



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

April 12, 2018

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 (SDDOE) request of December 28, 2017, 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 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. SDDOE requested this waiver because, based on State data for the 2016-2017 school year, the SDDOE has concluded that it will need to assess more than 1.0 percent of students using an AA-AAAS in the 2017-2018 school year.

After reviewing South Dakota's request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, the following waiver for school year 2017-2018:

- 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 a reading/language arts, mathematics and science.

As part of this waiver, SDDOE assured that the State educational agency:

- 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 (2016-2017) 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.

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- 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 South Dakota's waiver request, the system improvements and monitor future administrations to avoid exceeding the 1.0 percent cap.

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 Tanesha Hembrey of my staff at [OSS.SouthDakota@ed.gov](mailto:OSS.SouthDakota@ed.gov).

Sincerely,

/s/

Jason Botel  
Principal Deputy Assistant Secretary,  
Delegated the Authority to Perform the Functions and  
Duties of the Assistant Secretary of Elementary and  
Secondary Education

cc: Abby Javurek, Director, Division of Accountability Systems