



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

FEB 25 2019

The Honorable Jeffrey C. Riley
Commissioner
Massachusetts Department of Elementary
and Secondary Education
75 Pleasant Street
Malden, MA 02148

Dear Commissioner Riley:

I am writing in response to the Massachusetts Department of Elementary and Secondary Education's (MA DESE's) request on November 9, 2018, for an extension of the State's 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 students in the State using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS). MA DESE requested this waiver because, based on State data for the 2017-2018 school year, it has concluded that, although there was a reduction in the number of students taking the AA-AAAS in the 2017-2018 school year, it will still assess more than 1.0 percent of all tested students using an AA-AAAS in the 2018-2019 school year.

After reviewing MA DESE's request, I am pleased to grant, pursuant to my authority under section 8401(b) of the ESEA, a one-year extension of the 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 tested students in the State who are assessed in reading/language arts, mathematics and science for the 2018-2019 school year. I note that the State demonstrated progress in carrying out the plan submitted when you originally requested this waiver. I also note that Massachusetts made progress in reducing the number and percentage of students taking an AA-AAAS in 2017-2018 compared to 2016-2017.

As part of this waiver, Massachusetts assured 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.

400 MARYLAND AVE., SW, WASHINGTON, DC 20202
<http://www.ed.gov/>

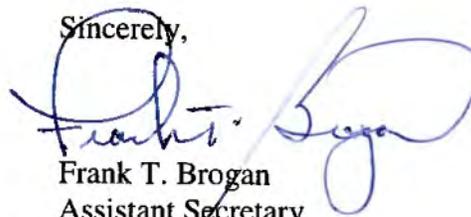
The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

- Will verify that each LEA at risk of assessing more than 1.0 percent of students with an AA-AAAS 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 Massachusetts' original waiver request, the system improvements and monitor future administrations to avoid exceeding the 1.0 percent cap.

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 with a 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 Massachusetts. If you have any questions, please contact my staff at OSS.Massachusetts@ed.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank T. Brogan". The signature is fluid and cursive, with a large loop at the end.

Frank T. Brogan
Assistant Secretary
for Elementary and Secondary Education

cc: Daniel Wiener, Administrator of Inclusive Assessment, Student Assessment Services
Michol Stapel, Associate Commissioner for Student Assessment
Rob Curtin, Associate Commissioner, Data and Accountability



Massachusetts Department of Elementary and Secondary Education

75 Pleasant Street, Malden, Massachusetts 02148-4906

Telephone: (781) 338-3000
TTY: N.E.T. Relay 1-800-439-2370

Jeffrey C. Riley
Commissioner

November 9, 2018

Office of State Support
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

SUBJECT: Massachusetts "One Percent" ESSA Waiver Request, submitted by email to OSS.Massachusetts@ed.gov

To Whom It May Concern:

I am writing to request an extension of the waiver received by the Massachusetts Department of Elementary and Secondary Education (the Department) on December 28, 2017, regarding our state exceeding the one percent cap on the number of assessed students who will take alternate assessments aligned with alternate achievement standards (AA-AAS). In Massachusetts, the AA-AAS is the Massachusetts Comprehensive Assessment System Alternate Assessment (MCAS-Alt). I anticipate that we will continue to exceed that cap in the 2018-2019 school year. However, the state has already made significant progress since 2015 by lowering the number of students with disabilities who participated in alternate assessments by about 1,000 students, and has maintained a **98 percent participation rate** both for all students and for students with disabilities in each subject assessment.

On the 2018 assessments,

- English language arts:
 - 1.47 percent of assessed students took the MCAS-Alt (a reduction of 619 students since 2017, when the rate was 1.6 percent)
- Mathematics:
 - 1.48 percent of assessed students took the MCAS-Alt (a reduction of 619 students since 2017, when the rate was 1.6 percent); and
- Science and Technology/Engineering:
 - 1.35 percent of assessed students took the MCAS-Alt in grades 5, 8, and 10 (a reduction of 36 students since 2017).

It will be particularly difficult to reach the threshold of one percent of all assessed students taking AA-AAS in a high-incidence state like Massachusetts, where **18.6 percent** of all students are served by an individualized educational program (IEP). However, I anticipate that we will continue to lower the percentage of students taking the statewide alternate assessment in the next year. My staff will continue to provide awareness, oversight, and training activities regarding the need to assess students with disabilities appropriately and will maintain frequent communication with districts, especially

those that assess more than one percent of their students participating in the alternate assessment.

In particular, the Department has widely disseminated resources on this topic and made them available on the [Department's website](#). These include:

- Clarified and updated **guidance and criteria** for IEP team decision-making on alternate assessment participation, including a **definition** of which students should be considered for alternate assessments, and a description of assessment options that may be more appropriate for some students currently designated for the MCAS-Alt.
- 2017 and 2018 MCAS-Alt **participation rates** by district.
- A request for a **written justification** in cases where a district anticipates that it will alternately assess greater than one percent of its eligible students in the current school year. We anticipate receiving any outstanding district justifications by the end of 2018.
- A sample **parent notification letter**, translated into five major languages, alerting parents that 1) their child's achievement will be measured using an alternate assessment based on alternate academic achievement standards, 2) participation in an alternate assessment may delay or affect the child's ability to complete the state's requirements for a high school diploma, and 3) the decision to have their child take an alternate assessment will be revisited annually by the IEP team.
- A presentation to be used for the **annual training** of IEP teams and 504 plan coordinators regarding the appropriate designation of students for alternate assessments.

I am requesting a waiver in the subjects of English language arts, mathematics, and science, based on the criteria provided in § 200.6(c)(4) of the regulations of the Every Student Succeeds ACT (ESSA). I am also enclosing the additional required components of this waiver request as an attachment to this memo, as outlined in the ESSA, pursuant to Section 8401 under Part D of the ESSA, as amended through P.L. 114-95.

I appreciate this opportunity to inform the U.S. Department of Education of our accomplishments and activities and look forward to your consideration of our request for a waiver of this ESSA provision. Please contact Dan Wiener, Administrator of Inclusive Assessment, at dwiener@doe.mass.edu with any additional questions you may have. Thank you for your attention to this information.

Sincerely,



Jeffrey C. Riley
Commissioner of Elementary and Secondary Education

Attachment:

Copies: Jeff Wulfson, Deputy Commissioner
Michol Stapel, Associate Commissioner for Student Assessment
Russell Johnston, Senior Associate Commissioner, Center for District Support
Rob Curtin, Associate Commissioner, Data and Accountability

Attachment

1. Waiver request submitted at least 90 days before start of testing window [§200.6(c)(4)(i)]

The MCAS-Alt “test window” informally begins on the first day of school, with teachers beginning the alternate assessment process at different points throughout the school year. The window ends with submission of the assessments on March 29, 2019. This would have required us to submit our request in early June 2018. In an effort to do so, we contacted the Office of State Support on May 22 and asked whether the OESE was accepting applications for waiver requests for the 2018-2019 school year.

On June 6, we received a reply from our state contact that: “It would be best to wait before submitting a 1.0 percent cap waiver request. Although there is no specific timeline, the Department intends to provide additional information on what should be included in the second year request. When this information is available, I will let you know.”

We subsequently learned that OESE would issue a clarifying memo in late August and assumed it would be acceptable to delay our application while awaiting receipt of that information. We also learned that a “One Percent Convening” that would provide even more guidance to states was planned for late October. By that time, we would also have calculated the final data on our 2018 assessment participation, which we felt would strengthen our application. At that point, we notified Don Peasley that we intended to apply for our waiver shortly after the October convening.

2. Assessment participation by all students, students with disabilities, and subgroups [§200.6(c)(4)(ii)]

2018 Overall Assessment Participation for All Students and Students with Disabilities

Content Area	Students eligible for assessment (Enrolled)	Students assessed (Standard test + MCAS-Alt)	Overall percent of students assessed	Students with disabilities eligible for assessment (Enrolled)	Students with disabilities assessed (Standard test + MCAS-Alt)	Overall percent of students with disabilities assessed
English Language Arts	507,557	496,888	98%	97,905	95,833	98%
Mathematics	507,378	496,732	98%	97,861	95,742	98%
Science and Technology/Engineering	219,197	215,336	98%	41,156	39,795	97%

2018 Subgroup Participation in Standard and Alternate Assessments in Each Subject

ENGLISH LANGUAGE ARTS

Subgroup	Number of students who took standard assessments	Number of students who took MCAS-Alt	Percent of students who took MCAS-Alt
All students	489,590	7,298	1.5%
Male	249,592	4,946	1.9%
Female	239,914	2,352	1.0%
English Learners	40,440	917	2.2%
African American	43,171	1,034	2.3%
Hispanic/Latino	96,243	654	2.1%
Asian	33,226	425	1.3%
White	297,567	3,542	1.2%
Economically Disadvantaged	167,716	4,334	2.5%
Students with Disabilities	95,833	7,298	7.6%

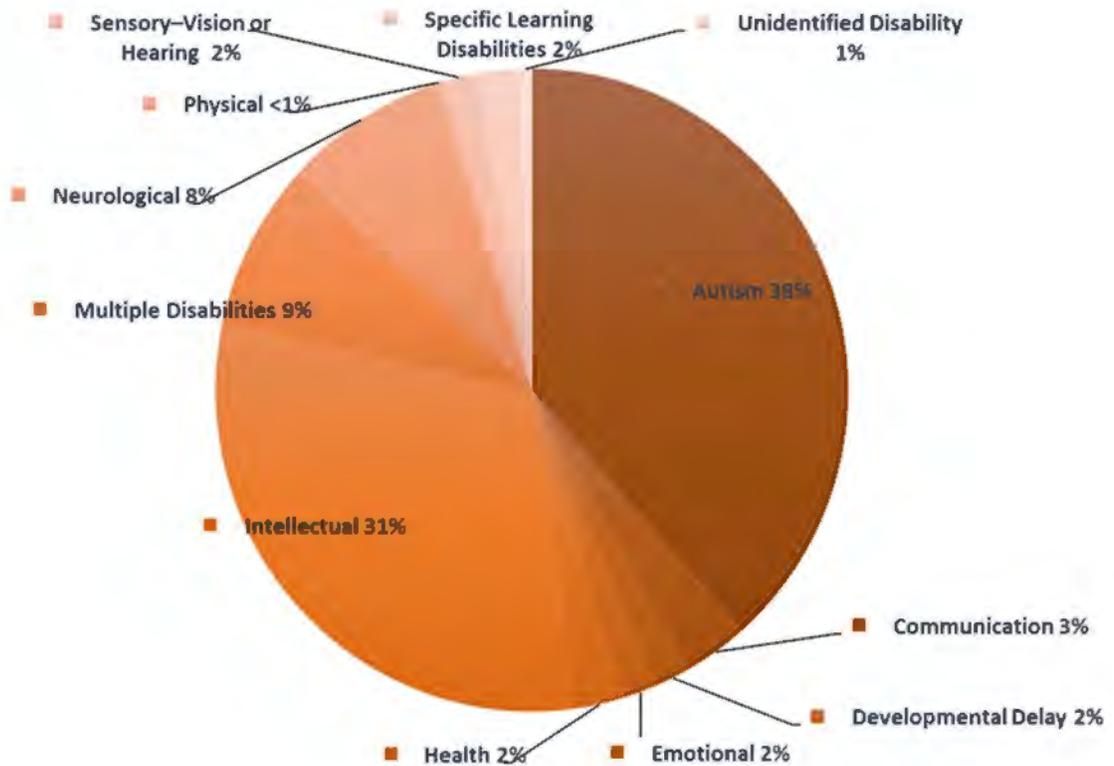
MATHEMATICS

Subgroup	Number of students who took standard assessments	Number of students who took MCAS-Alt	Percent of students who took MCAS-Alt
All students	489,372	7,360	1.5%
Male	249,576	4,945	1.9%
Female	239,721	2,415	1.0%
English Learners	40,542	901	2.2%
African American	43,160	1,047	2.4%
Hispanic/Latino	96,222	2,029	2.1%
Asian	33,250	2,882	1.2%
White	297,365	3,599	1.2%
Economically Disadvantaged	167,556	4,361	2.5%
Students with Disabilities	95,742	7,360	7.7%

SCIENCE AND TECHNOLOGY/ENGINEERING

Subgroup	Number of students who took standard assessments	Number of students who took MCAS-Alt	Percent of students who took MCAS-Alt
All students	212,439	2,897	1.3%
Male	108,042	1,954	1.8%
Female	104,316	943	0.9%
English Learners	14,346	321	2.2%
African American	18,723	392	2.1%
Hispanic/Latino	40,553	739	1.8%
Asian	14,325	164	1.1%
White	130,818	1,506	1.1%
Economically Disadvantaged	69,889	1,679	2.3%
Students with Disabilities	39,795	2,897	7.3%

2018 MCAS-Alt Participation by Nature of Disability



3. Substantial progress on the state’s plan and timeline to reduce the number of students taking the AA-AAS [(§200.6(c)(4)(v))]

We define “substantial progress” as a reduction of at least 500 students (or about 6–8 percent of the total number of students taking the AA-AAS) from the previous school year.

Highlights:

- Between 2016 and 2018, the number of students who took the MCAS-Alt **decreased overall by 1,075 students**, primarily as a result of the state’s training and awareness activities; targeted technical assistance and oversight; and face-to-face, digital, and physical dissemination of resources, materials, and guidelines.
- In 2018, the number of districts with 500 or more assessed students that exceeded 1.0 percent **decreased** from 144 districts in 2017 to 121 districts.
 - **5 districts** exceeded 3.0 percent of students taking MCAS-Alt in 2018, compared with **13 districts** in 2017.
 - **28 districts** exceeded 2.0 percent in 2018, compared with **45 districts** in 2017.
 - The state’s **three largest districts** assessed students on the MCAS-Alt at the following rates: Boston (**2.8 percent**), Springfield (**3.0 percent**), and Worcester (**2.2 percent**), suggesting a need for more intensive intervention by the Department.
- Seven urban districts **decreased** the percentage of students taking the 2018 MCAS-Alt, while three others slightly **increased** their percentage.
- Four of five urban districts that assessed at least 3.8 percent of students on the MCAS-Alt in 2017 have dramatically **decreased** their percentages in 2018 (ranging from 0.7 to 1.7 percent lower).
- Only one urban district that assessed at least 3.8 percent of students on the MCAS-Alt in 2017 **increased** its percentage in 2018.

In the 2018-2019 school year, urban districts will be the primary focus of Department activities to reduce the statewide percentage, since participation rates in those districts are much higher, on average, than in smaller districts.

Likely reasons for the dramatic statewide decrease in MCAS-Alt participation between 2016 and 2018 (i.e., a decrease of 1,075 students) include:

- intensive and continued Department training on this topic
- continued development and application of resources available to districts to decrease the number of students taking alternate assessments (e.g., training presentation for IEP teams, decision-making tool, etc.)
- changes in IEP team decision-making processes that resulted in an increase in the number of students who previously took the MCAS-Alt now taking tests with accommodations
- availability of new accessibility features and accommodated test formats in the computer-based tests
- increased designation of students for “grade-level” and “competency portfolios”
- changes in student population in some districts (i.e., students moving into and out of districts)

In the 2015-2016 school year:

- Massachusetts began its active engagement in the process of reducing the number of students taking the MCAS-Alt, after participation reached a peak of **1.7 percent** (or 8,373 students).

In the 2016-2017 school year:

- In March 2017, the Department posted [Important Information about the MCAS Alternate Assessment \(MCAS-Alt\) and the Every Student Succeeds Act \(ESSA\)](#) to its website (and has made revisions in 2018).
- In August 2017, the Department posted its 30-day Notice of Intent to Apply for a Waiver of the One Percent Provision and received public comments.
- The participation rate decreased by 131 students from 2016 to 2017, to a rate of **1.6 percent** (or 8,242 students).
- The Department received approval of its initial waiver request in December 2017.

In the 2017-2018 school year:

- The participation rate decreased by an additional 619 students from 2017 to 2018, to just below **1.5 percent** (or 7,298 students).
- Massachusetts updated its information posted to its [MCAS-Alt web page](#) regarding the one percent cap, including revisions to the Commissioner's memo, training presentation for IEP teams, and updated state and district data for 2018.

4. Assurances that the state has verified that each LEA (A) followed the state's participation guidelines; and (B) will address any disproportionality in the students taking the AA-AAS [§200.6(c)(4)(iii)]

The state recently reviewed the 2017 and 2018 MCAS-Alt participation rates in 406 Massachusetts districts and identified those in need of additional oversight. We have made clear to *all* districts that, if they have exceeded the cap of one percent taking the AA-AAS, they should use the Department's resources (available at www.doe.mass.edu/mcas/alt/essa/) to seek ways to lower their AA-AAS participation rate. However, we realized that many districts are small enough that only a few students can make a large statistical difference. We evaluated different approaches for maximizing the benefits of requesting justifications from all districts above one percent, and we concluded that our best opportunity to reduce the statewide participation rate was to focus on larger districts with higher participation rates. Therefore, in September 2018, the Department sent letters to 59 identified Massachusetts districts that

- assessed more than 500 total students; and
- maintained a rate of at least 1.5 percent or higher taking the AA-AAS for both of the past two school years (i.e., 2016-2017 and 2017-2018).

The letter sent by the Commissioner to those 59 districts requested that they provide the following information and assurances to the Department:

- the district has reviewed, understands, and complies with the guidance and criteria to be used in Massachusetts by IEP teams to determine assessment participation for students with disabilities, and in particular, those with significant cognitive disabilities;
- whether the district anticipates exceeding a total of one percent of the total number of students participating in MCAS in grades 3–8 and 10 who will take the MCAS-Alt in the 2018-2019 school year (2017 and 2018 MCAS-Alt district participation data were publicly posted at the website listed above);
- a justification for the reasons why the district will exceed the one percent cap, and steps the district will take in the coming year to reduce the number of students taking alternate assessments;

- a summary of progress made by the district to date in reducing the number of students participating in alternate assessments; and, if the number of students was reduced between 2017 and 2018, how that was accomplished;
- how the district will address any **disproportionality** of students from the following subgroups taking alternate assessments: male/female, economically disadvantaged, English learners, Hispanics, African Americans, and Asians;
- the procedures and timelines the district has put in place to train IEP teams and other appropriate staff using the Department’s updated training materials on this topic (available at the website above);
- parent notification is provided, as required, when a student is designated for an alternate assessment, including the likely impact this will have on their child’s ability to meet the graduation standard (Note: A sample Parent Notification letter was made available at the above website).

Massachusetts will continue to closely monitor its districts regarding 1) their overall percentage taking the AA-AAS; 2) progress and trends over two or more years in reducing the district’s overall percentage; and 3) whether districts have identified and are addressing any disproportionality in their student subgroup participation in the AA-AAS. The state will also monitor the statewide AA-AAS participation rate and any disproportionality identified in one or more subgroups.

5. A plan and timeline by which the state will (A) improve the implementation of its participation guidelines, including if necessary, revising its definition of “students with the most significant cognitive disabilities”; and (B) take steps to support and provide appropriate oversight to districts anticipated to exceed 1.0 percent [§200.6(c)(4)(iv)]

The Department has communicated to districts that the “one percent” ESSA provision is an opportunity to refine and clarify the decision-making guidelines used by IEP teams to determine participation in alternate assessments. Since 2016, the state has clarified its criteria and characteristics of a “student with a significant cognitive disability” who would be appropriate for an alternate assessment. The Department added a component to its guidelines describing the “criteria that should not be used as the sole determining factor in designating a student for an alternate assessment” (e.g., excessive absence, failing the statewide assessment, etc.). The Department recently updated the materials posted to its website regarding training for IEP teams and has re-emphasized the need to identify any disproportionality in students taking the MCAS-Alt. The Department annually disseminates information during eight face-to-face meetings for educators and administrators in the fall, and continues to address this in periodic digital newsletters and updates.

This coming year, the Student Assessment and Special Education Planning and Policy offices will:

- Meet internally at regular intervals;
- Co-present information on these requirements during regional meetings of administrators of special education;
- Focus resources on intervening in urban districts that appear to have higher rates of participation in alternate assessments than their suburban and rural counterparts;
- Coordinate with other Department offices on the topic of disproportionality so that we will recognize when this occurs;

- Develop corrective action plans with existing districts that have exceeded the cap in 2017 and 2018.

6. Notice of intent to apply for a waiver and opportunity for public comment

On August 28, 2018, the Massachusetts Department of Elementary and Secondary Education posted a *Notice of Intent to Apply and Opportunity for Comment Regarding a Waiver Extension of the Federal Requirement Related to the Percentage of Students Who Participate in Statewide Alternate Assessments* on its web page. The notice was posted to the following pages for a period of 30 days to receive public comment:

- Commissioner's Headlines (<http://www.doe.mass.edu/>, now archived at [DESE News](#))
- MCAS Headlines (<http://www.doe.mass.edu/mcas/>)
- MCAS-Alt Headlines (<http://www.doe.mass.edu/mcas/alt/>)

The following responses were provided to the Department in response to the Notice of Intent:

- Comments from the Center for Law and Education (attached)
- Questions about the MCAS-Alt from: Gerry Tuoti, Regional Newsbank Editor, GateHouse Media New England (attached)
- Questions about the MCAS-Alt from: Kara Arundel, Staff Writer, LRP Publications (attached)
- Comments from: Catherine Zinni, District Administrator of Special Education, Abington Public Schools (attached)

About 1,600 teachers and 500 administrators in each of the last two years were also informed of the Department's intent to re-apply for a waiver during regional face-to-face training sessions on the MCAS-Alt in October 2017 and 2018.



Jeffrey C. Riley
Commissioner

Massachusetts Department of Elementary and Secondary Education

75 Pleasant Street, Malden, Massachusetts 02148-4906

Telephone: (781) 338-3000
TTY: N.E.T. Relay 1-800-439-2370

MEMORANDUM

To: Interested Educators and Members of the Public
From: Jeffrey C. Riley, Commissioner of Elementary and Secondary Education
Date: August 28, 2018
Subject: Notice of Intent to Apply and Opportunity for Comment Regarding a Waiver Extension of the Federal Requirement Related to the Percentage of Students who Participate in Statewide Alternate Assessments

The Massachusetts Department of Elementary and Secondary Education (Department) intends to seek a renewal for the upcoming 2018–2019 school year of its existing waiver of the federal requirement that would limit the number of students in the state who take alternate assessments to one percent of eligible students. **The purpose of this notice is to provide you with an opportunity to comment** on the [request for a waiver](#) by the Department. A waiver of the “one percent requirement” was previously granted to Massachusetts by the U.S. Department of Education in December 2017 for the 2017–2018 school year.

Under the requirements of the reauthorized Elementary and Secondary Education Act, known as the [Every Student Succeeds Act](#) (ESSA), states must limit the total number of students designated to participate in statewide alternate assessments based on *alternate achievement standards* to 1.0 percent of the total number of students required to participate in statewide assessments. The aim of the legislation is to prevent designation of an excessive number of students with disabilities for alternate assessments, since this may limit access by those students to the full range of academic content standards and could, as a result, delay or prevent them from eventually meeting their state’s graduation requirements. Generally, students with *significant cognitive disabilities* are administered alternate assessments because they cannot participate in standard assessments, even with accommodations. In Massachusetts, the alternate assessment based on alternate achievement standards is the MCAS Alternate Assessment, or MCAS-Alt.

Massachusetts alternately assessed a total of 7,951 students in the 2017–2018 school year, or just under 1.6 percent of its MCAS-eligible students. This represents a decrease of 590 students taking the MCAS-Alt from the previous school year (2016–2017), during which 1.7 percent of eligible students were alternately assessed. As these data indicate, we have made progress in reducing the number of students taking the MCAS-Alt, but reaching the target set by ESSA (i.e., 1.0 percent) will likely take several years. In pursuit of this goal, the Department has posted a [memo](#) containing guidance and resources on this topic for Massachusetts schools and districts, and will continue to promote awareness of the need for appropriate assessment of students with disabilities through statewide training and oversight.

It is worth noting that the “one percent cap” is applied uniformly across all states, regardless of the relative percentage of students with disabilities in a state’s school-age population. Given a [national average](#) of 13.0 percent of school-age students receiving special education, Massachusetts serves a relatively high 17.7 percent of all students. The overall percentage of students taking alternate assessments in Massachusetts, therefore, might be expected to be higher than in most states.

The U.S. Department of Education is permitting states to apply for a renewal of their “one percent” waivers for the 2018–2019 school year. To be eligible for a waiver, states must demonstrate progress and continued efforts to lower the number of students taking alternate assessments, as well as a participation rate of 95 percent or higher in statewide assessments. The waiver, if granted, will permit Massachusetts to gradually reduce the number of students participating in the MCAS-Alt while continuing to provide oversight, resources, and training to assist IEP teams in making informed assessment decisions for students with disabilities.

We welcome your comments regarding our intent to apply for this waiver. Comments may be submitted via email to mcas@doe.mass.edu until September 28.

CENTER FOR LAW AND EDUCATION

www.cleweb.org

reply to:

105 Chauncy Street, 6th FL
Boston, MA 02111
617-451-0855

kboundy@cleweb.org

7011 8th Street, NW
Washington DC 20012
202-986-3000

pweckstein@cleweb.org

To: MA DESE

From: Kathleen Boundy, Center for Law and Education

Re: Comments on MA DESE's Intent to Apply for a Waiver of 1 Percent Cap on AA-AAAS

The Center for Law and Education (CLE) appreciates the opportunity to comment upon the MA Department of Elementary and Secondary Education (DESE)'s intent to seek a waiver of the federally imposed one percent cap on student participation in the statewide alternate assessment MCAS-ALT. CLE is a non-profit resource, advocacy and support organization that strives to make high quality education a reality for all students and help low-income communities to address their education problems effectively. CLE represents low-income students and their families and submits these comments on behalf of those who are students with disabilities who are participating on the MCAS ALT or vulnerable to being found eligible for such participation under MA DESE's current policy.

It is our position that MA DESE should not be granted a waiver. MA DESE has not met the criteria for a waiver of this significant safeguard, and time is of the essence for compliance with the 1 percent cap to ensure that those students with disabilities who are not eligible for the MCAS-ALT, but have been so identified, are effectively taught and assessed based on the grade level achievement standards set for all students. This is not the time for a waiver –DESE has already been operating under a *de facto* waiver with respect to these students.

DESE's use of the MCAS-Alt is not consistent with requirements of the Every Student Succeeds Act (ESSA), which amended and reauthorized the Elementary and Secondary Education Act. ESSA requires that with the *singular* exception of assessment of students with the "most significant cognitive disabilities," the same academic assessments must be administered and used: to measure the achievement of *all* public elementary school and secondary school students in the State; to provide coherent and timely information about student attainment of the State standards and whether the student is performing at the student's grade level; and allow parents, teachers, principals, and other school leaders to understand and address the specific academic needs of students. 20 U.S.C. §6311 The language of the statute and its regulations are clear. Only a single Alternate Assessment based on Alternate Academic Achievement Standards is authorized.

ESSA and its regulations require any State that provides for an alternate assessment, i.e., an assessment aligned with challenging State academic content standards and alternate academic achievement standards (AA-AAAS), to ensure that participation in the AA-AAAS is limited to students identified by their IEP Team with the "most significant cognitive disabilities." Furthermore, the total number of students with the "most significant cognitive disabilities" who are assessed in each subject using the AA-AAAS shall not exceed 1 percent of the total number of all students in the State who are assessed in each subject area. 20 U.S.C. § 6311(D)(i)(1); 34 C.F.R. § 200.6.

Contrary to ESSA and its regulations, MA DESE continues to allow the MCAS-Alt, a portfolio assessment, to assess certain students with disabilities based on grade level standards and to assess a range of other students with disabilities. With apparent disregard for ESSA and its regulations, MA DESE provides no

evidence that there is even a plan to ensure that the MCAS-Alt will be used to assess only students identified by their IEP Teams as having the “most significant cognitive disabilities” against Alternate Academic Achievement Standards. See March 2017 memo distributed from the Commissioner’s office, under “Criteria for Designating a Student for an Alternate Assessment” the provision reads as follows: “[a] student with a disability should take the **MCAS-Alt** if he or she

- is working on *learning standards* in the content area that have been *substantially modified* due to the severity of the disability; **and**
- is receiving *intensive, individualized instruction* in order to acquire, generalize, and demonstrate knowledge and skills; **and**
- is *unable to demonstrate knowledge and skills on a standardized paper or online test*, even with accommodations.

This description is not limited to those students with the “most significant cognitive disabilities” who require extensive, direct individualized instruction and substantial supports to achieve measurable gains on the challenging State academic content standards for the grade in which the student is enrolled, and consequently are being assessed against AAAS.

Similarly, in its 2018 Educator’s Manual for MCAS-Alt, Guidelines for IEP Team Decision-making: Which Students Should Take the MCAS-Alt? [Section] A. MCAS Participation Guidelines, pp. 8-10, there is not a single reference to the eligibility determination for students with the “most significant cognitive disability.” On page 11 in this same section, the Educator’s Manual identifies examples of unique circumstance intended to “expand the team’s understanding of the appropriate use of alternate assessments.” [E.g., “A student with severe emotional, behavioral, or other documented disability is unable to maintain sufficient concentration to participate in standard testing, even with accommodations.”]

The August 2017 Requirements for the Participation of Students with Disabilities and English Language Learners in the 2017-18 MCAS High School Tests: A Guide for Educators and Parents/Guardians does not include a single reference to students with the “most significant cognitive disabilities” –the only students who are eligible for consideration to participate in a State’s AA-AAAS. See Option 2: “If a student is a) generally unable to demonstrate knowledge and skills on a paper-and-pencil test, even with accommodations, and is (b) working on learning standards that have been substantially modified due to the nature and severity of his or her disability, and is (c) receiving intensive, individualized instruction in order to acquire, generalize, and demonstrate knowledge and skills, [look to adjacent column] Then the student should take the MCAS Alternate Assessment (MCAS-Alt) in this subject.” Option 3 describes a student who the team may recommend to participate in the “MCAS-Alt grade-level or competency portfolio” because the severity and complexity of the disability prevent the student from fully demonstrating knowledge and skills on the standard test, even with accommodations. While this particular assessment is not legal as an Alternate Assessment under the new ESSA provisions, use of a portfolio assessment at grade level standards can be used as one of multiple measures to help ensure more accurate valid result for certain students with disabilities whose knowledge and skills cannot otherwise be validly assessed by a paper or computer-based test.

The effect of MA DESE’s failure to take immediate steps to implement the safeguards created by ESSA and its regulations – i.e. , to limit the State’s use of a single Alternative Assessment which shall be based on AAAS, to authorize only that very small population of students with the “most significant cognitive disabilities” to participate in the assessment based on AAAS, and to cap the number of these students in the State to one percent of all students assessed in the subject area, is evidenced in the high percentages of students with disabilities in certain school districts who are currently participating in the MCAS-Alt and not being taught or assessed based on the same State achievement standards set for all.

Although MA DESE indicates that only 1.6 percent of students with disabilities in MA participated in the 2016 MCAS-Alt, a review of the urban and rural school districts that serve disproportionately high percentages of students who are economically disadvantaged, members of racial and ethnic minority groups, and English learners tell a different story. For example, see Boston, Brockton, Fall River, Greenfield, Lawrence, Springfield.

The March memorandum from the Commissioner's office—despite the new legal mandates under ESSA barely references the law and its regulations, the seriousness of the data showing districts with two, three and four hundred percent higher than the cap on the State participation rate, or the implications of such high proportions of students with disabilities being assessed on the MCAS-Alt based on AAAS. Instead, the memo merely states that “While we affirm the authority of IEP teams to act without undue external influence to make final determinations ... it is reasonable to assume that *some* students who were designated for the MCAS-Alt in the past may be more suited in 2017-2018 to either

- take the standard MCAS next-generation test, either with or without accommodations, now that new accessibility features and accommodations are available; or
- prepare a "grade-level" or "competency" portfolio for students with significant disabilities who are performing *at or near grade-level expectations* but are unable to demonstrate knowledge and skills on a paper- or computer-based test. (Note: Additional details on these assessment options are available in the attachments.)

There is no discussion in the materials presumably supporting the Request for Waiver—including the State Plan—concerning how the MCAS-ALT will be modified to comply with the mandates under ESSA, or how it will [hopefully] be modified in light of the development of the Next Generation MCAS. Nor is there any description or discussion about how those students who do not meet the definition of those with the most significant cognitive disability and who comprise in some cases up to 3-5 percent of all students being assessed based on the MCAS-Alt in their primarily urban school districts will be prepared to be included among those who will take the Next Generation MCAS.

MA DESE's request for a waiver of the 1 percent State cap ought to be denied based on the State's failure to address the serious educational implications for the significant overrepresentation of such students being assessed based on the MCAS-Alt [AAAS]. As presented, MADESE's request does not meet the criteria set forth in the regulations under ESSA. DESE has failed to address the number of students—far in excess of 1 percent—being assessed based on the MCAS Alt, to present this information disaggregated by subgroup and to address the disproportionality, to establish State guidelines for implementing the ESSA mandates limiting the subset of students to those with the “most significant cognitive disabilities” and restricting use of the MCAS Alt as an assessment of AAAS. Moreover, MA DESE has not offered any plan or timeline to turnaround those school districts assessing 2, 3 and 4 percent of all their students on the MCAS-Alt.