UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

March 7, 2023

The Honorable Robert P. Taylor
State Superintendent of Education
Mississippi Department of Education
P.O. Box 771
Jackson, MS 39205-0771

Dear Superintendent Taylor:

I am writing in response to the Mississippi Department of Education (MDE's) request on October 19, 2022, for a one-year 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 extension request, I am declining to exercise my authority under section 8401(b) of the ESEA, for school year 2022-2023, to grant a one-year waiver of section 1111(b)(2)(D)(i)(I) of the ESEA, so that the State may assess more than 1.0 percent of the total number of students in the State who are assessed in R/LA, mathematics, and science using an AA-AAAS. In the 2021-2022 school year, there was a markedly higher percentage of students taking an AA-AAAS than in the in the 2018-2019 school year. Because the State has not demonstrated progress toward this requirement to assess not more than 1.0 percent of students using an AA-AAAS, I do not find that granting MDE a waiver would contribute to improved student achievement, nor would granting such a waiver be in the public interest.

If MDE can demonstrate that the rate of participation on the AA-AAAS has declined since the 2018-2019 school year, and how granting this waiver would contribute to improved student achievement and in the public interest, 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 be submitted no later than 60 days from the date of this letter.

In addition, I note that MDE did not receive a waiver of section 1111(b)(2)(D)(i)(I) of the ESEA in the 2021-2022 school year and that the rates of participation on the AA-AAAS were well above the 1.0 percent cap for that school year (i.e., 1.6 percent in R/LA and mathematics and 1.8 percent in science). As a result, the Department is placing a grant condition on the State's fiscal year 2022 Title I, Part A award. To remove this condition, MDE must submit a plan for reducing the rate of AA-AAAS participation in future years in order to come into compliance with the 1.0 percent requirement. Please submit this plan by email to the Department at ESEA.Assessment@ed.gov within 60 days of receipt of

this letter. The State must also submit assessment participation data (including AA-AAAS participation) via ED*Facts* for the 2022-2023 school year by October 15, 2023.

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: Dr. Jackie Sampsell, Director of Assessment
Dr. Jennifer Boykin, Director of Special Education

MISSISSIPPI DEPARTMENT OF EDUCATION

Kim S. Benton, Ed.D.
Interim State Superintendent of Education

October 19, 2022

Mr. Patrick Rooney
Director, School Support and Accountability
Office of Elementary and Secondary Education
U. S. Department of Education

Ms. Valerie Williams
Director, Office of Special Education Programs
Office of Special Education Programs and Rehabilitative Services
U.S. Department of Education

Dear Mr. Rooney and Ms. Williams:

The Every Student Succeeds Act (ESSA) amended a provision of Title I of the Elementary and Secondary Education Act of 1965 related to students participating in alternate assessments of each State Education Agency's (SEA) Statewide assessment. The ESSA requires SEAs to submit waiver requests and subsequent extension requests to the United States Department of Education if the SEA anticipates having more than one percent of its students participating in the alternate assessment.

The Mississippi Department of Education (MDE) has conducted an extensive review of data from the Mississippi Student Information System (MSIS) and assessment data files from school years 2018-2019, 2020-2021, and 2021-2022. The purpose of the review was to determine the participation rates of students being assessed on the Mississippi Academic Achievement Program-Alternate (MAAP-A), which is aligned with the State-adopted alternate academic achievement standards.

In the 2016-2017 school year, approximately 1.64% of Mississippi's students participated in content areas of the MAAP-A. During the 2017-2018 school year, that number was reduced to 1.45%. Data for the 2018-2019 school year revealed that approximately 1.43% of Mississippi's students participated in content areas of the MAAP-A in 2018-2019. School Year 2020-2021 data showed participation rates in the MAAP-A remained at 1.4%. School year 2021-2022 data showed participation rates in the MAAP-A increased to 1.67%. Tables 1 and 2 below provide the participation rates for the 2019-2020 and 2020-2021 school years. Table 3 provides the participation rates for the 2021-2022 school year. While the State has realized a decrease in the percentage of students that participated in content areas of the MAAP-A since 2016-2017, based on the most recent available data,

the State anticipates exceeding the one percent threshold enacted by ESSA for school year 2022-2023. The Mississippi Department of Education (MDE) did make this waiver available for public comment but did not receive any comments. Pursuant to 34 C.F.R. § 200.6(c)(4), the MDE is seeking a waiver for all subject areas for the 2022-2023 school year from the Secretary of the United States Department of Education.

Participation and SCD Data Analysis

Mississippi follows the Federal participation requirements for assessment and requires all students enrolled in public K-12 schools be assessed with accommodations, without accommodations, or with an alternate assessment. The only exception to participation for any student is to receive a non-participation due to significant medical emergency waiver. To date, Mississippi has met or exceeded the Federal guidelines set at 95% participation rate of all students, including students with significant cognitive disabilities in the MAAP-A assessment. Tables 1 and 2 below show the overall participation rates for students with disabilities and participation rates by subgroups for the 2018-2019 and 2020-2021 school years.

Table 1: Overall Rates of Assessment Participation for 2018-19 and 2020-21

Group	**All Students Grades 3-8 and High School R/LA 2018-19**	**Students with Disabilities Grades 3-8 and High School R/LA 2018-19**	**All Students Grades 3-8 and High School R/LA 2020-21**	**Students with Disabilities Grades 3-8 and High School R/LA 2020-21**
Students Assessed	260214	35759	237457	33492
Students Enrolled	265333	36813	244035	35435
Assessment Participation Rate	98.1%	97.1%	97.3%	94.5%
Group	**All Students Grades 3-8 and High School Math 2018-19**	**Students with Disabilities Grades 3-8 and High School Math 2018-19**	**All Students Grades 3-8 and High School Math 2020-21**	**Students with Disabilities Grades 3-8 and High School Math 2020-21**
Students Assessed	255916	35251	242098	34334
Students Enrolled	259213	36432	249443	36440
Assessment Participation Rate	98.7%	96.8%	97.1%	94.2%

Group	All Students Grades 3-8 and High School Science 2018-19	Students with Disabilities Grades 3-8 and High School Science 2018-19	All Students Grades 3-8 and High School Science 2020-21	Students with Disabilities Grades 3-8 and High School Science 2020-21
Students Assessed	110274	14562	105252	14442
Students Enrolled	111707	15048	108789	15339
Assessment Participation Rate	98.7%	96.8%	96.7%	94.2%

Table 2: Assessment Participation Rates by Subgroup for 2018-19 and 2020-21

Group	Total # of Students in Grades 3-8 and High School R/LA 2018-19	# of Students Taking State AA-AAAS Grades 3-8 and High School R/LA 2018-19	% of Students Taking State AA-AAAS Grades 3-8 and High School R/LA 2018-19
All Students	265333	3701	1.4%
American Indian/Alaskan Native	613		
Asian	2969		
Black	130220	2146	1.6%
Hispanic	11040	117	1.1%
Multiracial	6247	76	1.2%
White	114084	1316	1.2%
Pacific Islander	160		
Economically Disadvantaged	181131	2969	1.6%
English Learner	8676	85	1.0%
Students with Disabilities	36813	3701	10.1%
Group	**Total # of Students in Grades 3-8 and High School R/LA 2020-21**	**# of Students Taking State AA-AAAS Grades 3-8 and High School R/LA 2020-21**	**% of Students Taking State AA-AAAS Grades 3-8 and High School R/LA 2020-21**
All Students	244035	3335	1.4%
American Indian/Alaskan Native	530		
Asian	2686		
Black	118501	1933	1.6%
Hispanic	11079	113	1.0%

Multiracial	8023	83	1.0%
White	103064	1162	1.1%
Pacific Islander	152	4	2.6%
Economically Disadvantaged	181449	2842	1.6%
English Learner	6434	84	1.3%
Students with Disabilities	35435	3335	9.4%
Group	**Total # of Students in Grades 3-8 and High School Math 2018-19**	**# of Students Taking State AA-AAAS Grades 3-8 and High School Math 2018-19**	**% of Students Taking State AA-AAAS Grades 3-8 and High School Math 2018-19**
All Students	259213	3646	1.4%
American Indian/Alaskan Native	590	9	1.5%
Asian	2705	27	1.0%
Black	127098	2130	1.7%
Hispanic	10948	118	1.1%
Multiracial	6318	80	1.3%
White	111393	1278	1.1%
Pacific Islander	161		
Economically Disadvantaged	178542	2952	1.7%
English Learner	8692	81	0.9%
Students with Disabilities	36432	3646	10.0%
Group	**Total # of Students in Grades 3-8 and High School Math 2020-21**	**# of Students Taking State AA-AAAS Grades 3-8 and High School Math 2020-21**	**% of Students Taking State AA-AAAS Grades 3-8 and High School Math 2020-21**
All Students	249443	3098	1.2%
American Indian/Alaskan Native	553		
Asian	2700		
Black	122551	1821	1.5%
Hispanic	11295	101	0.9%
Multiracial	8216	79	1.0%
White	103967	1057	1.0%
Pacific Islander	161		
Economically Disadvantaged	186463	2646	1.4%
English Learner	6626	75	1.1%
Students with Disabilities	36440	3098	8.5%

Group	Total # of Students in Grades 3-8 and High School Science 2018-19	# of Students Taking State AA-AAAS Grades 3-8 and High School Science 2018-19	% of Students Taking State AA-AAAS Grades 3-8 and High School Science 2018-19
All Students	111707	1707	1.5%
American Indian/Alaskan Native	303		
Asian	1162		
Black	54948	1006	1.8%
Hispanic	4583	44	1.0%
Multiracial	2248		
White	48395	613	1.3%
Pacific Islander	68		
Economically Disadvantaged	75131	1312	1.7%
English Learner	3146		
Students with Disabilities	15048	1707	11.3%
Group	**Total # of Students in Grades 3-8 and High School Science 2020-21**	**# of Students Taking State AA-AAAS Grades 3-8 and High School Science 2020-21**	**% of Students Taking State AA-AAAS Grades 3-8 and High School Science 2020-21**
All Students	108789	1709	1.6%
American Indian/Alaskan Native	248		
Asian	1235		
Black	53485	963	1.8%
Hispanic	4842	62	1.3%
Multiracial	3219	37	1.1%
White	45694	628	1.4%
Pacific Islander	66		
Economically Disadvantaged	80095	1443	1.8%
English Learner	2249	49	2.2%
Students with Disabilities	15339	1709	11.1%

Table 3: Overall Rates of Assessment Participation for 2021-22

Group	All Students Grades 3-8 and High School R/LA	Students with Disabilities Grades 3-8 and High School R/LA
Students Assessed	232,275	34,050
Students Enrolled	238,722	35,003
Assessment Participation Rate	97.3%	97.3%
Group	**All Students Grades 3-8 and High School Math**	**Students with Disabilities Grades 3-8 and High School Math**
Students Assessed	233,241	33,924
Students Enrolled	236,259	34,924
Assessment Participation Rate	98.7%	97.1%
Group	**All Students Grades 3-8 and High School Science**	**Students with Disabilities Grades 3-8 and High School Science**
Students Assessed	101,901	14,142
Students Enrolled	104,830	14,610
Assessment Participation Rate	97.2%	96.8%

Alternate Assessment Participation Rates by Subgroup for 2021-22

Group	Total Number in Grades 3-8 & HS	Num. Taking AA-AAAS in Grades 3-8 & HS	Percent Taking AA-AAAS in Grades 3-8 & HS
R/LA			
All Students	238,722	3,832	1.6%
Hispanic	11,441	147	1.3%
American Indian/Alaskan Native	522		
Asian	2,851		
Black	113,717	2,191	1.9%
Hawaiian/Pacific Islander	153		
White	101,432	1,334	1.3%
Two or More Races	8,606	115	1.3%
Male	121,736	2,530	2.1%
Female	116,986	1,302	1.1%
English Learner	6,724	103	1.5%
Econ. Disadvantaged	176,938	3,215	1.8%
Mathematics			
All Students	236,259	3,794	1.6%
Hispanic	11,573	140	1.2%
American Indian/Alaskan Native	515		
Asian	2,697		
Black	112,332	2,187	1.9%

Hawaiian/Pacific Islander	150		
White	100,335	1,313	1.3%
Two or More Races	8,657	108	1.2%
Male	120,814	2,477	2.1%
Female	115,445	1,317	1.1%
English Learner	6,772	99	1.5%
Econ. Disadvantaged	176,082	3,191	1.8%
Science			
All Students	104,830	1,893	1.8%
Hispanic	5,129	53	1.0%
American Indian/Alaskan Native	245		
Asian	1,160		
Black	51,032	1,156	2.3%
Hawaiian/Pacific Islander	64		
White	43,779	622	1.4%
Two or More Races	3,421		
Male	53,597	1,283	2.4%
Female	51,233	610	1.2%
English Learner	2,355	43	1.8%
Econ. Disadvantaged	77,666	1,582	2.0%

Based on a review of data, during the 2018-2019 school year, 129 of 148 LEAs assessed more than one percent of tested students with the MAAP-A during the 2018-2019 school year. During the 2020-2021 school year, 103 of 146 LEAs assessed more than one percent of students with an alternate assessment in at least one subject. School year 2021-2022 showed an increase with approximately 125 out of 146 of LEAS testing more than one percent of students with the MAAP-A.

MDE Plan of Action

During the 2022-2023 school year, the MDE, Office of Special Education (OSE) and the MDE, Office of Student Assessment (OSA) will require written justification from LEAs with a participation rate greater than one percent. All LEAs will be required to submit assurances. Assurances were established to ensure that all Individualized Education Program (IEP) Committees follow *Testing Students with Disabilities Regulations* when making assessment participation decisions. All assurances and justifications must be submitted to the MDE, OSE and OSA prior to the opening of the fall testing window on November 28, 2022. The MDE, OSE and OSA will review all justifications and assurances. Upon identification of LEAs whose justifications are of concern, the OSE and OSA will work with the LEAs to review LEA data, conduct root cause analysis, and to develop an action plan to resolve systemic issues regarding the identification of students with significant cognitive disabilities. The MDE will make the results of the justification and assurance process available to the U.S. Department of Education in an addendum to this waiver once all the data has been collected. Justifications will be made available to

the public upon request by contacting the MDE Office of Public Reporting. Assurance and justification forms have been attached to this letter.

Additionally, the MDE will continue to provide extensive Statewide support in the areas of professional development around the alternate assessment. Sessions regarding the identification, instruction, and assessment of students identified as having a Significant Cognitive Disability (SCD) were provided at the Statewide Making Connections Conference in June 2022, at the quarterly Special Education Directors meetings in Spring and Fall 2022, and during regional trainings in Fall 2022. SCD determination and instructional support professional development and individual coaching will continue to be available through the professional development menu of services at individual LEA's request. SCD determination, instruction, and assessment were topics included in the IEP Bootcamp hosted by the MDE, OSE in Spring 2022 and will be included in IEP Bootcamps hosted this coming Spring 2023. In addition, administrators will be reminded of SCD determination during the Mississippi Association of School Superintendents (MASS) conferences throughout the 2022-2023 school year. To ensure that all students are appropriately assessed, the MDE has developed and will continue to implement a three-pronged approach that involves LEA data analysis, LEA support, and a plan of correction for the SEA and LEAs.

The MDE, OSE has developed additional guidance documents to support educators and administrators with SCD determination and classroom programing. Teacher Resource Guides for all the Mississippi Alternate Academic Achievement Standards have been developed to provide valuable instructional strategies, sample lessons, and activities for teachers. During the 2021-2022 school year, the MDE, OSE published a Specially Designed Instruction (SDI) Guidance Document. This all-inclusive guidance includes the identification and needed support for students meeting the criteria for SCD. Additionally, during the 2021-2022 school year, the MDE, OSE developed and published the Family Guides to Special Education. This 14-volume resource includes a family friendly guide for each of the 13 special education eligibility categories and an additional volume for significant cognitive disability determination. The guides help families support their students with disabilities from identification to adulthood. During the 2022-2023 school year, the MDE, OSE anticipates the release of two additional guidance documents to support students who meet the criteria for SCD with the All Things Assessment Guide and the Compass to College Guidance Document. Both of these upcoming documents will provide support to educators and families as they develop and support to students.

LEA Support

- Prior to the opening of the fall testing window in the 2022-2023 school year, the MDE, OSE and OSA will verify that each LEA follows the State's guidelines, including an analysis of students identified as SCD by the Individuals with Disabilities Education Act (IDEA) eligibility category through the assurance process. The MDE, OSE and OSA will continue to verify that each LEA followed the State's guidelines, including an analysis of students identified as SCD by IDEA disability eligibility category.
- In the 2022-2023 school year, prior to the opening of the fall testing window, MDE, OSE and OSA will identify LEAs exceeding the one percent threshold and require

those LEAs to submit justifications for exceeding the one percent and participate in a root cause analysis when necessary; and

- The MDE, OSE has developed and made available to all LEAs the SCD Determination Guidance Document which provides guidance to IEP Committees making SCD determinations; and
- The MDE will continue to require LEAs to complete the Learner Characteristic Inventory (LCI) of the MAAP-A prior to the test window; and
- The MDE, OSE and OSA will continue to inform and engage parents and other stakeholders in decision-making regarding programmatic requirements for student SCD determination and participation in the MAAP-A and by making the waiver request open for public comment. Public comment and responses are attached to this letter; and
- The MDE, OSE will continue to publicly report Statewide MAAP-A data while maintaining student confidentiality.

LEA Data Profiles

- The MDE, OSE will continue to provide LEA-level District Determination Reports that include assessment data profiles that detail student participation rates, SCD participation percentages and the numbers of students with disabilities by IDEA disability eligibility category;
- The MDE, OSE and OSA will continue to identify any disproportionality in the percentage of students taking the MAAP-A at each LEA; and
- The MDE, OSE will address disproportionality in the percentage of students in each subgroup participating in the MAAP-A. The MDE collects alternate assessment data for the following subgroups:
    - American Indian/Alaska Native
    - Asian
    - Black
    - Hispanic
    - White
    - Other Pacific Islander
    - Economically Disadvantaged
    - English Language Learner

  For each district, the MDE will identify the subgroup's data by looking at the number of students who take the alternate assessment and compare with the number of all students who tested. We will use a threshold of 3%. An example: For XYZ district, the MDE will compare a subgroup (Asian) against itself (Asian) in the general population (all students assessed).

  Sample data:

  2 Asian students participated in alternate assessment

  20 students total participated in alternate assessment

  150 Asian students participated in all assessments

3500 students total participated in all assessments

Methodology: Representativeness

2/20 = 10% of alternate assessment testers were Asian

150/3500 = 4.3% of all assessment testers were Asian

The difference between these two groups is 5.7%. Using the 3% threshold, the determination is that the Asian students were disproportionally represented in the alternate assessment for this district.

Regional and Statewide Training

The MDE, OSE remains committed to ensuring that educators and administrators throughout the State have the needed support to identify, instruct, and assess students with disabilities. Extensive regional and Statewide professional development, technical assistance, and coaching will continue to be provided to all LEAs, in order to ensure all LEAs are fully informed of the requirements of SCD determination and to ensure that only students who meet the requirements take the MAAP-A. Training will focus on implementing the requirements set forth in the ESSA, including:

- Use of the SCD Determination Guidance Document outlining requirements for SCD determination;
- Use of the Teacher Resource Guides for appropriate classroom instruction and assessment;
- How to ensure that all students who take the MAAP-A have met the requirements; and
- Understanding implications of student participation in the alternate assessment as it applies to the type of diploma the student earns, as well as the student's postsecondary and career pathway.

The MDE will also conduct trainings for special education LEA staff as well as school-and district-level administrators on the State's definition of students with the most significant cognitive disabilities and the *Testing Students with Disabilities Regulations.*

LEA Plan of Correction

The MDE will provide oversight to each LEA that exceeds the one percent threshold to ensure that only students with the most significant cognitive disabilities participate in the MAAP-A including:

- An annual review of LEA participation rates in each subject of the alternate assessment. Assessment Data Profiles will be created; and
- Additional examination of LEAs with unusual patterns and/or higher participation rates; and
- LEAs exceeding the one percent participation rate will be required to provide MDE with a detailed justification for exceeding one percent; and
- The justification must include a plan for detailing how the LEA will lower its participation rate; and

- The MDE Office of Accreditation will be notified of LEA noncompliance with testing requirements and continued noncompliance may result in the recommendation of a loss of accreditation.

Summary

Each year since the 2016-2017 school year (with the exception of the 2021-2022 school year) the MDE has reduced the percentage of Mississippi students participating in the MAAP-A and will continue to work towards reducing the number to the one percent limit required by the ESSA through its plan of:

- Providing training and technical assistance to LEAs to ensure appropriate identification of students with significant cognitive disabilities, support LEAs in conducting root cause analysis, and to work with LEAs to develop action plans; and
- Identifying LEAs with more than one percent of students taking the MAAP-A; and
- Requiring LEAs with more than one percent of students participating in the MAAP-A to provide detailed justifications and plans of improvement; and
- Monitoring implementation of the LEA correction plans and providing sanctions as appropriate.

Please contact Dr. Jackie Sampsell at jsampsell@mdek12.org or via phone at (601) 359-3052 or Dr. Jennifer Boykin at jboykin@mdek12.org or via phone at (601) 359-3498 to discuss the content of this waiver extension or to have any questions addressed.

Sincerely,

Kim S. Benton, Ed.D.
State Superintendent of Education, Interim