognitive impairment.
 - Furthermore, these districts will have to conduct an educational benefit review for all students surpassing the Functional Independence level of alternate achievement expectations, based on test performance on MI-Access Functional Independence assessments and share the results for approval from MDE.
 - For these targeted Tier II and III districts, the flagged student cases will require verification, from either the ISD (Tier II districts) or MDE (Tier III districts), of the appropriateness of alternate achievement standards for these students, before justification forms will be approved.

Additionally, MDE will continue to provide the technical assistance needed for IEP teams to make decisions about the appropriate assessment for every student with a disability and determine technical assistance needed for IEP teams to target instruction to each student's unique needs, encourage high expectations for all students, and understand expectations regarding the use of state content standards and/or alternate content standards. For instance, MDE will be adding warnings into the test registration process this year for cases where the students past performance, educational placement, or disability type are incongruent with the student having a significant cognitive impairment.

Lastly, over the past year, MDE has provided the following support and guidance:

- Tier I, provided for all LEAs:
 - Communications regarding the training available online.
 - In-person training on assessment selection, as requested by ISDs or LEAs (the following trainings have been provided in the past year):
 - Michigan Council for Exceptional Children (MCEC) Supervisors of Low Incidence Programs Conference
 - Michigan Association for Administrators of Special Education (MAASE) Summer Institute
 - MAASE Community of Practice
 - Resources that are and will be developed by MDE, ISDs, or LEAs for others to access and use (such as developing standards-based IEPs based on alternate content expectations).
- Tier II, targeted guidance to ISDs for LEAs whose participation rates were 1.8 percent or higher percent or whose data indicated issues of disproportionality in state testing for students with disabilities.
 - As part of the justification forms, ISDs developed and updated plans for supporting each LEA who met criteria for Tier II support. ISDs were also encouraged to provide technical assistance or training to school staff regarding the definition of “Students with the Most Significant Cognitive Disability” (SMSCD), if the district’s justification form indicated that the definition of eligibility for alternate achievement standards was misunderstood or misapplied.
 - ISDs provide a list of LEAs that require support and a plan for that support and further training.
 - Furthermore, ISDs were asked to encourage Tier II districts to review the performance of their students surpassing the Functional Independence level of alternate assessments and to consider the educational benefit of the current alternate achievement standards to which the student is being taught.
- Tier III, for LEAs whose alternate participation rates were in the top 3.0 percent of districts or whose participation rate were 1.8 percent or higher and whose data indicated issues of disproportionality in state testing for students with disabilities.
 - The ISD and/or MDE personnel will develop individual plans for support for the LEAs falling into Tier III. Furthermore, ISDs were asked to have Tier III districts review the performance of their students surpassing the Functional Independence level of alternate assessments and to consider the educational benefit of the current alternate achievement standards to which the student is being taught and to review those findings with the ISD.

MDE created a formal definition of students with the most significant cognitive disabilities during the 2019-20 academic year. This definition was shared in draft form for feedback during Tier I and Tier III events, ISD special education director's meetings, Office of Special Education (OSE) data advisory committee meetings, and regional ISD monitor meetings. It was also included in the public comment request completed for this waiver application. The definition is now embedded in MDE's assessment selection flow chart, online assessment selection guidelines training, and the IEP interactive decision-making tool. The definition is:

Students with the most significant cognitive disabilities, for the purpose of determining instructional targets and state assessment selection, have a disability or multiple disabilities that significantly impact intellectual functioning and adaptive behavior.

Adaptive behaviors are essential to live independently and to function safely in daily life. When adaptive behaviors are significantly impacted, the individual is unlikely to develop the skills necessary to live independently and function safely in daily life.

Students with the most significant cognitive disabilities are supported with an Individualized Education Program (IEP) and the instruction is based on Michigan's alternate content standards in English language arts (ELA), mathematics, science and/or social studies.

Significant cognitive disabilities impact students both in and out of the classroom and across multiple life domains, including academic domains.

Special Note: MI-Access is not designed for most students whose primary disability is a specific learning disability, speech language impairment, emotional impairment, or other health impairment. Furthermore, MI-Access should not be the default assessment of choice for students with hearing, visual, or physical impairments. In each of these instances, students with these disabilities must also demonstrate clear evidence (either clinical or educational or both) of significant cognitive disabilities in order for alternate achievement standards to be appropriate.

MDE has not received any new feedback regarding the need to revise the definition of students with the most significant cognitive disabilities since the initial feedback following the 2019 waiver approval. The establishment of the definition played a significant role in facilitating appropriate assessment selection and reducing of the number of students taking the alternate assessment to 1.8 percent. Furthermore, when the district's justification form indicated that the definition of eligibility for alternate achievement standards was misunderstood or misapplied, ISDs were also encouraged to provide technical assistance or training to school staff regarding the definition of "Students with the Most Significant Cognitive Disability (SMSCD). MDE will continue to use the definition that was established in 2019-20 for the 2022-23 academic year.

MDE will continue to post the ISD justification summaries submitted for the 2021-22 academic year, which will include individual plans for ensuring appropriate assessment selection, from each year.

Requirement 4 (B): Submit a plan and timeline by which the state will take additional steps to support and provide appropriate oversight to each LEA that the state anticipates will assess more than 1.0 percent with the alternate assessment.

MDE uses the tiered system of support to sort LEAs for the purpose of providing oversight and technical assistance. The cut scores for inclusion in Tier II and Tier III have been reduced from 1.8 percent to 1.6 percent to reflect current participation rates.

For the 2022–23 academic year, ISDs and LEAs are submitting justification forms as a task in Catamaran. Catamaran is the electronic system used to complete reporting and compliance tasks with MDE. Both ISD and LEA forms are downloadable into accessible reports to be made available to members of the public, upon request.

MDE has recorded webinar workshops that provide technical assistance to LEAs and ISDs. MDE continues to have direct input to the ISDs regarding LEAs meeting the requirements for Tier II and Tier III support.

Based on interactions with ISD and LEA personnel, MDE believes that LEAs may need additional support for IEP teams in properly targeting instruction for students with disabilities, particularly for students who fall outside of the definition of SMSCD. MDE plans to have LEAs conduct educational benefit reviews for students performing highly on alternate assessments, especially if the LEAs are in Tier II or III. MDE plans to provide ISDs and LEAs with data on flagged student cases from Spring 2022, where the student's disability type, high level of integration in the general education setting, or past surpassing performance on alternate assessments are incongruent with the student having a most significant cognitive disability, so that the ISD or LEA may better evaluate and monitor whether or not alternate instruction is appropriately assigned.

Requirement 4 (C): Submit a plan and timeline by which the state will address any disproportionality in the percentage of students taking the alternate assessment.

There were no sub-groups in which the risk ratio would indicate a concern with disproportionality at the state level regarding participation in the alternate assessment. However, thirty districts within the state were identified as disproportionately over-assigning some sub-group of students to alternate assessments, based on high-risk ratios for two testing cycles in a row. As part of the justification form approval process, ISDs are expected to facilitate conversations with their affected LEAs on the disproportionality list. In addition, any LEA assessing 1.5 percent or more of all students using the alternate assessment and flagged for disproportionality qualifies for Tier III status and must include a plan to address the disproportionality in the justification forms submitted to their ISD.

Requirement 5: Demonstrate substantial progress toward each component of the prior year's plan and timeline, which was required under Requirement 4 (c).

MDE has made substantial progress toward meeting the 1.0 percent cap requirement under each year of the waiver. This is evidenced by the reduction in students taking the alternate assessment from a high of 2.4 percent in Spring 2017 to a projected rate of 1.9 percent in Spring 2021 (if overall participation rates had been normal) and 1.8 percent in Spring 2022. Furthermore, these reductions are greatest in earlier grades, suggesting sustained changes in practices that are likely to carry through as students matriculate to later grades. In all, from 2017 to 2022, Michigan has reduced the total number of students participating in alternate assessments by 6,028 students, down from a high of over 18,830 in 2017 to 12,802 in 2022. For students who have transitioned from alternate achievement standards to

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general grade-level standards, their odds in real terms of graduating high school with a diploma have increased by roughly 22 percent, and in relative terms, have roughly doubled, and their real-term odds of going on to enroll in college within two years of leaving high school has increased by roughly 10 percent. Additionally, from an equity perspective, the risk ratio for subgroups has improved across the assessment cycles, from 2017 to 2022, with disparity in alternate assessment use for economically disadvantaged students reaching its lowest point in 2021 and maintaining in 2022. In addition to meeting all components of the plan detailed in Requirement 4A, MDE has expanded the plans for improvement by:

- Lowering the criteria in the three-tier system of support as outlined in Requirement 4A.
- Monitoring and enforcing compliance on only assigning alternate achievement standards for SMSCD.
- Increasing LEA access to data needed for justifications.
- Increasing the verification of the appropriateness, necessity, and benefit of alternate achievement standards for students whose performance, disability type, or educational placement seem incongruous to alternate standards.
- Enhancing MDE's focus to include a collaborative process for developing IEP team guidance for properly targeting instruction, as well as assessment selection, for students with disabilities.

MDE is confident the plan outlined in this waiver request will result in continued reduction in the percentage and number of students taking the alternate assessment in the state of Michigan.

Sincerely,



Michael F. Rice, Ph.D.
State Superintendent

Attachments regarding this year's public comment:

[Spotlight article regarding public comment November 10, 2022](#)

[Spotlight article regarding public comment November 3, 2022](#)

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From: Cullum, Jerry (MDE) <CullumJ@michigan.gov>
Sent on: Friday, January 27, 2023 9:55:36 PM
To: Peasley, Donald <Donald.Peasley@ed.gov>
Subject: RE: Request to Extend the Waiver for 1.0 Percent Cap Waiver

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.

Hi Don,

I checked with our Ed Facts submission experts and the numbers you reported match. The footnote date in the waiver was a typo however and the enrollment data in the waiver were based on Spring 2022 enrollment (Mid-February through March) rather than Spring 2021, and valid test counts were based on August data which used a minimum test item completion criteria; I was told that the Ed Facts tables use Fall enrollment + new Spring Enrollment during the Testing Window (October-November + new in April through May); and the valid test completion criteria is stricter to match scorable proficiency requirements that are used in the State Accountability System; Data that are tabulated and completed in November of 2022). Still, last year I compared these estimates to Ed Facts tables for the 3 years before the pandemic, and the counts use to be a lot closer.

I tried to use the best and closest data I could get my hands on with enough lead time to meet our departments 6-week requirement for approval. I literally had 9 administrative assistants/contractors unfamiliar with the waiver making dueling formatting changes, mostly in the last 5 days of the internal pre-submission deadline. This made it difficult to catch any new typos or all of the rejected edits. So I tried to focus on the core content of the tables and action plan to make sure those remained consistent, throughout the internal submission process.

I'm sorry I missed the footnote year date, and for any inconvenience that made.

One thing that jumps out from the summary Ed Facts data our Ed Facts staff shared with me today, is that the non-participation count from Ed Facts is nearly 3 times higher than in 2019 (about 25,000 vs. about 9,000, respectively). And our Chronic absenteeism rates last year were roughly double what they were in 2019. I think we had a lot more students just not complete their test or who were absent much more often in Spring22 than in 2019.

Anyways,

Thank you for the follow up and feedback, Don, and Yes, the Ed Facts Tables should be accurate to use.

Have a nice weekend.

--Jerry

From: Peasley, Donald <Donald.Peasley@ed.gov>
Sent: Friday, January 27, 2023 8:00 AM
To: Cullum, Jerry (MDE) <CullumJ@michigan.gov>; Davis, Carrie (MDE-Contractor) <DavisC58@michigan.gov>; OESE.ESEA.Assessment <ESEA.Assessment@ed.gov>
Cc: Hinman, Shannon (MDE) <HinmanS@michigan.gov>; Jaquith, John (MDE) <JaquithJ1@michigan.gov>
Subject: RE: Request to Extend the Waiver for 1.0 Percent Cap Waiver

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

Good morning.
We've begun our review of MI's 1.0 percent waiver request.

There is some information I'd like to get verified.

When reviewing the data on assessment participation (overall, and for all students with disabilities) there is a statement that says the data (students expected to test) were based on spring 2021 enrollment numbers, not spring 2022 enrollment numbers, because the waiver was prepared before the State's EDFacts submission. In the waiver request, the following is presented:

Table 4: 2021-22 English Language Arts (Grades 3-8 and 11) Participation in State Summative Assessment (M-STEP, MME, MI Access), Overall and for Students with Disabilities