



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

April 8, 2025

The Honorable Robbie Fletcher
Commissioner of Education
Kentucky Department of Education
300 Sower Blvd, 5th Floor
Frankfort, KY 40601

Dear Commissioner Fletcher:

I am writing in response to the Kentucky Department of Education's (KDE's) revised request on March 31, 2025, for an extension of a one-year 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 the students in the grades assessed using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS). KDE requested this waiver because, based on State data for the 2023-2024 school year, KDE concluded that it will assess more than 1.0 percent of students using an AA-AAAS in reading/language arts (R/LA), mathematics, and science in the 2024-2025 school year. KDE first requested this waiver on August 14, 2024.

On February 27, 2025, the Department declined to approve KDE's initial request. KDE's request did not meet the requirements for a waiver, including both the general requirements for a waiver outlined in ESEA section 8401(b) and, for a waiver of this requirement, in 34 CFR § 200.6(c)(4). KDE revised its request pursuant to ESEA section 8401(b)(4)(B)(ii).

While I appreciate the additional information KDE provided, the revised request does not meet the statutory and regulatory requirements for a waiver. In R/LA, mathematics, and science, the State argued that despite the increased number and percentage of students assessed on alternate assessment in the 2023-2024 school year, KDE had identified multiple student subgroups with reduced AA-AAAS participation rates. I congratulate you on your success in reducing the alternate assessment participation rates for these student subgroups. However, 34 CFR § 200.6(c)(4)(v) requires the State to demonstrate substantial progress in achieving each component of the prior year's plan and timeline to reduce AA-AAAS participation rate in order for a waiver of this requirement to be extended. The overall numbers and percentages of AA-AAAS participation increased in SY 2023-2024 when compared to SY 2022-2023. The revised waiver request does not dispute this fact.

As a result, I am declining to exercise my authority under section 8401(b) of the ESEA to approve KDE's revised waiver request for the 2023-2024 school year for an extension of the one-year waiver of ESEA section 1111(b)(2)(D)(i)(I) to allow the State to assess more than 1.0 percent of students with an AA-AAAS in R/LA, mathematics, and science.

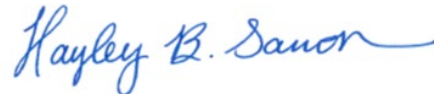
400 MARYLAND AVE., SW, WASHINGTON, DC 20202
<http://www.ed.gov/>

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

Pursuant to section 8401(b)(4)(B)(iii) of the ESEA, KDE may request a hearing to present argument and any testimony in support of its waiver request. If KDE requests a hearing, it may submit written argument; present oral testimony from one or more witnesses in Washington, DC or via teleconference; or both. By statute, we must conduct this hearing within 30 days after the date of KDE's revised waiver request—*i.e.*, by April 30, 2025. Therefore, please let me know by April 23, 2025, whether you intend to present oral testimony. KDE may also submit a written argument to me by April 30, 2025.

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



Hayley B. Sanon
Principal Deputy Assistant Secretary
and Acting Assistant Secretary
Office of Elementary and Secondary Education

cc: Carol Morrison, KDE



Dr. Robbie Fletcher
Commissioner of Education

KENTUCKY DEPARTMENT OF EDUCATION

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March 31, 2025

Ms. Ruth E. Ryder
Deputy Assistant Secretary for Policy and Programs and
Acting Assistant Secretary Office of Elementary and
Secondary Education
U.S Department of Education
Office of Special Education Programs
400 Maryland Avenue, SW
Washington, DC 20202

Dear Ms. Ryder:

I have received and reviewed your correspondence of February 27, 2025 declining Kentucky's request to waive section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965 (ESEA). Please accept and consider this response and revised waiver request.

Pursuant to [34 CFR §200.6 \(c\)\(4\)](#), the Kentucky Department of Education (KDE) submitted the Kentucky Request to Extend the 1.0% Alternate Assessment Participation Waiver to the United States Department of Education (USED) on August 14, 2024. In the submission, the KDE requested approval to extend its 1.0% Alternate Assessment Participation Waiver for the areas of reading, math and science for the 2024-2025 school year.

Your letter stated that you declined KDE's request because you did not find that approving the waiver will advance student academic achievement, as required in ESEA section 8401(b)(1)(C). You added that, specifically, Kentucky's assessment data for the 2023-2024 school year shows that rates of AA-AAAS participation increased in R/LA, mathematics, and science when compared to both the 2021-2022 and 2022-2023 school years. You continued that because the State's AA-AAAS rates increased in the 2023-2024 school year, you find that the State has not demonstrated that it has met 34 CFR section 200.6(c)(4)(v), which requires the State educational agency to demonstrate substantial progress in achieving each component of the prior year's plan and timeline to reduce AA-AAAS participation rates.

I am perplexed by your findings, as Kentucky's progress has proceeded along the same arc as in prior years, in which Kentucky received approval to extend its 1.0% Alternate Assessment Participation Waiver.

As anticipated, the final assessment data indicates participation in the subject areas of reading,

math and science have exceeded, for the 2023-2024 school year, the 1.0% threshold outlined in the Every Student Succeeds Act (ESSA). However, as in prior years in which Kentucky received approval, Kentucky assessed above 95% of its students enrolled in the 2023-2024 school year including students with disabilities as required by [34 CFR § 200.6\(c\)\(4\)\(ii\)\(B\)](#). Kentucky also, as in prior years in which Kentucky received waiver approval, increased the overall assessment participation rate for all students and increased the percentage of students with disabilities who were assessed for the 2023-2024 school year.

Group	All Students Grades 3-8 and High School R/LA	Students with Disabilities Grades 3-8 and High School R/LA
Students Assessed	333,408	51,158
Students Enrolled	335,467	51,589
Assessment Participation Rate	99.4%	99.2%
Group	All Students Grades 3-8 and High School Math	Students with Disabilities Grades 3-8 and High School Math
Students Assessed	333,285	51,115
Students Enrolled	335,422	51,577
Assessment Participation Rate	99.4%	99.1%
Group	All Students Grades 3-8 and High School Science	Students with Disabilities Grades 3-8 and High School Science
Students Assessed	141,834	20,193
Students Enrolled	143,262	20,429
Assessment Participation Rate	99.0%	98.8%

The following table shows the AA-AAAS participation data for individual subgroups assessed in the 2023-2024 school year as required by [34 CFR §200.6\(c\)\(4\)\(ii\)\(A\)](#). The KDE reviewed data from the 2023-2024 school year with a focus on disproportionality. Kentucky’s overall percentage of students assessed with the AA-AAAS for reading, math and science slightly increased; however, the state made progress in specific subgroups. The table below highlights specific subgroups in which Kentucky made progress in reducing the percentage of students taking the AA-AAAS.

Group	Total Number in Grades 3-8 and HS	Number Taking AA-AAAS in Grades 3-8 and HS	Percent Taking AA-AAAS in Grades 3-8 and HS
R/LA			
All Students	333,408	3,976	1.19%
Students with disabilities	51,158	3,976	7.77%
Female	161,467	1,284	0.80%
Male	171,879	2,692	1.57%
Hispanic	33,503	316	0.94%
American Indian	443	5	1.13%
African American	35,795	477	1.33%
White	238,345	2,886	1.21%
Asian American	7,184	72	1.00%
Hawaiian/Pacific Islander	661	4	0.61%
Multiracial	17,477	216	1.24%
Low Income	205,887	3,111	1.51%
English Learner	24,393	256	1.05%
Homeless	10,181	163	1.60%
Mathematics			
All Students	333,285	3,974	1.19%
Students with Disabilities	51,115	3,974	7.77%
Female	161,406	1,286	0.80%
Male	171,879	2,688	1.56%
Hispanic	33,512	319	0.95%
American Indian	443	5	1.13%
African American	35,755	477	1.33%
White	238,255	2,881	1.21%
Asian American	7,196	72	1.00%
Hawaiian/Pacific Islander	659	4	0.61%
Multiracial	17,465	216	1.24%
Low Income	205,778	3,109	1.51%

Group	Total Number in Grades 3-8 and HS	Number Taking AA-AAAS in Grades 3-8 and HS	Percent Taking AA-AAAS in Grades 3-8 and HS
English Learner	24,403	264	1.08%
Homeless	10,193	163	1.60%
Science			
All Students	141,834	1,733	1.22%
Students with Disabilities	20,193	1,733	8.58%
Female	69,071	593	0.86%
Male	72,763	1,140	1.57%
Hispanic	13,998	145	1.04%
American Indian	215	2	0.93%
African American	15,192	198	1.30%
White	102,011	1,264	1.24%
Asian American	2,995	36	1.20%
Hawaiian/Pacific Islander	275	2	0.73%
Multiracial	7,148	86	1.20%
Low Income	84,923	1,359	1.60%
English Learner	9,726	102	1.05%
Homeless	4,001	67	1.67%

The following table illustrates the AA-AAAS participation rates by subject for the last six years.

School Year	R/LA	Math	Science
2017-2018*	1.13	1.13	1.12
2018-2019*	1.13	1.13	1.14
2020-2021*	1.10	1.10	1.10
2021-2022*	1.12	1.12	1.14
2022-2023*	1.16	1.15	1.14
2023-2024	1.19	1.19	1.22

* State data submissions from prior year waiver requests.

The following table clarifies the substantial subgroup progress Kentucky has made between the 2022-2023 and 2023-2024 assessment years.

Group	Percent Taking AA-AAAS in Grades 3-8 and HS (22-23 assessment year)	Percent Taking AA-AAAS in Grades 3-8 and HS (23-24 assessment year)
R/LA		
All Students	1.16%	1.19%
Female	0.81%	0.80%
Male	1.50%	1.57%
Hispanic	1.77%	0.94%
American Indian	1.86%	1.13%
African American	2.24%	1.33%
White	2.03%	1.21%
Asian American	1.80%	1.00%
Hawaiian/Pacific Islander	0.92%	0.61%
Multiracial	1.91%	1.24%
Low Income	1.53%	1.51%
English Learner	1.23%	1.05%
Mathematics		
All Students	1.16%	1.19%
Female	0.80%	0.80%
Male	1.49%	1.56%
Hispanic	1.70%	0.95%
American Indian	1.86%	1.13%
African American	2.22%	1.33%
White	2.03%	1.21%
Asian American	1.77%	1.00%
Hawaiian/Pacific Islander	0.90%	0.61%
Multiracial	1.90%	1.24%
Low Income	1.51%	1.51%
English Learner	1.10%	1.08%
Science		
All Students	1.14%	1.22%
Female	0.78%	0.86%
Male	1.48%	1.57%
Hispanic	0.93%	1.04%
American Indian	1.06%	0.93%
African American	1.38%	1.30%

Group	Percent Taking AA-AAAS in Grades 3-8 and HS (22-23 assessment year)	Percent Taking AA-AAAS in Grades 3-8 and HS (23-24 assessment year)
White	1.14%	1.24%
Asian American	0.86%	1.20%
Hawaiian/Pacific Islander	1.65%	0.73%
Multiracial	1.06%	1.20%
Low Income	1.52%	1.60%
English Learner	1.04%	1.05%

With all due respect, I submit that while Kentucky’s assessment data for the 2023-2024 shows that rates of AA-AAAS participation increased in R/LA, mathematics, and science when compared to both the 2021-2022 and 2022-2023 school years, this metric does not give adequate consideration to and discounts Kentucky’s substantial subgroup progress between the 2022-2023 and 2023-2024 assessment years and Kentucky’s assessment participation rate. Furthermore, USED’s previous determination ignores the disabilities of individual students and the individualized decision-making for those students required by the Individuals with Disabilities Education Act (IDEA).

The KDE has satisfied all requirements and included documentation outlined in [34 CFR §200.6\(c\)\(4\)\(a\) through \(iv\)](#) in the waiver request submitted on August 14, 2024 and as supplemented in and by this revised waiver request. I ask for your reconsideration.

Please contact Carol Ann Morrison at carol.morrison@education.ky.gov or (502) 564-4970, ext. 4123, to discuss this supplemental and revised KDE request to extend Kentucky’s participation waiver. We look forward to working with USED staff to achieve a positive response to the application.

All In,



Dr. Robbie Fletcher
 Commissioner of Education
 Kentucky Department of Education

cc: Clayton Hollingshead
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