

Report on Public Comments: One Percent Waiver Extension Request for Reading, Mathematics and Science

ESEA section 1111(b)(2)(D) and 34 CFR 200.6(c) and (d) requires the participation of students with the most significant cognitive disabilities in the alternate assessment. The Individuals with Disabilities Education Act (IDEA), most recently reauthorized in 2004, mandates that *all* children, including those with the most significant cognitive disabilities have access to the general curriculum, be involved in the general curriculum, and progress in the general curriculum. IDEA also requires that all students participate in statewide assessments. IEP teams cannot exempt students from participating in statewide assessments. The role of the IEP team is to determine *how* a student will participate in state tests, not *if* they will participate.

Federal Requirement for State Waiver Requests

The U.S. Department of Education (USDOE) requires state educational agencies (SEAs) who submit a request to waive the 1 percent participation threshold in the Alternate Assessment for students with Significant Cognitive Disability (AASCD)¹ in any subject area to provide a public comment period for the state's waiver request. The USDOE also requires that the waiver request includes evidence that the state provided notice and reasonable opportunity for the public and districts and community schools to provide input on the waiver request. This must include:

- Evidence or a description of the manner in which the state provided this notice to the public and interested districts;
- Copies of all comments the state received from districts in response to this notice, with a description of how the state addressed the comments; and
- Evidence that the state also provided notice and reasonable opportunity to comment to the public and districts in the manner in which the state customarily provides similar notice and opportunity to comment.

¹ Please note that federal law refers to this as Alternate Assessments Aligned with Alternate Academic Achievement Standards (AA-AAAS).

Public Comment: Ohio's One Percent Waiver Extension Request for Reading, Mathematics and Science

On Oct. 5, 2018, the Ohio Department of Education (Department) posted a Draft for Public Comment of its [One Percent Waiver Extension Request for Reading, Mathematics and Science](#). An accompanying message invited citizens to use a posted survey to comment on the draft from then through Oct. 31, 2018. The Department also notified all district and community school superintendents, special education contacts and testing coordinators of the public comment opportunity through its e-newsletter, [EdConnection](#), and through its email service, GovDelivery.

During the survey window, the Department received written comments from 64 respondents. The Department was able to provide an appropriate general response to majority of those comments. This document summarizes those public comments, shows the Department's responses and notes any additional actions. Comments received not on the topic of the one percent waiver extension request are not addressed.

Summarized Public Comments and Department Responses

Many comments questioned the purpose and components of the state waiver and the difference between the state waiver application and district-level justification form.

Due to a new provision in Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA, 2016), a state education agency must submit a waiver request to the USDOE if it predicts exceeding 1 percent participation, statewide, in the AASCD in any subject area. In May 2017, the USDOE sent a [memo](#) to state assessment, Title I and special education directors providing guidance on the content required for state waivers. In August 2018, the USDOE, sent a [second memo](#) to state assessment, Title I and special education directors providing guidance on the requirements to request an extension to a previously granted waiver.

Ohio submitted and was granted a waiver for school year 2017-2018. Ohio's AASCD participation rate was approximately 1.72 percent in reading, 1.81 percent in mathematics and 2.00 percent in science for school year 2017-2018. Due to these past rates, Ohio anticipates exceeding the 1 percent threshold for the 2018- 2019 administration of the AASCD in reading, mathematics and science and is requesting an extension to the current waiver.

Ohio's waiver extension request includes a plan to obtain justifications from districts and community schools exceeding the 1 percent threshold and to ensure that districts and community schools are appropriately using the state's eligibility guidelines for the alternate assessment. The waiver also includes a plan to create a statewide tiered system of support to address appropriate student participation in Ohio's AASCD.

ESSA does not permit states to prohibit districts and community schools from assessing more than 1 percent of their assessed students with an AASCD. However, the federal waiver process requires states to obtain justifications from districts and community schools that assess more than 1 percent of

their assessed students in any subject with an AASCD. Justifications must explain the need to exceed the 1 percent threshold and describe local procedures for adhering to state guidelines. Student eligibility to participate in the AASCD remains a local Individualized Education Program (IEP) team decision, not a state decision.

The federal waiver requires states to provide appropriate oversight of each district or community school required to submit a justification and must make the justification publicly available, so long as the document does not reveal personally identifiable information about an individual student.

The Department continues to work to ensure appropriate participation in the AASCD. The cornerstone of the Department's multi-faceted approach is a system of tiered intervention and monitoring designed to improve statewide implementation of eligibility guidelines for participation in the AASCD. Implementation of the tiered system of support includes collaboration with the state's 16 regional State Support Teams (SSTs). The Department provides professional learning opportunities, tools and resources to all districts and community schools (Tier 1). For districts and community schools identified with higher levels of need, the Department and SSTs provides additional monitoring and evaluation (Tiers 2 and 3).

Ohio's assessment window for the AASCD is open from Feb. 19, 2019, through April 12, 2019. Ninety days prior to the start of Ohio's testing window (Nov. 19, 2018), the Department will submit a waiver extension request to the USDOE as required by ESSA.

A prominent theme in the public comments was concern for how districts should identify students for participation in the Ohio Alternate Assessment for Students with Significant Cognitive Disabilities (AASCD). Some comments included suggestions that students with significant cognitive disabilities should not be required to participate in state-wide standardized assessments.

Student eligibility for participation in the AASCD is a local IEP team decision, not a state decision. The Ohio Department of Education offers training, guidance and web-based resources to assist IEP teams in appropriately identifying students for participation in the alternate assessment. Web-based resources include:

[Alternate Assessment Participation Guidelines](#): This tool must be used by IEP teams to determine if a student qualifies to participate in the alternate assessment.

[Companion to Participation Guidelines and Decision-Making Flowchart](#): This document is a companion to the [Alternate Assessment Participation Guidelines](#) that assists IEP teams in making appropriate decisions regarding student participation in Ohio's AASCD. IEP teams must use various data sets in determining AASCD eligibility.

Online learning modules will be developed to assist districts and community schools in ensuring only students with the most significant cognitive disabilities participate in the AASCD. Additional online

learning will be available to support local monitoring and evaluation of AASCD policies, processes and practices. One commenter noted that Evaluation Team Reports (ETRs) should be reviewed by the Department as part of the oversight process. Records reviews already include ETRs. However, to be more explicit, the Department will add references to ETRs and IEPs in guidance documents.

A few commenters asked if 1 percent might be too low of a participation rate and if a higher percentage rate might be more appropriate. Some commenters asked about previous efforts to make a 2 percent modified assessment available.

The recent provision in Title I of ESSA is clear. Each state must submit a waiver request to the U.S. Department of Education if it predicts exceeding 1 percent participation in the alternate assessment in any subject area. In school year 2017-2018, Ohio's alternate assessment participation rates were 1.72 percent in reading, 1.81 percent in mathematics and 2.00 percent in science. Therefore, Ohio is required to request an extension to the current waiver.

The Department follows the guidance of the U.S. Department of Education's Office of Special Education and Rehabilitative Services when establishing rules for participation in the Ohio AASCD. Federal regulations no longer authorize an assessment of modified academic standards for students with disabilities. This proposed assessment would have provided an alternate assessment for the 2 percent of students with cognitive disabilities above the 1 percent significant threshold. For more information, see the [final regulations](#) related to the modified assessment (Aug. 21, 2015).

Some commenters asked what the consequences are for states that continue to exceed the 1 percent alternate assessment threshold.

As a condition of the receipt of federal funding, the Department and the districts and community schools, as subgrantees, sign assurances with the federal government agreeing to comply with all applicable federal statutes and regulations. ESSA requires the state to ensure that the total number of students assessed in such subject using the alternate assessments does not exceed 1 percent of the total number of all students in the state who are assessed in such subject. While ESSA does not impose a cap on the district for exceeding the 1 percent threshold, ESSA requires all districts that exceed the 1 percent threshold to submit a justification as to their need to exceed the threshold. Failure to comply with these federal requirements may result in a finding of non-compliance and/or placement on a corrective action plan.

Some comments included support for the request for extension of the 1 percent waiver from 2017-2018.

The Ohio Department of Education appreciates your support and time dedicated to all students. The Department aims to ensure **every** child is challenged, prepared and empowered to become a resilient, lifelong learner who contributes to society.