

EVERY STUDENT SUCCEEDS ACT (ESSA)

REQUEST FOR WAIVER OF THE STATE-LEVEL CAP ON THE PERCENTAGE OF STUDENTS WHO CAN BE ASSESSED VIA THE STATE ALTERNATE ASSESSMENT ON ALTERNATE ACADEMIC ACHIEVEMENT STANDARDS (AA-AAAS)

The Every Student Succeeds Act (ESSA), enacted in 2015, allows for the use of an alternate assessment aligned with alternate academic achievement standards (AA-AAAS) for students with the most significant cognitive disabilities. ESSA also places a 1% cap on the number of students who can participate in the AA-AAAS. Specifically, the state must ensure “that, for each subject, the total number of students assessed in such subject using the alternate assessments does not exceed one percent of the total number of all students in the State who are assessed in such subject.”

If a state anticipates that it will exceed the cap under paragraph (c)(2) of this section with respect to any subject for which assessments are administered under § 200.2(a)(1) in any school year, the State may request that the Secretary waive the cap for the relevant subject, pursuant to section 8401 of the Act, for one year. Requirements for a State Educational Agency to seek a waiver are set forth at 34 C.F.R §200.6(c)(4)(ii)-(v).

On May 16, 2017, the U.S. Department of Education sent a letter to state assessment directors, state Title I directors and state special education directors providing information about the implementation of the new provisions under ESSA. The letter is available at

<https://www2.ed.gov/admins/lead/account/saa/onepercentcapmemo51617.pdf>

Statutory Language re Waivers and Public Comment

Sec. 8401

(b) REQUEST FOR WAIVER.—

(1) IN GENERAL.—A State educational agency, acting on its own behalf or on behalf of a local educational agency in accordance with subsection (a)(2), or Indian tribe that desires a waiver shall submit a waiver request to the Secretary, which shall include a plan that—

- (A) identifies the Federal programs affected by the requested waiver;
- (B) describes which Federal statutory or regulatory requirements are to be waived;
- (C) describes how the waiving of such requirements will advance student academic achievement;
- (D) describes the methods the State educational agency, local educational agency, school, or Indian tribe will use to monitor and regularly evaluate the effectiveness of the implementation of the plan;
- (E) includes only information directly related to the waiver request; and

(F) describes how schools will continue to provide assistance to the same populations served by programs for which waivers are requested and, if the waiver relates to provisions of subsections (b) or (h) of section 1111, describes how the State educational agency, local educational agency, school, or Indian tribe will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the subgroups of students identified in section 1111(b)(2)(B)(xi).

Sec. 8401

(3) GENERAL REQUIREMENTS.—

(A) STATE EDUCATIONAL AGENCIES.—In the case of a waiver request submitted by a State educational agency acting on its own behalf, or on behalf of local educational agencies in the State under subsection (a)(2), the State educational agency shall—

- (i) provide the public and any interested local educational agency in the State with notice and a reasonable opportunity to comment and provide input on the request, to the extent that the request impacts the local educational agency;
- (ii) submit the comments and input to the Secretary, with a description of how the State addressed the comments and input; and
- (iii) provide notice and a reasonable time to comment to the public and local educational agencies in the manner in which the applying agency customarily provides similar notice and opportunity to comment to the public.

Regulatory Language on 1% Cap Waiver Request Requirements

34 C.F.R §200.6(c)(4)(ii)-(v)

(4) If a State anticipates that it will exceed the cap under paragraph (c)(2) of this section with respect to any subject for which assessments are administered under § 200.2(a)(1) in any school year, the State may request that the Secretary waive the cap for the relevant subject, pursuant to section 8401 of the Act, for one year. Such request must—

- (i) Be submitted at least 90 days prior to the start of the State’s testing window for the relevant subject;
- (ii) Provide State-level data, from the current or previous school year, to show—
 - (A) The number and percentage of students in each subgroup of students defined in section 1111(c)(2)(A), (B), and (D) of the Act who took the alternate assessment aligned with alternate academic achievement standards; and
 - (B) The State has measured the achievement of at least 95 percent of all students and 95 percent of students in the children with disabilities subgroup under section 1111(c)(2)(C) of the Act who are enrolled in grades for which the assessment is required under § 200.5(a);
- (iii) Include assurances from the State that it has verified that each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject for which assessments are administered under § 200.2(a)(1) in that school year using an alternate assessment aligned with alternate academic achievement standards—

(A) Followed each of the State’s guidelines under paragraph (d) of this section, except paragraph (d)(6); and

(B) Will address any disproportionality in the percentage of students in any subgroup under section 1111(c)(2)(A), (B), or (D) of the Act taking an alternate assessment aligned with alternate academic achievement standards;

(iv) Include a plan and timeline by which—

(A) The State will improve the implementation of its guidelines under paragraph (d) of this section, including by reviewing and, if necessary, revising its definition under paragraph (d)(1), so that the State meets the cap in paragraph (c)(2) of this section in each subject for which assessments are administered under § 200.2(a)(1) in future school years;

(B) The 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 of its assessed students in a given subject in a school year using an alternate assessment aligned with alternate academic achievement standards to ensure that only students with the most significant cognitive disabilities take an alternate assessment aligned with alternate academic achievement standards. The State must describe how it will monitor and regularly evaluate each such LEA to ensure that the LEA provides sufficient training such that school staff who participate as members of an IEP team or other placement team understand and implement the guidelines established by the State under paragraph (d) of this section so that all students are appropriately assessed; and

(C) The State will address any disproportionality in the percentage of students taking an alternate assessment aligned with alternate academic achievement standards as identified through the data provided in accordance with paragraph (c)(4)(ii)(A) of this section; and

(v) If the State is requesting to extend a waiver for an additional year, meet the requirements in paragraph (c)(4)(i) through (iv) of this section and demonstrate substantial progress towards achieving each component of the prior year’s plan and timeline required under paragraph (c)(4)(iv) of this section.

RESOURCES

ESSA Fact Sheet: Assessments for Students with the Most Significant Cognitive Disabilities

<http://www.parentcenterhub.org/essa-fact-sheet-alt-assess/>

Strategies for Meeting the 1% State-level Cap on Participation in the Alternate Assessment

<https://nceo.umn.edu/docs/OnlinePubs/NCEOBrief12OnePercentCap.pdf>

ESEA Academic Assessments Federal Regulations

<https://www.gpo.gov/fdsys/pkg/FR-2016-12-08/pdf/2016-29128.pdf>

Prepared by The Advocacy Institute
ESSA resources: www.advocacyinstitute.org/ESSA