



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

April 21, 2025

The Honorable Emily Anne Gullickson
Acting Superintendent of Education
Virginia Department of Education
P.O. Box 2120
Richmond, VA 23218

Dear Acting Superintendent Gullickson:

I am writing in response to the Virginia Department of Education's (VDOE's) request on November 26, 2024 (with additional information provided on January 9, 2025), 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). VDOE requested this waiver because, based on State data for school year (SY) 2023-2024, VDOE concluded that it may exceed the 1.0 percent cap on AA-AAAS in reading/language arts (R/LA), mathematics, and science.

After reviewing VDOE's waiver request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, for SY 2024-2025, a waiver of section 1111(b)(2)(D)(i)(I) of the ESEA so that the State may assess with an AA-AAAS more than 1.0 percent of the total number of students in the State who are assessed in R/LA, mathematics, and science.

As part of this waiver, VDOE 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 2023-2024 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.
- 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.

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

- Will implement, consistent with the plan submitted in VDOE’s waiver 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.

Given the strong workplan submitted by VDOE, I expect to see positive results of this plan in the 2024-2025 school year and beyond. Thank you for your continued efforts in achieving these reductions. Future requests for a waiver extension will continue to expect both continued progress implementing your plan and progress in reducing the current percentage of students taking the AA-AAAS in all tested subjects.

I appreciate your work to improve Virginia’s schools and provide a high-quality education for your students. If you have any questions, please contact my staff at ESEA.Assessment@ed.gov.

Sincerely,

/s/

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

cc: Jeff Phenicie, Executive Director of Data,
Monitoring, and General Supervision

Virginia’s Request for a Waiver for School Year (SY) 2024-2025 from the One 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

The *Every Student Succeeds Act* (ESSA) Section 1111(b)(2)(D)(i)(I) limits the total number of students with the most significant cognitive disabilities who are assessed statewide with an Alternate Assessment aligned with Alternate Academic Achievement Standards (AA-AAAS) to one percent of the total number of students in the state who are assessed in that subject; however, if a state anticipates that it will exceed the one percent cap for any subject, the state may request that the United States Department of Education (USED) waive the cap for that subject, pursuant to the *Elementary and Secondary Education Act* (ESEA), Section 8401, for one year. The four basic requirements for a state’s one percent cap waiver are detailed below.

Please consider Virginia’s waiver request for the school year (SY) 2024-2025 for reading, mathematics, and science.

Requirement 1 (§200.6(c)(4)(i)):

Submit the waiver request at least 90 days before the testing window starts for the relevant subject.

The assessment window for the Virginia Alternate Assessment Program (VAAP) for students with the most significant cognitive disabilities is open from February 24, 2025, through June 20, 2025, in all tested subjects. Ninety days prior to the opening of the test window is November 26, 2024.

Requirement 2 (§200.6(c)(4)(ii)):

Provide state-level data, from SY 2023-2024, to show: (A) overall assessment participation rates to demonstrate that the state had assessed at least 95 percent of all students and 95 percent of all students with disabilities during SY 2023-2024 in each subject area; (B) number and percentage of students in each required student group (race/ethnicity, economic disadvantage status, English learner status) who took the AA-AAAS during SY 2023-2024 in each subject area; and (C) AA-AAAS participation rates for SY 2017-2018 through SY 2023-2024 (including estimates for SY 2024-2025, if available) in each subject area.

Based on guidance released from the USED on October 3, 2024, regarding the requirements to request a waiver for SY 2024-2025 from the one percent cap on the percentage of students with the most significant cognitive disabilities who may be assessed with an AA-AAAS, The Virginia Department of Education has included the following tables.

Overall Rates of Assessment Participation for SY 2023-2024

Table 1: Overall Rates - Reading

Reading Group	All Students Grades 3-8 and High School	Students with Disabilities Grades 3-8 and High School
Students Assessed	640,126	92,735
Students Enrolled	644,346	94,105
Assessment Participation Rate	99.34%	98.54%

Table 2: Overall Rates - Mathematics

Mathematics Group	All Students Grades 3-8 and High School	Students with Disabilities Grades 3-8 and High School
Students Assessed	638,985	92,540
Students Enrolled	650,457	94,052
Assessment Participation Rate	98.23%	98.39%

Table 3: Overall Rates - Science

Science Group	All Students Grades 3-8 and High School	Students with Disabilities Grades 3-8 and High School
Students Assessed	272,560	37,148
Students Enrolled	277,516	38,256
Assessment Participation Rate	98.21%	97.10%

AA-AAAS Participation Rates by Subgroup for SY 2023-2024

Table 4: AA-AAAS Participation - Reading

Reading Group	Total Number Students Assessed in Grades 3-8 and High School	Total Number Students Assessed with the AA-AAAS in Grades 3-8 and High School	Percent Assessed with the AA-AAAS in Grades 3-8 and High School
All Students	640,126	8,025	1.24%
Hispanic	119,357	1,316	1.10%
American Indian/ Alaskan Native	1,670	27	1.61%
Asian	50,596	548	1.08%
Black	136,443	2,587	1.89%
Hawaiian/Pacific Islander	1,049	20	1.90%
White	287,124	3,047	1.06%
Two or More Races	43,887	480	1.09%
Male	327,982	5,465	1.66%
Female	311,673	2,558	0.82%
English Learner	96,565	1,400	1.44%
Economically Disadvantaged	275,166	3,911	1.42%

Table 5: AA-AAAS Participation - Mathematics

Mathematics Group	Total Number Students Assessed in Grades 3-8 and High School	Total Number Students Assessed with the AA-AAAS in Grades 3-8 and High School	Percent Assessed with the AA-AAAS in Grades 3-8 and High School
All Students	638,985	8,008	1.25%
Hispanic	122,960	1,320	1.07%
American Indian/ Alaskan Native	1,679	27	1.60%

Mathematics Group	Total Number Students Assessed in Grades 3-8 and High School	Total Number Students Assessed with the AA-AAAS in Grades 3-8 and High School	Percent Assessed with the AA-AAAS in Grades 3-8 and High School
Asian	49,949	549	1.09%
Black	136,030	2,583	1.89%
Hawaiian/Pacific Islander	1,046	18	1.72%
White	283,921	3,030	1.06%
Two or More Races	43,400	481	1.10%
Male	327,790	5,449	1.66%
Female	310,751	2,557	0.82%
English Learner	103,478	1,406	1.35%
Economically Disadvantaged	276,898	3,902	1.40%

Table 6: AA-AAAS Participation - Science

Science Group	Total Number Students Assessed in Grades 3-8 and High School	Total Number Students Assessed with the AA-AAAS in Grades 3-8 and High School	Percent Assessed with the AA-AAAS in Grades 3-8 and High School
All Students	272,560	3,276	1.20%
Hispanic	50,636	493	0.97%
American Indian/ Alaskan Native	680	15	2.20%
Asian	21,932	215	0.98%
Black	58,485	1,073	1.83%
Hawaiian/Pacific Islander	476	Less Than 10 Students	1.47%
White	122,756	1,281	1.04%
Two or More Races	17,595	192	1.09%

Science Group	Total Number Students Assessed in Grades 3-8 and High School	Total Number Students Assessed with the AA-AAAS in Grades 3-8 and High School	Percent Assessed with the AA-AAAS in Grades 3-8 and High School
Male	139,442	2,192	1.57%
Female	132,837	1,084	0.81%
English Learner	36,598	569	1.55%
Economically Disadvantaged	114,165	1,572	1.37%

AA-AAAS Participation Rates by School Year and Subject

Table 7: Participation Rates by School Year and Subject

School Year	Reading	Mathematics	Science
2017-2018	1.16%	0.99%	0.77%
2018-2019	1.18%	1.04%	0.87%
2020-2021	1.16%	1.14%	1.03%
2021-2022	1.19%	1.15%	1.31%
2022-2023	1.21%	1.35%	1.36%
2023-2024	1.24%	1.25%	1.20%
2024-2025 (estimate)	1.16%	1.15%	1.16%

Requirement 3 (§200.6(c)(4)(iii)):

Provide assurances that the state has verified that each local educational agency (LEA) that the state anticipates will assess more than one percent of its assessed students in a subject using the AA-AAAS did the following: (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) Assurance that LEAs over one percent followed the state's participation guidelines.

To meet this stated requirement, school divisions who anticipate exceeding the one percent cap on participation in the VAAP had to provide the VDOE with assurances that the school division followed the state's participation guidelines for the upcoming spring assessment window opening February 24, 2025, including that:

- Individualized Education Program (IEP) Teams will correctly identify students with the most significant cognitive disabilities following state criteria and participation guidelines.
- Students participating in the VAAP have been instructed, at minimum, to address the Virginia Essentialized Standards of Learning (VESOL).
- Student IEPs will include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the student meets the criteria for the alternate assessment; and how the student's participation in the VAAP will impact the student's promotion and/or graduation with a standard or advanced studies diploma, or other matters.
- School divisions will seek to measure the achievement of at least 95 percent of all students, including students with disabilities in all grades for which assessment is required.

(B) Assurance that any disproportionality in students taking the AA-AAAS will be addressed.

The VDOE will continue to address disproportionality in the percentage of students in any student group taking the VAAP through multiple activities as described below. In particular, the VDOE will perform the following steps to address disproportionality concerns:

- Calculate and analyze participation rates among student groups at the SEA and LEA levels.
- Identify student groups over-represented in the VAAP participation counts.
- Analyze student group data over time to identify trends in student group participation with the goal of decreasing disproportionality.
- Continue to provide resources and support to LEAs on appropriately identifying students with the most significant cognitive disabilities for inclusion in the VAAP.

- Engage with stakeholder groups to address disproportionalities and ensure only students with the most significant cognitive disabilities are participating in the VAAP.
- Maintain and update the VAAP.
- Report assessment data publicly.

Requirement 4 (§200.6(c)(4)(iv)):

Submit a plan and timeline by which the following will be accomplished: (A) state will improve the implementation of its participation guidelines including, if necessary, revising its definition of “students with the most significant cognitive disabilities;” (B) state will take additional steps to support and provide appropriate oversight to each LEA that the state anticipates will assess more than one percent with the AA-AAAS to ensure that only students with the most significant cognitive disabilities take the AA-AAAS (this must include a description of how the state will monitor and regularly evaluate each of these LEAs to ensure that the LEA provides sufficient training for IEP Team members); and (C) state will address any disproportionality in the percentage of students taking the AA-AAAS.

(A) State will improve the implementation of its participation guidelines including, if necessary, revising its definition of “students with the most significant cognitive disabilities.”

To meet this stated requirement, the following steps have been or will be taken:

- The VDOE recently revised and augmented its guidance regarding VAAP participation. In January 2024, the VDOE released the VAAP Participation Decision-Making Tool and Accompanying Frequently Asked Questions Document. The new [VAAP Participation Decision-Making Tool](#) and its accompanying document, [VAAP Participation Decision-Making Tool: Frequently Asked Questions](#), replaced the former criteria and guidance starting **July 1, 2024**. The purpose of the revisions was to ensure IEP Teams are identifying the appropriate students for VAAP participation. Along with the release of the new VAAP Participation Decision-Making Tool, an Introductory Module was released to all directors of special education in local school divisions. In February 2024, the VDOE facilitated four online and live question and answer (Q&A) webinars on the new tool for school divisions. Between April 2024 and October 2024, the VDOE provided eight regional trainings to school divisions on how to implement the new tool (three in-person and five virtual); two virtual overviews of the new tool training for parents; and three requested overview trainings to local school leadership and special education advisory committees.
- The VDOE staff members will continue to participate, bi-weekly, in the one percent Community of Practice (CoP), offered by The National Center on Educational Outcomes (NCEO), in accordance with Public Law (P.L.) 108-446 Section 617(a). The VDOE has been a participant since December 2017.

- The VDOE staff members will annually review and revise, if appropriate, state-level policies, procedures, and practices pertaining to Virginia’s AA-AAAS, based on information gathered from the above listed CoP and the data disaggregation in accordance with 34 C.F.R. §200.6(d).

(B) State will take additional steps to support and provide appropriate oversight to each LEA that the state anticipates will assess more than one percent with the AA-AAAS to ensure that only students with the most significant cognitive disabilities take the AA-AAAS (this must include a description of how the state will monitor and regularly evaluate each of these LEAs to ensure that the LEA provides sufficient training for IEP Team members).

To meet this stated requirement, the following steps will be taken:

- Through the release of an Associate Superintendent’s Email (i.e., memo) to all school divisions in the state, the VDOE continues to improve the implementation of the participation guidelines for the VAAP and to ensure that the appropriate students are assessed using this alternate assessment. The memo identifies several webpages on the VDOE website that provide specific information, resources, participation criteria sheets, training modules, and frequently asked questions about the alternate assessment. These resources are relevant to multiple audiences: administrators, testing directors, general education and special education teachers, special education service providers, parents, and other interested parties.
- The VDOE released mass messaging about and training on Critical Decision Points for Families of Children with Disabilities in English and Spanish through the Engage Your Family newsletter. The critical decision points products include a curriculum guide, online modules, one-pagers, and in-person training that highlight important considerations for families and school personnel regarding students with disabilities, including Standards of Learning (SOL) and VAAP participation. The VDOE has also provided VAAP frequently asked questions for parents (about the VAAP and the VAAP Participation Decision-Making Tool). As of October 10, 2024, the Engage Your Family newsletter has 27,513 subscribers.
- The VDOE is currently providing training on the Staying the Course initiative to support students in staying or joining the Standard Diploma Path by supporting teachers in identifying and closing learning gaps for those students who have not had exposure to SOL-driven instruction with the necessary rigor and high expectations to fully realize their potential.
- By November 1, 2024, all LEAs in the state were required to complete a survey, 2024 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program. The results of this survey revealed projected participation rates by LEAs for each content area to be assessed in Spring 2025. This information will be provided to state staff to assist with the 2024-2025 cyclical monitoring of LEAs. In addition, the information will help determine the level of technical assistance needed by each LEA.

- Following the Spring 2025 administration, VDOE staff members will disaggregate the AA-AAAS participation data by LEA, primary disability, gender, race/ethnicity, and grade level to reveal trends in disproportionality in accordance with 34 C.F.R. §200.6(c)(4)(ii)(A).
- Using the disaggregated data, VDOE staff members will address the disproportionality identified above for each LEA exceeding one percent of its students in any subject with an AA-AAAS and will provide technical assistance to LEAs in the area(s) of identified need(s), as required under 34 C.F.R. §200.6(c)(3)(iii).
- In addition, the VDOE is in its third year of implementing its new online version of the Virginia Alternate Assessment Program (VAAP), and VDOE monitoring of the administration of the online assessment is ongoing.

(C) State will address any disproportionality in the percentage of students taking the AA-AAAS.

To meet this stated requirement, the VDOE required LEAs to submit assurances including:

- The IEP Teams identified students with the most significant cognitive disabilities following state criteria and participation guidelines.
- Excessive absences; social, cultural, or economic differences; identification in a specific disability category; specific special education placement or services; anticipated scores on SOL tests; or concerns for accreditation calculations were not considered in the determination that the student will be assessed with the VAAP.
- Students participating in the VAAP have been instructed, at minimum, to address the VESOL.
- Student IEPs include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the student meets the criteria for the alternate assessment; and how the student's participation in the VAAP will impact the student's promotion and/or graduation with a standard or advanced studies diploma, or other matters.
- There is written confirmation that IEP Teams informed parents of students with the most significant cognitive disabilities of the implications of participation in the alternate assessment.
- The school division will seek to measure the achievement of at least 95 percent of all students, including students with disabilities in all grades for which assessment is required.
- There is written confirmation that the school division has no disproportionality in the percentage of students in any subgroup taking the alternate assessment, or if disproportionality does exist, it has plans (outlined below) to address any disproportionality.

The plan includes:

- Identifying districts with more than one percent of its students taking the AA-AAAS.
- Providing training and technical assistance to school divisions to ensure appropriate decisions for participation in the AA-AAAS are made by IEP Teams.
- Identifying school divisions with student groups who disproportionately participate in the AA-AAAS.
- Monitoring school divisions with more than one percent of their students participating in the AA-AAAS.

Virginia is making progress in its plan and timeline as follows:

- As part of the VDOE transition to a new format for the AA-AAAS, beginning in SY 2021-2022, additional webinar training sessions were provided to LEAs regarding students with the most significant cognitive disabilities, including revising and augmenting its guidance regarding VAAP participation.
- Based on data presented in the tables above and gathered through the survey, 2024 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program, the VDOE is able to identify those school divisions that exceed the one percent threshold of students participating in the VAAP. This data will be provided to state staff to assist with the 2024-2025 cyclical monitoring of LEAs and to determine the level of technical assistance needed by each LEA to address the need to exceed the one percent threshold.

To meet Requirement 4 (§200.6(c)(4)(iv)), the steps that have been or will be taken by the VDOE are listed in the table below.

Table 8: Steps That Have or Will be Taken to Meet Requirement 4 (§200.6(c)(4)(iv))

Steps	Timeline
The VDOE staff members will continue to participate, bi-weekly, in the One Percent Community of Practice (CoP), offered by NCEO in accordance with P.L. 108-446 Section 617(a).	Ongoing (December 2017–Present)
The VDOE staff members participated in the Peer Learning Group: PLG #2-Guiding and Evaluating District Justifications for Exceeding the One Percent Cap, offered by NCEO, in accordance with P.L. 108- 446 Section 617(a).	Completed (August 2019)
The VDOE staff members will annually review and revise, if appropriate, state-level policies, procedures, and practices pertaining to Virginia’s AA-AAAS, based on information gathered from the above listed CoP, PLGs, and the data disaggregation in accordance with 34 C.F.R. §200.6(d).	Ongoing
The VDOE staff members will annually disaggregate the AA-AAAS participation data by LEA, primary disability, gender, race/ethnicity, and grade level to reveal trends in disproportionality in accordance with 34 C.F.R. §200.6(c)(4)(ii)(A).	Ongoing
Using the disaggregated data, the VDOE staff members will address the disproportionality identified above for each LEA exceeding one percent of its students in any subject with an AA-AAAS and will provide technical assistance to LEAs in the area(s) of identified need(s), as required under 34 C.F.R. §200.6(c)(3)(iii).	Ongoing
Based on data presented in Tables 1-7 and gathered through the survey, 2024 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program, the VDOE is able to identify those school divisions that exceed the one percent threshold of students participating in the VAAP. This data will be provided to state staff to assist with the 2024-2025 cyclical monitoring of LEAs and to determine the level of technical assistance needed by each LEA within the cohort to address the need to exceed the one percent threshold. At a minimum, state staff will review student files to ensure the following:	Ongoing

Steps	Timeline
<ul style="list-style-type: none"> • The IEP Teams identified students with the most significant cognitive disabilities following state criteria and participation guidelines. • Excessive absences; social, cultural, or economic differences; identification in a specific disability category; specific special education placement or services; anticipated scores on SOL tests; or concerns for accreditation calculations were not considered in the determination that the student will be assessed with the VAAP. • Students participating in the VAAP have been instructed, at minimum, to address the VESOL. • Student IEPs include a statement that addresses why the student cannot participate in the regular assessment; why the particular assessment selected is appropriate for the student, including how the student meets the criteria for the alternate assessment; and how the student’s participation in the VAAP will impact the student’s promotion and/or graduation with a standard or advanced studies diploma, or other matters. • There is written confirmation that IEP Teams informed parents of students with the most significant cognitive disabilities of the implications of participation in the alternate assessment. 	
<p>The VDOE will require LEAs to submit information justifying the need to assess more than one percent of its students in any subject with an AA-AAAS, in accordance with 34 C.F.R. §200.6(c)(3)(ii).</p>	<p>Ongoing</p>

Results of the above Steps Taken

Based on information learned in the PLGs offered by NCEO and the information gathered through the disaggregation of the AA-AAAS participation data by LEA, primary disability, gender, race/ethnicity, and grade level to reveal trends in disproportionality, the VDOE revised the AA-AAAS participation criteria. In addition, the guidance on the determination of significant cognitive disabilities is revised, as needed. The survey, 2024 Justification to Exceed One Percent Participation in the Virginia Alternate Assessment Program, includes LEAs justifying the need to exceed one percent of its students in any subject with an AA-AAAS in 2024-2025. The LEAs (total number to be determined) will have their disaggregated data reviewed by state staff to determine the level of need for technical assistance.

All Cohort 4 LEAs slated for cyclical review, and certain LEAs identified through data disaggregation, will be identified for student file reviews. If noncompliance is determined by state staff, a VDOE monitoring specialist will be assigned to oversee timely correction in accordance with the USED Office of Special Education Programs (OSEP) QA 23-01.

It is also important to note, as part of the VDOE transition to a new format for the AA-AAAS, beginning in SY 2021-2022, additional webinar training sessions were provided to LEAs regarding students with the most significant cognitive disabilities, including revising and augmenting its guidance regarding VAAP participation.

Based on the data and the steps taken, as listed above, state staff indicate that substantial progress has been made toward the appropriate students being assessed in the AA-AAAS, in accordance with 34 C.F.R. §200.6(c)(3) and will monitor continuing improvement in the years to come.

Prior to the submission of this waiver request, input was solicited from a variety of stakeholders, including the Virginia State Special Education Advisory Committee (SSEAC) and the Community of Practitioners (CoP). Information about the waiver was provided, and a request for public comment was announced through the Associate Superintendent of Special Populations. In addition, the request for public comment was posted to the Virginia Alternate Assessment Program (VAAP) webpage. Consistent with the manner in which similar notices and public comment opportunities are provided, school division personnel and multiple stakeholder groups were also informed of the opportunity by email.

Please contact Jeff Phenicie, Executive Director of Data, Monitoring and General Supervision, by email at Jeff.Phenicie@doe.virginia.gov or by telephone at (804) 750-8145, if there are any questions or to discuss the content of this waiver request.

We look forward to working with the United States Department of Education staff to achieve a positive response to the request.

Lisa Coons, Ed.D.
Superintendent of Public Instruction
The Virginia Department of Education

Date

Public Notice and Comment Period Waiver Request Pursuant to 34 C.F.R. §200.6(C)(4)

Prior to submitting this ESSA waiver request, the VDOE provided public notice to Virginia stakeholders. The VDOE provided such notification, by posting a public notice on its website for more than 30 calendar days (October 24, 2024–November 25, 2024), of the intent to request a waiver from the alternate assessment based on alternate academic achievement standards one percent cap and solicited public comment. In addition, the request for public comment was posted to the Virginia Alternate Assessment Program (VAAP) webpage. Consistent with the manner in which similar notices and public comment opportunities are provided, school division personnel and multiple stakeholder groups were also informed of the opportunity by email. The State reviewed all public comment received and took the input into consideration when adjusting state procedures on the on the implementation of the alternate assessment aligned with alternate academic standards.

Copies of all comments the VDOE received from stakeholders in response to this notice are listed below.

- On November 21, 2024, Virginia’s Committee of Practitioners met to review and discuss the application for a Waiver Request for the Alternate Assessment Program. After a presentation on the application process and review of data by staff from the VDOE’s special education staff, the committee asked questions and held discussion before offering their unanimous support for the waiver application. - *Committee of Practitioners*
- The email serves as our official support for the Virginia Department of Education's request for a waiver related to the Virginia Alternate Assessment Program (VAAP). As an educator, we believe this waiver is critical to ensuring the continued delivery of equitable, accessible, and high-quality education for all students with significant cognitive disabilities in Virginia. The VAAP plays an essential role in addressing the diverse needs of students by providing them with an alternate assessment option tailored to their unique capabilities. Granting this waiver would enable the Virginia Department of Education to maintain flexibility in meeting the requirements while prioritizing the best interests of the students and educators involved. I urge you to carefully consider the request for this waiver and its potential to positively impact students with disabilities, their families, and their educational outcomes. Thank you for your attention to this important matter. – *LEA Representative*
- I am writing to address requirement 4 in your waiver request draft. According to requirement 4, the state must revise its definition of “students with the most significant cognitive disabilities”. The state of Virginia did this by creating a new guidance document for determining VAAP participation. Now, I’ll admit I do not completely understand the document as most of the testing terminology is unfamiliar to me. However, since the new guidance documents are included, I feel as though my comments are justified. The new guidance documents are failing our students. According to the documents, if you can wipe your butt independently, you can take an SOL test alongside same-aged peers. Unfortunately, those two skills do not go hand-in-hand. I am currently working harder than ever to educate students that cannot count past 10 on how to pass a sixth grade SOL test. In the time that I spend working on skills that are not being

comprehended, I am wasting time that I could be teaching them functional academic skills - only because your document said they must now be learning the same exact material as their same-aged peers. It is my understanding that the state of Virginia is pushing for more inclusion of our special needs students. This can be done in many ways. Sending these students to grade level classes (where they can be instructed in the standards by a certified teacher in that subject) when they are academically and functionally performing years below grade level is not appropriate. Now, I know your initial thought must be that their IEP can determine their placement, services, and goals. However, the IEP is now flawed because it says they will master grade level standards on a standardized assessment, but it also says they need to learn to respond to greetings, count to 20, and follow one-step verbal directions without prompting. How do all of those skills go hand-in-hand? By forcing these students to be removed from the VAAP, we have gone to a 0% participation rate in alternative assessments for middle schools in the area I reside. It is my belief that, if 1% is allowed to participate in alternate assessments, each division should be responsible for meeting their 1% capacity per grade level by whatever means necessary. If we have 500 students in 6th grade, then 5 should be allowed to participate in alternate assessments by our own determining guidelines. We have already tried so hard to make the world a better place for our students with disabilities. Why do we have to make school so complicated? If parents, teachers, administrators, and related service personnel are truly in it for the student, then they should be responsible for making the decisions that will affect them the most - not the state determining cognitive ability based on functional skills that do not relate to the ability to comprehend grade level skills. If I have missed the point of the public comment, I apologize. However, I feel led to bring attention to the detrimental effect that the new determining guidelines are bringing to our students and their education. – *LEA Representative*

- I strongly support the VAAP waiver for our students in Virginia. – *LEA Representative*
- Please allow school divisions to have a waiver beyond the 1% rule for VAAP. Many students who PREVIOUSLY qualified for VAAP no longer qualify because of the arbitrary 1% rule. Well, I understand LEA I do not understand how statistically the state came up with a one percent of the population as the measure. They are 20 students in self-contained autism classrooms in a classroom in a building of 517 students. How can the state decide that only 5.17 of those students qualify for VAAP? These are students that have been found eligible for the highest level of services through a committee of professionals and their families, but don't fit in the states 1% rule. Not only does this do a disservice to our special-needs populations, but it also does a disservice to our classroom teachers, many who don't have the specialized training to work with these students. It also is disservice to the students in general education classrooms. Is this is part of your plan to dismantle public education? . – *LEA Representative*
- I am in support of the VDOE VAAP waiver. Many school districts have more than 1% of students who qualify, and it is unfair to shut them out simply due to a number. Thank you for listening. – *Anonymous*
- I am writing this email tonight with great concern for the education of my son Dxxxxx Nxxx 3rd, also known as Txxx. I wanted to write tonight to let the Virginia Department of Education know that his name is Dxxxxx aka Txxx and not student 9XXXXXXXX. My son is a special needs student and he is identified under the categories of Intellectual

Disability and Speech and Language Impairment. Txxx is not his disability and he is not just a number. Txxx is not another check mark on someone's checklist to show that this state is any better than another state. I want the Virginia Department of Education to know from a parents' perspective how I feel about the changes that have been made concerning the education of our special needs students in regard to the VAAP. Just a brief history about my son Dxxxx aka Txxx. Txxx has struggled over the years with a speech impairment and developmental delays beginning very early on. With the hard work from myself and his team, he has made progress. Txxx struggles academically, social, emotionally, developmentally EVERY SINGLE DAY. I understand that we would like to push our kids to be the best of the best, but I am in full support of meeting my children where they are. Txxx was in general education classes and that setting was not beneficial to him or his development, he was found to be eligible to receive special education services in the self-contained classrooms. I truly believe if you meet a child where they are they will then show you what they are capable of and that will encourage progress. Txxx was placed in a setting that benefitted him the most and he has made progress to the best of his ability. I will not say that it has been an easy road, because that would be a lie. I will say that with his special education teams over the years, we have been able to teach and nurture his strengths to strengthen his weaknesses. Txxx is currently in the eighth grade in the self-contained/general education classrooms. This is not the model that benefits he or his previous progress! He has been made to be placed in classrooms that teach content at grade-level even though he can't read, count or speak independently. He has suffered over the years with social anxiety, and he has been diagnosed with selective mutism. In addition, he has been taught academically at his level and given goals to increase his abilities, so I am not sure why he is being "PUNISHED" by removing his ability to take the alternate assessment. The goals written for him do encourage increase of abilities, they are not "dumbed down" to keep him at the same level. The goals I have seen have always encouraged him to do his best and learn more, but his reality is that is a task in itself. So why would he be placed in courses that don't encourage progress, but the goal of passing a standardized test that doesn't benefit him in any way. He is in classes where they must give him unmodified work and modified at times, but he is still not gaining the knowledge from the class due to his significant cognitive deficits. He should not be subjected to being placed with students that he can't relate to on any level. He was once a child who self-inflicted pain, BUT when we found that it affected not only home situations, but school as well his time shifted gears to see what we could do to help him. I am not looking for him to regress back to his frustrated and overwhelmed state due to the VDOE not looking at the individual needs or allowing the teachers and teams to instruct according to the individual needs of the students. In the general education setting, he has become frustrated and begins to shut down at times due to his inability to even understand what people are talking about around him. IT IS UNFAIR!!! I am here to advocate for this "worksheet" that was introduced to me ALL OF A SUDDEN with no other options given to be taken away and continue to educate our children the way that is beneficial to them. I would like to advocate for my son to receive the VAAP waiver to allow him the continued ability to be assessed using the tool even throughout high school. Txxx is having to sit for an SOL (which I will be opting him out of) as a child who does not read at any level close to the eighth grade level, how is that fair? I was told that if my child could toilet, feed, dress, etc. without significant assistance that he should be able to

take general education classes and sit for SOLs. I feel as a special needs parent that we understand that our children have significant issues academically, developmentally, socially, etc. we prepare our children for the world from their point of view. So I guess the Virginia Department of Education feels that we should not teach them how to be independent in any way. We understand that our children will grow to be adults, so we are looking way past the school systems. We are looking at their future which is what the state and districts claim they are doing. I hope that this email makes someone think and help stand up for our students in the state of Virginia who have special needs. We need someone to stand up for our kids and the parents will continue to do so until and beyond being heard by the "important ears". – *Parent of a Student with a Disability*

- I support the VAAP waiver. The level of student needs in our state is extensive and this contributes to the over 1% participation rate in the alternate assessment. - *LEA representative*
- I am in support of the VDOE waiver request for the 2024-2025 school year on the number of students being assessed on the Virginia Alternate Assessment Program. - *LEA representative*
- I support VDOE's waiver request for the school year (SY) 2024-2025 for reading, mathematics, and science. - *LEA representative*
- The Advocacy Institute offers the comments below regarding the draft of Virginia's Request for a Waiver for School Year (SY) 2024-2025 from the One 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. This requirement became effective in school year 2017-2018. That year, Virginia was close to or under the one percent cap. The five ensuing years have seen steady increases in AA participation (see Table 7), indicating that the state is not committed to complying with this requirement. We highlight what we consider to be several serious failures of the draft waiver request. Failure to request waiver for school year 2023-2024 In its draft request, VDOE fails to provide information regarding why the state did not request a waiver for school year 2023-2024. The data submitted in the draft (Table 7) clearly indicates that Virginia exceeded the cap in 2023-2024. In fact, VDOE confirmed its decision to not request a waiver in 2023-2024 in response to an inquiry by this organization, shown below. VDOE should provide an explanation as to why a waiver was not sought for school year 2023-2024. In fact, a 2023-2024 request would have been a waiver extension request for Reading and Science. Failure to propose a new, revised plan to achieve the 1% cap. The draft waiver request for 2024-2025 is, with few exceptions, identical to the plan submitted in the waiver request for 2022-2023. Given that the assessment participation for the AA-AAAS has increased or only marginally decreased in recent years (Table 7), it seems highly inappropriate and irresponsible to propose nothing more than a repeat of earlier activities. It is clear that the activities proposed in 2022-2023 have been ineffective in reducing AA-AAAS participation. VDOE should undertake a number of steps to formulate a new, more aggressive plan, including but not limited to: Assemble an Alternate Assessment Advisory Group to review all current resources and make recommendations for new or improved resources. Such a group should include representatives of state disability organizations, the state's parent training and information center (PEATC), the state protection and advocacy

organization (disAbility Law Center of Virginia), representative of the State Special Education Advisory Panel, and representatives of Local Special Education Advisory Panels. Develop and disseminate information and activities on the alternate assessment and the important process of determining how students will participate in the state's assessments in collaboration with PEATC. Such activities might include podcasts, webinars, and YouTube videos showing the use of the VAAP Participation Decision-Making Tool in action. Provide Web (html) and WORD versions of the following documents: (providing documents such as these only in PDF creates barriers for many): Participation in the Virginia Assessment Program: A Resource for Educators and Parents of Students with Disabilities (PDF); Testing Accommodations for Students with Disabilities: Growth Assessments and Standards of Learning Tests utilize the resources developed by the National Center on Educational Outcomes, specifically the 1% Toolkit and TIES Center. Failure to make LEA justifications publicly available. ESEA Federal regulation at 34 CFR 200.6(c)(3)(iv) makes clear that annual LEA justifications must be made publicly available. As of this date, LEA justifications cannot be located on the VDOE website. Early this year, this organization's request for LEA justifications for 2023-2024 was treated as a FOIA request and a charge was assessed. Clearly, this treatment violates both the intent and spirit of the ESEA requirement. In fact, the U.S. Dept. of Education's October 3, 2024 letter to states regarding waiver requests for 2024-2025 makes clear that "*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.*" (page 4) Failure to include all students with disabilities in state assessments. As noted in the US Dept. of Education's response to VDOE's waiver request for 2022-2023, Virginia failed to assess at least 95 percent of students with disabilities in Math. This failure would seem to suggest that VDOE should work harder to comply with this requirement. Yet the draft waiver request states "*The school division will seek to measure the achievement of at least 95 percent of all students, including students with disabilities in all grades for which assessment is required.*" "Seek" to measure is a totally inadequate expectation. We remind VDOE of the following: IDEA requires that all students with disabilities be included in all state and district assessments; VDOE provides an assurance to the US Dept. of Education each year in its annual application for federal IDEA funds that it "All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs as noted in 20 U.S.C. 1412(a)(16)(A)-(E); as amended by the Every Student Succeeds Act; 34 CFR §300.160." . – *Advocate for Students with Disabilities*

- I support this waiver, as per the information presented on the VDOE Special Education webpage. Thank you for the opportunity to provide public comment. – *LEA Representative*
- I support the request for the VAAP waiver. – *LEA Representative*
- I am submitting my public comment as a former Principal, Assistant Principal, and Special Education Coordinator in the State of Virginia's Public School System, as well as a parent of a student currently in the Henrico County Public School System who is directly

impacted negatively by the 1% cap on the administration of the VAAP. I am in support of Virginia's Request for a Waiver for School Year (SY) 2024-2025 from the One 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. Please let me know if you need any further comment or involvement from me in support of this waiver request. – *LEA Representative*

- As an LEA representative, I'm writing in support of the drafted waiver request. – *LEA Representative*
- I have been an educator for twenty-five years and I am in support of Virginia's request for the waiver from the one percent cap on participation in the alternate assessment program. We work diligently to see students' potential and encourage high achievement, however we cannot determine or affect the number of children with a significant cognitive disability. This is particularly true in small school divisions. – *LEA Representative*
- I am supportive of the waiver. While school divisions make every effort to remain under the 1% cap for identifying students who take the alternate assessment, our priority is to individualize for each and every student and their needs. The process is taken very seriously and is completed with fidelity—but sometimes we go over the cap, and the waiver allows us to proceed in doing what is appropriate for each student, despite possibly going over the designated number. – *LEA Representative*
- I am in full support of Virginia's Request for a Waiver for School Year (SY) 2024-2025 from the One 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. – *LEA Representative*
- This email is submitted for the purpose of demonstrating support for the proposed waiver of the 1% cap on participation in the Virginia Alternate Assessment Program (VAAP). The determination of eligibility for participation in the VAAP should be driven by the exhibited needs of the individual student and not driven by an arbitrary "cap" of the percentage of a school division's overall enrollment within the tested grades and areas. Thank you for your consideration. – *LEA Representative*
- I am writing to express my support for Virginia's waiver request to exceed the one percent cap on the participation of students with the most significant cognitive disabilities in the Virginia Alternate Assessment Program (VAAP) for the 2024-2025 school year. Our division has rigorously adhered to state guidelines for identifying students eligible for the VAAP. We have worked closely with Individualized Education Program (IEP) Teams to ensure that only students who meet the state's specific criteria for significant cognitive disabilities participate in these assessments. This includes careful documentation within IEPs, transparent communication with parents, and ongoing professional development for our division's educators. I appreciate the Virginia Department of Education's (VDOE) clear guidance and resources, which have been instrumental in helping us maintain these standards. Even with this in mind, we typically exceed the 1% cap on VAAP participation. The VDOE's structured plan for monitoring and evaluating participation in the VAAP and its provision of technical assistance to divisions like ours is a model of proactive oversight. This level of guidance and accountability ensures that our division remains compliant with federal requirements while still focusing on the individual needs of our students. The waiver would allow us to continue working collaboratively with the state to make decisions that are in the best

interest of our students. In conclusion, I strongly support Virginia's request for a waiver from the one percent cap for alternate assessments. The data presented in the waiver request clearly demonstrates the state's commitment to upholding high standards while accommodating the unique needs of students with significant cognitive disabilities. As a Special Education Director, I believe this waiver is crucial to ensuring that we provide a fair and appropriate assessment environment for all our students. I urge the United States Department of Education to approve this request and continue to support the efforts of Virginia's education system in meeting the diverse needs of our student population.

Thank you for considering this public comment. – *LEA Representative*

- I am in full support of Virginia's waiver application for the one percent cap on the percentage of students with the most significant disabilities. The application highlights Virginia's efforts to bring the percentage to below the 1% cap in a way that supports all stakeholders understanding of the impact of their IEP decisions. – *LEA Representative*
- A 1% cap should not be placed on the Virginia Alternate Assessment Program. Each school division should determine the alternate assessments needed for their locality. A 1% cap should not be placed on the Virginia Alternate Assessment Program. Each school division should determine the alternate assessments needed for their locality. – *LEA Representative*
- I am emailing in support of the waiver for the school year 2024-2025 on the one percent cap for students who may be assessed with an alternate assessment aligned with alternate academic achievement strategies. – *LEA Representative*
- I am emailing in support of the VDOE's waiver for the 2024-2025 school year regarding the number of students being assessed. – *LEA Representative*
- I support the Virginia's Request for a Waiver for School Year (SY) 2024-2025 from the One 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. – *LEA Representative*
- I am writing in support of the proposed request for the VAAP assessment waiver. – *LEA Representative*
- I support the waiver application for the 2024-2025 school year. Virginia is working diligently to address all areas of concern. – *LEA Representative*
- I am emailing in support of VDOE's VAAP waiver. – *LEA Representative*
- I am emailing in support of VDOE's VAAP waiver is sufficient. – *Parent of a Student with a Disability*
- I am a teacher; I am emailing in support of VDOE's VAAP waiver. – *LEA Representative*
- I am writing to express my support for the Virginia Department of Education's request for a waiver of the VAAP 1% cap. – *LEA Representative*
- I support the waiver as written – *higher education faculty member and local and state special education advisory committee member*
- I am in support of Virginia's Alternative Assessment Waiver. – *LEA Representative*
- As a grandparent of a student with a disability, I am in support of the VAAP Assessment Waiver from the United States Department of Education. The state and localities should not be penalized for providing an alternate assessment option that the IEP team views as appropriate for the student. Please grant this waiver request. – *Grandparent of a Student with a Disability*

- As a concerned member of the community and a supporter of the Brunswick County Public Schools system I support the waiver of the 1% cap on the Virginia Alternate Assessment Program (VAAP). – *Anonymous*
I have family in Brunswick County Public Schools and two grandchildren. I am in support of the VAAP Assessment Waiver from the United States Department of Education. - *Grandparent of a Student with a Disability*
- I have reviewed the waiver prepared by the Virginia Department of Education (VDOE) to exceed the one percent cap on the Virginia Alternate Assessment Program (VAAP). I am in support of the waiver, and I kindly ask that you take the VDOE's VAAP waiver into consideration. The VDOE has been working very hard to provide guidance for divisions in the Commonwealth to reduce their percentages of students participating in the VAAP, and divisions are also working hard to train staff and reduce their numbers. – *LEA Representative*
- I am in support of the waiver. – *LEA Representative*
- I am a special educator, and I support the VDOE's waiver. – *LEA Representative*
- I have reviewed Virginia's Request for a Waiver for School Year (SY) 2024-2025 from the One 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. I support submission and approval of the waiver. – *LEA Representative*
- I support this waiver. – *LEA Representative*
- As part of the work of lowering the number of students taking the VAAP, Virginia needs to address the lack of accessibility in the SOLs and the problems that arise by requiring families to make this decision in 3rd grade. Once a student takes the VAAP in third grade it becomes very difficult to transition them back to SOLs, even if they are capable, because they do not learn the foundational skills necessary to transition back. If SOLs were normed for and accessible to students with significant expressive communication disorders and fine motor challenges, for example, more students would be able to take the SOLs and be included in their general education classrooms. It is common in self-contained classrooms for students' curriculum access to be limited to the few concepts that make up their IEP goals. This carries over from year to year to year, constantly widening the gap between the content their SOL peers are learning and what they even have access to. This makes it almost impossible to transition off of the VAAP once on it. This practice of self-contained students only having access to curriculum that addresses their individual IEP goals is exacerbated by the fact that access to basal curriculum for these students is entirely lacking. Even in literacy, where the Virginia Literacy Act requires that all K-3 (soon to be K-8) students have access to a science of reading based basal curriculum, VDOE has not yet approved a basal curriculum that actually meets the needs of these students, leaving individual teachers and districts to struggle which creates incredible inconsistency and lack of fidelity in instruction. Students taking the VAAP are among the most vulnerable, and smallest, populations of students in our schools. VDOE does not demand that **any** other student population determine their graduation track in 3rd grade. Requiring that this decision be made for our most vulnerable students, who have documented developmental delays and disabilities, at the earliest age of any student group is beyond comprehension. It continues a cycle of poor education access and poor educational outcomes that is near impossible for families to break. VDOE must do the

hard work required by the Endrew F Supreme Court decision, and provide these students access to appropriately challenging curriculum. Presume competence. These students are capable of more than VDOE currently gives them credit for, and they deserve the support necessary to - as The Arc says - live a life like ours. – *Anonymous*

- I am writing as a mother of a child with Down syndrome to strongly advocate for a statewide waiver of 34 C.F.R. §200.6(c)(4), which restricts the eligibility criteria for alternate assessments, such as the Virginia Alternate Assessment Program (VAAP). These criteria, if strictly enforced, will result in many children with significant disabilities being moved to the general Standards of Learning (SOL) track, where they will be held to standards that are not aligned with their unique needs and abilities. My son, who cannot read or write, has been placed on the VAAP track for most of his schooling, which has enabled him to engage with a curriculum that is tailored to his developmental level and strengths. With these recent changes, however, he will now be required to follow the SOL track, even though he has not developed the basic skills necessary to meet those standards. The impact of this shift is profound: rather than supporting his learning and potential growth, this move places unrealistic expectations on him that he simply cannot meet, setting him up for failure and frustration. The purpose of the VAAP—and alternate assessments in general—has always been to provide a pathway for students with significant disabilities to access an education that reflects their individual needs and capacities. By enforcing criteria that effectively narrow the scope of the VAAP, we are denying students like my son the right to an education that genuinely supports their learning journey. A waiver of 34 C.F.R. §200.6(c)(4) would allow Virginia to offer children with disabilities an education that reflects their individual capabilities, as intended by their individualized education plans (IEPs). Forcing children who cannot meet SOL standards onto this track will only deepen the educational divide. Rather than helping these children grow, we are risking their academic, social, and emotional well-being by placing them in environments that are ill-suited to their needs. Not only does this undermine the principles of equitable education, but it also places undue stress on families, teachers, and, most importantly, the children themselves. I urge you to support a statewide waiver for 34 C.F.R. §200.6(c)(4) to protect and preserve access to appropriate educational opportunities for students with significant disabilities. This waiver is crucial to maintaining an inclusive education system that meets every child at their level, honors their individual learning pathways, and fosters their growth in a supportive environment. Thank you for your consideration of this request and your commitment to serving all students. Please stand with families like mine and allow our children to continue receiving the education they deserve. – *Parent of a Student with a Disability*
- Please consider the comments below. Requirement 3 mentions that by spring assessment window which opens Feb 24, 2025, IEP teams will "correctly identify students with the most significant cognitive disabilities following state criteria and participation guidelines"... The new VAAP Participation decision-making tool criteria was not effective until July 2025 and IEP teams were instructed to use the tool at the next IEP evaluation meeting. VDOE cannot guarantee that this correct identification will take place by Spring assessment given that many IEP meetings take place after February 2025. The memo mentions "Staying the Course" initiative to support teachers of students staying or joining the standard diploma. I could not find reference to this initiative on the VDOE website. If this information is publicly available, please add it to the VDOE

website on VAAP resources. This VAAP website contains information for both parents and educators. In addition to the VAAP Decision Making Tool, expand resources for educators and parents to understand how students who are no longer eligible for the VAAP can be supported in general education and special education classes. This includes guidance for teams: 1) who support new students in general education classes who may still need modifications (and are eligible for them because the type of diploma doesn't remove the responsibilities of IDEA to provide those supports), 2) on how to grade students who may receive modifications, 3) to learn more about how to support students who are working below grade level material in general education classes, 4) guidance for educators on whether students who are no longer eligible for the VAAP should still be educated in self-contained classes with only the VESOL curriculum. Provide this guidance for educators and parents and place it on the VAAP VDOE website. – *Parent of a Student with a Disability*

- I am writing in support of the VAAP waiver. – *LEA Representative*

34 CFR § 200.6(c)(4)(iii) requires assurances from the State that it has verified that each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject with an alternate assessment has– (A) followed the State’s participation guidelines and (B) will address any disproportionality in the percentage of students in any subgroup taking an alternate assessment.

- **OSEP Request:** Please provide a statement of assurance that Virginia has verified this.
- **VDOE Response:** The VDOE assures that each LEA in the State that anticipates it will assess more than 1.0 percent of its assessed students in any subject with an alternate assessment has– (A) followed the State’s participation guidelines and (B) will address any disproportionality in the percentage of students in any subgroup taking an alternate assessment. This is accomplished by requiring certification be submitted to the VDOE from each LEA that anticipates it will assess more than 1.0 percent of its assessed students in any subject with an alternate assessment in the State. A list of assurances and all 2024-2025 LEAs that agreed to those assurances are posted to the VDOE website at the URL link below.

VDOE website: <https://www.doe.virginia.gov/?navid=808> – (scroll to the bottom of the page)

34 CFR § 200.6(c)(3)(ii) and (iv), which requires that each LEA the State anticipates will assess more than 1.0 percent of its assessed students in any subject with an AA-AAAS must submit information to the State justifying the need to exceed the 1.0 percent cap and the State must demonstrate that the LEA justifications are made publicly available.

- **OSEP Request:** Please demonstrate that district justifications are made publicly available such as with a URL link to them or their summaries; or a screenshot of a webpage on the State’s website that says justifications are available upon request with the contact person’s name, email and/or phone number.
- **VDOE Response:** URL link on VDOE website: <https://www.doe.virginia.gov/?navid=808> – (Scroll to the bottom of the page)

Screenshot of webpage on VDOE website at <https://www.doe.virginia.gov/?navid=808>

VAAP One Percent Waiver

The *Every Student Succeeds Act* (ESSA) requires states to ensure that the total number of students assessed in each subject using the alternate assessment based on alternate achievement standards (AA-AAAS) does not exceed one percent of the total number of all students in the state who were assessed. States that anticipate exceeding one percent in alternate assessment participation may submit a waiver request to the United States Department of Education (USED) 90 days before the beginning of the alternate assessment testing window. In addition, ESSA requires each school division to submit a justification when it anticipates testing more than one percent of students using the AA-AAAS. In Virginia, the AA-AAAS is known as the Virginia Alternate Assessment Program (VAAP).

- [2024-2025 School Divisions Assurances](#) (PDF)

School divisions' justification statements to exceed one percent participation in the VAAP are available upon request by email at spedinstruction@doe.virginia.gov.

34 CFR § 200.6(c)(4)(iv) requires a plan and timeline by which: (B) The SEA will take additional steps to support and provide appropriate oversight to each LEA that the State anticipates will assess more than 1.0 percent of its assessed students with an AA-AAAS to ensure that only students with the most significant cognitive disabilities take an AA-AAAS.

- **OSEP Request:** The waiver request described a cyclical monitoring process and technical assistance. Please indicate whether Virginia has established a system of tiered intervention for providing support and monitoring. This may include differentiated support and monitoring depending on the tier that districts are in. For example, Tier 1 may be support for all districts. Tier 2 may be support and monitoring for districts that assessed more than 1% with an Alt assessment by a certain amount. Tier 3 may be intensive support and monitoring for districts that assessed more than 1% with an Alt assessment by an even larger amount and for a longer period.
- **VDOE Response:** Virginia has established a three-tiered system of intervention for providing support and monitoring of the AA-AAAS.
 - **Tier 1** includes all LEAs in the State. Tier 1 LEAs received written guidance from the VDOE Assistant Superintendent of Special Populations (released January 19, 2024) regarding the new AA-AAAS participation decision-making tool and its accompanying frequently asked questions. The written notification encouraged LEA staff to watch an introductory recording titled *VAAP Participation Decision-Making Tool: Module 1* and were asked to pre-register for one of four online live question and answer webinars hosted by VDOE staff on the implementation of the new AA-AAAS participation decision-making tool. The notification also offered contact information for VDOE specialists to answer questions and provide additional technical assistance.
 - **Tier 2** includes LEAs with participation rates in the AA-AAAS between 1.50-1.99 percent of the total student population (Fall Membership) in the grades tested for mathematics; English/reading (Grades 3, 4, 5, 6, 7, 8, and high school); or science (Grades 5, 8, and high school). Small student populations can have a significant impact on the participation percentages. The LEA is Tier 1 if it meets all three criteria: 1) Fall Membership for the tested grades is less than or equal to 1,500 students; 2) Less than 15 students in the AA-AAAS overall; and 3) AA-AAAS participation rate is less than or equal to 2.0 percent. In addition to all interventions and supports offered to Tier 1, Tier 2 LEAs were encouraged to participate in one of seven regional trainings (four virtual and three in person) that were conducted from April to August 2024. The trainings provided LEA teams information and practice with implementing the new AA-AAAS participation decision-making tool. Each LEA was encouraged to bring a team consisting of its Special Education Director, Special Education Coordinators, and any LEA staff responsible for training within the LEA.
 - **Tier 3** includes LEAs with participation rates in the AA-AAAS greater than 2.0 percent of the total student population (Fall Membership) in the grades tested for mathematics; English/reading (Grades 3, 4, 5, 6, 7, 8, and high school); or science (Grades 5, 8, and high school). In addition to all interventions and supports offered to Tier 1 and Tier 2, Tier 3 LEAs

will work directly with their assigned IDEA Part B regional monitoring specialist at the VDOE.

34 CFR § 200.6(c)(4)(iv) requires a plan and timeline by which: (C) The State will address any disproportionality in the percentage of students taking an alternate assessment aligned with alternate academic achievement standards as identified through the data provided in accordance with paragraph (c)(4)(ii)(A) of this section.

- **OSEP Request:** Please describe how the State calculated disproportionality at the State and district levels. Also indicate the criterion used to determine disproportionality. Most States use NCEO's disproportionality calculator and whatever criterion for identification that has been recommended (indicate the value).
- **VDOE Response:** Virginia calculates disproportionality in the percentage of students taking an alternate assessment aligned with alternate academic achievement standards at the State and LEA levels using the NCEO disproportionality calculator. Criterion for identification is set on NCEO's default setting of 5% confidence level and risk ratio of 1.0. To account for a small number of students taking the alternate assessment, Virginia uses the NCEO-recommended three-year totals. The LEA totals taking the AA-AAAS by race/ethnicity of ten or less are omitted from the calculation.