



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

JUN 28 2019

The Honorable Donald E. Kirkegaard
Secretary of Education
South Dakota Department of Education
The Townsend Building
800 Governors Drive
Pierre, SD 57501

Dear Secretary Kirkegaard:

I am writing in response to the South Dakota Department of Education's (SD DOE) request on March 29, 2019, 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 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. SD DOE requested this waiver because, based on State data for the 2017-2018 school year, SD DOE has concluded that it will need to assess more than 1.0 percent of students using an AA-AAAS in the 2018-2019 school year.

After reviewing SD DOE's request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, for the 2018-2019 school year, 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 reading/language arts, mathematics and science. SD DOE demonstrated substantial progress in carrying out the plan that was submitted when the State initially requested this waiver a year ago.

As part of this waiver, SD DOE 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.
- 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 SD DOE's waiver request, system improvements and will monitor future administrations of the AA-AAAS to avoid exceeding the 1.0 percent cap.

I note that the State demonstrated progress in carrying out the plan you submitted originally requested this waiver. I also note that South Dakota made progress in reducing the number and percentage of students taking an AA-AAAS in 2017-2018 compared to 2016-2017.

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<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.

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.

Finally, in order to help all States support implementation of the 1.0 percent participation threshold for AA-AAAS participation, the Department is supporting work by the National Center on Educational Outcomes (NCEO) and the Center on Standards and Assessment Implementation (CSAI) to host three Peer Learning Groups (PLGs):

- Digging into Your Data: Building a One Percent Data Analysis and Use Plan
- Guiding and Evaluating District Justifications for Exceeding the One Percent Cap
- Building Capacity of IEP Teams and Parents in Making Decisions about Assessment Participation

If you have questions about any of these PLGs, please contact Susan Hayes, NCEO, at shayes@wested.org or (802) 951-8210.

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,

A handwritten signature in black ink that reads "Frank T. Brogan". The signature is written in a cursive style with a large initial "F" and "B".

Frank T. Brogan
Assistant Secretary
for Elementary and Secondary Education

cc: Becky Nelson, Director, Division of Learning and Instruction
Roxanne Weber, Director, Office of Assessment



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March 29, 2019

Deborah Spitz
U.S. Department of Education
Office of Special Education Programs
400 Maryland Ave. SW
Washington, DC 20202
Deborah.Spitz@ed.gov

Dear Ms. Spitz,

Attached you will find the South Dakota Department of Education (SD DOE) request for a waiver extension for the 1.0 percent cap in ESEA section 111(b)(2)(D)(i)(I) on the number of students who participate in alternate assessments, aligned with alternate academic achievement standards (AA-AAAS). Based on the participation data from 2017-18, it is necessary for SD DOE to request a waiver extension as there was 1.15 percent of eligible students participating in the alternate assessments.

This waiver extension request was delayed because of personnel changes. The waiver extension request includes information from our original waiver made by the state to reduce our percent of eligible students participating in alternate assessments. The state continues to work with school districts to implement the waiver requirements, which have so far reduced our 1.34 percent in 2016-17 to the current 1.15 percent in 2017-18.

This document outlines the participation data for all students in addition to students participating in alternate assessments along with processes implemented to gather information from school districts.

If you have any questions regarding the attached documents or require additional details, please contact Roxanne Weber, Roxanne.Weber@state.sd.us, the state's assessment director. She will be able to provide necessary information.

Sincerely,

(b)(6)

Becky Nelson
Director
Division of Learning and Instruction
South Dakota Department of Education

Cc: South Dakota Office of State Support, OSS.SouthDakota@ed.gov.
Donald Peasley, Donald.Peasley@ed.gov;

South Dakota ESSA 1% Participation Waiver Extension Request

The Every Student Succeeds Act (ESSA) amended a provision of Title I of the Elementary and Secondary Education Act of 1965 pertaining to students participating in alternate assessments of a SEA's statewide assessment. The ESSA requires SEAs to submit waiver requests to the United States Department of Education when the percent of students participating in alternate assessments exceeds 1% of students participating in state assessments.

South Dakota assessed 72,009 students in grades 3-8 and in high school in 2017-18 with an overall participation rate of 99.56% for English/Language Arts (ELA) and a rate of 99.54% for mathematics. The participation rate for students with disabilities was 99.29% for ELA and 99.18% for mathematics. The data indicates that all students are participating in statewide assessments at a consistent rate.

The South Dakota Department of Education (SD DOE) reviewed the data from the 2017-18 administration of English/Language Arts (ELA) and mathematics assessments (Smarter Balanced and Multi State Alternate Assessment) and the South Dakota Science Assessment (SDSA) and the alternate science assessment (SDSA – Alt) to determine if the participation in alternate assessments exceeded the 1% threshold.

Based on the data presented in **Table 1**, South Dakota exceeded the 1% requirement during the 2017-2018 SY. Therefore, the South Dakota Department of Education (SD DOE) is requesting an extension of our previous waiver from the Secretary for the United States Department of Education pursuant to 34 C.F.R §200.6(c)(4) for English Language Arts, Mathematics, and Science alternate assessments for the 2018-2019 school year with the start date of March 06, 2019 for ELA and Mathematics assessments and the science administration starting on April 1, 2019.

Based on the data presented in **Table 2** from 2016-17, South Dakota has made some great strides in reducing participation in alternate assessments. In addition to an overall decrease from 1.34 percent to 1.15 percent, each subject area shows substantial improvement from 2016-17.

Table 1: 2017-18 Participation in Alternate Assessment

Content	Number Participating in Alternate Assessment	Number Participating in Statewide Assessment	Percent Participating in Alternate Assessment
Reading Language Arts (Gr. 3-8 & High School)	831	72,009	1.15%
Mathematics (Gr. 3-8 & High School)	828	71,993	1.15%
Science (Gr. 3-8 & High School)	334	29,242	1.14%

Table 2: 2016-17 Participation in Alternate Assessment

Content	Number Participating in Alternate Assessment	Number Participating in Statewide Assessment	Percent Participating in Alternate Assessment
Reading Language Arts (Gr. 3-8 & High School)	951	70,733	1.34
Mathematics (Gr. 3-8 & High School)	952	70,903	1.34
Science (Gr. 3-8 & High School)	388	29,243	1.33

Following are the steps SD DOE has taken to meet the original waiver requirements as outlined in the May 16, 2017 memo from the United States Department of Education to work on reducing the percent of students taking alternate assessments.

2018 1% Waiver

(iii) Include assurances from the State that it has verified each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject for which assessments are administered under § 200.2(a)(1) in that school year using an alternate assessment aligned with alternate academic achievement standards—

(A) Followed each of the State's guidelines under paragraph (d) of this section, except paragraph (d)(6); and

South Dakota, in conjunction with the Multi State Alternate Assessment group, developed a “Guidance for IEP Teams on Participation Decision on the Alternate Assessment of South Dakota Content Standards” located on the Alternate Assessment webpage at <http://doe.sd.gov/assessment/alternate.aspx>. The document includes an **Alternate Assessment Worksheet** and a **Documentation of Evidence Worksheet**. IEP teams can use the documents as guidance in their determination.

In the 2016-2017, Governor’s Advisory Panel of Children with Disabilities priority area was alternate assessment. They provided recommendation to the office of Special Education Programs: Provide guidance documents to districts, add additional student scenarios, oversight and training. These are identified in [2016-2017 Annual Report](#).

In September 2017, the South Dakota Department of Education (SD DOE) developed the LEA justification for exceeding the 1% participation at the district level. Each LEA that had over 1% participation in the 2016-2017 assessment based on the accountability participation rate was required to complete a self-assessment which included assurance of the use of the alternate assessment participation criteria, a

data review process, the reason the LEA had an identification rate over 1% and other relevant input for the state to consider. Once the self-assessment was completed the LEA developed a public justification which included: the assurance of the use of the alternate assessment participation criteria, results of the data review processes and the reason why the LEA had a high participation rate.

On October 11, 2017, the LEAs that had over 1% participation and in 2016-2017 received notification to complete the self-assessment and provide a summarized justification based on the self-assessment by November 15, 2017.

Justifications for LEAs which had 10 or more students taking an alternate assessment and a compilation of justifications was posted for LEAs which had under 10 participants was posted publicly.

Based on the 2016-2017 self-assessments, 36 out of 37 districts with over 1% participation documented using the participation guidelines in the individual student determination. One district, upon completion of the self-assessment, identified not all IEP teams consistently used the participation criteria. They are updating procedures and the IEP team met again for any student who was identified to take the alternate assessment that did not use the participation criteria appropriately.

(B) Will address any disproportionality in the percentage of students in any subgroup under section 1111(c)(2)(A), (B), or (D) of the Act taking an alternate assessment aligned with alternate academic achievement standards;

Based on the 2016-2017 student data, there are no LEAs identified as having disproportionality in a subgroup of students taking an AA-AAAS. The data will be examined annually to ensure that there are no districts with a disproportional subgroup of students identified for alternate assessments.

To address any disproportionate representation of students taking the alternate assessment the SD DOE will continue to undertake the following activities:

- Monitoring alternate assessment data by reviewing demographic information related to participants (race/ethnicity, gender, English Learner, etc.);
- Requiring self-assessment from LEAs that exceed the one percent threshold;
- LEA will complete a deeper data and policy review to determine root cause; and
- LEA will develop an action plan which includes professional development or updated policy or procedures.

Upon examination of LEA data, deeper review, and action plan, SD DOE will provide technical assistance and oversight as needed.

(iv) Include a plan and timeline by which—

(A) The State will improve the implementation of its guidelines under paragraph (d) of this section, including by reviewing and, if necessary, revising its definition under paragraph (d)(1), so that the State meets the cap in paragraph (c)(2) of this section in each subject for which assessments are administered under § 200.2(a)(1) in future school years;

Oversight:

The State will take additional steps to **support and provide oversight** to each LEA that the State anticipates will exceed the 1.0 percent threshold to ensure that only students with the most significant cognitive disabilities take an AA-AAS. The State must describe how it will monitor and regularly evaluate each such LEA to ensure that the LEA provides sufficient training such that school staff who participate as members of an individualized education program (IEP) team or other placement team understand and implement the guidelines established by the State for participation in AA-AAS so that all students are appropriately assessed; and

Oversight Committee Developed:

An oversight committee was formed and is mainly be comprised of the Augmentative and Assistive Communication and Community of Practice (AAC/COP) workgroup. They have been trained in instructional practices, core connectors derived from the South Dakota State Standards, and communication needs of this population. They will provide recommendations and state guidance regarding the students who are identified to take the Alternate Assessment. All process and procedures recommended will be presented to Governor's Advisory of Children with Disabilities Panel, Developmental Disability Council, Special Education Director Calls and Testing Coordinators for additional input and recommendations.

Oversight Committee tasks include:

- Further develop the definition of Significant Cognitive Disabilities
- Review data and identify technical assistance and professional development needs for the state and LEAs.
- Identify technical assistance and professional development can be developed in South Dakota and which areas need outside experts.
- Develop and continuously update the oversight process for the 1% participation.
- Continual improve and revise the Participation Guidelines in order for clarity to the Individual Education Plan (IEP) team members.
- Develop accessibility information for students who are accessing the general content standards and those utilizing the Core Connectors.
- Identify parent resources that will allow parents to be meaningful contributors to the selection of the most appropriate assessment for their child. SEA will work with South Dakota Parent Connections in development and dissemination of information.

Oversight Membership:

This group is comprised of:

- Administrator
- Speech Language Therapists
- Professor
- Special Education Teachers Mild to Severe disabilities
- LEA Representative
- Educational Cooperative personnel
- Parent

- Agency who serves students with disabilities
- Center for Disabilities Deaf and Blind Program

The South Dakota Department of Education (SD DOE) has taken the initial steps in oversight and support regarding the 1% participation beginning in Spring of 2017. Feedback from districts exceeding the 1% threshold will be taken into consideration as the oversight committee continues their work in the winter of 2018. The oversight committee will continue to provide feedback and recommendations on the following areas:

Monitor:

SD DOE will annually monitor LEA improvement on meeting the 1% participation threshold through a variety of sources. Data utilized will include:

- LEAs over the 1% threshold;
- Review of self-assessment information completed by the LEA;
- Review the LEA’s Alternate Assessment Learner Characteristics Inventory;
- LEA making reasonable progress to reduce numbers;
- Disproportionality in any subgroup;

Targeted technical assistance will be provided to each LEA that is identified in any of the following categories:

- Disproportionate representation in a subgroup;
- Not making progress in reduction of numbers; and
- 3% or higher on participation in the Alternate Assessment (MSAA English Language Arts (ELA) and Math)

The targeted LEAs will complete a deeper data and policy review to determine root cause. The LEA will develop an action plan which includes professional development or updated policy or procedures. The DOE will assist the LEAs throughout the process.

Activity	Description	Timeline
Accountability Review: Special Education general on-site reviews with LEAs		
One on one file review: <ul style="list-style-type: none"> • Ensure teachers know about the participation guidelines. • If student file identified for alternate assessment, review the process the team used to make the determination. 	As of November 20, 2017, all 28 districts indicated they were aware of the alternate assessment participation guidelines.	September 2017 and continue

<ul style="list-style-type: none"> Team file review will ask, "What was the team's process to determine which assessment was appropriate for the student?" 	Currently in development	Completed by September 2018
<ul style="list-style-type: none"> Update on the data collected from 2017-2018 reviews 	All 30 districts indicated they were aware of the alternate assessment participation guidelines or criteria was reviewed with them.	
Updated Process 2018-2019		
<ul style="list-style-type: none"> Alternate Assessment staff person reviewed alternate assessment data for each district receiving a special education accountability review. 	Files were selected based on disability category and performance on previous MSAA ELA and Math. Reviewers reviewed files to ensure student met the criteria and followed process. Discussed with district staff if any concerns.	
Targeted Technical Assistance:		
LEAs exceeding one percent participation will be required to complete a self-assessment to identify areas of strengths and needs. The LEAs will also submit a 1% Participation Public Justification Rationale.	Data extract from the Accountability Participation Rate and MSAA Data Extract	August 2017
LEAs identified for target technical assistance. (see above)	DOE process and procedures will be developed by July 2018.	October 2017
Targeted LEAs will complete a deeper data and policy review and develop the action plan.		Developed by July 1, 2018
LEA's technical assistance will be identified based on the action plans submitted.		Completed by June 2018
Update: 2017-2018	State accountability data was not finalized until December 17, 2018. This did not give the state time to implement the new procedures.	

South Dakota will ensure appropriate oversight by reviewing state and LEA data through learner characteristics along with LEA justifications and embedding processes within current work. The oversight committee recommendations will provide guidance on implementation of identified professional development along with state policy and procedures in reducing number of students taking the alternate assessment.

SD DOE Testing Dates for 2018-19 school year

NAEP – National Assessment of Educational Progress

Jan. 28 – March 8, 2019

ACCESS and ACCESS Alt (for EL students)

ACCESS 2.0: Jan. 28 – March 1, 2019

ACCESS Alt: Jan. 28 – March 1, 2019

Smarter Balanced (ELA and Math Assessment)

Grades 3-8 and 11: March 6 - May 3, 2019

(Paper/pencil window: March 18 – April 19, 2019. Tests shipped no later than April 25, 2019)

MSAA (Alternate ELA and Math Assessment)

March 18 - May 3, 2019

South Dakota Science and South Dakota Science Alt

April 1 – May 3, 2019

Home School Testing (State-provided SAT 10 ab)

March 25 – April 19, 2019

NCRC

Grade 11 or 12, schools work with CTE and Dept. of Labor to schedule

State of South Dakota – Office of Assessment
 Additional Data Requested by the US Department of Education in consideration of 17-18 1% Waiver

ELA & Math - Non-Alt and Alt Counts		2018	
		Count	Percent of Population
	Gen Ed	71,494	100.00%
	ALT	831	100.00%
	All Students	72,325	100.00%
American Indian / Alaskan Native	Gen Ed	8,097	1.13%
	ALT	124	1.49%
		Difference	-0.36%
Asian	Gen Ed	1,195	1.67%
	ALT	15	1.81%
		Difference	-2.03%
Black/African American	Gen Ed	2,141	2.99%
	ALT	57	6.86%
		Difference	-3.86%
Hispanic/Latino	Gen Ed	4,236	5.92%
	ALT	55	6.62%
		Difference	-0.69%
Native Hawaiian/Pacific Islander	Gen Ed	(b)(6)	
	ALT	(b)(6)	
	Percent ALT	Difference	(b)(6)
Multi-Race	Gen Ed	3,041	4.25%
	ALT	46	5.54%
		Difference	-1.28%
White/Caucasian	Gen Ed	52,706	73.72%
	ALT	533	64.14%
		Difference	9.58%
Economically Disadvantaged	Gen Ed	28,006	39.17%
	ALT	457	54.99%
		Difference	-15.82%
Foster Care	Gen Ed	600	0.84%
	ALT	21	2.53%
		Difference	-1.69%
Homeless	Gen Ed	(b)(6)	
	ALT	(b)(6)	
		Difference	(b)(6)
Migrant	Gen Ed	(b)(6)	
	ALT	(b)(6)	
		Difference	(b)(6)