



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

February 28, 2023

The Honorable Jillian Balow
Superintendent of Public Instruction
Virginia Department of Education
P.O. Box 2120
Richmond, VA 23218

Dear Superintendent Balow:

I am writing in response to the Virginia Department of Education's (VDOE's) request on November 29, 2022 (with additional information provided on January 3, 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). VDOE requested this waiver because, based on State data for the 2021-2022 school year, VDOE 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 VDOE's waiver request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, for school year 2022-2023, a one-year extension of the State's waiver of section 1111(b)(2)(D)(i)(I) of the ESEA so that the State may assess more than 1.0 percent of the total number of students in the State who are assessed in R/LA and science using an AA-AAAS.

However, I am declining to exercise my authority under section 8401(b) of the ESEA, for the 2022-2023 school year, a one-year extension of the State's waiver of section 1111(b)(2)(D)(i)(I) of the ESEA in mathematics. I am declining the request for mathematics because VDOE did not meet the 95 percent assessment participation requirement in 34 CFR § 200.6(c)(4)(ii) in mathematics for all students during the 2021-2022 school year. If the data reported by VDOE are erroneous and the State can demonstrate that it has assessed at least 95 percent of all students in mathematics during the 2021-2022 school year, VDOE may revise its waiver extension 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 extension request must be submitted no later than 60 days from the date of this letter.

As part of this waiver granted in R/LA and science, VDOE 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 and science assessments are required.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

- 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 AAAAAS.
- Will provide appropriate oversight of an LEA that is required to submit such information to the State.
- Will verify that each LEA that is required to submit such information to the State is following all State guidelines in 34 CFR § 200.6(d) – excluding (d)(6) – and will address any subgroup disproportionality in the percentage of students taking an AA-AAAS.
- Will implement, consistent with the plan submitted in VDOE’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. I also encourage you to make available your State’s plan and timeline, and your progress to date, in reducing the percentage of students taking the AA-AAAS.

Given the workplan submitted by VDOE, I expect to continue to see positive results of this plan in the 2022-2023 school year and beyond. I note that the rates of AA-AAAS participation in the 2021-2022 school year for R/LA and science were lower than the corresponding rates in the 2018-2019 school year. I want to thank you for your continued efforts in achieving such progress. Future requests for an extension of this partial waiver must include continued progress implementing your plan and in reducing the percentage of students taking the AA-AAAS in all tested subjects.

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

Sincerely,

/s/

Adam A. Schott
Deputy Assistant Secretary for Policy and Programs
Office of Elementary and Secondary Education

cc: Samantha Marsh Hollins
Assistant Superintendent of Special Education and Student Services, VDOE

**Virginia’s Request for a One-Year Extension of the 2021-2022
Waiver from the One Percent Limit of Students Participating in the
Alternate Assessments Aligned with Alternate Academic
Achievement Standards (AA-AAAS) Granted by the United States
Department of Education (March 4, 2022)**

The *Every Student Succeeds Act* (ESSA) Section 1111(b)(2)(D)(i)(I) limits the total number of students with the most significant cognitive disabilities who are assessed statewide with an Alternate Assessment aligned with Alternate Academic Achievement Standards (AA-AAAS) to one percent of the total number of students in the state who are assessed in that subject; however, if a state anticipates that it will exceed the one percent cap for any subject, the state may request that the United States Department of Education (USED) waive the cap for that subject, pursuant to the *Elementary and Secondary Education Act* (ESEA), Section 8401, for one year. The four basic requirements for a state’s one percent cap waiver are detailed below.

Please consider Virginia’s extension request for the 2022-2023 school year for reading, mathematics, and science.

Requirement 1 (§200.6(c)(4)(i)):

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

The assessment window for the Virginia Alternate Assessment Program (VAAP) for students with the most significant cognitive disabilities is open from February 27, 2023, through June 23, 2023, in all tested subjects. Ninety days prior to the opening of the test window is November 29, 2022.

Requirement 2 (§200.6(c)(4)(ii)):

Provide state-level data, from the current or previous year, to show: (A) the number and percent in each subgroup who took the AA-AAAS in the subject area; and (B) the state has measured the achievement of at least 95 percent of all students and students with disabilities enrolled in the grades for which the AA-AAAS is required.

Based on guidance released from the USED on September 20, 2022, regarding the requirements to request a waiver extension for school year (SY) 2022-2023 from the one percent cap on the percentage of students with the most significant cognitive disabilities who may be assessed with an Alternate Assessment aligned with Alternate Academic Achievement Standards (AA-AAAS), the Virginia Department of Education (VDOE) has included the actual AA-AAAS participation rates for SY 2020-2021 and SY 2021-2022.

In addition, projected estimates of the number and percentage of students expected to take the AA-AAAS in SY 2022-2023, by subject area, are included. The percentages of students with

disabilities participating in the Alternative Assessment in the following tables highlight the significant difference compared to the other Student Groups.

(A) Data on participation in AA-AAAS in subject area by subgroup.

Alternate Assessment Participation Rates for English/Reading, 2020-2021, by Student Group

Student Group	Number of Students Participating in Regular Assessment	Number of Students Participating in Alternate Assessment	Total Number of Students Assessed ¹	Percent Participating in Alternate Assessment
All Students	523,967	6,179	531,467	1.16%
Asian	40,147	349	40,789	0.86%
Black or African American	107,780	1,961	109,827	1.79%
Hispanic or Latino	87,857	930	89,438	1.04%
Two or More Races	32,319	359	32,709	1.10%
White	253,717	2,549	256,522	0.99%
Students with Disabilities	62,526	6,179	68,734	8.99%
Limited English Proficient (LEP)	41,486	892	43,690	2.04%
Economically Disadvantaged	216,775	2,970	220,297	1.35%
Male	267,241	4,111	272,059	1.51%
Female	256,675	2,068	259,356	0.80%

Note: Data submitted to ED Facts.

¹ LEP students who, at the time of testing, were in the United States for less than 12 months and took the English Language Proficiency test as substitute for the reading/language arts assessment are also considered participants in that reading assessment (PARTELP).

Alternate Assessment Participation Rates for English/Reading, 2021-2022, by Student Group

Student Group	Number of Students Participating in Regular Assessment	Number of Students Participating in Alternate Assessment	Total Number of Students Assessed ²	Percent Participating in Alternate Assessment
All Students	640,220	7,676	647,896	1.18%
Asian	49,082	476	49,558	0.96%
Black or African American	139,455	2,487	141,942	1.75%
Hispanic or Latino	113,663	1,183	114,846	1.03%
Two or More Races	41,010	479	41,489	1.15%
White	294,264	3,017	297,281	1.01%
Students with Disabilities	81,779	7,676	89,455	8.58%
Limited English Proficient (LEP)	56,076	1,196	57,272	2.09%
Economically Disadvantaged	271,832	3,670	275,502	1.33%
Male	326,896	5,209	332,105	1.57%
Female	312,920	2,467	315,387	0.78%

Note: Data submitted to EDFacts.

Projected Assessment Participation Rates for English/Reading, 2022–2023³

Number of Students in Membership at Grades 3–8 and 11 in Fall 2022	Number of Students Projected to Participate in the Alternate Assessment in 2022–2023	Percent Projected to Participate in the Alternate Assessment
622,727	7,594	1.22%

² LEP students who, at the time of testing, were in the United States for less than 12 months and took the English Language Proficiency test as substitute for the reading/language arts assessment are also considered participants in that reading assessment (PARTELP).

³ Data was derived from a participation survey sent from the VDOE Department of Special Education and Student Services to local educational agency (LEA) staff in October 2022 as part of the planned monitoring process. This survey did not require specific student information from all divisions; therefore, the projected values are not able to be disaggregated to the student group level.

Alternate Assessment Participation Rates for Mathematics, 2020-2021, by Student Group

Student Group	Number of Students Participating in Regular Assessment	Number of Students Participating in Alternate Assessment	Total Number of Students Assessed	Percent Participating in Alternate Assessment
All Students	535,870	6,218	542,088	1.14%
Asian	41,070	351	41,421	0.84%
Black or African American	164,727	2,633	167,360	1.57%
Hispanic or Latino	92,610	947	93,557	1.02%
Two or More Races	33,044	355	33,399	1.06%
White	256,846	2,574	259,420	0.99%
Students with Disabilities	64,775	6,218	70,993	8.75%
Limited English Proficient (LEP)	45,551	909	46,460	1.95%
Economically Disadvantaged	224,001	2,981	226,982	1.31%
Male	273,858	4,135	277,993	1.48%
Female	261,952	2,083	264,035	0.78%

Note: Data submitted to ED Facts.

Alternate Assessment Participation Rates for Mathematics, 2021-2022, by Student Group

Student Group	Number of Students Participating in Regular Assessment	Number of Students Participating in Alternate Assessment	Total Number of Students Assessed	Percent Participating in Alternate Assessment
All Students	665,210	7,799	673,009	1.16%
Asian	50,920	488	51,408	0.95%
Black or African American	145,434	2,542	147,976	1.72%
Hispanic or Latino	123,877	1,204	125,081	0.96%
Two or More Races	42,444	485	42,929	1.13%
White	299,677	3,047	302,724	1.01%
Students with Disabilities	84,855	7,799	92,654	8.42%
Limited English Proficient (LEP)	66,198	1,213	67,411	1.80%
Economically Disadvantaged	286,412	3,722	290,134	1.28%
Male	340,649	5,278	345,927	1.53%
Female	324,111	2,521	326,632	0.77%

Projected Assessment Participation Rates for Mathematics, 2022-2023⁴

Number of Students in Membership at Grades 3-8 and 11 in Fall 2022	Number of Students Projected to Participate in the Alternate Assessment in 2022-2023	Percent Projected to Participate in the Alternate Assessment
629,974	7,688	1.22%

⁴ Data was derived from a participation survey sent from the VDOE Department of Special Education and Student Services to LEA staff in October 2022 as part of the planned monitoring process. This survey did not require specific student information from all divisions; therefore, the projected values are not able to be disaggregated to the student group level.

Alternate Assessment Participation Rates for Science, 2020-2021, by Student Group

Student Group	Number of Students Participating in Regular Assessment	Number of Students Participating in Alternate Assessment	Total Number of Students Assessed	Percent Participating in Alternate Assessment
All Students	263,688	2,726	266,414	1.03%
Asian	19,935	128	20,063	0.63%
Black or African American	54,116	924	55,040	1.67%
Hispanic or Latino	42,734	398	43,132	0.92%
Two or More Races	15,551	133	15,684	0.85%
White	130,259	1,128	131,387	0.86%
Students with Disabilities	30,811	2,726	33,537	8.13%
Limited English Proficient (LEP)	15,701	353	16,054	2.20%
Economically Disadvantaged	103,281	1,260	104,541	1.21%
Male	135,002	1,803	136,805	1.32%
Female	128,652	923	129,575	0.71%

Note: Data submitted to ED Facts.

Alternate Assessment Participation Rates for Science, 2021-2022, by Student Group

Student Group	Number of Students Participating in Regular Assessment	Number of Students Participating in Alternate Assessment	Total Number of Students Assessed	Percent Participating in Alternate Assessment
All Students	330,974	3,536	334,510	1.06%
Asian	24,849	218	25,067	0.87%
Black or African American	72,262	1,154	73,416	1.57%
Hispanic or Latino	60,032	543	60,575	0.90%
Two or More Races	20,295	214	20,509	1.04%
White	152,093	1,391	153,484	0.91%
Students with Disabilities	41,340	3,536	44,876	7.88%
Limited English Proficient (LEP)	26,210	526	26,736	1.97%
Economically Disadvantaged	137,058	1,707	138,765	1.23%
Male	169,159	2,365	171,524	1.38%
Female	161,533	1,171	162,704	0.72%

Projected Assessment Participation Rates for Science, 2022–2023⁵

Number of Students in Membership at Grades 5, 8, and 11 in Fall 2022	Number of Students Projected to Participate in the Alternate Assessment in 2022–2023	Percent Projected to Participate in the Alternate Assessment
281,560	3,385	1.20%

⁵ Data was derived from a participation survey sent from the VDOE Department of Special Education and Student Services to LEA staff in October 2022 as part of the planned monitoring process. This survey did not require specific student information from all divisions; therefore, the projected values are not able to be disaggregated to the student group level.

Alternate Assessment Participation Rates for Students with Disabilities 2020-2021 Compared to 2021-2022, by Content Area

Content Area	Number of Students Participating in Alternate Assessment 2020-2021	Total Number of Students with Disabilities Assessed in 2020-2021	Participation Percent by Content Area 2020-2021	Number of Students Participating in Alternate Assessment 2021-2022	Total Number of Students with Disabilities Assessed in 2021-2022	Participation Percent by Content Area 2021-2022
Reading	6,179	68,734	8.99%	7,676	89,455	8.58%
Math	6,218	70,993	8.75%	7,799	92,654	8.42%
Science	2,726	33,537	8.13%	3,536	44,876	7.88%

Although Virginia has not reduced the percentage of students taking the AA-AAAS by content area when compared to all students tested, the State has made significant reduction in the percentage of students with disabilities subgroup assessed with the AA-AAAS across all three subject areas (demonstrated in the above table). Such analysis of the students with disabilities subgroup demonstrates that the waiver has been effective in enabling the State to carry out an AA-AAAS for students with the most significant cognitive disabilities. State staff believe Virginia will see overall reduction in the percentage of students taking the AA-AAAS once participation rates overall and students with disabilities, by content area, return to pre-pandemic levels.

(B) Data showing 95 percent participation overall and for the students with disabilities student group.

2020-2021 Participation Rate Overall and for Students with Disabilities, by Content Area

Content Area	All Students Tested	All Students in the Tested Population	Participation Percent by Content Area	Students with Disabilities Tested	Students with Disabilities in the Tested Population	Participation Percent by Content Area
Reading	531,467	654,816	81.16%	68,734	88,334	77.81%
Math	542,088	671,217	80.76%	70,993	91,935	77.22%
Science	266,414	328,285	81.15%	33,537	43,226	77.59%

2021-2022 Participation Rate Overall and for Students with Disabilities, by Content Area

Content Area	All Students Tested	All Students in the Tested Population	Participation Percent by Content Area	Students with Disabilities Tested	Students with Disabilities in the Tested Population	Participation Percent by Content Area
Reading	628,017	646,308	97.17%	86,911	89,775	96.81%
Math	608,179	644,545	94.36%	84,587	87,668	96.49%
Science	240,896	246,247	97.83%	31,963	33,473	95.49%

Virginia had a significant increase in the number of parent refusals to test due to COVID-19. Specifically, if parents refused to have their child participate in the AA-AAAS in 2020-2021 due to the COVID-19 pandemic, local educational agency (LEA) staff were directed to inform the parents that their child’s score report will reflect that the test was refused due to COVID-19 and a “No Score” or “NS” was assigned. School staff were strongly encouraged to request a written statement from parents indicating the specific test(s) the parents refused to have their child complete due to the pandemic and to maintain the statement in the student’s file as a record of the decision. Test records coded in this manner in reading, mathematics, and science were included as non-participants in federal accountability calculations. In 2021-2022, participation rates overall and for students with disabilities returned to near pre-pandemic levels.

Requirement 3 (§200.6(c)(4)(iii)):

Provide assurances that the state has verified that each LEA that the state anticipates will assess more than 1.0 percent of its assessed students in a subject using the AA-AAAS did the following: (A) followed the state's participation guidelines; and (B) will address any disproportionality in the students taking the AA-AAAS.

(A) Assurance that districts over one percent followed the state's participation guidelines.

To meet this stated requirement, school divisions who anticipate exceeding the one percent cap on participation in the VAAP had to provide to the VDOE assurances that the division followed the State's participation guidelines for the upcoming spring assessment window opening February 27, 2023, including that:

- Individualized Education Program (IEP) Teams will correctly identify students with the most significant cognitive disabilities following state criteria and participation guidelines.
- Students participating in the VAAP have been instructed in a modified curriculum aligned to state standards (i.e., Virginia Essentialized Standards of Learning (VESOL)).
- Student IEPs will include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the child meets the criteria for the alternate assessment; and how the child's participation in the VAAP will impact the child's promotion and/or graduation with a standard or advanced studies diploma, or other matters.
- School divisions will seek to measure the achievement of at least 95 percent of all students, including students with disabilities in all grades for which assessment is required.

(B) Assurance that any disproportionality in students taking the AA-AAAS will be addressed.

The VDOE will continue to address disproportionality in the percentage of students in any student group taking the VAAP through multiple activities as described below. In particular, the VDOE will perform the following steps to address disproportionality concerns:

- Calculate and analyze participation rates among student groups at the state educational agency (SEA) and LEA levels.
- Identify student groups over-represented in the VAAP participation counts.
- Analyze student group data over time to identify trends in student group participation with the goal of decreasing disproportionality.
- Continue to provide resources and support to LEAs on appropriately identifying students with the most significant cognitive disabilities for inclusion in the VAAP.
- Engage with stakeholder groups to address disproportionalities and ensure only students with the most significant cognitive disabilities are participating in the VAAP.

- Maintain and update the VAAP.
- Report assessment data publicly.

Requirement 4 (§200.6(c)(4)(iv)):

Submit a plan and timeline by which the following will be accomplished: (A) state will improve the implementation of its participation guidelines, including if necessary, revising its definition of “students with the most significant cognitive disabilities”; (B) state will take additional steps to support and provide appropriate oversight to each LEA that the state anticipates will assess more than 1.0 percent with the AA-AAAS to ensure that only students with the most significant cognitive disabilities take the AA-AAAS (this must include a description of how the state will monitor and regularly evaluate each of these LEAs to ensure that the LEA provides sufficient training for IEP team members); and (C) state will address any disproportionality in the percentage of students taking the AA-AAAS.

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

To meet this stated requirement, the following steps have been or will be taken:

- The VDOE staff members will continue to participate, bi-weekly, in the one percent Community of Practice (CoP), offered by The National Center on Educational Outcomes (NCEO), in accordance with Public Law (P.L.) 108-446 Section 617(a). The VDOE has been a participant since December 2017.
- The VDOE staff members participated in the Peer Learning Group (PLG): PLG #2-Guiding and Evaluating District Justifications for Exceeding the 1% Cap, from June through August 2019, offered by NCEO, in accordance with P.L. 108-446 Section 617(a); and Peer Learning Group: PLG #3-Building Capacity of IEP Teams and Parents in Making Decisions About Assessment Participation, offered by NCEO, in accordance with P.L. 108-446 Section 617(a). This was offered from October through December 2019.
- The VDOE staff members will annually review and revise, if appropriate, state-level policies, procedures, and practices pertaining to Virginia’s AA-AAAS, based on information gathered from the above listed CoP, PLGs, and the data disaggregation in accordance with 34 CFR §200.6(d).

(B) State will take additional steps to support and provide appropriate oversight to each LEA that the state anticipates will assess more than one percent with the AA-AAAS to ensure that only students with the most significant cognitive disabilities take the AA-AAAS (this must include a description of how the state will monitor and regularly evaluate each of these LEAs to ensure that the LEA provides sufficient training for IEP Team members).

To meet this stated requirement, the following steps will be taken:

- Through the release of an assistant superintendent memo to all school districts in the state, the VDOE continues to improve the implementation of the participation guidelines for the VAAP and to ensure that the appropriate students are assessed using this alternate assessment. The memo identifies several pages on the VDOE website that provide specific information, resources, participation criteria sheets, training modules, and frequently asked questions about the alternate assessment. These resources are relevant to multiple audiences: administrators, testing directors, general education and special education teachers, special education service providers, parents, and other interested parties.
- The VDOE released mass messaging about, and training on, Critical Decision Points for Families of Children with Disabilities in English and Spanish through GovDelivery. The critical decision points products and in-person training highlight for families and school personnel important considerations for children with disabilities, including Standards of Learning (SOL) and VAAP participation. As of November 28, 2022, GovDelivery has 22,593 subscribers.
- By November 3, 2022, all LEAs in the state were required to complete a survey titled, “2022 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program.” The results of this survey revealed projected participation rates by LEAs for each content area to be assessed in Spring 2023. This information will be provided to state staff to assist with the 2022-2023 cyclical monitoring of LEAs. In addition, the information will help determine the level of technical assistance needed by each LEA.
- Following the Spring 2023 administration, VDOE staff members will disaggregate the AA-AAAS participation data by LEA, primary disability, gender, race/ethnicity, and grade level to reveal trends in disproportionality in accordance with 34 CFR §200.6(c)(4)(ii)(A).
- Using the disaggregated data, VDOE staff members will address disproportionality identified above for each LEA exceeding one percent of its students in any subject with an AA-AAAS and will provide technical assistance to LEAs in the area(s) of identified need(s), as required under 34 CFR §200.6(c)(3)(iii).
- In addition, the VDOE transitioned to a new format for the AA-AAAS, beginning in SY 2021-2022. The new Virginia Alternate Assessment Program (VAAP) is an online assessment in reading, mathematics, and science for eligible students with significant cognitive disabilities in grades three through eight and high school, which replaced the portfolio-based assessment.

(C) State will address any disproportionality in the percentage of students taking the AA-AAAS.

To meet this stated requirement, the VDOE required LEAs to submit assurances including:

- The IEP Teams identified students with the most significant cognitive disabilities following state criteria and participation guidelines.
- Excessive absences; social, cultural, or economic differences; identification in a specific disability category; specific special education placement or services; anticipated scores on SOL tests; or concerns for accreditation calculations were not considered in the determination that the student will be assessed with the VAAP.
- Students participating in the VAAP have been instructed in a modified curriculum aligned to state standards (i.e., VESOL).
- Student IEPs include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the child meets the criteria for the alternate assessment; and how the child's participation in the VAAP will impact the child's promotion and/or graduation with a standard or advanced studies diploma, or other matters.
- There is written confirmation that IEP Teams informed parents of students with the most significant cognitive disabilities of the implications of participation in the alternate assessment.
- The division will strive to measure the achievement of at least 95 percent of all students, including students with disabilities in all grades for which assessment is required.
- There is written confirmation that the division has no disproportionality in the percentage of students in any subgroup taking the alternate assessment, or if disproportionality does exist, it has plans to address any disproportionality.

The plan includes:

- Identifying districts with more than one percent of its students taking the AA-AAAS.
- Providing training and technical assistance to districts to ensure appropriate decisions for participation in the AA-AAAS are made by IEP Teams.
- Identifying districts with student groups that disproportionately participate in the AA-AAAS.
- Monitoring districts with more than one percent of their students participating in the AA-AAAS.

Virginia is making progress in its plan and timeline as follows:

- As part of the VDOE transition to a new format for the AA-AAAS, beginning in SY 2021-2022, additional webinar training has been provided to LEAs regarding students with the most significant cognitive disabilities, including revisiting the characteristics of students with the most significant cognitive disabilities and the criteria for participation in the VAAP.

- Based on data presented in the tables above and gathered through the survey, “2022 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program,” the VDOE is able to identify those divisions that exceed the one percent threshold of students participating in the VAAP. This data will be provided to state staff to assist with the 2022-2023 cyclical monitoring of LEAs and to determine the level of technical assistance needed by each LEA to address the need to exceed the one percent threshold.

To meet the Requirement 4 (§200.6(c)(4)(iv)), the steps that have been or will be taken by the VDOE are listed in the table below.

Steps That Have or Will be Taken to Meet Requirement 4 (§200.6(c)(4)(iv))

Steps	Timeline
The VDOE staff members will continue to participate, bi-weekly, in the One Percent Community of Practice (CoP), offered by NCEO in accordance with P.L. 108-446 Section 617(a).	Ongoing (December 2017–Present)
The VDOE staff members participated in the Peer Learning Group: PLG #2-Guiding and Evaluating District Justifications for Exceeding the 1% Cap, offered by NCEO, in accordance with P.L. 108- 446 Section 617(a).	Completed (August 2019)
The VDOE staff members participated in the Peer Learning Group: PLG #3-Building Capacity of IEP Teams and Parents in Making Decisions About Assessment Participation, offered by NCEO, in accordance with P.L. 108-446 Section 617(a).	Completed (December 2019)
The VDOE staff members will annually review and revise, if appropriate, state-level policies, procedures, and practices pertaining to Virginia’s AA-AAAS, based on information gathered from the above listed CoP, PLGs, and the data disaggregation in accordance with 34 CFR §200.6(d).	Ongoing
The VDOE staff members will annually disaggregate the AA-AAAS participation data by LEA, primary disability, gender, race/ethnicity, and grade level to reveal trends in disproportionality in accordance with 34 CFR §200.6(c)(4)(ii)(A).	Ongoing
Using the disaggregated data, the VDOE staff members will address disproportionality identified above for each LEA exceeding one percent of its students in any subject with an AA-AAAS and will provide technical assistance to LEAs in area(s) of identified need(s), as required under 34 CFR §200.6(c)(3)(iii).	Ongoing
Based on data presented in the tables above and gathered through the survey titled, “2022 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program,” the VDOE is able to identify those divisions that exceed the one percent threshold of students participating in the VAAP. This data will be provided to state staff to assist with the 2022-2023 cyclical monitoring of LEAs and to determine the level of technical assistance needed by each LEA within the cohort to address the need to exceed the one percent threshold. At a minimum, state staff will review student files to ensure:	Ongoing

Steps	Timeline
<ul style="list-style-type: none"> • The IEP Teams identified students with the most significant cognitive disabilities following state criteria and participation guidelines; • Excessive absences; social, cultural, or economic differences; identification in a specific disability category; specific special education placement or services; anticipated scores on SOL tests; or concerns for accreditation calculations were not considered in the determination that the student will be assessed with the VAAP; • Students participating in the VAAP have been instructed in a modified curriculum aligned to state standards (i.e., VESOL); • Student IEPs include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the child meets the criteria for the alternate assessment; and how the child’s participation in the VAAP will impact the child’s promotion and/or graduation with a standard or advanced studies diploma, or other matters; and • There is written confirmation that IEP Teams informed parents of students with the most significant cognitive disabilities of the implications of participation in the alternate assessment. 	
<p>The VDOE will require LEAs to submit information justifying the need to assess more than one percent of its students in any subject with an AA-AAAS, in accordance with 34 CFR §200.6(c)(3)(ii).</p>	<p>Ongoing</p>

Results of the above Steps Taken

Based on information learned in the PLGs offered by NCEO and the information gathered through the disaggregation of the AA-AAAS participation data by LEA, primary disability, gender, race/ethnicity, and grade level to reveal trends in disproportionality, the VDOE revised the AA-AAAS participation criteria. In addition, the guidance on the determination of significant cognitive disabilities is revised, as needed. The survey titled, “2022 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program,” identified 100 LEAs justifying the need to exceed one percent of its students in any subject with an AA-AAAS in 2022-2023. All 100 LEAs will have their disaggregated data reviewed by state staff to determine the level of need for technical assistance.

All Cohort 2 LEAs slated for cyclical review, and certain LEAs identified through data disaggregation, will be identified for student file reviews. If noncompliance is determined by state staff, a VDOE monitor will be assigned to oversee timely correction in accordance with the United States Office of Special Education Programs (OSEP) Memo 09-02 Timely Correction.

It is also important to note, as part of the VDOE transition to a new format for the AA-AAAS, beginning in SY 2021-2022, additional webinar training has been provided to LEAs regarding students with the most significant cognitive disabilities, including revisiting the characteristics of students with the most significant cognitive disabilities and the criteria for participation in the VAAP.

Based on the data and the steps taken, as listed above, state staff believe substantial progress has been made toward the appropriate students being assessed in the AA-AAAS, in accordance with 34 CFR §200.6(c)(3), and look forward to continued improvement in the years to come.

Prior to the submission of this waiver request, input was solicited from a variety of stakeholders, including members of the Virginia State Special Education Advisory Committee (SSEAC) and the Committee of Practitioners (CoP). Information about the waiver was provided, and a request for public comment was announced in the Superintendent's Memo #258-22. The Superintendent's Memoranda are posted on the VDOE website, and the request for public comment was posted to the VDOE Virginia Alternate Assessment Program (VAAP) webpage. Consistent with the manner in which similar notices and public comment opportunities are provided, school division personnel and multiple stakeholder groups were also informed of the opportunity by email.

Please contact Jeff Phenicie, Director of Program Improvement, by email at Jeff.Phenicie@doe.virginia.gov, or by telephone at (804) 786-0308, if there are any questions or to discuss the content of this waiver request.

We look forward to working with the United States Department of Education staff to achieve a positive response to the request.

Jillian Balow
Superintendent of Public Instruction
Virginia Department of Education

Date

Public Notice and Comment Period Waiver Request Pursuant to 34 CFR §200.6(C)(4)

Prior to submitting this ESSA waiver extension request, the VDOE provided public notice to Virginia stakeholders. The VDOE provided such notification, by posting a public notice on its website for more than 30 calendar days (October 28, 2022–November 28, 2022), of the intent to request an extension of Virginia’s waiver from the alternate assessment based on alternate academic achievement standards one percent cap and solicited public comment. In addition, the VDOE has disseminated information pertaining to the public notification/comment period of the waiver extension request through Superintendent’s Memo #258-22, all special education directors, all assessment directors, parent groups, and the Virginia SSEAC.

Copies of all comments the VDOE received from stakeholders in response to this notice are listed below.

- The purpose of this comment is to support the use of VA’s Alternate Assessment Program. The federal requirement of less than 1% is a flawed approach. My school specializes in providing educational opportunities for students with severe autism. The LEAs place their students at our school due to our ability to provide these learning experiences. The cognitive abilities of these students require an alternate assessment, so 100% of students placed here will require an alternate assessment. Moreover, with an increase in children having autism, how can the Fed justify a 1% cap, if there is also an increase in the total number of students who qualify for an alternate assessment? Lastly, even subjecting students with low cognitive abilities and/or unique learning needs presented in students with autism to any standardized assessment is demoralizing. For example, why does a 15 y/o nonverbal student, with severe learning disabilities, unable to spell his/her name, lack of number sense, minimal to no daily living skills, need to be assessed on the functions of cell or determine the height of an imaginary flagpole when provided a shadow. – *Submitted by a Private Day School*
- It is unreasonable to place a one-percent cap on all school divisions because some schools have more severe students than others. The opioid crisis in Appalachia as referenced in the book “Dopesick” by Beth Macey has had a major impact on the number of drug babies and learning disabilities in our area. Therefore, our school system should not be held to the same standards as other school divisions that were not affected by the opioid crisis. – *Submitted by an LEA Representative*
- I agree that VDOE should request a waiver to 34 CFR §200.6(c)(4), and that the Virginia Department of Education (VDOE) should seek to extend a waiver for the 2022-2023 school year from the Secretary for the United States Department of Education. – *Submitted by a Parent of a Student with a Disability*
- The Virginia Committee of Practitioners met on November 14, 2022. The group expressed unanimous support of the waiver extension request. – *Submitted on behalf of the Committee of Practitioners*
- I am writing in support of the waiver for students to participate in the Virginia Alternate Assessment. We can’t place an arbitrary number to limit the birth of children with

significant cognitive abilities, so how are we doing that with the number of children eligible for the assessment? While I understand the point of the cutoff number is to make sure schools don't abuse the use of the alternative assessment, the number of students that truly need it will fluctuate each year. Please grant the waiver for this year. – *Submitted by an LEA Representative*

- My school division is in full support of Virginia's request for a one-year extension of the 2021-2022 waiver from the one percent limit of students participating in the alternate assessment program. As a small school division with approximately 700 students grades Pre-K -12, my division is especially vulnerable for exceeding the one percent cap. RCPS is currently experiencing declining enrollment due to the rural nature and high tax base of our county- smaller numbers of test takers in grades 3, 4, 5, 6, 7, 8, and 11 disproportionately impacts the percentage for students participating in VAAP. In addition, my division has no control over the number of students who will need the VAAP assessment. While the division carefully considers VAAP participation using the required VDOE guidance document, students transfer into the division who are also identified for the VAAP. One new transfer student can push the division over the 1% cap due to our small numbers. This arbitrary cap is not only unfair to small school divisions, but defies the spirit of the IDEA, which protects the right of every special needs student to receive specialized instruction and assessment, regardless of percentages. – *Submitted by an LEA Representative*
- I suggest including adding to the chart “mass messaging about, and training on, critical decision points in English and Spanish.” The critical decision points products and in person training highlight for families and LEA personnel important considerations for students with disabilities, including SOL and VAAP participation. – *Submitted by Parent to Parent of Virginia*

The majority of the public comments specifically related to the waiver were supportive of it. The stakeholder feedback and plan will guide the Virginia Department of Education's commitment to support the appropriate reduction of the number of students participating in the alternate assessments.

2022 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program (VAAP)

Introduction

The *Every Student Succeeds Act of 2015* (ESSA) was signed into law in December 2015. The ESSA amended the *Elementary and Secondary Education Act of 1965* (ESEA) and replaced the previous *No Child Left Behind* amendment. Section 1111(b)(2)(D)(i)(I) and Section 1111(b)(2)(D)(ii)(II) of ESSA clarify that states must ensure that the total number of students assessed in a subject using the alternate assessment aligns with alternate achievement standards, and the state may not exceed one percent of the total number of all students who are assessed in a subject. However, states are precluded from setting a division-level cap on the percentage of students who may be assessed with an alternate assessment. The law also specifies that any division that exceeds the one percent cap must submit information to the state justifying the need to exceed it.

To meet this requirement and to be in alignment with the Virginia Department of Education's (VDOE's) Corrective Action Plan for exceeding the one percent cap for alternate assessment participation, school divisions are asked to examine their VAAP participation to determine the division's need to exceed the one percent cap, and therefore, the need to provide justification for exceeding the one percent cap to the VDOE. Please complete the following survey questions by November 3, 2022.

1. Contact Information for Person Completing the Survey

Name

Phone Number

Email Address

School Division

2022 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program (VAAP)

Divisionwide Data Calculation by Content Area

2. What is your division's projected **total** number of students taking the VAAP for grades 3, 4, 5, 6, 7, 8, and 11 by content area? If your division is testing at different grades (flexible testing schedule) in high school, please include the number of those students as well.

Mathematics

English/Reading

Science

3. What is your division's September 30, 2022, Fall Membership **total** for the tested grades (3, 4, 5, 6, 7, 8, and 11) by content area? If your division is testing VAAP at different grades (flexible testing schedule) in high school, please include the Fall Membership totals for those grades.

Mathematics

English/Reading

4. What is your division's September 30, 2022, Fall Membership **total** for the tested grades (5, 8, and 11) by content area? If your division is testing VAAP at different grades (flexible testing schedule) in high school, please include the Fall Membership totals for those grades.

Science

5. Calculate your division's projected VAAP participation percentage rate by content area.
Example: Division has 35 students participating in English/Reading VAAP and 1,300 in tested Fall Membership (FM) Grades. $(35/1,300) \times 100 = 2.69\%$

Mathematics (# VAAP / FM X 100= %)

English/Reading (# VAAP / FM X 100= %)

Science (# VAAP / FM X 100 = %)

6. Based on the projected calculations above, does your school division anticipate participation rates on the VAAP to be more than one percent of the total student population (Fall Membership) in the grades tested (grades 3, 4, 5, 6, 7, 8, and high school) for Math or English/Reading or (grades 5, 8, and high school) for Science for the 2022-2023 administration?

Yes

No

2022 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program (VAAP)

Rationale and Justification for Need to Exceed One Percent

7. Rationale for Need to Exceed One Percent (*Check all that apply*)

- Small Student Population** - Your school division has a very small total student population that has a significant impact on the participation percentages. Your school division must meet all three criteria: 1) Fall Membership for the tested grades is less than or equal to 1,500 students; 2) Less than 15 students in the VAAP; and 3) Division VAAP participation rate is less than or equal to two percent.
- Special Student Populations** - Your school division has a disproportionately high number of school, community, or health programs including group homes and foster care or adoptive parents that draw a large number of students with the most significant cognitive disabilities.
- Local Military Base** - A local military base includes your school division on its list of compassionate assignments, and a significant number of service members have children with significant cognitive disabilities enrolled in your school division
- Staff Knowledge** - Lack of knowledge of how to gather and analyze the appropriate data when making the decision for a student to participate in the VAAP.
- IEP Team** - The IEP Team lacked the necessary knowledge to effectively use the alternate assessment participation guidelines when defining a student as having a significant cognitive disability.
- Other (please specify)

8. **Justification Statement** - Based on the information above, provide written justification for the need to exceed one percent participation at the division level in the Virginia Alternate Assessment Program for the 2022-2023 administration. **This information will be made publicly available.** (250 word limit)

2022 Justification to Exceed One Percent Participation in the Virginia
Alternate Assessment Program (VAAP)

Assurances

9. **ASSURANCE STATEMENT** - Our division assures the following:

- The IEP Teams identified students with the most significant cognitive disabilities following state criteria and participation guidelines.
- Excessive absences; social, cultural, or economic differences; identification in a specific disability category; specific special education placement or services; anticipated scores on Standards of Learning tests; or concerns for accreditation calculations were not considered in the determination that the student will be assessed with the VAAP.
- Students participating in the VAAP have been instructed, at minimum, to address the Virginia Essentialized Standards of Learning (VESOL).
- Student IEPs include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the child meets the criteria for the alternate assessment; and how the child's participation in the VAAP will impact the child's promotion and/or graduation with a standard or advanced studies diploma; or other matters.
- There is written confirmation that IEP Teams informed parents of students with the most significant cognitive disabilities of the implications of participation in the alternate assessment.
- The division will seek to measure the achievement of at least 95 percent of all students, including students with disabilities in all grades for which assessment is required.
- There is written confirmation that the school division has no disproportionality in the percentage of students in any subgroup taking the alternate assessment, or if disproportionality does exist it has plans to address any disproportionality.

Yes

If no to assurances, then provide an explanation in field below.

2022 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program (VAAP)

Technical Assistance and Professional Development

10. How does the school division train staff utilizing the guideline for VAAP Participation Criteria and the Determination of Significant Cognitive Disabilities, and how often does this training take place?

11. After reviewing divisionwide data on participation rates in the alternate assessment, provide a summary of the school division's plan to provide professional development for staff. This may include but is not limited to training on assessment selection, alternate assessment, alternate content standards, and/or planning for specialized instruction.

12. Does your school division need the VDOE to provide resources or technical assistance to ensure students in your division are being assessed using the appropriate state assessment?

No

Yes (Please specify in space below.)

Comment

Virginia Alternate Assessment Program: School Division Assurances for Alternate Assessment Participation, 2022-2023

To justify the need to exceed the one percent cap on participation in the Virginia Alternate Assessment Program (VAAP), school divisions who anticipated exceeding the one percent cap on participation in the VAAP had to provide to the Virginia Department of Education assurances that the division followed the State's criteria and participation guidelines for the spring assessment window that opened on February 27, 2023, including that:

- IEP Teams identified students with the most significant cognitive disabilities following state criteria and participation guidelines;
- Excessive absences; social, cultural, or economic differences; identification in a specific disability category; specific special education placement or services; anticipated scores on Standards of Learning tests; or concerns for accreditation calculations were not considered in the determination that the student will be assessed with the VAAP;
- Students participating in the VAAP have been instructed, at minimum, to address the Virginia Essentialized Standards of Learning (VESOL);
- Student IEPs include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the child meets the criteria for the alternate assessment; and how the child's participation in VAAP will impact the child's promotion and/or graduation with a standard, or advanced studies diploma; or other matters;
- There is written confirmation that IEP Teams informed parents of students with the most significant cognitive disabilities of the implications of participation in the alternate assessment;
- The division will seek to measure the achievement of at least 95 percent of all students, including students with disabilities in all grades for which assessment is required; and
- There is written confirmation that it has no disproportionality in the percentage of students in any subgroup taking the alternate assessment, or if disproportionality does exist it has plans to address any disproportionality.

School Divisions that Anticipate VAAP Participation Rates to Be More than One Percent for the 2022-2023 Administration

SCHOOL DIVISION	PROVIDED ASSURANCES
Alleghany Highlands Public Schools	YES
Amelia County Public Schools	YES
Amherst County Public Schools	YES
Appomattox County Public Schools	YES
Augusta County Public Schools	YES
Bath County Public Schools	YES
Bedford County Public Schools	YES
Bland County Public Schools	YES
Botetourt County Public Schools	YES
Bristol Virginia Public Schools	YES
Brunswick County Public Schools	YES
Buchanan County Public Schools	YES
Buckingham County Public Schools	YES
Buena Vista City Public Schools	YES
Campbell County Public Schools	YES
Caroline County Public Schools	YES
Carroll County Public Schools	YES
Charles City County Public Schools	YES
Charlotte County Public Schools	YES
Charlottesville City Public Schools	YES
Chesapeake Public Schools	YES
Chesterfield County Public Schools	YES
Clarke County Public Schools	YES
Colonial Heights City Public Schools	YES
Culpeper County Public Schools	YES
Cumberland Public Schools	YES

SCHOOL DIVISION	PROVIDED ASSURANCES
Danville City Public Schools	YES
Dickenson County Public Schools	YES
Dinwiddie County Public Schools	YES
Essex County Public Schools	YES
Fauquier County Public Schools	YES
Floyd County Public Schools	YES
Fluvanna County Public Schools	YES
Franklin City Public Schools	YES
Franklin County Public Schools	YES
Frederick County Public Schools	YES
Fredericksburg City Public Schools	YES
Greensville County Public Schools	YES
Halifax County Public Schools	YES
Hampton City Public Schools	YES
Hanover County Public Schools	YES
Henrico County Public Schools	YES
Henry County Public Schools	YES
Hopewell City Public Schools	YES
Isle of Wight Public Schools	YES
King and Queen County Public Schools	YES
King George County Schools	YES
King William County Public Schools	YES
Lancaster County Public Schools	YES
Lee County Public Schools	YES
Lexington City Public Schools	YES
Louisa County Public Schools	YES
Lunenburg County Public Schools	YES
Lynchburg City Public Schools	YES
Madison County Public Schools	YES

SCHOOL DIVISION	PROVIDED ASSURANCES
Manassas Park City Public Schools	YES
Martinsville City Public Schools	YES
Mathews County Public Schools	YES
Mecklenburg County Public Schools	YES
Middlesex County Public Schools	YES
Nelson County Public Schools	YES
Newport News Public Schools	YES
Norfolk City Public Schools	YES
Northampton County Public Schools	YES
Norton City Public Schools	YES
Nottoway County Public Schools	YES
Orange County Public Schools	YES
Patrick County Public Schools	YES
Petersburg City Public Schools	YES
Pittsylvania County Public Schools	YES
Poquoson City Public Schools	YES
Portsmouth City Public Schools	YES
Prince Edward County Public Schools	YES
Prince William County Public Schools	YES
Pulaski County Public Schools	YES
Rappahannock County Public Schools	YES
Richmond Public Schools	YES
Roanoke City Public Schools	YES
Rockbridge County Public Schools	YES
Rockingham County Public Schools	YES
Russell County Public Schools	YES
Salem City Public Schools	YES
Scott County Public Schools	YES
Shenandoah County Public Schools	YES

SCHOOL DIVISION	PROVIDED ASSURANCES
Smyth County Public Schools	YES
Southampton County Public Schools	YES
Spotsylvania County Public Schools	YES
Stafford County Public Schools	YES
Staunton City Public Schools	YES
Suffolk Public Schools	YES
Surry County Public Schools	YES
Tazewell County Public Schools	YES
Virginia School for the Deaf and the Blind	YES
Washington County Public Schools	YES
Westmoreland County Public Schools	YES
Williamsburg-James City County Public Schools	YES
Winchester Public Schools	YES
Wise County Public Schools	YES
Wythe County Public Schools	YES
York County School Division	YES

School divisions' justification statements to exceed one percent participation in the Virginia Alternate Assessment Program (VAAP) are available upon request by email at spedinstruction@doe.virginia.gov.

From: [Hollins, Samantha](#)
To: [Banks, Kathleen](#)
Cc: [OESE.ESEA.Assessment](#); [Loving-ryder, Shelley](#)
Subject: Re: Virginia's Request for a Waiver for the 2022-2023 School Year for the Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)
Date: Tuesday, January 10, 2023 12:17:56 PM

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.

Thanks Kathy, see my responses below. I also have one follow up question for you, is there a requirement associated with the waiver that the Assurance and Justification form and/or responses to that form be made public on the agency website?

Thanks in advance for your review,
Sam



Samantha Marsh Hollins, PhD
Assistant Superintendent
Department of Special Education and Student Services
VIRGINIA DEPARTMENT OF EDUCATION
804.786.8079 | Samantha.Hollins@doe.virginia.gov

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On Tue, Jan 10, 2023 at 12:04 PM Banks, Kathleen <kathleen.banks@ed.gov> wrote:

Hi Samantha,

I have a follow-up question regarding VA's 1% cap waiver request.

1. If Cohort 2 districts receive monitoring what happens to districts in Cohorts 1 and 3 and 4 if there is a Cohort 4? *Divisions in those cohorts are also monitored. The number corresponds to a year-long process for monitoring. For example, Cohort 2 is monitored during the 2022-2023 school year.*
2. You stated that the Assurance and Justification form is not made available to the

public on VDOE's website. What about the district responses to the form are they made available to the public on VDOE's website or is there a statement on VDOE's website that the responses are available upon request? If there is a statement on VDOE's website please provide a link to the webpage. *The division responses are not posted on the website and there is no statement posted regarding them being available upon request.*

Kathy

From: Hollins, Samantha <samantha.hollins@doe.virginia.gov>
Sent: Tuesday, January 3, 2023 12:43 PM
To: OESE.ESEA.Assessment <ESEA.Assessment@ed.gov>
Cc: Loving-ryder, Shelley <shelley.loving-ryder@doe.virginia.gov>
Subject: Re: Virginia's Request for a Waiver for the 2022-2023 School Year for the Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)

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.

Kathy,

Thank you for your email and your patience with my response. Please see the below and let me know if you have any questions or require additional information.

Sincerely,

S. Hollins

1. Please provide a copy of your State's Assurances and Justification form. (*see attached*)

2. Indicate whether the form is made available to the public on VDOE's website. *(the form is not made available to the public)*
3. Indicate who signs the form and when it's due to VDOE. *(there is no signature required)*
4. Can you please explain to me how districts are classified into Cohort 2 for monitoring and technical assistance? Also, is there a Cohort 1 and Cohort 3? If so, how are districts classified into those cohorts? *(the "cohort" refers divisions listed each year to undergo cyclical federal program monitoring as required by the Individuals with Education Act (IDEA) see additional detail below)*

The educational entities (LEAs and other educational facilities) have been grouped into a 5 year review cycle based on their review year. However, the list is fluid based on information received from a variety of sources to include the following: parent concerns or inquiries; public media; a history of self-reporting noncompliance; special education complaints; annual local determinations; information reported during previous monitoring reviews; due process findings; inaccurate financial reporting; issues/concerns and data from other VDOE divisions; parent advocacy groups; and other governmental agencies.



Samantha Marsh Hollins, PhD

Assistant Superintendent

Department of Special Education and Student Services

VIRGINIA DEPARTMENT OF EDUCATION

804.786.8079 | Samantha.Hollins@doe.virginia.gov

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wrote:

Hi Samantha,

I have one more question regarding your State's 1% wavier request.

Can you please explain to me how districts are classified into Cohort 2 for monitoring and technical assistance?

Also, is there a Cohort 1 and Cohort 3? If so, how are districts classified into those cohorts?

Kathy

From: OESE.ESEA.Assessment <ESEA.Assessment@ed.gov>
Sent: Friday, December 30, 2022 2:55 PM
To: Hollins, Samantha <samantha.hollins@doe.virginia.gov>; OESE.ESEA.Assessment <ESEA.Assessment@ed.gov>
Cc: Loving-ryder, Shelley <shelley.loving-ryder@doe.virginia.gov>
Subject: RE: Virginia's Request for a Waiver for the 2022-2023 School Year for the Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)

Hi Samantha,

I am writing to ask for additional evidence on you State's 1% waiver request.

1. Please provide a copy of your State's Assurances and Justification form.
2. Indicate whether the form is made available to the public on VDOE's website.
3. Indicate who signs the form and when it's due to VDOE.

Kathy

From: Hollins, Samantha <samantha.hollins@doe.virginia.gov>
Sent: Tuesday, November 29, 2022 3:16 PM
To: OESE.ESEA.Assessment <ESEA.Assessment@ed.gov>
Cc: Loving-ryder, Shelley <shelley.loving-ryder@doe.virginia.gov>
Subject: Virginia's Request for a Waiver for the 2022-2023 School Year for the Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)

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Please see attached for Virginia's application.



SAMANTHA MARSH HOLLINS, PH.D.
ASSISTANT SUPERINTENDENT
DEPARTMENT OF SPECIAL EDUCATION & STUDENT SERVICES
DIVISION OF SCHOOL QUALITY, INSTRUCTION AND PERFORMANCE
VIRGINIA DEPARTMENT OF EDUCATION

SESS

804.786.8079 | samantha.hollins@doe.virginia.gov

From: [Hollins, Samantha](#)
To: [OESE.ESEA.Assessment](#)
Cc: [Loving-ryder, Shelley](#)
Subject: Re: Virginia's Request for a Waiver for the 2022-2023 School Year for the Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)
Date: Tuesday, January 3, 2023 12:42:54 PM
Attachments: [2022 Justification Survey\(v3\).pdf](#)

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.

Kathy,

Thank you for your email and your patience with my response. Please see the below and let me know if you have any questions or require additional information.

Sincerely,
S. Hollins

1. Please provide a copy of your State's Assurances and Justification form. *(see attached)*
2. Indicate whether the form is made available to the public on VDOE's website. *(the form is not made available to the public)*
3. Indicate who signs the form and when it's due to VDOE. *(there is no signature required)*
4. Can you please explain to me how districts are classified into Cohort 2 for monitoring and technical assistance? Also, is there a Cohort 1 and Cohort 3? If so, how are districts classified into those cohorts? *(the "cohort" refers divisions listed each year to undergo cyclical federal program monitoring as required by the Individuals with Education Act (IDEA) see additional detail below)*

The educational entities (LEAs and other educational facilities) have been grouped into a 5 year review cycle based on their review year. However, the list is fluid based on information received from a variety of sources to include the following: parent concerns or inquiries; public media; a history of self-reporting noncompliance; special education complaints; annual local determinations; information reported during previous monitoring reviews; due process findings; inaccurate financial reporting; issues/concerns and data from other VDOE divisions; parent advocacy groups; and other governmental agencies.

Samantha Marsh Hollins, PhD
Assistant Superintendent



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On Tue, Jan 3, 2023 at 12:16 PM OESE.ESEA.Assessment <ESEA.Assessment@ed.gov> wrote:

Hi Samantha,

I have one more question regarding your State's 1% wavier request.

Can you please explain to me how districts are classified into Cohort 2 for monitoring and technical assistance?

Also, is there a Cohort 1 and Cohort 3? If so, how are districts classified into those cohorts?

Kathy

From: OESE.ESEA.Assessment <ESEA.Assessment@ed.gov>

Sent: Friday, December 30, 2022 2:55 PM

To: Hollins, Samantha <samantha.hollins@doe.virginia.gov>; OESE.ESEA.Assessment <ESEA.Assessment@ed.gov>

Cc: Loving-ryder, Shelley <shelley.loving-ryder@doe.virginia.gov>

Subject: RE: Virginia's Request for a Waiver for the 2022-2023 School Year for the Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)

Hi Samantha,

I am writing to ask for additional evidence on you State's 1% waiver request.

1. Please provide a copy of your State's Assurances and Justification form.
2. Indicate whether the form is made available to the public on VDOE's website.
3. Indicate who signs the form and when it's due to VDOE.

Kathy

From: Hollins, Samantha <samantha.hollins@doe.virginia.gov>

Sent: Tuesday, November 29, 2022 3:16 PM

To: OESE.ESEA.Assessment <ESEA.Assessment@ed.gov>

Cc: Loving-ryder, Shelley <shelley.loving-ryder@doe.virginia.gov>

Subject: Virginia's Request for a Waiver for the 2022-2023 School Year for the Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)

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Please see attached for Virginia's application.



SESS

SAMANTHA MARSH HOLLINS, PH.D.

ASSISTANT SUPERINTENDENT

DEPARTMENT OF SPECIAL EDUCATION & STUDENT SERVICES

DIVISION OF SCHOOL QUALITY, INSTRUCTION AND PERFORMANCE

VIRGINIA DEPARTMENT OF EDUCATION

804.786.8079 | samantha.hollins@doe.virginia.gov

From: [Hollins, Samantha](#)
To: [Banks, Kathleen](#)
Subject: Re: Virginia's Request for a Waiver for the 2022-2023 School Year for the Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)
Date: Tuesday, January 10, 2023 6:59:48 PM
Attachments: [image001.png](#)
[image.png](#)
[image.png](#)
[Virginia Alternate Assessment Program- School Division Assurances for Alternate Assessment Participation 2022-2023.pdf](#)

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.

Also see attached and let me know if you have any additional questions.

Thanks again,
Sam



Samantha Marsh Hollins, PhD
Assistant Superintendent
Department of Special Education and Student Services
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On Tue, Jan 10, 2023 at 6:57 PM Hollins, Samantha <samantha.hollins@doe.virginia.gov> wrote:

Kathy,

Thank you so much for following up and for your additional questions and inquiries, it is greatly appreciated. A couple of items for follow-up;

1. Virginia fell short in SY 2021-2022 of the 95% ESSA requirement in the **All Students** category in math by 0.64%. Virginia did meet the 95% ESSA requirement for SWD in math.

2021-2022 Participation Rate Overall and for Students with Disabilities, by Content Area

Content Area	All Students Tested	All Students in the Tested Population	Participation Percent by Content Area	Students with Disabilities Tested	Students with Disabilities in the Tested Population	Participation Percent by Content Area
Reading	628,017	646,308	97.17%	86,911	89,775	96.81%
Math	608,179	644,545	94.36%	84,587	87,668	96.49%
Science	240,896	246,247	97.83%	31,963	33,473	95.49%

2. I apologize for misunderstanding, here is the link to where the school divisions' assurances are posted for each LEA that anticipates exceeding one percent participation in the Virginia Alternate Assessment Program (VAAP) for SY 2022-2023 and the statement notifying the public that justification statements to exceed one percent participation in the Virginia Alternate Assessment Program (VAAP) are available upon request. The PDF attachment is the same document that is posted to the VDOE website.

<https://www.doe.virginia.gov/teaching-learning-assessment/student-assessment/virginia-sol-assessment-program/virginia-alternate-assessment-program-vaap>

We had this information available for SY 2021-2022 from 9/1/2022 as well. Here is a screenshot for confirmation.

VAAP One Percent Waiver

The Every Student Succeeds Act (ESSA) requires states to ensure that the total number of students assessed in each subject using the alternate assessment based on alternate achievement standards (AA-AAAS) does not exceed one percent of the total number of all students in the state who were assessed. States that anticipate exceeding one percent in alternate assessment participation may submit a waiver request to the United States Department of Education (USED) 90 days before the beginning of the alternate assessment testing window. In addition, ESSA requires each school division to submit a justification when it anticipates testing more than one percent of students using the AA-AAAS. In Virginia, the AA-AAAS is known as the Virginia Alternate Assessment Program (VAAP).

Virginia's 2021-2022 documents are listed below.

- 2021-2022 Waiver Request (PDF)
- 2021-2022 USED Response Letter (PDF)
- 2021-2022 School Divisions Assurances (PDF)



Samantha Marsh Hollins, PhD
Assistant Superintendent
Department of Special Education and Student Services
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 804.786.8079 | Samantha.Hollins@doe.virginia.gov

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On Tue, Jan 10, 2023 at 3:16 PM Banks, Kathleen <kathleen.banks@ed.gov> wrote:

Hi Samantha,

Thank you for your answers to my additional questions.

Based on the information provided in the Virginia Department of Education's (VDOE's) 1% percent waiver extension request, the State **cannot be considered for Math** because it did not meet the 95% assessment participation requirement for this subject in SY 2021-2022.

The State **may be considered for R/LA and Science** if VDOE can provide evidence that it has included a statement on its website (maybe the alternate assessment webpage) stating that district responses to the *Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program Survey* is available upon request. VDOE does not have to use the exact language indicated here but some version that gets the message across.

Please let us know if VDOE can include such a statement on its website. If so, please send us a link to the statement.

Kathy

From: Banks, Kathleen

Sent: Tuesday, January 10, 2023 12:41 PM

To: Hollins, Samantha <samantha.hollins@doe.virginia.gov>

Cc: OESE.ESEA.Assessment <ESEA.Assessment@ed.gov>; Loving-ryder, Shelley <shelley.loving-ryder@doe.virginia.gov>; Peasley, Donald <Donald.Peasley@ed.gov>

Subject: RE: Virginia's Request for a Waiver for the 2022-2023 School Year for the Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)

Hi Samantha,

Yes the justifications are to be made available to the public. Below is a screenshot from

the Code of Federal Regulations (CFR) 200.6(c)(3)(i-iv). Notice that (iv) is about making the information publicly available.

So can you tell me where the information is made public on VDOE's website?

Kathy

(3) A State must -

- (i) Not prohibit an LEA from assessing more than 1.0 percent of its assessed students in any subject for which assessments are administered under § 200.2(a)(1) with an alternate assessment aligned with alternate academic achievement standards;
- (ii) Require that an 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 such an alternate assessment;
- (iii) Provide appropriate oversight, as determined by the State, of an LEA that is required to submit information to the State; and
- (iv) Make the information submitted by an LEA under paragraph (c)(3)(ii) of this section publicly available, provided that such information does not reveal personally identifiable information about an individual student.

From: Hollins, Samantha <samantha.hollins@doe.virginia.gov>

Sent: Tuesday, January 10, 2023 12:18 PM

To: Banks, Kathleen <kathleen.banks@ed.gov>

Cc: OESE.ESEA.Assessment <ESEA.Assessment@ed.gov>; Loving-ryder, Shelley <shelley.loving-ryder@doe.virginia.gov>

Subject: Re: Virginia's Request for a Waiver for the 2022-2023 School Year for the Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)

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Thanks Kathy, see my responses below. I also have one follow up question for you, is there a requirement associated with the waiver that the Assurance and Justification form and/or responses to that form be made public on the agency website?

Thanks in advance for your review,

Sam



Samantha Marsh Hollins, PhD

Assistant Superintendent

Department of Special Education and Student Services

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On Tue, Jan 10, 2023 at 12:04 PM Banks, Kathleen <kathleen.banks@ed.gov> wrote:

Hi Samantha,

I have a follow-up question regarding VA's 1% cap waiver request.

1. If Cohort 2 districts receive monitoring what happens to districts in Cohorts 1 and 3 and 4 if there is a Cohort 4? *Divisions in those cohorts are also monitored. The number corresponds to a year-long process for monitoring. For example, Cohort 2 is monitored during the 2022-2023 school year.*
2. You stated that the Assurance and Justification form is not made available to the public on VDOE's website. What about the district responses to the form are they made available to the public on VDOE's website or is there a statement on VDOE's website that the responses are available upon request? If there is a statement on VDOE's website please provide a link to the webpage. *The division responses are not posted on the website and there is no statement posted regarding them being available upon request.*

Kathy

From: Hollins, Samantha <samantha.hollins@doe.virginia.gov>
Sent: Tuesday, January 3, 2023 12:43 PM
To: OESE.ESEA.Assessment <ESEA.Assessment@ed.gov>
Cc: Loving-ryder, Shelley <shelley.loving-ryder@doe.virginia.gov>
Subject: Re: Virginia's Request for a Waiver for the 2022-2023 School Year for the Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)

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Kathy,

Thank you for your email and your patience with my response. Please see the below and let me know if you have any questions or require additional information.

Sincerely,

S. Hollins

1. Please provide a copy of your State's Assurances and Justification form. *(see attached)*
2. Indicate whether the form is made available to the public on VDOE's website. *(the form is not made available to the public)*
3. Indicate who signs the form and when it's due to VDOE. *(there is no signature required)*
4. Can you please explain to me how districts are classified into Cohort 2 for monitoring and technical assistance? Also, is there a Cohort 1 and Cohort 3? If so, how are districts classified into those cohorts? *(the "cohort" refers divisions listed each year to undergo cyclical federal program monitoring as required by the Individuals with Education Act (IDEA) see additional detail below)*

The educational entities (LEAs and other educational facilities) have been grouped into a 5 year review cycle based on their review year. However, the list is fluid based on information received from a variety of sources to include the following: parent concerns or inquiries; public media; a history of self-reporting noncompliance; special education complaints; annual local determinations; information reported during previous monitoring reviews; due process findings; inaccurate financial reporting; issues/concerns and data from other VDOE divisions; parent advocacy groups; and other governmental agencies.



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On Tue, Jan 3, 2023 at 12:16 PM OESE.ESEA.Assessment <ESEA.Assessment@ed.gov> wrote:

Hi Samantha,

I have one more question regarding your State's 1% waiver request.

Can you please explain to me how districts are classified into Cohort 2 for monitoring and technical assistance?

Also, is there a Cohort 1 and Cohort 3? If so, how are districts classified into those cohorts?

Kathy

From: OESE.ESEA.Assessment <ESEA.Assessment@ed.gov>
Sent: Friday, December 30, 2022 2:55 PM
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Cc: Loving-ryder, Shelley <shelley.loving-ryder@doe.virginia.gov>
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(AA-AAAS)

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