UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

August 7, 2020

The Honorable Randy Watson
Commissioner of Education
Kansas State Department of Education
900 SW Jackson Street
Topeka, KS 66612-1212

Dear Commissioner Watson

I am writing in response to the Kansas State Department of Education's (KSDE's) request on June 2, 2020, for a waiver extension 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 State. Upon receipt of a waiver extension from the U.S. Department of Education (the Department) on January 2, 2020, statewide testing was cancelled in Kansas for the 2019-2020 school year due to COVID-19.

After reviewing KSDE's waiver extension request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, for school year 2020-2021, a one-year waiver extension 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 reading/language arts, mathematics, and science.

As part of this waiver extension, KSDE assured that:

- 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 most recent years for which data was available, (2018-2019) 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 AAAAAS.
- Will provide appropriate oversight of an LEA that is required to submit such information to the State, and it will make such information publicly available.
- Will verify that each LEA that is required to submit such information to the State 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 KSDE's waiver request, system improvements and will monitor future administrations of the AA-AAAS to avoid exceeding the one percent cap.

I want to remind you of the requirement in 34 CFR § 200.6(c)(3)(iv) that the State must make publicly available the information submitted by an LEA justifying the need of the LEA to assess more than 1.0 percent of its students on the AA-AAAS, provided that such information does not reveal personally identifiable information about an individual student. I also encourage you to make available your State's plan and timeline and your progress to date in reducing the percentage of students taking the AA-AAAS.

Given the workplan submitted by KSDE, I expect to see positive results of this plan in the 2020-2021 school year and beyond. Any future requests for an extension of this waiver will be contingent on both continued progress implementing your plan and progress in reducing the percentage of students taking the AA-AAAS in all tested subjects.

Finally, in order to help all States support implementation of the 1.0 percent participation threshold for AA-AAAS participation, the Department is supporting work by the National Center on Educational Outcomes (NCEO). I note that KSDE's 1.0 percent disproportionality methodology follows the NCEO guidelines (e.g., determining relative risk of participating in the alternate assessment). In 2019, NCEO had published several resources that may be helpful to stakeholders in your State. They may be found online at https://nceo.info/Assessments/alternate_assessments.

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 my staff at ESEA.Assessment@ed.gov.

Sincerely,



Frank T. Brogan
Assistant Secretary
for Elementary and Secondary Education

cc: Beth Fultz, Assistant Director of Career Standards and Assessment Services

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June 2, 2020

The Honorable Frank Brogan
Assistant Secretary for Elementary
and Secondary Education
United States Department of Education
400 Maryland Ave. SW
Washington, D.C. 20202

Dear Assistant Secretary Brogan:

Please find enclosed with this letter Kansas' waiver extension request pursuant to 34 C.F.R. §200.6 (c)(4). The submission of a waiver extension in accordance with 34 C.F.R. §200.6 (c)(4) is warranted for reading/language arts, mathematics, and science for the 2020-2021 school year.

For more information or questions on the attached waiver request for the 2020-2021 school year AA-AAAS 1% participation requirement, please contact Beth Fultz, Assistant Director of Career Standards and Assessment Services for the Kansas State Department of Education at bfultz@ksde.org or 785-296-2325.

Sincerely,

Dr. Brad Neuenswander
Deputy Commissioner

Kansas State Department of Education

AA-AAAS 1% Threshold Waiver Extension

Request Pursuant to 34 C.F.R §200.6(c)(4)

June 2020

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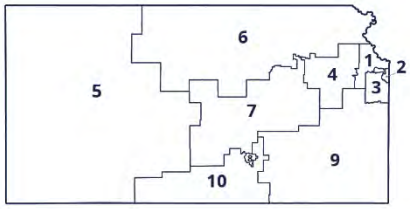


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- Academic preparation,
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- Civic engagement

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- Social-emotional growth measured locally
- Kindergarten readiness
- Individual Plan of Study focused on career interest
- High school graduation
- Postsecondary success

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SEPT. 2019

KSDE AA-AAAS 1% Threshold Waiver Extension Request

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KSDE AA-AAAS 1% Threshold Waiver Extension Request

Introduction

"Pursuant to 34 C.F.R. 200.6(c)(4), the Kansas State Department of Education (KSDE) is seeking a waiver extension of 34 C.F.R. 200.6(c)(2) for the 2020-2021 school year from the Secretary for the United States Department of Education. This regulation limits the total number of students assessed in a subject area using an alternate assessment to no more than 1.0 percent of the total number of students assessed in the state.

KSDE has adopted alternate academic achievement standards for students with the most significant cognitive disabilities and measures the achievement of those standards with an alternate assessment aligned with alternate academic achievement standards (AA-AAAS). Federal regulation 34 C.F.R. 200.6(c)(2) requires that, for each subject for which assessments are administered, the total number of students assessed in that subject using an AA-AAS may not exceed 1.0 percent of the total number of students in the State who are assessed in that subject.

One Percent Waiver Extension Request Requirement

Requirements for submitting a request to extend a waiver for an additional year are included in 200.6(c)(4)(v). Specifically, the state is to meet the requirements of 200.6(c)(4)(i)-(iv), as well as, show substantial progress toward the achievement of each component of the previous year's plan and timeline. KSDE received notification on January, 2, 2020 that the United States Department of Education had granted Kansas a waiver of section 111(b)(2)(D)(i)(I) of the ESEA, allowing the State to assess more than 1.0 percent of the total number of students assessed in reading/language arts, mathematics, and science on the AA-AAAS for 2019-2020.

State testing window

KSDE is submitting a waiver extension request to the U.S. Department of Education 90 days prior to the start of Kansas' instructionally embedded testing window for its alternate assessment in the areas it anticipates being over 1.0 percent. Kansas participates in the Dynamic Learning Maps (DLM) instructionally embedded assessment. Reading/language arts and mathematics assessments consist of two instructionally embedded test windows. Kansas' instructionally embedded assessment for reading/language arts and mathematics has a fall test window (September 14, 2020 – December 18, 2020) and a spring test window (February 1, 2021 – April 30, 2021). The science assessment is a summative assessment administered during the spring test window (February 1, 2021 – April 30, 2021). April 30, 21 is the tentative close date for the spring window. It will not be finalized until the general assessment dates are finalized.

State-level data on participation

Due to COVID 19, Gov. Laura Kelly announced on March 17, 2020 that school buildings across the state must be closed for the duration of this school year for the purpose of general student and staff attendance. The Kansas State Department of Education submitted the assessment and accountability waiver request for the 2019-2020 academic year on March 23, 2020. As a result of the school closure and subsequent waiver, KSDE does not have assessment data to compare to 2018-2019.

State-Level Data showing 95% participation overall and for students with disabilities subgroup

Kansas expects 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. Kansas follows the federal participation requirement and, to date has met or exceeded the federal guidelines set at 95%. KSDE received an accountability and assessment waiver for the 2019-2020 assessments. As a result of the assessment waiver, no new data is available to share.

State Assurance

By submitting this request, the Kansas State Department of Education assures that it has verified that each LEA that the state anticipated would assess more than 1.0 percent of its assessed students in a subject using the AA-AAAS followed the state's participation guidelines; and addressed any disproportionality in the students taking the AA-AAAS.

KSDE required all LEAs, that tested over 1.0 percent of their students on the DLM during the 2018-2019 school year, to complete alternate assessment justifications. In the past, LEAs that tested fewer than 4 students on the DLM were not required to submit justifications due to small n-size. After reviewing the district data from the 2017-2018 school year, KSDE made the decision to have LEAs with small n-size complete alternate assessment justifications during the 2019-2020 school year. KSDE reviewed 146 alternate assessment justifications and has posted the justifications at http://www.ksde.org/Default.aspx?tabid=567.

KSDE provided LEAs data on disability categories taking the DLM, risk ratio data by subgroup (disproportionality), and percentage of students performing at target or advanced. This data was provided by subject. Districts were requested to use this data to complete their 2019-2020 alternate assessment justifications. If a LEA had a risk ratio of greater than 3.0, they were required to explain how they would address the disproportionality.

Assurances were included in the justifications. LEAs that anticipated testing over 1.0 percent of their students on the DLM for the 2019-2020 school year were required to complete DLM assurances.

The LEA must submit assurances for each of the following five items:

1. Individualized Education Program (IEP) teams have correctly identified students with the Most Significant Cognitive Disability. at http://www.ksde.org/Default.aspx?tabid=887.
2. The district has measured the achievement of, at least 95% of all students, including students with disabilities in tested grades.
3. Students who will be participating in an alternate assessment receive instruction aligned to the alternate academic achievement standards, the Essential Elements. https://dynamiclearningmaps.org/erp_ie/ks-ela https://dynamiclearningmaps.org/sci_resources

4. Parents are informed of their child's participation in an alternate assessment and implications of participating.
5. The district addresses any disproportionality in the percentage of students in any subgroup taking the alternate assessment.

LEA's will not be completing alternate assessment justifications during 2020-2021 due to the 2019-2020 state assessments being waived during the COVID 19 pandemic. KSDE will continue to request assurances from districts that anticipate testing over 1% of their students in any subject area.

Outlined below is a summary of the State Plan and Timeline activities included in the KSDE original waiver request with a description of how each activity was completed.

Plan and timeline

Plan and timeline for improving the implementation of participation guidelines (and possibly revising definition of *students with the most significant cognitive disabilities*)

The goal of this waiver component is to ensure each student eligible to take a Kansas State Assessment, is administered the appropriate form of the assessment. KSDEs plan and waiver request outlined several key strategies and action steps toward reaching this goal: revising the state's participation guidelines to emphasize distinct criterion; revising the state-adopted definition of students with the most significant cognitive disabilities in the state; providing training, tools, and technical assistance to improve the implementation of the state's participation guidelines; and leveraging the concept of least dangerous assumption with the field.

KSDE updated the DLM participation guidelines and Kansas Alternate Assessment Flow Chart. The Rubric for Determining Participation on the Kansas Alternate Assessment (DLM) was also created. These documents are located at at http://www.ksde.org/Default.aspx?tabid=887.

Beginning with the 2019-2020 school year, the DLM participation guidelines have *four* criteria that all have to be "yes" for a student to participate in the DLM.

1. The student has a most significant cognitive disability (intellectual disability).
2. The student has significant deficits in adaptive behavior.
3. The student is primarily being instructed (or taught) using the Dynamic Learning Maps Essential Elements as content standards.
4. The student requires extensive direct individualized instruction and substantial supports to achieve measurable gains in all grade-and age-appropriate curriculum.

KSDE provided training on and shared the updated participation guidelines, flow chart, and rubric through the following activities:

- June 6, 2019 – Kansas Infinitec Cadre Summer Academy
- July 30-August 1, 2019 - KSDE Leadership Conference,
- August 16, 2019 - Directors Webinar,
- August 22, 2019 - DLM webinar,
- September 9, 2019 - Special Education Advisory Council meeting,
- September 11, 2019 - virtual district test coordinator call.

KSDE consultants also presented a breakout session at the KSDE Leadership Conference titled: Using the Least Dangerous Assumption when Making Assessment Decisions. The updated resources and PowerPoint presentation were shared on directors, superintendents, principals, curriculum leaders, and test coordinators listservs on August 6th.

KSDE staff participated in the CCSSO-SCASS and meetings sponsored by the Department for the purpose of informing state-level policies, practices and/or procedures in relation to the state-level 1.0 percent requirement and identifying enhancements or additions to the technical assistance and tools provided to LEAs in the state. Staff attended the CCSSO-ASES meetings in October 2019 in Minnesota and February 2020 in New Orleans. Staff has participated in the biweekly 1%CoP calls and the PLGs hosted by NCEO and the TIES Center.

KSDE consultants provided technical support and training to teachers and administrators throughout the school year.

- Six DLM webinars were scheduled for the 2019-2020 school year
  - Five DLM Webinars – August 22, 2019; September 19, 2019; October 17, 2019; December 5, 2019; and February 13, 2020. The webinar recordings and materials are available at http://www.ksde.org/Default.aspx?tabid=887e
  - The April 30, 2020 webinar was cancelled due to state assessments being suspended after school buildings were closed on March 17, 2020
- Monthly calls for special education administrators, district level administrators, and test coordinators were scheduled throughout 2019-2020.
  - Directors Webinars addressing DLM – August 16, 2019; October 18, 2019; November 15, 2019; January 10, 2020; February 14, 2020
  - District level administrators' hot topics addressing DLM – September 4, 2019; November 6, 2019; December 4, 2019
  - District Test Coordinators virtual calls addressing DLM – September 13, 2019; October 16, 2019; November 13, 2019; January 30, 2020; February 12, 2020
- Provision of on-site technical assistance and/or professional learning
  - August 5, 2019 – district requested professional learning
  - August 6, 2019 – regional requested professional learning (5 districts participated)
  - August 20, 2019 – on-site district Technical Assistance on new guidelines and resources, and on analyzing district red flags
  - August 26, 2019 – on-site for 3 districts Technical Assistance on new guidelines and resources, and on analyzing district red flags
  - November 1, 2019 – special education cooperative professional learning (7 districts)
  - November 5, 2019 – special education cooperative professional learning (5 districts)
  - January 27, 2020 – special education cooperative professional learning (3 districts)
- Continued online availability of participation guidelines, flow chart and rubric

Plan and timeline for taking steps to support and provide appropriate oversight to districts anticipated to exceed 1.0 percent

KSDE took additional steps to support and provide appropriate oversight to each LEA that tested more than 1.0 percent of students with AA-AAAS to ensure only students with a most significant cognitive disability take the AA-AAAS.

KSDE sent a letter to districts on January 7, 2020 advising them to review their 2018-2019 DLM participation data available in the KSDE Authenticated Application-Kansas Integrated Accountability System. If the percentage of students taking the DLM exceeded 1.0 percent in any subject area, the district completed and submit a justification form to KSDE. Districts that anticipated testing over 1.0 percent of students in one or more subject areas during the 2019-2020 school year, completed assurances as part of the alternate assessment justification.

KSDE provided districts with data displays located within the Kansas Integrated Accountability System. For each subject, districts were provided the percentage of students who took the DLM, the number of students in each disability category that took the DLM, the percentage of students that performed at target or advanced, and subgroup data that included risk ratios. Districts were encouraged to use this data to complete the DLM justification. Districts were also asked if their LEA needed further guidance in one of several areas.

KSDE staff assessed each district justification and responded, as necessary via email or phone call. KSDE made these justifications publicly available, provided that such information did not reveal personally identifiable information about an individual student as is required by 34 CFR 200.6(c)(3)(ii) and (iv). The 2019-2020 justifications are publicly available online at: http://www.ksde.org/Default.aspx?tabid=567. This fall, KSDE staff will reach out to LEAs that indicated a need for additional training or assistance.

KSDE created a customized data display template similar to the one developed during the PLG meetings. Going forward the data will provide KSDE with three years of data on AA-AAAS for each district in Kansas. KSDE will use this data to flag districts who may be using practices which result in students taking an inappropriate

form of Kansas State assessment in reading/language arts and/or mathematics.

KSDE staff analyzed variables from the DLM First Contact Survey and score report information for students who took the DLM for the 2018-2019 school year. Identified variables included disability categories that are not usually associated with students with a most significant cognitive disability (SLP, SLD, and ED), instructional setting, reading levels, writing skills, computation skills, and performance level for the 2018-2019 assessments. Superintendents, special education directors, and district test coordinators were emailed a letter in August 2019 indicating the number of students that were identified with potential red flags. Specific student information was then shared on request over the phone and through encrypted email.

KSDE staff utilized this data analysis to:

1. Make personal contact with LEAs whose data reflected a significant number of variables that showed potential red flags.
2. Verified that LEAs were using the most up to date DLM participation guidelines, Least Dangerous Assumption, and maximizing available accommodations for the general assessment. Additional training was provided to staff in LEAs upon request.
3. Provided on-site technical assistance to 35 districts who requested and/or districts who exceeded the 1.0 percent threshold and had high rates of potential red flags.
4. Completed 73 DLM test observations in 13 different districts that tested over 1.0 percent of students on the DLM and districts that had high rates of potential red flags for their students taking the DLM. The majority of the spring DLM test observations were cancelled due to school buildings closing on March 17, 2020.

KSDE staff is analyzing variables from the 2019-2020 DLM First Contact Survey and will share potential red flags identified with LEAs in the fall. KSDE will not be able to include score report data since assessments were suspended prior to the end of the spring assessment window.

Plan and timeline for addressing any disproportionality in percentage of students taking the AA-AAAS

KSDE examined the data on subgroup participation, as reported in ESSA, on the alternate assessment, to identify and address any disproportionality in the students taking the AA-AAAS. KSDE analyzed state risk ratio data by subgroup for each subject area for the alternate assessment for 2018-2019. The 2018-2019 state level data did not reflect any subgroup with a risk ratio greater than 3.0 for any subject.

KSDE provided data to districts on subgroup participation, as reported in ESSA, on the alternate assessment through the authenticated application used for completing alternate assessment justifications. KSDE ensured that all districts with a risk ratio greater than 3.0 communicated how they would address the disproportionality in the DLM alternate assessment justifications. Data showed that 97 out of 146 districts had a risk ratio greater than 3.0 in at least one subgroup for at least one subject. Some of these districts indicated that they felt small n-size was the reason they were identified. KSDE will be moving to a three-year rolling average when calculating the risk ratio to help eliminate those districts identified due to small n-size.

Substantial progress

KSDE communicated the progress that was made on the plan and timeline for improving the implementation of participation guidelines and definition of *students with the most significant cognitive disabilities*; for taking steps to support and provide appropriate oversight to districts anticipated to exceed 1.0 percent, and for addressing any disproportionality in percentage of students taking the AA-AAAS.

Due to COVID 19, KSDE submitted an assessment and accountability waiver for 2019-2020. Therefore, KSDE does not have assessment data to show substantial progress in the number of students that were tested on the AA-AAAS. The general assessment had not opened prior to governor Laura Kelly closing all Kansas school buildings for the remainder of the school year. However, DLM has two instructionally embedded test windows. Students had completed the fall test window and were in the process of testing in the spring window. KSDE does have data showing the number of students who were enrolled and rostered on the DLM. Since the spring

DLM assessment window opened on February 3, 2020, students should have already been enrolled and rostered prior to the suspension of the assessment in March. When comparing this number to the number of students who took the DLM in 2018-2019, there was a decrease of 75 students in reading, 72 students in math, and 17 students in science.

Public Comment

KSDE seeks stakeholder input on this waiver extension request from multiple stakeholder groups including: Special Education Advisory Council (SEAC); ESEA stakeholder group; local district administrators in special education and title services; parents and families through dissemination by the state's Parent Training and Information Center, Families Together, Inc.; and from the general public through the KSDE SETS website.

Through these opportunities, KSDE received input from one stakeholder. The feedback was in support of the waiver extension.

KSDE sincerely appreciates the opportunity to improve the state system supporting AA-AAAS implementation. For more information or questions, please contact Beth Fultz, bfultz@ksde.org Assistant Director of Career Standards and Assessment Services, Division of Learning Services, Kansas State Department of Education.

For more information, contact:

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