



---

# NCEO Tool 5

---

## Frequently Asked Questions on AA-AAAS

1% Toolkit

# Frequently Asked Questions on AA-AAAS

Kathy Strunk and Martha Thurlow

A publication of:

NATIONAL CENTER ON EDUCATIONAL OUTCOMES

In collaboration with

NCEO 1.0% Peer Learning Group (PLG 2), NCEO 1% Community of Practice (CoP), and the October 2018 1% Cap National Convening: Supporting States in Implementing ESSA's 1% State-level Cap on Participation of Students in the AA-AAAS Participants

The Center is supported through a Cooperative Agreement (#H326G160001) with the Research to Practice Division, Office of Special Education Programs, U.S. Department of Education. The Center is affiliated with the Institute on Community Integration at the College of Education and Human Development, University of Minnesota. The contents of this report were developed under the Cooperative Agreement from the U.S. Department of Education, but does not necessarily represent the policy or opinions of the U.S. Department of Education or Offices within it. Readers should not assume endorsement by the federal government.

Project Officer: David Egnor



All rights reserved. Any or all portions of this document may be reproduced and distributed without prior permission, provided the source is cited as:

Strunk, K., & Thurlow, M. L. (2019). *Frequently asked questions on AA-AAAS*. Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes. Available at [www.nceo.info](http://www.nceo.info).

## Acknowledgments

This *Frequently Asked Questions on AA-AAAS* was developed through the work of the National Center on Educational Outcomes (NCEO) 1% 2019 Peer Learning Group (PLG) 2, “Guiding and Evaluating District Justifications for Exceeding the 1% Cap,” and the 1% Community of Practice (CoP). We also include here questions that were posed during the October 2018 *1% Cap National Convening: Supporting States in Implementing ESSA’s 1% State-level Cap on Participation of Students in the AA-AAAS held in Boston, Massachusetts* (see <https://nceo.info/Resources/publications/OnlinePubs/1percentCap/default.html>). The documentation of questions from states with answers from the U.S. Department of Education was possible only because of the willingness of the U.S. Department of Education to respond to the questions that were posed.

In addition to the authors of this document, it took a team to ensure that PLG 2 and the 1% CoP were successful. Members of this team included, in addition to the authors (in alphabetical order): Anthea Brady, Duane Brown, Cesar D’Agord, Sharon Hall, Maureen Hawes, Susan Hayes, Sheryl Lazarus, Judy Lee, Kate Nagle, Travis Peterson, Tanner Petry, Chris Rogers, Stephen Ruffini, Tony Ruggiero, and Mari Shikuzawa,

Staff from 45 states participated in the PLG 2 webinar calls. In addition, staff from 44 states participated in the CoP. The participating states are listed here. Many of the states had multiple representatives on the webinar calls. This Guide would not exist had it not been for the active participation of state personnel in PLG 2 and the CoP.

Alabama  
Alaska  
Arizona  
Arkansas  
Bureau of Indian Education  
California  
Colorado  
Connecticut  
Delaware  
District of Columbia  
Florida  
Georgia  
Hawaii  
Idaho  
Illinois  
Indiana  
Iowa  
Kansas  
Kentucky  
Louisiana  
Maine  
Maryland  
Massachusetts

Michigan  
Minnesota  
Mississippi  
Missouri  
Montana  
Nebraska  
Nevada  
New Hampshire  
New Jersey  
New Mexico  
New York  
North Carolina  
North Dakota  
Ohio  
Oklahoma  
Oregon  
Pennsylvania  
Rhode Island  
South Carolina  
South Dakota  
Tennessee  
Texas  
Utah  
Vermont  
Virginia  
Washington  
West Virginia  
Wisconsin  
Wyoming

## Frequently Asked Questions on AA-AAAS

The 2015 reauthorization of the Elementary and Secondary Education Act, known as the Every Student Succeeds Act (ESSA), includes a 1.0% cap on state-level participation rates in the alternate assessment aligned to alternate academic achievement standards (AA-AAAS). No limit was placed on district or school rates, but districts must provide justifications to the state if they exceed or anticipate exceeding the 1.0% threshold. In addition, states are to provide oversight to these districts. These requirements mean that states, districts, schools, and Individualized Education Program (IEP) teams need to think carefully about which students should be included in the AA-AAAS. Further, districts should examine their data frequently to ensure that state guidelines are being followed and that appropriate decisions are being made for individual students. Having a data analysis and use plan is essential to being able to examine and discuss data in ways that inform how states and districts act on their data.<sup>1</sup>

### Purpose of this FAQ

This *Frequently Asked Questions on AA-AAAS* is designed to document for states questions that were asked during the 1% Convening, PLG 2, and the 1% CoP, along with the answers provided by the U.S. Department of Education. The questions were posed by state personnel who participated in the Convening, the PLG or the CoP. They are listed here by topic, with the date the question was answered by the U.S. Department of Education.

### Topic 1: How is the 1.0% calculated?

**1. In calculating the 1.0 percent cap on the number of students with the most significant cognitive disabilities who take an AA-AAAS, is the denominator the number of eligible students or the number of tested students? How many decimal points can be reported?**

a.

The 1.0 percent cap is calculated based on a ratio of the total number of students assessed in a subject using an AA-AAAS (numerator) as compared with the total number of students assessed in that subject in the State (denominator).

b.

The cap is 1.0 percent, and it must be reported with only one decimal point. ( October 19, 2018)

---

<sup>1</sup> Several tools have been developed to assist with data analyses and planning. Many of these are listed in the Resources section of this Tool.

**2. Will ED calculate the 1.0% to one decimal place (tenths placeholder) after the 1? Will ED look only at one decimal point (truncating there without looking at the next hundreds place)?**

ED will follow simple rounding rules, and evaluates a State's AA-AAAS participation rate using one decimal place after rounding. The percentage is NOT truncated at the tenths decimal place. (April 19, 2019)

**Topic 2: Consequences for States that are not Compliant with ESSA 1.0% Cap Requirements**

**1. What potential actions could ED take if a State exceeds the 1.0 percent cap on the number of students with the most significant cognitive disabilities who take an AA-AAAS in a given subject and the State does not request or receive a waiver under section 8401 of ESEA?**

a.

A State's failure to meet the 1.0 percent cap on the total number of students with the most significant cognitive disabilities who can take an AA-AAAS is treated in the same way that any other noncompliance with a Federal requirement is treated.

b.

There is a range of enforcement options that the Department may take, including requiring corrective action to address any noncompliance resulting in the failure to meet the 1.0 percent cap, imposing a specific condition on a grant, or designating the State a high-risk grantee and, if the noncompliance persists, the possibility of withholding funds, in whole or in part, subject to notice and an opportunity for a hearing.

c.

As a first step, a State that exceeds the 1.0 percent cap in a given subject would need to examine its guidelines required under section 612(a)(16)(C) of the Individuals with Disabilities Education Act (IDEA) and 34 C.F.R. §300.160(c) of the IDEA Part B regulations (Part B) for participation of students with the most significant cognitive disabilities in an AA-AAAS and how those guidelines are being implemented across the State.

d.

But, of course, the Department hopes none of these actions is necessary, and that each State is able to satisfy the conditions for a waiver under section 8401 of ESEA or address any potential noncompliance to make a waiver request unnecessary. We [the U.S. Department of Education] encourages you to reach out to us for technical assistance. (October 19, 2019)

**2. What is Year 1 for consequences?**

Year 1 of consequences is 2017-2018. There is a 1-year lag. (April 19, 2019)

**3. When will the notification letters be sent (as described in the March 28, 2019 Letter from Patrick Rooney and Ruth Ryder, US Department of Education): “Information Regarding Consequences for States Not Meeting the Requirement to Assess Not More than 1.0 Percent of Students on the Alternate Assessment”)?**

If no notification letter is received by a state by July 2019, it is not coming thereafter. Approximately 15-20 states will get letters. States with a waiver will not get letters. (April 19, 2019)

**4. What information should states include in the plan they submit (as directed in the March 28, 2019 notification letter)?**

The plan that states submit (both States under and over 95% participation) should contain very similar information to what is included in waiver requests. Both waiver requests and plans mirror what is in the regulations. (April 19, 2019)

**Topic 3: Public Posting of 1.0% Documents**

**1. Are states’ waiver requests posted publicly on the ED website?**

Historically, OESE has not posted waiver requests, but has posted its response to the State waiver requests. Beginning with the 2018-19 1% AA-AAAS waiver requests, the Department will post the full State request appended to the Department’s response. The Department is publishing the full State request at the behest of Congress. State requests will be reviewed and redacted so that any potentially personally identifiable information (PII) is masked.

The OESE link to the page with waiver responses is:

[https://www2.ed.gov/admins/lead/account/saa.html#Assessment\\_Waivers](https://www2.ed.gov/admins/lead/account/saa.html#Assessment_Waivers)

This is a state by state index of all Title I waiver responses. OESE describes each waiver for those posted in 2017 and 18 moving forward. If you navigate to the page, and search that page for “request for waiver of the one percent cap” you should see all of them; none were posted prior to 2017. (September 6, 2018)

**2. Is a State required to publicly post its 1.0 percent cap waiver request or extension request?**

Yes. All waiver and extension requests under section 8401 of ESEA require that a State accept public comment on the request. Requirements for a waiver request of the 1.0 percent cap under section 8401 of ESEA are described in detail in the regulations in 34 C.F.R. §200.6(c). Note that, in preparing a waiver renewal request, a State must continue to meet each requirement associated with a first-year waiver. (October 19, 2018)

**3. Must the state publicly post the actual LEA justification (with personal information redacted or deleted)?**

In 34 CFR 200.6(c)(3)ii-iv, the requirement is that States must:

“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.”

The requirements do not indicate that these justifications must be posted, but that they be made publicly available. States may choose various ways to meet this requirement, posting redacted justifications on a website might be one way. Another way might be to post on the State’s website that these justifications are available to the public on request. (June 21, 2019)

**4. May a State list only the names of districts that have submitted justifications?**

A State might choose to list the names of districts, but the actual information submitted by Districts must be made publicly available in some fashion (appropriately redacted). (June 21, 2019).

**5. May a State provide a summary related to the data associated with the district/school justifications?**

See answer to #4 above; this answer also applies to this question. (June 21, 2019).

**6. How long must states publicly post 1.0% documents, e.g., waiver request posted for public comment, waiver (and waiver extension) requests, LEA justifications (or message stating these are publicly available upon request), action plan developed per receipt of a June 2019 notification letter, improvement plans, etc.?**

ED does not have a quantitative target.

The statute and regulations are clear; they must be publicly available. If not directly available on a website, it is reasonable that the website contains instructions (that are up to date) on how the public might be able to view these materials.

There is not a timeframe for when these materials would NOT be publicly available. (August 8, 2019)



## Topic 4: Waiver and Waiver Extension Requests

**1. The states participating in the 1% Cap CoP expressed interest in using a peer review format (requirement on left, evidence required on right) for their waiver requests. Have any states taken this approach? Would it be an acceptable approach?**

There would be no reason why a state could not provide the waiver application in a two column approach. Most states do a linear requirement by requirement presentation top to bottom. But side by side works for the Department if it is efficient for the State. (September 6, 2018)

**2. One or more states have asked what they should do if they determine that they have not made "sufficient" progress, and thus want to revise the plan and timeline in their original waiver request. Is that appropriate for a waiver extension request?**

The State should put the best rationale forward that they can. Adapting the plan is part of progress toward a longer term goal; having said that, the Department does not have an official rubric for what merits sufficient progress. (September 6, 2018)

**3. Will state waiver requests be approved in the future if the state's percentages go up?**

Several states received waiver extensions this year even though their percentages went up. They can anticipate that this won't happen again next year for states with increasing percentages, since the letter clearly lays out what happens. States with increasing numbers next year may get both a denial of their waiver extension request and a notification letter. (April 19, 2019)

## Resources

D'Agord, C., Ruggiero, T. Strunk, K., & Thurlow, M. J. (2019). *Data analysis and use planning tool for examining AA-AAAS participation: Addressing the percentage of students participating in the alternate assessment* (Tool #2, 1% Toolkit). Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes, NCEO PLG 1

Evans, C. M., & Domaleski, C. (2018). *Guidance for examining district alternate assessment participation rates*. Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes.

Evans, C., & Domaleski, C. (2019, August). *Guidance for examining disproportionality of student group participation in alternate assessments* (NCEO Brief #18). Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes.

Nagle, K., Thurlow, M.L., Strunk, K., D'Agord, C., & Ruggiero, T. (2019). *District dialogue guide: Addressing the percentage of students participating in the alternate assessment* (Tool #4,

1% Toolkit). Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes, NCEO PLG 1.

National Center for the Improvement of Educational Assessment & National Center on Educational Outcomes. *Guidance for examining participation rates and disproportionality: A video training module*. Available at <https://vimeo.com/325082455>.

Ruggiero, T., D'Agord, C. Strunk, K., & Thurlow, M. (2019). *State-district data display templates: Addressing the percentage of students participating in the alternate assessment* (Tool #3, 1% Toolkit). Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes, NCEO PLG 1.

Strunk, K., Thurlow, M. L. (2019). *Developing a 1% cap waiver or waiver extension request* (Tool #1, 1% Toolkit). Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes, NCEO PLG 1.

### **Federal Regulations and Letters**

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>

INSTITUTE *on* COMMUNITY INTEGRATION

---

UNIVERSITY OF MINNESOTA

*NCEO is an affiliated center of the Institute on Community Integration*