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# Delaware 1% Waiver Extension Request: ELA, Mathematics, and Science

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ESEA Section 111(b)(2)(D) and 34 CFR 200.6 (c) AND (d)



*401 Federal Street  
Dover, DE 19901  
302-857-3391*

*Michelle Jackson, Education Associate, Special Populations*  
**[Michelle.Jackson@doe.k12.de.us](mailto:Michelle.Jackson@doe.k12.de.us)**

*Theresa Bennett, Director, Office of Assessment*  
**[Theresa.Bennett@doe.k12.de.us](mailto:Theresa.Bennett@doe.k12.de.us)**

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## Introduction

### National Context

The Every Student Succeeds Act (ESSA) of 2015, amended from the previous Title I of the Elementary and Secondary Education Act of 1965, revised the provisions associated with the alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities. ESSA requires states anticipating exceeding 1% participation in these alternate assessments in ELA, mathematics, or science submit a 1% cap waiver request to the U.S. Department of Education.

### Delaware's Progression

An initial waiver was approved for ELA, mathematics, and science in 2017. Delaware continued to implement planned activities related to the 1% cap and moved forward with enacting a balanced system of assessments. A focus on standardization of guidance, professional development, and technical support was launched.

### A Review of Participation Rates

During the 2017-2018 school year, alternate assessment participation rates were 1.49% for ELA, 1.49% for mathematics, and 1.56% for science. Rates for the 2021-2022 school year were 1.21% for ELA and mathematics, and 1.06% for science. These participation rates demonstrate a reduction and as seen in Table 1, a trending approach toward the 1% cap threshold.

Table 1: Percentage of Students Participating in the Alternate Assessment Over Time

Content Area	2018	2019	2020	2021	2022	2023	Difference from 2018-2022
ELA	1.49	1.45		1.35	1.21		-0.28
Math	1.49	1.44		1.35	1.21		-0.28
Science	1.56	1.48		1.64	1.06		-0.50

Table 1 demonstrates an overall decrease of 0.28% in ELA and mathematics and .50% in science alternate assessment participation from 2018 to 2022. Delaware anticipates exceeding the 1% cap minimally in 2023 and is requesting a waiver for the 2023 SY. Delaware was not granted a waiver request for 2022 due to participation rates. However, Delaware has continued to work on the assurances from the original waiver in order to reduce the one percent gap.

### Stakeholder Engagement

The 1% cap plan incorporates collaboration between both internal and external stakeholder groups. At the state level, groups including the Governor's Advisory Council for Exceptional Citizens (GACEC) and the state Parent Information Center (PIC) group are active in two-way communication related to 1% cap initiatives. Both groups have cross-state representatives and engaged parent participants. Within the state department of education, representatives from various departments including assessment, instruction and exceptional children continue to have active involvement through 1% cap sessions, planning, and activities. Ongoing meetings with local education agencies (LEAs), special education directors, and assessment directors take place with a standing 1% cap component included routinely in cross-state sessions. Updates, monitoring, and training help to reach all LEAs across the state. Additionally, parents and community stakeholders are encouraged to provide feedback on posted initiatives, such as the posting of this waiver extension request. See collected feedback from Delaware's 2023 Waiver Extension Request.

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### ***Professional Development and Technical Assistance***

Under the direction of the Director of Office of Assessment & Accountability and the Secretary of Education, the Special Populations Education Associate within the Office Assessment and Accountability helps to focus the 1% efforts, manage revisions, provide monitoring, lead desk audits, address professional development needs, and update those involved in 1% activities. The Special Populations Education Associate actively participates in a variety of stakeholder and professional learning activities as a mechanism for feedback, support and technical assistance:

- National Center for Educational Outcomes (NCEO) Community of Practice
- The TIES Center
- The Council of Chief State School Officers (CCSSO)
- State Collaborative for Assessment, Standards and Education of Students with Disabilities (ASES)
- National Conference on Student Assessment (NCSA)
- Dynamic Learning Maps Item Development and Analysis

In conjunction with these professional learning and stakeholder activities, the Special Populations Education Associate has developed a tiered and tailored system for ongoing LEA support while promoting efforts to adhere to effective policies and procedures for the assessment of each student in the most appropriate manner. Delaware's Department of Education (DDOE) strives to ensure only those students eligible to participate in the alternate state assessments due to their identification with the most significant cognitive disabilities do so. In accordance with the ESEA 1% cap stipulations, justification forms are utilized to ensure closer examination of alternate assessment participation rates.

### ***State Review Process***

All Delaware LEAs are required to complete initial justification forms. Those LEAs expecting to exceed the 1% cap participation rate must also submit expanded justification form sections and provide required assurances.

### ***Revisions to Professional Learning Plan and Resources***

The development of the professional learning plan called for the DDOE to create and refine state resources such as technical support protocols, guidance documents, and monitoring procedures. Some of the developed and revised activities included:

- Revision of the most significant cognitive disability (MSCD) definition
- Alignment of guidance resources to the revised definition of MSCD
- Updates to the Appendix B-3: DeSSA-Alternate Decision-Making Tool
- Updates to the DDOE's Companion Guide for Appendix B-3: DeSSA-Alternate Decision-Making Tool
- Adaptation of the professional development module for the DeSSA-Alternate Assessment Decision-Making Tool
- Review of the Decision-Making Tree for assessing students with the most significant cognitive disabilities

Additional professional learning and technical assistance activities align with the following components of the one percent waiver extension request requirements.

## One Percent Cap Waiver Extension Request Requirements

**Requirement 1** – (§200.6(c)(4)(i)): *Submit the waiver request at least 90 days before testing window starts for the relevant subject.*

DDOE RESPONSE	Evidence and Additional Information
DDOE operational window has been identified as 9/11/2023- 5/17/24 and the waiver request will be submitted by 7/9/2023.	<ul style="list-style-type: none"> <li>• The DLM Instructionally Embedded (IE) assessments have two windows:               <ul style="list-style-type: none"> <li>• Fall: 9/11/2023-12/22/23</li> <li>• Spring: 2/22/24- 5/17/24</li> </ul> </li> <li>• The OAA testing schedule is disseminated through three state-wide forums:               <ul style="list-style-type: none"> <li>• District Testing Coordinator (DTC) meetings</li> <li>• Multi- Lingual Language Learner meetings, and</li> <li>• Special Education Leadership meetings.</li> </ul> </li> <li>• The waiver submission date is 90 days prior to the operations window opening.</li> </ul>

**Requirement 2 (A)** - (§200.6(c)(4)(ii)(A)): *Provide State-level data from the current or previous year that shows the number and percent in each subgroup who took the alternate assessment in the subject area.*

All students participate in the state assessments in grades 3- 8 for ELA and mathematics, SAT for high school, grades 5, 8, and HS Biology for science, and grade 11 for alternate assessment (high school equivalent). Students participate in the DeSSA general education assessments with or without accommodations or participate in the alternate assessment.

A summary of subgroup data for Delaware’s state level alternate assessment participation by content is provided in Tables 2 - 4.

Table 2: ELA Alternate Assessment Participation Rates by Subgroup

ELA	2022			2023		
	Total Students Assessed	Total Assessed in Alternate Assessment	1% Assessed in Alternate Assessment	Total Students Assessed	Total Assessed in Alternate Assessment	1% Assessed in Alternate Assessment
<b>All Students</b>	71079	860	1.21			
<b>Female</b>	34863	249	0.71			
<b>Male</b>	36216	611	1.69			
<b>Hispanic</b>	13539	128	0.95			
<b>American Indian</b>	283	2	0.71			
<b>African American</b>	22039	342	1.55			
<b>White</b>	28630	312	1.09			

<b>ELA</b>	<b>2022</b>			<b>2023</b>		
<b>Asian-American</b>	3005	35	1.16			
<b>Hawaiian/ Pacific Islander</b>	114	41	35.96			
<b>Multiracial</b>	3469	41	1.18			
<b>Low-Income</b>	19908	278	1.40			
<b>ELL</b>	7790	45	0.58			
<b>Homeless</b>	1361	36	2.65			

Table 3: Math Alternate Assessment Participation Rates by Subgroup

<b>Mathematics</b>	<b>2022</b>			<b>2023</b>		
	Total Students Assessed	Total Assessed in Alternate Assessment	1% Assessed in Alternate Assessment	Total Students Assessed	Total Assessed in Alternate Assessment	1% Assessed in Alternate Assessment
<b>All Students</b>	71272	862	1.21			
<b>Female</b>	34964	251	0.72			
<b>Male</b>	36308	611	1.68			
<b>Hispanic</b>	13743	129	0.94			
<b>American Indian</b>	282	2	0.71			
<b>African American</b>	22015	342	1.55			
<b>White</b>	28635	314	1.10			
<b>Asian American</b>	3021	34	1.13			
<b>Hawaiian/ Pacific Islander</b>	118	0	0.00			
<b>Multiracial</b>	3458	41	1.19			
<b>Low-Income</b>	19846	278	1.40			
<b>ELL</b>	8070	45	0.56			
<b>Homeless</b>	1384	36	2.60			

Table 4: Science Alternate Assessment Participation Rates by Subgroup

Science	2022			2023		
	Total Students Assessed	Total Assessed in Alternate Assessment	1% Assessed in Alternate Assessment	Total Students Assessed	Total Assessed in Alternate Assessment	1% Assessed in Alternate Assessment
All Students	31405	334	1.06			
Female	15377	107	0.70			
Male	16028	227	1.42			
Hispanic	6114	50	0.82			
American Indian	117	0	0.00			
African American	9702	143	1.47			
White	12702	113	0.89			
Asian American	1222	13	1.06			
Hawaiian/ Pacific Islander	48	0	0.00			
Multiracial	1500	15	1.00			
Low-Income	8292	112	1.35			
ELL	2984	22	0.74			
Homeless	575	13	2.26			

**Requirement 2 (B) - (§200.6(c)(4)(ii)(B)):** Provide State-level data from the current or previous year on the overall assessment participation rate for all students and for students with disabilities.

DDOE addressed participation through the State’s ESSA State Assessment Participation requirement. Delaware’s ESSA plan requires LEAs under 95% participation to create an action plan and participate in monitoring of participation throughout the state assessment window for 2022-2023.

Table 5: Participation Rates of Students w/ Disabilities (SWDs) in DeSSA Assessments by Content Area

Content Area	Eligible SWDs 2022	SWD Participants 2022	Participation Rate 2022
ELA	13464	12272	91.15
MATH	13472	12254	90.96
SCIENCE	5883	5216	88.66
Content Area	Eligible SWDs 2023	SWD Participants 2023	Participation Rate 2023
ELA			
MATH			
SCIENCE			

Table 6: Participation Rates for All Students in DeSSA Assessments by Content Area

Content Area	Total Eligible Participants 2022	Total Participants 2022	Participation Rate 2022
ELA	74744	71079	95.10
MATH	75112	71272	94.89
SCIENCE	33735	31405	93.09
Content Area	Total Eligible Participants 2023	Total Participants 2023	Participation Rate 2023
ELA			
MATH			
SCIENCE			

Table 7: Participation Rates in DeSSA-Alternate by Content Area

Content Area	Total Eligible 2023	Total Participants 2023	Participation Rate 2023
ELA	1027	859	83.64
MATH	1027	861	83.64
SCI	449	334	74.39
Content Area	Total Eligible 2023	Total Participants 2023	Participation Rate 2023

**Requirement 3 (A) – (§200.6(c)(4)(iii)(A)):** Provide assurance that districts over 1.0 percent participation in the alternate assessment followed the state’s participation guidelines.

DDOE RESPONSE	Evidence and Additional Information
<p>DDOE has verified that each district with more than 1.0 percent participation followed the state’s guidelines for participation.</p>	<p>In Delaware, all LEAs are required to complete a yearly justification form. Through our 2022-23 Justification Form, all LEAs confirmed assurances of the following:</p> <ul style="list-style-type: none"> <li>• The IEP team adheres to the DeSSA-Alternate Assessment Decision-Making Tool (Appendix B-3) when making decisions for students to participate in the alternate assessment.</li> <li>• Special educators are trained to administer the DeSSA-Alternate Assessment.</li> <li>• IEP team leaders attend the statewide PD: Alternate Assessment Participation Decision-Making Tool Workshop.</li> <li>• Special educators and IEP team leaders attend the statewide webinar: State Guidelines and Participation Criteria to keep up to date on changes in the Decision-Making Tool.</li> </ul> <p>For LEAs over the one percent, The LEAs must respond to the following questions:</p> <ul style="list-style-type: none"> <li>• Is there a high incidence of students with disabilities in the district? If yes, please elaborate.</li> <li>• Is there a school, community or health program in the district that draws large numbers of students with significant intellectual disabilities? If Yes, please elaborate.</li> </ul> <p>The LEA Superintendent and Special Education Administrator are both required to sign the justification document to provide assurance that the contents of the LEA’s plan are accurate. The Justification and assurance information received is compiled and posted on the DDOE webpage.</p> <p>“By submitting this application, the district verifies that all students participating in the DeSSA-Alt meet the Delaware Department of Education’s DeSSA-Alt Decision-Making Tool.”</p>



**Requirement 3 (B)** – (§200.6(c)(4)(iii)(B)): *Provide assurance that any disproportionality in students taking the alternate assessment will be addressed.*

DDOE RESPONSE	Evidence and Additional Information
DDOE has verified that LEAs provided assurance that any disproportionality in students taking the alternate assessment will be addressed.	<p>In Delaware, all LEAs are required to complete a yearly justification form. Through our 2022-23 Justification Form, all LEAs confirmed assurances of the following:</p> <ul style="list-style-type: none"> <li>• Address any disproportionality in the subgroups that arise from students participating in the alternate assessment.</li> </ul> <p>For those LEAs over the one percent who are placed on Tier 2 Supports, they must provide subgroup data using a <a href="#">Tier 2 Subgroup Data Report</a></p> <p>The annual participation and performance data are provided by the alternate assessment vendor and uploaded to the EdInsight Reports data management system.</p>

**Requirement 4 (A)** – (§200.6(c)(4)(iv)(A)): *Submit a plan and timeline by which the State will improve the implementation of its participation guidelines, including if necessary, revising its definition of “students with the most significant cognitive disabilities” in future school years.*

The state will continue to meet all other requirements of section 1111 of 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.

The state plan and timeline intended to address the reduction of percentages exceeding the one percent cap of alternate assessment participation will be included, pursuant to the additional federal requirements detailed in 34 C.F.R. §200.6(c)(4). This plan will also include State guidelines clarification, professional development, oversight, and support for identified areas of need. Consistent with the plan submitted in this waiver request, DDOE will implement system improvements and monitor future administrations to avoid exceeding the 1% cap.

DDOE RESPONSE	Evidence and Additional Information
The DDOE improved its participation guidelines, including its definition of students with the most significant cognitive disabilities.	<p>The DDOE worked in conjunction stakeholders during the 2017-18 school year to develop a state definition of “students with the most significant cognitive disabilities.” The definition has been included in the required professional development module around the Decision-Making Tool. This module is available in the statewide online PDMS system.</p> <p>After in-depth research and the inclusion of stakeholder input, in Fall 2022, the state revised its definition of “students with the most significant disabilities” to include a focus on the word pervasive. This definition was also added to the state decision-making tool.</p>

	<p>The DeSSA-Alt Decision-Making Tool is posted on the DeSSA-Alternate Assessment webpage and is in Appendix (B-3) in the Delaware Accessibility Guidelines. The decision to participate in the AA-AAAS is made by the Individualized Education Program (IEP) team and documented accordingly in the student's IEP.</p> <p>The department also created the following accompanying resources for IEP Teams.</p> <ul style="list-style-type: none"> <li>• <a href="#">Companion Guide for the DeSSA-Alternate Decision-Making Tool</a></li> <li>• <a href="#">Guidance and Procedures for Implementing the Decision-Making Tool</a></li> </ul> <p>These guidance documents are meant to assist IEP teams during the decision-making process when determining the appropriateness of a student's participation in the DeSSA-Alternate Assessment.</p> <p>The DDOE participates in the bi-monthly NCEO 1% calls to increase knowledge on how Delaware can continue to move forward in reducing the One Percent.</p> <p>The DDOE staff takes part in the CCSSO-SCASS and CCSSO-ASES meetings to increase knowledge around assessing students with the most significant cognitive disabilities.</p> <p>The DDOE provides yearly professional development on the Decision-Making Tool and revisions are shared with stakeholders.</p>
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**Requirement 4 (B) – (§200.6(c)(4)(iv)(B)):** *Submit a plan and timeline by which 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 with the alternate assessment.*

<b>DDOE RESPONSE</b>	<b>Evidence and Additional Information</b>
<p>DDOE will provide support and appropriate oversight to each LEA that the state anticipates will assess more than 1.0 percent with the DeSSA.</p>	<p>DDOE will employ a multi-faceted, three-tiered approach to providing LEA support and appropriate oversight. Previously, the accountability process was based on a four-tier model. However, to reinforce the state's MTSS framework for tiered intervention and support, in Jun. 2023, the DDOE adjusted to a three-tiered model: universal, secondary and tertiary. The following criteria will be applied for tiered supports. All LEAs will participate in Tier 1 support.</p> <p>1) <b>Universal (Tier 1) supports</b> will include:</p> <ul style="list-style-type: none"> <li>• Complete the Justification Form</li> <li>• Complete the Professional Development Module on the Decision-Making Tool and review the implications of assessing students on the alternate assessment;</li> <li>• <b>Business Rules:</b> <ul style="list-style-type: none"> <li>• A school with a total testing population of 300 or less will be placed on Tier 1.</li> </ul> </li> </ul>

DDOE RESPONSE	Evidence and Additional Information
	<ul style="list-style-type: none"> <li>• LEAs with special schools (or separate school settings) with a high incidence of students with complex needs will be placed on Tier 1. <ul style="list-style-type: none"> <li>▪ As a condition of this business rule, LEAs with special schools will annually: <ul style="list-style-type: none"> <li>• Complete a file review of at least 10% of their students participating in the Alternate Assessment using the <b><u>Alternate Assessment IEP Review Self-Evaluation form</u></b></li> <li>• for each student</li> </ul> </li> <li>▪ Submit the summary and analysis reports for their file review using the <b><u>LEA Self-Assessment Review Summary Report</u></b> LEAs with special schools who do not annually complete the above requirements will be moved to Tier 2 support.</li> </ul> </li> </ul> <p>2) <b>Secondary (Tier 2) Supports:</b> LEAs who exceed the 1.0 percent cap will receive Tier 2 support. Secondary supports will include:</p> <ul style="list-style-type: none"> <li>• Complete a file review of students provided by DDOE utilizing the <b><u>Alternate Assessment IEP Review Self-Evaluation form</u></b> <ul style="list-style-type: none"> <li>○ DDOE will randomly select 10% of the students participating in the Alternate Assessment and provide the roster to the LEA for their file review.</li> </ul> </li> <li>• Compose a summary and analysis of the file review using the <b><u>LEA Self-Assessment Review Summary Report</u></b></li> <li>• Complete <b><u>Tier 2 Subgroup Data Report form</u></b> – provide subgroup data and identify and disproportionality</li> <li>• Develop a corrective action plan to address non-compliance as identified by the LEA</li> <li>• Submit the summary and analysis of the file reviews and intervention plan to DDOE OAA</li> </ul> <p>3) <b>Tertiary (Tier 3) Supports:</b> LEAs who exceed the 1.0 percent cap for three or more years will receive Tier 3 support. Tertiary support will include:</p> <ul style="list-style-type: none"> <li>• DDOE will monitor each LEAs alternate assessment IEPs with a monitoring checklist;</li> <li>• DDOE will meet with each LEA via Zoom or onsite meeting to review results of monitoring.</li> <li>• DDOE and the LEA will meet to collaboratively develop an intervention plan to address the outcomes of the monitoring activities.</li> <li>• DDOE will provide accountability for the completion of the LEA’s intervention plan activities.</li> </ul>

DDOE RESPONSE	Evidence and Additional Information
<p>DDOE will provide a range of professional learning opportunities to support LEAs in the identification and participation of students on the DeSSA.</p>	<p>Professional development workshops, asynchronous modules and recorded videos offered to LEAs state-wide.</p> <p>The DDOE has developed decision-making resources and guidance documents for LEAs and will continuously review and revise as necessary.</p> <p>The DDOE also provides resources for parents to make sure that parents understand all the implications of participating in the alternate assessment. More resources are available on the webpage.</p> <ul style="list-style-type: none"> <li>• <a href="#">Parent Guide for the Alternate Assessment</a></li> <li>• <a href="#">What Parents need to know about the Accessibility Supports on Statewide Assessments</a></li> <li>• <a href="#">DeSSA-Alt Fact Sheet</a></li> <li>• <a href="#">Delaware's High School Diploma versus Diploma of Alternate Achievement Standards</a></li> </ul> <p>Individualized support framed around LEA needs is also available.</p> <p>The DDOE will address overall trends and overarching needs by participating in and/or providing the following:</p> <ul style="list-style-type: none"> <li>• Data collection, analyses, and reporting of overall data and subgroup data</li> <li>• Corrective Active Plans for LEAs who exceed one percent</li> <li>• Revisions of the and Guidance on the Decision-Making Tool, as needed, for participation in alternate assessments</li> <li>• An informational session detailing the components of the Decision-Making Tool.</li> <li>• Training on Universal Design for Learning and IEP accommodations training for staff and families</li> <li>• Increase marketing for the awareness of the one percent and solicit feedback related to the one percent threshold for alternate assessments, the state plan, along with related state and LEA level data stakeholder groups including <ul style="list-style-type: none"> <li>○ Access to General Curriculum committee</li> <li>○ Governor’s Advisory Council for Exceptional Citizens (GACEC-state advisory council}</li> <li>○ Public Comment</li> </ul> </li> <li>• Recorded trainings and updates related to the definition, participation guidelines, and one percent topics</li> <li>• One percent data compiled from justification forms returned by LEAs</li> <li>• Publicly post justification forms, state waiver request, public comment request, and waiver plan with timeline</li> <li>• Ensure support and guidance for all LEAs</li> <li>• Using the Companion document for the State Guidelines during IEP meetings</li> </ul>

**Delaware’s Timeline**

Timeframe	Tasks 2023-2024
<p><b>June 2023</b></p>	<p><b>Review and Revise current Waiver Request</b></p> <ul style="list-style-type: none"> <li>Jun. 16, 2023 – DDOE One Percent Cap team – drafted a revised Waiver Plan and a new tiered system of support to align with MTSS. There are the tiers outlined to describe how DDOE will provide support and appropriate oversight to each LEA that the state anticipates will assess more than 1.0 percent with the DeSSA.</li> <li>The state revised the Business Rules: LEAs with total testing population of 300 or less will be on Tier 1. LEAs with special schools will be placed on Tier 1.</li> <li>With this revision, there will be a self-evaluation tool created for the LEAs on Tier 2 to create corrective action steps in order to ensure they are using the tool, and ensuring their staff is sufficiently trained on the tool.</li> </ul>
<p><b>July 2023</b></p>	<ul style="list-style-type: none"> <li>DDOE posted the Waiver Request for Public Comment on July 3, 2023. This will be out for comment for 30 days.</li> </ul> <p><b>Submit Waiver Extension Request by July 9, 2023</b></p> <ul style="list-style-type: none"> <li>DDOE was denied a waiver request on Jan. 2023. DDOE has been steadily reducing the alternate assessment participation rate, but the State needed to make 95% participation in order to apply for a review.</li> <li>Preliminary review of data show that the state will make 95% in ELA and Math.</li> </ul>
<p><b>July 3 – Aug. 3, 2023</b></p>	<p>Public comment period on the waiver request.</p> <ul style="list-style-type: none"> <li>The state will share information about the public comment period to DTCs, Spec Ed Leaderships, Principal’s Memo.</li> <li>District Test Coordinators received information on the July 3, 2023 recap.</li> <li>The Public Comment notice was posted on our <a href="#">DDOE Announcements Webpage</a> on July 3, 2023.</li> </ul> <p><b>State Assessment Participation Waiver - Public Notice and Comment Period</b></p> <p>The Delaware Department of Education (DDOE) Office of Assessment is seeking comments on the following waiver extension request. DDOE will request a waiver from the United States Department of Education for the 2022-2023 school year, pursuant to the regulation found at 34 C.F.R. §200.6(c)(4) requiring districts and charter schools to limit the number of students participating in state alternate assessment in a required subject area to be at or below one percent of the total number of all students taking the state level assessment.</p> <p>34 C.F.R. §200.6(c)(2) states:</p> <p><i>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.</i></p> <p>State Education Agencies requesting a waiver are required to adhere to the requirements stipulated at 34 C.F.R. §200.6(c)(4) and may be found below. DDOE is requesting a waiver extension for the anticipated greater than one percent alternate assessment participation in accordance with waiver requirements below.</p> <p><i>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;</i></p> <p>Pursuant to the stated federal requirements, DDOE will submit a one-year waiver extension request, along with a plan and timeline intended to begin to address the reduction of percentages exceeding the one percent cap of alternate assessment participation. The following information, as detailed in 34 C.F.R. §200.6(c)(4), will be included in the waiver:</p> <ul style="list-style-type: none"> <li></li> </ul>
<p><b>Jul. 2023 - Jun. 2024</b></p>	<p><b>One Percent Cap Team meetings</b></p> <ul style="list-style-type: none"> <li>Review the data related to the One Percent Cap – The data will help the state determine next steps as far as 95% Participation Plans, Technical Supports</li> <li>Analyze the Waiver Plan and Timeline and update our progress</li> <li>Review the Justification form to determine revisions and updates.</li> </ul>

	<ul style="list-style-type: none"> <li>• Discuss any other issues and regulations around the 1% Cap brought by public comment, or from the field.</li> <li>• Professional Development on the Tool – revamping. This will be recorded and disseminated to parents, educators and other stakeholders. Determine PD needed</li> </ul>
<b>September 2023</b>	<p>Share out with Special Education Leadership and District Test Coordinators on the following:</p> <ul style="list-style-type: none"> <li>• Alternate assessment dates</li> <li>• Waiver Plan</li> <li>• Justification form completion.</li> </ul>
<b>Oct. 2023</b>	<p>Justification forms due from LEAs. The information is then compiled into a spreadsheet and posted on our <a href="#">1% website</a>.</p> <p>The information from the Justification forms are reviewed to determine and substantial progress, technical assistance needed, used for feedback. This year, we have added a question seeking feedback on if students were moved off the alternate assessment.</p>
<b>Aug. 2023 – Mar. 2024</b>	<p>Professional Development</p> <ul style="list-style-type: none"> <li>• State provides webinars and other online professional development related to the tool</li> <li>• Alternate Achievement Standards training for teachers of students on the alternate assessments</li> <li>• Inclusive Practices for teachers on the alternate assessments.</li> <li>• Ongoing consultation with One Percent Cap Group</li> <li>• Review Justification forms and using that data to further drive next steps in waiver plan; create or revise PD as needed and inform stakeholders</li> <li>• Address concerns around the 1% Cap</li> <li>• Address technical assistance requests surrounding the 1% Cap</li> <li>• Begin working on Draft of Waiver Extension Request – data will be provided once it is available (March 2023)</li> </ul>
<b>December 2023</b>	<ul style="list-style-type: none"> <li>• Notify LEAs placed on Tier 2 support. The LEAs will conduct an internal review of 10% of it students placed on the alternate assessment and submit the summary reports to DDOE by January 2024. LEAs on Tier 2 support will also be required to submit information on their subgroups. This will be reviewed for any disproportionality in the subgroups.</li> <li>• LEAs with special schools will also conduct an internal review of 10% of its students placed on the alternate assessment and submit a summary report to DDOE by January 2024.</li> </ul>
<b>Jan. 2023 – Jun, 2024</b>	<p>Review the Self-Assessment for LEAs with Special Schools</p> <p>Review the Plans for LEAs on Tier 2. Provide processes for self-evaluation and corrective action plans. Check if these LEAs made 95% participation.</p> <p>DDOE will also conduct IEP reviews of LEAs with students on the alternate assessment in conjunction with ECR. OAA will review the IEPs of students who are placed on the alternate assessment and provide feedback or technical assistance as needed.</p>
<b>June 2024</b>	<p>Work on Waiver Request submission to USED if we have exceeded the 1.0 percent cap.</p>

**Requirement 4 (C) – (\$200.6(c)(4)(iv)(C)):** *Submit a plan and timeline by which the State will address any disproportionality in the percentage of students taking the alternate assessment.*

DDOE RESPONSE	Evidence and Additional Information
<p>The DDOE will address disproportionality concerns in the percentage of students in any subgroup taking the DeSSA-Alternate assessment.</p>	<p>If disproportionality is triggered, the DDOE will address disproportionality concerns in the percentage of students in any subgroup of the DeSSA-Alternate through the following plan:</p> <ul style="list-style-type: none"> <li>• Calculate and analyze participation rates among subgroups at the state and district levels;</li> <li>• Identify subgroups over-represented in the DeSSA-Alternate participation counts;</li> <li>• Review district justifications and data to identify unusual patterns and high participation rates across subgroups.</li> <li>• Analyze subgroup data over time to identify trends in subgroup participation with the goal of decreasing disproportionality;</li> <li>• Continue support and guidance for appropriate use of the DeSSA-Alt Decision-Making Tool;</li> <li>• Revise and deliver professional develop on the required usage of the developed Companion Guide for the DeSSA-Alternate Decision-Making Tool;</li> <li>• Engage with stakeholder groups to address disproportionalities and ensure only students with the most significant cognitive disabilities are participating in the DeSSA-Alternate;</li> <li>• Report Assessment Data and Justification Forms on the DDOE Office of Assessment and Accountability webpage.</li> <li>• Create a <a href="#">Guidance and Procedures for Calculating Disproportionality for the DeSSA-Alternate Assessment</a> for the DeSSA-Alternate Assessment document provides a definition for disproportionality as well as step-by-step instructions on calculating disproportionality.</li> </ul> <p>The following can be used as references to address disproportionality concerns in subgroups:</p> <ul style="list-style-type: none"> <li>• <a href="#">Guidance for Examining District Alternate Assessment Participation Rates</a></li> <li>• <a href="#">Guidance for Examining Disproportionality of Student Group Participation in Alternate Assessments</a></li> <li>• <a href="#">Guidance for Examining Participation Rates and Disproportionality</a></li> </ul>

**Requirement 5 – (§200.6(c)(4)(v)):** *Demonstrate substantial progress toward each component of the prior year’s plan and timeline, which was required under Requirement 4 (C).*

DDOE accomplished substantial progress toward meeting the 1% cap for the alternate assessment. This advancement is evident in DDOE participation data and completion of state plan and timeline activities outlined in this year’s waiver extension request. A comparison of 2017-2018, 2018-2019, 2020-2021, 2021-2022 and 2022-2023 data confirms Delaware’s progress toward reducing the number of students participating in the alternate assessment.

<b>July 2022</b>	
<b>95% Participation</b>	DDOE Office of Assessment & Accountability began working on 95 Percent Participation plan requirements for LEAs.

<b>Delaware Waiver Request</b>	DDOE began reviewing data for the One Percent Cap and to work on the Waiver Request.
<b>August 2022</b>	
<b>Decision-Making Tool</b>	<p>In 2021, DDOE implemented a Decision-Making Tool for IEP teams to determine eligibility for the alternate assessment.</p> <p>In 2022, DDOE revised the tool. The state:</p> <ul style="list-style-type: none"> <li>• Added that IEP teams must respect the outcome of the tool. This revised tool was posted to the 1% website.</li> <li>• The state worked on a guidance document listing current state PD and resources for students who have been moved off the alternate assessment.</li> <li>• Students have been moved off the alternate assessment.</li> </ul>
<b>September 2022</b>	
<b>Communication</b>	The state shared with Special Education Leadership, Coordinators, District Test Coordinators, about honoring the tool; Review the Justification form requirements; and present updates on the 1% Cap.
<b>Justification Form</b>	Distribute Justification forms to the LEAs. The state requires all LEAs to complete the Justification form. For the upcoming 2023-24 school year, Justification Forms will now include feedback on students who were moved off the alternate assessment.
<b>October 2022</b>	
<b>95% Participation Plan</b>	<ul style="list-style-type: none"> <li>• On October 20, 2022, LEAs were required to complete participation plans. A memo was sent out stating: <ul style="list-style-type: none"> <li>○ For Delaware schools that did not meet the federal 95% participation rate requirement in Math and/or ELA, DDOE, under federal law, requires each district to submit an action plan that includes strategies for each school to meet participation requirements in the 2022-2023 school year.</li> </ul> </li> <li>• In the action plans, LEAs had to provide data around the subgroups, conduct root-cause analysis, barriers and strategies/action steps.</li> <li>• Resources include: <ul style="list-style-type: none"> <li>○ Guidance for Participation Rate Action Plan 2022</li> <li>○ Assessment &amp; Accountability Requirements Clarification document</li> </ul> </li> </ul>
<b>Justification forms</b>	<p>Justification forms were due from LEAs on October 22, 2022. The information is then compiled into a spreadsheet and posted on the DDOE <a href="#">1% website</a>. <a href="#">2023 Justification Forms for LEA Compiled</a></p> <p>In September 2022, the reviewed Justification form was distributed to all LEA special education supervisors. All LEAs were required to complete whether or not they are above the 1.0 percent cap and even if they did not have students on the alternate assessment. This is because there are assurances that they completed necessary trainings. All 42 LEAs submitted the appropriate forms and participated in a conference review with the DDOE. A quantitative and qualitative analysis of the 19 district forms led to the following summations about the alternate assessment participation between the 2021-2022 school year and 2022-2023 school year:</p> <ul style="list-style-type: none"> <li>• Ten districts decreased in alternate assessment participation in all three content areas.</li> </ul>



	<ul style="list-style-type: none"> <li>• Four districts decreased in ELA/mathematics and remained the same for science.</li> <li>• Two districts maintained their participation rates in all three content areas.</li> <li>• One maintained their participation rates in ELA/mathematics and decreased participation in science</li> <li>• Two districts maintained 0% participation in the alternate assessment throughout both school years</li> </ul> <p>A review of the 23 charter forms led to the following conclusions about the alternate assessment participation between the 2021-2022 school year and 2022-2023 school year.</p> <ul style="list-style-type: none"> <li>• Of the 23 charter school justification forms submitted, 2021-2022 SY to 2022-2023 SY participation in the alternate assessment in ELA, mathematics, and science from 17 charter schools remained the same with zero student participation across all three subject areas.</li> <li>• Of the six charters with student participation in the alternate assessment, three remained the same from 2021-2022 SY to 2022 -2023 SY (zero or one).</li> <li>• One charter increased from one to four in ELA/mathematics, with science remaining at one and another charter increased from zero to one in all three content areas in the 2022-2023 SY.</li> <li>• Finally, one charter decreased from one student participating in ELA/mathematics/science in the 2021-2022 SY to no students participating in the 2022-2023 SY.</li> <li>• Student participation in the charter school programs is limited, with the greatest student count of four at one location ELA/mathematics/science in the 2021-2022 SY to no students participating in the 2022-2023 SY.</li> </ul> <p>The Justification form was also revised for 2023-2024 to capture LEAs feedback on the students being transitioned off the tool.</p>
<b>December 2022</b>	
<b>Technical Support</b>	<ul style="list-style-type: none"> <li>• Delaware worked with a consultant to review other state waivers and action plans to revise and create the waiver plan.</li> <li>• Discussions and attendance at NCEO 1% CoP around the waiver plan.</li> <li>• Review of the state definition across the districts.</li> <li>• Analysis of a document provided around NCEO led to the revision of the state definition.</li> </ul>
<b>Ongoing Support from Fall 2022 to Spring 2023</b>	
<b>State Definition</b>	<ul style="list-style-type: none"> <li>• <b>On Feb. 2023, the state definition was revised to the following:</b> Students with the most significant cognitive disabilities are those whose school records indicate their disabilities pervasively impact their intellectual functioning and adaptive behavior across settings. Significant deficits in intellectual functioning result in the students requiring extensive individualized direct instruction and substantial supports in order to make measurable educational gains. Significant deficits in adaptive behavior often result in the student being</li> </ul>

	<p>unable to develop the skills needed to live independently or to function safely in their daily life at home, in school and in the community. The student cannot show learning on the general assessment. As a result, the student is learning academic content that is reduced in depth, breadth, and complexity.</p> <p>The decision to include the student in the DESSA-Alt is NOT based on the following:</p> <ol style="list-style-type: none"> <li>1. existence of an IEP;</li> <li>2. specific categorical label;*</li> <li>3. educational placement or setting**;</li> <li>4. English language learner status;</li> <li>5. socio-economic or cultural differences ;</li> <li>6. excessive or extended absences;</li> <li>7. disruptive behavior;</li> <li>8. student’s reading level; or</li> <li>9. the expectation that the student will not perform well on DeSSA Gen. Ed assessments</li> </ol> <ul style="list-style-type: none"> <li>• <b>The following comments were added to the website and the Decision-Making Tool.</b>  * Intelligence quotient (IQ) scores are not a reliable measure to determining eligibility, as many of the assessment tools used to determine IQ are not fully accessible for learners with significant motor, communication and sensory complexities.  **It is important to remember that participation in the Delaware Alternate Assessment does not determine the setting/placement in which the student receives instruction.”</li> </ul>
<b>Professional Development</b>	<ul style="list-style-type: none"> <li>• State provided Alternate Assessment Participation Decision-Making workshop professional development</li> <li>• State provided webinar on State Definition and DeSSA-Alternate Decision-Making Tool</li> <li>• Trainings around the Delaware Alternate Achievement Standards were revamped to reflect the shift to the Instructionally-Embedded assessment model. ASL and CC were also added.</li> </ul>
<b>Companion Guide to the Decision-Making Tool</b>	<ul style="list-style-type: none"> <li>• In April 2023, the Companion Guide was updated and added to the 1% Website.</li> </ul>
<b>One Percent Cap Group meetings</b>	<ul style="list-style-type: none"> <li>• Reviewed Justification forms and using that data to further drive next steps in the waiver plan; create or revise PD as needed and to inform stakeholders</li> <li>• Addressed concerns around the 1% Cap</li> <li>• Addressed technical assistance requests surrounding the 1% Cap. There were no requests made as we were researching and revamping the current waiver and timeline.</li> <li>• Begin working on Draft of Waiver Extension Request – the state hired a consultant</li> </ul>
<b>Alternate Assessment IEP Review</b>	<ul style="list-style-type: none"> <li>• The state, in conjunction with ECR, reached out to LEAs for student IDs to review the IEPs of students placed on the alternate assessment.</li> </ul>

	<ul style="list-style-type: none"> <li>• The state used the <a href="#">Alternate Assessment IEP Review Protocol</a> to provide a rating on whether LEAs did the following: <ul style="list-style-type: none"> <li>○ completed the Decision-Making Tool during the decision-making for eligibility for the appropriate school year</li> <li>○ provided information to parents on the implications of participating in the alternate assessment. The parents are required to complete that section of the tool at the meeting, or over the phone.</li> <li>○ The state used the tool to provide feedback. Feedback included commendations and recommendations.</li> <li>○ The state found that some LEAs were not using the most recent participation guidelines.</li> </ul> </li> <li>• This rubric was revised for LEAs on Tier 2 to use to conduct independent file reviews in their self-evaluation. This will be new for the 2023-2024 school year. The state believes using this model increases LEAs adherence to the tool. (Outlined in the Delaware Plan and Timeline)</li> </ul>
<b>June 2023</b>	
<b>One Percent Cap Team collaboration</b>	<ul style="list-style-type: none"> <li>• One Percent Cap meeting - review the draft of the waiver and the new tiered system of support. Delaware is moving to a three-tiered approach.</li> <li>• Revise the <a href="#">Justification form for 2023-2024</a> – addition of request for information about the students who moved off the alt. for feedback purposes. The Justification forms will be disseminated in September 2023 and collected October 2023.</li> <li>• Waiver Request – Out for Public Comment from July 7 to July 21, 2023</li> <li>• Reviewed preliminary participation data. The state made participation in ELA and Math. SAT participation also increased. Currently waiting on the alternate assessment participation data.</li> </ul>
<b>July 2023</b>	
<b>Revision of the Waiver Request</b>	<p>OAA in conjunction with ECR reviewed our new Delaware Waiver Plan – tweaking the business rules for LEAs on Tier 2 and for LEAs with Special Schools.</p> <ul style="list-style-type: none"> <li>• Creation of the <a href="#">Alternate Assessment IEP Review Self-Evaluation</a> form – this is an individual student review form for LEAs to use</li> <li>• Creation of the <a href="#">Tier 2 Subgroup Data Report form</a> – this is for LEAs on Tier 2 supports to complete</li> <li>• Creation of the <a href="#">LEA Self-Assessment Review Summary Report</a> – This will be submitted to DDOE and is a compilation of the students reviewed</li> </ul>
<b>Submission of the Waiver Request</b>	<p><b>Submit a Waiver Request</b> – due to the alternate assessment beginning in September 2023, the state will submit the current waiver plan in July 2023. The state will resubmit the waiver request once the data for 2023 has been calculated. The state anticipates more reduction on the one percent cap.</p>

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## Public Notice and Comment Period

Waiver Request- Pursuant to 34 C.F.R. §200.6(c)(4)

July 3, 2023

The Delaware Department of Education (DDOE) Office of Assessment is seeking comments on the following waiver extension request. DDOE will request a waiver from the United States Department of Education for the 2022-2023 school year, pursuant to the regulation found at 34 C.F.R. §200.6(c)(4) requiring State Education Agencies (SEAs) to limit the number of students participating in state alternate assessment in a required subject area to be at or below one percent of the total number of all students taking the state level assessment.

34 C.F.R. §200.6(c)(2) states:

*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.*

State Education Agencies requesting a waiver are required to adhere to the requirements stipulated at 34 C.F.R. §200.6(c)(4) and may be found below. DDOE is requesting a waiver extension for the anticipated greater than one percent alternate assessment participation in accordance with waiver requirements below.

*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;*

Pursuant to the stated federal requirements, DDOE will submit a one-year waiver extension request, along with a plan and timeline intended to begin to address the reduction of percentages exceeding the one percent cap of alternate assessment participation. The following information, as detailed in 34 C.F.R. §200.6(c)(4), will be included in the waiver:

- Delaware state-level data including
  - subgroup counts and percentages
  - participation rates in alternate assessments
- State assurances that LEAs exceeding the one percent cap followed State guidelines in determining eligibility for participation in alternate assessments
- A statewide plan and timeline including
  - Clarification of State guidelines, in conjunction with professional development, to expand understanding and implementation of the guidelines and the identification process
  - Support and oversight for LEAs exceeding the one percent cap, as well as addressing any identified areas of disproportionality

### NOTIFICATION OF PUBLIC COMMENT PERIOD

**Prior to the submission of this waiver extension request to exceed one percent alternate assessment participation, the DDOE is providing notification and requesting public comment. Comments on this proposed Delaware waiver pursuant to 34 C.F.R. §200.6(c)(4) may be submitted in writing from July 3-August 3, 2023 to Michelle Jackson, Delaware Department of Education, Office of Assessment, 401 Federal Street, Suite 2, Dover DE 19901 or through email at [Michelle.Jackson@doe.k12.de.us](mailto:Michelle.Jackson@doe.k12.de.us).**

**Notification of this waiver request submission is being posted publicly on the DDOE website. Additionally, this information will be disseminated to LEA superintendents, district and charter leadership and coordinators, special education leadership, parent advisory and stakeholder groups, as well as educators. Comments received will be attached to the waiver request submission being sent to the US Department of Education.**