



**#258-22**

**Commonwealth of Virginia  
Virginia Department of Education  
Superintendent's Memo #258-22**

**DATE:** October 28, 2022  
**TO:** Division Superintendents  
**FROM:** Jillian Balow, Superintendent of Public Instruction  
**SUBJECT:** **Opportunity to Comment on a Waiver from the United States Department of Education on the Number of Students Being Assessed on the Virginia Alternate Assessment**

Pursuant to 34 C.F.R. §200.6(c)(4), the Virginia Department of Education (VDOE) will seek to extend a waiver for the 2022-2023 school year from the Secretary for the United States Department of Education. The regulation in question, found at 34 C.F.R. 200.6(c)(2), requires State Education Agencies, such as the VDOE, to limit the total number of students assessed in a subject area using an alternate assessment. The limit on the percentage of students assessed by the alternate assessment is set by the federal regulation, stating there shall be no more than one (1) percent of the total number of students assessed taking the alternate assessment in each subject area.

Specifically, 34 C.F.R. 200.6(c)(2) provides:

For each subject for which assessments are administered under § 200.2(a)(1), the total number of students assessed in that subject using an alternate assessment with alternate academic achievement standards under paragraph (c)(1) of this section may not exceed 1.0 percent of the total number of students in the State who are assessed in that subject.

**Notice of Public Comment Period:** Any individual or organization may submit written comments on the proposed waiver pursuant to 34 C.F.R. §200.6(c)(4). The proposed waiver extension request can be accessed on the VDOE's [Virginia Alternate Assessment Program \(VAAP\) webpage](#). Public comment on the proposed waiver may be submitted via email at: [Accountability@doe.virginia.gov](mailto:Accountability@doe.virginia.gov). Written comments shall be accepted until **November 28, 2022**.

The VDOE requests that this information be shared with members of your education community and local board of education.

### For more information

For additional information about the proposed waiver, please contact Jeff Phenicie, Director of Office of Program Improvement, by telephone at (804) 786-0308, or by email at [Jeff.Phenicie@doe.virginia.gov](mailto:Jeff.Phenicie@doe.virginia.gov); or Deborah Johnson, Specialist for Intellectual Disabilities, Office of Instructional Services, by telephone (804) 371-2725, or by email at [Deborah.Johnson@doe.virginia.gov](mailto:Deborah.Johnson@doe.virginia.gov).

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