

**Virginia’s Request for a One-Year Extension of the 2021-2022
Waiver from the One Percent Limit of Students Participating in the
Alternate Assessments Aligned with Alternate Academic
Achievement Standards (AA-AAAS) Granted by the United States
Department of Education (March 4, 2022)**

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 extension request for the 2022-2023 school year for reading, mathematics, and science.

Requirement 1 (§200.6(c)(4)(i)):

Submit the waiver request at least 90 days before 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 27, 2023, through June 23, 2023, in all tested subjects. Ninety days prior to the opening of the test window is November 29, 2022.

Requirement 2 (§200.6(c)(4)(ii)):

Provide state-level data, from the current or previous year, to show: (A) the number and percent in each subgroup who took the AA-AAAS in the subject area; and (B) the state has measured the achievement of at least 95 percent of all students and students with disabilities enrolled in the grades for which the AA-AAAS is required.

Based on guidance released from the USED on September 20, 2022, regarding the requirements to request a waiver extension for school year (SY) 2022-2023 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 (AA-AAAS), the Virginia Department of Education (VDOE) has included the actual AA-AAAS participation rates for SY 2020-2021 and SY 2021-2022.

In addition, projected estimates of the number and percentage of students expected to take the AA-AAAS in SY 2022-2023, by subject area, are included. The percentages of students with

disabilities participating in the Alternative Assessment in the following tables highlight the significant difference compared to the other Student Groups.

(A) Data on participation in AA-AAAS in subject area by subgroup.

Alternate Assessment Participation Rates for English/Reading, 2020-2021, by Student Group

Student Group	Number of Students Participating in Regular Assessment	Number of Students Participating in Alternate Assessment	Total Number of Students Assessed ¹	Percent Participating in Alternate Assessment
All Students	523,967	6,179	531,467	1.16%
Asian	40,147	349	40,789	0.86%
Black or African American	107,780	1,961	109,827	1.79%
Hispanic or Latino	87,857	930	89,438	1.04%
Two or More Races	32,319	359	32,709	1.10%
White	253,717	2,549	256,522	0.99%
Students with Disabilities	62,526	6,179	68,734	8.99%
Limited English Proficient (LEP)	41,486	892	43,690	2.04%
Economically Disadvantaged	216,775	2,970	220,297	1.35%
Male	267,241	4,111	272,059	1.51%
Female	256,675	2,068	259,356	0.80%

Note: Data submitted to ED Facts.

¹ LEP students who, at the time of testing, were in the United States for less than 12 months and took the English Language Proficiency test as substitute for the reading/language arts assessment are also considered participants in that reading assessment (PARTELP).

Alternate Assessment Participation Rates for English/Reading, 2021-2022, by Student Group

Student Group	Number of Students Participating in Regular Assessment	Number of Students Participating in Alternate Assessment	Total Number of Students Assessed ²	Percent Participating in Alternate Assessment
All Students	640,220	7,676	647,896	1.18%
Asian	49,082	476	49,558	0.96%
Black or African American	139,455	2,487	141,942	1.75%
Hispanic or Latino	113,663	1,183	114,846	1.03%
Two or More Races	41,010	479	41,489	1.15%
White	294,264	3,017	297,281	1.01%
Students with Disabilities	81,779	7,676	89,455	8.58%
Limited English Proficient (LEP)	56,076	1,196	57,272	2.09%
Economically Disadvantaged	271,832	3,670	275,502	1.33%
Male	326,896	5,209	332,105	1.57%
Female	312,920	2,467	315,387	0.78%

Note: Data submitted to EDFacts.

Projected Assessment Participation Rates for English/Reading, 2022–2023³

Number of Students in Membership at Grades 3–8 and 11 in Fall 2022	Number of Students Projected to Participate in the Alternate Assessment in 2022–2023	Percent Projected to Participate in the Alternate Assessment
622,727	7,594	1.22%

² LEP students who, at the time of testing, were in the United States for less than 12 months and took the English Language Proficiency test as substitute for the reading/language arts assessment are also considered participants in that reading assessment (PARTELP).

³ Data was derived from a participation survey sent from the VDOE Department of Special Education and Student Services to local educational agency (LEA) staff in October 2022 as part of the planned monitoring process. This survey did not require specific student information from all divisions; therefore, the projected values are not able to be disaggregated to the student group level.

Alternate Assessment Participation Rates for Mathematics, 2020-2021, by Student Group

Student Group	Number of Students Participating in Regular Assessment	Number of Students Participating in Alternate Assessment	Total Number of Students Assessed	Percent Participating in Alternate Assessment
All Students	535,870	6,218	542,088	1.14%
Asian	41,070	351	41,421	0.84%
Black or African American	164,727	2,633	167,360	1.57%
Hispanic or Latino	92,610	947	93,557	1.02%
Two or More Races	33,044	355	33,399	1.06%
White	256,846	2,574	259,420	0.99%
Students with Disabilities	64,775	6,218	70,993	8.75%
Limited English Proficient (LEP)	45,551	909	46,460	1.95%
Economically Disadvantaged	224,001	2,981	226,982	1.31%
Male	273,858	4,135	277,993	1.48%
Female	261,952	2,083	264,035	0.78%

Note: Data submitted to ED Facts.

Alternate Assessment Participation Rates for Mathematics, 2021-2022, by Student Group

Student Group	Number of Students Participating in Regular Assessment	Number of Students Participating in Alternate Assessment	Total Number of Students Assessed	Percent Participating in Alternate Assessment
All Students	665,210	7,799	673,009	1.16%
Asian	50,920	488	51,408	0.95%
Black or African American	145,434	2,542	147,976	1.72%
Hispanic or Latino	123,877	1,204	125,081	0.96%
Two or More Races	42,444	485	42,929	1.13%
White	299,677	3,047	302,724	1.01%
Students with Disabilities	84,855	7,799	92,654	8.42%
Limited English Proficient (LEP)	66,198	1,213	67,411	1.80%
Economically Disadvantaged	286,412	3,722	290,134	1.28%
Male	340,649	5,278	345,927	1.53%
Female	324,111	2,521	326,632	0.77%

Projected Assessment Participation Rates for Mathematics, 2022-2023⁴

Number of Students in Membership at Grades 3-8 and 11 in Fall 2022	Number of Students Projected to Participate in the Alternate Assessment in 2022-2023	Percent Projected to Participate in the Alternate Assessment
629,974	7,688	1.22%

⁴ Data was derived from a participation survey sent from the VDOE Department of Special Education and Student Services to LEA staff in October 2022 as part of the planned monitoring process. This survey did not require specific student information from all divisions; therefore, the projected values are not able to be disaggregated to the student group level.

Alternate Assessment Participation Rates for Science, 2020-2021, by Student Group

Student Group	Number of Students Participating in Regular Assessment	Number of Students Participating in Alternate Assessment	Total Number of Students Assessed	Percent Participating in Alternate Assessment
All Students	263,688	2,726	266,414	1.03%
Asian	19,935	128	20,063	0.63%
Black or African American	54,116	924	55,040	1.67%
Hispanic or Latino	42,734	398	43,132	0.92%
Two or More Races	15,551	133	15,684	0.85%
White	130,259	1,128	131,387	0.86%
Students with Disabilities	30,811	2,726	33,537	8.13%
Limited English Proficient (LEP)	15,701	353	16,054	2.20%
Economically Disadvantaged	103,281	1,260	104,541	1.21%
Male	135,002	1,803	136,805	1.32%
Female	128,652	923	129,575	0.71%

Note: Data submitted to ED Facts.

Alternate Assessment Participation Rates for Science, 2021-2022, by Student Group

Student Group	Number of Students Participating in Regular Assessment	Number of Students Participating in Alternate Assessment	Total Number of Students Assessed	Percent Participating in Alternate Assessment
All Students	330,974	3,536	334,510	1.06%
Asian	24,849	218	25,067	0.87%
Black or African American	72,262	1,154	73,416	1.57%
Hispanic or Latino	60,032	543	60,575	0.90%
Two or More Races	20,295	214	20,509	1.04%
White	152,093	1,391	153,484	0.91%
Students with Disabilities	41,340	3,536	44,876	7.88%
Limited English Proficient (LEP)	26,210	526	26,736	1.97%
Economically Disadvantaged	137,058	1,707	138,765	1.23%
Male	169,159	2,365	171,524	1.38%
Female	161,533	1,171	162,704	0.72%

Projected Assessment Participation Rates for Science, 2022–2023⁵

Number of Students in Membership at Grades 5, 8, and 11 in Fall 2022	Number of Students Projected to Participate in the Alternate Assessment in 2022–2023	Percent Projected to Participate in the Alternate Assessment
281,560	3,385	1.20%

⁵ Data was derived from a participation survey sent from the VDOE Department of Special Education and Student Services to LEA staff in October 2022 as part of the planned monitoring process. This survey did not require specific student information from all divisions; therefore, the projected values are not able to be disaggregated to the student group level.

Alternate Assessment Participation Rates for Students with Disabilities 2020-2021 Compared to 2021-2022, by Content Area

Content Area	Number of Students Participating in Alternate Assessment 2020-2021	Total Number of Students with Disabilities Assessed in 2020-2021	Participation Percent by Content Area 2020-2021	Number of Students Participating in Alternate Assessment 2021-2022	Total Number of Students with Disabilities Assessed in 2021-2022	Participation Percent by Content Area 2021-2022
Reading	6,179	68,734	8.99%	7,676	89,455	8.58%
Math	6,218	70,993	8.75%	7,799	92,654	8.42%
Science	2,726	33,537	8.13%	3,536	44,876	7.88%

Although Virginia has not reduced the percentage of students taking the AA-AAAS by content area when compared to all students tested, the State has made significant reduction in the percentage of students with disabilities subgroup assessed with the AA-AAAS across all three subject areas (demonstrated in the above table). Such analysis of the students with disabilities subgroup demonstrates that the waiver has been effective in enabling the State to carry out an AA-AAAS for students with the most significant cognitive disabilities. State staff believe Virginia will see overall reduction in the percentage of students taking the AA-AAAS once participation rates overall and students with disabilities, by content area, return to pre-pandemic levels.

(B) Data showing 95 percent participation overall and for the students with disabilities student group.

2020-2021 Participation Rate Overall and for Students with Disabilities, by Content Area

Content Area	All Students Tested	All Students in the Tested Population	Participation Percent by Content Area	Students with Disabilities Tested	Students with Disabilities in the Tested Population	Participation Percent by Content Area
Reading	531,467	654,816	81.16%	68,734	88,334	77.81%
Math	542,088	671,217	80.76%	70,993	91,935	77.22%
Science	266,414	328,285	81.15%	33,537	43,226	77.59%

2021-2022 Participation Rate Overall and for Students with Disabilities, by Content Area

Content Area	All Students Tested	All Students in the Tested Population	Participation Percent by Content Area	Students with Disabilities Tested	Students with Disabilities in the Tested Population	Participation Percent by Content Area
Reading	628,017	646,308	97.17%	86,911	89,775	96.81%
Math	608,179	644,545	94.36%	84,587	87,668	96.49%
Science	240,896	246,247	97.83%	31,963	33,473	95.49%

Virginia had a significant increase in the number of parent refusals to test due to COVID-19. Specifically, if parents refused to have their child participate in the AA-AAAS in 2020-2021 due to the COVID-19 pandemic, local educational agency (LEA) staff were directed to inform the parents that their child’s score report will reflect that the test was refused due to COVID-19 and a “No Score” or “NS” was assigned. School staff were strongly encouraged to request a written statement from parents indicating the specific test(s) the parents refused to have their child complete due to the pandemic and to maintain the statement in the student’s file as a record of the decision. Test records coded in this manner in reading, mathematics, and science were included as non-participants in federal accountability calculations. In 2021-2022, participation rates overall and for students with disabilities returned to near pre-pandemic levels.

Requirement 3 (§200.6(c)(4)(iii)):

Provide assurances that the state has verified that each LEA that the state anticipates will assess more than 1.0 percent of its assessed students in a subject using the AA-AAAS did the following: (A) followed the state's participation guidelines; and (B) will address any disproportionality in the students taking the AA-AAAS.

(A) Assurance that districts 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 to the VDOE assurances that the division followed the State's participation guidelines for the upcoming spring assessment window opening February 27, 2023, 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 in a modified curriculum aligned to state standards (i.e., 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 child meets the criteria for the alternate assessment; and how the child's participation in the VAAP will impact the child'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 state educational agency (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 1.0 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 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 participated in the Peer Learning Group (PLG): PLG #2-Guiding and Evaluating District Justifications for Exceeding the 1% Cap, from June through August 2019, offered by NCEO, in accordance with P.L. 108-446 Section 617(a); and Peer Learning Group: PLG #3-Building Capacity of IEP Teams and Parents in Making Decisions About Assessment Participation, offered by NCEO, in accordance with P.L. 108-446 Section 617(a). This was offered from October through December 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 CFR §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 assistant superintendent memo to all school districts 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 pages 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 GovDelivery. The critical decision points products and in-person training highlight for families and school personnel important considerations for children with disabilities, including Standards of Learning (SOL) and VAAP participation. As of November 28, 2022, GovDelivery has 22,593 subscribers.
- By November 3, 2022, all LEAs in the state were required to complete a survey titled, “2022 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 2023. This information will be provided to state staff to assist with the 2022-2023 cyclical monitoring of LEAs. In addition, the information will help determine the level of technical assistance needed by each LEA.
- Following the Spring 2023 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 CFR §200.6(c)(4)(ii)(A).
- Using the disaggregated data, VDOE staff members will address 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 CFR §200.6(c)(3)(iii).
- In addition, the VDOE transitioned to a new format for the AA-AAAS, beginning in SY 2021-2022. The new Virginia Alternate Assessment Program (VAAP) is an online assessment in reading, mathematics, and science for eligible students with significant cognitive disabilities in grades three through eight and high school, which replaced the portfolio-based assessment.

(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 in a modified curriculum aligned to state standards (i.e., 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 child meets the criteria for the alternate assessment; and how the child's participation in the VAAP will impact the child'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 division will strive 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 division has no disproportionality in the percentage of students in any subgroup taking the alternate assessment, or if disproportionality does exist, it has plans 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 districts to ensure appropriate decisions for participation in the AA-AAAS are made by IEP Teams.
- Identifying districts with student groups that disproportionately participate in the AA-AAAS.
- Monitoring districts 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 has been provided to LEAs regarding students with the most significant cognitive disabilities, including revisiting the characteristics of students with the most significant cognitive disabilities and the criteria for participation in the VAAP.

- Based on data presented in the tables above and gathered through the survey, “2022 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program,” the VDOE is able to identify those 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 2022-2023 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 the 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.

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 1% Cap, offered by NCEO, in accordance with P.L. 108- 446 Section 617(a).	Completed (August 2019)
The VDOE staff members participated in the Peer Learning Group: PLG #3-Building Capacity of IEP Teams and Parents in Making Decisions About Assessment Participation, offered by NCEO, in accordance with P.L. 108-446 Section 617(a).	Completed (December 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 CFR §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 CFR §200.6(c)(4)(ii)(A).	Ongoing
Using the disaggregated data, the VDOE staff members will address 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 area(s) of identified need(s), as required under 34 CFR §200.6(c)(3)(iii).	Ongoing
Based on data presented in the tables above and gathered through the survey titled, “2022 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program,” the VDOE is able to identify those 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 2022-2023 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:	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 in a modified curriculum aligned to state standards (i.e., 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 child meets the criteria for the alternate assessment; and how the child’s participation in the VAAP will impact the child’s promotion and/or graduation with a standard or advanced studies diploma, or other matters; and • 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 CFR §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 titled, “2022 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program,” identified 100 LEAs justifying the need to exceed one percent of its students in any subject with an AA-AAAS in 2022-2023. All 100 LEAs will have their disaggregated data reviewed by state staff to determine the level of need for technical assistance.

All Cohort 2 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 monitor will be assigned to oversee timely correction in accordance with the United States Office of Special Education Programs (OSEP) Memo 09-02 Timely Correction.

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 has been provided to LEAs regarding students with the most significant cognitive disabilities, including revisiting the characteristics of students with the most significant cognitive disabilities and the criteria for participation in the VAAP.

Based on the data and the steps taken, as listed above, state staff believe substantial progress has been made toward the appropriate students being assessed in the AA-AAAS, in accordance with 34 CFR §200.6(c)(3), and look forward to continued improvement in the years to come.

Prior to the submission of this waiver request, input was solicited from a variety of stakeholders, including members of the Virginia State Special Education Advisory Committee (SSEAC) and the Committee of Practitioners (CoP). Information about the waiver was provided, and a request for public comment was announced in the Superintendent's Memo #258-22. The Superintendent's Memoranda are posted on the VDOE website, and the request for public comment was posted to the VDOE 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, Director of Program Improvement, by email at Jeff.Phenicie@doe.virginia.gov, or by telephone at (804) 786-0308, 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.

Jillian Balow
Superintendent of Public Instruction
Virginia Department of Education

Date

Public Notice and Comment Period Waiver Request Pursuant to 34 CFR §200.6(C)(4)

Prior to submitting this ESSA waiver extension request, the VDOE provided public notice to Virginia stakeholders. The VDOE provided such notification, by posting a public notice on its website for more than 30 calendar days (October 28, 2022–November 28, 2022), of the intent to request an extension of Virginia’s waiver from the alternate assessment based on alternate academic achievement standards one percent cap and solicited public comment. In addition, the VDOE has disseminated information pertaining to the public notification/comment period of the waiver extension request through Superintendent’s Memo #258-22, all special education directors, all assessment directors, parent groups, and the Virginia SSEAC.

Copies of all comments the VDOE received from stakeholders in response to this notice are listed below.

- The purpose of this comment is to support the use of VA’s Alternate Assessment Program. The federal requirement of less than 1% is a flawed approach. My school specializes in providing educational opportunities for students with severe autism. The LEAs place their students at our school due to our ability to provide these learning experiences. The cognitive abilities of these students require an alternate assessment, so 100% of students placed here will require an alternate assessment. Moreover, with an increase in children having autism, how can the Fed justify a 1% cap, if there is also an increase in the total number of students who qualify for an alternate assessment? Lastly, even subjecting students with low cognitive abilities and/or unique learning needs presented in students with autism to any standardized assessment is demoralizing. For example, why does a 15 y/o nonverbal student, with severe learning disabilities, unable to spell his/her name, lack of number sense, minimal to no daily living skills, need to be assessed on the functions of cell or determine the height of an imaginary flagpole when provided a shadow. – *Submitted by a Private Day School*
- It is unreasonable to place a one-percent cap on all school divisions because some schools have more severe students than others. The opioid crisis in Appalachia as referenced in the book “Dopesick” by Beth Macey has had a major impact on the number of drug babies and learning disabilities in our area. Therefore, our school system should not be held to the same standards as other school divisions that were not affected by the opioid crisis. – *Submitted by an LEA Representative*
- I agree that VDOE should request a waiver to 34 CFR §200.6(c)(4), and that the Virginia Department of Education (VDOE) should seek to extend a waiver for the 2022-2023 school year from the Secretary for the United States Department of Education. – *Submitted by a Parent of a Student with a Disability*
- The Virginia Committee of Practitioners met on November 14, 2022. The group expressed unanimous support of the waiver extension request. – *Submitted on behalf of the Committee of Practitioners*
- I am writing in support of the waiver for students to participate in the Virginia Alternate Assessment. We can’t place an arbitrary number to limit the birth of children with

significant cognitive abilities, so how are we doing that with the number of children eligible for the assessment? While I understand the point of the cutoff number is to make sure schools don't abuse the use of the alternative assessment, the number of students that truly need it will fluctuate each year. Please grant the waiver for this year. – *Submitted by an LEA Representative*

- My school division is in full support of Virginia's request for a one-year extension of the 2021-2022 waiver from the one percent limit of students participating in the alternate assessment program. As a small school division with approximately 700 students grades Pre-K -12, my division is especially vulnerable for exceeding the one percent cap. RCPS is currently experiencing declining enrollment due to the rural nature and high tax base of our county- smaller numbers of test takers in grades 3, 4, 5, 6, 7, 8, and 11 disproportionately impacts the percentage for students participating in VAAP. In addition, my division has no control over the number of students who will need the VAAP assessment. While the division carefully considers VAAP participation using the required VDOE guidance document, students transfer into the division who are also identified for the VAAP. One new transfer student can push the division over the 1% cap due to our small numbers. This arbitrary cap is not only unfair to small school divisions, but defies the spirit of the IDEA, which protects the right of every special needs student to receive specialized instruction and assessment, regardless of percentages. – *Submitted by an LEA Representative*
- I suggest including adding to the chart “mass messaging about, and training on, critical decision points in English and Spanish.” The critical decision points products and in person training highlight for families and LEA personnel important considerations for students with disabilities, including SOL and VAAP participation. – *Submitted by Parent to Parent of Virginia*

The majority of the public comments specifically related to the waiver were supportive of it. The stakeholder feedback and plan will guide the Virginia Department of Education's commitment to support the appropriate reduction of the number of students participating in the alternate assessments.