



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable Eric G. Mackey  
State Superintendent  
Alabama State Department of Education  
Gordon Persons Building  
P.O. Box 302101  
Montgomery, AL 36130-2101

February 19, 2019

Dear Superintendent Mackey:

I am writing in response to the Alabama State Department of Education's (ALSDE's) request for a waiver of section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), of the requirement that a State may not assess more than 1.0 percent of the total number of tested students in the State using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS) in a given subject.

On December 10, 2018, ALSDE requested a waiver of this requirement for both the 2017-2018 and 2018-2019 school years. After reviewing Alabama's request, I am declining to exercise my authority under section 8401 of the ESEA to grant ALSDE the retroactive waiver requested for school year 2017-2018. The reason for the denial is the request was not made in a timely manner prior to the administration of the assessments in the 2017-2018 school year.

For the request for the 2018-2019 school year, I approve, pursuant to my authority under section 8401(b) of the ESEA, a 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 reading/language arts, mathematics and science.

As part of this waiver, Alabama assures that it:

- Will continue to meet all other requirements of section 1111 of the ESEA and implementing 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.
- Assessed in the prior school year (2017-2018) at least 95 percent of all students and 95 percent of students with disabilities who are enrolled in grades for which an assessment is required.
- 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, and it will make such information publicly available.

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- 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) (with the exception of incorporating principles of universal design) 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 monitor future administrations of the AA-AAAS to avoid using an AA-AAAS to assess more than 1.0 percent of the total number of tested students in the State.

In addition, 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 appreciate the work you are doing to improve your schools and provide a high-quality education for students in Alabama. If you have any questions, please contact my staff at [OSS.Alabama@ed.gov](mailto:OSS.Alabama@ed.gov).

Sincerely,

/s/

Frank T. Brogan  
Assistant Secretary  
for Elementary and Secondary Education

cc: Edmund Moore, Director, Federal Programs  
Tony Thacker, Assistant State Superintendent, Office of Evaluation and Innovation  
Maggie Hicks, Director, Assessments