

Virginia’s Request for a Waiver for School Year (SY) 2024-2025 from the One Percent Cap on the Percentage of Students with the Most Significant Cognitive Disabilities Who May Be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards

The *Every Student Succeeds Act* (ESSA) Section 1111(b)(2)(D)(i)(I) limits the total number of students with the most significant cognitive disabilities who are assessed statewide with an Alternate Assessment aligned with Alternate Academic Achievement Standards (AA-AAAS) to one percent of the total number of students in the state who are assessed in that subject; however, if a state anticipates that it will exceed the one percent cap for any subject, the state may request that the United States Department of Education (USED) waive the cap for that subject, pursuant to the *Elementary and Secondary Education Act* (ESEA), Section 8401, for one year. The four basic requirements for a state’s one percent cap waiver are detailed below.

Please consider Virginia’s waiver request for the school year (SY) 2024-2025 for reading, mathematics, and science.

Requirement 1 (§200.6(c)(4)(i)):

Submit the waiver request at least 90 days before the testing window starts for the relevant subject.

The assessment window for the Virginia Alternate Assessment Program (VAAP) for students with the most significant cognitive disabilities is open from February 24, 2025, through June 20, 2025, in all tested subjects. Ninety days prior to the opening of the test window is November 26, 2024.

Requirement 2 (§200.6(c)(4)(ii)):

Provide state-level data, from SY 2023-2024, to show: (A) overall assessment participation rates to demonstrate that the state had assessed at least 95 percent of all students and 95 percent of all students with disabilities during SY 2023-2024 in each subject area; (B) number and percentage of students in each required student group (race/ethnicity, economic disadvantage status, English learner status) who took the AA-AAAS during SY 2023-2024 in each subject area; and (C) AA-AAAS participation rates for SY 2017-2018 through SY 2023-2024 (including estimates for SY 2024-2025, if available) in each subject area.

Based on guidance released from the USED on October 3, 2024, regarding the requirements to request a waiver for SY 2024-2025 from the one percent cap on the percentage of students with the most significant cognitive disabilities who may be assessed with an AA-AAAS, The Virginia Department of Education has included the following tables.

Overall Rates of Assessment Participation for SY 2023-2024

Table 1: Overall Rates - Reading

Reading Group	All Students Grades 3-8 and High School	Students with Disabilities Grades 3-8 and High School
Students Assessed	640,126	92,735
Students Enrolled	644,346	94,105
Assessment Participation Rate	99.34%	98.54%

Table 2: Overall Rates - Mathematics

Mathematics Group	All Students Grades 3-8 and High School	Students with Disabilities Grades 3-8 and High School
Students Assessed	638,985	92,540
Students Enrolled	650,457	94,052
Assessment Participation Rate	98.23%	98.39%

Table 3: Overall Rates - Science

Science Group	All Students Grades 3-8 and High School	Students with Disabilities Grades 3-8 and High School
Students Assessed	272,560	37,148
Students Enrolled	277,516	38,256
Assessment Participation Rate	98.21%	97.10%

AA-AAAS Participation Rates by Subgroup for SY 2023-2024

Table 4: AA-AAAS Participation - Reading

Reading Group	Total Number Students Assessed in Grades 3-8 and High School	Total Number Students Assessed with the AA-AAAS in Grades 3-8 and High School	Percent Assessed with the AA-AAAS in Grades 3-8 and High School
All Students	640,126	8,025	1.24%
Hispanic	119,357	1,316	1.10%
American Indian/ Alaskan Native	1,670	27	1.61%
Asian	50,596	548	1.08%
Black	136,443	2,587	1.89%
Hawaiian/Pacific Islander	1,049	20	1.90%
White	287,124	3,047	1.06%
Two or More Races	43,887	480	1.09%
Male	327,982	5,465	1.66%
Female	311,673	2,558	0.82%
English Learner	96,565	1,400	1.44%
Economically Disadvantaged	275,166	3,911	1.42%

Table 5: AA-AAAS Participation - Mathematics

Mathematics Group	Total Number Students Assessed in Grades 3-8 and High School	Total Number Students Assessed with the AA-AAAS in Grades 3-8 and High School	Percent Assessed with the AA-AAAS in Grades 3-8 and High School
All Students	638,985	8,008	1.25%
Hispanic	122,960	1,320	1.07%
American Indian/ Alaskan Native	1,679	27	1.60%

Mathematics Group	Total Number Students Assessed in Grades 3-8 and High School	Total Number Students Assessed with the AA-AAAS in Grades 3-8 and High School	Percent Assessed with the AA-AAAS in Grades 3-8 and High School
Asian	49,949	549	1.09%
Black	136,030	2,583	1.89%
Hawaiian/Pacific Islander	1,046	18	1.72%
White	283,921	3,030	1.06%
Two or More Races	43,400	481	1.10%
Male	327,790	5,449	1.66%
Female	310,751	2,557	0.82%
English Learner	103,478	1,406	1.35%
Economically Disadvantaged	276,898	3,902	1.40%

Table 6: AA-AAAS Participation - Science

Science Group	Total Number Students Assessed in Grades 3-8 and High School	Total Number Students Assessed with the AA-AAAS in Grades 3-8 and High School	Percent Assessed with the AA-AAAS in Grades 3-8 and High School
All Students	272,560	3,276	1.20%
Hispanic	50,636	493	0.97%
American Indian/ Alaskan Native	680	15	2.20%
Asian	21,932	215	0.98%
Black	58,485	1,073	1.83%
Hawaiian/Pacific Islander	476	Less Than 10 Students	1.47%
White	122,756	1,281	1.04%
Two or More Races	17,595	192	1.09%

Science Group	Total Number Students Assessed in Grades 3-8 and High School	Total Number Students Assessed with the AA-AAAS in Grades 3-8 and High School	Percent Assessed with the AA-AAAS in Grades 3-8 and High School
Male	139,442	2,192	1.57%
Female	132,837	1,084	0.81%
English Learner	36,598	569	1.55%
Economically Disadvantaged	114,165	1,572	1.37%

AA-AAAS Participation Rates by School Year and Subject

Table 7: Participation Rates by School Year and Subject

School Year	Reading	Mathematics	Science
2017-2018	1.16%	0.99%	0.77%
2018-2019	1.18%	1.04%	0.87%
2020-2021	1.16%	1.14%	1.03%
2021-2022	1.19%	1.15%	1.31%
2022-2023	1.21%	1.35%	1.36%
2023-2024	1.24%	1.25%	1.20%
2024-2025 (estimate)	1.16%	1.15%	1.16%

Requirement 3 (§200.6(c)(4)(iii)):

Provide assurances that the state has verified that each local educational agency (LEA) that the state anticipates will assess more than one percent of its assessed students in a subject using the AA-AAAS did the following: (A) followed the state's guidelines for participation in the AA-AAAS; and (B) will address any disproportionality in the percentage of students in any student group taking the AA-AAAS.

(A) Assurance that LEAs over one percent followed the state's participation guidelines.

To meet this stated requirement, school divisions who anticipate exceeding the one percent cap on participation in the VAAP had to provide the VDOE with assurances that the school division followed the state's participation guidelines for the upcoming spring assessment window opening February 24, 2025, including that:

- Individualized Education Program (IEP) Teams will correctly identify students with the most significant cognitive disabilities following state criteria and participation guidelines.
- Students participating in the VAAP have been instructed, at minimum, to address the Virginia Essentialized Standards of Learning (VESOL).
- Student IEPs will include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the student meets the criteria for the alternate assessment; and how the student's participation in the VAAP will impact the student's promotion and/or graduation with a standard or advanced studies diploma, or other matters.
- School divisions will seek to measure the achievement of at least 95 percent of all students, including students with disabilities in all grades for which assessment is required.

(B) Assurance that any disproportionality in students taking the AA-AAAS will be addressed.

The VDOE will continue to address disproportionality in the percentage of students in any student group taking the VAAP through multiple activities as described below. In particular, the VDOE will perform the following steps to address disproportionality concerns:

- Calculate and analyze participation rates among student groups at the SEA and LEA levels.
- Identify student groups over-represented in the VAAP participation counts.
- Analyze student group data over time to identify trends in student group participation with the goal of decreasing disproportionality.
- Continue to provide resources and support to LEAs on appropriately identifying students with the most significant cognitive disabilities for inclusion in the VAAP.

- Engage with stakeholder groups to address disproportionalities and ensure only students with the most significant cognitive disabilities are participating in the VAAP.
- Maintain and update the VAAP.
- Report assessment data publicly.

Requirement 4 (§200.6(c)(4)(iv)):

Submit a plan and timeline by which the following will be accomplished: (A) state will improve the implementation of its participation guidelines including, if necessary, revising its definition of “students with the most significant cognitive disabilities;” (B) state will take additional steps to support and provide appropriate oversight to each LEA that the state anticipates will assess more than one percent with the AA-AAAS to ensure that only students with the most significant cognitive disabilities take the AA-AAAS (this must include a description of how the state will monitor and regularly evaluate each of these LEAs to ensure that the LEA provides sufficient training for IEP Team members); and (C) state will address any disproportionality in the percentage of students taking the AA-AAAS.

(A) State will improve the implementation of its participation guidelines including, if necessary, revising its definition of “students with the most significant cognitive disabilities.”

To meet this stated requirement, the following steps have been or will be taken:

- The VDOE recently revised and augmented its guidance regarding VAAP participation. In January 2024, the VDOE released the VAAP Participation Decision-Making Tool and Accompanying Frequently Asked Questions Document. The new [VAAP Participation Decision-Making Tool](#) and its accompanying document, [VAAP Participation Decision-Making Tool: Frequently Asked Questions](#), replaced the former criteria and guidance starting **July 1, 2024**. The purpose of the revisions was to ensure IEP Teams are identifying the appropriate students for VAAP participation. Along with the release of the new VAAP Participation Decision-Making Tool, an Introductory Module was released to all directors of special education in local school divisions. In February 2024, the VDOE facilitated four online and live question and answer (Q&A) webinars on the new tool for school divisions. Between April 2024 and October 2024, the VDOE provided eight regional trainings to school divisions on how to implement the new tool (three in-person and five virtual); two virtual overviews of the new tool training for parents; and three requested overview trainings to local school leadership and special education advisory committees.
- The VDOE staff members will continue to participate, bi-weekly, in the one percent Community of Practice (CoP), offered by The National Center on Educational Outcomes (NCEO), in accordance with Public Law (P.L.) 108-446 Section 617(a). The VDOE has been a participant since December 2017.

- The VDOE staff members will annually review and revise, if appropriate, state-level policies, procedures, and practices pertaining to Virginia’s AA-AAAS, based on information gathered from the above listed CoP and the data disaggregation in accordance with 34 C.F.R. §200.6(d).

(B) State will take additional steps to support and provide appropriate oversight to each LEA that the state anticipates will assess more than one percent with the AA-AAAS to ensure that only students with the most significant cognitive disabilities take the AA-AAAS (this must include a description of how the state will monitor and regularly evaluate each of these LEAs to ensure that the LEA provides sufficient training for IEP Team members).

To meet this stated requirement, the following steps will be taken:

- Through the release of an Associate Superintendent’s Email (i.e., memo) to all school divisions in the state, the VDOE continues to improve the implementation of the participation guidelines for the VAAP and to ensure that the appropriate students are assessed using this alternate assessment. The memo identifies several webpages on the VDOE website that provide specific information, resources, participation criteria sheets, training modules, and frequently asked questions about the alternate assessment. These resources are relevant to multiple audiences: administrators, testing directors, general education and special education teachers, special education service providers, parents, and other interested parties.
- The VDOE released mass messaging about and training on Critical Decision Points for Families of Children with Disabilities in English and Spanish through the Engage Your Family newsletter. The critical decision points products include a curriculum guide, online modules, one-pagers, and in-person training that highlight important considerations for families and school personnel regarding students with disabilities, including Standards of Learning (SOL) and VAAP participation. The VDOE has also provided VAAP frequently asked questions for parents (about the VAAP and the VAAP Participation Decision-Making Tool). As of October 10, 2024, the Engage Your Family newsletter has 27,513 subscribers.
- The VDOE is currently providing training on the Staying the Course initiative to support students in staying or joining the Standard Diploma Path by supporting teachers in identifying and closing learning gaps for those students who have not had exposure to SOL-driven instruction with the necessary rigor and high expectations to fully realize their potential.
- By November 1, 2024, all LEAs in the state were required to complete a survey, 2024 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program. The results of this survey revealed projected participation rates by LEAs for each content area to be assessed in Spring 2025. This information will be provided to state staff to assist with the 2024-2025 cyclical monitoring of LEAs. In addition, the information will help determine the level of technical assistance needed by each LEA.

- Following the Spring 2025 administration, VDOE staff members will disaggregate the AA-AAAS participation data by LEA, primary disability, gender, race/ethnicity, and grade level to reveal trends in disproportionality in accordance with 34 C.F.R. §200.6(c)(4)(ii)(A).
- Using the disaggregated data, VDOE staff members will address the disproportionality identified above for each LEA exceeding one percent of its students in any subject with an AA-AAAS and will provide technical assistance to LEAs in the area(s) of identified need(s), as required under 34 C.F.R. §200.6(c)(3)(iii).
- In addition, the VDOE is in its third year of implementing its new online version of the Virginia Alternate Assessment Program (VAAP), and VDOE monitoring of the administration of the online assessment is ongoing.

(C) State will address any disproportionality in the percentage of students taking the AA-AAAS.

To meet this stated requirement, the VDOE required LEAs to submit assurances including:

- The IEP Teams identified students with the most significant cognitive disabilities following state criteria and participation guidelines.
- Excessive absences; social, cultural, or economic differences; identification in a specific disability category; specific special education placement or services; anticipated scores on SOL tests; or concerns for accreditation calculations were not considered in the determination that the student will be assessed with the VAAP.
- Students participating in the VAAP have been instructed, at minimum, to address the VESOL.
- Student IEPs include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the student meets the criteria for the alternate assessment; and how the student's participation in the VAAP will impact the student's promotion and/or graduation with a standard or advanced studies diploma, or other matters.
- There is written confirmation that IEP Teams informed parents of students with the most significant cognitive disabilities of the implications of participation in the alternate assessment.
- The school division will seek to measure the achievement of at least 95 percent of all students, including students with disabilities in all grades for which assessment is required.
- There is written confirmation that the school division has no disproportionality in the percentage of students in any subgroup taking the alternate assessment, or if disproportionality does exist, it has plans (outlined below) to address any disproportionality.

The plan includes:

- Identifying districts with more than one percent of its students taking the AA-AAAS.
- Providing training and technical assistance to school divisions to ensure appropriate decisions for participation in the AA-AAAS are made by IEP Teams.
- Identifying school divisions with student groups who disproportionately participate in the AA-AAAS.
- Monitoring school divisions with more than one percent of their students participating in the AA-AAAS.

Virginia is making progress in its plan and timeline as follows:

- As part of the VDOE transition to a new format for the AA-AAAS, beginning in SY 2021-2022, additional webinar training sessions were provided to LEAs regarding students with the most significant cognitive disabilities, including revising and augmenting its guidance regarding VAAP participation.
- Based on data presented in the tables above and gathered through the survey, 2024 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program, the VDOE is able to identify those school divisions that exceed the one percent threshold of students participating in the VAAP. This data will be provided to state staff to assist with the 2024-2025 cyclical monitoring of LEAs and to determine the level of technical assistance needed by each LEA to address the need to exceed the one percent threshold.

To meet Requirement 4 (§200.6(c)(4)(iv)), the steps that have been or will be taken by the VDOE are listed in the table below.

Table 8: Steps That Have or Will be Taken to Meet Requirement 4 (§200.6(c)(4)(iv))

Steps	Timeline
The VDOE staff members will continue to participate, bi-weekly, in the One Percent Community of Practice (CoP), offered by NCEO in accordance with P.L. 108-446 Section 617(a).	Ongoing (December 2017–Present)
The VDOE staff members participated in the Peer Learning Group: PLG #2-Guiding and Evaluating District Justifications for Exceeding the One Percent Cap, offered by NCEO, in accordance with P.L. 108- 446 Section 617(a).	Completed (August 2019)
The VDOE staff members will annually review and revise, if appropriate, state-level policies, procedures, and practices pertaining to Virginia’s AA-AAAS, based on information gathered from the above listed CoP, PLGs, and the data disaggregation in accordance with 34 C.F.R. §200.6(d).	Ongoing
The VDOE staff members will annually disaggregate the AA-AAAS participation data by LEA, primary disability, gender, race/ethnicity, and grade level to reveal trends in disproportionality in accordance with 34 C.F.R. §200.6(c)(4)(ii)(A).	Ongoing
Using the disaggregated data, the VDOE staff members will address the disproportionality identified above for each LEA exceeding one percent of its students in any subject with an AA-AAAS and will provide technical assistance to LEAs in the area(s) of identified need(s), as required under 34 C.F.R. §200.6(c)(3)(iii).	Ongoing
Based on data presented in Tables 1-7 and gathered through the survey, 2024 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program, the VDOE is able to identify those school divisions that exceed the one percent threshold of students participating in the VAAP. This data will be provided to state staff to assist with the 2024-2025 cyclical monitoring of LEAs and to determine the level of technical assistance needed by each LEA within the cohort to address the need to exceed the one percent threshold. At a minimum, state staff will review student files to ensure the following:	Ongoing

Steps	Timeline
<ul style="list-style-type: none"> • The IEP Teams identified students with the most significant cognitive disabilities following state criteria and participation guidelines. • Excessive absences; social, cultural, or economic differences; identification in a specific disability category; specific special education placement or services; anticipated scores on SOL tests; or concerns for accreditation calculations were not considered in the determination that the student will be assessed with the VAAP. • Students participating in the VAAP have been instructed, at minimum, to address the VESOL. • Student IEPs include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the student meets the criteria for the alternate assessment; and how the student’s participation in the VAAP will impact the student’s promotion and/or graduation with a standard or advanced studies diploma, or other matters. • There is written confirmation that IEP Teams informed parents of students with the most significant cognitive disabilities of the implications of participation in the alternate assessment. 	
<p>The VDOE will require LEAs to submit information justifying the need to assess more than one percent of its students in any subject with an AA-AAAS, in accordance with 34 C.F.R. §200.6(c)(3)(ii).</p>	<p>Ongoing</p>

Results of the above Steps Taken

Based on information learned in the PLGs offered by NCEO and the information gathered through the disaggregation of the AA-AAAS participation data by LEA, primary disability, gender, race/ethnicity, and grade level to reveal trends in disproportionality, the VDOE revised the AA-AAAS participation criteria. In addition, the guidance on the determination of significant cognitive disabilities is revised, as needed. The survey, 2024 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program, includes LEAs justifying the need to exceed one percent of its students in any subject with an AA-AAAS in 2024-2025. The LEAs (total number to be determined) will have their disaggregated data reviewed by state staff to determine the level of need for technical assistance.

All Cohort 4 LEAs slated for cyclical review, and certain LEAs identified through data disaggregation, will be identified for student file reviews. If noncompliance is determined by state staff, a VDOE monitoring specialist will be assigned to oversee timely correction in accordance with the USED Office of Special Education Programs (OSEP) QA 23-01.

It is also important to note, as part of the VDOE transition to a new format for the AA-AAAS, beginning in SY 2021-2022, additional webinar training sessions were provided to LEAs regarding students with the most significant cognitive disabilities, including revising and augmenting its guidance regarding VAAP participation.

Based on the data and the steps taken, as listed above, state staff indicate that substantial progress has been made toward the appropriate students being assessed in the AA-AAAS, in accordance with 34 C.F.R. §200.6(c)(3) and will monitor continuing improvement in the years to come.

Prior to the submission of this waiver request, input was solicited from a variety of stakeholders, including the Virginia State Special Education Advisory Committee (SSEAC) and the Community of Practitioners (CoP). Information about the waiver was provided, and a request for public comment was announced through the Associate Superintendent of Special Populations. In addition, the request for public comment was posted to the Virginia Alternate Assessment Program (VAAP) webpage. Consistent with the manner in which similar notices and public comment opportunities are provided, school division personnel and multiple stakeholder groups were also informed of the opportunity by email.

Please contact Jeff Phenicie, Executive Director of Data, Monitoring and General Supervision, by email at Jeff.Phenicie@doe.virginia.gov or by telephone at (804) 750-8145, if there are any questions or to discuss the content of this waiver request.

We look forward to working with the United States Department of Education staff to achieve a positive response to the request.

Lisa Coons, Ed.D.
Superintendent of Public Instruction
The Virginia Department of Education

Date