



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

TO: State Assessment Directors  
State Title I Directors  
State Special Education Directors

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SUBJECT: Information Regarding Consequences for States Not Meeting the Requirement to  
Assess Not More than 1.0 Percent of Students on the Alternate Assessment

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### Introduction

The purpose of this memorandum is to provide information regarding the implications for States not meeting the requirement, in Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), related to participation in an alternate assessment aligned with alternate academic achievement standards (AA-AAAS). The ESEA requires that only students with the most significant cognitive disabilities may take an AA-AAAS and limits the percentage of students that a State may assess with an AA-AAAS to no more than 1.0 percent of all students in the grades assessed in a State for each subject (reading/language arts, mathematics and science). This requirement took effect beginning with the 2017-18 school year (SY).

Since most States previously assessed more than 1.0 percent of students with the AA-AAAS, the Department understands that States may need time to adjust their systems to come into compliance. To support States in meeting the requirement, the ESEA allows States to seek a waiver. The Department established regulations that describe the requirements States must meet to be granted a waiver. The Department granted 23 States such a waiver for the 2017-18 SY.<sup>1</sup> In receiving these waivers, each State had to meet specific requirements set forth in the ESEA statute and regulations.<sup>2</sup> Specifically, each State receiving the waiver had to demonstrate that at least 95 percent of all students and 95 percent of all students with disabilities participated in the

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<sup>1</sup> DE, GA, ID, KY, MI, MS, MO, NE, NC, OH, OK, SD, TN, TX, WV, and WI each received waivers for reading/language arts, mathematics, and science; AZ, AR, IN, HI, LA, MA, and ND each received waivers for reading/language arts and mathematics.

<sup>2</sup> See <https://www2.ed.gov/admins/lead/account/saa/onepercentcapmemo51617.pdf> and <https://www2.ed.gov/admins/lead/account/saa/ossstateassessmentltr.pdf>.

required assessments. These States also provided the Department assurances and detailed plans on how they would work with local educational agencies (LEAs) to reduce the rates of students participating in AA-AAAS.

We encourage States that received a waiver to make readily and publicly available the State's plan for reducing the percentage of students assessed on the AA-AAAS so that parents, stakeholders, and the public are aware of the State's actions and progress in implementing their plans.

In addition, we want to remind all States of the requirement in 34 CFR 200.6(c)(3)(iv) to make the information submitted by an LEA justifying the need to assess more than 1.0 percent of its students with an AA-AAAS publicly available, provided that such information does not reveal personally identifiable information about an individual student.

### Technical Assistance

The Department understands that this new requirement necessitates robust engagement with LEAs and community members and may require an update to your AA-AAAS guidelines. To support the effort, the Department has been providing technical assistance. Last October, the National Center on Educational Outcomes (NCEO) hosted a convening, in partnership with OSEP and OSSA, "Supporting States in Implementing ESSA's 1.0 Percent State-Level Cap on Participation of Students in the AA-AAAS." NCEO and the Center on Standards and Assessment Implementation (CSAI) published a document summarizing the convening, "Proceedings of the 1% Cap National Convening", which is available at:

[1PercentNationalConveningProceedings.pdf](#). This document includes links to video clips of the plenary presentations as well as resources that were shared by States and others.

Additionally, NCEO and CSAI are hosting three Peer Learning Groups (PLGs) on topics that States identified at the convening:

- Digging into Your Data: Building a One Percent Data Analysis and Use Plan
- Guiding and Evaluating District Justifications for Exceeding the One Percent Cap
- Building Capacity of IEP Teams and Parents in Making Decisions about Assessment Participation

### Consequences for Exceeding the Cap

If a State did not receive a waiver for the 2017-18 SY and assessed more than 1.0 percent of assessed students in reading/language arts, mathematics, and/or science, in the State with the AA-AAAS, the State is out of compliance with ESSA. Based on the State's context and information, such as the extent to which the State exceeded the 1.0 percent cap, the Department will consider one of the following actions:

1. Sending a letter notifying the State that it has assessed more than 1.0 percent of tested students with an AA-AAAS and requiring the State to submit a plan to come into compliance with the 1.0 percent cap.
2. Placing a condition on the State's Title I Part A grant award. As part of the condition, a State would be required to submit a plan to assess no more than 1.0 percent of students with an AA-AAAS in each subject.
3. Imposing high risk status on the State's Title I Part A grant award. A State with such a high risk status would be required to submit a plan to come into compliance with the 1.0

percent cap and to participate in joint OESE/OSEP monitoring calls while the State works to meet the requirement.

4. Withholding Title I Part A State administrative funds. If the Department withholds funds, a State would be required to submit a plan to come into compliance with the 1.0 percent cap and participate in joint OESE/OSEP monitoring calls while they work to come into compliance.

When determining which of these consequences to apply, the Department will consider multiple factors, including **the extent** to which a State assessed more than 1.0 percent of tested students with an AA-AAAS (e.g., a rate of 1.2 percent compared to a rate of 2.5 percent); and the State’s **improvement over time** in reducing participation of students in alternate assessments.

The Department established the following framework for classifying consequences for State noncompliance with the 1.0 percent cap on AA-AAAS participation, which will guide our actions this year and in future years. This framework considers the complexity States face in addressing rates of AA-AAAS participation and takes into account the amount of time that may be necessary for States to make the changes to come into compliance with this new requirement. Accordingly, the most severe consequences are not contemplated until after the 2019-20 SY and then only if the State has not demonstrated improvement in reducing AA-AAAS participation rates.

<b>Classification Criteria</b>	<b>Consequence for State</b>
<p>Between <b>1.0-1.3 percent</b> of students assessed with an AA-AAAS in at least one subject without a waiver and the State would have been eligible for (i.e., assessed at least 95 percent of all students and students with disabilities in the previous year), but did not request, a waiver.</p>	<p>Notification letter and a State is required to submit a plan for compliance with the requirement.</p>
<p>Between <b>1.0-1.3 percent</b> of students assessed with an AA-AAAS in at least one subject without a waiver. The State would not have been eligible for a waiver request because assessment participation rates in that subject for all students or students with disabilities were below 95 percent.</p> <p>OR</p> <p>More than 1.3 percent of students assessed with an AA-AAAS in at least one subject without a waiver.</p> <p>OR</p> <p>State received a <b>notification letter</b> in the preceding year and did not come into compliance by reducing the AA-AAAS participation rate below 1.0 percent.</p>	<p>Title I Part A grant award condition. As part of the condition, a State is required to submit a plan to come into compliance with the 1.0 percent cap and submit data via <i>EDFacts</i> for the 2018-19 SY by October 1, 2019.</p>

<b>Classification Criteria</b>	<b>Consequence for State</b>
State received a Title I grant condition in the preceding year and did not make progress in decreasing the AA-AAAS participation rate by at least 0.1 percent.	High-risk status for the Title I Part A grant award. A State with high-risk status would be required to submit a plan to come into compliance with the 1.0 percent cap and participate in joint OESE/OSEP monitoring calls until it meets the requirement.
State was on high-risk status or had Title I administrative funds withheld in the preceding year and did not make progress in decreasing the AA-AAAS participation rate by at least 0.1 percent.	Withhold a percentage of Title I Part A State administrative funds. A State would be required to submit a plan to come into compliance with the requirement and participate in joint OESE/OSEP monitoring calls while until it meets the requirement.

States with requests for technical assistance, or with questions about these consequences or the process to request a waiver, should contact their Office of School Support and Accountability contacts at: OSS.[State]@ed.gov (e.g., OSS.Nebraska@ed.gov) and their Office of Special Education Programs State Leads.

Thank you for your continued commitment to our nation’s students.