



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

April 12, 2018

The Honorable Steven L. Paine, Ed.D  
State Superintendent of Schools  
West Virginia State Department of Education  
1900 Kanawha Boulevard East  
Charleston, WV 21201

Dear Superintendent Paine:

I am writing in response to the West Virginia Department of Education's (WVDE) request on January 10, 2018, 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. WVDE requested this waiver because, based on State data for the 2016-2017 school year, WVDE 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 WVDE'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 subject.

As part of this waiver, WVDE is assuring 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.
- 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  
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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 WVDE'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 Denise M. Joseph of my staff at: [OSS.WestVirginia@ed.gov](mailto:OSS.WestVirginia@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