



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable MaryEllen Elia  
Commissioner of Education  
New York State Education Department  
89 Washington Avenue, Room 111  
Albany, NY 12234

Dear Commissioner Elia:

I am writing regarding the New York State Education Department's (NYSED) percentage of students taking the alternate assessment based on alternate academic achievement standards (AA-AAAS). The Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), limits the percentage of students that a State may assess with an AA-AAAS to no more than 1.0 percent of all assessed students in the grades assessed in a State for each subject. The U.S. Department of Education (Department) recognizes that this is a new requirement starting in the 2017-2018 school year and that most States previously assessed more than 1.0 percent of students with the AA-AAAS. We understand that a State may need time to adjust its systems to reduce its AA-AAAS participation rate. The ESEA and the Department's regulations lay out the requirements for a State seeking a waiver as it works to meet this new requirement, as laid out in a memorandum to States on August 27, 2018 (available at: [www2.ed.gov/admins/lead/account/saa/ossstateassessmentltr.pdf](http://www2.ed.gov/admins/lead/account/saa/ossstateassessmentltr.pdf)). The Department granted 23 States such a waiver for school year 2017-2018.<sup>1</sup>

While there is a limit on the percentage of students statewide who may take the AA-AAAS, there is no such limit among local educational agencies (LEAs). However, 34 CFR 200.6(c)(3)(ii) and (iv) requires that an LEA submit information justifying the need to assess more than 1.0 percent of its students in any subject with an AA-AAAS and the State must make that information publicly available, provided that such information does not reveal personally identifiable information about an individual student.

NYSED submitted information to the Department via *EDFacts*, as of March 25, 2019, that indicated the percentage of all tested students assessed with an AA-AAAS in 2017-2018 statewide:

**Reading/language arts:** 1.75% **Mathematics:** 1.74% **Science:** 1.56%

### Consequences for Exceeding the Cap

Because NYSED had rates of AA-AAAS participation that were relatively high in reading/language arts, mathematics, and science (i.e., rates greater than 1.3%) without a waiver, the Department will be placing a grant condition on the State's fiscal year 2019 Title I, Part A award. This condition will require that the State submit must submit a plan for reducing your rate of AA-AAAS participation in future years in order to come into compliance with the 1.0 percent requirement. Please submit this plan by email to the Department at [ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov) by August 1, 2019. The State must also submit assessment participation data (including AA-AAAS participation) via EDFacts for the 2018-2019 school year by October 1, 2019.

The condition will read as follows:

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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.

The New York State Education Department (NYSED) reported alternate assessment based on alternate academic achievement standards (AA-AAAS) data for the 2017-2018 school year indicating rates of AA-AAAS participation that were relatively high in reading/language arts, mathematics, and science (i.e., rates greater than 1.3%). NYSED is therefore out of compliance with the requirement of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA) that limits the percentage of students that a State may assess with an AA-AAAS to no more than 1.0 percent of all assessed students in the grades assessed in a State for each subject.

The NYSED's grant award is subject to the following requirements:

- By no later than August 1, 2019, the NYSED must provide a plan for how the State will come into compliance with the 1.0 percent requirement.
- The NYSED must demonstrate that it made progress in reducing the participation of students on alternate assessments in the 2018-2019 school year by submitting data on participation on these assessments to *EDFacts* by no later than October 1, 2019.

If this condition is not resolved in a timely manner, the Department may request additional information, revise this condition to require further action, or provide notice of its intent to take further administrative action.

Please note that consequences in future years may be more severe if the State continues to have an AA-AAAS participation rate over 1.0 percent. Based on the State's context and information, the Department may consider taking one of the following actions:

1. 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 monitoring calls with the Office of Special Education and Rehabilitation Services (OSERS) and the Office of Elementary and Secondary Education (OESE) while the State works to meet the requirement.
2. 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/OSERS monitoring calls while they work to come into compliance.

#### Technical Assistance

The Department continues to support your work to meet this new requirement. In October, the Department hosted a convening, "Supporting States in Implementing ESSA's 1.0 Percent State-Level Cap on Participation of Students in the AA-AAAS." A summary of the event is available at: [1PercentNationalConveningProceedings.pdf](https://nceo.umn.edu/docs/OnlinePubs/NCEO_CSAI_CapProceedings_508compliance_042619.pdf) (available at [https://nceo.umn.edu/docs/OnlinePubs/NCEO\\_CSAI\\_CapProceedings\\_508compliance\\_042619.pdf](https://nceo.umn.edu/docs/OnlinePubs/NCEO_CSAI_CapProceedings_508compliance_042619.pdf)), including links to video clips of the plenary presentations as well as resources that were shared by States and others.

Additionally, because we know this work requires robust engagement with LEAs and community members and may require you to update your AA-AAAS guidelines, as a continued step to support implementation, the Department is supporting work by the National Center on Educational Outcomes (NCEO) and the Center on Standards and Assessment Implementation (CSAI) to host three Peer Learning Groups (PLGs) on topics that States identified at the conference:

- 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

If you have questions about the 1.0 Percent PLGs, please contact Susan Hayes, NCEO, at [shayes@wested.org](mailto:shayes@wested.org) or (802) 951-8210. If you are interested in joining NCEO's broader Community of Practice related to the AA-AAAS, please contact NCEO's Kathy Strunk at [kstrunk@umn.edu](mailto:kstrunk@umn.edu) or (615) 300-6217.

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

Sincerely,

/s/

Frank T. Brogan  
Assistant Secretary for  
Elementary and Secondary Education