

**Virginia’s Request for a One-Year Extension of the 2020-2021  
Waiver from the One Percent Limit of Students Participating in the  
Alternate Assessments Aligned with Alternate Academic  
Achievement Standards (AA-AAAS) Granted by the United States  
Department of Education (April 13, 2021)**

The *Every Student Succeeds Act* (ESSA) Section 1111(b)(2)(D)(i)(I) limits the total number of students with the most significant cognitive disabilities who are assessed statewide with an Alternate Assessment aligned with Alternate Academic Achievement Standards (AA-AAAS) to one percent of the total number of students in the state who are assessed in that subject; however, if a state anticipates that it will exceed the one percent cap for any subject, the state may request that the United States Department of Education (USED) waive the cap for that subject, pursuant to the *Elementary and Secondary Education Act* (ESEA), Section 8401, for one year. The four basic requirements in a state’s one percent cap waiver are detailed below.

Please consider Virginia’s extension request for the 2021-2022 school year for reading, mathematics, and science.

***Requirement 1 (§200.6(c)(4)(i)):***

*Submit the waiver request at least 90 days before testing window starts for the relevant subject.*

The assessment window for the Virginia Alternate Assessment Program (VAAP) for students with the most significant cognitive disabilities is open from February 28, 2022, through June 24, 2022, in all tested subjects. Ninety days prior to the opening of the test window is November 30, 2021.

***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.*

Based on guidance released from the USED on October 29, 2021, regarding the requirements to request a waiver for school year (SY) 2021-2022 from the one percent cap on the percentage of students with the most significant cognitive disabilities who may be assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS), the VDOE has included the actual AA-AAAS participation rates for SY 2018-2019 and SY 2020-2021.

In addition, projected estimates of the number and percentage of students expected to take the AA-AAAS in SY 2021-2022, by subject area, are included.

*(A) Data on participation in AA-AAAS in subject area by subgroup.*

Alternate Assessment Participation Rates for English/Reading, 2018-2019, by Student Group

<b>Student Group</b>	<b>Number of Students Participating in Regular Assessment</b>	<b>Number of Students Participating in Alternate Assessment</b>	<b>Total Number of Students Assessed</b>	<b>Percent Participating in Alternate Assessment</b>
All Students	667,365	7,940	675,305	1.18%
American Indian or Alaska Native	1,765	15	1,780	0.84%
Asian	48,527	489	49,016	1.00%
Native Hawaiian or Other Pacific Islander	1,068	23	1,091	2.11%
Black or African American	147,265	2,644	149,909	1.76%
Hispanic or Latino	107,921	1,211	109,132	1.11%
Two or More Races	38,350	383	38,733	0.99%
White	322,469	3,175	325,644	0.97%
Children with Disabilities	82,633	7,940	90,573	8.77%
Limited English Proficient (LEP)	48,389	1,172	49,561	2.36%
Economically Disadvantaged	277,493	4,250	281,743	1.51%
Migratory Students	140	<10 or less students	141	0.71%
Male	339,964	5,172	345,136	1.50%
Female	327,401	2,768	330,169	0.84%

Alternate Assessment Participation Rates for English/Reading, 2020-2021, by Student Group

Student Group	Number of Students Participating in Regular Assessment	Number of Students Participating in Alternate Assessment	Total Number of Students Assessed**	Percent Participating in Alternate Assessment
All Students	523,967	6,179	531,467	1.16%
Asian	40,147	349	40,789	0.86%
Black or African American	107,780	1,961	109,827	1.79%
Hispanic or Latino	87,857	930	89,438	1.04%
Two or More Races	32,319	359	32,709	1.10%
White	253,717	2,549	256,522	0.99%
Children with Disabilities	62,526	6,179	68,734	8.99%
Limited English Proficient (LEP)	41,486	892	43,690	2.04%
Economically Disadvantaged	216,775	2,970	220,297	1.35%
Male	267,241	4,111	272,059	1.51%
Female	256,675	2,068	259,356	0.80%

Note: Data submitted to EDFacts. \*\*LEP students who, at the time of testing, were in the United States for less than 12 months and took the English Language Proficiency test as substitute for the reading/ language arts assessment are also considered participants in that reading assessment (PARTELP).

Projected Assessment Participation Rates for English/Reading, 2021-2022

Number of Students in Membership at Grades 3-8 and 11 in Fall of 2021	Number of Students Projected to Participate in the Alternate Assessment in 2021-2022*	Percent Projected to Participate in the Alternate Assessment
636,004	7,464	1.17%

\*Data was derived from a participation survey sent from the VDOE Department of Special Education to Local Educational Agency (LEA) staff in September of 2021 as part of the planned monitoring process. This survey did not require specific student information from all divisions; therefore, the projected values are not able to be disaggregated to the student group level.

Alternate Assessment Participation Rates for Mathematics, 2018-2019, by Student Group

<b>Student Group</b>	<b>Number of Students Participating in Regular Assessment</b>	<b>Number of Students Participating in Alternate Assessment</b>	<b>Total Number of Students Assessed</b>	<b>Percent Participating in Alternate Assessment</b>
All Students	753,804	7,917	761,721	1.04%
American Indian or Alaska Native	1,940	16	1,956	0.82%
Asian	54,717	489	55,206	0.89%
Native Hawaiian or Other Pacific Islander	1,249	22	1,271	1.73%
Black or African American	166,182	2,633	168,815	1.56%
Hispanic or Latino	126,433	1,209	127,642	0.95%
Two or More Races	42,758	375	43,133	0.87%
White	360,525	3,173	363,698	0.87%
Children with Disabilities	91,069	7,917	98,986	8.00%
Limited English Proficient (LEP)	59,138	1,179	60,317	1.95%
Economically Disadvantaged	313,138	4,248	317,386	1.34%
Migratory Students	169	<10 or less students	170	0.59%
Male	381,978	5,158	387,136	1.33%
Female	371,826	2,759	374,585	0.74%

Alternate Assessment Participation Rates for Mathematics, 2020-2021, by Student Group

Student Group	Number of Students Participating in Regular Assessment	Number of Students Participating in Alternate Assessment	Total Number of Students Assessed	Percent Participating in Alternate Assessment
All Students	535,870	6,218	542,088	1.14%
Asian	41,070	351	41,421	0.84%
Black or African American	164,727	2,633	167,360	1.57%
Hispanic or Latino	92,610	947	93,557	1.02%
Two or More Races	33,044	355	33,399	1.06%
White	256,846	2,574	259,420	0.99%
Children with Disabilities	64,775	6,218	70,993	8.75%
Limited English Proficient (LEP)	45,551	909	46,460	1.95%
Economically Disadvantaged	224,001	2,981	226,982	1.31%
Male	273,858	4,135	277,993	1.48%
Female	261,952	2,083	264,035	0.78%

Note: Data submitted to EDFacts.

Projected Assessment Participation Rates for Mathematics, 2021-2022

Number of Students in Membership at Grades 3-8 and 11 in Fall of 2021	Number of Students Projected to Participate in the Alternate Assessment in 2021-2022*	Percent Projected to Participate in the Alternate
633,500	7,451	1.18%

\*Data was derived from a participation survey sent from the VDOE Department of Special Education to LEA staff in September of 2021 as part of the planned monitoring process. This survey did not require specific student information from all divisions; therefore, the projected values are not able to be disaggregated to the student group level.

Alternate Assessment Participation Rates for Science, 2018-2019, by Student Group

<b>Student Group</b>	<b>Number of Students Participating in Regular Assessment</b>	<b>Number of Students Participating in Alternate Assessment</b>	<b>Total Number of Students Assessed</b>	<b>Percent Participating in Alternate Assessment</b>
All Students	394,384	3,468	397,852	0.87%
American Indian or Alaska Native	993	<10 or less students	1,001	0.80%
Asian	29,301	211	29,512	0.71%
Native Hawaiian or Other Pacific Islander	653	<10 or less students	658	0.76%
Black or African American	85,501	1,171	86,672	1.35%
Hispanic or Latino	62,693	490	63,183	0.78%
Two or More Races	21,487	168	21,655	0.78%
White	193,756	1,415	195,171	0.73%
Children with Disabilities	45,587	3,468	49,055	7.07%
Limited English Proficient (LEP)	23,173	477	23,650	2.02%
Economically Disadvantaged	153,944	1,829	155,773	1.17%
Migratory Students	76	<10 or less students	76	0.00%
Male	199,333	2,233	201,566	1.11%
Female	195,051	1,235	196,286	0.63%

Alternate Assessment Participation Rates for Science, 2020-2021, by Student Group

<b>Student Group</b>	<b>Number of Students Participating in Regular Assessment</b>	<b>Number of Students Participating in Alternate Assessment</b>	<b>Total Number of Students Assessed</b>	<b>Percent Participating in Alternate Assessment</b>
All Students	263,688	2,726	266,414	1.03%
Asian	19,935	128	20,063	0.63%
Black or African American	54,116	924	55,040	1.67%
Hispanic or Latino	42,734	398	43,132	0.92%
Two or More Races	15,551	133	15,684	0.85%
White	130,259	1,128	131,387	0.86%
Children with Disabilities	30,811	2,726	33,537	8.13%
Limited English Proficient (LEP)	15,701	353	16,054	2.20%
Economically Disadvantaged	103,281	1,260	104,541	1.21%
Male	135,002	1,803	136,805	1.32%
Female	128,652	923	129,575	0.71%

Note: Data submitted to EDFacts.

Projected Assessment Participation Rates for Science, 2021-2022

<b>Number of Students in Membership at Grades 5, 8, and 11 in Fall of 2021</b>	<b>Number of Students Projected to Participate in the Alternate Assessment in 2021-2022*</b>	<b>Percent Projected to Participate in the Alternate Assessment</b>
280,192	3,590	1.28%

\*Data was derived from a participation survey sent from the VDOE Department of Special Education to LEA staff in September of 2021 as part of the planned monitoring process. This survey did not require specific student information from all divisions; therefore, the projected values are not able to be disaggregated to the student group level.

***(B) Data showing 95 percent participation overall and for the students with disabilities student group.***

2020-2021 Participation Rate Overall and for Students with Disabilities, by Content Area

<b>Content Area</b>	<b>All Students Tested</b>	<b>All Students in the Tested Population</b>	<b>Participation Percent by Content Area*</b>	<b>Students with Disabilities Tested</b>	<b>Students with Disabilities in the Tested</b>	<b>Participation Percent by Content Area*</b>
Reading	531,467	654,816	81.16%	68,734	88,334	77.81%
Math	542,088	671,217	80.76%	70,993	91,935	77.22%
Science	266,414	328,285	81.15%	33,537	43,226	77.59%

\*Virginia has consistently maintained assessment participation rates in English/reading, mathematics, and science above 95 percent overall and for students with disabilities. The initial waiver request submitted pre-pandemic utilized participation rate data from 2018-2019 as support documentation. Refer to the next table.

2018-2019 (Pre-Pandemic) Participation Rate Overall and for Students with Disabilities, by Content Area

<b>Content Area</b>	<b>All Students Tested</b>	<b>All Students in the Tested Population</b>	<b>Participation Percent by Content Area</b>	<b>Students with Disabilities Tested</b>	<b>Students with Disabilities in the Tested</b>	<b>Participation Percent by Content Area</b>
Reading	677,718	683,544	99.15%	91,177	91,793	99.33%
Math	761,420	766,472	99.34%	98,852	99,886	98.96%
Science	397,563	400,621	99.24%	48,925	49,648	98.54%

Virginia appreciates that the United States Department of Education recognizes the challenges associated with the Spring 2021 assessment administration and accountability provisions related to the 95 percent assessment participation requirement. Despite the flexibilities offered by the United States Department of Education and the Virginia Department of Education, Virginia was unable to maintain pre-pandemic assessment participation rates across content areas in the Spring of 2021 administration.



Virginia had a significant increase in the number of parent refusals to test due to COVID-19. Specifically, if parents refused to have their child participate in the AA-AAAS in 2020-2021 due to the COVID-19 pandemic, LEA staff were directed to inform the parents that their child's score report will reflect that the test was refused due to COVID-19 and a "No Score" or "NS" was assigned. School staff were strongly encouraged to request a written statement from parents indicating the specific test(s) the parents refused to have their child complete due to the pandemic and maintain in the student's file as a record of the decision. Test records coded in this manner in reading, mathematics, and science were included as non-participants in federal accountability calculations.

In light of this, Virginia respectfully requests United States Department of Education to consider waiving ("setting aside") the specific requirement in 34 CFR 200.6(c)(4)(ii)(B) when reviewing this waiver extension request.

***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 one percent followed the state's participation guidelines.***

To meet the above stated requirement, school divisions who anticipate exceeding the one percent cap on participation in the VAAP had to provide to the VDOE assurances that the division followed the state's participation guidelines for the upcoming spring assessment window opening February 28, 2022, including that:

- Individualized Education Program (IEP) Teams will correctly identify students with the most significant cognitive disabilities following state criteria and participation guidelines.
- Students participating in the VAAP have been instructed in a modified curriculum aligned to state standards (i.e., Virginia Aligned Standards of Learning (ASOL) and/or the Virginia Essentialized Standards of Learning (VESOL)).
- Student IEPs will include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the child meets the criteria for the alternate assessment; and how the child's participation in the VAAP will impact the child's promotion and/or graduation with a standard or advanced studies diploma, or other matters.
- School divisions will seek to measure the achievement of at least 95 percent of all students, including students with disabilities in all grades for which assessment is required.

***(B) Assurance that any disproportionality in students taking the AA-AAAS will be addressed.***

The VDOE will continue to address disproportionality in the percentage of students in any student group taking the VAAP through multiple activities as described below. In particular, VDOE will perform the following steps to address disproportionality concerns:

- Calculate and analyze participation rates among student groups at the State Educational Agency (SEA) and LEA levels.
- Identify student groups over-represented in the VAAP participation counts.
- Analyze student group data over time to identify trends in student group participation with the goal of decreasing disproportionality.
- Continue to provide resources and support to LEAs on appropriately identifying students with the most significant cognitive disabilities for inclusion in the VAAP.
- Engage with stakeholder groups to address disproportionalities and ensure only students with the most significant cognitive disabilities are participating in the VAAP.
- Maintain and update the VAAP.
- Report assessment data publicly.

***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) State will improve the implementation of its participation guidelines, including, if necessary, revising its definition of “students with the most significant cognitive disabilities.”***

To meet the above stated requirement, the following steps have been or will be taken:

- The VDOE staff members will continue to participate, bi-weekly, in the one percent Community of Practice (CoP), offered by The National Center on Educational Outcomes (NCEO), in accordance with P.L. 108-446 Sec. 617(a). The VDOE has been a participant since December 2017.

- The VDOE staff members participated in the Peer Learning Group (PLG): PLG #2- Guiding and Evaluating District Justifications for Exceeding the 1% Cap, from June through August 2019, offered by The National Center on Educational Outcomes (NCEO), in accordance with P.L. 108-446 Sec. 617(a); and Peer Learning Group (PLG): PLG #3- Building Capacity of IEP Teams and Parents in Making Decisions About Assessment Participation, offered by The National Center on Educational Outcomes (NCEO), in accordance with P.L. 108-446 Sec. 617(a). This was offered October through December 2019.
- The VDOE staff members will annually review and revise, if appropriate, state-level policies, procedures, and practices pertaining to Virginia’s AA-AAAS, based on information gathered from the above listed CoP, PLGs, and the data disaggregation in accordance with 34 CFR § 200.6(d).

***(B) State will take additional steps to support and provide appropriate oversight to each LEA that the state anticipates will assess more than one 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).***

To meet the above stated requirement, the following steps will be taken:

- By November 5, 2021, all LEAs in the state were required to complete a survey titled, “2021 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program.” The results of this survey revealed projected participation rates by LEAs for each content area to be assessed in the Spring of 2022. This information will be provided to state staff to assist with the 2021-2022 cyclical monitoring of LEAs. In addition, the information will help determine the level of technical assistance needed by each LEA.
- Following the Spring 2022 administration, VDOE staff members will disaggregate the AA-AAAS participation data by LEA, primary disability, gender, race/ethnicity, and grade level to reveal trends in disproportionality in accordance with 34 CFR § 200.6(c)(4)(ii)(A).
- Using the disaggregated data, VDOE staff members will address disproportionality identified above for each LEA exceeding one percent of its students in any subject with an AA-AAAS and will provide technical assistance to LEAs in area(s) of identified need(s), as required under 34 CFR § 200.6(c)(3)(iii).
- In addition, the VDOE is transitioning to a new format for the AA-AAAS, beginning in SY 2021-2022. The new Virginia Alternate Assessment Program (VAAP) is an online assessment in reading, mathematics, and science for eligible students with significant cognitive disabilities, in grades three through eight and high school, that will replace the current portfolio-based assessment.

***(C) State will address any disproportionality in the percentage of students taking the AA-AAAS.***

To meet the above stated requirement, the VDOE required LEAs to submit assurances including:

- IEP Teams identified students with the most significant cognitive disabilities following state criteria and participation guidelines.
- Excessive absences; social, cultural or economic differences; identification in a specific disability category; specific special education placement or services; anticipated scores on Standards of Learning tests; or concerns for accreditation calculations were not considered in the determination that the student will be assessed with the VAAP.
- Students participating in the VAAP have been instructed in a modified curriculum aligned to state standards (i.e., Virginia Aligned Standards of Learning (ASOL) and/or the Virginia Essentialized Standards of Learning (VESOL)).
- Student IEPs include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the child meets the criteria for the alternate assessment; and how the child's participation in the VAAP will impact the child's promotion and/or graduation with a standard or advanced studies diploma, or other matters.
- There is written confirmation that IEP Teams informed parents of students with the most significant cognitive disabilities of the implications of participation in the alternate assessment.
- The division will strive to measure the achievement of at least 95 percent of all students, including students with disabilities in all grades for which assessment is required.
- There is written confirmation that it has no disproportionality in the percentage of students in any subgroup taking the alternate assessment, or if disproportionality does exist, it has plans to address any disproportionality.

The plan includes:

- Identifying districts with more than one percent of its students taking the AA-AAAS.
- Providing training and technical assistance to districts to ensure appropriate decisions for participation in the AA-AAAS are made by IEP Teams.
- Identifying districts with student groups that disproportionately participate in the AA-AAAS.
- Monitoring districts with more than one percent of their students participating in the AA-AAAS.

Virginia is making progress in its plan and timeline as follows:

- As part of the VDOE transition to a new format for the AA-AAAS, beginning in SY 2021-2022, additional webinar training has been provided to LEAs regarding students with the most significant cognitive disabilities, including revisiting the characteristics of students with the most significant cognitive disabilities and the criteria for participation in the VAAP.
- Based on data presented in tables above and gathered through the survey titled, “2021 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program,” the VDOE is able to identify those districts who exceed the one percent threshold of students participating in the VAAP. This data will be provided to state staff to assist with the 2021-2022 cyclical monitoring of LEAs and to determine the level of technical assistance needed by each LEA to address the need to exceed the one percent threshold

<b>To meet the Requirement 4 (§200.6(c)(4)(iv)), the following steps have or will be taken:</b>	<b>Timeline</b>
The VDOE staff members will continue to participate, bi-weekly, in the One Percent Community of Practice (CoP), offered by The National Center on Educational Outcomes (NCEO) in accordance with P.L. 108-446 Sec. 617(a).	Ongoing (December 2017- Present)
The VDOE staff members participated in the Peer Learning Group (PLG) PLG #2-Guiding and Evaluating District Justifications for Exceeding the 1% Cap, offered by The National Center on Educational Outcomes (NCEO) in accordance with P.L. 108- 446 Sec. 617(a).	Completed (August 2019)
The VDOE staff members participated in the Peer Learning Group (PLG) PLG #3-Building Capacity of IEP Teams and Parents in Making Decisions about Assessment Participation, offered by The National Center on Educational Outcomes (NCEO) in accordance with P.L. 108-446 Sec. 617(a).	Completed (December 2019)
The VDOE staff members will annually review and revise, if appropriate, state level policies, procedures, and practices pertaining to Virginia’s AA-AAAS based on information gathered from the above listed CoP, PLGs, and the data disaggregation in accordance with 34 CFR § 200.6(d).	Ongoing
The VDOE staff members will annually disaggregate the AA-AAAS participation data by LEA, primary disability, gender, race/ethnicity, and grade level to reveal trends in disproportionality in accordance with 34 CFR § 200.6(c)(4)(ii)(A).	Ongoing
Using the disaggregated data, the VDOE staff members will address disproportionality identified above for each LEA exceeding one percent of its students in any subject with an AA-AAAS and will provide technical assistance to LEAs in area(s) of identified need(s), as required under 34 CFR § 200.6(c)(3)(iii).	Ongoing
<p>Based on data presented in the tables above and gathered through the survey titled, “2021 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program,” the VDOE is able to identify those districts who exceed the one percent threshold of students participating in the VAAP. This data will be provided to state staff to assist with the 2021-2022 cyclical monitoring of LEAs and to determine the level of technical assistance needed by each LEA within the cohort to address the need to exceed the one percent threshold. At a minimum, state staff will review student files to ensure:</p> <ul style="list-style-type: none"> <li>• IEP Teams identified students with the most significant cognitive disabilities following state criteria and participation guidelines;</li> <li>• Excessive absences; social, cultural, or economic differences; identification in a specific disability category; specific special education placement or services; anticipated scores on Standards of Learning tests; or concerns for accreditation calculations were not considered in the determination that the student will be assessed with the VAAP;</li> <li>• Students participating in the VAAP have been instructed in a modified curriculum aligned to state</li> </ul>	Ongoing

<b>To meet the Requirement 4 (§200.6(c)(4)(iv)), the following steps have or will be taken:</b>	<b>Timeline</b>
standards (i.e., Virginia Aligned Standards of Learning (ASOL) and/or the Virginia Essentialized Standards of Learning (VESOL)); <ul style="list-style-type: none"> <li>• Student IEPs include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the child meets the criteria for the alternate assessment; and how the child’s participation in the VAAP will impact the child’s promotion and/or graduation with a standard or advanced studies diploma, or other matters; and</li> <li>• There is written confirmation that IEP Teams informed parents of students with the most significant cognitive disabilities of the implications of participation in the alternate assessment.</li> </ul>	
Require LEAs to submit information justifying the need to assess more than one percent of its students in any subject with an AA-AAAS, in accordance with 34 CFR § 200.6(c)(3)(ii).	Ongoing

**Results of the above Steps Taken:**

Based on information learned in the PLGs offered by NCEO and the information gathered through the disaggregation of the AA-AAAS participation data by LEA, primary disability, gender, race/ethnicity, and grade level to reveal trends in disproportionality, the VDOE revised the AA-AAAS participation criteria. In addition, the guidance on the determination of significant cognitive disabilities is revised, as needed. The survey titled, “2021 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program”, identified 96 LEAs justifying the need to exceed one percent of its students in any subject with an AA-AAAS in 2021-2022. All 96 LEAs will have their disaggregated data reviewed by state staff to determine the level of need for technical assistance.

All cohort 1 LEAs slated for cyclical review, and certain LEAs identified through data disaggregation, will be identified for student file reviews. If noncompliance is determined by state staff, a VDOE monitor will be assigned to oversee timely correction in accordance with the United States Office of Special Education Programs (OSEP) Memo 09-02 Timely Correction.

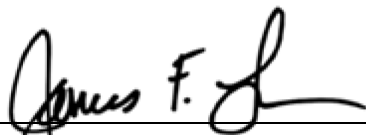
It is also important to note, as part of the VDOE transition to a new format for the AA-AAAS, beginning in SY 2021-2022, additional webinar training has been provided to LEAs regarding students with the most significant cognitive disabilities, including revisiting the characteristics of students with the most significant cognitive disabilities and the criteria for participation in the VAAP.

Based on the data and the steps taken, as listed above, Virginia has demonstrated substantial progress toward the appropriate students being assessed in the AA-AAAS, in accordance with 34 CFR § 200.6(c)(3), and in alignment with the state’s prior year’s plan, timeline and submitted materials

Prior to the submission of this waiver request, input was solicited from a variety of stakeholders, including the Virginia State Special Education Advisory Committee (SSEAC) and the Community of Practitioners (CoP). Information about the waiver was provided, and a request for public comment was announced in the Superintendent's Memo #294-21. The Superintendent's Memoranda are posted on the VDOE website, and the request for public comment was posted to the Virginia Alternate Assessment Program (VAAP) webpage. Consistent with the manner in which similar notices and public comment opportunities are provided, school division personnel and multiple stakeholder groups were also informed of the opportunity by email.

Please contact Jeff Phenicie, Director of Special Education Program Improvement, by email at [Jeff.Phenicie@doe.virginia.gov](mailto:Jeff.Phenicie@doe.virginia.gov), or by phone at (804) 786-0308, if there are any questions or to discuss the content of this waiver request.

Virginia looks forward to working with the United States Department of Education staff to achieve a positive response to the request.



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James F. Lane, Ed.D.  
Superintendent of Public Instruction  
Virginia Department of Education

November 30, 2021

Date



## **Public Notice and Comment Period Waiver Request Pursuant to 34 C.F.R. §200.6(C)(4)**

Prior to submitting this ESSA waiver request, the VDOE provided public notice to Virginia stakeholders. The VDOE provided such notification, by posting a public notice on its website for more than 30 calendar days (October 15, 2021–November 19, 2021), of the intent to request a waiver from the alternate assessment based on alternate academic achievement standards one percent cap and solicited public comment. In addition, the VDOE has disseminated information pertaining to the public notification/comment period waiver request through Superintendent’s Memo #294-21, all special education directors, all assessment directors, parent groups, and the Virginia SSEAC.

Copies of all comments the VDOE received from stakeholders in response to this notice are listed below.

- The *Virginia Committee of Practitioners* met on November 29, 2021. The group expressed unanimous support of the waiver extension request.
- It is the understanding of the Virginia State Special Education Advisory Committee that the Virginia Department of Education is seeking a waiver for SY 2021-2022 from the Secretary for the United States Department of Education. After discussion at our previous meeting, the representatives agreed to support the waiver to allow the percentage of students taking the alternate assessment to go above the 1% limit in each subject area. – *Submitted by the Chairman of the Virginia State Special Education Advisory Committee (SSEAC)*
- I am emailing in support of the waiver for the 2021-2022 school year from the USDOE on the number of students being assessed on the VAAP. – *Submitted by an SEA Representative (not VDOE)*
- A 1% cap should not be placed on the Virginia Alternate Assessment Program. Each individual school division should be able to determine the number of alternate assessments needed for their county. This should be an IEP team decision with parent input. – *Submitted by an LEA Representative*
- This is a statement of support on the proposed Waiver from the USED on the Number of Students Being Assessed on the Virginia Alternate Assessment (VAAP) Pursuant to 34 C.F.R. § 200.6(c)(4). – *Submitted by an SEA Representative*
- I support VDOE’s waiver request. – Submitted by an SEA Representative
- I have taught special education for 31 years and have seen many students who, although they have had the best teaching and accommodations will not be able to participate in a paper/pencil or computer multiple choice test. We are able to show their individual progress in skills which are helping them become more independent, self-aware, able to communicate, use a communication device, and be an active member of the school and community if they have a VAAP test. To not allow this special consideration for testing essentially tells those students that they don’t have as much value as a student who can participate in traditional testing. I cannot believe we are even having this question in 2021. Special Education has come far and so has the integration of people with disabilities. This sends the message that Virginia is backward thinking in the United States. – *Submitted by an LEA Representative*

- I support the proposed Waiver from the USED on the Number of Students Being Assessed on the Virginia Alternate Assessment (VAAP) Pursuant to 34 C.F.R. § 200.6(c)(4) – Submitted by an Advocate for Special Education
- It is very unfortunate that VDOE could not provide the appropriate waiver request for public comment. Per communication with Jeffrey Phenicie on 11-15-21, VDOE will revise the waiver request posted for comment to take the form of a request for a one-year extension of the waiver granted to Virginia for the 2020-2021 school year, available at <https://oese.ed.gov/files/2021/04/VA-one-percent-waiver-letter-1.pdf>. Such a request must comply with the requirements articulated in the U.S. Dept. of Education’s memorandum to states dated October 29, 2021 available at <https://oese.ed.gov/files/2021/10/Memo-to-States-re-One-Percent-Waiver-Requirements-2021-2022.pdf>. According to data in the 2018-2019 and 2021-2022 waiver requests, Virginia has made little if any progress in reducing the number/percent of students assessed via the state’s alternate assessment. Thus, VDOE needs to amplify its efforts associated with reducing the AA participation. This should include enhancing its outreach efforts to parents, disability organizations, local special education advisory committees, special education advocates and the state’s PTI, PEATC. The proposed waiver makes no mention of any of these important stakeholders in its plan. VDOE must ensure compliance with 34 C.F.R §200.6(c)(3)(iv) which requires the state to “make 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. Currently there is no LEA information available on the VDOE website. – *Submitted by an Advocate for Special Education*
- The Virginia Council of Administrators of Special Education (VCASE) supports the Virginia Department of Education (VDOE) submitting the waiver request regarding the one percent limit on the total number of students assessed in a subject area using an alternate assessment. VCASE represents over 300 members who are primarily local school district administrators supervising the provision of special education services for the more than 168,000 students with disabilities in Virginia. The VDOE has described in its waiver request significant data that shows efforts the Commonwealth has made to ensure that eligible students participate in the Virginia Alternate Assessment Program (VAAP). VCASE looks forward to VDOE’s additional professional development and technical assistance offered for localities who exceed the one percent cap. VCASE believes in the appropriateness of the Virginia Alternate Assessment Program (VAAP) as a component of Virginia’s state assessment program. Through this alternate assessment program, students with significant cognitive impairments are provided opportunities to demonstrate their skills and knowledge according to appropriately developed aligned standards of learning. – *Submitted by the President of the Virginia Council of Administrators of Special Education (VCASE)*

The majority of the public comments specifically related to the waiver were supportive of it. The stakeholder feedback and plan will guide the Virginia Department of Education’s commitment to support the appropriate reduction of the number of students participating in the alternate assessments.