



NEBRASKA

DEPARTMENT OF EDUCATION

December 22, 2020

Frank Brogan
Assistant Secretary of Elementary and Secondary Education
Office of State Support, OESE, USDE
400 Maryland Ave., SW
Washington DC 20202

Dear Assistant Secretary Brogan:

The *Every Student Succeeds Act (ESSA)* amended the provision of Title I of the Elementary and Secondary Education Act of 1965 related to students participating in alternate assessments of each State Education Agency's (SEA's) statewide assessment. The ESSA requires SEAs to submit waiver requests to the United States Department of Education in the event they have more than 1% of their students participating in the alternate assessment.

The Nebraska Department of Education (NDE) was unable to administer statewide assessment due to the COVID-19 Pandemic. All districts closed to in-person learning. Districts did their best to continue educating their students by either remote learning or providing hard copy lessons to be completed and when necessary returned to the district. Nebraska received a waiver from the ESSA requirements for both assessment and accountability for the 2019-20 school year. Lack of data from 2019-20 caused NDE to rely on older data to complete this waiver request.

NDE has conducted a review of data from Nebraska's statewide assessment for the school year 2018-19. The purpose of the review was to determine the participation rates of students taking the alternate assessments aligned to Nebraska's College and Career Ready Academic Standards with Extended Indicators. NDE also examined 2019-20 projections and impact on the current learning environments caused by the ongoing pandemic when making the decision about the need for this waiver request.

The data revealed that just over one percent of Nebraska students participated in each of the content areas included in Nebraska's Alternate Assessment (Table 1). Based on this data, the state anticipates exceeding the one percent threshold enacted by the ESSA for school year 2020-21. (See Attachment 27 – Trend Data for Participation by Disability to see projections.)

Table 1: Participation in Alternate Assessment by Content

Subject	Number of Alternate Assessments Given			Number of all Assessments Given			Percent Participation		
	2016-17	2017-18	2018-19	2016-17	2017-18	2018-19	2016-17	2017-18	2018-19
English Language Arts (3 – 8, HS)	2,054	1833	1716	161,149	163,851	164,733	1.27%	1.12%	1.04%
Math (3 – 8, HS)	2,058	1831	1715	161,998	163,729	164,663	1.27%	1.12%	1.04%
Science (3 – 8, HS)	892	817	733	68,749	68,420	70298	1.30%	1.19%	1.04%

Table 2: Projected Participation in Alternate Assessment by Content for 2020 (looked at roster uploads for each vendor)

Subject	Projected Number of Alternate Assessments Given	Projected Number of all Assessments Given	Projected Percent Participation
School Year	2019-20	2019-20	2019-20
English Language Arts (3 – 8, HS)	1683	165,657	1.02%
Math (3 – 8, HS)	1683	165,657	1.02%

Science (3 – 8, HS)	The Science assessment was to be a stand-alone field test for alternate and general assessments and so we would not have had any scores.
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Table 3: Projected Participation in Alternate Assessment by Sub-Groups

2020 Projected Participation by Sub-Groups of Students Participating in the NSCAS Alternate Summative Assessments:

SUB-GROUP	Number of projected Alternate Assessments according to roster uploads	Number of projected district assessments according to roster uploads	Projected Percent of Participation
	ELA and Math (Grades 3-8 & HS)	ELA and Math (Grades 3-8 & HS)	ELA and Math (Grades 3-8 & HS)
All Students	1683	165,657	1.02
Female	603	80,189	0.75
Male	1080	85,468	1.26
American Indian or Alaska Native	21	2088	1.01
Asian	52	4648	1.12
Black or African American	178	11,148	1.60
Hispanic	313	32,467	0.96
Native Hawaiian or Other Pacific Islander	3	258	1.16
White	1026	108,185	0.95
Two Or More Races	90	6863	1.31
English Learners	8	9396	0.09
Socio-Economic Status	1036	80,801	1.28
Homeless	23	1716	1.34

No Science projections it was supposed to be a field test only and so there would not have been any scores for 2020 in general and alternate assessments. We had a waiver granted for this from USDOE.

Pursuant to 34 C.F.R. §200.6(c)(4), the Nebraska Department of Education (NDE) is seeking a waiver for all subject areas for the 2020-2021 school year from the Secretary for the United States Department of Education. Nebraska has received a waiver from USDOE for the 2019-2020 Science assessment. NDE plans on requesting that waiver be extended to 2020-21 due to COVID impacts. The Science assessment will be a stand-alone field test for general and alternate. NDE will not have any data to submit for Science. Nebraska has one testing window during the spring of each year. The start date for each subject is scheduled for March 22, 2021. Submission of the NDE waiver request comes 90 days prior to the start of the testing window.

The NDE sought public comment on its request for a waiver on the number of students who participate in NSCAS Alternate Assessment. The NDE accepted public input from December 7 - 21, 2020 on the waiver request. The public input was gathered through NDE's website, shared on listservs for district assessment coordinators and directors of special education, and disseminated via email to other stakeholders. The notice was posted for two weeks, the usual amount of time the agency posts such notices for public comment.

During the public comment period, the NDE received a total of 2 comments. The documents are included in the following attachments:

- Attachment 1 includes NDE release of the public notice and comment period.
- Attachment 2 includes the public notice of waiver request posted for public comment.
- Attachment 3 includes public comments received by the NDE.

Nebraska follows the federal participation requirements for assessment and requires all students enrolled in public K-12 schools be assessed with accommodations, without accommodations or with alternate assessment.

To date, Nebraska has consistently exceeded the federal guidelines set at 95% participation rate of all students. For the 2018-19 school year Nebraska's participation rate for all students and for students with disabilities exceeded 99% for all content areas. (Nebraska was granted a waiver to suspend statewide assessments due to COVID-19 and closure of schools for the 2019-20 school year.)

Local district data was reviewed and analyzed. Due to COVID-19, 2019-20 testing was suspended. NDE reviewed roster data and district provided projections for 2019-20. There is no current data to review to determine how many districts would have exceeded the 1%

Threshold in 2019-20. (See Attachment 27 – Trend Data for Participation by Disability to see projections.)

There were 110 of 244 districts that assessed more than one percent of its assessed students with NSCAS Alternate Assessment during the 2018-19 school year. (In 2017, 136 of 244 and in 2018, 115 of 244 districts assessed more than one percent.)

(<http://nep.education.ne.gov/>)

NDE will reach out to each district with a participation rate greater than one percent and request written assurances that each Individual Education Program (IEP) Team, is following the criteria for determining participation in the alternate assessment (NSCAS-AA) when making assessment participation decisions.

The NDE will develop and implement procedures to ensure appropriate oversight of each local school district that exceeds the one percent cap. The NDE will develop a plan and timeline for:

- Requiring **all** districts to submit information annually that assures they are following the NDE guidance and whether they will exceed the 1% Threshold;
- Reviewing and revising (as necessary) the state's guidelines for participation in alternate assessment, including the state's definition of students with the most significant cognitive disabilities;
- Describing the steps the state will take in providing appropriate oversight to each district 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;
- Gather district data on current and previous year alternate assessment participation rates by disability in each subject area;
- Addressing any disproportionality in the percentage of students taking an alternate assessment;
- Developing and distributing resources for parents that includes information on Nebraska's alternate assessment participation guidelines, and accommodations that enable students to participate in the general assessment to the maximum extent possible; and
- Reporting assessment data publicly.

Statewide technical assistance will be available to all districts. Topics may include the following implementation requirements set forth in the ESSA:

- Using the alternate assessment participation guidelines (developed by NDE to determine if a student will take part in NSCAS-AA) to make appropriate 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;
- Reviewing implications of student participation in the alternate assessment as it applies to completing requirements for a regular high school diploma;
- Reviewing the state's definition of students with the most significant cognitive disabilities;
- Assist LEA in informing and engaging parents in the conversations and decisions around participating in NSCAS-AA; and
- Addressing any disproportionality in the percentage of students taking NSCAS-AA.

An annual review of disaggregated district data on participation rates in each subject of the alternate assessment will be conducted by the NDE. Districts that exceed the one percent participation rate will be required to provide NDE with a detailed justification for exceeding the one percent cap.

Districts with unusual patterns or higher participation rates will require additional examination by the NDE to determine the reasons for higher percentages of students participating in NSCAS-AA.

The NDE will provide support to districts to ensure they are utilizing the criteria for determining participation in the NSCAS-AA to make appropriate decisions for students who are participating in NSCAS-AA. For districts that continue to exceed the one percent threshold, a more intensive approach will be taken. The NDE will provide ongoing training, coaching, and support to ensure appropriate assessment of all students.

Districts were required to address disproportionality among subgroups of students participating in NSCAS-AA beginning in the fall of 2018. After collecting and reviewing LEA's data on disproportionality by subgroups NDE will be reaching out to specific LEA's for information on how they plan to address this and discuss with them how they are identifying students for the NSCAS-AA. (see Attachment 5)

To determine if disproportionality among subgroups of students participating in the NSCAS-AA of Nebraska's statewide assessments existed, the NDE used the risk ratio methodology. Data was analyzed to determine risk ratios for the following subgroups: 1) seven race/ethnicity categories, 2) socio-economic status (determined by free or reduced lunch), 3) English Language Learners, 4) homelessness, and 5) gender. The SEA will also examine the percentage by disability category participating in the NSCAS-AA (when data is available). These data analysis techniques provide the NDE the information on student

subgroups to focus initiatives on reducing the percentage of students participating in the NSCAS-AA.

To determine risk ratios for the subgroups listed above, the NDE ascertained the risk of each subgroup participating in the 2016-2017, 2017-18 and 2018-19 NSCAS-AA, compared to the risk of assessed students not in a given subgroup. The risk ratio analysis identified subgroups that are more likely to participate in NSCAS-AA. For example, a risk ratio of 1.0 represents an equal likelihood of participation in the NSCAS-AA between students in a particular subgroup and students not in that subgroup. Moreover, a risk ratio of 2.0 indicates students in a subgroup are twice as likely to participate in the NSCAS-AA as students not in that subgroup. Any risk ratio above 2.0 indicates disproportionality, the higher the risk ratio, the greater the degree of disproportionality.

Seen in the Table 4 below, the risk ratio analysis identified disproportionality in three (3) subgroups: American Indian/Alaska Native, Black/African American and Homeless (Science only).

Table 4: Participation Disproportionality by Sub-Groups on Alternate Assessment

**Disproportionality by Sub-Groups of Students Participating in the
NSCAS Alternate Summative Assessments:**

SUB-GROUP	ELA			MATHEMATICS			SCIENCE		
	(Grades 3-8 & 11)			(Grades 3-8 & 11)			(Grades 5, 8, & 11)		
	2017	2018	2019	2017	2018	2019	2017	2018	2019
All Students	1.27	1.12	1.04	1.27	1.12	1.04	1.30	1.19	1.04
Female	0.94	0.81	0.76	0.94	0.81	0.76	0.96	0.86	0.80
Male	1.59	1.41	1.31	1.58	1.41	1.31	1.62	1.51	1.27
American Indian or Alaska Native	1.99	2.14	1.53	2.03	2.14	1.53	1.60	2.37	1.87
Asian	1.19	1.00	0.93	1.11	1.00	0.93	1.25	1.10	0.84
Black or African American	1.97	1.65	1.55	1.94	1.65	1.55	2.21	1.78	1.57
Hispanic	1.32	1.11	0.99	1.31	1.10	0.99	1.27	1.21	0.95
Native Hawaiian or Other Pacific Islander	0.43	0.82	0.88	0.44	0.82	0.88	0.00	1.08	1.01
White	1.17	1.04	0.98	1.18	1.04	0.98	1.20	1.10	1.00
Two Or More Races	1.44	1.33	1.33	1.44	1.33	1.33	1.52	1.39	1.26
English Learners	0.38	0.43	0.20	0.38	0.43	0.20	0.28	0.62	0.13
Socio-Economic Status	1.67	1.42	1.30	1.65	1.42	1.30	1.71	1.48	1.32
Homeless	1.95	1.40	1.46	1.82	1.41	1.46	2.38	1.20	1.98

The NDE believes its plan of:

- Identifying districts with more than 1% of its students participating in NSCAS-AA;
- Identifying NSCAS-AA participation by disability and district;
- Providing technical assistance to districts to ensure appropriate decisions for participation in NSCAS-AA are made by IEP teams;
- Identifying districts with subgroups that are disproportionate on NSCAS-AA participation;
- Providing support to districts with more than 1% of their students participating in NSCAS-AA; and
- Monitoring districts with more than 1% of their students participating in the NSCAS-AA;

will act to reduce the percentage of Nebraska students participating in NSCAS-AA to the 1% limit required by ESSA. Nebraska saw a decrease in the participation percentages from 2018 to 2019. In ELA we went from 1.12% to 1.04%, Math 1.12% to 1.04% and Science we went from 1.19% to 1.04%.

Please contact Jeremy Heneger, jeremy.heneger@nebraska.gov to discuss the content of this waiver request or to get any questions addressed. We look forward to working with U.S. Department of Education staff to achieve a positive response to the request.

Sincerely,

Jeremy Heneger
Jeremy Heneger (Dec 22, 2020 15:20 CST)

Dr. Jeremy Heneger

Director of Statewide Assessment

- Document 1 – Letter Requesting Waiver from Nebraska Commissioner of Education
- Attachment 1 – Notice of Intent to Apply for the 1% Waiver 2020-2021
- Attachment 2 – Alternate Assessment Waiver Public Comment Request 2020-21
- Attachment 3 – Public Comments Received
- Attachment 4 – NDE Timeline 2019-2020/2020-2021
- Attachment 5 – SEA Plan for Monitoring Districts 1% Participation
- Attachment 6 – LEA Justification for Exception to the 1 Percent Participation Threshold on NSCAS Alternate Assessment Form (2019-2020)
- Attachment 7 – LEA Justification for Exception to the 1 Percent Participation Threshold on NSCAS Alternate Assessment Form (2020-2021)
- Attachment 8 – LEA Justification Support Worksheet (Projected disability categories of NSCAS Alternate Assessment participants and training) (2019-2020)
- Attachment 9 – LEA Justification Support Worksheet (Projected disability categories of NSCAS Alternate Assessment participants and training) (2020-2021)
- Attachment 10 – LEA Alternate Assessment Letter (2019-2020)
- Attachment 11 – LEA Alternate Assessment Letter (2020-2021)
- Attachment 12 – LEA Participation Chart (sample)
- Attachment 13 – LEA Subgroup Participation Percentage Data Template (sample)
- Attachment 14 – NDE Most Significant Cognitive Disability Definition
- Attachment 15 – Alternate Assessment Criteria Document (Updated in 2019)
- Attachment 16 – Companion to Alternate Assessment Criteria (new in 2019)
- Attachment 17 – IEP Team Decision Making Flow Chart for Alternate Assessment for Students with the Most Significant Cognitive Disabilities
- Attachment 18 – IEP Team Decision Making Guidelines When Identifying Appropriate Assessment
- Attachment 19 - Case Studies Handout
- Attachment 20 - Samples of Criteria
- Attachment 21 – New Special Education Directors Handout on Alternate Assessment

- Attachment 22 – State Assessment Informational Pamphlet for Parents of Students with Disabilities
- Attachment 23 – NSCAS Alternate Assessment Frequently Asked Questions (for parents)
- Attachment 24 – NDE Training Powerpoint for Alternate Assessment for LEAs (updated)
- Attachment 25 – Engaging Educators Training Powerpoint (updated 2020)
- Attachment 26 – TSI and ATSI Information on Alternate Assessment
- Attachment 27 – Trend Data for Participation by Disability

Nebraska 1% Waiver Request Document 2020-21_Letter head

Final Audit Report

2020-12-22

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