



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

**FEB 18 2020**

The Honorable Susan Bunting  
Secretary of Education  
Delaware Department of Education  
The Townsend Building  
401 Federal Street, Suite 2  
Dover, DE 19901-3639

Dear Superintendent Bunting:

I am writing in response to the Delaware Department of Education's (DDOE) request on December 12, 2019, to extend its waiver of section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), of the requirement that a State may not assess using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS) more than 1.0 percent of the total number of students in the State in reading/language arts and mathematics. In addition, DDOE has requested a new waiver to exceed the cap on the number of students with the most significant cognitive disabilities who may be assessed using an AA-AAAS in science. DDOE requested this waiver because, based on State data for the 2018-2019 school year, DDOE has concluded that it will need to assess more than 1.0 percent of students using an AA-AAAS in reading/language arts, mathematics, and science in the 2019-2020 school year.

After reviewing DDOE's request, I am declining to exercise my authority under section 8401(b) of the ESEA, for school year 2019-2020, a one-year waiver of section 1111(b)(2)(D)(i)(I) of the ESEA, so that the State may assess with an AA-AAAS more than 1.0 percent of the total number of students in the State who are assessed in reading/language arts, mathematics and science. My reason for denial is that, based on the data submitted for school year 2018-2019, DDOE did not meet the requirement in 34 CFR 200.6(c)(4) that, in order to be eligible for such a waiver, the State must assess at least 95 percent of all students and 95 percent of children with disabilities. In 2018-2019, DDOE assessed fewer than 95 percent of children with disabilities in all three subject areas and fewer than 95 percent of all students on the science assessment. In addition, DDOE did not demonstrate that the State educational agency has verified that local educational agencies will address disproportionality, as required by 34 CFR 200.6(c)(4)(iii). Finally, the State has not demonstrated that it has reduced the rates of students taking the alternate assessment in reading/language arts and mathematics. DDOE has, therefore, not demonstrated substantial progress in achieving the plan and timeline that was submitted when the State initially requested this waiver two years ago.

If the data reported by DDOE are erroneous and DDOE can demonstrate that it assessed at least 95 percent of all students and 95 percent of children with disabilities on the reading/language arts, mathematics, and science assessments, DDOE may revise its waiver request, consistent with section 8401(b)(4)(B)(ii) of the ESEA, to meet the requirements under sections 8401(b)(1)(C) and (F) and 34

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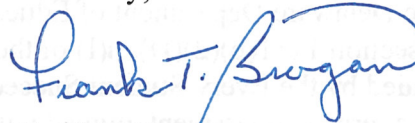
*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

CFR 200.6(c)(4). The revised waiver request must be submitted no later than 60 days from the date of this letter.

In order to help all States support implementation of the 1.0 percent participation threshold for AA-AAAS participation, the Department is supporting work by the National Center on Educational Outcomes (NCEO). I note that Delaware has participated in some of these efforts and encourage your State's continued involvement. In 2019, NCEO has published several resources that may be helpful to stakeholders in your State. They may be found online at [https://nceo.info/Assessments/alternate\\_assessments](https://nceo.info/Assessments/alternate_assessments).

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](mailto:ESEA.Assessment@ed.gov).

Sincerely,

A handwritten signature in blue ink that reads "Frank T. Brogan". The signature is fluid and cursive, with the first name "Frank" and last name "Brogan" clearly legible.

Frank T. Brogan,  
Assistant Secretary for  
Elementary and Secondary Education

cc: Theresa Bennett, Director, Office of Assessment