



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

March 3, 2026

The Honorable Pedro Martinez  
Commissioner  
Massachusetts Department of Elementary  
and Secondary Education  
135 Santilli Highway  
Everett, MA 02149

Dear Commissioner Martinez:

I am writing in response to the Massachusetts Department of Elementary and Secondary Education's (DESE's) request on December 12, 2025 (with public comments provided on January 6, 2026), for a 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). Massachusetts requested this waiver extension because, based on State data for school year (SY) 2024-2025, Massachusetts DESE concluded that it may exceed the 1.0 percent cap on AA-AAAS participation in reading/language arts (R/LA), mathematics, and science.

After reviewing Massachusetts DESE's waiver extension request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, for SY 2025-2026, a waiver extension of section 1111(b)(2)(D)(i)(I) of the ESEA so that Massachusetts may assess with an AA-AAAS more than 1.0 percent of the total number of students in the State who are assessed in R/LA, mathematics, and science.

As part of this waiver, Massachusetts DESE 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 SY 2024-2025 at least 95 percent of all students and all students with disabilities who are enrolled in grades for which the R/LA, mathematics, and science assessments are required.
- 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 AA-AAAS.
- Will provide appropriate oversight of an LEA that is required to submit such information to the State.

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<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.*

- 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 Massachusetts DESE’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 that such information does not reveal personally identifiable information about an individual student. I also encourage you to make available your State’s plan, timeline, and progress to date in reducing the percentage of students taking the AA-AAAS.

I appreciate your work to improve Massachusetts’ 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,

/s/

Kirsten Baesler  
Assistant Secretary  
Office of Elementary & Secondary Education

cc: Michol Stapel, Associate Commissioner for Student Assessment  
Rob Curtin, Deputy Commissioner



December 12, 2025

Patrick Rooney  
Director, School Support and Accountability  
U.S. Department of Education  
400 Maryland Avenue, SW Washington, DC 20202

SUBJECT: Request for a Waiver Extension for the 2025–2026 School Year from the 1.0 Percent Cap on the Percentage of Students of Students with the Most Significant Cognitive Disabilities Who May Be Assessed with an Alternate Assessment Aligned with Alternate Academic Achieve Standards (AA-AAAS)

*Submitted by email to [ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)*

Dear Director Rooney:

This written communication serves as our request that the waiver referenced above, which was first received by the Massachusetts Department of Elementary and Secondary Education (DESE) on December 28, 2017—with waiver extensions granted each year—be extended for the 2025–2026 school year. As noted in your letter, any state that anticipates their LEAs will collectively exceed to assess more than 1.0 percent of students with an Alternate Assessment must provide written justification along with their request for a waiver of the 1.0 percent cap, as defined in the Every Student Succeeds Act (ESSA). In Massachusetts, the AA-AAAS is the Massachusetts Comprehensive Assessment System–Alternate Assessment, known as the MCAS-Alt.

I anticipate that Massachusetts will exceed the one-percent threshold in the 2025–2026 school year. We have made steady annual progress in lowering the number of students with disabilities who participate in alternate assessments, including meeting the target of assessing 1.0% of students in science in 2025-26. An extension of the waiver will allow the state to further evolve and target our training programs to LEAs, and provide the necessary transition period to implement significantly revised guidance and technical assistance to our LEAs.

Massachusetts has maintained at least a 96 percent participation rate in the statewide MCAS assessments for all students in each subject assessed.

The overall number and percentage of students who participated in the 2025 MCAS-Alt in each subject is shown below.

- English Language Arts (ELA):  $5,576/472,164 = 1.18$  percent, a **decrease** of 149 students since 2024
- Mathematics:  $5,662/471,692 = 1.20$  percent, a **decrease** of 177 students since 2024
- Science and Technology/Engineering (STE):  $2,038/203,756 = 1.00$  percent, a **decrease** of 473 students from 2024

I anticipate that with our ongoing and targeted technical assistance and evolving practice, the state will continue to lower the percentage of students taking the statewide alternate assessment in the coming year.

Current resources on this topic are available on [DESE's website](#), including:

- Updated Training Materials for LEAs and IEP Teams
  - the definition for students with the most significant cognitive disabilities for decision-making on alternate assessment participation
  - an Alternate Assessment Participation Tool, which is required for LEAs to complete
  - a sample MCAS-Alt participation tool that provides an example of students that could be eligible to participate in an alternate assessment
  - a disproportionality analysis tool for schools to determine if disproportionality is present
- publicly available data on MCAS-Alt participation rates (2017–2025) for each district and the state
- a sample parent notification letter translated into five major languages stating that 1) their child's achievement will be measured using an alternate assessment based on alternate academic achievement standards, 2) participation in an alternate assessment may delay their child's ability to earn a regular high school diploma, and 3) the decision to have their child take an alternate assessment will be revisited annually by their child's IEP team.

On November 28, 2025, a Notice of Intent to apply for a waiver extension was posted to DESE's web page and included in my Weekly Update (see the attachments to this letter), with an invitation for public comment through December 31. Any public comment that is received will be added to this request, along with any appropriate response, following the closing of the public comment period. In addition, letters will be sent later this month to 88 districts that assessed more than 1.0 percent of tested students on the MCAS-Alt with a request to complete an updated statement of assurances that the district will follow DESE's guidance in continuing to reduce the number of students

participating in the MCAS-Alt. I anticipate receiving completed statements of assurance from districts in January-February 2026. I appreciate this opportunity to inform the U.S. Department of Education of our accomplishments and evolving activities and look forward to your consideration of our request to waive these ESSA provisions. Please contact Michol Stapel, associate commissioner of student assessment, at [michol.stapel@mass.gov](mailto:michol.stapel@mass.gov) with any additional questions you may have. Thank you for your attention to this information.

Sincerely,

*/s/*

Pedro Martinez, Commissioner of Elementary and Secondary Education

Attachment

Copies: Michol Stapel, Associate Commissioner for Student Assessment  
Rob Curtin, Deputy Commissioner

## Massachusetts “One Percent” ESSA Waiver Extension Request for School Year 2025–2026

### Notice of intent to apply for a waiver and opportunity for public comment

On November 28, 2025, DESE posted a *Notice of Intent to Apply and Opportunity for Comment Regarding a Waiver Extension of the Federal Requirement Related to the Percentage of Students Who Participate in Statewide Alternate Assessments* to solicit public comment by December 31, 2025.

- Notice of Intent (11/28/2025)
- MCAS Update (11/25/2025 and 12/9/25)
- MCAS-Alt Headlines (11/28/2025)
- Commissioner’s Weekly Update (12/1/2025)

The postings of the Notice of Intent are documented at the end of this waiver request. Any comments and responses to those comments will be forwarded to the US Department of Education—Office of Elementary and Secondary Education following the closing of the public comment period.

### Waiver request submitted at least 90 days before start of testing window [§200.6(c)(4)(i)]

The MCAS-Alt assessment window begins on the first day of the school year, although educators may begin the alternate assessment process at different points throughout the year. The testing window will end with submission of alternate assessments on Friday, March 27, 2026. We were unable to submit our extension waiver request earlier (in June 2025) because results of the annual assessment only became available in fall 2025. We found it necessary to review last year’s assessment participation reports and stakeholder feedback prior to determining if an extension of the 2024–2025 waiver would be warranted. Our review of participation data found that the alternate assessment participation numbers decreased in all subjects but also demonstrated that a renewal of the waiver request is warranted.

Assessment participation by number and percentage of all students and students in each subgroup [§200.6(c)(4)(ii)]

Table 1: Overall Rates of Assessment Participation for SY 2024–25

Subject Domains	ELA Grades 3–8 and HS	ELA Grades 3–8 and HS	Math Grades 3–8 and HS	Math Grades 3–8 and HS	Science and Technology/ Engineering Grades 5, 8, and HS	Science and Technology/ Engineering Grades 5, 8, and HS
Participation Factors by Groups	All students	Students with disabilities	All students	Students with disabilities	All students	Students with disabilities
Students Assessed	472,164	102,782	471,692	102,628	203,756	42,362
Students Enrolled	479,068	106,002	478,851	105,947	207,848	44,115
<b>Assessment Participation Rate</b>	<b>99%</b>	<b>97%</b>	<b>99%</b>	<b>97%</b>	<b>98%</b>	<b>96%</b>

Table 2: AA-AAAS Participation Rates by Subgroup for SY 2024–25—ELA

ELA	Total Number in Grades 3-8 & HS	Number Taking AA-AAAS in Grades 3-8 & HS	% Taking AA-AAAS in Grades 3-8 & HS
All Students	472,164	5,576	1.18%
Hispanic or Latino	120,146	1,645	1.37%
American Indian or Alaska Native			
Asian	36,220	445	1.23%
Black or African American	47,287	977	2.07%
Native Hawaiian or Other Pacific Islander			
White	244,965	2,233	0.91%
Multi-Race, Not Hispanic or Latino	21,904	255	1.16%
Male	241,965	3,801	1.57%
Female	229,587	1,773	0.77%
Nonbinary			
English Learners	61,087	925	1.52%
Low Income	208,960	3,714	1.78%

Table 3: AA-AAAS Participation Rates by Subgroup for SY 2024–25—Mathematics

<b>Mathematics</b>	<b>Total Number in Grades 3-8 &amp; HS</b>	<b>Number Taking AA-AAAS in Grades 3-8 &amp; HS</b>	<b>% Taking AA-AAAS in Grades 3-8 &amp; HS</b>
All Students	471,692	5,662	1.20%
Hispanic or Latino	119,994	1,696	1.41%
American Indian or Alaska Native			
Asian	36,293	457	1.26%
Black or African American	47,281	986	2.09%
Native Hawaiian or Other Pacific Islander			
White	244,649	2,245	0.92%
Multi-Race, Not Hispanic or Latino	21,800	257	1.18%
Male	241,837	3,854	1.59%
Female	229,252	1,806	0.79%
Nonbinary			
English Learners	61,411	1,022	1.66%
Low Income	208,526	3,779	1.81%

Table 4: AA-AAAS Participation Rates by Subgroup for SY 2024–25—Science

<b>Science and Technology/ Engineering</b>	<b>Total Number in Grades 3–8 &amp; HS</b>	<b>Number Taking AA-AAAS in Grades 3-8 &amp; HS</b>	<b>% Taking AA-AAAS in Grades 3-8 &amp; HS</b>
All Students	203,756	2,038	1.00%
Hispanic or Latino	51,373	597	1.16%
American Indian or Alaska Native			
Asian	15,480	160	1.03%
Black or African American	20,611	348	1.69%
Native Hawaiian or Other Pacific Islander			
White	104,466	848	0.81%
Multi-Race, Not Hispanic or Latino	9,089	75	0.83%
Male	104,503	1,346	1.29%
Female	98,876	690	0.70%
Nonbinary			
English Learners	22,866	343	1.50%
Low Income	88,876	1,382	1.55%

Table 5: AA-AAAS Rates by Subject, by year

School Year	ELA	Mathematics	Science
2017	1.50%	1.61%	NA
2018	1.47%	1.48%	-NA
2019	1.38%	1.39%	1.31%
2021	1.29%	1.30%	0.99%
2022	1.24%	1.25%	1.16%
2023	1.24%	1.24%	1.14%
2024	1.21%	1.23%	1.21%
2025	1.18%	1.20%	1.00%
<b>2026 (estimate)</b>	<b>1.15%</b>	<b>1.15%</b>	<b>1.0%</b>

Table 6: 2025 MCAS and MCAS-Alt Participation by Nature of Primary Disability

(Note: Percentage may not total 100% due to rounding.)

Primary Disability <sup>b</sup>	A: Number of All Assessed Participants in Disability Category <sup>a</sup>	B: Number of MCAS-Alt Participants in Disability Category	C: <u>% of All Assessed</u> Students in Disability Category Who Took MCAS-Alt (B/A)	D: <u>% of MCAS- Alt</u> Participants in Disability Category (B/5,698)
Autism	16,851	3,239	19.2%	56.8%
Communication	11,653	94	0.8%	1.6%
Developmental Delay	2,034	64	3.1%	1.1%
Emotional				
Health	23,110	110	0.5%	1.9%
Intellectual	3,994	1,272	31.8%	22.3%
Multiple Disabilities	631	249	39.5%	4.4%
Neurological	6,893	501	7.3%	8.8%
Physical				
Sensory/Deaf and Blind				
Sensory/Hard of Hearing or Deaf				
Sensory/Vision Impairment or Blind				
Specific Learning Disabilities				
Unidentified Disability				
<b>Total</b>	<b>115,983</b>	<b>5,698</b>	<b>4.9%</b>	<b>100.0%</b>

<sup>a</sup> The number of students with disabilities participating in standard MCAS and MCAS-Alt for accountability purposes in at least one subject.

<sup>b</sup> Primary disability data were reported by districts to the Department's Student Information Management System (SIMS) in March and June 2025.

Include a statement of assurance in the waiver request that the State has verified that each LEA the State anticipates will assess more than 1.0 percent of all students assessed using an AA-AAAS in each subject for which the State is seeking a waiver has:

- a) Followed the State’s guidelines for participation in the AA-AAAS; and
- b) Will address any disproportionality in the percentage of students in any student group taking the AA-AAAS.

A) The state reviewed the 2024–2025 MCAS-Alt statement of assurances from each LEA. **We received statement of assurances from all 107 LEAs who were required to respond.** Through reviewing each statement of assurances, DESE determined that the majority of LEAs implemented each requirement. Compared to previous years, the district responses suggest that comprehension of the alternate assessment eligibility safeguards and requirements is improving. LEAs continue to apply the revised alternate assessment eligibility criteria associated with the adoption of the new definition of students with the most significant cognitive disabilities. DESE has acknowledged the efforts of LEAs to retrain their special education staff on best practices to identify students for updated alternate assessment eligibility criteria.

We continue to require all schools to use the new [Companion Document: Alternate Assessment Participation Tool](#) for each student that participates in the MCAS-Alt. Our outreach and training efforts have yielded some success in reducing participation in the alternate assessment, especially in the science domain, but there is still a need for robust trainings and support from DESE, especially around the following participation guidelines:

<https://www.doe.mass.edu/mcas/alt/default.html>

<https://www.doe.mass.edu/mcas/participation.html>

<https://www.doe.mass.edu/mcas/accessibility/default.html>

B) The updated statement of assurances required districts examine if any disproportionate designation exists and to explain their method to determine whether disproportionality is present. As a new procedure last year, DESE provided a risk ratio tool kit. DESE will offer additional trainings during the 2025–2026 school year and in-service hours for LEAs to determine how to apply the risk ratio tool.

As a continued member of the National Center for Education Outcome’s Community of Practice, DESE continues to meet with other SEA representatives

at biweekly meetings to collaborate and share monitoring and training plans to help Massachusetts' LEAs address disproportionality. DESE has adopted and customized the guidance tool described in the NCEO publication [\*Disproportionality in the Alternate Assessment Calculator: A Tool for State and Local Education Agencies\*](#).

We also reviewed the *NCEO Brief: Guidance for Examining Disproportionality of Student Group Participation in Alternate Assessments (#18)* to determine if additional measures could be implemented in future years.

Require that each LEA that the State anticipates will assess more than 1.0 percent of all students assessed with an AA-AAAS in each subject for which the State is seeking a waiver has submitted information to the State justifying the need to exceed the 1.0 percent cap. States must show where these justifications are made publicly available, and that this information is easily accessible (see 34 CFR § 200.6(c)(3)(iv)). For example, the State could include a URL link to these justifications (or a URL link to a summary of these justifications) in the waiver request.

As previously described, DESE required all LEAs that assessed or anticipated to assess more than 1.0 percent of students with an alternate assessment in 2025 complete a statement of assurances with their justifications to exceed the 1.0-percent cap. All 107 LEAs that were identified based on 2024 participation rates were notified of the requirement to submit a statement of assurance in 2025. DESE collected each statement of assurance and notified the public that the LEA statement of assurances are publicly available upon request. This statement is displayed on [DESE's MCAS-Alt website](#) (see exhibit).

Provide a current plan and timeline by which the State will do the following:

- a. Improve the implementation of the State's guidelines for participation in the AA-AAAS, including by reviewing and, if necessary, revising its definition of students with the most significant cognitive disabilities (see 34 CFR § 200.6(c)(4)(iv)(A)) so that less than 1.0 percent of all students assessed take an AA-AAAS.

In 2023, DESE released a new definition of a student with the most significant cognitive disabilities, and began providing technical assistance around the new definition. The state provided [new materials and updated resources](#) to educate districts—particularly districts that have exceeded the 1.0-percent threshold in previous years—and support them in lowering their alternate assessment participation rates.

DESE required that LEAs review specific cognitive and adaptive behavior functioning levels of all students designated for an alternate assessment. The eligibility criteria was emphasized in last year's statement of assurances sent to all districts over the 1.0-percent cap.

The 2024–2025 school year continued our transition planning and period for schools to learn and adopt the new eligibility criteria. We reviewed feedback from our LEAs on their comprehension of the revised eligibility criteria for participating in the MCAS-Alt. Our LEAs communicated to DESE, through the submitted statement of assurances as well as informal questions and discussions, that some schools and educators still did not have the objective evaluation data required to comply with all aspects of the definition and criteria. In addition, information from DESE's Public School Monitoring unit found that some LEAs did not complete the Alternate Assessment Eligibility Participation Tool. These LEAs are continuing to work on obtaining updated measures of cognitive and adaptive behavior for students designated for the alternate assessment.

The participation data provides evidence that the alternate assessment participation numbers decreased in all subjects. Our continued goal is to reach the 1.0-percent cap across all subjects. DESE will continue to evolve our monitoring practices and technical assistance to ensure LEAs are correctly and fully applying the updated eligibility criteria when determining eligibility for an AA-AAAS.

To improve our implementation and to continue to support schools and districts, DESE has completed the following steps:

- Delivered trainings on Alternate Assessment Participation Criteria in January and February 2025
- Held annual MCAS-Alt fall training sessions
- Scheduled trainings for special education leaders in targeted districts in fall 2025 (see next section below for more details)
- Offered pre-recorded webinars at the beginning of the school year and included specific information on the updated definition of students with the most significant cognitive disabilities (see exhibits)
- Added new MCAS-Alt office hours trainings sessions with a question-and-answer format for our LEA educators and administrators

We anticipate that approximately 3,000 educators or administrators will participate in these fall training sessions. These action steps are expected to

yield further reduction in our state's alternate assessment participation percentage.

- b. Take additional steps to support and provide appropriate oversight to each LEA that the State anticipates will assess more than 1.0 percent of all students assessed with an AA-AAAS in each subject for which the State is seeking a waiver. This should include describing how the State 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 for participation in an AA-AAAS so that all students are appropriately assessed (see 34 CFR § 200.6(c)(4)(iv)(B)). Last school year, DESE's Office of Student Assessment Services partnered with the Office of Special Education Policy and Planning to deliver revamped training courses included in our monthly *Special Education Leaders Meetings* (see exhibits). The information sessions were attended primarily by special education directors. We described the updated participation requirements and new disproportionality calculator tool.

Student Assessment Services will continue our collaboration with the Offices of Special Education Policy and Planning, as well as the Office of Public School Monitoring. We are convening webinars on the eligibility and monitoring requirement associated with participation by students with disabilities in the MCAS-Alt. Our Public School Monitoring Team is adding the following language to their public resource *Office of Public School Monitoring Integrated Monitoring Review: Group A Pre-Review Checklist for Special Education*.

1. *All students with disabilities, including those enrolled in out-of-district placements, are included in the Massachusetts Comprehensive Assessment System (MCAS) and other district-wide assessment programs.*
  2. *The district's IEP Teams designate how each student will participate and, if necessary, provide an alternate assessment.*
- a. ***For each student that is designated for the Alternate Assessment based on Alternate Academic Achievement Standards (MCAS- Alt), the IEP Team documents that the student met the definition of most significant cognitive disability and all other eligibility criteria for an alternate assessment....***  
Record Review Questions:
    - *If the student's IEP includes MCAS testing accommodations, are those accommodations clearly delineated?*

- ***If the student's IEP indicates the student is taking the MCAS-Alt, does the record include the completed Alternate Assessment Participation Tool?***

Per last year's approved waiver extension, DESE identified 15 LEAs that assessed greater than 2 percent of their students with an alternate assessment and required them to participate in targeted webinar trainings focused on eligibility. The specialized in-service trainings were held on October 14, 15, and 17, 2025.

The state will continue to closely monitor each district regarding 1) the percentage of assessed students taking the MCAS-Alt; 2) progress and trends over two or more years in reducing the district's overall MCAS-Alt percentage; 3) whether the district has identified and is addressing any disproportionality in their student subgroup participation in the MCAS-Alt; and 4) whether the district is using the revised definition for students with the most significant cognitive disabilities as their criteria. These priorities are again reflected in the revised statement of assurances sent to districts this year.

For next year, **DESE will lower the targeted training threshold requirement to 1.75 percent.** DESE will notify all LEAs with an MCAS-Alt participation rate of 1.75 percent or higher in any subject domain that their staff and administrators supporting the school's alternate assessment must participate in a targeted MCAS-Alt eligibility training. We will continue to ask for a participation acknowledgement (e.g., names and titles of educators that attended that webinar).

- c) Address any disproportionality in the percentage of students taking an AA-AAAS as identified through the State's data (see 34 CFR § 200.6(c)(4)(iv)(C)).

As described in section 4(B) above, DESE will continue to use the [publication issued by The National Center on Educational Outcomes \(NCEO\)](#) to assist districts in understanding disproportionality in designation for alternate assessment. We have reviewed the statement of assurances to ensure the LEA explained how disproportionality was examined and whether disproportionality was present. A DESE-provided risk ratio tool has been made available (see exhibits) for districts to analyze participation by subgroup. The training sessions DESE launched this fall (see exhibits) describing how to use the risk ratio tool and other resources to address disproportionality. At the recent trainings, districts were able to ask questions and receive technical support.

During the development of the state’s definition for students with the most significant cognitive disabilities, we convened meetings with stakeholders in the state offices, LEAs, and advocacy organizations. Specifically, we engaged the Center for Law & Education to discuss methods to prevent students from historically marginalized subgroups being designated for alternate assessments. We intend to offer additional feedback sessions to gain more knowledge from our stakeholder groups, including the Massachusetts Advocates for Children.

As with previous years, a **memo from DESE leadership and statement of assurances** will be sent in early December to districts that exceeded 1.0 percent of tested students taking the MCAS-Alt in 2025. (See the Exhibits section for a draft of this communication.)

Demonstrate that the State **reduced its AA-AAAS participation rates** in each subject for which the State is seeking a waiver. The Department expects that a State requesting to extend a waiver will have decreased its AA-AAAS rates in SY 2024–25 compared to SY 2023–24. A State with relatively high rates of AA-AAAS participation should demonstrate a greater reduction in its AA-AAAS participation rates compared to States near the 1.0 percent cap.

Implementing the definition of a student with the most significant cognitive disabilities has been a substantial change for our districts. We are making progress reducing the statewide participation in alternate assessments and believe that we will continue to make progress in moving closer to the 1-percent participation rate.

The overall number and percentage of students who participated in the 2025 MCAS-Alt in each subject has **decreased** as follows.

- English Language Arts (ELA):  $5,576/472,164 = 1.18$  percent, a **decrease** of 149 students since 2024
- Mathematics:  $5,662/471,692 = 1.20$  percent, a **decrease** of 177 students since 2024
- Science and Technology/Engineering (STE):  $2,038/203,756 = 1.00$  percent, a **decrease** of 473 students from 2024

Since 2017, the state has annually taken steps that have achieved a steady reduction in the participation rate (see figure 1).

Figure 1. MCAS-Alt Participation Rates  
2017–2025

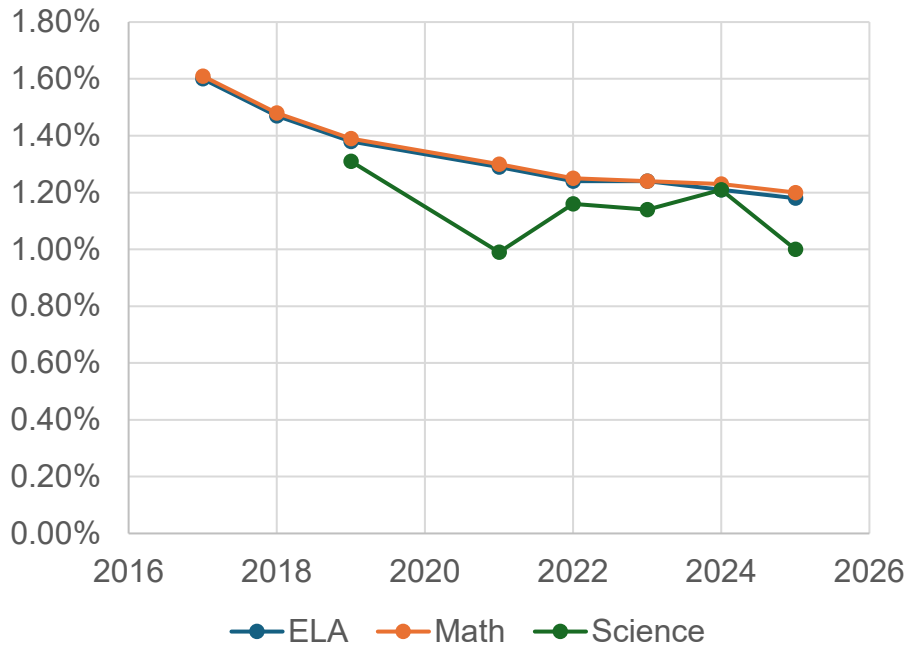


Table 7. MCAS-Alt Participation Rates by Subject, 2017–2025

Year	ELA	Math	Science
2017	1.60%	1.61%	NA
2018	1.47%	1.48%	NA
2019	1.38%	1.39%	1.31%
2021	1.29%	1.30%	0.99%
2022	1.24%	1.25%	1.16%
2023	1.24%	1.24%	1.14%
2024	1.21%	1.23%	1.21%
2025	1.18%	1.20%	1.00%

## Summary of Waiver Extension Request

The state carefully reviewed the *Requirements to Request a Waiver/Waiver Extension for the 2025–26 School Year from the 1.0 Percent Cap on the Percentage of Students with the Most Significant Cognitive Disabilities Who May Be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)* and our previous actions and guidance. The state completed the following actions:

- conducted new and revised technical assistance training sessions to districts, explaining the 1% cap
- reviewed statements of assurances received from LEAs (all LEAs responded as required)
- posted updated revised technical assistance training documents and resources
- convened regular meetings with Acting State Director of Special Education, the Student Assessment Services Office, and the Special Education Planning and Policy Office (SEPP)
- collaborated with the One Percent Community of Practice (CoP) coordinated by the National Center on Educational Outcomes (NCEO) (ongoing)
- coordinated with other DESE offices on the topic of disproportionality in order to identify root causes (ongoing)
- identified districts with especially high rates of alternate assessment participation (i.e., greater than 2 percent) and provided targeted trainings
- created opportunities for districts to share knowledge on how to reduce participation rates collaborate with high percentage rate districts
- reviewed all our strategies for reducing the MCAS-Alt participation rates

DESE has emphasized our updated alternate assessment resources, guidance, training sessions, and alternate assessment eligibility criteria the last two school years. The state's 2024–25 overall participation in alternate assessment decreased, and the state met the 1% cap in science. One factor in meeting these caps is when a student IEP Team meets and designates a student for alternate assessment. IEP annual reviews do not occur at a specific point in time; rather, IEP team meet throughout the school year and may occur after a student has participated in the statewide content assessment. Given these factors, we anticipate that Massachusetts districts will continue to take time to fully and correctly implement

the revised guidance and will likely exceed the 1-percent threshold for 2025–26 school year. The state’s steady alternate assessment participation reduction provides evidence of our commitment to meeting the 1.0-percent cap, which we have achieved through updated policies, monitoring, and resources to limit the number of students participating in alternate academic achievement assessments.

Since districts have begun implementing the revised guidance, DESE’s offices of Student Assessment Services and Public School Monitoring continue to receive questions on how to apply the revised alternate assessment eligibility criteria. DESE anticipates gradual reduction during the 2025–26 school year and looks forward to working closely with the districts to meet the 1-percent cap across all subjects in the near future.

## EXHIBITS

Documents and guidance for district leaders and edcutors for reducing the number of students taking AA-AAS

## Exhibit: Online Monitoring Checklist from the [Web Based Monitoring \(WBS\) Program](#) through the Office of Public School Monitoring (Updated)

The Web-based Monitoring System (WBMS) is a collaborative online portal used throughout the cycle that allows LEAs and PSM to review self-assessment data, reporting documentation, and progress reporting activities.

<p>curriculum, including social and emotional development.</p> <p>4 SE 5 Participation in general state and district wide assessments</p> <p><b>Criteria Description</b></p> <ol style="list-style-type: none"><li>1. All students with disabilities, including those enrolled in out-of-district placements, are included in the Massachusetts Comprehensive Assessment System (MCAS) and other district-wide assessment programs.</li><li>2. The district's IEP Teams designate how each student will participate and, if necessary, provide an alternate assessment.<ol style="list-style-type: none"><li>a. For each student that is designated for the Alternate Assessment based on Alternate Academic Achievement Standards (MCAS-Alt), the IEP Team documents that the student met the definition of <i>most significant cognitive disability</i> and all other eligibility criteria for an alternate assessment.</li></ol></li><li>3. The superintendent of a school district or, for a <a href="#">public school</a> program that is not part of a school district, the equivalent administrator:</li></ol>
<ol style="list-style-type: none"><li>a. files an MCAS performance appeal for a student with a disability when the student's parent or guardian or the student, if 18 or over, requests it, provided that the student meets the eligibility requirements for such an <a href="#">appeal</a>;</li><li>b. obtains the consent of the parent or guardian or the student, if 18 or over, for any MCAS performance appeal filed on behalf of a student with a <a href="#">disability</a>;</li><li>c. includes in the MCAS performance appeal, to the extent possible, the required evidence of the student's knowledge and skills in the subject at issue.</li></ol> <p><b>Record Review Questions:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> If the student's IEP includes MCAS testing accommodations, are those accommodations clearly delineated?</li><li><input type="checkbox"/> If the student's IEP indicates the student is taking the MCAS-Alt, does the record include the completed Alternate Assessment Participation Tool?</li></ul>

**Exhibit: Decision-Making Tool for MCAS Participation**

Use the definition and the questions below to guide discussions of how students will participate in MCAS testing.

Massachusetts defines “students with the most significant cognitive disabilities” as those who meet **all** of the following criteria:

- have cognitive disabilities evidenced by significant delays in attaining age-level academic achievement standards, even with systematic, extensive individually designed instruction, related services, and modifications
- have cognitive disabilities that significantly impact their educational performance and ability to apply learning from one setting to another
- require extensive, direct individualized instruction and substantial supports to achieve measurable gains on the challenging State academic content standards for the grade in which the student is enrolled
- perform significantly below average in general cognitive functioning and adaptive behavior.

Note: “Significantly below average” is defined as a student functioning two or more standard deviations below the mean on commonly accepted norm-referenced assessments in both cognitive functioning and adaptive behavior (e.g., two or more adaptive skill areas such as daily living skills, communication, self-care, social skills, and academic skills).

**Question 1:** Does this student with disabilities meet the definition for “students with the most significant cognitive disabilities” as described above?

**YES:** The student is eligible for the MCAS-Alt.  
Note: Simply because the student is eligible does not warrant the Team to administer the MCAS-Alt. Students taking the MCAS-Alt likely will face challenges earning their high school diploma.

**NO:** Proceed to question 2.

**Question 2:** Does this student with disabilities require specific and allowable accommodations and accessibility features to demonstrate knowledge and skills on assessments?

**YES:** The student’s IEP or 504 plan must include the specific allowable accommodations and accessibility features for MCAS testing, which should generally mirror accommodations the student receives during routine instruction.

**NO:** The student must participate in the standard MCAS tests using available accessibility features.  
Accommodations may be included in the student’s IEP or 504 plan later if the student’s needs changes.

## Exhibit: Alternate Assessment Participation Tool Companion Document



### ALTERNATE ASSESSMENT PARTICIPATION TOOL

Date Completed:

Student Name:   
 District:   
 School:

Student SASID:   
 Student DOB:

Individualized Education Program (IEP) Teams should use the criteria below to determine if the student meets the criteria of the definition of "students with the most significant cognitive disabilities" to be eligible for the state-wide alternate assessment based on alternate achievement standards (e.g., MCAS-Alt).

PARTICIPATION CRITERIA:		SOURCES OF EVIDENCE: <i>Consider formal and informal results</i>
1. Students' cognitive disabilities are evidenced by significant delays in attaining age-level academic achievement standards, even with systematic, extensive individually designed instruction, related services, and modifications.	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="text"/>
2. Students' cognitive disabilities significantly impact their educational performance and ability to apply what they learn from one setting to another.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Classroom Observations: <input type="text"/> OTHER: <input type="text"/>
3. Student requires extensive, direct individualized instruction and substantial support to achieve measurable gains on the challenging State academic content standards for the grade in which the student is enrolled; and	<input type="checkbox"/> Yes <input type="checkbox"/> No	Clinical/Specialists Evaluations: <input type="text"/> OTHER: <input type="text"/>
4. Students perform significantly below average in general cognitive functioning <i>and</i> adaptive behavior.  This is defined as a student functioning two or more standard deviations below the mean on commonly accepted <i>norm-referenced assessments</i> in <b>both cognitive functioning and adaptive behavior</b> (e.g., two or more adaptive skill areas such as daily living skills, communication, self-care, social skills, and academic skills).	<input type="checkbox"/> Yes <input type="checkbox"/> No	Cognitive Evaluations: <input type="text"/> Adaptive Behavior Assessment: <input type="text"/>
<input type="checkbox"/> Yes <input type="checkbox"/> No	The Team has reviewed <i>all</i> four criteria and determined <i>each</i> criterion has been met, and the student is eligible for the alternate assessment based on alternate achievement standards.	
Participation in the alternate assessment indicates all content areas will be assessed. (ELA, Math, Science, Civics).		

# Exhibit: Sample Completed Alternate Assessment Participation Tool Companion Document



## ALTERNATE ASSESSMENT PARTICIPATION TOOL

Date Completed: 10/25/2023

Student Name: Sample Student  
 District: Everybody  
 School: Maybeyours

Student SASID: 1023456789  
 Student DOB: 05/06/2012

Individualized Education Program (IEP) Teams should use the criteria below to determine if the student meets the criteria of the definition of “students with the most significant cognitive disabilities” to be eligible for the state-wide alternate assessment based on alternate achievement standards (e.g., MCAS-Alt).

PARTICIPATION CRITERIA:		SOURCES OF EVIDENCE: <i>Consider formal and informal results</i>
1. Students’ cognitive disabilities are evidenced by significant delays in attaining age-level academic achievement standards, even with systematic, extensive individually designed instruction, related services, and modifications.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	The student requires small group specialized and individualized instruction, as appropriate, in all academics, from a special education teacher and program paraprofessionals as the student learns in a substantially separate program with a modified curriculum. A multi-sensory approach, hands-on activities, and repetition and re-teaching of skills will be across the methods.
2. Students’ cognitive disabilities significantly impact their educational performance and ability to apply what they learn from one setting to another.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Classroom Observations:</b> In class time: 4/14/2023 (sub-separate) The student was observed today in the classroom. The student  <b>OTHER:</b> Instruction time: Reading Group The student did not visually attend to the reading activity and
3. Student requires extensive, direct individualized instruction and substantial support to achieve measurable gains on the challenging State academic content standards for the grade in which the student is enrolled; and	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Clinical/Specialists Evaluations:</b> The student’s observed and reported communication skills indicate significant deficits. The student presents complex  <b>OTHER:</b> AAAS Resource Guide: needs the access Skills.
4. Students perform significantly below average in general cognitive functioning and adaptive behavior.  <small>This is defined as a student functioning two or more standard deviations below the mean on commonly accepted norm-referenced assessments in <b>both cognitive functioning and adaptive behavior</b> (e.g., two or more adaptive skill areas such as daily living skills, communication, self-care, social skills, and academic skills).</small>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Cognitive Evaluations: (Looking for actual SD #)</b> WISC-IV on 5/2020: FSIQ 88, (-2.25 Standard Deviations, SD)  <b>Adaptive Behavior Assessment:</b> Adaptive Behavior Assessment System, Third Edition (ABAS-3) 5/2023 General Adaptive Composite- <-3.0 SD, Extremely Low. Scaled Score = 58, SD=-2.75
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>The Team has reviewed <i>all</i> four criteria and determined <i>each</i> criterion has been met, and the student is eligible for the alternate assessment based on alternate achievement standards.</b>	
<i>Participation in the alternate assessment indicates all content areas will be assessed. (ELA, Math, Science, Civics).</i>		

Exhibit: Updated Training Resources Materials for Districts on Alternate Assessment Eligibility, 2025–2026

# MCAS-Alt Participation Criteria

Required by the  
Every Student Succeeds Act  
(ESSA)

**dese**

## Exhibit: Sample Worksheet to Calculate Disproportionality Risk Ratio

**Enter Data for Students Taking the Alternate Assessment** You may change these categories as desired. Unhide columns M:O for additional categories.

	American Indian	Asian	Black	Hispanic	Multi-racial	Pacific Islander	White	Total Alternate Assessment	Economic Dis-advantage	English Learner
2017								0		
2018								0		
2019								0		
2020								0		
2021								0		
2022								0		
2023								0		
2024								0		
2025								0		
2026								0		
Multi-year Year Total	0	0	0	0	0	0	0	0	0	0

**Enter Data for Students Taking the General Assessment**

	American Indian	Asian	Black	Hispanic	Multi-racial	Pacific Islander	White	Total General Assessment	Economic Dis-advantage	English Learner
2017								0		
2018								0		
2019								0		
2020								0		
2021								0		
2022								0		
2023								0		
2024								0		
2025								0		
2026								0		
Multi-year Year Total	0	0	0	0	0	0	0	0	0	0

**Notes**  
 Because of small numbers of students taking the alternate assessment to calculate the Risk Ratio, it can be more statistically relevant to use the three-year totals.  
 Use the numbers in the three-year total column when determining the Difference in Proportion and Risk Ratio.

= Enter data in the yellow cells.  
 = Grey cells are calculated and protected.

ELA | Math | Science | Summary | Other | +

# Exhibit: Alternate Assessment Training Notifications and Resources

## Determining Which Students Should Participate in the Alternate Assessment

Massachusetts defines "students with the most significant cognitive disabilities" as students who demonstrate *all* four criteria:

1. have cognitive disabilities evidenced by significant delays in attaining age-level academic achievement standards, even with systematic, extensive individually designed instruction, related services, and modifications; **and**
2. have cognitive disabilities that significantly impact their educational performance and ability to apply learning from one setting to another; **and**
3. require extensive, direct individualized instruction and substantial support to achieve measurable gains on the challenging State academic content standards for the grade in which the student is enrolled; **and**
4. perform significantly below average in general cognitive functioning and adaptive behavior. This is defined as a student functioning two or more standard deviations below the mean on commonly accepted norm-referenced assessments in both cognitive functioning and adaptive behavior (e.g., two or more adaptive skill areas such as daily living skills, communication, self-care, social skills, and academic skills).

- Attachment 1: Decision-Making Tool for MCAS Participation [📄](#)

- Attachment 2: Companion document: Alternate Assessment Participation Tool [📄](#)

If the IEP team determines a student is eligible to participate in the alternate assessment based on the criteria for students with the most significant cognitive disabilities, complete the required companion document and retain with the student's special education forms.

- 2A. Sample MCAS-Alt Participation Tool [📄](#)

- Attachment 3: 2017 – 2025 MCAS-Alt Percent of Participants by District [📄](#) (and **Technical assistance for the Statement of Assurance Worksheet**)

Districts should examine the data provided in attachment #3 above and anticipate the percentage of students that will be designated by IEP teams in their district to take the MCAS-Alt in the current school year.

- Attachment 4: Sample Parent Notification Letter (English and translated versions)

Parents/guardians of students with disabilities who take alternate assessments be informed as part of the IEP process that their child's academic achievement will be measured based on "alternate achievement standards, and Participation in an alternate assessment may delay or otherwise affect their child's completion of the requirements for a diploma.

- Attachment 5: Updated Training for District IEP Teams (PowerPoint) [📄](#)

All districts must address any **disproportionality** of students in any subgroup taking the alternate assessment, per 34 CFR 200.6(c)(4)(iii)(B)

- Each district will collect, disaggregate, and review the MCAS-Alt participation rates for students within the following subgroups: male, female, English learners (ELs), African-American, White, Asian, Hispanic/Latino, and economically disadvantaged.

- Sample Formula Worksheet to Calculate Disproportionality Risk Ratio [📄](#)

- Districts will review the available data School and District Profiles. If the district determines that disproportionality exists, the district must develop an action plan that includes professional development for staff who make decisions during IEP team meetings regarding assessment participation for students with the most significant cognitive disabilities.

- Students who take the MCAS-Alt will continue to receive **instruction in the general curriculum** beyond what is necessary to collect materials and data for the student's MCAS-Alt.

If you wish to review DESE's waiver [📄](#), or a district's justification and statement of assurances, please contact Student Assessment by email [✉](#) or phone at 781-338-3625. Thank you very much for your attention to this matter.

**Exhibit: Notice to Special Education Leaders on MCAS-Alt Participation Requirements, Alternate Assessment Companion Tool, and Significant Disproportionality Analysis**

Special Education Leaders Meeting November 7, 2025

The focus of this meeting was Special Education Updates and Key Special Education Topics, Professional Development and Technical Assistance, Participation Cap for Alternate Assessment Based on Alternate Achievement Standards, Fiscal Topics, Circuit Breaker, and Resources.

## **Exhibit: Evidence of Webinar Trainings and Resources on MCAS-Alt Eligibility**

Student Assessment Update, October 15, 2025

### **5. MCAS Alternate Assessment (MCAS-Alt)**

#### **a. 2026 MCAS-Alt Trainings**

School staff administering the MCAS-Alt should be aware that pre-recorded virtual trainings are available on the [MCAS-Alt Manuals and Training Sessions](#) website. These pre-recorded trainings have been developed for the current school year and mirror [live training opportunities](#) available this fall. Educators are encouraged to view these trainings prior to attending live trainings or registering for the upcoming [Office Hours for the MCAS-Alt](#) sessions.

#### **b. 2025 District Participation Rates for the MCAS-Alt**

DESE has posted the 2025 MCAS-Alt participation rates under the [Determining Which Students Should Participate in the Alternate Assessment](#) section on the [MCAS-Alt website](#). This information is important in supporting DESE's progress to meet the statewide one percent alternate assessment cap set by the federal Every Student Succeeds Act (ESSA).

**Exhibit: Statement of Assurances Sent to all LEAs with More than One-Percent MCAS-Alt Participation in 2025**

Memo and Statement of Assurances Request to Districts Regarding Exceeding One Percent Alternate Assessment Participation (Draft)



## MEMORANDUM

**To:** Interested Educators and Members of the Public  
**From:** Rob Curtin, Chief Officer for Data, Assessment, and Accountability  
**Date:** December 1, 2025  
**Subject:** Notice of Intent to Apply and Opportunity to Comment on the Department's Waiver Extension Request Related to the Percentage of Students Who Participate in the MCAS Alternate Assessment

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The Every Student Succeeds Act (ESSA) places a 1.0 percent cap on the number of students with disabilities who may participate in statewide **alternate assessments** each year (ESSA Section 1111(b)(2)(d)(i)). This cap has been in effect since the 2016-2017 school year and applies to all states. Participation in alternate assessments is limited to only students that meet the eligibility definition of a student with *the most significant cognitive disabilities*.

Trainings and publications clarify the alternate assessment participation guidelines of the state's eligibility definition of students with the most significant cognitive disabilities, plus additional relevant resources, including participation data for your district each year since 2017, is available at [www.doe.mass.edu/mcas/alt/essa/](http://www.doe.mass.edu/mcas/alt/essa/). Your district has assessed more than one percent of the total number of assessed students on the MCAS-Alt. Educators and administrators in your district must closely examine which students are designated for those assessments. Although your district may already have made progress in reducing the number being alternately assessed, the overall percentage is still above the one percent threshold. We look forward to collaborating with your district to fully implement the revised MCAS-Alt eligibility definition and share evolved guidance to assist your IEP teams make evidenced-based decision on which students may participate in alternate assessments.

You or your designee must respond to this memorandum with the information requested in the attached Statement of Assurances **no later than January 30, 2026**. The information you provide will be used to support the Massachusetts application for a waiver of the "one percent cap" from the U.S. Department of Education for the 2025–2026 school year.

This request is being sent by email rather than regular mail so that you (or your designee) can respond electronically and return your district's response more efficiently. Please address your responses **by January 30** to Robert W. Pelychaty, Manager of Inclusive Assessment, at [robert.pelychaty@mass.gov](mailto:robert.pelychaty@mass.gov). If you have questions or wish to discuss this further, please contact the office of Student Assessment Services at 781-338-3625 or by email at [mcas@mass.gov](mailto:mcas@mass.gov).

Thank you for your attention to this timely and important information.

## STATEMENT OF ASSURANCES

Please complete the information on this form and submit it no later than January 30, 2026, to Robert Pelychaty, Manager of Inclusive Assessment Office of Student Assessment, at [Robert.Pelychaty@mass.gov](mailto:Robert.Pelychaty@mass.gov).

- District:
- Name of person completing this form:
- Title:
- The superintendent has reviewed and approved the submission of the following responses to DESE.  Yes  No  
(Please note that all responses are available to the public upon request.)

Please check one (\* new for the 2025–2026 school year)

My district does not expect to exceed 1.0 percent of the number of tested students taking the MCAS-Alt in the 2025–2026 school year. (Complete questions 1-3 on this form only.)

\* My district expects to exceed 1.0 percent but less than 1.75 percent of the number of tested students taking the MCAS-Alt in the 2025–2026 school year. (Complete all questions on this form.)

\* My district expects to exceed 1.75 percent of the number of tested students taking the MCAS-Alt in the 2025–2026 school year and acknowledges that this is significantly higher than the state average and a DESE-sponsored MCAS-Alt eligibility training may be warranted. (Complete all questions on this form.)

Your district’s MCAS-Alt participation data is available at [www.doe.mass.edu/mcas/alt/essa/participants-district.xlsx](http://www.doe.mass.edu/mcas/alt/essa/participants-district.xlsx).

1. Please check Yes or No for each of the following statements.

Yes	No	Updated Assurances for 2025–2026 School Year
<input type="checkbox"/>	<input type="checkbox"/>	IEP teams follow the state’s (DESE’s) previously updated guidelines and eligibility criteria for students with the most significant cognitive disabilities (available online at <a href="http://www.doe.mass.edu/mcas/alt/essa/">www.doe.mass.edu/mcas/alt/essa/</a> ) regarding which students should take the MCAS-Alt.
<input type="checkbox"/>	<input type="checkbox"/>	For each student participating in the MCAS-Alt, the district completed and retained a copy of the required <a href="#">Companion document: Alternate Assessment Participation Tool</a> .
<input type="checkbox"/>	<input type="checkbox"/>	The district provides IEP teams with the updated annual trainings materials and presentation (available at <a href="http://www.doe.mass.edu/mcas/alt/essa/">www.doe.mass.edu/mcas/alt/essa/</a> ) on the requirements to limit the number of students taking the MCAS-Alt to one percent statewide.
<input type="checkbox"/>	<input type="checkbox"/>	The district considered the use of special access accommodations (such as read-aloud, scribe, word prediction, and other assistive technology programs for the student to access the standard academic assessment, prior to designating the student to the MCAS-Alt.

<input type="checkbox"/>	<input type="checkbox"/>	<p>The district provides opportunities for interaction and collaboration among general and special educators to meet the need of adapting the academic curriculum for students with significant cognitive disabilities.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<p>The districts informs all parents, in writing, when their child is designated to take an alternate assessment. Written statements include information about how this designation may affect their child’s ability to eventually meet graduation requirements. (Notification of parents is required under ESSA. Sample Parent Notification Letters with translations are available at <a href="http://www.doe.mass.edu/mcas/alt/essa/">www.doe.mass.edu/mcas/alt/essa/</a>).</p>
<input type="checkbox"/>	<input type="checkbox"/>	<p>The district has provided or will provide professional development to general and special education staff in the following areas:</p> <ul style="list-style-type: none"> <li>• Identification of appropriate accommodations for instruction and assessment.</li> <li>• Implementation of universal design for learning principles in the classroom.</li> <li>• Development of strategies to include students with the most significant cognitive disabilities in the general academic curriculum.</li> </ul>

For any boxes marked “No” above, please describe the reason and how the district plans to address this in the coming school year:

2. How did the district determine if any disproportionate representation exists with students assigned to the MCAS-Alt in the following subgroups: English Learners, Black or African American, Asian, American Indian or Alaska Native, Hispanic or Latino, White, Male, Female, Low Income?

(\*DESE provides [new tools](#) and [resources](#) informed by the National Center on Educational Outcomes [NCEO] outlining specific steps for examining disproportionality in alternate assessments [nceo.umn.edu/docs/OnlinePubs/NCEOBrief18.pdf](http://nceo.umn.edu/docs/OnlinePubs/NCEOBrief18.pdf).)

\*Describe the method used to determine if disproportionality exists in the district.

Please check Yes or No to indicate whether your district is aware of disproportionality.

No, at this time our district is not aware of the disproportionate representation of students taking the MCAS-Alt.

- Yes, the district is aware that there is disproportionate representation.

If yes, please describe the steps the district will take in the coming year (or the steps already taken) to find the root cause of and reduce the effects of any disproportionate representation of students in the above-referenced subgroups among those taking the MCAS-Alt:

- 3.** Please review the statements and indicate below whether these statements reflect your district’s practices.

When designating a student to take the MCAS-Alt, our district’s decisions are not based on whether the student:

- a. was absent excessively
- b. performed poorly (or for whom a poor performance was anticipated) on MCAS tests
- c. took MCAS-Alt previously
- d. is in a specific disability category
- e. is an English learner
- f. is from a low-income family or is a child in foster care
- g. would contribute positively to the school’s accountability rating if by teams the student took the MCAS-Alt.

Yes, our district follows the above guidelines.

No, our district does not follow the above guidelines.

If no, please describe the steps your district will take to implement these guidelines in the future:

Questions 4–10 should be completed only if your district expects to exceed one percent of the number of tested students taking the MCAS-Alt in 2025–2026.

- 4.** What was your district’s actual percentage of students participating in MCAS-Alt in SY 2024–25?

\_\_\_\_\_ %

- 5.** What is your district’s projection for the percentage of students participating in MCAS-Alt in SY 20245–26?

\_\_\_\_\_ %

6. Are there unique circumstances in the district (e.g., specialized schools or programs) that might draw large numbers of students with the most significant cognitive disabilities to live in the district, which in turn might result in an excess of one percent of students taking the MCAS-Alt? If so, provide a description of those unique circumstances.

7. How does your district's primary disability categories data in SY 2024–25 compared to the state's primary disability categories data, for students participating in the MCAS-Alt? You may use the worksheet on the last page of this document to help you make this comparison.

List primary disability categories in your district that were above state percentage in SY 2024–25:

List primary disability categories in your district that were below state percentage in SY 2024–2025:

8. After reviewing data on students with the most significant cognitive disabilities, were there any patterns that emerged? For example, were students who attend a specific class or school more likely to participate in the alternate assessment? Does the participation rate vary by content area?

9. Are IEP decisions in all schools within your district consistently implementing the state's guidelines and criteria (available online at [www.doe.mass.edu/mcas/alt/essa/](http://www.doe.mass.edu/mcas/alt/essa/) regarding which students should take the MCAS-Alt? Please consider the following for all IEP teams within your district, including students in outplacements.

- Do the chairpersons meet on a regular basis?
- Do all IEP teams understand the revised definition of students with the most significant disabilities?
- Do all IEP teams first consider whether students could participate in the general assessment with appropriate support and accommodations in each content area?

**10.** Describe your district's action plan to assist schools to verify that only the eligible students (those that meet the new definition of a student most significant cognitive disabilities) are participating in the alternate assessment. (Plan should include actionable steps and how the district will monitor progress or address challenges, e.g., ensured evaluation teams are collecting specific evaluation scores on cognitive and adaptive behavior.)

## District Worksheet: Percentage of Students in Each Primary Disability Category Taking the MCAS-Alt

Instructions: The table below may be used to compare your district's rate of students taking the MCAS-Alt with the state average for students in each disability category. Complete the empty cells and compare this information with statewide percentages in the right-hand column.

By comparing your district's percentage in each disability category with the state's percentage, you will be able to determine whether any disability categories should be examined for over-representation among students taking the MCAS-Alt. The percentage of students assessed by MCAS-Alt in each disability category can be determined by dividing the number of students in a disability category taking the MCAS-Alt by the number of all students (MCAS + MCAS-Alt) assessed in that disability category.

For example, if 100 students with autism participated in MCAS and MCAS-Alt in grades 3–8 and 10, and 35 of those students took the MCAS-Alt, then  $35/100 = 35\%$ . Since this is higher than the percentage of students with autism statewide taking MCAS-Alt (21.3% from the table below), the autism disability category should be examined for over-representation among students taking MCAS-Alt, and students should be reconsidered to take the general assessment with accommodations.

District information on student assessment formats (i.e., tested versus alternate assessment) and the nature of primary disabilities can be found in your district's DropBox at [gateway.edu.state.ma.us/](http://gateway.edu.state.ma.us/) in the file: Spring2025\_MCAS\_official\_[your district code].csv. Additional instructions for using the district worksheet will be available at the [MCAS-Alt's ESSA website](#).

After completing the worksheet below, identify primary disability categories in your district that should be examined more closely for over-representation when compared with the state averages.

Content Area (Check one):     ELA     Mathematics     Science and  
Technology/Engineering

Nature of Disability (SIMS Disability Code)	# in Disability Category Taking <b>MCAS</b> (District)	# in Disability Category Taking <b>MCAS-Alt</b> (District)	% in Disability Category Taking MCAS-Alt (District)	% in Disability Category Taking MCAS-Alt (State)
Autism (11)				19.2%
Communication (03)				0.8%
Developmental Delay (13)				3.1%
Emotional (05)				0.1%
Health (07)				0.5%
Intellectual Disability (01)				31.8%
Multiple Disabilities (10)				39.5%
Neurological (12)				7.3%
Physical (06)				3.7%
Sensory/Deafblind (09)				21.1%
Sensory/Hard of Hearing or Deaf (02)				5.0%
Sensory/Vision Impairment or Blind (04)				9.4%
Specific Learning Disability (08)				0.1%

## **Notice of Intent to Apply for One-Percent Waiver Extension**

Documentation of Posting

Public Comments Received (To be added in early January 2026, following end of public comment period)

Notice of Intent announced on 11/25/25 and posted on 11/28/25

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## Student Assessment Update November 25, 2025

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### News from DESE Student Assessment Services

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#### **Contents:**

##### **For All Schools**

1. [MCAS BYOD Participation: Notification Deadlines for Winter and Spring 2026](#)
2. [MCAS Individual Student Reports \(ISRs\) Available in the MCAS Portal](#)
3. [MCAS Alternate Assessment \(MCAS-Alt\) Updates](#)
4. [WIDAACCESS Updates](#)

##### **For Grade 8**

1. [Reminder: MCAS Civics State-level Performance Task Topic for Spring 2026](#)

##### **For High Schools**

1. [February Science Student Registration Window: December 1–12](#)
2. [Requesting a Waiver from the MCAS CBT Expectation for the February Science Tests: Submit by December 10](#)
3. [November Retest MCAS Portal Cleanup](#)

##### **For Selected Schools**

1. [Reminder: NAEP Testing 2026](#)
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### **3. MCAS Alternate Assessment (MCAS-Alt) Updates**

#### **a. Intent to Seek a Waiver from the One-Percent Limit on Alternate Assessments**

DESE is issuing a Notice of Intent to Apply for an extension of its waiver from the U.S. Department of Education's one-percent limit on the number of students who can take alternate assessments (the MCAS-Alt), which will be available soon on the [main MCAS webpage](#). Massachusetts has made steady progress in reducing the number of students taking the MCAS-Alt; however, reaching the one-percent threshold may take more years. In pursuit of this goal, please see the [guidance and resources](#) for more information. The waiver, if granted, will permit DESE to continue to provide oversight, resources, and training to help Individualized Education Program (IEP) teams make informed assessment decisions for students with disabilities.

DESE welcomes the public's comments regarding its intent to apply for this waiver. Comments may be submitted via email to [mcas@mass.gov](mailto:mcas@mass.gov) until **Wednesday, December 31**.

# Notice posted to MCAS and MCAS-Alt Headlines – 11/28/25



**Massachusetts Comprehensive Assessment System**

Student Assessment

MCAS

- Student Participation
- Statewide Testing Schedule
- Test Administration Resources
- Accessibility and Accommodations
- Test Design and Development
- Test Questions and Practice Tests
- Student Work/Scoring Guides
- Technical Reports
- Results

## Massachusetts Comprehensive Assessment System News Archives

**MCAS Updates Archive**

**2025**

- 11/28/2025** Notice of Intent to Apply and Opportunity for Comment Regarding a Waiver Extension of the Federal Requirement Related to the Percentage of Students Who Participate in Statewide Alternate Assessments
- 11/25/2025** Student Assessment Update November 25, 2025
- 11/13/2025** Student Assessment Update November 13, 2025
- 10/28/2025** Student Assessment Update October 28, 2025
- 10/15/2025** Student Assessment Update October 15, 2025

**Featured**

Student Assessment Updates

**Contact Us**

Office of Student Assessment Services

**MCAS Alternate Assessment (MCAS-Alt)**

**MCAS-Alt Updates**

- 11/28/2025** Notice of Intent to Apply and Opportunity for Comment Regarding a Waiver Extension of the Federal Requirement Related to the Percentage of Students Who Participate in Statewide Alternate Assessments

[MCAS-Alt Updates Archive](#)

### Background

The Massachusetts Comprehensive Assessment System (MCAS) is the Commonwealth's statewide assessment program developed in response to the Education Reform Act of 1993. MCAS, along with other components of education reform, is designed to strengthen public education in Massachusetts. MCAS is designed to measure a student's knowledge of key concepts and skills and to ensure that all students participate in a challenging curriculum based on the Massachusetts *Curriculum Frameworks*.

**All** students educated with Massachusetts public funds, including students with disabilities, must participate in MCAS using one of the following formats:

- Routine (standard) MCAS testing
- MCAS testing using one or more test accommodation(s)
- MCAS Alternate Assessment (MCAS-Alt)

Students with disabilities take standard computer-based or paper-and-pencil MCAS tests, either with or without accommodation, at the grade identified for assessment in that subject.

## Commissioner's Weekly Update

2025

December 1, 2025 [🔗](#)

1. Message from Commissioner Martinez
2. Picture of the Week: Statewide High School Graduation Framework Announcement
3. Accountability and Assistance Advisory Council to Meet
4. Family Engagement around Pre-K Language and Literacy Development
5. December Sessions on Pre-K Language and Literacy Assessment
6. Medical and Behavioral Health Emergency Response Plans
7. Intent to Seek a Waiver from the Limit on Alternate Assessments

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### **7. Intent to Seek a Waiver from the Limit on Alternate Assessments:**

The Department has issued a Notice of Intent to Apply for an extension of its waiver from the U.S. Department of Education's 1 percent limit on the number of students who can take alternate assessments (the MCAS-Alt).

Massachusetts has made steady progress in reducing the number of students taking the MCAS-Alt but has not reached the 1 percent threshold yet. For more information, please download [this memo about the state's extension request](#), which includes details on how the state is working toward this goal and resources related to this effort. The waiver, if granted, will permit DESE to continue to provide oversight, resources, and training to help Individualized Education Program (IEP) teams make informed assessment decisions for students with disabilities. The Department welcomes comments from the public regarding its intent to apply for this waiver. [Comments may be submitted via email](#) until **Wednesday, December 31**.

Request for a Waiver Extension for the 2025–2026 School Year from the 1.0 Percent Cap on the Percentage of Students of Students with the Most Significant Cognitive Disabilities Who May Be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)

Public Comments received by Massachusetts Department of Elementary and Secondary Education as of December 31, 2025

**From:** [Pelychaty, Robert \(DESE\)](#)  
**To:** "[CYarrell@cleweb.org](#)"; "[skochenour@cleweb.org](#)"; "[pweckstein@cleweb.org](#)"  
**Cc:** [MCAS \(DESE\)](#); [Luz, Sarah \(DESE\)](#); [Stapel, Michol \(DESE\)](#)  
**Subject:** RE: Center for Law and Education's public comment on AA-AAAS 1% cap waiver request  
**Date:** Friday, January 2, 2026 10:11:00 AM  
**Attachments:** [image001.png](#)

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Dear Chris, Sky and Paul:

We received your comments dated December 31, 2025, on behalf of the Center for Law and Education in response to the Department of Elementary and Secondary Education's (DESE) public notice document, "Notice of Intent to Apply and Opportunity to Comment on DESE's Waiver Extension Request Related to the Percentage of Students Who Participate in the MCAS Alternate Assessment." We are reviewing your feedback and shared the comments with other relevant offices at DESE.

-  
Thank you again for sending your comments.



**Robert W. Pelychaty** (*Pronouns: he, him, his*)  
**Manager of Inclusive Assessment**  
Massachusetts Department of Elementary and Secondary Education  
*Serving pre-K through adult learners*

781-338-3625  
[Robert.pelychaty@mass.gov](mailto:Robert.pelychaty@mass.gov)  
135 Santilli Highway, Everett, MA 02149  
***Your Presence is Powerful***

---

**From:** Chris Yarrell <[CYarrell@cleweb.org](mailto:CYarrell@cleweb.org)>  
**Sent:** Wednesday, December 31, 2025 10:41 AM  
**To:** MCAS (DESE) <[MCAS@mass.gov](mailto:MCAS@mass.gov)>  
**Cc:** [skochenour@cleweb.org](mailto:skochenour@cleweb.org); [pweckstein@cleweb.org](mailto:pweckstein@cleweb.org)  
**Subject:** Center for Law and Education's public comment on AA-AAAS 1% cap waiver request

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

To whom it may concern,

Attached please find the Center for Law and Education's public comment on DESE's intent to seek a waiver of the 1% cap on AA-AAAS for the 2025-26 school year.

Thank you.

Warmly,  
Chris

**Chris Yarrell**  
Staff Attorney  
Center for Law & Education  
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# CENTER FOR LAW AND EDUCATION

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December 31, 2025

Massachusetts Department of Elementary and Secondary Education  
135 Santilli Highway  
Everett, MA 02149

To Whom It May Concern:

The Center for Law and Education (“CLE”) appreciates the opportunity to provide comments on the Massachusetts Department of Elementary and Secondary Education’s (“DESE”) request to extend its waiver of the federally imposed 1% cap on participation in alternate assessments aligned with alternate achievement standards (“AA-AAAS”).

CLE is a non-profit resource, advocacy, and support organization that strives to make high-quality education a reality for all students and to help low-income communities address their education problems effectively. CLE represents low-income students and their families and submits these comments on behalf of those who are students with disabilities who participate in alternate assessments aligned with alternate academic achievement standards or who are vulnerable to being found eligible for such participation under DESE’s current policy.

CLE strongly opposes DESE’s waiver extension request because DESE has not demonstrated, as required by 20 U.S.C. § 7861(d)(2), that previous waivers have been effective in enabling Massachusetts to meet the 1% cap, ensure students are not erroneously assigned to take AA-AAAS, or improve student achievement. Furthermore, Massachusetts’s continued failure to safeguard students’ right to an educational program aimed at achieving the knowledge and skills all students should master works grievous harm, undermines both immediate and long-term opportunities, and disproportionately affects students of color, multilingual learners, and students from low-income families – making clear that granting Massachusetts a waiver extension for the seventh time (totaling eight waivers since the 2017–18 school year) is therefore also not in the public interest.

\*\*\*\*\*

Assigning a student to an AA-AAAS is an intentional decision that determines, because of the student’s disability, that the student will be educated to lower achievement standards than their peers with less significant disabilities and those without disabilities. In Massachusetts, that decision removes students from the instructional program the State has declared all other students must receive—an educational program aimed at achieving the knowledge and skills all students should master. Every erroneous assignment therefore inflicts a grievous harm, one that can significantly impair a student’s immediate and long-term educational trajectory. For that reason, a state that uses AA-AAAS bears a paramount civil rights responsibility to ensure that only students for whom it is truly impossible, solely because of their disability and even with the best supports and interventions, to learn to grade-level achievement standards may be considered

for alternate assessment. Failing to reach certainty on that impossibility is what constitutes erroneous assignment.

That meaning is obvious and inherent in Section 504, along with Title I. When the state identifies the knowledge and skills that all students should master and tasks schools to enable them to do so, but then exempts schools from that task for certain students explicitly because of their disabilities as that one exception for whom that will not be expected (rather than seeking to address their needs so that they may benefit from that mandate like other students), that is on its face grievous discrimination on the basis of disability. What then could possibly make such denial permissible? Only an air-tight, error-free determination that a student is truly and permanently incapable.

Many students, both with and without disabilities, fail to attain the knowledge and skills expected for all, for a variety of reasons (albeit disproportionately students of color and students from economically disadvantaged families). And once students have fallen significantly behind grade level, the likelihood of that failure goes up. A variety of factors go into that failure. But schools do not, and cannot, remove other students from the assessments and curricula tied to those grade-level standards. It is essential to recognize that those other factors affect students with disabilities no less than students without, and to ensure that those factors play no role in the decision to remove them from the assessment and program standards expected for all.

The harm is exacerbated by the one-size-fits all nature of the alternate achievement standards of AAAS-AA in Massachusetts, as in other states. Individual students removed from the grade-level achievement standards are dropped into a single set of alternate achievement standards, which can be set extremely low, regardless of the variation among such students of the extent of their cognitive impairment and in what they may be able to achieve.

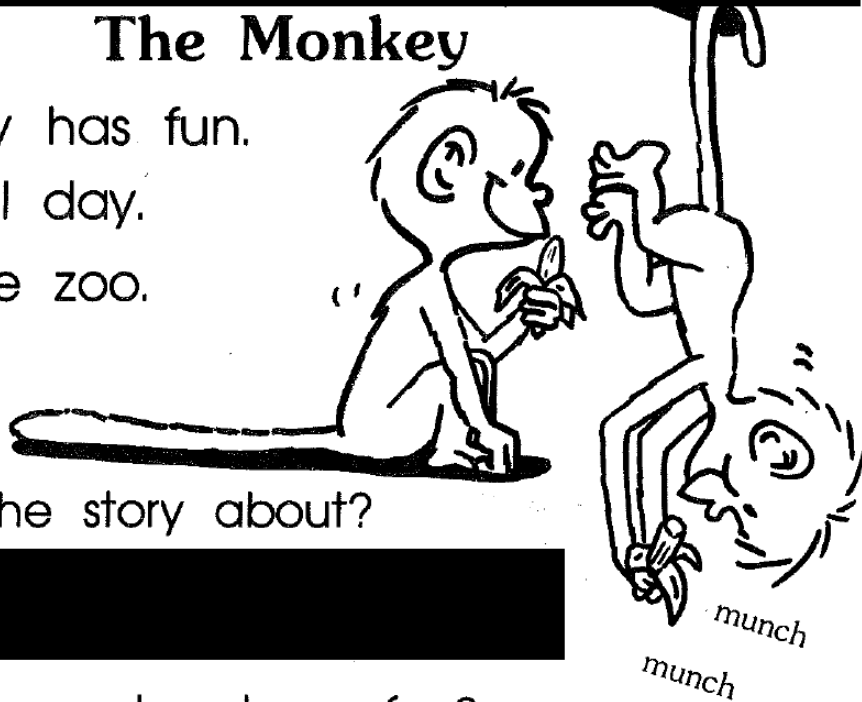
With all this in mind, it is also essential to understand and act upon the recognition that the underlying goal and legal mandate is to eliminate any student's wrongful individual assignment to the AA-AAAS, and that the 1% cap is merely a tool to help achieve that goal and comply with that mandate. Meeting the cap cannot be a substitute for it. (And at the same time, the best and most effective way to bring the rates down is to reform the processes by which students are placed in order to eliminate the errors.) A state with an average below 1% will still have many districts above it. But more importantly, even in a district below it, that overall rate does not mean that students are not being erroneously placed in the Alt. And for those students and their families, there is no solace in the fact that the number of other such students has gone down. The "Individuals" in the title of IDEA is no accident.

For those who may feel comforted by the federal requirement that students assigned to AA-AAAS must nevertheless be taught to grade-level *content* standards, we urge you to look at an example of what that actually looks like (see the following page):

Name \_\_\_\_\_

## The Monkey

The monkey has fun.  
He plays all day.  
He is in the zoo.



1. Who is the story about?

2. Does the monkey have fun?

3. Does the monkey play?

4. When does the monkey play?

5. Where is the monkey?



Massachusetts has a long history of failing to ensure that local educational agencies (“LEAs”) do not erroneously assign students to AA-AAAS, and this failure has fallen most heavily on students already facing systemic barriers to educational attainment. Multilingual learners, African American students, Hispanic/Latinx students, and students from low-income families have, for years, been disproportionately routed into this non-grade-level track—despite the fact that these disparities reflect inequitable systems, not inherent incapacity.

CLE strongly opposes this waiver extension because DESE has not demonstrated, as required by 20 U.S.C. § 7861(d)(2), that previous waivers have been effective in enabling Massachusetts to meet the 1% cap, ensure students are not erroneously assigned to take AA-AAAS, or improve student achievement. Massachusetts’s continued failure to safeguard students’ right to an educational program aimed at achieving the knowledge and skills all students should master works grievous harm, undermines both immediate and long-term opportunities, and disproportionately affects students of color, multilingual learners, and students from low-income families. Granting Massachusetts a waiver extension for the seventh time (totaling eight waivers since the 2017–18 school year) is therefore not in the public interest.

The 1% cap exists to “ensur[e] that all students, including children with disabilities, are held to the highest standards of academic achievement, and to protect against the inappropriate use of the alternate assessment.”<sup>1</sup> A waiver extension for a state that has continuously failed to meet the cap and ensure students are not inappropriately placed on AA-AAAS “[vitiat]e[s]...the statutory restriction on a State’s use of an AA–AAAS....”<sup>2</sup>

We ask USED to act with the urgency this issue demands and respectfully request that USED deny Massachusetts’s request for a waiver extension and hold the Commonwealth accountable for failing to ensure that students are not erroneously assigned to take AA-AAAS.

Sincerely,

Chris Yarrell  
Sky Kochenour

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<sup>1</sup> Every Child Achieves Act of 2015, Report of the Committee on Health, Education, Labor, and Pensions Together with Additional Views to Accompany S.1177 (Mar. 17, 2016), at 18.

<sup>2</sup> 81 Fed. Reg. 88909.

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## Part 1

Part I of these comments identifies the foundational considerations we believe the U.S. Department of Education (“USED”) must assess when determining whether to grant a waiver or waiver extension request. We begin by situating the 1% cap within the broader assessment framework established under Title I and explaining why a state’s numerical compliance with the cap is not, standing alone, determinative of lawful use of AA-AAAS. The statutory and regulatory scheme makes clear that the cap functions as a compliance safeguard—not as a proxy for ensuring appropriate assessment placement.

We then explain how a state’s failure to ensure that local educational agencies (“LEAs”) appropriately assign students to AA-AAAS constitutes a violation of the state’s affirmative obligations under federal civil rights laws, as well as core provisions of Title I of the Elementary and Secondary Education Act. Next, we examine the concrete educational consequences of erroneous AA-AAAS assignment, including its impact on students’ rights to receive a free appropriate public education in the least restrictive environment.

Finally, we underscore that 20 U.S.C. § 7861(d)(2) and 34 C.F.R. § 200.6(c)(4) impose independent and substantive requirements on any state seeking a waiver extension. To lawfully grant such a request, USED must find that the state has demonstrated meaningful progress not only in implementing the prior year’s corrective plan, but also in actually reducing both the number and percentage of students inappropriately assessed using AA-AAAS. We offer this analysis to support USED’s review of this and other waiver requests nationwide.

### **I. Whether a state is using AA-AAAS appropriately turns not on that state’s compliance (or noncompliance) with the 1% threshold, but rather on the state ensuring that LEAs do not erroneously assign students to take AA-AAAS**

The 1% cap is an extremely narrow exception to the core requirements of 20 U.S.C. § 6311(b)(2)(A) and (B), which mandate that all students be assessed using the same academic assessments aligned to the same academic achievement standards. Its purpose is not to create a safe harbor for states, but rather to “ensur[e] that all students, including children with disabilities, are held to the highest standards of academic achievement, and to protect against the inappropriate use of the alternate assessment.”<sup>3</sup> Proper use of AA-AAAS therefore turns not on whether a state meets—or fails to meet—the 1% threshold, but on whether the state has ensured that local educational agencies (“LEAs”) do not erroneously assign students to take AA-AAAS.

The 1% cap serves as a statutory tool to help states achieve this end. As a practical matter, a state that effectively ensures appropriate AA-AAAS placement would be expected to fall below the 1% threshold, given the limited incidence of students with cognitive disabilities severe enough to warrant even consideration for alternate assessment. But the inverse is not true. A state’s compliance with the 1% cap, standing alone, does not establish that it has met its obligation to prevent erroneous assignment.

A state may fall below the 1% threshold while still having multiple—potentially many—LEAs that assess students using AA-AAAS at rates well above 1% of their assessed population. And

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<sup>3</sup> Every Child Achieves Act of 2015, Report of the Committee on Health, Education, Labor, and Pensions Together with Additional Views to Accompany S.1177 (Mar. 17, 2016), at 18 (emphasis added).

even LEAs operating below the cap may nevertheless be erroneously assigning substantial numbers of students to alternate assessments. Aggregate compliance thus obscures individual harm and masks systemic misapplication at the district and school levels.

In sum, independent of the overall number or percentage of students assessed using AA-AAAS statewide, the question of whether a state has ensured that students are not erroneously assigned to AA-AAAS remains central to the waiver inquiry and is directly relevant to whether a waiver or waiver extension may lawfully be granted.

## **II. A state that fails to ensure LEAs do not erroneously assign students to AA-AAAS violates its affirmative obligations under the civil rights laws, as well as provisions of Title I of the ESEA**

Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 prohibit recipients of federal financial assistance from discriminating on the basis of disability. As with all civil rights statutes, these laws impose affirmative obligations on state educational agencies (“SEAs”) and LEAs not only to refrain from discriminatory conduct, but to eliminate discrimination, prevent its recurrence, and remedy its effects. A recipient’s failure to meet these obligations constitutes discrimination on the basis of disability.

Decisions by LEAs to assign students to an AA-AAAS raise particularly acute discrimination concerns because they are explicitly predicated on disability. Assigning a student to an AA-AAAS is an intentional determination that, because of the student’s disability, the student will be held to lower academic achievement standards than both peers with less significant disabilities and peers without disabilities. In Massachusetts, that determination removes the student from the instructional program the State has deemed essential for all other students—an educational program aimed at achieving the knowledge and skills all students should master. These disability-based exclusions trigger the State’s most exacting civil rights responsibilities.

Accordingly, the State bears a clear and paramount obligation to ensure that LEAs do not make these intentional, disability-based determinations erroneously. That obligation is reinforced by Title I of the Elementary and Secondary Education Act (ESEA), which requires states to ensure that all students are taught to the same academic content standards and assessed against the same achievement standards, subject only to the narrowest of exceptions.

A state that fails to prevent LEAs from erroneously assigning students to take AA-AAAS therefore violates its affirmative obligations under federal civil rights law, as well as its statutory duties under Title I of the ESEA.

## **III. A state’s failure to ensure that LEAs do not erroneously assign students to AA-AAAS has significant practical ramifications for those students’ right to receive a free appropriate education in the least restrictive environment**

The Individuals with Disabilities Education Act (“IDEA”) expressly provides that “special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily”—a mandate commonly referred to as the least restrictive environment, or “LRE,”

requirement.<sup>4</sup> The legislative history of the IDEA underscores that this provision is intended to integrate students with disabilities into the mainstream educational experience to support their social, emotional, and academic development.<sup>5</sup>

On its face, designation to take an AA-AAAS should not dictate that a student receive special education services in settings divorced from the general education environment. Yet recent empirical evidence reveals a persistent pattern of segregation for students with the most significant cognitive disabilities. Across a 15-state sample encompassing nearly 40,000 students, “a total of 93% [were] served primarily in self-contained classrooms, separate schools, home[s], hospital[s], or residential settings.”<sup>6</sup> This reality persists despite a substantial body of research demonstrating the academic and developmental benefits of inclusive educational placements. Indeed, students with significant cognitive disabilities continue to be placed in segregated settings “at a substantially greater rate...than... students in any single IDEA category.”<sup>7</sup>

This de facto segregation of students who participate in AA-AAAS undermines the legislative purpose of the LRE mandate,<sup>8</sup> while reinforcing harmful assumptions that students with significant cognitive disabilities are categorically different and undeserving of inclusion.<sup>9</sup> Such practices marginalize students and erode the IDEA’s broader statutory framework, which is designed to dismantle barriers to access and ensure that students with disabilities receive a free appropriate public education aligned with the academic standards the State has established for all students. When students are erroneously assigned to take AA-AAAS and subsequently placed in overly restrictive settings, the harm is compounded—and public confidence in the IDEA as a meaningful safeguard for students with disabilities is further diminished.<sup>10</sup>

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<sup>4</sup> 20 U.S.C. § 1412(a)(5)(A).

<sup>5</sup> See Robert T. Stafford, *Education for the Handicapped: A Senator’s Perspective*, 3 VT. L. REV. 71, 72 (1978).

<sup>6</sup> Harold Kleinert & Jacqui Kearns, *Reconsidering LRE: Students with the Most Significant Cognitive Disabilities and the Persistence of Separate Schools*, Ties Center, <https://publications.ici.umn.edu/ties/reconsidering-lre/main>.

<sup>7</sup> *Id.*

<sup>8</sup> See Robert T. Stafford, *Education for the Handicapped: A Senator’s Perspective*, 3 VT. L. REV. 71, 72 (1978). (Observing that the IDEA’s LRE provision purpose, according to a principal drafter of the provision, is to “represent[] a gallant and determined effort to terminate the two-tiered invisibility once and for all with respect to exceptional children in the Nation’s school systems.”).

<sup>9</sup> See Heather J. Russell, *Florence County School District Four v. Carter: A Good “IDEA”; Suggestions for Implementing the Carter Decision and Improving the Individuals with Disabilities Education Act*, 45 AM. U. L. REV. 1479, 1482 (1996) (“[E]ncouraging access of handicapped students to public schools[,] [Mills and PARC] spurred Congress in 1974 to increase federal funding for existing programs and require, for the first time, that states adopt as their goal to ‘provide full educational opportunities to all handicapped children.’”) (quoting *Education of the Handicapped Amendments of 1974*, Pub. L. No. 93-380, 88 Stat. 578, 580); see Kerrigan O’Malley, *From Mainstreaming to Marginalization?—IDEA’s De Facto Segregation Consequences and Prospects for Restoring Equity in Special Education*, 50 U. RICH. L. REV. 951, 952-53 (2016); see also 20 U.S.C. § 6311(b)(2)(D)(i).

<sup>10</sup> See Jennifer A. Kurth, Andrea L. Ruppard, Samantha Gross Toews, Katie M. McCabe, Jessica A. McQueston & Russell Johnston, *Considerations in Placement Decisions for Students with Extensive Support Needs: An Analysis of LRE Statements*, 44 RSCH. & PRAC. FOR PERS. WITH SEVERE DISABILITIES 3, 9 (2019) (“Contrary to guidelines in IDEA [§ 1412(a)(5)], which compel IEP teams to only remove students from general education ‘when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily,’ no LRE justification statement in this analysis referred to supplementary aids and services, nor any discussion of how these were considered when making LRE decisions.”).

Given the strong association between AA-AAAS assignment and placement in restrictive educational environments, the marginalization that often follows, and the heightened harm that occurs when students are erroneously assigned to AA-AAAS and removed from the general education environment on that basis, it is critical that, in evaluating a waiver extension request, USED examine whether students designated to take AA-AAAS are being inappropriately segregated from mainstream educational settings. Because students educated in segregated environments frequently lack meaningful access to grade-level instruction, this inquiry is directly supported by 20 U.S.C. § 7861(d)(2)(A), which requires a state seeking a waiver extension to demonstrate that “the waiver [they are currently operating under] has contributed to improved student achievement.”

#### **IV. A state must demonstrate that it has met the independent requirements of both 20 U.S.C. § 7861(d)(2) and 34 C.F.R. § 200.6(c)(4) in order to be eligible to receive a waiver extension**

To receive an extension of a waiver under 20 U.S.C. § 7861, a state must “demonstrate” three distinct statutory elements. First, the state must show that the waiver “has been effective in enabling the State...to carry out the activities for which the waiver was requested.”<sup>11</sup> Second, the state must demonstrate that “the waiver has contributed to improved student achievement.”<sup>12</sup> Third, the state must establish that “the extension is in the public interest.”<sup>13</sup>

These statutory requirements operate independently of—and in addition to—the regulatory requirements set forth in 34 C.F.R. § 200.6(c)(4). Under that regulation, “states requesting to extend a waiver for an additional year” must satisfy all requirements applicable to an initial waiver request, including submission of a plan describing the steps the state will take to achieve compliance with the 1% cap, such as reducing overall participation rates and ensuring that LEAs do not inappropriately assign students to take AA-AAAS. The regulation further requires states to “demonstrate substantial progress towards achieving each component of the prior year’s plan and timeline required under paragraph (c)(4)(iv) of this section.” While interpretation of the regulatory framework is informed by 20 U.S.C. § 7861(d)(2), compliance with the regulation does not displace the independent statutory requirement that the waiver itself must have been effective in accomplishing the purpose for which it was granted.<sup>14</sup>

That purpose is unambiguous. The 1% cap exists to “ensur[e] that all students, including children with disabilities, are held to the highest standards of academic achievement, and to protect

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<sup>11</sup> 20 U.S.C. § 7861(d)(2)(A).

<sup>12</sup> *Id.*

<sup>13</sup> 20 U.S.C. § 7861(d)(2)(B).

<sup>14</sup> This is consistent with USED’s recognition, in the context of initial requests for a waiver, that 20 U.S.C. § 7861 contains additional requirements from those spelled out in 34 C.F.R. § 200.6. *See* 81 Fed. Reg. 88910 (“The criteria to receive a waiver of the 1.0 percent cap in § 200.6(c)(4) also help to reinforce the other statutory requirements that a State seeking a waiver, in general, must meet (as described in section 8401(b)(1)(C), (D), and (F)), including that the waiving of the requested requirements will advance student academic achievement, that the SEA will monitor and regularly evaluate the effectiveness of its waiver plan, and in cases where a State is seeking to waive statutory requirements related to student assessment and data reporting under title I, part A, that the SEA and its LEAs will maintain or improve transparency in reporting to parents and the public on student achievement, including subgroups of students.”).

against the inappropriate use of the alternate assessment.”<sup>15</sup> Waivers under 20 U.S.C. § 7861 are intended to provide temporary flexibility for states that anticipate exceeding the cap while they work toward compliance. Accordingly, the statutory requirement that a waiver “has been effective” cannot be satisfied by procedural compliance alone. It requires evidence of tangible results—namely, that the waiver enabled meaningful progress in reducing participation rates and addressing the overuse or misapplication of AA-AAAS.<sup>16</sup> The statutory language thus ties waiver effectiveness directly to outcomes: reducing participation toward the 1% cap and ensuring that students are not erroneously assigned to AA-AAAS, not merely implementing a plan designed to achieve those ends.

Taken together, the statute and regulations impose a dual and independent obligation. A state must both (1) develop and implement a credible corrective plan under 34 C.F.R. § 200.6(c)(4) and (2) demonstrate, through measurable outcomes, that the waiver has materially advanced the state’s progress toward compliance with the 1% cap and toward preventing erroneous assignment to AA-AAAS. A state that shows substantial progress in implementing its regulatory plan, but fails to make corresponding progress toward compliance with the cap or toward ensuring students are not erroneously assigned to take AA-AAAS, has not satisfied the requirements of 20 U.S.C. § 7861(d)(2) for receipt of a waiver extension.

## Part 2

### Note on Data Sources

Unless otherwise specified, the data referenced in Part II are drawn from publicly available sources maintained by the Massachusetts Department of Elementary and Secondary Education (“DESE”), including the School and District Profiles database (<https://profiles.doe.mass.edu/>), “Attachment 3: 2017–2025 MCAS-Alt Percent of Participants by District” (<https://www.doe.mass.edu/mcas/alt/essa/>), and DESE’s current and prior waiver requests submitted to the U.S. Department of Education.

### Note on Data Analysis

We appreciate that Massachusetts’s current waiver request reports certain figures to the hundredths place in materials submitted directly to USED. Precision is particularly important in this context, where year-over-year changes in AA-AAAS participation are often incremental and small in magnitude. As demonstrated in our comments last year, rounding to the tenths place obscures meaningful variation and can misrepresent whether genuine progress has occurred in reducing participation rates or preventing inappropriate assignment to AA-AAAS.

We continue to believe that best analytical practice in this setting requires calculations rounded to the thousandths and such practice is reflected throughout these comments. This level of precision is necessary to accurately assess trends, evaluate compliance claims, and meaningfully compare year-over-year changes in participation rates.

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<sup>15</sup> Every Child Achieves Act of 2015, Report of the Committee on Health, Education, Labor, and Pensions Together with Additional Views to Accompany S.1177 (Mar. 17, 2016), at 18. This is also apparent from the nature of the narrowness of AA-AAAS exception itself.

<sup>16</sup> A well thought-out and implemented plan created pursuant to 34 C.F.R. § 200.6(c)(4)(iv) may be a key element in a state’s reducing AA-AAAS participation rate and ensuring students are not erroneously assigned to AA-AAAS.

**V. Previous waivers were not effective in enabling Massachusetts to reduce the number and percentage of students taking AA-AAAS in English language arts, mathematics, or science and technology/engineering and meet the 1% cap. 20 U.S.C. § 7861(d)(2)(A)**

For the 2024–25 school year, Massachusetts assessed students using AA-AAAS at rates that remain largely unchanged from the prior year across all tested subjects (ELA: 1.221% to 1.192%; Mathematics: 1.230% to 1.201%; Science and Technology/Engineering: 1.208% to 1.084%). These shifts amount to an overall reduction of just 0.029 percentage points in both ELA and mathematics, while science and technology/engineering reflects a 0.124 percentage-point change—the most substantial of the three single-year movements occurring only after USED declined to extend Massachusetts’s STE waiver for the 2024-25 school year.<sup>17</sup>

Viewed over time (*see* Figure 1), these year-to-year changes underscore the limited effect of repeated waiver extensions. Since the 2017–18 school year, the first year Massachusetts received a waiver of the 1% requirement, Massachusetts has reduced AA-AAAS participation by only 0.277 percentage points in ELA, 0.281 percentage points in mathematics, and 0.223 percentage points in science and technology/engineering (for STE beginning in the 2018-19 school year). Even in science—where recent year-to-year changes have been larger—the pattern includes years of backsliding and reflects meaningful progress only following federal intervention, not as a result of prior waivers. Taken together, the data confirm that Massachusetts’s waiver history has not produced the sustained, measurable reductions necessary to demonstrate that the waivers have been effective in advancing compliance or preventing erroneous assignment, as required under 20 U.S.C. § 7861(d)(2).

Admin Year	ELA % AA-AAAS <sup>18</sup>	Percentage Point Change <sup>19</sup>	Math % AA-AAAS	Percentage Point Change	STE % AA-AAAS	Percentage Point Change
2025	1.192%	-0.029	1.201%	-0.029	1.084%	-0.124
2024	1.221%	-0.014	1.230%	-0.008	1.208%	+0.065
2023	1.235%	-0.006	1.238%	-0.009	1.143%	-0.019
2022	1.241%	-0.049	1.247%	-0.049	1.162%	+0.173

<sup>17</sup> For the 2024–25 school year, CLE relies on DESE’s publicly published spreadsheet (listed on page 10 above as “2017–2025 MCAS-Alt Percent of Participants by District”), which reflects higher AA-AAAS participation rates than those reported in DESE’s waiver narrative—particularly for science and technology/engineering, where the spreadsheet shows Massachusetts remained above the 1.0 percent cap. Accordingly, we request that USED require DESE to explain and reconcile these discrepancies before relying on the current waiver request.

<sup>18</sup> Massachusetts Department of Elementary and Secondary Education, MCAS Alternate Assessment (MCAS-Alt): ESSA Resources, Attachment 3, <https://www.doe.mass.edu/mcas/alt/essa/default.html>.

<sup>19</sup> Percentage-point change calculated as current year minus prior year for all subjects (e.g., ELA, Math, and STE).

2021	1.290%	-0.094	1.296%	-0.098	0.989%	-0.318
2019	1.384%	-0.085	1.394%	-0.088	1.307%	--
2018	1.469%	-0.128	1.482%	-0.128	--	--
2017	1.597%	--	1.610%	--	--	--

Projecting Massachusetts’s progress under any reasonable methodology<sup>20</sup> confirms that the Commonwealth remains years away from compliance. Using an average rate of reduction across the three most recent administration year—an already generous assumption given the state’s uneven and largely diminishing year-to-year reductions and the absence of a 2020 administration—Massachusetts would continue to exceed the 1% cap until approximately the 2036–37 school year in ELA<sup>21</sup> and the 2038–39 school year in mathematics.<sup>22</sup>

Even when progress is averaged over five years—smoothing over periods of stagnation and backsliding—Massachusetts would still require waivers through at least 2030–31 in ELA<sup>23</sup> and mathematics.<sup>24</sup> Assuming the reductions observed in the most recent school year (2024–25) were to repeat annually—the Commonwealth would similarly not fall below the cap until 2031–32 in both ELA and mathematics.<sup>25</sup> Across all three projections, the conclusion is the same:

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<sup>20</sup> Projected timelines for reaching the 1 percent cap are calculated using observed percentage-point reductions in AA-AAAS participation across administered years only, as reflected in Figure 1. *See* Massachusetts Department of Elementary and Secondary Education, MCAS Alternate Assessment (MCAS-Alt): ESSA Resources, Attachment 3, <https://www.doe.mass.edu/mcas/alt/essa/default.html>.

<sup>21</sup>For English language arts, the three-year average reduction is based on changes from 2023–2025 (–0.006, –0.014, and –0.029 percentage points), yielding an average annual reduction of approximately 0.016 percentage points; applied to the 2024–25 participation rate of 1.192 percent, this projects compliance around the 2036–37 school year. *See* Massachusetts Department of Elementary and Secondary Education, MCAS Alternate Assessment (MCAS-Alt): ESSA Resources, Attachment 3, <https://www.doe.mass.edu/mcas/alt/essa/default.html>.

<sup>22</sup> For mathematics, the three-year average reduction from 2023–2025 (–0.009, –0.008, and –0.029) yields an average annual reduction of approximately 0.015 percentage points, projecting compliance around the 2038–39 school year, *See* Massachusetts Department of Elementary and Secondary Education, MCAS Alternate Assessment (MCAS-Alt): ESSA Resources, Attachment 3, <https://www.doe.mass.edu/mcas/alt/essa/default.html>.

<sup>23</sup> Because AA-AAAS was not administered statewide in 2020, no value is imputed for that year; averages are instead calculated across consecutive administration years. The five-year average for ELA is based on changes from 2021–2025 (–0.094, –0.049, –0.006, –0.014, and –0.029), yielding an average annual reduction of approximately 0.038 percentage points and projecting compliance around the 2030–31 school year. *See* Massachusetts Department of Elementary and Secondary Education, MCAS Alternate Assessment (MCAS-Alt): ESSA Resources, Attachment 3, <https://www.doe.mass.edu/mcas/alt/essa/default.html>.

<sup>24</sup> Because AA-AAAS was not administered statewide in 2020, no value is imputed for that year; averages are instead calculated across consecutive administration years. For mathematics, the five-year average from 2021–2025 (–0.098, –0.049, –0.009, –0.008, and –0.029) yields an average annual reduction of approximately 0.039 percentage points and projects compliance around the 2030–31 school year. *See* Massachusetts Department of Elementary and Secondary Education, MCAS Alternate Assessment (MCAS-Alt): ESSA Resources, Attachment 3, <https://www.doe.mass.edu/mcas/alt/essa/default.html>.

<sup>25</sup> Assuming the 2024–25 single-year reduction of –0.029 percentage points repeats annually, both ELA and mathematics would not fall below the 1 percent cap until approximately the 2031–32 school year. *See* Massachusetts

Massachusetts's pace of reduction is incompatible with the temporary and corrective purpose of the waiver mechanism, and instead points toward a regime of long-term waiver dependence that the statute does not permit.

Similarly troubling to Massachusetts's failure to meaningfully reduce AA-AAAS participation rates is the Commonwealth's limited progress in reducing the total number of students assigned to take AA-AAAS. According to DESE's published MCAS-Alt participation data<sup>26</sup>, the total number of students assessed statewide declined only modestly between SY 2023–24 and SY 2024–25—from 5,725 to 5,580 in ELA, from 5,839 to 5,665 in math, and from 2,511 to 2,187 in STE. These reductions, amounting to decreases of 145 students in ELA, 174 students in math, and 324 students in science, remain small in relation to the overall scale of AA-AAAS use and do not reflect the type of sustained or structural change necessary to bring the Commonwealth into compliance with the 1 percent cap. Taken together, the marginal nature of these reductions further confirms that repeated waiver extensions have not functioned as a meaningful corrective mechanism, but instead have coincided with incremental and fragile changes insufficient to prevent erroneous assignment.

Also concerning are subgroup trends: the number of Black students assigned to AA-AAAS in ELA increased by 53 students and Asian student participation increased by 18 students statewide.<sup>27</sup> For Native Hawaiian or Other Pacific Islander students—whose statewide population is extremely small—an increase of two students, while not necessarily statistically significant for larger conclusions, nonetheless reflects movement in the wrong direction with respect to AA-AAAS participation rates. A similar pattern emerges in mathematics, with increases in students being assigned to AA-AAAS including 48 additional Black students and 22 additional Asian students during the same period.

Taken together, these data confirm that Massachusetts cannot demonstrate that prior waivers were effective in enabling it to meaningfully reduce either the number or the percentage of students taking AA-AAAS in English language arts, mathematics, or science and technology/engineering, nor in ensuring that reductions—where they occur—are achieved in a manner consistent with the statute's civil rights-protective purpose or the 1% cap's role as a safeguard against erroneous assignment.

## **VI. Previous waivers were not effective in enabling Massachusetts to ensure that students are not erroneously assigned to take AA-AAAS. 20 U.S.C. § 7861(d)(2)(A)**

Beyond the state's general failure to substantially reduce the number and percentage of students assigned to AA-AAAS as a clear indicator that Massachusetts has failed to demonstrate that the previous waiver has been effective in enabling the state to ensure students are not erroneously assigned to take AA-AAAS, consider also (A) Massachusetts lack of guidance to assist schools in determining which students with the most significant cognitive disabilities should take an AA-

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Department of Elementary and Secondary Education, MCAS Alternate Assessment (MCAS-Alt): ESSA Resources, Attachment 3, <https://www.doe.mass.edu/mcas/alt/essa/default.html>.

<sup>26</sup> Massachusetts Department of Elementary and Secondary Education, MCAS Alternate Assessment (MCAS-Alt): ESSA Resources, Attachment 3, <https://www.doe.mass.edu/mcas/alt/essa/default.html>.

<sup>27</sup> Subgroup data is taken from pages 4-5 of DESE's 2025 Waiver Request.

AAAS and (B) the continued disproportionate assignment of Black and Latinx students, multilingual learners, and students from low-income families to AA-AAAS.

- A. Massachusetts continued lack of clear guidance to assist schools in determining, first, which students constitute students with the most significant cognitive disabilities and, second, which of those students should take an AA-AAAS demonstrates that previous waivers were not effective in enabling Massachusetts to ensure that students are not erroneously assigned to take AA-AAAS

For the third consecutive year, DESE’s definition of “students with the most significant cognitive disabilities” remains too vague to support consistent implementation across LEAs, and the state’s guidance documents remain largely unchanged. As in prior years, DESE again relies on substantially the same checklist and explanatory materials, without providing meaningful clarification or operational standards capable of guiding IEP Team decision-making in a manner consistent with federal law.

In its waiver request for the current year, DESE again acknowledges that LEAs are “still” learning how to apply the revised definition and are “still” lacking the evaluation data necessary to do so accurately—despite more than two years having passed since the definition’s adoption. Last year, DESE characterized implementation of the revised definition as a “substantial change” requiring time for LEAs to adapt. That DESE continues to rely on this same justification years later underscores that prior waivers have not resulted in clearer guidance, improved implementation, or more reliable decision-making frameworks at the local level.

As CLE explained in its comments on Massachusetts’s request for a waiver for the 2023-24 and 2024-25 school years, the deficiencies in DESE’s guidance are not abstract or technical; they operate in ways that make erroneous assignment more likely and lawful differentiation more difficult. In particular, DESE’s “new” definition of who qualifies as a student with the most significant cognitive disability relies on factors that are largely insufficient—and in some instances irrelevant—for distinguishing between students with cognitive disabilities generally and those with the most significant cognitive disabilities.<sup>28</sup>

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<sup>28</sup> “Massachusetts defines ‘students with the most significant cognitive disabilities’ as those who meet **all** of the following criteria:

- have cognitive disabilities evidenced by significant delays in attaining age-level academic achievement standards, even with systematic, extensive individually designed instruction, related services, and modifications
- have cognitive disabilities that significantly impact their educational performance and ability to apply learning from one setting to another
- require extensive, direct individualized instruction and substantial supports to achieve measurable gains on the challenging State academic content standards for the grade in which the student is enrolled
- perform significantly below average in general cognitive functioning and adaptive behavior. Note: “Significantly below average” is defined as a student functioning two or more standard deviations below the mean on commonly accepted norm-referenced assessments in both cognitive functioning and adaptive behavior (e.g., two or more adaptive skill areas such as daily living skills, communication, self-care, social skills, and academic skills).” (emphasis in original)

Whether a student has “significant delays in attaining age-level academic achievement standards, even with systematic, extensive individually designed instruction, related services, and modifications” or significant difficulty with “educational performance and [their] ability to apply learning from one setting to another” may both (1) have

Compounding these problems, DESE’s guidance fails to make clear that only a narrow subset of students—those for whom it is impossible, solely because of their disability, to learn to grade-level achievement standards even with the best educational supports and interventions—should even be considered for AA-AAAS. The guidance continues to further obscure individualized decision-making by incorrectly suggesting that participation in an AA-AAAS in one subject necessitates participation across all academic subject areas.<sup>29</sup> And, despite CLE repeatedly raising this issue for DESE, neither DESE’s updated guidance nor the current waiver request clarifies that non-cognitive factors—such as behavior, linguistic difference, chronic absenteeism, poverty, or lack of access to standards-based instruction—are impermissible bases for AA-AAAS assignment under federal law. The continued absence of this clarity enables precisely the misassignments the statute was designed to prevent and perpetuates longstanding patterns of over-assignment among historically marginalized students.

Unfortunately, despite CLE’s identification of these issues in prior waiver cycles, Massachusetts has continued to fail to provide appropriate guidance regarding which students qualify to take AA-AAAS and, of those students, which should take such alternate assessments. Massachusetts’s inaction to address these longstanding deficiencies—and the central role that clear guidance plays in preventing erroneous assignment—makes clear that prior waivers were not effective in enabling the Commonwealth to meet its statutory obligations.

**B. The continued disproportionate assignment of Black and Latinx students, multilingual learners, and students from low-income families to AA-AAAS demonstrates that previous waivers were not effective in enabling Massachusetts to ensure that students are not erroneously assigned to take AA-AAAS**

Since being granted waivers to exceed the 1% cap beginning in the 2017-18 school year, Massachusetts has consistently assessed Black and Latinx students, multilingual learners, and students from low-income families at disproportionately high rates on AA-AAAS. The most recent data—reflected in DESE’s current waiver request—confirm that these disparities remain entrenched rather than diminishing, underscoring that prior waivers have not been effective in preventing erroneous assignment as required by 20 U.S.C. § 7861(d)(2)(A).

As reflected in the data below and cited in DESE’s current waiver request, Massachusetts continues to assign Black and Latinx students, multilingual learners, and students from low-

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nothing to do with a student having a cognitive disability or (2) even for students with cognitive disabilities, be caused by something other than disability-related factors [e.g., ineffective instruction, instruction by unqualified teachers, and/or a lack of appropriate special education and supportive services that would have allowed the student to access the general education curriculum and learn to the same challenging academic standards as students without disabilities].

<sup>29</sup> See Massachusetts Department of Elementary and Secondary Education, MCAS-Alt: ESSA Resources, , *Training for District IEP Teams (PowerPoint)*, slide 9, <https://www.doe.mass.edu/mcas/alt/essa/> (“Participation in the alternate assessment indicates that all content areas will be assessed. (ELA, Math, Science.)”); Massachusetts Department of Elementary and Secondary Education, MCAS-Alt: ESSA Resources, *Companion Document: Alternate Assessment Participation Tool*, <https://www.doe.mass.edu/mcas/alt/essa/> (“Participation in the alternate assessment indicates that all content areas will be assessed. (ELA, Math, Science, Civics.)”); Massachusetts Department of Elementary and Secondary Education, MCAS-Alt: ESSA Resources, *Sample MCAS-Alt Participation Tool*, <https://www.doe.mass.edu/mcas/alt/essa/> (“Participation in the alternate assessment indicates that all content areas will be assessed. (ELA, Math, Science.)”).

income families to AA-AAAS at disproportionately high rates in English language arts. When participation rates are compared to those of White students, the resulting risk ratios confirm substantial disproportionality: Black students are approximately 2.27 times as likely as White students to be assigned to AA-AAAS, Hispanic/Latinx students are 1.51 times as likely, and Asian students are 1.35 times as likely. These disparities have increased for both Black and Asian students relative to prior years and persist across multiple waiver cycles, demonstrating that prior waivers have not resulted in meaningful or sustained progress toward equitable assignment. A similar pattern is evident for students from low-income families, who remain substantially overrepresented in AA-AAAS participation relative to their non-low-income peers, with statewide risk ratios indicating that low-income students are 2.51 times as likely to be assigned to AA-AAAS. And multilingual learners remain overrepresented at 1.34 times as likely as their non-multilingual peers to be assigned to AA-AAAS. Taken together, these tiered patterns confirm that Massachusetts’s waiver history has failed to correct the systemic assignment practices that the statute requires states to address as a condition of exceeding the one-percent cap.

ELA Risk-Ratio Analysis <sup>30</sup>							
	2025	2024	2023	2022	2021	2019	2018
African American/Black	2.27	2.12	2.15	2.02	2.16	2.21	2.01
Hispanic/Latino	1.51	1.51	1.23	1.55	1.74	1.79	0.57
Asian	1.35	1.25	1.23	1.18	1.10	1.06	1.07
English learners	1.34	1.45	1.65	1.79	2.04	1.67	1.60
Low-income students	2.51	2.54	2.96	2.97	3.04	3.21	2.81

Critically, DESE’s current waiver request does not meaningfully explain why these disparities persist, nor does it identify concrete changes to state guidance, oversight, or accountability mechanisms that would plausibly reduce them. To the contrary, the continuation of these patterns across multiple waiver cycles strongly suggests that the state’s permissive and vague guidance—discussed in Section VI.A of CLE’s comments—continues to allow other factors to influence assignment decisions in practice.

That the students most likely to be erroneously assigned to AA-AAAS are the same students who already face systemic barriers to accessing grade-level instruction underscores the civil rights stakes of the waiver request. These disparities are neither inevitable nor incidental; they are the predictable result of a state administrative framework that has remained largely unchanged despite repeated waiver extensions. As such, the persistence of disproportionate assignment

<sup>30</sup> The risk ratios for Math and Science for the 2024-25 school year continued to parallel historical trends as well.

- Math: African American/Black (2.27); Hispanic/Latinx (1.54); Asian (1.37); English learners (1.47); low-income (2.53);

- Science: African American/Black (2.08); Hispanic/Latinx (1.43); Asian (1.27); English learners (1.60); low-income (2.72)

Calculations in this footnote and the above table are made from data provided by DESE on pages 4-5 of its 2025 Waiver Request, which supply raw subgroup data needed to calculate the risk ratios.

provides independent and compelling evidence that prior waivers were not effective in enabling Massachusetts to ensure that students are not erroneously assigned to AA-AAAS.<sup>31</sup>

## **VII. Previous waivers were not effective in enabling Massachusetts to improve academic achievement. 20 U.S.C. § 7861(d)(2)(A)**

Massachusetts's continued failure to reduce AA-AAAS participation rates or ensure that students are not erroneously assigned to alternate assessments is inextricably tied to Massachusetts's failing to use the waiver to improve academic achievement, as required by 20 U.S.C. § 7861(d)(2)(A). The most recent data submitted by the state confirm that, even where overall AA-AAAS participation declines modestly, those reductions have not translated into more accurate assignment, improved access to grade-level instruction, or better academic outcomes for students who remain disproportionately routed onto the AA-AAAS track.

For students erroneously assigned to take AA-AAAS, the consequences are immediate and compounding. These students, sometimes as early as grade 3, are often educated in segregated classrooms and denied meaningful access to grade-level curriculum and higher-order thinking. Deemed unable to learn, they are relegated to years of practicing “life skills,” held to lower expectations, and taught and tested based on lower standards. Little consideration is given to whether some or all of these students labeled as such could nevertheless learn to grade-level achievement standards given appropriate interventions. Every student erroneously assigned to take an AA-AAAS suffers immediate and long-term harm to their educational trajectory: harm from which they may never recover.

This reality is borne out not only in the data, but also in practice. This has been confirmed to us both from our own representation of students assigned to take AA-AAAS but also through our role as the backup center for education in Massachusetts. We continue to see students assigned to AA-AAAS removed from the general education setting, subjected to below-grade-level content standards, and held to significantly lower expectations—often without meaningful reevaluation or pathways back to grade-level instruction.

External reviews reinforce these concerns and underscore the disconnect between waiver extensions and genuine academic improvement. For example, the Council of the Great City Schools—a national coalition—reviewed Boston's data in 2022 and concluded that the increase in the number of students scoring “proficient” on the state's standardized measure of achievement (the Massachusetts Comprehensive Assessment System, or “MCAS”) in English

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<sup>31</sup> As an aside, on pages 11-12 of its waiver request, DESE states that, “[d]uring the development of the state's definition for students with the most significant cognitive disabilities, we convened meetings with stakeholders in the state offices, LEAs, and advocacy organizations,” and that DESE “engaged the Center for Law & Education to discuss methods to prevent students from historically marginalized subgroups being designated for alternate assessments.” CLE would like to clarify that during the 2022-23 school year, we participated in stakeholder discussions with DESE staff regarding DESE's proposed exit criteria for multilingual learners taking the Alternate ACCESS, a component of which involves students with the most significant cognitive disabilities, but has not explicitly met with DESE staff regarding AA-AAAS. CLE's participation in stakeholder discussions regarding the Alternate ACCESS should not be construed as an endorsement of DESE's subsequent definition of students with the most significant cognitive disabilities as it relates to AA-AAAS, guidance, or disproportionality framework. Regardless of the process described, the outcomes reflected in DESE's own data remain unchanged in the ways that matter: historically marginalized students continue to be disproportionately assigned to AA-AAAS, and the state has not demonstrated that prior waivers have produced meaningful improvements in accuracy or equity of assignment, as required by 20 U.S.C. § 7861(d)(2)(A).

and math between 8th and 10th grade was likely attributable to changes in assessment participation rather than instructional gains. Specifically, the Council found that these increases were “probably the product of decision-making resulting in substantially fewer students participating in the [regular] test, rather than authentic achievement increases.”<sup>32</sup>

Taken together, the state’s own data, CLE’s direct experience representing students, and independent external analyses all point to the same conclusion: prior waivers have not been effective in enabling Massachusetts to improve academic achievement. Instead, waiver extensions have coincided with continued reliance on alternate assessments that lower expectations, restrict access to grade-level instruction, and obscure—rather than remedy—systemic instructional failures. These outcomes fall well short of the statutory standard and further confirm that Massachusetts has not demonstrated that prior waivers have been effective under 20 U.S.C. § 7861(d)(2)(A).

### **VIII. Massachusetts has not demonstrated that its requested waiver extension is in the public interest. 20 U.S.C. § 7861(d)(2)(B)**

Under 20 U.S.C. § 7861(d)(2)(B), a waiver may be granted only if the state demonstrates that the requested waiver is in the public interest. Massachusetts has not met that burden. To the contrary, the most recent data submitted by the state—together with the persistence of erroneous assignment, disproportionality, and limited academic benefit—confirm that continued waiver extensions would entrench, rather than remedy, the very harms Congress sought to prevent.

As discussed above, every student erroneously assigned to take an AA-AAAS suffers immediate and long-term harm to their educational trajectory: harm from which they may never recover. These students, sometimes as early as grade 3, are often educated in segregated classrooms and denied access to grade-level curriculum and higher-order thinking. Deemed unable to learn, they are relegated to years of practicing “life skills,” held to lower expectations, and taught and tested based on lower standards. Little consideration is given to whether some or all of these students labeled as such could nevertheless learn to grade-level achievement standards given appropriate interventions. These harms are not speculative; they are structural, cumulative, and borne disproportionately by students who already face systemic barriers to educational opportunity.

Despite having already received seven consecutive waiver approvals for English language arts and mathematics—with the most recent waiver denied only for science—Massachusetts remains unable to meet the 1% cap or ensure that students are not erroneously assigned to take AA-AAAS. As the data in this year’s waiver request demonstrate, progress on both fronts remains significantly limited. At the same time, the Commonwealth continues to fail to prevent students of color, multilingual learners, and students from low-income families from being disproportionately assigned to AA-AAAS, even where overall participation declines modestly.

In this context, granting Massachusetts a waiver for an eighth consecutive year would not incentivize compliance or improvement. Instead, it would normalize continued noncompliance and sever the statutory link between waiver relief and demonstrable progress. As CLE has previously explained, such an outcome would approach the realm of a perpetual waiver,<sup>33</sup>

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<sup>32</sup> Council of the Great City Schools, “Building a Unified System: Inclusive Education Designed to Improve Outcomes for All Students” (2022) at 37.

<sup>33</sup> States should not have an expectation “to perpetually receive a waiver of the requirement.” 81 Fed. Reg. 88915.

“[vitiating]...the statutory restriction on a State’s use of an AA–AAAS...,”<sup>34</sup> and undermine Congress’s clear intent to limit alternate assessment participation to a narrow and carefully defined group of students.

The public interest is not served by waiver extensions that lower expectations, obscure instructional failures, and disproportionately burden historically marginalized students—particularly where the state has had multiple years and repeated opportunities to correct course. Because Massachusetts has failed to demonstrate that prior waivers have produced meaningful improvement, accuracy, or equity in AA-AAAS assignment, the requested waiver extension is unequivocally not in the public interest within the meaning of 20 U.S.C. § 7861(d)(2)(B).

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<sup>34</sup> 81 Fed. Reg. 88915.

**From:** [Pelychaty, Robert \(DESE\)](#)  
**To:** [Boyter, Lauren](#); [OESE.ESEA.Assessment](#)  
**Cc:** [Stapel, Michol \(DESE\)](#); [Peasley, Donald](#)  
**Subject:** RE: Massachusetts One Percent Waiver Extension Request 2025-2026  
**Date:** Tuesday, February 24, 2026 12:32:29 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Lauren,

Thank you for the update.

Our team reviewed the reported participation data and confirmed that the participation data that is currently reported in EDFacts is accurate.

Please let us know if you have any additional questions.



**Robert W. Pelychaty** (*Pronouns: he, him, his*)  
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**From:** Boyter, Lauren <Lauren.Boyter@ed.gov>  
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**Cc:** Stapel, Michol (DESE) <Michol.Stapel@mass.gov>; Peasley, Donald <Donald.Peasley@ed.gov>; Boyter, Lauren <Lauren.Boyter@ed.gov>  
**Subject:** RE: Massachusetts One Percent Waiver Extension Request 2025-2026

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Thank you, Robert. If you can confirm that the EDFacts data in the tables below is accurate, we will proceed using that information and you will not need to send updated tables.

Please let me know if we may proceed using the current data.

Thanks!  
Lauren

Lauren Boyter  
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U.S. Department of Education

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**From:** Pelychaty, Robert (DESE) <[Robert.Pelychaty@mass.gov](mailto:Robert.Pelychaty@mass.gov)>  
**Sent:** Tuesday, February 24, 2026 7:46 AM  
**To:** Boyter, Lauren <[Lauren.Boyter@ed.gov](mailto:Lauren.Boyter@ed.gov)>; OESE.ESEA.Assessment <[ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)>  
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**Subject:** RE: Massachusetts One Percent Waiver Extension Request 2025-2026

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Good morning Lauren,

Yes, during our investigation we confirmed a discrepancy between the submitted waiver application in December 2025 and the reported EDFacts data.

We are in the process of adjusting the data in our waiver request and will plan to resubmit the document to you, with changes highlighted, in the next week.

Please let us know if this will work for your team.



**Robert W. Pelychaty** (*Pronouns: he, him, his*)  
**Manager of Inclusive Assessment**  
Massachusetts Department of Elementary and Secondary Education  
*Serving pre-K through adult learners*

781-338-3625

[Robert.pelychaty@mass.gov](mailto:Robert.pelychaty@mass.gov)  
135 Santilli Highway, Everett, MA 02149  
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**From:** Boyter, Lauren <[Lauren.Boyter@ed.gov](mailto:Lauren.Boyter@ed.gov)>  
**Sent:** Thursday, February 19, 2026 8:23 AM  
**To:** Pelychaty, Robert (DESE) <[Robert.Pelychaty@mass.gov](mailto:Robert.Pelychaty@mass.gov)>; OESE.ESEA.Assessment <[ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)>  
**Cc:** Stapel, Michol (DESE) <[Michol.Stapel@mass.gov](mailto:Michol.Stapel@mass.gov)>; Peasley, Donald <[Donald.Peasley@ed.gov](mailto:Donald.Peasley@ed.gov)>  
**Subject:** RE: Massachusetts One Percent Waiver Extension Request 2025-2026

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Good morning Robert,

I am following up to see if your team had a chance to review the ED Facts data.

Thanks!  
Lauren

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**From:** Pelychaty, Robert (DESE) <[Robert.Pelychaty@mass.gov](mailto:Robert.Pelychaty@mass.gov)>  
**Sent:** Thursday, February 5, 2026 9:40 AM  
**To:** OESE.ESEA.Assessment <[ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)>; Boyter, Lauren <[Lauren.Boyter@ed.gov](mailto:Lauren.Boyter@ed.gov)>  
**Cc:** Stapel, Michol (DESE) <[Michol.Stapel@mass.gov](mailto:Michol.Stapel@mass.gov)>; Peasley, Donald <[Donald.Peasley@ed.gov](mailto:Donald.Peasley@ed.gov)>  
**Subject:** RE: Massachusetts One Percent Waiver Extension Request 2025-2026

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Lauren,

Thank you for contacting us with your question about the number of students that participated in our state's alternate assessment in 2025. We are investigating your question, and we will respond shortly once we have reviewed our ED Facts data submission and the data listed in the waiver request.

Thank you in advance for your patience and let us know if you have any additional questions.



**Robert W. Pelychaty** (*Pronouns: he, him, his*)  
**Manager of Inclusive Assessment**  
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**From:** OESE.ESEA.Assessment <[ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)>  
**Sent:** Friday, January 30, 2026 11:25 AM  
**To:** Stapel, Michol (DESE) <[Michol.Stapel@mass.gov](mailto:Michol.Stapel@mass.gov)>  
**Cc:** Peasley, Donald <[Donald.Peasley@ed.gov](mailto:Donald.Peasley@ed.gov)>; Boyter, Lauren <[Lauren.Boyter@ed.gov](mailto:Lauren.Boyter@ed.gov)>; Pelychaty, Robert (DESE) <[Robert.Pelychaty@mass.gov](mailto:Robert.Pelychaty@mass.gov)>; OESE.ESEA.Assessment <[ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)>  
**Subject:** RE: Massachusetts One Percent Waiver Extension Request 2025-2026

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Good morning Michol,

Hope you are all staying warm in Massachusetts!

We are reviewing MA’s 1.0 percent waiver extension request and would like to quickly verify the data. Please see the EDFacts record below. The data differ from what was provided in the waiver request, particularly for science. Could you please confirm whether the EDFacts data below are accurate and should be used for our review?

<b>Group</b>	<b>All Students Grades 3-8 and High School R/LA</b>	<b>Students with Disabilities Grades 3-8 and High School R/LA</b>
Students Assessed	472,164	102,782
Students Enrolled	478,115	105,521
Assessment Participation Rate	98.76%	97.40%
<b>Group</b>	<b>All Students Grades 3-8 and High School Math</b>	<b>Students with Disabilities Grades 3-8 and High School Math</b>
Students Assessed	471,692	102,628
Students Enrolled	477,965	105,509
Assessment Participation Rate	98.69%	97.27%

Group	All Students Grades 3-8 and High School Science	Students with Disabilities Grades 3-8 and High School Science
Students Assessed	201,673	42,145
Students Enrolled	205,374	43,695
Assessment Participation Rate	98.20%	96.45%

School Year	R/LA		Mathematics		Science	
	# AA-AAAS	% of All Students Assessed	# AA-AAAS	% of All Students Assessed	# AA-AAAS	% of All Students Assessed
2024-2025	5,580	1.18%	5,665	1.20%	2,187	1.08%

Thank you!

Lauren

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**From:** Pelychaty, Robert (DESE) <[Robert.Pelychaty@mass.gov](mailto:Robert.Pelychaty@mass.gov)>

**Sent:** Tuesday, January 6, 2026 8:10 PM

**To:** OESE.ESEA.Assessment <[ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)>

**Cc:** Peasley, Donald <[Donald.Peasley@ed.gov](mailto:Donald.Peasley@ed.gov)>; Boyter, Lauren <[Lauren.Boyter@ed.gov](mailto:Lauren.Boyter@ed.gov)>; Stapel, Michol (DESE) <[Michol.Stapel@mass.gov](mailto:Michol.Stapel@mass.gov)>

**Subject:** RE: Massachusetts One Percent Waiver Extension Request 2025-2026

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Good afternoon,

Please see Massachusetts's Public Comments received and our response (thus far) for the one percent waiver extension for the 2025–26 school year. Any additional comments will also be submitted.

Please let me know if you have any questions regarding this attachment.

Thank you,

Robert



**Robert W. Pelychaty** (*Pronouns: he, him, his*)  
**Manager of Inclusive Assessment**

Massachusetts Department of Elementary and Secondary Education  
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781-338-3625

[Robert.pelychaty@mass.gov](mailto:Robert.pelychaty@mass.gov)

135 Santilli Highway, Everett, MA 02149

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**From:** Stapel, Michol (DESE) <[Michol.Stapel@mass.gov](mailto:Michol.Stapel@mass.gov)>  
**Sent:** Monday, December 15, 2025 8:48 AM  
**To:** OESE.ESEA.Assessment <[ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)>  
**Cc:** Pelychaty, Robert (DESE) <[Robert.Pelychaty@mass.gov](mailto:Robert.Pelychaty@mass.gov)>; Peasley, Donald <[Donald.Peasley@ed.gov](mailto:Donald.Peasley@ed.gov)>; Boyter, Lauren <[Lauren.Boyter@ed.gov](mailto:Lauren.Boyter@ed.gov)>  
**Subject:** RE: Massachusetts One Percent Waiver Extension Request 2025-2026

Thanks, Lauren!

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**From:** OESE.ESEA.Assessment <[ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)>  
**Sent:** Monday, December 15, 2025 8:46 AM  
**To:** Stapel, Michol (DESE) <[Michol.Stapel@mass.gov](mailto:Michol.Stapel@mass.gov)>  
**Cc:** Pelychaty, Robert (DESE) <[Robert.Pelychaty@mass.gov](mailto:Robert.Pelychaty@mass.gov)>; Peasley, Donald <[Donald.Peasley@ed.gov](mailto:Donald.Peasley@ed.gov)>; Boyter, Lauren <[Lauren.Boyter@ed.gov](mailto:Lauren.Boyter@ed.gov)>; OESE.ESEA.Assessment <[ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)>  
**Subject:** RE: Massachusetts One Percent Waiver Extension Request 2025-2026

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Good morning Michol,

We are acknowledging receipt of Massachusetts's request. We will review and let you know if there are any questions.

Respectfully,

Lauren Boyter  
Education Program Specialist  
Office of Elementary and Secondary Education  
U.S. Department of Education

Email: [Lauren.Boyter@ed.gov](mailto:Lauren.Boyter@ed.gov)

Phone Number: (202) 205-4675

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**From:** Stapel, Michol (DESE) <[Michol.Stapel@mass.gov](mailto:Michol.Stapel@mass.gov)>  
**Sent:** Friday, December 12, 2025 7:05 AM  
**To:** OESE.ESEA.Assessment <[ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov)>  
**Cc:** Pelychaty, Robert (DESE) <[Robert.Pelychaty@mass.gov](mailto:Robert.Pelychaty@mass.gov)>  
**Subject:** Massachusetts One Percent Waiver Extension Request 2025-2026

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Good morning,

Massachusetts's request to extend its one-percent waiver for 2024-2025 is attached for your consideration.

Please let me know if you have any questions regarding this request.

Thank you,  
Michol



**Michol Stapel**

**Associate Commissioner for Student Assessment**

Massachusetts Department of Elementary and Secondary Education

*Serving pre-K through adult learners*

781-338-3610

[michol.stapel@mass.gov](mailto:michol.stapel@mass.gov)

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