

# 1% Assessment Participation Cap on Students with Significant Disabilities

## Background

The Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act (ESSA), contains a requirement for a 1% cap on the participation of students with the most significant cognitive disabilities in the state alternate assessment, based on alternate academic achievement standards. The 1% cap is designed to limit the number of students with disabilities who are assessed with a state's alternate assessment. Any state that anticipates exceeding the 1% cap is required to submit a waiver to the U.S. Department of Education (USED) identifying all of the state content areas that will be impacted, the number and percentage of students who will take the state's alternate assessment<sup>1</sup>, and a plan and timeline for reviewing and possibly revising state guidelines for participation in state alternate assessments.

## State Context

Many states have taken stock of where they are in relation to the 1% cap. States also frequently consider whether the 1% cap might be exceeded and whether a waiver application will need to be submitted. They are also considering their approaches to implementation, which may include, but are not limited to:

- ◆ Focusing efforts on relatively larger districts with higher-than-average participation rates
- ◆ Initiating stakeholder engagement on the policy
- ◆ Reviewing (individualized education program (IEP) plan decision-making processes and guidelines
- ◆ Increasing communication about existing IEP decision-making processes and guidelines
- ◆ Reviewing state- and district-level data
- ◆ Increasing monitoring activities, including data validation monitoring and file reviews
- ◆ Increasing levels of technical assistance and/or training to districts
- ◆ Creating or reviewing the state definition
- ◆ Updating district justification documents
- ◆ Creating informational materials aimed at improving assessment participation (e.g., district best practices documents, benefits of assessment)

States also need to consider pre-existing conditions that may impact their ability to address the 1% cap, including being a state with high opt-out rates for assessments or a state with a legislatively imposed opt-out option, or having a large number of small school districts, a lack of state education agency (SEA) capacity, or a lack of existing

<sup>1</sup> U.S. Department of Education. (2017). Requirements for the cap on the percentage of students who may be assessed with an alternate assessment aligned with alternate academic achievement standards. Retrieved from <https://sites.ed.gov/idea/files/onepercentcapmemo51617.pdf>

infrastructure to work with or communicate directly with districts. Finally, states will need to consider the importance of presenting all of these 1% cap-related efforts through a lens of instruction and learning (rather than a lens of assessment), with a focus on helping teachers improve student outcomes.

Ultimately, states will need to work closely and collaboratively with their districts to address the 1% cap. The three critical implementation elements that states will need to consider in their work with districts are:

- ◆ Ensuring that IEP teams identify students with the most significant cognitive disabilities
- ◆ Examining data
- ◆ District oversight and monitoring

## FAQs

1. Should the denominator for calculating the alternate assessment participation be the number of eligible students or the number of tested students? How many decimal points does a state need to report?
  - ◆ The denominator is the number of assessed students.
  - ◆ The cap is 1.0 percent, so one decimal point.
2. What are the consequences if a state exceeds the 1% cap and does not receive a waiver?
  - ◆ USED will work with states, providing partnership, support, and flexibility. There are a range of USED enforcement actions, including a grant condition, requiring corrective action, and/or high-risk status, and possibly escalating to withholding funds. USED recognizes that each state has unique circumstances and would likely begin any enforcement action by having a conversation with the state.
3. Does the U.S. Department of Education plan to produce any additional guidance?
  - ◆ USED will continue to work with its Office of Special Education Programs- and Office of Elementary and Secondary Education-funded technical assistance centers to continue the great work that they are doing, based on states' identified needs.
4. Is it required that a state publicly post its 1% cap waiver request or extension?
  - ◆ Yes. All waiver requests made under ESSA section 8401 require that a state first go through a public comment process.
5. Is it required that states post a list of local education agencies (LEAs) exceeding the 1% cap?
  - ◆ States are required to make publicly available the information that LEAs submit to the SEA justifying being over the 1% cap. This requirement is described in detail in the ESSA regulations, 34 CFR 200.6.
6. If a state exceeds the 1% cap in one subject area, does its waiver need to identify the percentages of students taking alternate assessments in all other subject areas?
  - ◆ A state is only required to address and identify the percentage of students taking alternate assessments in the subjects for which it is seeking a waiver.



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