



December 20, 2021

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.

NDE has conducted a review of data from Nebraska's statewide assessment for the school year 2020-21. 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 2021-22 district provided 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 one percent of Nebraska students participated in each of the content areas of ELA and Math (Science was a stand-alone field test) on the 2021 assessment included in Nebraska's Alternate Assessment (See Table 1). Based on the data reviewed and included in Table 2, the state anticipates exceeding the one percent threshold enacted by the ESSA in ELA and Math for school year 2021-22.

Table 1: Participation in Alternate Assessment by Content

Science assessment (general and alternate) for 2021 was a stand-alone field test so there is no data to report. No assessment administered in 2020.

Subject	Number of Alternate Assessments Given			Number of all Assessments Given			Percent Participation		
	2017-18	2018-19	2020-21	2017-18	2018-19	2020-21	2017-18	2018-19	2020-21
English Language Arts (3 – 8, HS)	1833	1716	1550	163,851	164,733	154,408	1.12	1.04	1.00
Math (3 – 8, HS)	1831	1715	1541	163,729	164,663	154,210	1.12	1.04	1.00
Science (3 – 8, HS)	817	733	N/A	68,420	70298	N/A	1.19	1.04	N/A

Table 2: Projected Participation in Alternate Assessment by Content for 2022

Subject	Projected Number of Alternate Assessments Given	Projected Number of all Assessments Given	Projected Percent Participation
School Year	2021-22	2021-22	2021-22
English Language Arts (3 – 8, HS)	1753	165,217	1.06

Math (3 – 8, HS)	1753	165,217	1.06
Science (3 – 8, HS)	707	71,201	0.99

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 2021-2022 school year from the Secretary for the United States Department of Education. Nebraska received a waiver extension from USDOE for the 2020-2021 Science assessment. The Science assessment was a stand-alone field test for general and alternate. NDE does not have any data to submit for Science 2020-21. Nebraska has one testing window during the spring of each year. The start date for each subject is scheduled for March 21, 2022. 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 5 - 20, 2021 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 0 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.

Except during the COVID-19 Pandemic, 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. (See Table 3 – 2019 Participation)

Table 3 – 2019 Participation

2019 Participation Percentages			
SUBJECT	GENERAL	SPECIAL EDUCATION	ALTERNATE ASSESSMENT
ELA	99.84	99.07	1.04
MATH	99.83	99.04	1.04
SCIENCE	99.75	98.31	1.04

Nebraska barely missed the 95% participation requirement for 2020-21 because of conditions of the ongoing pandemic. Participation data is included in Tables 4 and 5 to show what the actual numbers were for the 2020-21 administration of NSCAS.

NDE is requesting a waiver to the requirement of 95% participation for 34 CFR 200.6(c)(4)(ii)(B) - “Provide State-level data, from the current or previous school year, to show -...(B) The State has measured the achievement of at least 95 percent of all students and 95 percent of students in the children with disabilities subgroup . . . who are enrolled in grades for which the assessment is required.”

Based on the current pandemic conditions, NDE does predict that we will meet the 95% participation requirement for 2021-22 NSCAS administration.

Table 4 – 2021 Participation Percentages (Science was a stand-alone field test)

2021 Participation Percentages					
Subject	Overall		Special Education		Alternate Assessment
	3 – 8	ACT	3 – 8	ACT	3 - 8 and High School
ELA	94.36	94	93.16	86	87.08
Math	94.28	93	93.03	86	86.77
Science	FT	93	FT	85	Field Test
Not Tested	Due to Covid				
ELA	5.64	6	6.84	14	12.92

Math	5.72	7	6.97	14	13.25
Science	FT	7	FT	15	FT

Table 5 – 2021 Participation Numbers (Science was a stand-alone field test)

2021 Participation Numbers					
Subject	Overall		Special Education		Alternate Assessment
	3 – 8	ACT	3 – 8	ACT	3 - 8 and High School
ELA	132,510	21,996	22,161	2322	1550
Math	132,326	21,982	22,117	2315	1541
Science	FT	22,953	FT	2295	Field Test
Not Tested	Due to Covid				
ELA	7922	1516	1627	375	230
Math	8023	1530	1657	382	235
Science	FT	1559	FT	402	Field Test

Local district data was reviewed and analyzed. Due to COVID-19, NDE’s testing participation was affected for 2020-21. NDE reviewed assessment data from 2020-21 and district provided projections for 2021-22 by disability. (See Attachment 20 – Trend Data for Participation by Disability to see projections.)

There were 89 of 244 districts that assessed more than one percent of its assessed students with NSCAS Alternate Assessment during the 2020-21 school year. (In 2019, 110 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;
- Require districts to provide their process that they use to determine if students meet NDE criteria (how, what data is used and characteristics) to be administered the alternate assessment;
- 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;
- Provide guidance on how to look at data and other factors that help districts make the most appropriate decision for identification;
- 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 2017-18, 2018-19 and 2020-21 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 Table 6 below, the risk ratio analysis identified disproportionality in no areas for 2021. (This was affected by the lower than usual number of students participating due to COVID.)

Table 6: Participation Disproportionality by Sub-Groups on Alternate Assessment
(Science was a stand-alone field test)

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

SUB-GROUP	ELA (Grades 3-8 & HS)			MATHEMATICS (Grades 3-8 & HS)			SCIENCE (Grades 5, 8, & HS)		
	2018	2019	2021	2018	2019	2021	2018	2019	2021
All Students	1.12	1.04	1.00	1.12	1.04	1.00	1.19	1.04	N/A
Female	0.81	0.76	0.71	0.81	0.76	0.71	0.86	0.80	N/A
Male	1.41	1.31	1.28	1.41	1.31	1.27	1.51	1.27	N/A
American Indian or Alaska Native	2.14	1.53	1.30	2.14	1.53	1.31	2.37	1.87	N/A
Asian	1.00	0.93	1.14	1.00	0.93	1.14	1.10	0.84	N/A
Black or African American	1.65	1.55	1.42	1.65	1.55	1.42	1.78	1.57	N/A
Hispanic	1.11	0.99	1.05	1.10	0.99	1.05	1.21	0.95	N/A
Native Hawaiian or Other Pacific Islander	0.82	0.88	1.24	0.82	0.88	1.24	1.08	1.01	N/A
White	1.04	0.98	0.92	1.04	0.98	0.92	1.10	1.00	N/A
Two Or More Races	1.33	1.33	1.32	1.33	1.33	1.33	1.39	1.26	N/A
English Learners	0.43	0.20	0.21	0.43	0.20	0.21	0.62	0.13	N/A
Socio-Economic Status	1.42	1.30	1.33	1.42	1.30	1.32	1.48	1.32	N/A
Homeless	1.40	1.46	1.18	1.41	1.46	1.19	1.20	1.98	N/A

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-AAS;

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 2019 to 2021. In ELA we went from 1.04% to 1.00%, Math 1.04% to 1.00% and Science was a stand-alone field test so no data to compare. NDE continues to carefully watch 1% participation numbers on the alternate assessment due to the continuing effects of the pandemic.

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 20, 2021 11:15 CST)

Dr. Jeremy Heneger
Director of Statewide Assessment

- Document 1 – Letter Requesting Waiver from Nebraska Department of Education
- Attachment 1 – Notice of Intent to Apply for the 1% Waiver 2021-2022
- Attachment 2 – Alternate Assessment Waiver Public Comment Request 2021-22
- Attachment 3 – Public Comments Received
- Attachment 4 – NDE Timeline 2021-2022
- 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 (2021-2022)
- Attachment 7 – LEA Justification Support Worksheet (Projected disability categories of NSCAS Alternate Assessment participants and training) (2021-2022)
- Attachment 8 – LEA Alternate Assessment Letter (2021-2022)
- Attachment 9 – NDE Most Significant Cognitive Disability Definition

- Attachment 10 – Alternate Assessment Criteria Document
- Attachment 11 – Companion to Alternate Assessment Criteria
- Attachment 12 – IEP Team Decision Making Flow Chart for Alternate Assessment for Students with the Most Significant Cognitive Disabilities
- Attachment 13 – IEP Team Decision Making Guidelines When Identifying Appropriate Assessment
- Attachment 14 - Case Studies Handout
- Attachment 15 - Samples of Criteria
- Attachment 16 – New Special Education Directors Handout on Alternate Assessment
- Attachment 17 – State Assessment Informational Pamphlet for Parents of Students with Disabilities
- Attachment 18 – NSCAS Alternate Assessment Frequently Asked Questions (for parents)
- Attachment 19 – NDE Training PowerPoint for Alternate Assessment for LEAs
- Attachment 20 – Trend Data for Participation by Disability
- Attachment 21 – Alternate Assessment/Assessment PowerPoint for ESU’s
- Attachment 22 – How to Complete the 1% Documents PowerPoint






1% Waiver Request Document 2021-22

Final Audit Report

2021-12-20

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"1% Waiver Request Document 2021-22" History

-  Document created by Stacey Weber (stacey.weber@nebraska.gov)
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