



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable James F. Lane  
Superintendent of Public Instruction  
Virginia Department of Education  
P.O. Box 2120  
Richmond, VA 23218

July 17, 2020

Dear Superintendent Lane:

I am writing to follow up on a letter I sent you on June 4, 2019, regarding the Virginia Department of Education's (VDOE) percentage of students with the most significant cognitive disabilities taking an alternate assessment aligned with alternate academic achievement standards (AA-AAAS). As you know, the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), limits the percentage of students that a State may assess with an AA-AAAS to no more than 1.0 percent of all assessed students in a State for each subject. In that letter, I noted that VDOE had exceeded the 1.0 percent threshold in the 2017-2018 school year in reading/language arts based on data submitted to the Department of Education (Department) via the EDFacts reporting system.

I recognize that the limit on the number of students with the most significant cognitive disabilities who may be assessed with an AA-AAAS was a new requirement starting in the 2017-2018 school year, and understand that many States needed time to provide training and guidance to reduce their AA-AAAS participation rates. Because VDOE had rates of AA-AAAS participation that were greater than 1.0 percent in reading/language arts without a waiver, the Department requested a plan for reducing the rate of AA-AAAS participation in future years in order to come into compliance with the 1.0 percent requirement. I appreciate the plan VDOE developed and submitted in summer 2019 to address this issue and look forward to seeing the results of your implementation of this plan over the next year.

VDOE submitted information to the Department via *EDFacts*, as of April 9, 2020, that indicated that the percentage of all tested students assessed with an AA-AAAS in 2018-2019 statewide is still above 1.0 percent in reading/language arts.

However, the Department acknowledges that on December 20, 2019, Virginia submitted the necessary information for a request of a waiver of the requirement that a State may assess with an AA-AAAS to no more than 1.0 percent of all assessed students in the grades assessed in a State for each subject. This waiver was rescinded in March 2020 because the State applied for, and received, a blanket waiver of school testing due to COVID-19. Because VDOE provided the requisite information for the waiver of the 1.0 percent cap, the blanket assessment waiver will be applied to VDOE for school year 2019-2020. If VDOE anticipates exceeding 1.0 percent of students assessed in any subject in school year 2020-2021, it should apply for a new waiver as provided in the memorandum issued by the Department on June 2, 2020.

The Department continues to support Virginia and all States to ensure all students are being assessed using the right assessments. Over the past two years, the National Center on Educational Outcomes has facilitated a variety of technical assistance activities for States working to meet the 1.0 percent threshold. I note that VDOE has participated in some of these activities. You may find resources from these activities available at [https://nceo.info/Assessments/alternate\\_assessments](https://nceo.info/Assessments/alternate_assessments).

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[www.ed.gov](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.*

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I appreciate the work you are doing to improve your schools and provide a high-quality education for students. If you have any questions, please contact Don Peasley of my staff at [ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov).

Sincerely,

/s/

Frank T. Brogan  
Assistant Secretary  
for Elementary and Secondary Education

cc: Shelley Loving-Ryder, Assistant Superintendent for Student Assessment, Accountability, and ESEA Programs