



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

April 13, 2021

The Honorable James F. Lane
Superintendent of Public Instruction
Virginia Department of Education
P.O. Box 2120
Richmond, VA 23218

Dear Superintendent Lane:

I am writing in response to the Virginia Department of Education's (VDOE's) request on December 16, 2020, for a waiver of section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965 (ESEA) 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. VDOE requested this waiver because, based on State data for the 2018-2019 school year, VDOE has concluded that it will need to assess more than 1.0 percent of students using an AA-AAAS in the 2020-2021 school year.

After reviewing VDOE's request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, for school year 2020-2021 a one-year 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.

As part of this waiver, VDOE 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 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 in 2018-2019, the most recent year for which data are available.
- 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.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

- Will implement, consistent with the plan submitted in VDOE's waiver request, system improvements and will monitor future administrations of the AA-AAAS to avoid exceeding the 1.0 percent threshold.

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.

Given the workplan submitted by VDOE, I expect to see positive results of this plan in the 2020-2021 school year and beyond. Any future requests for an extension of this waiver will be contingent on both continued progress implementing your plan and progress in reducing the percentage of students taking the AA-AAAS in all tested subjects.

By letter of June 4, 2019, the Department placed a condition on the State's Fiscal Year 2019 Title I grant award because the State had assessed in reading/language arts more than 1.0 percent of the total number of students with an AA-AAAS in 2017-2018 without receiving a waiver. By way of letter on July 17, 2020, the Department extended the condition for another year because the State was still above the 1.0 percent limit in the subject area of reading/language arts. In granting this waiver for 2020-2021, I am removing that condition.

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). I note that Virginia has participated in several of these efforts and encourage your State's continued involvement. In 2019, NCEO has published several resources that may be helpful to stakeholders in your State. They may be found online at https://nceo.info/Assessments/alternate_assessments.

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,



Ian Rosenblum
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary
Office of Elementary and Secondary Education

cc: Julie Molique, Director of Accountability