



NCEO Tool 1

Developing a 1% Cap Waiver or Waiver Extension Request

1% Toolkit

Developing a 1% Cap Waiver or Waiver Extension Request

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Project Officer: David Egnor



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This Tool was developed through a truly collaborative process with the 44 states participating in the 1% Cap CoP during its bi-weekly webinar calls in 2018. Although the CoP was formed at the request of states to be for private state conversations, it was with mutual agreement that this report should be shared publicly on the NCEO website.¹ Several states agreed that their state's information could be included in the report.

The states participating are listed here. Many of the states had multiple representatives on the webinar calls. This report would not exist had it not been for their active participation and sharing during the CoP calls.

Alabama
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Nebraska
New Hampshire
New Jersey

¹ CoP members agreed to share the version of the report that was available at the end of February, 2019. On March 28, 2019, OESE and OSERS sent guidance titled "Information Regarding Consequences for States Not Meeting the Requirement to Assess Not More Than 1.0 Percent of Students on the Alternate Assessment" to state assessment and Title I directors. It described consequences for states that did not receive a waiver for the 2017-18 school year and assessed more than 1.0 percent of assessed students in a subject area with the AA-AAAS. Detailed information about consequences is not included in this report.

New Mexico
North Dakota
Ohio
Oklahoma
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

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Developing a 1% Cap Waiver or Waiver Extension Request

Introduction

The Every Student Succeeds Act allows for states to request a waiver from the 1% cap on participation requirement. Requirements for what states are to submit in their waiver requests were described in regulation (§200.6(c)(4)). The regulation also described what states were to do if they needed to submit a request for an extension of their waiver (see Appendix A for regulation language). Information about procedures for a state that wants to seek a waiver of the 1.0 percent cap is also provided in a letter from OESE and OSERS to state assessment directors, state Title I directors, and state special education directors on May 16, 2017 (see Appendix A).

These requirements are described in this Tool, along with **state examples** to exemplify how states responded to each requirement. The 2017-18 school year was the first year that states submitted their waiver requests, and not all states submitted requests. Examples included in this Tool were provided to NCEO by states; states are not required to post their final waiver requests (although they are required to obtain stakeholder input on their plans). The U.S. Department of Education does not post states' waiver requests, but does post the Department's responses to states' requests (see <https://www2.ed.gov/admins/lead/account/stateplan17/waivers/index.html>). Both initial waiver requests and continuation requests are presented in this Tool. In addition, following these two sections, the Tool includes a section on Additional Considerations (reporting on stakeholder involvement; addressing approaches to take when the participation requirement for requesting a waiver is not met; and resources on opting out of testing).

The format of waiver requests is open. Some states submit them in the form of a letter to the U.S. Department of Education whereas others provide a waiver request document with a cover letter. Regardless of the approach, all of the waiver request requirements must be addressed. A possible alternate format for a waiver request, one that aligns with the approach taken by the U.S. Department of Education peer review guidance, is included in Appendix B. The Office of Elementary and Secondary Education advises that waiver and waiver extension requests may be emailed to: ESEA.Assessment@ed.gov.

Initial Waiver Requests

Four basic requirements are to be covered in a state's submission of an initial 1% cap waiver request. For each of these, this Tool includes a general description of the requirement and state examples of how the requirement was met.

Requirement 1 (§200.6(c)(4)(i)): Submit the waiver request at least 90 days before testing window starts for the relevant subject.

To address this requirement, a state typically confirms the dates of its testing windows (by subject area), and documents that it is requesting its waiver at least 90 days before that, for the subject area for which the request is made. For example, the Ohio Department of Education's waiver request stated:

Ohio's assessment window for the Alternate Assessment for Students with Significant Cognitive Disabilities (AASCD) is open from Feb. 20, 2018, through April 13, 2018. Ninety days prior to the start of Ohio's testing window (Nov. 20, 2017), the Department will submit a waiver request to the United States Department of Education in each of the subject areas listed above [Reading, Math, and Science].²

Some states provide multiple opportunities for students with significant cognitive disabilities to take the alternate assessment. In these cases, the final testing window is considered the summative alternate assessment testing window, and 90 days prior to that window is identified as the critical date for submission of a waiver request. For example, Arkansas tests throughout the year for instructional purposes, but considers its spring testing window to be the summative alternate assessment that is used for ESEA accountability. In its initial waiver request, the Arkansas Department of Education stated:

The ADE will submit a waiver request to the U.S. Department of Education 90 days prior to the start of Arkansas's first testing window for its alternate assessment in the areas it was over 1%. The subject areas are literacy and mathematics. The assessment start date for each subject will be March 19, 2018.³

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% of all students and students with disabilities enrolled in the grades for which the AA-AAAS is required. It is important to note that Requirement 2 has two different approaches to subgroups. For (A), data for *all subgroups* must be provided, while for (B) the only subgroup for which data are to be provided is the *students with disabilities subgroup* (which must be provided along with the data for the all students group).

(A) Data on participation in AA-AAAS in subject area by subgroup are most easily provided in tabular format. For example, the Idaho State Department of Education provided all the data needed to see how the percentage participating in the alternate assessment was calculated; it did this for each subject area for which a waiver was requested and included data by subgroup and overall. It also clarified (in a footnote to the table) that the data presented were those that had been submitted to EDFacts:

² Ohio Department of Education, *One Percent Waiver Request for Reading, Mathematics and Science* (Jan 24, 2018).

³ Arkansas Department of Education, *Waiver of 34 C.F.R. §200.6(c)(2) for the 2017-2018 school year* (no date).

Table 1: Alternate Assessment Participation Rates for Reading/Language Arts in 2016-17

Student Sub-Group	# Students Participating in Regular Assessment	# Students Participating in Alternate Assessment	Total # Students Assessed	Percentage Participating in Alternate Assessment
All Students	158,722	1,916	160,638	1.19%
American Indian or Alaska Native	1,857	56	1,913	2.93%
Asian	1,927	33	1,960	1.68%
Native Hawaiian or Other Pacific Islander	473	5	478	1.05%
Black or African American	1,773	41	1,814	2.26%
Hispanic or Latino	28,938	395	29,333	1.35%
White	119,603	1,332	120,935	1.10%
Two or more races	4,151	54	4,205	1.28%
Children with Disabilities	14,897	1,916	16,813	11.40%
Limited English Proficient (LEP)	7,944	174	8,118	2.14%
Economically Disadvantaged	80,948	1,317	82,265	1.60%
Migratory Students	1,562	14	1,576	0.89%
Male	81,155	1,196	82,351	1.45%
Female	77,567	720	78,287	0.92%

NOTE: Data submitted to EDFacts.⁴

(B) Data showing 95% participation overall and for students with disabilities subgroup can be confirmed either in text or in a table. An example of a text-based approach is seen in the waiver request of the Indiana Department of Education:

To date, Indiana has met or exceeded the federal guidelines set at 95% participation rate of all students. For the 2016-17 school year [the state's] participation rate for students with disabilities was 97.2 % in English/Language Arts and 97.8% in Math.⁵

⁴ Idaho State Department of Education, *Idaho One Percent Cap Waiver Request* (Rev Jan 23, 2018).

⁵ Indiana Department of Education, *(IDOE) is seeking a waiver for all subject areas for the 2017-2018 school year* (Oct. 16, 2017).

An example of a tabular approach is the one provided by the Ohio Department of Education:⁶

TABLE 2: Participation Rate of All Students and Students with Disabilities (Grades 3-8 and High School)

Content area	Students tested	Students required to test	Percent achievement measured for all students	Students with disabilities tested	Students with disabilities required to test	Percent achievement measured for students with disabilities
Reading	1,036,658	1,046,446	99.1%	154,219	156,389	98.6%
Math	991,127	999,199	99.2%	149,968	152,242	98.5%
Science	396,935	401,858	98.8%	59,437	60,704	97.9%

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 1.0 percent followed the State’s participation guidelines is provided in text that indicates the number of districts and evidence that they followed the guidelines. An example of how this could be done is evident in the Wisconsin Department of Public Instruction section on Assurances, as follows:

In analyzing the data..., the WI DPI identified 211 out of 426 local educational agencies (LEAs) that would exceed the 1.0 percent participation cap in any subject for which the DLM is administered.... The department required all LEAs receiving the notice to submit a verification form to the department that included the following assurances:

1. The IEP teams correctly identified students with the most significant cognitive disabilities following state criteria and participation guidelines (See Attachment 5);
2. The LEA will measure the achievement of at least 95 percent of all students, including students with disabilities in all grades for which assessment is required;
3. Students who will be participating in the DLM have been instructed according to the Wisconsin Essential Elements, the state’s alternate curriculum aligned to the alternate achievement standards;

⁶ Ohio Department of Education, One Percent Waiver Request for Reading, Mathematics and Science (Jan. 24, 2018).

4. The LEA will inform parents of students with the most significant cognitive disabilities that the student will participate in the DLM and will inform parents of the implications of participation in the DLM; and
5. The LEA will address any disproportionality in the percentage of students in any subgroup taking the DLM.⁷

The Kentucky Department of Education provided information on its approach, which included requesting written assurances from districts in which more than 1.0% were assessed in the alternate assessment:

Local district data was reviewed and analyzed. There were 94 of 173 districts that assessed more than one percent of its assessed students with an AA-AAAS during the 2015-16 school year. KDE's Division of Learning Services (DLS) has reached out to each district with a participation rate greater than one percent and requested written assurances that each Individual Education Program (IEP) Team, known in Kentucky as the Admissions and Release Committee (ARC), in the district is following *the Alternate Assessment Participation Guidelines* when making assessment participation decisions. The correspondence sent to the local districts is included in *Attachment 6*.⁸

The Arizona Department of Education made special mention of its participation in the Multi-State Alternate Assessment which has developed materials and processes in support of assuring districts over 1.0 percent followed the state's participation guidelines.

It should be noted that Arizona is a Multi-State Alternate Assessment state which has collaboratively developed Participation Guidance and support materials for MSAA states. The MSAA participation guidance includes a definition of students with the most significant cognitive disabilities, currently addressing both cognitive functioning and adaptive behavior.⁹

(B) Assurance that any disproportionality in students taking the AA-AAAS will be addressed can be provided through text that describes the approach the state is taking. For example, the Indiana Department of Education provided the following information about how *disproportionality* would be identified, and what districts would be required to do:

Districts will be required to address disproportionality among subgroups of students participating in ISTAR beginning in the fall of 2018.

⁷ Wisconsin Department of Public Instruction, *Pursuant to 34 C.F.R. § 200.6(c)(4) and section 8401(b) of ESSA, this letter is to request a waiver for the Wisconsin Department of Public Instruction (WI DPI) from the 1.0 percent cap on students taking the state's AA-AAAS known as the Dynamic Learning Maps assessment (DLM)* (Sept. 23, 2017).

⁸ Kentucky Department of Education, *Pursuant to 34 C.F.R. §200.6(c)(4), the Kentucky Department of Education (KDE) is seeking a waiver for all subject areas for the 2017-2018 school year* (Aug. 7, 2017).

⁹ Arizona Department of Education, *Pursuant to 34 C.F.R. §200.6(c)(4), the Arizona Department of Education (ADE) will seek a waiver for the 2017-2018 school year from the Secretary of the United States Department of Education* (Nov. 14, 2017).

To determine if disproportionality of students participating in ISTAR exists, the IDOE will analyze the participation of students taking the alternate assessment in each of the following subgroups:

1. Racial and Ethnic Groups
 - a. White
 - b. Black or African American
 - c. Hispanic
 - d. Native American or Alaska Native
 - e. Asian
 - f. Pacific Islander
 - g. Multiracial
2. Socio-Economic Status (As determined by students' eligibility for Free and Reduced Price Meals)
3. English Language Learners

The IDOE's disproportionality analysis will examine data for each of the content areas above for as many of the subgroups for which data are available.¹⁰

The Ohio Department of Education provided several details about how any disproportionality would be addressed:

The Department will continue to address disproportionality in the percentage of students in any subgroup taking the AASCD through multiple activities as described in the tiered support system below. In particular, the following steps address disproportionality concerns:

- Calculating and analyzing participation rates among subgroups at the state and district levels;
- Identifying subgroups over-represented in the AASCD participation counts;
- Reviewing district justifications and data to identify unusual patterns and high participation rates across subgroups;
- Analyzing subgroup data over time to identify trends in subgroup participation with the goal of decreasing disproportionality;
- Continuing support and guidance for appropriate use of the [participation guidelines for Ohio's alternate assessment](#);
- Posting and implementing the [companion document](#) to the participation guidelines;
- Engaging with stakeholder groups to address disproportionalities and ensure only students with the most significant cognitive disabilities are participating in the AASCD;
- Maintaining and updating AASCD [online resources](#); and
- Reporting assessment data publicly.¹¹

¹⁰ Indiana Department of Education, (*IDOE*) is seeking a waiver for all subject areas for the 2017-2018 school year (Oct. 16, 2017).

¹¹ Ohio Department of Education, *One Percent Waiver Request for Reading, Mathematics and Science* (Jan. 24, 2018).

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) Plan and timeline for improving the implementation of participation guidelines (and possibly revising definition of students with the most significant cognitive disabilities) can be provided in several ways. In its initial waiver request, the Arkansas Department of Education presented a set of steps it would take:

The ADE is convening an advisory group of stakeholders to examine the state definition of “students with the most significant cognitive disabilities” who participate in alternate assessments. The advisory group will recommend revisions to the ADE’s Participation Guidelines used to determine if a student meets the standard to participate in the alternate assessment. The advisory group is scheduled to meet on October 19, 2017; November 15, 2017; December 7, 2017; and January 11, 2018.

The ADE will monitor alternate assessment data and request justification from districts that exceed the 1% cap. The ADE will provide professional learning opportunities for IEP team members and other educators, particularly on the nature of the alternate assessment and the students who are eligible to participate under the revised Alternate Assessment Participation Guidelines.¹²

The North Dakota Department of Education provided a short paragraph to confirm its plan and timeline for improving the implementation of guidelines:

The NDDPI will annually monitor alternate assessment data. Districts that exceeds the one percent cap, will be required to provide the NDDPI with detailed justification for exceeding the one percent cap. Data from the monitoring will be used to develop targeted, content-specific training and support aimed at addressing each district’s unique needs. The NDDPI will provide professional learning opportunities for IEP team members and other educators, particularly on the nature of the alternate assessment and the students who are eligible to participate under the *North Dakota Alternate Assessment Participation Guidelines*.¹³

¹² Arkansas Department of Education, *Waiver of 34 C.F.R. §200.6(c)(2) for the 2017-2018 school year* (no date).

¹³ North Dakota Department of Education, *Pursuant to 34 C.F.R. §200.6(c)(4), Every Student Succeed Act (ESSA), the North Dakota Department of Public Instruction (NDDPI) will seek a waiver for the 2017-2018 school year* (Nov. 2017).

The Arizona Department of Education presented a table of Learner Characteristics Inventory (LCI) Subgroup Data along with a description of processes and steps to explain how it would improve the implementation of participation guidelines:

The Arizona Department of Education has been working to inform and ensure the State is moving below the 1% Cap. Participation rates for all students participating in Alternate Assessments are included in Table 1 [see p. 3 of waiver request]. Annually the LCI data is included in the LEA data file to assist LEAs in ensuring only the students with the most significant cognitive disabilities are participating in the AA-AAAS.

In addition, the ADE has extracted the participation rates for subgroups of students assessed with the AA-AAAS using the LCI. Data reviewed for each of the subgroups is from the 2015-16 and 2016-2017 MSAA.

Table 3. 2016 and 2017 LCI Subgroup Data

IDEA Disability	2016	2017
Intellectual Disability	48.5%	51.8%
Autism	27.9%	29.1%
Multiple Disabilities	10.8%	10.8%
Other Health Impairment	3.7%	2.0%
SLD	3.2%	2.5%
Orthopedic Impairment, Visual Impairment, Hearing Impairment, Deaf, Deaf/Blind	1.3%	1.4%
Traumatic Brain Injury	0.5%	0.5%
Emotional Disability	0.5%	0.4%
Speech/Language Impairment	0.2%	0.1%
Other	1.4%	1.3%
EL Designation	16.4%	15.4%

The ADE will also monitor alternate assessment data during the Student Selection window. In addition, late fall of each year, the Alternate Assessment Unit will notify each LEA and request action plans from each LEA that exceeded the one percent cap the previous year. The ADE will continue to provide professional learning opportunities for IEP team members and other educators, particularly on the nature of the alternate assessment and the students who are eligible to participate under the State Participation Guidance.¹⁴

(B) Plan and timeline for taking steps to support and provide appropriate oversight to districts anticipated to exceed 1.0 percent also is typically addressed through text indicating

¹⁴ Arizona Department of Education, Pursuant to 34 C.F.R. §200.6(c)(4), the Arizona Department of Education (ADE) will seek a waiver for the 2017-2018 school year from the Secretary of the United States Department of Education (Nov. 14, 2017).

what it will do to provide oversight to districts. The Wisconsin Department of Public Instruction addressed the requirement under a heading of the requirement:

B. Support and Provide Appropriate Oversight to Each LEA That the State Anticipates Will Exceed the 1.0 Percent Cap

... the WI DPI provided a letter to all LEAs that exceeded the 1.0 percent cap on students participating in the DLM in the 2016-17 school year that notified the LEA that it is anticipated to exceed the cap in the 2017-18 school year. The letter included LEA-specific data regarding student participation in assessments and required LEAs to complete a verification form with assurances in accordance with 34 C.F.R. § 200.6(c)(4)(iii).

Upon receipt of the verification forms, the WI DPI will provide targeted annual review and assistance to specific LEAs in need of additional support and guidance in meeting the 1.0 percent cap. Additionally, the WI DPI added an alternate assessment indicator in the State Data Warehouse that will allow the WI DPI to regularly monitor expected participation in all LEAs.¹⁵

The North Dakota Department of Education also documented its plan and timeline through text that followed the entire requirement:

(B) The 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 of its assessed students in a given subject in a school year using an alternate assessment aligned with alternate achievement standards. The State must describe how it will monitor and regularly evaluate each such LEA to ensure that the LEA provides sufficient training such that school staff who participate as members of an IEP team or other placement team understand and implement the guidelines established by the State under paragraph (d) of this section so that all students are appropriate assessed; and

The NDDPI will provide training and support to local school districts and special education units.

Training will include:

- Implementing the requirements set forth in the ESSA, including:
 - Using the *North Dakota Alternate Assessment Participation Guidelines* to make assessment participation decisions;
 - Selecting, implementing and evaluation accessibility features and accommodations for instruction and assessment;
 - Differentiating instruction and providing better access to academic content;
 - Having high expectations for all students regardless of the category or their disability; and

¹⁵ Wisconsin Department of Public Instruction, Pursuant to 34 C.F.R. § 200.6(c)(4) and section 8401(b) of ESSA, this letter is to request a waiver for the Wisconsin Department of Public Instruction (WI DPI) from the 1.0 percent cap on students taking the state's AA-AAAS known as the Dynamic Learning Maps assessment (DLM) (Sept. 23, 2017).

- Understanding implications of student participation in the alternate assessment as it applies to the student’s postsecondary and career pathway.
- Providing oversight to each district that the state anticipates exceeding the one percent threshold to ensure only students with the most significant cognitive disabilities take the AA-AAAS.
- Informing and engaging parents in the conversations and decisions around participating in the AA-AAAS; and
- Publicly reporting statewide AA-AAAS data while maintaining student confidentiality.

The NDDPI will provide resources that will be made available to parents of student with disabilities so parents can contribute in the IEP decision making process regarding the assessment in which their child participates. Parent information resources will include:

- Explanation of the *North Dakota Alternate Assessment Participation Guidelines*;
- Requirements of the North Dakota Alternate Assessment; and
- Accommodations that enable students to participate in the general assessment.¹⁶

(C) Plan and timeline for addressing any disproportionality in percentage of students taking the AA-AAAS also can be addressed through text or a timeline. The Wisconsin Department of Public Instruction provided several paragraphs to explain its plan and timeline for addressing any disproportionality:

Under IDEA, the WI DPI annually collects data and monitors LEA compliance with Part B indicators as part of the State Performance Plan. Relevant to this waiver, the department requires LEAs to review data under IDEA Part B indicators 9 and 10 to identify and address disproportionate representation in special education that is a result of inappropriate identification.

The WI DPI engages in the following ongoing activities to improve the identification process and ensure compliance with the indicators including developing technical assistance resources, providing training on disproportionality data analysis and reviewing and analyzing state and district policies and practices. Through this existing compliance process, the WI DPI will continue to monitor and provide technical assistance to LEAs in addressing disproportionalities in students identified for special education. The WI DPI will provide targeted assistance to LEAs who have exceeded the 1.0 percent cap to identify why the LEA exceeded the cap and to improve identification methods to ensure compliance in future years.

As noted previously, this is the first year that the state’s definition of students with the most significant cognitive disabilities as well as the modified forms and guidance materials are available and in effect. As a result, the WI DPI anticipates that the number of LEAs

¹⁶ North Dakota Department of Education, *Pursuant to 34 C.F.R. §200.6(c)(4), Every Student Succeed Act (ESSA), the North Dakota Department of Public Instruction (NDDPI) will seek a waiver for the 2017-2018 school year* (Nov. 2017).

exceeding the cap will decrease over the next few years. The WI DPI will collect and assess data from the 2017-18 assessments and will make appropriate modifications to materials as necessary in order to address disproportionalities for future assessments.¹⁷

The Arkansas Department of Education uses a similar approach to detail its plan and timelines for addressing any disproportionality:

LEAs who are significantly over the 1% threshold will be required to analyze the data by subgroup to determine whether disproportionality exists for students participating in the alternate assessment. Analysis will consist of reviewing current and previous years' alternate assessment participation rates to determine if assessment decisions are consistently made regardless of race, gender, economic status, English Learner status, across buildings, across grades, and teachers.

Additionally, the ADE gathered district data on current and previous years' alternate assessment participation rates and will analyze the data by subgroup to determine whether disproportionality exists for students participating in the alternate assessment.

For LEAs who are significantly over the 1% threshold and whose data indicate disproportionate representation, more intense monitoring and/or technical assistance will be provided.

- The ADE will provide training during the 2017-2018 school year regarding participation guidelines for districts.
- The ADE will monitor LEA required activities pursuant to disproportionate representation during the 2017-2018 school year.¹⁸

Another example is provided by the Kentucky Department of Education waiver request:

To determine if disproportionality of students participating in the AA-AAAS of Kentucky's statewide assessments exists, the KDE will use a risk ratio method to analyze the participation of students taking the alternate assessment in each of the following subgroups:

1. Racial and Ethnic Groups
 - a. White
 - b. Black or African American
 - c. Hispanic
 - d. Native American or Alaska Native
 - e. Asian
 - f. Pacific Islander
 - g. Two or More Races

¹⁷ Wisconsin Department of Public Instruction, Pursuant to 34 C.F.R. § 200.6(c)(4) and section 8401(b) of ESSA, this letter is to request a waiver for the Wisconsin Department of Public Instruction (WI DPI) from the 1.0 percent cap on students taking the state's AA-AAAS known as the Dynamic Learning Maps assessment (DLM) (Sept 23, 2017).

¹⁸ Arkansas Department of Education, Waiver of 34 C.F.R. §200.6(c)(2) for the 2017-2018 school year (no date).

2. Socio-Economic Status (As determined by students' eligibility for Free and Reduced Price Meals)
3. English Language Learners
4. Gender
 - a. Female
 - b. Male

To determine a risk ratio for these various subgroups, the KDE will examine the risk of each subgroup to participate in the AA-AAAS, compared to the risk of students not in the subgroup to participate in the AA-AAAS. The risk analysis of the various subgroups will identify if any of the subgroups are more likely than others not in the subgroup to participate in AA-AAAS. The analysis will provide the KDE with information on the student subgroups, to focus initiatives on reducing the percentage of students participating in this assessment.

Participation rates for all students participating in K-PREP are included in *Attachment 11*. KDE has extracted the participation rates for subgroups of students assessed with the AA-AAAS. Data reviewed for each of the subgroups is from the 2015-16 statewide assessments, as Kentucky has not yet completed its analysis of the 2016-17 assessments. The KDE used the process described below to determine the level of disproportionality of students participating in AA-AAAS by subgroup and content area as reported in *Attachment 12*. The subgroup with overwhelming disproportionality are those eligible for free or reduced meals. This subgroup is followed in order by males, English Language Learners, Homeless students, African American and white students.¹⁹

Waiver Extensions

Waiver Extension Requirements (§200.6(c)(4)(v)): Requirements for submitting a request to extend a waiver for an additional year are included in §200.6(c)(4)(v). Specifically, the state is to meet the requirements of §200.6(c)(4)(i) – (iv), as well as show **substantial progress** toward the achievement of each component of the previous year's plan and timeline. According to information from OESE and OSERS,²⁰ the state should provide **updated** information on each requirement in the previous year's submission. In addition to meeting each of the requirements in an original waiver request, the state must demonstrate **substantial progress** toward achieving **each component of the prior year's plan and timeline**. In creating the plan and timeline, OESE and OSERS reminded states that they must address three areas: (a) how the state will improve implementation of its guidelines for participation in the alternate assessment; (b) how the state will monitor and regularly evaluate each LEA; and (c) any disproportionality in the percentage of students taking the alternate assessment. After this Tool was completed a letter

¹⁹ Kentucky Department of Education, *Pursuant to 34 C.F.R. §200.6(c)(4), the Kentucky Department of Education (KDE) is seeking a waiver for all subject areas for the 2017-2018 school year* (Aug. 7, 2017).

²⁰ Letter from OESE (Patrick Rooney) and OSERS (Ruth E. Ryder) dated Aug.27, 2018: <https://sites.ed.gov/idea/files/osstateassessmentltr092718.pdf>

about consequences for states not meeting the 1.0% cap that had not requested a waiver was released (see Resources).

The U.S. Department of Education indicated that it does not use an official rubric for determining what merits sufficient progress. Rather, the Department will base decisions about whether to approve a waiver extension by evaluating whether the state has met the waiver requirements as well as by the degree to which the state has demonstrated progress against the previous year's plan for improvement.

Demonstrating progress may include revising a plan based on information gained during the initial year's waiver-related activities. Further, a state may want to consider providing a rationale for its judgment that it has made substantial progress toward meeting the 1.0 percent cap. The waiver continuation request would then support this rationale by clearly communicating and providing evidence that:

- The state continues to meet the requirements of §200.6(c)(4)(i) – (iv)
- The state provides updated information on each requirement in the previous year's submission
- The state has achieved substantial progress toward each component of the prior year's plan and timeline. This must include three areas:
 - How the state will **improve the implementation of its guidelines** for participation in the AA-AAAS including by reviewing and, if necessary, revising its definition of students with the most significant cognitive disabilities (see 34 CFR 200.6(d)(1)), so that the state meets the 1.0 percent cap in each subject for which assessments are administered in future school years;
 - How the state will **monitor and regularly evaluate each LEA** to ensure that the LEA provides sufficient training such that school staff who participate as members of an IEP team or other placement team understand and implement the guidelines established by the State for participation in an AA-AAAS so that all students are appropriately assessed; and
 - How the state will **address any disproportionality** in the percentage of students taking an AA-AAAS as identified through the data provided.

States may use the tables of sample data in the memo from OESE and OSEP, dated August 17, 2018,²¹ to guide their provision of required and complete data, thus avoiding requests from the U.S. Department of Education for additional information.

The Idaho Department of Education is a state that has submitted a waiver extension. In its request, it added a section to address Requirement 5 (substantial progress). In this section, it provided a description of how it determined that it had made substantial progress:

The ISDE has made substantial progress toward meeting the 1.0% cap on IDAA participation since our original waiver was submitted and approved. This progress is evident in IDAA participation data and completion of State Plan and Timeline activities

²¹ Letter from OESE (Patrick Rooney) and OSERS (Ruth E. Ryder) dated Aug. 27, 2018: <https://sites.ed.gov/idea/files/ossstateassessmentltr092718.pdf>

outlined in last year’s waiver request. A comparison of 2017-18 data with 2016-17 confirms Idaho’s progress toward reducing the percentage of students participating in the IDAA. Idaho experienced a reduction in the number of LEAs exceeding the 1% cap and the IDAA participation rate from 2016-17 to 2017-18. Table 1 illustrates the reduction of the number of LEAs exceeding the 1.0% cap, including the 11.5% - 14.8% reduction in IDAA participation rates, across content areas. Table 2 illustrates the reduction in IDAA participation rates across content area.

Table 1: Comparison of the Number of LEAs Exceeding the 1.0% Cap for 2016-17 and 2017-18

Content Area	Number of LEAs Exceeding 1% Cap in 2016-17	Number of LEAs Exceeding 1% Cap in 2017-18	Difference in Number	Percentage of Difference
ELA	60	52	- 8	- 13.3%
Mathematics	61	54	- 7	- 11.5%
Science	54	46	- 8	- 14.8%

Table 2: Comparison of IDAA Participation Rates for 2016-17 and 2017-18

Content Area	IDAA Participation Rate 2016-17	IDAA Participation Rate 2017-18	Difference
ELA	1.2%	1.1%	- 0.1%
Mathematics	1.19%	1.15%	- 0.04%*
Science	1.3%	1.1%	- 0.2%

*NOTE: It was necessary to calculate the IDAA participation rate to two decimal points to illustrate the reduction in Mathematics

Idaho also provided a summary of its *State Plan and Timeline* activities included in the ISDE original waiver request, accompanied by a description of how each activity was completed.²²

Massachusetts submitted a waiver extension request in November 2018. In its cover letter, it noted not only changes in participation in the alternate assessment by subject areas, but also the state’s high assessment participation rate:

...the state has already made significant progress since 2015 by lowering the number of students with disabilities who participated in alternate assessments by about 1,000 students, and has maintained a 98 percent participation rate both for all students and for students with disabilities in each subject assessment.

²² Idaho State Department of Education. *Idaho One Percent Cap Waiver Extension Request* (Aug. 29, 2018).

Massachusetts also provided a summary of the resources that have been widely disseminated:

- Clarified and updated **guidance and criteria** for IEP team decision-making on alternate assessment participation, including a **definition** of which students should be considered for alternate assessments, and a description of assessment options that may be more appropriate for some students currently designated for the MCAS-Alt.
- 2017 and 2018 MCAS-Alt participation rates by district.
- A request for a **written justification** in cases where a district anticipates that it will alternately assess greater than one percent of its eligible students in the current school year. We anticipate receiving any outstanding district justifications by the end of 2018.
- A sample **parent notification letter**, translated into five major languages, alerting parents that 1) their child's achievement will be measured using an alternate assessment based on alternate academic achievement standards, 2) participation in an alternate assessment may delay or affect the child's ability to complete the state's requirements for a high school diploma, and 3) the decision to have their child take an alternate assessment will be revisited annually by the IEP team.
- A presentation to be used for the annual training of IEP teams and 504 plan coordinators regarding the appropriate designation of students for alternate assessments.

Similar to Idaho, Massachusetts provided data on the number of districts exceeding the 1.0% cap in 2018 compared to 2017. These were among the many updated data breakdowns that Massachusetts had provided in its original waiver request.²³

Ohio also submitted a waiver extension request in November 2018. Similar to other states requesting an extension, it addressed each component in the original waiver request, addressing how each was similar or different from the previous year. Ohio included an extensive appendix that provided slide presentations, agendas for various meetings during which the 1% cap and related forms were discussed, email notifications, various tools that were used (e.g., discussion outline, sample record review tally), including a district self-review summary report template.

Along with its waiver extension request, Ohio submitted a summary of the public comment that it received on its waiver extension request:

On Oct. 5, 2018, the Ohio Department of Education (Department) posted a Draft for Public Comment of its [One Percent Waiver Extension Request for Reading, Mathematics and Science](#). An accompanying message invited citizens to use a posted survey to comment on the draft from then through Oct. 31, 2018. The Department also notified all district and community school superintendents, special education contacts and testing coordinators of the public comment opportunity through its e-newsletter, [EdConnection](#), and through its email service, GovDelivery.

During the survey window, the Department received written comments from 64 respondents. The Department was able to provide an appropriate general response to

²³ Massachusetts Department of Elementary and Secondary Education, *Massachusetts "One Percent" ESSA Waiver Request*, submitted by email to OSS.Massachusetts@ed.gov (Nov. 9, 2018).

majority of those comments. This document summarizes those public comments, shows the Department's responses and notes any additional actions. Comments received not on the topic of the one percent waiver extension request are not addressed.²⁴

One component of Indiana's waiver extension request, submitted in December 2018, was included in Requirement 4 (§200.6(c)(4)(iv)): State Plan and Timeline in section B. LEA Oversight and Support:

In addition to participation guidance, a Formative Assessment Webinar for Educators of Students with Significant Cognitive Disabilities was released in December 2018 which provides formative assessment strategies for educators of students with significant cognitive disabilities. In spring 2019 IDOE will record educators utilizing these strategies with students and then post these recordings in a virtual library to support the use of formative strategies across the State.²⁵

Additional Considerations

Documenting stakeholder involvement efforts: How should my state document its stakeholder involvement efforts?

States are required to seek public comment on their waiver requests on the 1.0 percent cap on students who participate in the alternate assessment (20 U.S.C. § 7861(b)(3)(A)).

The Idaho Department of Education provided information about its public comment process in its waiver request:

The ISDE provided directed information to stakeholders via email notification including; notification regarding the changes pursuant of ESEA §111(b)(2)(D) and 34 CFR 200.6(c) and (d) to the 1.0% cap on alternate assessment participation, a copy of the Idaho One Percent Cap Waiver Request, and guidelines for submitting comments to the ISDE. Stakeholders included; Idaho Parents Unlimited, the Special Education Advisory Panel, LEA Assessment Coordinators, and Special Education Directors.

To ensure public access, a copy of the Idaho One Percent Cap Waiver Request and guidelines for providing comment were posted on the ISDE website on both the Assessment and Accountability (opens in new window) and Special Education (opens in new window) home pages. An invitation to comment on the Idaho One Percent Cap Waiver Request was included as part of the Weekly Update sent out to all public LEA superintendents on December 15, 2017, as well.

The ISDE allowed 2 weeks for public comment, closing on December 27, 2017. ISDE staff responded to comments from stakeholders in a timely manner, on an individual

²⁴ Ohio Department of Education, *One Percent Waiver Extension Request for Reading, Mathematics and Science*, ESEA section 1111(b)(2)(D) and 34 CFR 200.6(c) and (d) (Nov. 19, 2018).

²⁵ Indiana State Department of Education, *Indiana 1% Cap Waiver Extension Request* (Dec. 21, 2018).

basis. The final Idaho One Percent Cap Waiver Request includes a summary of public comments and ISDE responses. The ISDE will respond to public comments received after December 27, 2017; however, those comments and responses will not be included in the Idaho One Percent Cap Waiver Request.²⁶

The Kentucky Department of Education provided an attachment that included public comments received by the Department, as well as an additional attachment that provided the Department's responses to public comments:

During the public comment period the KDE received a total of 12 comments: one oral and 11 written comments. The documents are included in the following attachments:

Attachment 1 includes KDE's new release of the public notice and comment period.

Attachment 2 includes the public notice of waiver request posted for public comment.

Attachment 3 includes e-mails that were shared with various stakeholders soliciting feedback.

Attachment 4 includes public comments received by the KDE.

*Attachment 5 includes KDE's response to public comments.*²⁷

Did not meet the 95% participation requirement: What should my state do if my state's participation rate in a subject area did not meet the 95% participation requirement?

One of the requirements for a state to request a waiver is for the state to show that it has measured the achievement of at least 95% of all students and students with disabilities enrolled in the grades for which the AA-AAAS is required (see Requirement 2, §200.6(c)(4)(ii)). A number of states that did not meet the 95% requirement were unsure of whether to submit a waiver request.

Some states that did not meet the 95% requirement did submit a waiver request. In their request (which was denied), these states generally documented how they were addressing the other waiver requirements.

- What should my state do if the testing opt out movement is negatively impacting the state's ability to reach the ESSA 2015 requirement for schools and districts to maintain a 95 percent participation rate on state assessments?

Several organizations have attempted to help states reduce the testing opt out movement. Among these are the following:

- High Achievement New York (<https://www.highachievementny.org/say-yes-to-the-test-2017>)
- National Association of Secondary School Principals (https://www.nassp.org/wordpress/wp-content/uploads/2018/04/Opt_Out.pdf)

²⁶ Idaho State Department of Education, Idaho One Percent Cap Waiver Request (Rev Jan. 23, 2018).

²⁷ Kentucky Department of Education, *Pursuant to 34 C.F.R. §200.6(c)(4), the Kentucky Department of Education (KDE) is seeking a waiver for all subject areas for the 2017-2018 school year* (Aug. 7, 2017).

- Teachers College, Columbia University (Oren Pizmony-Levy and Benjamin Cosman) (<https://www.tc.columbia.edu/media/news/docs/How-Americans-View-the-Opt-Out-movement---v8-COMBINED.pdf>)

Resources

Link to Federal Regulation (December 8, 2016): <https://www.gpo.gov/fdsys/pkg/FR-2016-12-08/pdf/2016-29128.pdf>

Link to letter from OESE (Patrick Rooney) and OSERS (Ruth E. Ryder) (May 16, 2017): <https://www2.ed.gov/admins/lead/account/saa/onepercentcapmemo51617.pdf>

Link to letter from OESE (Patrick Rooney) and OSERS (Ruth E. Ryder) (August 27, 2018): <https://sites.ed.gov/idea/files/ossstateassessmentltr092718.pdf>

Link to Letter from OESE (Patrick Rooney) and OSEP (Ruth Ryder) (March 28, 2019): <https://www2.ed.gov/admins/lead/account/saa/state1capconsequences19final.pdf>

State References

Note: State Examples Were Shared with the NCEO 1% Cap CoP in Support of the “Developing a 1% Cap Waiver or Waiver Extension Request” Tool.

Arizona Department of Education, Pursuant to 34 C.F.R. §200.6(c)(4), the Arizona Department of Education (ADE) will seek a waiver for the 2017-2018 school year from the Secretary of the United States Department of Education (Nov. 14, 2017).

Arkansas Department of Education
2017-2018 SY

Pursuant to 34 C.F.R. §200.6(c)(4), the Arkansas Department of Education (ADE) will seek a waiver of 34 C.F.R. §200.6(c)(2) for the 2017-2018 school year from the Secretary for the United States Department of Education. This regulation limits the total number of students assessed in a subject area using an alternate assessment at no more than one percent (1%) of the total number of students assessed in the state. The subject areas are Literacy and Mathematics.

Idaho State Department of Education
Rev January 23, 2018
Idaho One Percent Cap Waiver Request.

Idaho State Department of Education, *Idaho One Percent Cap Waiver Extension Request* (Aug. 29, 2018).

Indiana Department of Education, (*IDOE*) *is seeking a waiver for all subject areas for the 2017-2018 school year* (Oct. 16, 2017).

Indiana Department of Education, *Indiana 1% Cap Waiver Extension Request* (December 21, 2018).

Kentucky Department of Education, *Pursuant to 34 C.F.R. §200.6(c)(4), the Kentucky Department of Education (KDE) is seeking a waiver for all subject areas for the 2017-2018 school year* (Aug. 7, 2017).

Massachusetts Department of Elementary and Secondary Education, *Massachusetts “One Percent” ESSA Waiver Request*, submitted by email to OSS.Massachusetts@ed.gov, (Nov. 9, 2018).

North Dakota Department of Education, Pursuant to 34 C.F.R. §200.6(c)(4), Every Student Succeed Act (ESSA), the North Dakota Department of Public Instruction (NDDPI) will seek a waiver for the 2017-2018 school year (Nov. 2017).

Ohio Department of Education
Nov. 20, 2017
Amended Jan. 24, 2018
Approved Mar. 13, 2018

Submission to U.S. Department of Education
One Percent Waiver Request for Reading, Mathematics and Science
ESEA section 1111(b)(2)(D) and 34 CFR 200.6(c) and (d).

Ohio Department of Education
Nov. 19, 2018
Submission to U.S. Department of Education
One Percent Waiver Extension Request for Reading, Mathematics and Science
ESEA section 1111(b)(2)(D) and 34 CFR 200.6(c) and (d).

Wisconsin Department of Public Instruction, Pursuant to 34 C.F.R. § 200.6(c)(4) and section 8401(b) of ESSA, this letter is to request a waiver for the Wisconsin Department of Public Instruction (WI DPI) from the 1.0 percent cap on students taking the state's AA-AAAS known as the Dynamic Learning Maps assessment (DLM) (Sept. 23, 2017).

Appendix A

Waiver Request Regulation²⁸

Section 200.6(c)(4):

(4) If a State anticipates that it will exceed the cap under paragraph (c)(2) of this section with respect to any subject for which assessments are under § 200.2(a)(1) in any school year, the State may request that the Secretary waive the cap for the relevant subject, pursuant to section 8401 of the Act, for one year. Such request must—

(i) Be submitted at least 90 days prior to the start of the State’s testing window for the relevant subject;

(ii) Provide State-level data, from the current or previous school year, to show—

(A) The number and percentage of students in each subgroup of students defined in section 1111(c)(2)(A), (B), and (D) of the Act who took the alternate assessment aligned with alternate academic achievement standards; and

(B) The State has measured the achievement of at least 95 percent of all students and 95 percent of students in the children with disabilities subgroup under section 1111(c)(2)(C) of the Act who are enrolled in grades for which the assessment is required under § 200.5(a);

(iii) Include assurances from the State that it has verified that each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject for which assessments are administered under § 200.2(a)(1) in that school year using an alternate assessment aligned with alternate academic achievement standards—

(A) Followed each of the State’s guidelines under paragraph (d) of this section, except paragraph (d)(6); and

(B) Will address any disproportionality in the percentage of students in any subgroup under section 1111(c)(2)(A), (B), or (D) of the Act taking an alternate assessment aligned with alternate academic achievement standards;

(iv) Include a plan and timeline by which—

(A) The State will improve the implementation of its guidelines under paragraph (d) of this section, including by reviewing and, if necessary, revising its definition under paragraph (d)(1), so that the State meets the cap in paragraph (c)(2) of this section in each subject for which assessments are administered under § 200.2(a)(1) in future school years;

(B) The 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 of its assessed students in a given subject in a school year using an alternate assessment aligned with alternate academic achievement standards to ensure that only students with the most significant cognitive disabilities take an alternate assessment aligned with alternate academic achievement standards. The State must describe how it will monitor and regularly evaluate each such LEA to ensure that the LEA provides sufficient training such that school staff who participate as members of an IEP team or other placement team understand and implement the guidelines established by the State under paragraph (d) of this section so that all students are appropriately assessed; and

²⁸ Section 200.6(d), which is referred to in Sections 200.6(c)(4)(iv)(A) and 200.6(c)(4)(iv)(B), addresses state guidelines for students with the most significant cognitive disabilities.

(C) The State will address any disproportionality in the percentage of students taking an alternate assessment aligned with alternate academic achievement standards as identified through the data provided in accordance with paragraph (c)(4)(ii)(A) of this section; and

(v) If the State is requesting to extend a waiver for an additional year, meet the requirements in paragraph (c)(4)(i) through (iv) of this section and demonstrate substantial progress towards achieving each component of the prior year's plan and timeline required under paragraph (c)(4)(iv) of this section.

Appendix B

Waiver Request Alternate Format (Consistent with Peer Review Guidance)

Many states follow the assessment peer review guidance²⁹ when they submit their assessments to the U.S. Department of Education for peer review. The information in this document has been adapted to fit into the format used for the assessment peer review to meet the needs of those states for which this is a familiar format.

²⁹ U.S. Department of Education. (2018, June 22). *A state's guide to the U.S. Department of Education's assessment peer review process*. Washington, DC: U.S. Department of Education, Office of Elementary and Secondary Education. Available at <https://www2.ed.gov/admins/lead/account/saa/assessmentpeerreview.pdf>.

SECTION 1: INITIAL WAIVER REQUESTS

Requirement 1 – (§200.6(c)(4)(i)): Submit the waiver request at least 90 days before testing window starts for the relevant subject.

	Examples of Evidence
<p>The State indicated the dates of its alternate assessment testing window, and confirmed that the waiver request was being submitted 90 days prior to the beginning of the testing window.</p> <p><i>For multiple testing windows during the year:</i> The State indicated the testing window that is considered to be its summative assessment, and then confirmed that the waiver request was being submitted 90 days prior to the summative assessment testing window.</p>	<p>Evidence to support this requirement includes:</p> <ul style="list-style-type: none"> • Dates of alternate assessment testing window. • Date that is 90 days prior to the first date of the alternate assessment testing window. • Documentation that defines all alternate assessment testing windows, including which are for instructional purposes and which are considered the summative assessment testing window. • Date that is 90 days prior to the first date of the alternate assessment summative testing window.

Requirement 2 (A) - (§200.6(c)(4)(ii)(A)): Provide State-level data from the current or previous year that shows the number and percent in each subgroup who took the alternate assessment in the subject area.

	Examples of Evidence
<p>The State provided detailed data on alternate assessment participation for all ESSA required subgroups.</p>	<p>Evidence to support this requirement includes:</p> <ul style="list-style-type: none"> • List of all subgroups for which the state must report for ESSA. • For each subgroup and overall, the number and percent who participated in the alternate assessment in each subject area for which the waiver is being requested. Indicate the year of the assessment that the data represent. • Presentation in table format with several numbers for context, such as the following: <ul style="list-style-type: none"> ○ Number of students participating in the regular assessment ○ Number of students participating in the alternate assessment ○ Total number of students assessed ○ Percent of all student tested participating in the alternate assessment Indicate the year of the assessment that the data represent.

Requirement 2 (B) - (§200.6(c)(4)(ii)(B)): Provide State-level data from the current or previous year on the overall assessment participation rate for all students and for students with disabilities.

	Examples of Evidence
<p>The State provided detailed data on overall assessment participation rates for all students and for students with disabilities to show that 95% of all students and 95% of students with disabilities participated in state assessments.</p>	<p>Evidence to support this requirement includes:</p> <ul style="list-style-type: none"> • Number of all students tested, compared to number of all students required to test. • Percent of all students tested (of all students required to test). • Number of students with disabilities tested (including both regular assessment and alternate assessment), compared to number of students with disabilities required to test. • Percent of students with disabilities tested (of students with disabilities required to test).

Requirement 3 (A) – (§200.6(c)(4)(iii)(A)): Provide assurance that districts over 1.0 percent participation in the alternate assessment followed the state’s participation guidelines.

	Examples of Evidence
<p>The state provided an assurance that it has verified that each district with more than 1.0% participation in the alternate assessment followed the state’s guidelines for participation.</p>	<p>Evidence to support this requirement includes:</p> <ul style="list-style-type: none"> • Documentation that each district over 1.0% alternate assessment participation provided a written confirmation that its IEP teams followed the state’s guidelines for participation in the alternate assessment. • Documentation that each district over 1.0% provided written confirmation that it met the 95% participation requirement for all students and students with disabilities, or that it had plans to ensure a 95% participation rate. • Documentation that each district over 1.0% provided written confirmation that it was informing parents of students with the most significant cognitive disabilities of the implications of participation in the alternate assessment. • Documentation that each district over 1.0% provided written confirmation that it has no disproportionality in the percentage of students in any subgroup taking the alternate assessment, or that it had plans to address any disproportionality.

Requirement 3 (B) – (§200.6(c)(4)(iii)(B)): Provide assurance that any disproportionality in students taking the alternate assessment will be addressed.

	Examples of Evidence
<p>The state provided an assurance that it has verified that each district with more than 1.0% participation in the alternate assessment will address any disproportionality in participation in the alternate assessment.</p>	<p>Evidence to support this requirement includes:</p> <ul style="list-style-type: none"> • Information on how disproportionality is calculated by the state. • Process for reviewing district data and justifications to identify unusual patterns in participation across subgroups. • Data on participation by subgroup and rationale for conclusion that disproportionality does or does not exist. • Stakeholder group discussions about ways to address disproportionality in participation in the alternate assessment. • Public reporting of alternate assessment participation by subgroup.

Requirement 4 (A) – (§200.6(c)(4)(iv)(A)): Submit a plan and timeline by which the State will improve the implementation of its participation guidelines, including if necessary, revising its definition of “students with the most significant cognitive disabilities” in future school years.

	Examples of Evidence
<p>The state provided a plan and timeline for future school years for improving its guidelines, including its definition of students with the most significant cognitive disabilities.</p>	<p>Evidence to support this requirement includes:</p> <ul style="list-style-type: none"> • A timeline that includes dates for events that will be used by the state to improve implementation, including, for example, dates when participation guidelines or definition will be revised, dates when guidelines or definitions will be released, etc. • A detailed plan of the steps the state will take to improve implementation of its participation guidelines. • A plan for evaluating the effects of events used to improve implementation of participation guidelines. • Dates on which monitoring of districts will occur.

Requirement 4 (B) – (§200.6(c)(4)(iv)(B)): Submit a plan and timeline by which the 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 alternate assessment.

	Examples of Evidence
The state provided a plan and timeline for additional steps it will take to support and provide appropriate oversight of districts expected to assess more than 1.0%.	<p>Evidence to support this requirement includes:</p> <ul style="list-style-type: none"> • A timeline that includes dates for reviewing data and monitoring district procedures. • If the state requires districts to provide verification or justification forms, dates when these will be reviewed and dates for replying to districts. • Dates on which training will be provided to districts exceeding the 1% participation rate and the specific focus of the training. • Working with parent groups in districts exceeding the 1% participation rate on participation guidelines and the implications of participation in the alternate assessment.

Requirement 4 (C) – (§200.6(c)(4)(iv)(C)): Submit a plan and timeline by which the State will address any disproportionality in the percentage of students taking the alternate assessment.

	Examples of Evidence
The state provided a plan and timeline for addressing any disproportionality.	<p>Evidence to support this requirement includes:</p> <ul style="list-style-type: none"> • A timeline that includes dates for when data on subgroup participation in the alternate assessment will be examined, along with a plan for how apparent disproportionality will be addressed. • Stakeholder group discussions about ways to address disproportionality in participation in the alternate assessment. • Public reporting of alternate assessment participation by subgroup.

SECTION 2: WAIVER CONTINUATION REQUESTS

Requirements 1, 2(A), 2(B), 3(A), 3(B), 4(A), 4(B), 4(C) [see SECTION 1] – Meet the requirements in paragraph (c)(4)(i) through (c)(4)(iv).

	Examples of Evidence
The state showed that it met each of the requirements 1-4.	<p>Evidence to support this requirement includes:</p> <ul style="list-style-type: none"> • Confirmation that state continues to meet requirements for requesting a waiver. • Documentation of changes in participation rates in alternate assessment in each subject area. • Documentation of overall assessment participation rate and participation rate for students with disabilities in each subject area. • Updated information for each requirement addressed in initial waiver request. • Discussion of changes in evidence provided for each requirement. • List of the resources (e.g., guidelines, parent letter) that have been used with districts and documentation of the extent to which they have been disseminated to districts. • Inclusion of an appendix with resources provided to districts. • Discussion of implications of change or lack of change for each requirement.

Requirement 5 – (§200.6(c)(4)(v)): Demonstrate substantial progress toward each component of the prior year’s plan and timeline, which was required under Requirement 4 (C).

	Examples of Evidence
The state showed that it made progress toward its prior year’s plan and timeline.	<p>Evidence to support this requirement includes:</p> <ul style="list-style-type: none"> • Information on how the state defined substantial progress on its plan and timeline. • Rationale for judgment that state has made substantial progress. • Documentation of data that shows changes in participation rates in districts identified for monitoring and oversight. • Documentation of stakeholder input on waiver extension request (e.g., number of comments, focus of comments). • Revised plans based on information gained during the year. • If substantial progress was not observed, a revised timeline and plan for how substantial progress will be made during the next year.

INSTITUTE *on* COMMUNITY INTEGRATION

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