

ARIZONA DEPARTMENT OF EDUCATION
PUBLIC NOTICE AND COMMENT PERIOD
WAIVER REQUEST PURSUANT TO
34 C.F.R. §200.6(c)(4)
October 10, 2018

Pursuant to 34 C.F.R. §200.6(c)(4), the Arizona Department of Education (ADE) will seek a waiver for the 2018-2019 school year from the Secretary of the United States Department of Education. The regulation in question, found at 34 C.F.R. 200.6(c)(2), requires State Education Agencies such as the ADE to limit the total number of students assessed in a subject area using an alternate assessment. The limit on the percentage of students assessed by the alternate assessment is set by the federal regulation, stating there shall be no more than one (1) percent of the total number of students taking a state assessment assessed in each subject area.

Specifically, 34 C.F.R. 200.6(c)(2) provides:

For each subject for which assessments are administered under § 200.2(a)(1), the total number of students assessed in that subject using an alternate assessment with alternate academic achievement standards under paragraph (c)(1) of this section may not exceed 1.0 percent of the total number of students in the State who are assessed in that subject.

NOTICE OF PUBLIC COMMENT PERIOD: Any individual or organization may submit written comments on the proposed waiver pursuant to 34 C.F.R. §200.6(c)(4). Written comments shall be accepted through October 25, 2018.

You may submit your comments electronically, using the following link:

<http://www.azed.gov/assessment/public-comment/> or directly to Audra Ahumada, Deputy Associate Superintendent of Assessment, Arizona Department of Education, 1535 West Jefferson St. Bin #6, Phoenix, AZ 85007. Mrs. Ahumada may be reached by telephone at 602-542-5450, by fax at 602-542-5467 or through email at Audra.Ahumada@azed.gov.

The requirements for a State Education Agency to seek a waiver are set forth at 34 C.F.R. §200.6(c)(4) and reproduced below. ADE is requesting a waiver in response to the requirements set forth at 34 C.F.R. §200.6(c)(4) because its most recent data on the percentage of students taking Arizona's alternate assessments in all subject areas stands at 1.01%. Arizona is seeking waiver for Science only.

The waiver requirements are in **bold** lettering below.

- 1. If a State anticipates that it will exceed the cap under paragraph (c)(2) of this section with respect to any subject for which assessments are administered under § 200.2(a)(1) in any school year, the State may request that the Secretary waive the cap for the relevant subject, pursuant to section 8401 of the Act, for one year. Such request must—***

Be submitted at least 90 days prior to the start of the State's testing window for the relevant subject;

ADE will submit a waiver request to the U.S. Department of Education 90 days prior to the start of Arizona's testing window for its alternate assessment for the subject area: Science. The start date for the State Alternate Science assessment is February 1, 2019.

2. *Provide State-level data, from the current or previous school year, to show—The number and percentage of students in each subgroup of students defined in section 1111(c)(2)(A), (B), and (D) of the Act who took the alternate assessment aligned with alternate academic achievement standards; and*

Table 1. 2018 State Participation Rates by Grade for ELA, Math and Science

	Gr. 3	Gr. 4	Gr. 5	Gr. 6	Gr. 7	Gr. 8	Gr. 10	Gr. 11	STATE
Number of Students ELA/Math	78,699	81,766	82,597	81,234	80,045	79,804		97,054	581,199
Number Tested Statewide Assessment- ELA	77,013	79,980	80,918	79,455	77,923	77,604		94,516	567,399
Percent Tested Statewide Assessment - ELA	97.86	97.82	97.97	97.80	97.35	97.24		97.38	97.63
Number of Tested Alternate Assessment - <i>ELA</i>	774	813	785	819	812	860		811	5674
Percent Tested Alternate Assessment - <i>ELA</i>	0.98	0.99	0.95	1.01	1.01	1.08		0.84	0.98
Number Tested Statewide Assessment - Math	77,187	80,168	81,068	79,573	78,089	77,718		93,629	567,432
Percent Tested Statewide Assessment - Math	98.08	98.05	98.15	97.96	97.56	97.39		96.47	97.67
Number of Tested Alternate Assessment - <i>Math</i>	777	817	796	824	814	861		815	5704
Percent Tested Alternate Assessment - <i>Math</i>	0.99	1.0	0.96	1.01	1.02	1.08		0.84	0.99
Number of Students Science		81,742				79,747	99,696		261,185
Number Tested Statewide Assessment - Science		80,223				77,602	95,167		252,992
Percent Tested Statewide Assessment - Science		98.14				97.31	95.46		96.97
Number Tested Alternate Assessment - <i>Science</i>		852				902	896		2650
Percent Tested Alternate Assessment - <i>Science</i>		1.04				1.13	0.90		1.02

Table 2. 2018 Statewide Subgroup Demographics for Science

Demographics	Number of FAY Students	Science Number of Tests	Science Percent Tested	Percent Participating in Alternate Assessment (Science)
American Indian or Alaska Native	11,631	11,079	95.25	1.5
Asian	7,787	7,629	97.97	0.71
Black or African American	12,751	12,186	95.57	1.39
English Language Learner	13,913	13,453	96.69	0.47
Female	127,136	123,641	97.25	0.8
Hispanic or Latino	118,119	114,610	97.03	1.06
Economically Disadvantaged	113,784	109,980	96.66	1.32
Male	134,047	129,349	96.50	1.22
Migrant	933	894	95.82	1.93
Multi-Race	7,151	6,915	96.70	0.74
Native Hawaiian or <u>Other</u> Pacific Islander	887	850	95.83	0.9
Students with Disabilities	29,436	25,458	86.49	8.98
White	102,615	99,493	96.96	0.9
ALL STUDENTS	261,185	252,992	96.86	1.01

In 2016, ADE began to gather Local Education Agency (LEA) data on participation rates in each subject of the alternate assessment and provided this information to Alternate Assessment District Test Coordinators. It is important for ADE to continue to identify whether students taking Arizona's alternate assessment are students clustered in "subgroups," such as category of disability under the Individuals with Disabilities Education Act (IDEA). These data will help the ADE understand whether there are:

- LEAs in which the numbers of students participating in alternate assessments are higher than expected;
- Certain grades in which participation in the alternate assessment is higher than expected; and
- Potential disproportionality in specific subgroups, specifically Autism and Specific Learning Disabilities.

The ADE will also continue to gather data on the characteristics of students participating in the alternate assessment to provide a standard for determining whether students are participating who do not have significant cognitive disabilities. The *Learner Characteristics Inventory (LCI)* has been used in the State since 2010. This data will continue to be used to collect information reported by a student's teacher about students participating in the alternate assessment. LEAs receive the data collected from the *LCI* annually. The ADE expects the *LCI* will continue to be valuable in exploring the characteristics of students participating in certain districts.

ADE will make available to LEAs participation data electronically in late Fall 2018. ADE will continue to provide training to the LEAs that exceed the one percent cap set forth at 34 C.F.R. §200.6(c)(2). Currently there are several trainings, including one recorded training available on the Alternate Assessment District Test Coordinator webpage:

<http://www.azed.gov/assessment/dtc/> Under Alternate Assessment Tab, then Webinars tab.

3. ***The State has measured the achievement of at least 95 percent of all students and 95 percent of students in the children with disabilities subgroup under section 1111(c)(2)(C) of the Act who are enrolled in grades for which the assessment is required under § 200.5(a);***

Arizona requires all students enrolled in public K-12 schools be assessed with accommodations, without accommodations or with an alternate assessment in Grades 3 - 8 and high school. Arizona follows the federal participation requirement and, to date, has met or exceeded the federal guidelines set at 95% participation as evidenced in Table 1 and Table 2.

4. ***Include assurances from the State that it has verified each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject for which assessments are administered under § 200.2(a)(1) in that school year using an alternate assessment aligned with alternate academic achievement standards—
Followed each of the State's guidelines under paragraph (d) of this section, except paragraph (d)(6); and***

It should be noted that Arizona is a Multi-State Alternate Assessment state which has collaboratively developed Participation Guidance and support materials for MSAA states. The MSAA participation guidance includes a definition of students with the most significant cognitive disabilities, currently addressing both cognitive functioning and adaptive behavior. In

June of 2018 ADE updated the Combined Eligibility Criteria document to streamline the process for IEP teams.

The ADE will continue to provide statewide universal training on eligibility and participation requirements.

5. Will address any disproportionality in the percentage of students in any subgroup under section 1111(c)(2)(A), (B), or (D) of the Act taking an alternate assessment aligned with alternate academic achievement standards;

The ADE will address any disproportionality in the percentage of students taking the alternate assessment by undertaking the following activities. The ADE will:

- require an action plan from LEAs that exceed the one percent cap
- provide training to LEAs on Participation Guidance for student alternate assessments
- gather LEA data on current and previous years' alternate assessment participation rates in each subject area tested
- analyze the data by subgroup, such as race/ethnicity, gender, English learner, and students eligible for free or reduced price school meals, to determine whether disproportionality exists for students participating in the alternate assessment

**6. Include a plan and timeline by which—
The State will improve the implementation of its guidelines under paragraph (d) of this section, including by reviewing and, if necessary, revising its definition under paragraph (d)(1), so that the State meets the cap in paragraph (c)(2) of this section in each subject for which assessments are administered under § 200.2(a)(1) in future school years;**

The ADE has been working to inform and ensure the State is moving below the 1% Cap. Participation rates for all students participating in Alternate Assessments are included in *Table 1*. Annually the LCI data is included in the LEA data file for MSAA to assist LEAs in ensuring only the students with the most significant cognitive disabilities are participating in the AA-AAS.

Table 4. 2016, 2017, and 2018 LCI Subgroup Data

Disability	2016	2017	2018
Intellectual Disability	48.9%	49.8%	48.6%
Autism	26.1%	28.2%	28.8%
Multiple Disabilities	11.9%	12.1%	11.8%
Other Health Impairment	2.1%	2.0%	2.0%
Specific Learning Disability	3.1%	2.4%	2.1%
Orthopedic Impairment, Visual Impairment, Hearing Impairment, Deaf, Deaf/Blind	1.0%	1.4%	1.1%
Traumatic Brain Injury	0.6%	0.6%	0.5%
Emotional Disability	0.7%	0.4%	0.5%
Speech/Language Impairment	0.2%	0.1%	0.2%
Other	1.4%	1.4%	1.7%

The ADE will also monitor alternate assessment data during the Student Selection window. In addition, late fall of each year, the Alternate Assessment Unit will notify each LEA and request action plans from each LEA that exceeded the one percent cap the previous year. The ADE will continue to provide professional learning opportunities for IEP team members and other educators, particularly on the nature of the alternate assessment and the students who are eligible to participate under the State Participation Guidance.

7. *The State 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 in a given subject in a school year using an alternate assessment aligned with alternate academic achievement standards to ensure that only students with the most significant cognitive disabilities take an alternate assessment aligned with alternate academic achievement standards. The State must describe how it will monitor and regularly evaluate each such LEA to ensure that the LEA provides sufficient training such that school staff who participate as members of an IEP team or other placement team understand and implement the guidelines established by the State under paragraph (d) of this section so that all students are appropriately assessed; and*

The ADE will take additional steps to support and provide oversight to each LEA that exceeds the one percent threshold to ensure that only students with the most significant cognitive disabilities participate in the AA-AAS. An annual review of LEA data on participation rates in each subject of the alternate assessment will be conducted by the ADE. LEAs that exceed the one percent participation rate will be required to provide ADE with an action plan to addressing reducing the percentage over the 1% Cap. LEAs will be divided into three tiers of support.

Tier 1: LEAs with 1.0 to 1.50% over the Cap will receive technical assistance focusing on training on participation requirements or if granted an exception to Tier 2 or 3 based on the student details and size of LEA.

Tier 2: LEAs with 1.51 to 2.00% over the Cap will receive technical assistance focusing on training regarding participation requirements and examining LEA policies regarding participation requirements.

Tier 3: LEAs with 2.01% or more over the Cap will receive technical assistance focusing on participation requirements. In addition, a LEA identified team and ADE will work collaboratively to focus on training on participation requirements including school psychologists and IEP teams, and examining LEA policies regarding participation requirements and instructional supports. The ADE will continue to provide professional learning opportunities for IEP team members and other educators. The training will be on the purpose of the alternate assessment and the characteristics of students who are eligible to participate in the alternate assessment, based on Arizona's Combined Eligibility Criteria and the MSAA Participation Guidance.

All educators, including those who are not members of IEP teams, must have a solid understanding of how to make appropriate instruction and assessment decisions for all students, including students who may be eligible to participate in alternate assessment. The ADE will provide training on the accessibility features and accommodations available for the general assessment, as those features and accommodations enable most students with disabilities to meaningfully participate in the general assessment.

Training will include:

- Using the Participation Guidance to make assessment participation decisions;
- Selecting, implementing, and evaluating accessibility features and accommodations for instruction and assessments;
- Differentiating instruction and providing better access to academic content;
- Having high expectations for all students regardless of the category of their disability; and
- Understanding implications of student participation in the alternate assessment as it applies to the type of diploma the student earns, as well as the student's postsecondary and career pathway.

The ADE will continue to make informational resources available to parents of students with disabilities so parents can contribute in the IEP decision making process regarding the assessment in which their child participates. Parent informational resources will include:

- Arizona's Combined Eligibility Criteria and Participation Guidance;
- Requirements of the alternate assessment;
- NCSC Briefs on high expectations, standard based instruction and grade aligned instruction and assessment;
- Accommodations that enable students to participate in the general assessment.

8. *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;*

The ADE will continue to gather LEA data on current and previous years' alternate assessment participation rates in each subject area and the *LCI* and will analyze the data by subgroup to determine whether disproportionality exists for students participating in the alternate assessment.

In the event the data reveal any disproportionality in the percentage of students taking the alternate assessment, the ADE will address the issue as follows:

- The ADE will provide training on Participation Guidance to LEAs with disproportionality.
- In LEAs whose data indicate disproportionality in the percentage of students taking the alternate assessment, the ADE will monitor LEAs with the highest rates of disproportionality. The ADE Alternate Assessment Unit will be utilizing its external consultants that have been observing and supporting LEAs for the past six years.
- LEAs will be required to address any disproportionality issues at the LEA within their Action Plan.
- In the event the decision to place the student on the alternate assessment was not made pursuant to the applicable regulations and the Participation Guidance, the ADE will direct the LEA to notify the IEP team to review the student's eligibility for the alternate assessment utilizing the State's Participation Guidance and Combined Eligibility Criteria.