

# Addressing the 1% Cap and Waiver Requests through Data Analyses



**NCEO**

National Center on  
Educational Outcomes



NCEO is supported through a cooperative agreement between the University of Minnesota, National Center on Educational Outcomes (NCEO) (#H326G160001) and the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Office of Special Education Programs. The materials do not necessarily reflect the position or policy of the U.S. Department of Education or Offices within it.

**Project Officer: David Egnor**

# Objectives

1. Share annual performance report data on participation rates in the AA-AAS (Yi-Chen Wu)
2. Share state student-level data on participation in the AA-AAS (John Jaquith)
3. To review what ESSA says about the 1% cap on participation in the alternate assessment (AA-AAS) and the provisions in regulation for requesting a waiver (Martha Thurlow)
4. Discuss from a state perspective (Jennifer Dugan)

# ESSA Participation Requirement

- ESSA changed 1% cap to be based on the **participation rate** rather than the proficient rate.
- ESSA placed the 1% cap on the **state** participation rate for **each content area**, based on the total number of all students in the state assessed in the content area.

# ESSA Participation Requirement – cont.

- States cannot place a cap on participation rates of districts.
- State must make LEA data publicly available (as long as no PII is shown).
- LEAs exceeding the cap must submit information justifying the need to exceed the cap and the state must provide oversight of district.

# ESSA Participation Requirement – cont.

- Parents of students being considered for participation in the alternate assessment (as part of the IEP process) must be clearly informed:
  - That their child's academic achievement will be measured based on alternate achievement standards.
  - How participation in the alternate assessment may delay or otherwise affect completing requirements for a regular high school diploma.

# ESSA Waiver Provisions

- State can apply for a waiver from the 1% cap.
- **Assessment regulations** now in force lay out specific things that state must do if it plans to request a waiver, including:
  - Submitting the waiver request 90 days before testing window starts
  - Providing data
  - Providing assurances
  - Providing plan and timeline
  - Addressing disproportionality

# ESSA Waiver Provisions – cont.

- **Data requirements**, at minimum:
  - Number and percentage of each subgroup of students who took the alternate assessment
  - Data showing that at least 95% of all students and 95% of students with disabilities participated in the assessments in the subject area for which a waiver is requested

**Note:** These state-level data can be from the current year or the previous year

# ESSA Waiver Provisions – cont.

- **Assurances to be provided:**
  - Each LEA expected to exceed the 1% cap followed each of the state's guidelines for assessment participation.
  - These LEAs will address any disproportionality in students taking the alternate assessment.

Note: Assessment regulations also require that states provide guidelines for IEP teams to use in determining whether a student will take an alternate assessment. The guidelines must include a **state definition** of “students with the most significant cognitive disabilities” (must address factors related to **cognitive** functioning and **adaptive** behaviors).



# ESSA Waiver Provisions – cont.

- **Plan and timeline by which:**
  - State will improve implementation of its participation guidelines (and review and revise its definition of “student with the most significant cognitive disability” if needed so that cap will be met in the future).
  - State will provide support and oversight to each LEA that is anticipated to assess more than 1%.
  - State will monitor and regularly evaluate each of these LEAs.

# ESSA Waiver Provisions – cont.

- **Plan and timeline by which:**
  - State will **address any disproportionality** in the percentage of students taking an alternate assessment that was identified in the data provided.

**In other words, requesting a waiver requires a thoughtful process in the state.**

# Waiver Requests for 2017-18

As of mid June, **approvals** were as follows (based on posted U.S. Department of Education letters):

Reading/Language Arts – 23 of 26 (1 of these had limited approval)


Mathematics – 23 of 26 (1 had limited approval)

Science – 16 of 22 (1 had limited approval)

Primary reason for denial: Failure to meet 95% participation requirement

# Most states using strategies similar to those in NCEO Brief 12


NCEO Brief Number 12 • April 2017



**Strategies for Meeting the 1% State-level Cap on Participation in the Alternate Assessment**

States have been implementing alternate assessments for more than 15 years. These assessments were first identified in the Individuals with Disabilities Education Act (IDEA) reauthorization of 1997, with implementation required by the year 2000.

The purpose and nature of alternate assessments have evolved since the time when they were first required. Likewise, participation in alternate assessments has increased over time. In 2003, regulations for the Elementary and Secondary Education Act (ESEA) reauthorization of 2001 allowed for proficient performance on alternate achievement standards to be counted in with proficient performance on grade-level achievement standards.



*Strategies for Meeting the 1% Cap on Participation in the State Alternate Assessment, on the NCEO website at*

<https://nceo.umn.edu/OnlinePubs/NCEOBrief12OnePercentCap.pdf>

Now that 2017-18 is essentially over ....

What do states need to submit if they have not yet met the 1% cap requirement?

# Language from the Regulations

Further, should a State request a waiver for an additional year, under § 200.6(c)(4)(v) the Department expects to see **substantial progress** towards the State's plan and timeline for meeting the requirement to assess no more than 1.0 percent of students with an AA–AAAS.

# Language from the Regulations

With regard to the request to address the steps a State should take absent an approved waiver, the Department notes that it maintains general enforcement authority, as it does with any ESEA violation.