



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

March 4, 2022

The Honorable Jillian Balow
Superintendent of Public Instruction
Virginia Department of Education
101 North 14th Street
Richmond, VA 23219

Dear Superintendent Balow:

I am writing in response to the Virginia Department of Education's (VDOE's) request on November 30, 2021, for a one-year extension of the State's waiver of section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965 (ESEA) which stipulates that a State may not assess using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS) more than 1.0 percent of the total number of students in the State who are assessed in the subjects of reading/language arts (R/LA), mathematics, and science.

After reviewing VDOE's waiver request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, for school year 2021-2022, a one-year extension of the State's waiver of section 1111(b)(2)(D)(i)(I) of the ESEA so that the State may assess with an AA-AAAS more than 1.0 percent of the total number of students in the State who are assessed in R/LA, mathematics, and science.

As part of this waiver, VDOE assured that it:

- Will continue to meet all other requirements of section 1111 of the ESEA and implement regulations with respect to all State-determined academic standards and assessments, including reporting student achievement and school performance, disaggregated by subgroups, to parents and the public.
- Had assessed in 2018-2019 at least 95 percent of all students and students with disabilities who are enrolled in grades for which an assessment is required. I note that while the State did not assess at least 95 percent of all students and students with disabilities in 2020-2021 due to disruptions caused by the COVID-19 pandemic, it assessed students with disabilities at about the same rate as all students in 2020-2021. Therefore, consistent with information provided in the guidance to States on October 29, 2021,¹ I am also approving a one-year waiver of the requirement in 34 CFR § 200.6(c)(4)(ii)(B) that a State must have assessed at least 95 percent of students in the prior year.
- Will require that a local educational agency (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 an AA-AAAS.
- Will provide appropriate oversight of an LEA that is required to submit such information to the State.

¹ See: <https://oese.ed.gov/files/2021/10/Memo-to-States-re-One-Percent-Waiver-Requirements-2021-2022.pdf>.

- Will verify that each LEA that is required to submit such information to the State is following all State guidelines in 34 CFR § 200.6(d) – excluding (d)(6) and will address any subgroup disproportionality in the percentage of students taking an AA-AAAS.
- Will implement, consistent with the plan submitted in ODE’s waiver request, system improvements and will monitor future administrations of the AA-AAAS to avoid exceeding the
- 1.0 percent cap.

I want to remind you of the requirement in 34 CFR § 200.6(c)(3)(iv) that the State must make publicly available the information submitted by an LEA justifying the need of the LEA to assess more than 1.0 percent of its students on the AA-AAAS, provided that such information does not reveal personally identifiable information about an individual student. I also encourage you to make available your State’s plan and timeline and your progress to date in reducing the percentage of students taking the AA-AAAS. I would also like to remind you that this waiver does not alleviate any of the State’s obligations in meeting all of the requirements found in section 612(a)(16) of the Individuals with Disabilities Education Act (IDEA) which address assessment participation, assessment accommodations, alternate assessments, and reporting for children with disabilities.

Given the workplan submitted by VDOE, I expect to see positive results of this plan in the 2021-2022 school year and beyond. I note that the rate of AA-AAAS participation did not decline in your State in 2020-21. I do understand that COVID-19 schooling disruptions significantly impacted overall rates of participation, and that the AA-AAAS participation rates for 2020-21 may be anomalous as a result. However, when reviewing future requests for an extension of this waiver, the Department will continue to expect both continued progress implementing your plan and, in particular, demonstrated progress in reducing the percentage of students taking the AA-AAAS in all tested subjects.

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

Sincerely,



Ruth E. Ryder
Deputy Assistant Secretary for Policy and Programs
Office of Elementary and Secondary Education

cc: Shelly Loving Ryder, Assistant Superintendent for Assessment