

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

imab-adad-jul24item04

# California State Board of Education July 2024 Agenda Item #08

## Subject

Request to Approve a Response Letter to the U.S. Department of Education Regarding the 1.0 Percent Cap on the Percentage of Eligible Students with the Most Significant Cognitive Disabilities Who May Be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards for Reading/Language Arts, Mathematics, and Science.

## Type of Action

Action, Information, Consent

## Summary of the Issue(s)

The California Department of Education (CDE) and State Board of Education (SBE)—collectively, California—received a letter on May 17, 2024, from the U.S. Department of Education (ED), in response to California’s request for a one-year waiver for the 2023–24 school year of section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965, which stipulates that a state may not assess more than 1.0 percent of all students in the grades assessed using an alternate assessment based on alternate academic achievement standards (AA-AAAS). This letter is included in Attachment 1. California’s waiver request was approved by the SBE at the November 2023 meeting and submitted to ED on December 6, 2023.

In its letter to California, ED notified California that because CDE’s rates of participation on the AA-AAAS in the 2022–23 school year were above the 1.0 percent cap in reading/language arts (RLA) and mathematics, ED is declining the waiver request and maintaining the condition on the CDE’s Title I, Part A grant award. For ED to remove the condition on the Title I, Part A grant award, CDE must:

1. Within 60 days of receiving the letter from ED, submit an updated plan for reducing the rate of AA-AAAS participation in future years in order to comply with the 1.0 percent requirement.
2. Submit evidence that the plan and timeline are made publicly available on the state’s website when the plan is provided to ED.
3. Demonstrate progress in reducing the percentage of students tested on alternate assessments in the 2023–24 school year as validated by CDE EDFacts assessment participation data submission.

CDE intends to meet the requirements necessary to remove the condition placed on its Title I, Part A grant award. In Attachment 2, CDE provides California’s response letter to ED, which includes the revised plan and timeline, for SBE approval, to be jointly submitted by the State Superintendent of Public Instruction (SSPI) and SBE President by July 16, 2024, which is 60 days of receiving the letter from ED.

In connection with California’s waiver request of the 1.0 percent cap for the 2021-22 school year, ED made a similar request in an October 27, 2023 letter for additional information. California responded on December 4, 2023 with a joint letter from the SSPI and SBE President, providing additional information including a revised plan outlining how the state will come into compliance. The SBE took action at the January 18, 2024 meeting to ratify the December 2023 response.

## Recommendation

CDE requests that the SBE approve a letter for signature by the SSPI and SBE President in response to ED’s denial of California's 2023–24 request to waive the 1.0 percent cap on the percentage of eligible students with the most significant cognitive disabilities who may be assessed with an AA-AAAS for RLA, mathematics, and science, as provided in Attachment 2.

## Brief History of Key Issues

On February 4, 2020, ED placed a condition on CDE’s 2020 Title I, Part A grant award after California exceeded the 1.0 percent cap in RLA, mathematics, and science for the 2018–19 school year. In the 2021‒22 school year, California exceeded the 1.0 percent cap for RLA and mathematics. As a result, a condition was placed on CDE’s fiscal year 2023 Title I, Part A grant award. CDE was required to submit by November 27, 2023, a revised plan for how the state would come into compliance with the requirement to assess no more than 1.0 percent of students with an AA-AAAS. On November 17, 2023, upon CDE request, ED confirmed an extension until December 15, 2023, for California to provide its response.

On January 18, 2024, SBE ratified the letter that was submitted to ED in response to the letter received on October 27, 2023, regarding the 1.0 percent cap on the percentage of eligible students with the most significant cognitive disabilities who may be assessed with alternate assessments based on AA-AAAS. The letter sent by ED on October 27, 2023, as well as California’s response letter ratified by the SBE in January 2024, can be found in Item 07 of the SBE’s January agenda at <https://www.cde.ca.gov/be/ag/ag/yr24/agenda202401.asp>.

On May 17, 2024, CDE received a letter from ED in response to California’s request for a one-year waiver of the requirement that a state may not assess more than 1.0 percent of all students in the grades assessed using an AA-AAAS. This letter is included in Attachment 1.

California has and will continue to work with our local educational agency partners and interest holders to ensure maximum participation rates and that every student is taking the most appropriate assessment based on individual needs. Although California narrowly exceeded the 1.0 percent threshold set by ED, it asserts that students who took the AA-AAAS-based assessments were tested appropriately and in compliance with federal law as determined by each student’s Individualized Education Program team.

The revised plan and timeline are detailed in California’s response letter to ED, which is included as Attachment 2.

## Summary of Previous State Board of Education Discussion and Action

In January 2024, SBE ratified the letter that was submitted to ED in response to the letter received on October 27, 2023, regarding the 1.0 percent cap on the percentage of eligible students with the most significant cognitive disabilities who may be assessed with AA-AAAS (<https://www.cde.ca.gov/be/ag/ag/yr24/documents/jan24item07.docx>) (<https://www.cde.ca.gov/be/ag/ag/yr24/jan24item07a1.asp>) (<https://www.cde.ca.gov/be/ag/ag/yr24/documents/jan24item07a2.pdf>).

In November 2023, SBE authorized the CDE to submit to ED a request for the waiver of the requirement to assess less than 1.0 percent of eligible students with an alternate assessment for English language arts/literacy (ELA), mathematics, and science for the 2023–24 administration. SBE also authorized CDE to submit to the ED a request for a waiver of the requirement that a request for a waiver of the 1.0 percent cap be submitted at least 90 days before the beginning of the annual testing window for the California Alternate Assessment (CAA) for ELA, mathematics, and science (<https://www.cde.ca.gov/be/ag/ag/yr23/documents/nov23item11.docx>).

In July 2022, SBE authorized CDE to submit to ED a request for the waiver of the requirement to assess less than 1.0 percent of eligible students with an alternate assessment for ELA, mathematics, and science for the 2022–23 administration. SBE also authorized CDE to submit to ED a request for a waiver of the requirement that a request for a waiver of the 1.0 percent cap be submitted at least 90 days before the beginning of the annual testing window for the CAA for Science (<https://www.cde.ca.gov/be/ag/ag/yr22/documents/jul22item06.docx>).

In March 2022, SBE authorized CDE to pursue a waiver of the 1.0 percent cap on the percentage of eligible students with the most significant cognitive disabilities who may be assessed with an alternate assessment aligned with alternate academic achievement standards for ELA, mathematics, and science and other related waivers for the 2021–22 administration (<https://www.cde.ca.gov/be/ag/ag/yr22/documents/mar22item03rev.docx>).

In September 2020, SBE provided approval for CDE to request a waiver under the Every Student Succeeds Act, 34 *Code of Federal Regulations* Section 200.6(c)(4), to waive the 1.0 percent threshold for the 2020–21 CAAs for ELA, mathematics, and science (<https://www.cde.ca.gov/be/ag/ag/yr20/documents/sep20item07.docx>).

In April 2020, CDE provided SBE with a notification from ED’s Office of Elementary and Secondary Education, which indicated that the state had exceeded the 1.0 percent threshold of students taking alternate assessments. In addition, the CDE provided SBE with CDE’s response, which included an update to the plan to come into compliance (<https://www.cde.ca.gov/be/pn/im/documents/apr20memoadad02.docx>).

## Fiscal Analysis (as appropriate)

Not Applicable.

## Attachment(s)

* Attachment 1: May 17, 2024 Letter from U.S. Department of Education Regarding 1.0 Percent Cap on Alternate Assessments to State Superintendent of Public Instruction Tony Thurmond and State Board President Linda Darling-Hammond (2 pages)
* Attachment 2: Draft Letter from State Superintendent of Public Instruction   
  Tony Thurmond and State Board President Linda Darling-Hammond to U.S. Department of Education Regarding 1.0 Percent Cap on Alternate Assessments in response to May 17, 2024 ED letter (7 pages)



DRAFT July XX, 2024

Adam Schott, Principal Deputy Assistant Secretary

Office of Elementary and Secondary Education

U.S. Department of Education

400 Maryland Avenue SW

Washington, DC 20202

Dear Principal Deputy Assistant Secretary Schott:

# Subject: Response to Denial of California's 2023–24 Request to Waive the 1.0 Percent Threshold for Alternate Assessments

The California Department of Education (CDE) and the California State Board of Education (SBE) (collectively, California) received a letter on May 17, 2024, from the U.S. Department of Education (ED), in response to California’s request for a one-year waiver of section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965, which stipulates that a state may not assess more than 1.0 percent of all students in the grades assessed using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS).

In its letter to California, ED notified California that, because CDE’s rates of participation on the AA-AAAS in the 2022–23 school year were above 1.0 percent in reading/language arts and mathematics, ED is maintaining the condition on CDE’s Title I, Part A grant award. For ED to remove the condition on the Title I, Part A grant award, CDE must:

1. Within 60 days of receiving the letter from ED, submit an updated plan for reducing the rate of AA-AAAS participation in future years in order to comply with the 1.0 percent requirement.
2. Submit evidence that the plan and timeline are made publicly available on the state’s website when the plan is provided to ED.
3. Demonstrate progress in reducing the percentage of students tested on alternate assessments in the 2023–24 school year as validated by CDE EDFacts assessment participation data submission.

California intends to meet the requirements necessary for the removal of the condition placed on its Title I, Part A grant award and provide ED updates to its plan and timeline (Table 1). These updates to the plan and timeline were shared at the July 2024 SBE meeting and are publicly available on the July 2024 SBE Agenda on the CDE website at <https://www.cde.ca.gov/be/ag/ag/>.

While California complies with the federal policy, we also want to note that the purpose of the alternate assessments is to ensure that children are appropriately assessed in a one-on-one setting with authentic tasks, so that they can show what they know and be better supported in their learning and development. Our primary concern—like that of all educators—must be focused on the needs of our students. The increased need for special education supports is indicated by the increase in the number of students with disabilities in our student population. The Centers for Disease Control and Prevention (CDC) estimates, for example, that the prevalence of autism among U.S. children has risen from 1 in 150 children in 2000 to 1 in 36 children in 2020. As reported by the Autism and Developmental Disabilities Monitoring Network, California’s rates of autism spectrum disorder are 63 percent higher than the national average and the highest in the nation. The full report can be found on the CDC web page at <https://www.cdc.gov/mmwr/volumes/72/ss/ss7202a1.htm?s_cid=ss7202a1_w>. According to the National Institutes of Environmental Health Sciences (NIEHS), these increasing rates of autism are associated with exposure to air pollution, pesticides, or other toxins; prematurity or very low birth weight; and parental age, nutrition, and health, among other things. More information can be found on the NIEHS Autism web page at <https://www.niehs.nih.gov/health/topics/conditions/autism>.

Many of the environmental conditions associated with this increase and that of other disabilities are more pronounced for children living in poverty. California schools serve a large and steadily growing proportion of socioeconomically disadvantaged students—the proportion of tested students who are low-income increased from 58 percent to 63 percent in the four years from 2019 and 2023—which also impacts the proportion of students identified as students with disabilities. Research consistently indicates a correlation between poverty and student identification for special education programs. This association is complex, influenced by factors such as less access to maternal and child nutrition and healthcare, environmental stressors associated with poverty, and limited access to early childhood education. While California has taken steps to ensure the appropriate assessment of all students—including its students with disabilities—by making assessments more accessible, we want to ensure that students who need access to alternate assessments are able to participate in them, so all California students can demonstrate what they know.

Recognizing the tension between students’ needs, educators’ concerns to understand true student learning, and the administration of the federal rule, CDE continues to implement system improvements and monitor future administrations to avoid exceeding the 1.0 percent cap. Consistent with the plan submitted in its 2023–24 waiver request,

1. CDE continues to improve the implementation of its guidelines for participation in the AA-AAAS, including reviewing the definition of students with the most significant cognitive disabilities so that the state meets the 1.0 percent cap requirement in each subject for which assessments are administered in future school years.

With feedback from interest holders, an updated Alternate Assessment Decision Confirmation Worksheet was posted in May 2024 on CDE California Alternate Assessments (CAAs) for English Language Art/Literacy (ELA) and Mathematics web page at <https://www.cde.ca.gov/ta/tg/ca/altassessment.asp> and on the CDE CAA for Science web page at <https://www.cde.ca.gov/ta/tg/ca/caascience.asp>. CDE continues to expand and leverage existing outreach efforts to local educational agencies (LEAs)—such as workshops, conferences, newsletters, and other communications—to promote understanding and use of this decision-making tool. To date, this worksheet has been shared at CDE’s Pretest Workshop, the California Assessment Conference, the California Association of Bilingual Educators Conference, the California Association of Resource Specialists and Special Education Teachers, the California All Titles Conference, as well as the National Center on Educational Outcomes Conference.

CDE continues to monitor and regularly evaluate each LEA to ensure that the LEA provides sufficient training to school staff who participate as members of an Individualized Education Program (IEP) team or other placement team to understand and implement the guidelines established by the state for participation in an AA-AAAS and that all students are appropriately assessed.

California’s special education monitoring framework uses a tiered system that differentiates the level of monitoring and technical assistance for each LEA to determine the LEA’s need for support and intervention. At the core of the monitoring framework is the Compliance and Improvement Monitoring (CIM) process. LEAs in Targeted or Intensive Monitoring Levels for performance are required to participate in and complete the CIM process as part of their ongoing, annual monitoring activity. The CIM process is a series of steps and activities which identify LEAs that need assistance with correction, improvement, and the development of an integrated action plan to address the identified problems of practice. LEAs identified with a disproportionate number of students assigned the CAAs participate in and complete the CIM process.

In addition, current CDE procedures require all LEAs to submit a response to the annual 1.0 Percent Justification Survey regardless of whether they have exceeded the threshold. In the 2021–22 school year, over 500 LEAs (approximately 25 percent of all LEAs) did not complete the 1.0 Percent Justification Survey. Through the outreach efforts of CDE and its testing contractor, the 1.0 Percent Justification Survey response rate has been improved to only 92 LEAs (approximately 4 percent of all LEAs) not completing the survey in the 2023–24 school year.

CDE engaged with LEAs that exceeded the 1.0 percent threshold during the 2023–24 administration. That engagement includes, but is not limited to, the dissemination of information on the appropriate identification of students, the dissemination of general IEP team guidance, the use of targeted strategies for confirming and reducing participation rates in the alternate assessment, and the use of potential findings of noncompliance.

In addition, starting in September 2024, CDE will implement a new reporting feature on the home page of the LEA Test Operations Management System (TOMS) that displays the percentage of students assigned the alternate assessment over the prior three years at the LEA and state level. This longitudinal data will provide LEA testing coordinators quick and easy access to metrics to help them identify trends in their assignment of the alternate assessment and note where more than 1.0 percent of the students are assigned the alternate assessment. The 1.0 Percent Justification Survey will be linked alongside this report, helping LEAs understand the considerations surrounding appropriate test assignment.

1. CDE continues to address any disproportionality in the percentage of students taking an AA-AAAS.

To determine a risk for disproportionality, CDE continues to examine the participation in the CAAs of each subgroup compared to the participation in the CAAs of students not in the subgroup. The analysis of this risk helps identify whether any of the subgroups are more likely than others not in the subgroup to participate in the CAAs. The analysis for the 2023–24 administration is expected to be completed in October 2024 and will provide CDE with anticipated participation and the potential risk of disproportionality of student subgroups taking the CAAs. In turn, the information will be used to provide the basis for engaging affected LEAs to provide oversight and monitoring through the implementation of CDE’s monitoring requirements under 34 *Code of Federal Regulations*, Section 300.600.

Following the analysis of 2023–24 administration data, CDE will be able to make more definitive statements regarding California’s progress in reducing the percentage of students tested with the alternate assessments, including an analysis of the proportion of various student groups participating in the alternate assessments. These statements will be validated by CDE EDFacts assessment participation data submission, which will be submitted to ED later this year.

California has and will continue to work with our LEA partners and interest holders to ensure maximum participation rates and that every student is taking the most appropriate assessment based on individual needs. Although California narrowly exceeded the 1.0 percent threshold set by ED, it asserts that students who took the AA-AAAS-based assessments were tested appropriately and in compliance with federal law as determined by each student’s IEP 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.

**Table 1. Update to California’s Plan and Timeline**

| **Description of Activity** | **Condition Requirements for Fiscal Year 2023 Title, Part A Grant Award Completion Period and Status** | **2023–24 School Year Waiver Anticipated Completion Period and Status** |
| --- | --- | --- |
| 1. 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; Administration of the 1.0 Percent Threshold Survey to LEAs <https://www.cde.ca.gov/ta/tg/ca/caaonepercent.asp> | October 2022–January 2023  Completed | August 2023–October 2023  Completed |
| 1. Analysis of assessment data to identify LEAs that exceeded the 1.0 percent cap and did not complete the 1.0 Percent Threshold Survey | Fall 2023  Completed | Fall 2024  To be completed |
| 1. Presentation of the 1.0 percent threshold requirements and Alternative Assessment Decision-Making worksheet to the California Special Education Local Planning Area administrators | July 2023  Completed | July 2024  To be completed |
| 1. Presentation of 1.0 percent threshold requirements to LEA coordinators at the annual statewide Assessment Information Meeting | August 2023  Completed | August 2024  To be completed |
| 1. Submission of the request for a waiver of the 1.0 percent cap if a review of the spring prior-administration data indicates a need for such a request | Fall 2023  Completed | Fall 2024  To be completed |
| 1. Presentation of the 1.0 percent threshold requirements and Alternative Assessment Decision-Making worksheet at CodeStack Conference | October 2023  Completed | October 2024  To be completed |
| 1. Review of guidelines and provision of guidance on eligibility for participation in the AA-AAAS included as part of pretest workshops throughout the state to ensure the appropriate identification of students for alternate assessments | September 2022–February 2023  Completed | September 2023–February 2024  Completed |
| 1. Review of data to determine LEAs exceeding the 1.0 percent cap and potential disproportionality; engage with LEAs that exceed the 1.0 percent cap and/or indicate potential disproportionality | January 2023–July 2023  Completed | January 2024–October 2024  In progress |
| 1. Post Alternate Assessment Participation Decision-Making Tool | N/A | May 2024  Completed |
| 1. Launch Alternate Assessment Reporting Widget in LEA TOMS | N/A | September 2024  In progress |

For questions related to this letter, please contact Mao Vang, Director, Assessment Development and Administration Division, by phone at 916-324-9566 or by email at [mvang@cde.ca.gov](mailto:mvang@cde.ca.gov).

Sincerely,

*Signed by*

Tony Thurmond

State Superintendent of Public Instruction

California Department of Education

*Signed by*

Linda Darling-Hammond

President

California State Board of Education

TT/LDH:dt