California Department of Education

Executive Office

SBE-002 (REV. 11/2017)

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# **MEMORANDUM**

**DATE:** July 31, 2019

**TO:** MEMBERS, State Board of Education

**FROM:** TONY THURMOND, State Superintendent of Public Instruction

**SUBJECT:** California Alternate Assessment: Exceeding the 1.0 Percent Threshold

## Summary of Key Issues

On June 4, 2019, the California Department of Education (CDE) received notification from the US Department of Education (ED), Office of Elementary and Secondary Education that the state had exceeded the 1.0 percent threshold on students taking alternate assessments based on alternate achievement standards (AA-AAAS).

The CDE had AA-AAAS participation rates greater than 1.0 percent in reading/language arts, mathematics, and science in 2017–18. The CDE had submitted information to the ED indicating that the percentages of all tested students assessed with an AA-AAAS statewide in 2017–18 were 1.09 percent for reading/language arts; 1.09 percent for mathematics; and 1.07 percent for science. In addition, assessment participation rates in California were lower than 95 percent for all students in science and lower than 95 percent for students with disabilities in reading/language arts, mathematics, and science. As a result, the ED will place a grant condition on California's fiscal year 2019 Title I, Part A award.

The CDE annually surveys local educational agencies (LEAs) concerning the 1.0 percent threshold and the number of students taking AA-AAAS. This information regarding the survey can be found on the 1.0 Percent Threshold on Alternate Assessments web page located at [https://www.cde.ca.gov/ta/tg/ca/caaonepercent.asp.](https://www.cde.ca.gov/ta/tg/ca/caaonepercent.asp) While there is a limit on the percentage of students statewide who may take the AA-AAAS, there are no limitations on LEA individualized education program (IEP) teams identifying students for alternate assessment. As part of the annual survey, an LEA submits information justifying the need to assess more than 1.0 percent of its students in any subject with an AA-AAAS. The CDE makes that information publicly available on the California Alternate Assessments 1.0 Percent Threshold Data web page located at <https://caaspp.cde.ca.gov/caa1percentthresholddata.asp>, in compliance with federal law.

Exceeding the 1.0 percent statewide threshold requires the CDE to carry out the following:

1. By no later than August 1, 2019, provide a plan for how the state will come into compliance with the 1.0 percent requirement.
2. By no later than October 1, 2019, demonstrate that it made progress in reducing the participation of students in alternate assessments in the 2018–19 school year by submitting data on participation in these assessments to ED*Facts*.

The correspondences attached provide detailed information on this issue. To develop, submit, and implement the required plan, the Assessment Development and Administration Division is working with representatives from the Special Education Division and the Analysis, Measurement, and Accountability Reporting Division of CDE.

## Attachment(s)

* Attachment 1: US Department of Education’s June 4, 2019 Notification Letter regarding California exceeding the 1.0 percent threshold (4 Pages)
* Attachment 2: California State Board of Education’s response to the US Department of Education’s Notification Letter regarding California exceeding the 1.0 percent threshold (3 Pages)

# **Attachment 1: U.S. Department of Education’s Exceeding the 1.0 Percent Threshold for Alternate Assessments Letter**



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

**JUN 4 2019**

The Honorable Tony Thurmond

Superintendent of Public Instruction

California Department of Education

1430 N Street, Suite 5602

Sacramento, CA 95814-5901

Dr. Linda Darling-Hammond

President

California State Board of Education

1430 N Street, Room 5111

Sacramento, CA 95814

Dear Superintendent Thurmond and Dr. Darling-Hammond:

I am writing regarding the California Department of Education’s (CDE) percentage of students taking the alternate assessment based on alternate academic achievement standards (AA-AAAS). 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 the grades assessed in a State for each subject. The U.S. Department of Education (Department) recognizes that this is a new requirement starting in the 2017-18 school year and that most States previously assessed more than 1.0 percent of students with the AA-AAAS. We understand that a State may need time to adjust its systems to reduce its AA-AAAS participation rate. The ESEA and the Department’s regulations lay out the requirements for a State seeking a waiver as it works to meet this new requirement, as laid out in a memorandum to States on August 27, 2018 (available at: [www2.ed.gov/admins/lead/account/saa/ossstateassessmentltr.pdf](https://www2.ed.gov/admins/lead/account/saa/ossstateassessmentltr.pdf)). The Department granted 23 States such a waiver for school year 2017-2018.[[1]](#footnote-1)

While there is a limit on the percentage of students statewide who may take the AA-AAAS, there is no such limit among local educational agencies (LEAs). However, 34 CFR 200.6(c)(3)(ii) and (iv) requires that an LEA submit information justifying the need to assess more than 1.0 percent of its students in any subject with an AA-AAAS and the State must make that information publicly available, provided that such information does not reveal personally identifiable information about an individual student.

CDE submitted information to the Department via *EDFacts*, as of March 25, 2019, that indicated the percentage of all tested students assessed with an AA-AAAS in 2017-2018 statewide:

**Reading/language arts:** 1.09% **Mathematics:** 1.09% **Science:** 1.07%

Consequences for Exceeding the Cap

Because CDE had rates of AA-AAAS participation that are greater than 1.0% in reading/language arts, mathematics and science; and had assessment participation rates that were less than 95% for all students in science and less than 95% for students with disabilities in reading/language arts, mathematics, and science without a waiver, the Department will be placing a grant condition on the State’s fiscal year 2019 Title I, Part A award. This condition will require that the State must submit a plan for reducing your rate of AA-AAAS participation in future years in order to come into compliance with the 1.0 percent requirement. Please submit this plan by email to the Department at [ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov) by August 1, 2019. The State must also submit assessment participation data (including AA-AAAS participation) via ED*Facts* for the 2018-2019 school year by October 1, 2019.

The condition will read as follows:

The California Department of Education (CDE) reported alternate assessment based on alternate academic achievement standards (AA-AAAS) data for the 2017-2018 school year indicating rates of AA-AAAS participation that are greater than 1.0% in reading/language arts, mathematics and science; and had assessment participation rates that were less than 95% for all students in science and less than 95% for students with disabilities in reading/language arts, mathematics and science. CDE is therefore out of compliance with the requirement of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA) that 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 the grades assessed in a State for each subject.

The CDE’s grant award is subject to the following requirements:

* By no later than August 1, 2019, the CDE must provide a plan for how the State will come into compliance with the 1.0 percent requirement.
* The CDE must demonstrate that it made progress in reducing the participation of students on alternate assessments in the 2018-2019 school year by submitting data on participation on these assessments to ED*Facts* by no later than October 1, 2019.

If this condition is not resolved in a timely manner, the Department may request additional information, revise this condition to require further action, or provide notice of its intent to take further administrative action.

Please note that consequences in future years may be more severe if the State continues to have an AA-AAAS participation rate over 1.0 percent. Based on the State’s context and information, the Department may consider taking one of the following actions:

1. Imposing high risk status on the State’s Title I, Part A grant award. A State with such a high-risk status would be required to submit a plan to come into compliance with the 1.0 percent cap and to participate in joint monitoring calls with the Office of Special Education and Rehabilitation Services (OSERS) and the Office of Elementary and Secondary Education (OESE) while the State works to meet the requirement.
2. Withholding Title I, Part A State administrative funds. If the Department withholds funds, a State would be required to submit a plan to come into compliance with the 1.0 percent cap and participate in joint OESE/OSERS monitoring calls while they work to come into compliance.

Technical Assistance

The Department continues to support your work to meet this new requirement. In October, the Department hosted a convening, “Supporting States in Implementing ESSA’s 1.0 Percent State-Level Cap on Participation of Students in the AA-AAAS.” A summary of the event is available at: 1PercentNationalConveningProceedings.pdf (available at <https://nceo.umn.edu/docs/OnlinePubs/NCEO_CSAI_CapProceedings_508compliance_042619.pdf>), including links to video clips of the plenary presentations as well as resources that were shared by States and others.

Additionally, because we know this work requires robust engagement with LEAs and community members and may require you to update your AA-AAAS guidelines, as a continued step to support implementation, the Department is supporting work by the National Center on Educational Outcomes (NCEO) and the Center on Standards and Assessment Implementation (CSAI) to host three Peer Learning Groups (PLGs) on topics that States identified at the conference:

* Digging into Your Data: Building a One Percent Data Analysis and Use Plan
* Guiding and Evaluating District Justifications for Exceeding the One Percent Cap
* Building Capacity of IEP Teams and Parents in Making Decisions about Assessment Participation

If you have questions about the 1.0 Percent PLGs, please contact Susan Hayes, NCEO, at [shayes@wested.org](mailto:shayes@wested.org) or (802) 951-8210. If you are interested in joining NCEO’s broader Community of Practice related to the AA-AAAS, please contact NCEO’s Kathy Strunk at [kstrunk@umn.edu](mailto:kstrunk@umn.edu) or (615) 300-6217.

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,

Signature of Frank T. Brogan Assistant Secretary for Elementary and Secondary Education


Frank T. Brogan

Assistant Secretary for

Elementary and Secondary Education

# **Attachment 2: California State Board of Education’s Response to the US Department of Education’s Notification Letter Regarding California Exceeding the 1.0 Percent Threshold**



July 31, 2019

Frank T. Brogan, Assistant Secretary for Elementary and Secondary Education  
U.S. Department of Education  
400 Maryland Avenue, SW   
Washington, DC 20202

Dear Assistant Secretary Brogan:

Subject: Exceeding the 1.0 Percent Threshold for Alternate Assessments

The California Department of Education (CDE) and the State Board of Education (SBE) (collectively, California) received the U.S. Department of Education’s (ED’s) letter on June 4, 2019, regarding the percentage of students taking alternate assessments based on alternate academic achievement standards (AA-AAAS). California acknowledges it had AA-AAAS participation rates slightly higher than 1.0 percent in reading/language arts, mathematics, and science. It also acknowledges assessment participation rates were lower than 95 percent for all students in science and for students with disabilities in reading/language arts, mathematics, and science.

Although California narrowly exceeded the 1.0 threshold set by ED, it asserts that students who took the AA-AAAS were tested appropriately and in compliance with federal law as determined by each student’s individualized education program team. This is a discussion that takes place at the local level and considers individual student needs as required by the Individuals with Disabilities Education Act and/or Section 504 of the Rehabilitation Act of 1973.

California has and will continue to work with our local educational agency (LEA) partners and stakeholders to ensure maximum participation rates and that each and every student is taking the most appropriate assessment based on individual need. In Table 1, California provides a plan and timeline of key activities to meet the following grant condition requirements:

* By no later than August 1, 2019, provide a plan for how the state will come into compliance with the 1.0 percent requirement.
* By no later than October 1, 2019, demonstrate that it made progress in reducing the participation of students in alternate assessments in the 2018–19 school year by submitting data on participation in these assessments to ED*Facts*.

Table 1. Plan and Timeline of Key Activities for Compliance with the 1.0 Percent Requirement for Alternate Assessments for the 2019–20 School Year

| **Description of Activity** | **Anticipated Completion** |
| --- | --- |
| Presentation of ED notification letter to the Advisory Commission for Special Education for awareness and input. | June 2019 |
| Analysis of assessment data to identify LEAs that exceeded the 1.0 percent threshold and did not complete the 1.0 percent threshold survey; notification to LEAs of their responsibility to report and provide justification. | June–August 2019 |
| Presentation of 1.0 percent threshold requirements to LEA coordinators at the annual statewide assessment information meetings. | August 2019 |
| Notification to LEA superintendents about the requirement to test all students and the importance of reporting and providing justification for potentially exceeding the 1.0 percent threshold. | September 2019 |
| Administration of the 1.0 Percent Threshold Survey to LEAs. | Fall 2019 |
| Submission of a 2019–20 application for the 1.0 percent threshold waiver if a review of the 1.0 Percent Threshold Survey data indicates a need for such a request. | December 2019 |
| Review of guidelines and provision of guidance, during pretest workshops throughout the state, on participation in the AA-AAAS to ensure appropriate identification of students for alternate assessments. | September 2019–February 2020 |

California is committed to ensuring that all of its students with disabilities are assessed appropriately and will continue to provide monitoring and technical assistance in this regard. It looks forward to working with ED to ensure ongoing compliance with federal law.

For questions related to this letter, please contact Shanine Coats, Federal Policy Liaison, by phone at 916-319-0570 or by email at [scoats@cde.ca.gov](mailto:scoats@cde.ca.gov).

Sincerely,

/s/

Tony Thurmond

State Superintendent of Public Instruction

California Department of Education

/s/

Linda Darling-Hammond

President

California State Board of Education

TT/LDH:sc

1. DE, GA, ID, KY, MI, MS, MO, NE, NC, OH, OK, SD, TN, TX, WV and WI each received waivers for reading/language arts, mathematics and science; AZ, AR, IN, HI, LA, MA, and ND each received waivers for reading/language arts and mathematics. [↑](#footnote-ref-1)