



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

MAY 14 2018

The Honorable Sheila Alles
Interim State Superintendent
Michigan Department of Education
608 W. Allegan Street
P.O. Box 30008
Lansing, MI 48909

Dear Interim Superintendent Alles:

I am writing in response to the Michigan Department of Education's (MDE) request on January 9, 2018, for a waiver of section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), of the requirement that a State may not assess using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS) more than 1.0 percent of the total number of students in the grades assessed in the State. MDE requested this waiver because, based on State data for the 2016-2017 school year, the MDE has concluded that it will need to assess more than 1.0 percent of students using an AA-AAAS in reading/language arts, mathematics, and science in the 2017-2018 school year.

After reviewing MDE's request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, the following waiver for school year 2017–2018:

- 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 a reading/language arts, mathematics and science.

As part of this waiver, MDE assured that the State educational agency:

- Will continue to meet all other requirements of section 1111 of the ESEA and implementing 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.
- Assessed in the prior school year (2016-2017) at least 95 percent of all students and 95 percent of students with disabilities who are enrolled in grades for which an assessment is 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, and will make such information publicly available.

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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 verify that each LEA that is required to submit such information to MDE is following all State guidelines in 34 CFR § 200.6(d) (with the exception of incorporating principles of universal design) and will address any subgroup disproportionality in the percentage of students taking an AA-AAAS.
- Will implement, consistent with the plan submitted in MDE’s waiver request, system improvements and monitor future administrations of its AA-AAAS to avoid exceeding the 1.0 percent cap.

I appreciate the work you are doing to improve your schools and provide a high-quality education for your students. If you have any questions, please contact Tahira Rashid of my staff at OSS.Michgan@ed.gov.

Sincerely,

A handwritten signature in black ink that reads "Jason Botel". The signature is written in a cursive style with a large, stylized initial "J".

Jason Botel
Principal Deputy Assistant Secretary, Delegated the
Authority to Perform the Functions and Duties of the
Assistant Secretary of Elementary and Secondary
Education



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

RICK SNYDER
GOVERNOR

BRIAN J. WHISTON
STATE SUPERINTENDENT

January 9, 2018

Jason Botel, Principal Deputy Assistant Secretary
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Ave.,
SW Washington, DC 20202
jason.botel@ed.gov

Dear Mr. Botel,

The Every Student Succeeds Act (ESSA) amended a provision of Title I of the Elementary and Secondary Education Act of 1965 related to students participating in alternate assessments of each State Education Agency's (SEA's) statewide assessment. The ESSA requires SEAs to submit waiver requests to the United States Department of Education, in the event they expect more than 1% of their students tested in a given content area and will participate in the state's alternate assessment.

The Michigan Department of Education (MDE) has conducted an extensive review of data from Michigan's statewide assessments in 2016 – 2017. The purpose of the review was to determine the participation rates of students taking the alternate assessments aligned with alternate academic achievement standards (AA- AAAS), better known as MI-Access.

The data revealed that an average of 2.4% percent of Michigan students participated in each of the content areas included on MI-Access in 2016 – 2017. Table 1 listed below displays participation rates by subject for the 2016 – 2017 MI-Access assessment. Based on the data, the state anticipates exceeding the 1% threshold enacted by the ESSA for school year 2017 – 2018.

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Table 1: 2016 – 2017 Participation in Alternate Assessment, MI-Access, by content

Content	Number of Students participating in alternate assessment (MI-Access)	Number of students participating in statewide summative assessments (M-STEP/Michigan Merit Exam, MI-Access)	Percent of students participating in alternate assessment (MI-Access)
English Language Arts (Grades 3-8 and 11)	18830	771950	2.4%
Mathematics (Grades 3-8 and 11)	18421	773767	2.4%
Science (Grades 4, 7 and 11)	7747	335091	2.3%

Table 2: 2016 – 2017 Total Students "tested" using state summative assessment (M-STEP, MME, MI-Access), by content

Content	Number of students participating in statewide summative assessments (M-STEP/Michigan Merit Exam, MI-Access)	Number of students expected to test in statewide summative assessments (M-STEP/Michigan Merit Exam, MI-Access)	Percent of total students tested
English Language Arts (Grades 3-8 and 11)	769087	782421	98.30%
Mathematics (Grades 3-8 and 11)	771390	782421	98.59%
Science (Grades 4, 7 and 11)	332390	340032	97.75%

Pursuant to 34 CFR § 200.6(c)(4), MDE is seeking a waiver for all subject areas for the 2017 – 2018 school year from the Secretary of the United States Department of Education. The 2017 – 2018 testing window for the alternate assessment, MI-Access, is from April 9, 2018 through May 25, 2018. The purpose of requesting this waiver is to acknowledge our baseline and to describe our plan to ensure that students are held to high academic standards and that students are being assessed using the assessment tools that are most appropriate to each student.

Input from MDE's Assessment of Students with Disabilities Advisory Committee was obtained and included in the creation of this waiver and plan. Feedback included the importance of including the following information:

- The current state participation rates;
- Consideration of the percentage of students identified with a cognitive impairment within a specific county and within the state;
- A consideration that Michigan has long been committed to assessing all students, regardless of ability or disability, and that we do not offer exemptions to certain populations of students;
- For English Language Arts and Mathematics, Michigan has adopted rigorous alternate content standards based on the Essential Elements developed by the Dynamic Learning Maps Consortia, of which Michigan was a part of developing;
- Social Studies alternate content standards are aligned to the general Michigan content standards and new alternate content standards in science are currently being developed to align with recent changes to the general science content standards; and
- Michigan emphasizes that decisions regarding assessment selection are a local Individualized Education Program (IEP) team decision.

Additional feedback included the following suggestions for local education agencies (LEAs) to include in their examination of their data on participation rates:

- Identify students that are being taught to general content standards but taking an alternate assessment;
- Identify the use of the state guidelines for participation in the alternate assessment as well as training provided to staff on: assessment selection, the alternate content standards and the alternate assessment;
- Identify how many students enroll in schools outside of their resident district. The districts serving these students should not be penalized for providing service to students who choose them and therefore increase special education numbers; and
- LEAs operating center-based programs for students with significant cognitive impairments that are open to students regionally, should have their participation rates looked at from a variety of perspectives, including examining rates with and without resident district students included.

PUBLIC COMMENT

MDE communicated to the public its intent to file a waiver for the 1% cap on alternate assessment participation. This communication was sent from our state superintendent to local and intermediate school district superintendents and public-school academy directors with a copy to the Michigan Education Alliance. In addition, the communication was sent to all intermediate school district (ISD), Local Education

Agency (LEA) and public-school academy (PSA) special education directors, as a state-wide press release, and as a memo to Family Matters, Michigan Alliance for Families and the Special Education Advisory Committee. An article in our state-wide newsletter regarding student assessments provided a link to the communication and it was also posted on the Office of Special Education, MI-Access, and the general assessment websites. The memo is provided as Appendix A. Public comment opened on November 15, 2017 and closed on December 20, 2017, which provided to the public a similar window to other MDE surveys.

Michigan had 36 total respondents who provided comments on the following open-ended opportunities found in the survey:

1. Please comment on Michigan's current rate of participation in the alternate assessment (2.4% English Language Arts; 2.4% Mathematics; 2.3% Science). (36 responses)
2. Please comment on what should be included in the plan and timeline for improvement. (34 responses)
3. Other comments. (25 responses)

Summary results and *responses* are as follows (For full details, see Appendix B):

PROMPT #1: Please comment on Michigan's current rate of participation in the alternate assessment (2.4% English Language Arts; 2.4% Mathematics; 2.3% Science):

- Comments were primarily in defense of Michigan's current participation rate citing beliefs that more than 1% of students function as if they have a cognitive impairment, alternate assessment participation should be based on student needs and is an IEP team decision, the belief that Michigan assesses more students than other states, concern that putting students who now take the alternate assessment into the regular assessment will be detrimental to the individuals. Because of these thoughts, many commented that districts should not be punished for being over 1%.

Response: Evidence signifies that most states also assess ALL students.

Although there are a variety of data sets that can be considered to provide research and documentation regarding the validity of a 1% cap, the State of Michigan is required to follow federal guidance and reporting requirements. Michigan underscores that the practice of IEP teams determining alternate assessment participation continues to be the expectation. The MDE will continue to work with all districts to ensure IEP teams have the proper training and tools to make appropriate decisions.

- Comments included concern for districts being punished when providing programming to or assessing students with cognitive impairments.

Response: There is no penalty for an ISD, LEA or PSA who exceeds the 1% cap. Justification is required from the district so the ISD and MDE can determine if technical assistance is needed to ensure students take the appropriate assessment. The department is aware of district programming variations and have provided consideration of that factor in the justification form for districts who exceed the 1% cap.

- One commenter asked the question, "do we have consistency from district to district with the definition of "severe cognitive impairment?"

Response: Michigan provides cognitive impairment eligibility guidance in R 340.1705, but has not defined what is meant by "functioning as if he/she has a significant cognitive impairment" for the purposes of assessment consideration.

- One commenter questioned all decisions made regarding students with disabilities and whether this waiver reduces expectations.

Response: The department is working to substantiate that the decision-making tool is utilized by all IEP teams to ensure that students' academic competences are being measured with the appropriate assessment tool. MDE is committed to reinforcing high standards and providing aligned assessments for all students.

PROMPT #2: Please comment on what should be included in the plan and timeline for improvement:

- Twenty-five comments were general and did not provide input regarding what should be included in a plan to address Michigan exceeding the 1% cap.
- Sixteen comments provided input such as creating online professional development, providing a clear definition of a significant cognitive impairment, making sure staff have access to decision making tools, focusing on appropriateness of those students taking the functional independence assessment, making sure staff understand the purpose of alternate assessments and more.

Response: All the ideas will be considered when creating the plan. MDE is reminding the commenters that although the state will look at the percentages of students identified with a cognitive impairment, and will work to define "significant cognitive impairment" relating to participation in the alternate

assessment, the State of Michigan is required to follow federal guidance and reporting requirements specific to the 1% cap.

PROMPT #3: Other comments:

- There were twenty-five additional comments of varying types, most of which were similar in nature to the comments for prompts 1 and 2.

Response: All ideas will be considered when creating the plan. MDE is reminding the commenters that although the state will look at the percentages of students identified with a cognitive impairment, and will work to define "significant cognitive impairment" relating to participation in the alternate assessment, the State of Michigan is required to follow federal guidance and reporting requirements specific to the 1% cap.

DISPROPORTIONATE REPRESENTATION IN ALTERNATE ASSESSMENT PARTICIPATION

Michigan examined disproportionality regarding participation in the state alternate assessment (MI-Access) for the following demographics:

- 1) Gender
 - a. Male
 - b. Female
- 2) Economically disadvantaged (based on poverty risk factors such as free and reduced lunch eligibility, homelessness, migrant status, and direct certification for government food assistance)
 - a. Disadvantaged
 - b. Not Disadvantaged
- 3) Racial/Ethnic groups
 - a. Native American
 - b. Asian
 - c. African American or Black
 - d. Pacific Islander
 - e. Hispanic
 - f. White
 - g. Two or more races
- 4) English Language Learners status
 - a. Participation in a Learning English Program
 - b. Non-participation in a Learning English Program

To determine if substantive disproportionality of students occurred, Michigan uses a Relative Risk Ratio method to analyze the rate of participation in alternate assessments. For other federal reporting, (i.e., in the Annual Performance Report), Michigan uses multiple years of data and a threshold Risk Ratio of 2.5 for each

demographic subgroup. For assessments, this threshold means students in one demographic subgroup are participating in the alternate assessment at a rate of 2½ times more often than students who are not in that demographic. A relative Risk Ratio of 1.0 means that students in one demographic participate in the alternate assessment at the same rate as students who are not in that demographic.

For each assessment content area (English Language Arts, Math and Science), Michigan examined 3 years of test participation aggregated to improve reliability of the analyses (especially in cases where districts have smaller numbers of students). These findings will be shared with ISDs and districts to review as part of their general guidance, and ISD staff will be trained to identify and target districts with substantively high disproportionate representation in alternate assessment participation. Statewide, Michigan has identified one demographic (i.e., the economically disadvantaged) for which we find some elevated Risk Ratios. See Table 3 - 5 for statewide results.

Table 3: Disproportionate Alternate Assessment Participation by Demography (3-year aggregate) for English Language Art

Gender	Group Rate Comparison (In-group vs not)	Risk Ratio
Male vs Female	3.15% vs 1.68%	1.87
Economic Disadvantaged	3.45% vs 1.49%	2.32*
English Language Learner	2.36% vs 2.44%	0.97
Race	Group Rate Comparison (In-group vs not)	Risk Ratio
Native American	3.41% vs 2.41%	1.40
Asian	1.31% vs 2.47%	0.53
African American	3.75% vs 2.16%	1.74
Pacific Islander	3.05% vs 2.43%	1.25
Hispanic	2.33% vs 2.44%	0.96
White	2.16% vs 3.01%	0.72
Two or More Races	2.25% vs 2.44%	0.92

Table 4: Disproportionate Alternate Assessment Participation by Demography (3-year aggregate) for Math

Gender	Group Rate Comparison (In-group vs not)	Risk Ratio
Male vs Female	3.05% vs 1.67%	1.83
Economic Disadvantaged	3.35% vs 1.46%	2.29*
English Language Learner	2.19% vs 2.39%	0.92
Race	Group Rate Comparison (In-group vs not)	Risk Ratio

Gender	Group Rate Comparison (In-group vs not)	Risk Ratio
Native American	3.25% vs 2.43%	1.34
Asian	1.24% vs 2.48%	0.50
African American	3.68% vs 2.17%	1.69
Pacific Islander	3.17% vs 2.43%	1.30
Hispanic	2.24% vs 2.45%	0.92
White	2.11% vs 3.13%	0.67
Two or More Races	2.21% vs 2.44%	0.91

Table 5: Disproportionate Alternate Assessment Participation by Demography (3-year aggregate) for Science

Gender	Group Rate Comparison (In-group vs not)	Risk Ratio
Male vs Female	2.98% vs 1.62%	1.84
Economic Disadvantaged	3.33% vs 1.44%	2.32*
English Language Learner	2.28% vs 2.31%	0.98
Race	Group Rate Comparison (In-group vs not)	Risk Ratio
Native American	3.12% vs 2.43%	1.28
Asian	1.20% vs 2.45%	0.49
African American	3.56% vs 2.35%	1.52
Pacific Islander	3.10% vs 2.43%	1.28
Hispanic	2.21% vs 2.44%	0.90
White	2.07% vs 2.59%	0.80
Two or More Races	2.14% vs 2.44%	0.88

* = Risk Ratio \geq 2.0, ** = Risk Ratio \geq 2.5

Note: Data examined alternate assessment participation rates aggregated over 3 years (School Years 2014 – 2015, 2015 – 2016, 2016 – 2017). Relative Risk Ratios of 2.50 or above are considered disproportionately high representation among students taking the alternate assessment.

GUIDELINES FOR PARTICIPATION

Michigan’s guidelines for IEP teams to use in determining which assessment a students should be taking can be found here and in Appendix C:

http://www.michigan.gov/documents/mde/Should_My_Student_Take_the_Alternate_Assessment_556705_7.pdf.

In addition to making this document publicly available, professional development has been provided by MDE over the course of the past year from the Office of Educational Assessment and Accountability and the Office of Special Education in the following venues:

- The Michigan State Testing Conference in February, 2017
- MI Council for Exceptional Children Conference, March, 2017
- MI-Access Test Administration webcast, March, 2017
- Mi-Access Standard Setting, July and August, 2017
- Michigan Association of Administrators of Special Education Summer Conference, August, 2017
- Multiple articles appearing in the MDE eNewsletter: Spotlight on Student Assessment
- Michigan Association of Administrators of Special Education fall meeting, December, 2017.

PLAN FOR IMPROVEMENT

The Michigan Department of Education will partner with each ISD in Michigan to implement a plan to address the 1% cap. ISDs divide the state into smaller regions and serve a variety of oversight and services to LEAs and PSAs. There are approximately 56 ISDs, 546 LEAs, and 297 PSAs in Michigan. As sub-recipients of IDEA federal funding, part of the ISD responsibility under R 340.1839 of the Michigan Administrative Rules for Special Education, includes:

Each ISD shall implement monitoring procedures and evaluation methods developed by the department to ensure that the standards and criteria established are being achieved by the ISD, their constituent LEAs, and their PSAs.

MDE will:

- Provide each ISD with both ISD summary and LEA/PSA data regarding participation rates for students taking MI-Access. Data will be updated and re-distributed as it becomes available for each test administration cycle (a sample can be found in Appendix D);
- Provide a justification form for districts that currently exceed the 1% participation rate, to provide feedback to the ISD and MDE regarding why this is the case and any plans they have to provide training to IEP teams (see Appendix E);
- Provide guidance for holding discussions and data review for LEAs on the 1% cap. This guidance will be updated as MDE receives and responds to the data from each ISD, LEA and PSA. For example, future versions will include addressing disproportionate representation in alternate assessment participation. The current guidance Every Student Succeeds Act (ESSA) and the 1% GAP: The MDE Guide for Intermediate School Districts (ISD) document is found in Appendix F and at the website below:

http://www.michigan.gov/documents/mde/1_Cap_Guidance_for_ISDs_595801_7.pdf.

- Develop a template for collecting LEA level data for ISDs to use in structuring support and technical assistance;
- Provide state level training, that will include, but is not limited to:
 - Online accessible training on the assessment selection guidance for special education staff and IEP team members;
 - In person training on assessment selection, assessment supports and accommodations and understanding alternate content standards (various state conferences); and
 - Continued training modules on supports and accommodations for all Michigan assessments.
- Work with interested parties to further define what it means, in consideration of alternate assessment participation, for a student to function as if they have a significant cognitive impairment; and
- Consider other technical assistance activities as gleaned throughout the process.

In partnership with MDE, each ISD will:

- Review the data of each LEA regarding the current participation rate for students taking MI-Access;
- Collect justification forms and additional information as needed from any district that has a participation rate over 1%;
- Structure support and technical assistance to districts based on their current rate of participation, identified needs and additional information provided by the district;
 - Focus will be on training for IEP team members on assessment selection decisions, including but not limited to:
 - Assessment selection guidelines
 - Characteristics of adaptive behavior as outlined in assessment selection guidelines
 - Review of current alternate content standards in English Language Arts, Mathematics, Science and Social Studies
 - Potential implication for a student earning a regular high school diploma when a path of alternate content standards and assessment is chosen
- Provide the ISD's participation rate and justification, if over the 1% CAP and
- Provide an ISD level summary of technical assistance for LEA, PSA and ISD program staff to address strict adherence to the assessment selection guidance and related topics.

The Michigan Department of Education believes its plan will reduce the percentage of Michigan students participating in the alternate assessment, MI-Access to be closer to the 1% cap required by ESSA. Beyond meeting the requirements of ESSA, the MDE is committed to providing ISDs, LEAs, PSAs and IEP teams information and assistance to ensure that students are held to high academic achievement standards and that students are assessed using the tools most appropriate for individual student needs.

Please contact John Jaquith, jaquithj@michigan.gov or (517) 335-1987, to discuss the content of this waiver request or to answer any questions you may have. We look forward to working with the United States Department of Education staff to achieve a positive response to this request.

Sincerely,



Brian J. Whiston, State Superintendent
Michigan Department of Education

Attachments

cc: Michigan Education Alliance
oss.michigan@ed.gov