



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable James Lane  
Superintendent of Public Instruction  
Virginia Department of Education  
101 North 14th Street  
Richmond, VA 23219

June 4, 2019

Dear Superintendent Lane:

I am writing regarding the Virginia Department of Education's (VDOE) percentage of students taking the alternate assessment based on alternate academic achievement standards (AA-AAAS). The Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), limits the percentage of students that a State may assess with an AA-AAAS to no more than 1.0 percent of all assessed students in the grades assessed in a State for each subject. The U.S. Department of Education (Department) recognizes that this is a new requirement starting in the 2017-2018 school year and that most States previously assessed more than 1.0 percent of students with the AA-AAAS. We understand that a State may need time to adjust its systems to reduce its AA-AAAS participation rate. The ESEA and the Department's regulations lay out the requirements for a State seeking a waiver as it works to meet this new requirement, as laid out in a memorandum to States on August 27, 2018 (available at: [www2.ed.gov/admins/lead/account/saa/ossstateassessmentltr.pdf](http://www2.ed.gov/admins/lead/account/saa/ossstateassessmentltr.pdf)). The Department granted 23 States such a waiver for school year 2017-2018.<sup>1</sup>

While there is a limit on the percentage of students statewide who may take the AA-AAAS, there is no such limit among local educational agencies (LEAs). However, 34 CFR 200.6(c)(3)(ii) and (iv) requires that an LEA submit information justifying the need to assess more than 1.0 percent of its students in any subject with an AA-AAAS and the State must make that information publicly available, provided that such information does not reveal personally identifiable information about an individual student.

VDOE submitted information to the Department via *EDFacts*, as of March 25, 2019, that indicated the percentage of all tested students assessed with an AA-AAAS in 2017-2018 statewide:

**Reading/language arts:** 1.16% **Mathematics:** Less Than 1.0% **Science:** Less Than 1.0%

### Consequences for Exceeding the Cap

As noted in a memorandum to States on March 28, 2019, the Department is following up with each State that exceeded the 1.0 percent statewide threshold on the AA-AAAS without a waiver. Because of rates of AA-AAAS participation that were greater than 1.0% in reading/language arts, based on data provided by your State, VDOE must submit a plan for reducing your rate of AA-AAAS participation in future years in order to come into compliance with the 1.0 percent requirement. Please submit this plan by email to the Department at [ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov) by August 1, 2019.

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<sup>1</sup> DE, GA, ID, KY, MI, MS, MO, NE, NC, OH, OK, SD, TN, TX, WV and WI each received waivers for reading/language arts, mathematics, and science; AZ, AR, IN, HI, LA, MA and ND each received waivers for reading/language arts and mathematics.

Please note that consequences in future years may be more severe if the State continues to have an AA-AAAS participation rate over 1.0 percent. Based on the State’s context and information, the Department may consider taking one of the following actions:

1. Placing a condition on the State’s Title I, Part A grant award. As part of the condition, a State would be required to submit a plan to assess no more than 1.0 percent of students with an AA-AAAS in each subject.
2. Imposing high risk status on the State’s Title I, Part A grant award. A State with such a high-risk status would be required to submit a plan to come into compliance with the 1.0 percent cap and to participate in joint Office of Special Education and Rehabilitation Services (OSERS) and the Office of Elementary and Secondary Education (OESE) monitoring calls while the State works to meet the requirement.
3. Withholding Title I, Part A State administrative funds. If the Department withholds funds, a State would be required to submit a plan to come into compliance with the 1.0 percent cap and participate in joint OESE/OSERS monitoring calls while they work to come into compliance.

#### Technical Assistance

The Department continues to support your work to meet this new requirement. In October, the Department hosted a convening, “Supporting States in Implementing ESSA’s 1.0 Percent State-Level Cap on Participation of Students in the AA-AAAS.” A summary of the event is available at: [1PercentNationalConveningProceedings.pdf](https://nceo.umn.edu/docs/OnlinePubs/NCEO_CSAI_CapProceedings_508compliance_042619.pdf) (available at [https://nceo.umn.edu/docs/OnlinePubs/NCEO\\_CSAI\\_CapProceedings\\_508compliance\\_042619.pdf](https://nceo.umn.edu/docs/OnlinePubs/NCEO_CSAI_CapProceedings_508compliance_042619.pdf)), including links to video clips of the plenary presentations as well as resources that were shared by States and others.

Additionally, because we know this work requires robust engagement with LEAs and community members and may require you to update your AA-AAAS guidelines, as a continued step to support implementation, 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) on topics that States identified at the conference:

- 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 the 1.0 Percent PLGs, please contact Susan Hayes, NCEO, at [shayes@wested.org](mailto:shayes@wested.org) or (802) 951-8210. If you are interested in joining NCEO’s broader Community of Practice related to the AA-AAAS, please contact NCEO’s Kathy Strunk at [kstrunk@umn.edu](mailto:kstrunk@umn.edu) or (615) 300-6217.

I appreciate the work you are doing to improve your schools and provide a high-quality education for students. If you have any questions, please contact Don Peasley of my staff at [ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov).

Sincerely,

/s/

Frank T. Brogan  
Assistant Secretary for  
Elementary and Secondary Education