



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

February 28, 2023

The Honorable Jillian Balow
Superintendent of Public Instruction
Virginia Department of Education
P.O. Box 2120
Richmond, VA 23218

Dear Superintendent Balow:

I am writing in response to the Virginia Department of Education's (VDOE's) request on November 29, 2022 (with additional information provided on January 3, 2023) for a one-year extension of the State's waiver of section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965 (ESEA), which stipulates that a State may not assess more than 1.0 percent of all students in the grades assessed using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS). VDOE requested this waiver because, based on State data for the 2021-2022 school year, VDOE has concluded that it will need to assess more than 1.0 percent of students using an AA-AAAS in reading/language arts (R/LA), mathematics, and science in the 2022-2023 school year.

After reviewing VDOE's waiver request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, for school year 2022-2023, a one-year extension of the State's waiver of section 1111(b)(2)(D)(i)(I) of the ESEA so that the State may assess more than 1.0 percent of the total number of students in the State who are assessed in R/LA and science using an AA-AAAS.

However, I am declining to exercise my authority under section 8401(b) of the ESEA, for the 2022-2023 school year, a one-year extension of the State's waiver of section 1111(b)(2)(D)(i)(I) of the ESEA in mathematics. I am declining the request for mathematics because VDOE did not meet the 95 percent assessment participation requirement in 34 CFR § 200.6(c)(4)(ii) in mathematics for all students during the 2021-2022 school year. If the data reported by VDOE are erroneous and the State can demonstrate that it has assessed at least 95 percent of all students in mathematics during the 2021-2022 school year, VDOE may revise its waiver extension request, consistent with section 8401(b)(4)(B)(ii) of the ESEA, to meet the requirements under 8401(b)(1)(C) and (F) and 34 CFR § 200.6(c)(4)(ii). The revised waiver extension request must be submitted no later than 60 days from the date of this letter.

As part of this waiver granted in R/LA and science, VDOE assured that it:

- Will continue to meet all other requirements of section 1111 of the ESEA and implement 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.
- Had assessed in 2021-2022 at least 95 percent of all students and 95 percent of students with disabilities who are enrolled in grades for which the R/LA and science assessments are required.

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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 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 AAAAAS.
- Will provide appropriate oversight of an LEA that is required to submit such information to the State.
- 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) – excluding (d)(6) – and will address any subgroup disproportionality in the percentage of students taking an AA-AAAS.
- Will implement, consistent with the plan submitted in VDOE’s waiver extension request, system improvements and will monitor future administrations of the AA-AAAS to avoid exceeding the 1.0 percent cap.

As a reminder, 34 CFR § 200.6(c)(3)(iv) requires a State to make publicly available the information submitted by an LEA justifying the need to assess more than 1.0 percent of its students on the AA-AAAS, provided such information does not reveal personally identifiable information. 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 continue to see positive results of this plan in the 2022-2023 school year and beyond. I note that the rates of AA-AAAS participation in the 2021-2022 school year for R/LA and science were lower than the corresponding rates in the 2018-2019 school year. I want to thank you for your continued efforts in achieving such progress. Future requests for an extension of this partial waiver must include continued progress implementing your plan and in reducing the percentage of students taking the AA-AAAS in all tested subjects.

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,



Adam A. Schott
Deputy Assistant Secretary for Policy and Programs
Office of Elementary and Secondary Education

cc: Samantha Marsh Hollins
Assistant Superintendent of Special Education and Student Services, VDOE