# Superintendent’s Memo #280-19

[](http://www.doe.virginia.gov/administrators/index.shtml)  
**COMMONWEALTH of VIRGINIA   
Department of Education**

DATE: December 6, 2019

TO: Division Superintendents

FROM: James F. Lane, Ed.D., Superintendent of Public Instruction

## SUBJECT: Virginia Department of Education Public Notice and Comment Period Waiver Request Pursuant to 34 C.F.R. §200.6(C)(4)

Pursuant to 34 C.F.R. §200.6(c)(4), the Virginia Department of Education (VDOE) will seek a waiver for the 2019-2020 school year from the Secretary for the United States Department of Education. The regulation in question, found at 34 C.F.R. 200.6(c)(2), requires State Education Agencies such as the VDOE to limit the total number of students assessed in a subject area using an alternate assessment. The limit on the percentage of students assessed by the alternate assessment is set by the federal regulation, stating there shall be no more than one (1) percent of the total number of students taking the alternate assessment assessed in each subject area.

Specifically, 34 C.F.R. 200.6(c)(2) provides:

For each subject for which assessments are administered under § 200.2(a)(1), the total number of students assessed in that subject using an alternate assessment with alternate academic achievement standards under paragraph (c)(1) of this section may not exceed 1.0 percent of the total number of students in the State who are assessed in that subject.

NOTICE OF PUBLIC COMMENT PERIOD: Any individual or organization may submit written comments on the proposed waiver pursuant to 34 C.F.R. §200.6(c)(4). The proposed waiver can be accessed on the VDOE [Virginia Alternate Assessment Program (VAAP)](http://www.doe.virginia.gov/testing/alternative_assessments/vaap_va_alt_assessment_prog/index.shtml) web page. Written comments shall be accepted through December 16, 2019.

Public comment on the proposed waiver may be submitted via email at: [spedprogramdata@doe.virginia.gov](mailto:spedprogramdata@doe.virginia.gov).

Comments for the proposed Waiver may also be sent via mail or fax to:

Jeff Phenicie

Director of the Office of Special Education Program Improvement

Virginia Department of Education  
P.O. Box 2120  
Richmond, VA 23218-2120  
FAX: (804) 371-8796

The Department of Education requests that this information be shared with members of your education community and local board of education. For additional information about the proposed waiver, please contact [Jeff Phenicie](mailto:Jeff.Phenicie@doe.virginia.gov), Director of Office of Special Education Program Improvement; telephone (804) 786-0308; or [Deborah Johnson](mailto:Deborah.Johnson@doe.virginia.gov), Specialist for Intellectual Disabilities, Office of Special Education Instructional Services; telephone (804) 371-2725.

JFL/SMH/JP