



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

March 9, 2023

The Honorable Megan Degenfelder  
Superintendent of Public Instruction  
Wyoming Department of Education  
122 W. 25th St., Ste. E-200  
Cheyenne, WY 82002-0050

Dear Superintendent Degenfelder:

I am writing in response to the Wyoming Department of Education's (WDE's) request on November 29, 2022, with additional information provided on January 25, 2023, 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). WDE requested this waiver because, based on State data for the 2021-2022 school year, WDE has concluded that it will 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 WDE's waiver request, I am granting, pursuant to my authority under section 8401(b) of the ESEA a one-year waiver (school year 2022-2023) 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.

As part of this waiver, WDE 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 2021-2022 at least 95 percent of all students and 95 percent of students with disabilities who are enrolled in grades for which the R/LA, mathematics, and science assessments are required.
- Will require that a local educational agency (LEA) submit information justifying the need of the LEA to assess more than 1.0 percent of its assessed students in any such subject with an AA-AAAS.
- Will provide appropriate oversight of an LEA that is required to submit such information to the State.
- Will verify that each LEA that is required to submit such information to the State is following all State guidelines in 34 CFR § 200.6(d) – excluding (d)(6) – and will address any subgroup disproportionality in the percentage of students taking an AA-AAAS.

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

As a reminder, 34 CFR § 200.6(c)(3)(iv) requires a State to make publicly available the information submitted by an LEA justifying the need to assess more than 1.0 percent of its students on the AA-AAAS, provided such information does not reveal personally identifiable information about a student. I also encourage you to make available your State’s plan, timeline, and progress to date in reducing the percentage of students taking the AA-AAAS.

Given the workplan submitted by WDE, I expect to continue to see positive results of this plan in the 2022-2023 school year and beyond. I note that the rate of AA-AAAS participation in the 2021-2022 school year in R/LA, mathematics, and science was very close to the 1.0 percent threshold. Future requests for a waiver extension will continue to expect both continued progress implementing your plan and progress in maintaining or reducing the percentage of students taking the AA-AAAS in all tested subjects.

I appreciate the work you are doing to improve your schools and provide a high-quality education for your students. If you have any questions, please contact my staff at [ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov).

Sincerely,

/s/

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

cc: Laurie Hernandez, Director of Assessment, WDE



# One Percent Participation Waiver Request for the Alternate Assessments

ESEA section 1111(b)(2)(D) and 34 CFR 200.6(c) and (d)

Submission to U.S. Department of Education

November 28, 2022

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## Introduction

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

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

After reviewing the 2021-2022 assessment data, the Wyoming Department of Education (WDE) has determined that participation in the WY-ALT for English, Math and Science may be over 1.0 percent of the total number of students assessed in each subject area for the 2022-2023 school year. Pursuant to the Code of Federal Regulations, Title 34 (34 CFR), Section 200.6(c)(4), the WDE is requesting a federal waiver for exceeding the 1% threshold on AA-AAAS participation in the Science WY-ALT.

## Requirement 1: 90-Day

### Requirement

The testing window for the Summative WY-ALT in Spring of 2023 will last from February 28 through April 07, 2023. The requirement to submit this request is 90 days prior to the testing window which is November 30, 2022. Provided is the public publishing of the testing information that can be found on the [WDE public website](#).

- **WY-TOPP Summative:** April 11 – May 5, 2023
  - **ELA:** Grades 3-10
  - **Mathematics:** Grades 3-10
  - **Science:** Grades 4, 8, and 10
  - **Writing:** Grade 3, 5, 7, and 9
- **WY-ALT:** February 28 – April 7, 2023
  - **ELA:** Grades 3-10
  - **Mathematics:** Grades 3-10
  - **Science:** Grades 4, 8, 10

## Requirement 2: State-Level Data

Data has been pulled from our State Summative Assessment given in the Spring of 2022. The data found in the tables below details the participation in the WY-ALT for English, Math, and Science 2023.

Table 1 shows that 1.07% of all students, and 98.08% of Students with Disabilities participated in the AA-AAAS for English in grades 3-10. Table 2 shows that 1.07% of all students, and 98.27% of Students with Disabilities participated in the AA-AAAS for Math in grades 3-10. Enrollment numbers in these grade levels are expected to stay close to the enrollment for the 2021-2022 school year.

Table 3 shows that 1.10% of all students, and 97.96% of Students with Disabilities participated in the AA-AAAS for Science in grades 4, 8, and 10. Student enrollment in the preceding grade-levels for this assessment show a similar ratio. This leads us to anticipate exceeding the alternate assessment participation threshold next year.

Based on this data, we anticipate exceeding the one percent threshold for participation in the AA-AAAS.

**Table 1: Alternate Assessment Participation Rates for 2021-2022 English**

Group	Total # Assessed	# Taking WY-ALT	% Taking WY-ALT
All Students	56777	608	1.07%
American Indian/Alaska Native	1834		
Asian	361		
Black	497		
Hispanic	8326	96	1.15%
Native Hawaiian/Pacific Islander	80		
Multiracial	2049		
White	43630	441	1.01%
Econ. Disadv.	15267	257	1.68%
English Learner	1444		

	<b>Total Enrolled</b>	<b>Total Assessed</b>	<b>Total % Assessed</b>
All Students Gr. 3-10	57555	56777	98.65%
SWD Gr. 3-10	8418	8256	98.08%
ALT Gr. 3- 10	609	608	99.84%

**Table 2: Alternate Assessment Participation Rates for 2021-2022 Math**

<b>Group</b>	<b>Total # Assessed</b>	<b># Taking WY-ALT</b>	<b>% Taking WY-ALT</b>
All Students	56899	606	1.07%
American Indian/Alaska Native	1836	27	1.47%
Asian	364		
Black	498		
Hispanic	8415	96	1.14%
Native Hawaiian/Pacific Islander	80		
Multiracial	2047		
White	43659	439	1.01%
Econ. Disadv.	15321	256	1.67%
English Learner	1538		
	<b>Total Enrolled</b>	<b>Total Assessed</b>	<b>Total % Assessed</b>
All Students Gr. 3-10	57555	56899	98.86%
SWD Gr. 3-10	8418	8272	98.27%
ALT Gr. 3- 10	609	606	99.51%

**Table 3: Alternate Assessment Participation Rates for 2021-2022 Science**

<b>Group</b>	<b>Total # Assessed</b>	<b># Taking WY-ALT</b>	<b>% Taking WY-ALT</b>
All Students	21,201	234	1.10%
American Indian/Alaska Native	690		
Asian	134		
Black	181		
Hispanic	3,131	39	1.25%
Native Hawaiian/Pacific Islander	35		
Multiracial	727		
White	16,303	169	1.04%
Econ. Disadv.	5,404	90	1.67%
English Learner	553		
	<b>Total Enrolled</b>	<b>Total Assessed</b>	<b>Total % Assessed</b>
All Students Gr. 4, 8, 10	21522	21201	98.55%
SWD Gr. 4, 8, 10	2889	2828	97.96%
ALT Gr. 4, 8, 10	237	234	98.73%

## Requirement 3: Assurances

### LEAs Followed States Guidelines

In analyzing the identification data from the 2021-2022 WY-ALT administration, the Wyoming Department of Education identified 34 local educational agencies (LEAs) that exceeded the one percent participation threshold for the Spring 2022 assessment window on the public website. Many of these LEAs identified only fewer than ten students; however, still exceeded the one percent threshold for participation in the AA-AAAS due to a low overall n-count.

Each district submitted a 1% Participation District Reporting form that included an analysis of their 1% data as well as their assurances below. If the district anticipates going over the 1% Threshold of participation in the alternate assessment, they also submitted justifications through this form. These justifications can be requested through a Public Record Request from the WDE.

#### Assurances:

- General and special education teachers and other appropriate staff are knowledgeable about the administration of assessments including making appropriate use of testing accommodations.
- Our district provides individualized education program team members with training on the Wyoming Alternate Assessment Participation Guidance and Checklist
- Our district continues to allow individualized education program teams to decide which students qualify for an alternate assessment using the guidance provided by the Wyoming Department of Education
- All alternate assessment test administrators have the required training for administering the alternate assessments.
- Our district continues to address any disproportionality in the percentage of students in any subgroup participating in the alternate assessment.
- Parents are informed when their students will be assessed on alternate achievement standards, including information about the implications of participation in the alternate assessment.



In September 2022, WDE’s Special Education Programs Division and Assessment Team reviewed the 2021-22 data for WY-ALT administration. At this time, LEAs were placed in Tier 1, 2, or 3 based on this analysis using the tiering criteria matrix (Table 3).

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

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

**Table 3:** Tiering Criteria Matrix

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

## LEAs Addressing Disproportionalities

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

## Requirement 4: Plans and Timelines

### Improvement of Guidelines and Implementation

Through a review of the current processes, the WDE has identified a need to improve communication and update guidance for identification of students who participate in the alternate assessment video for all districts.

The first step in our improvement process is to improve communication by establishing regular reminders to SPED Directors and district and school staff. Included in the communication to all LEAs is a reminder about and a copy of the guidance and checklist WDE provides to assist IEP teams in determining participation in the alternate assessment. This Tier 1 support will be sent out twice a year in the fall and spring to help guide the LEAs in their training and decision-making processes.

Next, the Special Education Programs Division of WDE will open and amend Wyoming's Chapter 7: Services for Children with Disabilities rules and will have this process started in the Fall of 2023. Once updates have been made, WDE will communicate updates to Wyoming's Chapter 7 rules that apply to participation in AA-AAAS.

In addition to updating Wyoming's Chapter 7 rules, Wyoming's Assessment Team will revise the WY-ALT Participation Guidance and accompanying video training to align with revisions made to Chapter 7 rules regarding the standard processes for determining participation in the AA-AAAS. After the described revisions, the guidance suite will be rereleased to LEAs in January 2024 through a Superintendent's Memo, the public WDE website, and an email to LEA leadership.

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

The Wyoming Department of Education Assessment Team and Special Education Programs Division will continue to monitor the enrollment of students in the alternate assessment administration to

determine the effectiveness of these changes. If further action is required, both teams will determine future improvements to the guidance and implementation of that guidance as needed.

## LEA Oversight and Monitoring

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

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

**Tier 1, Meets Requirements:** Those below 1% in all areas will receive a letter indicating 100% compliance.

**Tier 2, Needs Assistance:** Those exceeding 1% in 1 or more areas, and/or an upward trend, or possible concerns after subgroup analysis will receive a Tier 2 letter. WDE will determine whether this was due to small population size or other contributing factors. These districts are not required to submit a file review. They will receive a letter indicating a request to submit a Letter of Assurance:

- Staff are trained on the WY-ALT participation criteria.
- IEPs are being reviewed every year to determine participation.
- The WY-ALT guidance documents have been reviewed and WY-ALT decisions are made on an annual basis.

**Tier 3, Needs Intervention:** Those exceeding 1% in 1 or more areas and/or a 2-year trend up, or significant concerns after subgroup analysis will receive a Tier 3 letter. Districts will submit requested files to WDE for review based on subgroup analysis of the disability category, service environment, or

other subgroup concerns. WDE will review WY-ALT participation explanations and any team discussion and decision-making process reported in the IEP or Prior Written Notice.

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

### Addressing Disproportionality in State-level Data

The WDE examined the data on subgroup participation, as reported in ESSA, on the alternate assessment, to identify and address any disproportionality in the students taking the WY-ALT. WDE utilized the NCEO guidance on calculating risk ratio to analyze this information.

When calculating the information for disproportionality, WDE combined information from the 2019, 2021, and 2022 assessment years to offset our small population sizes. The number of students in each subgroup that participated in the alternate assessment was added over the three-year period and then divided by the overall number of students that participated in the alternate assessment for all three years.

$$\frac{\text{sum of \# of focal group AAAAAS participants in 2019 +2021+2022}}{\text{sum of \# of total AAAAAS participants in 2019+2021+2022}} = \% \text{ of focal group participants in AAAAAS}$$

To compare the focal group participation to the overall participation of each subgroup, WDE then also calculated the subgroup participation in the general content assessment over the same three-year period. To achieve this we took the sum of the focal group not participating in the alternate assessment and divided that number by the total participation in the general content assessment.

$$\frac{\text{sum of \# of focal group non-AAAAAS participants in 2019 +2021+2022}}{\text{sum of \# of total non-AAAAAS participants in 2019+2021+2022}} = \% \text{ of focal group in general assessment}$$

Finally, to calculate the risk ratio for each subgroup, the proportion of the subgroup participating in the AA-AAAS was divided by the proportion of the subgroup participating in the general content assessment. This determined the risk ratio for each subgroup identified and the results can be found in Table 4 below. After completing these calculations, WDE found that the only group with a risk ratio higher than 2 was our Native Hawaiian/Pacific Islander ethnic subgroup. Due to the small n-size of this particular population across all three years, Wyoming doesn't consider this risk ratio to be meaningful and therefore finds no disproportionality in any subgroup's identification for an alternate assessment.

$$\frac{\text{proportion of AAAAAS focus group participants}}{\text{proportion of general content focus group participants}} = \text{risk ratio}$$

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

**Table 4: Disproportionality Data for all Subgroups over 3 years**

Focal Group	% Focal Group AA-AAAS	% Focal Group Non-AA-AAAS	Risk Ratio
American Indian/Alaska Native	4.73%	3.24%	1.46
Asian	1.15%	0.69%	1.68
Black	1.56%	0.93%	1.67
Hispanic	15.45%	14.48%	1.07
Native Hawaiian/Pacific Islander	0.63%	0.15%	4.24
Multiracial	3.80%	3.19%	1.19
White	72.68%	77.33%	.94

Econ. Disadv.	47.20%	31.07%	1.52
English Learner	4.50%	2.55%	1.76

## Conclusion

Based upon the provided information, the Wyoming Department of Education is requesting a federal waiver for exceeding the 1% threshold on AA-AAAS participation in the WY-ALT for English/Language Arts, Math, and Science for the 2023 assessment administration.

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

Due to the increased participation in the WY-ALT based on the Spring 2022 assessment data, WDE anticipates exceeding the one percent threshold of participation. Therefore, pursuant to the Code of Federal Regulations, Title 34 (34 CFR), Section 200.6(c)(4), the WDE is requesting a federal waiver for exceeding the 1% threshold on AA-AAAS participation in the Summative Administration of the WY-ALT for all content areas.

## Appendix A: Evidence of Public Comment

Wyoming follows a public notice process as is laid out in statute [W.S. 16-3-103](#) which states that we must “give at least forty-five (45) days notice of its intended action. Notice shall be mailed to all persons making timely requests of the agency.” Pursuant to this statute, WDE put out a notice of public comment for this waiver request on October 3, 2022. This public notice period lasted from October 3, 2022, to November 15, 2022.

### Manner of Provided Notice

The Wyoming Department of Education provided the entirety of this waiver to stakeholders via digital access. Stakeholders were notified of the waiver and public comment options through communication in multiple memos, newsletters, social media posts, and a webpage banner advertisement.

Stakeholders were given access to a Google Form to provide comments and feedback on the Wyoming One Percent Threshold Waiver Request. The Wyoming Department of Education also hosted three Public Comment Virtual Open House sessions on November 1, 2022, November 2, 2022, and November 3, 2022.

No changes to the Wyoming One Percent Threshold Waiver Request were necessary because stakeholders did not submit comments through the Google Form or attend any of the Public Comment Virtual Open Houses. WDE staff members were on hand during the Public Comment Virtual Open House sessions to respond to comments and questions that the public provided.

### Reasonable and Customary Opportunity for Input

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