



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

May 9, 2024

The Honorable Brian Maher  
Commissioner of Education  
Nebraska Department of Education  
P.O. 94987  
Lincoln , NE 68509-4987

Dear Commissioner Maher:

I am writing in response to the Nebraska Department of Education's (NDE's) request on January 2, 2024 (with additional information provided on April 11, 2024), for a waiver of section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965 (ESEA), 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). NDE requested this waiver because, based on State data for school year 2022-2023, NDE has concluded that it may need to assess more than 1.0 percent of students using an AA-AAAS in reading/language arts (R/LA), mathematics, and science in the 2023-2024 school year.

After reviewing NDE's waiver request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, for SY 2023-2024, a waiver 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 R/LA, mathematics, and science.

As part of this waiver, NDE assured that it:

- Will continue to meet all other requirements of section 1111 of the ESEA and implement 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.
- Had assessed in SY 2022-2023 at least 95 percent of all students and all students with disabilities who are enrolled in grades for which the R/LA, mathematics, and science assessments are 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 AA-AAAS.
- Will provide appropriate oversight of an LEA that is required to submit such information to the State.
- 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) – excluding (d)(6) – and will address any subgroup disproportionality in the percentage of students taking an AA-AAAS.

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- Will implement, consistent with the plan submitted in NDE’s waiver request, system improvements and will monitor future administrations of the AA-AAAS to avoid exceeding the 1.0 percent cap.

As a reminder, 34 CFR § 200.6(c)(3)(iv) requires a State to make publicly available the information submitted by an LEA justifying the need 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 publish your State’s plan, timeline, and progress in reducing the percentage of students taking the AA-AAAS.

Given the workplan submitted by NDE, I expect to continue to see positive results of this plan in the 2023-2024 school year and beyond. I note that, while the rate of AA-AAAS participation is generally close to 1.0 percent, it increased slightly in the 2022-2023 school year compared to the 2021-2022 school year. Future requests for a waiver extension will continue to expect both continued progress implementing your plan and progress in reducing the percentage of students taking the AA-AAAS in all tested subjects.

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](mailto:ESEA.Assessment@ed.gov).

Sincerely,



Adam Schott  
Principal Deputy Assistant Secretary  
Delegated the Authority to Perform the  
Functions and Duties of the Assistant Secretary  
Office of Elementary and Secondary Education

cc: Trudy Clark, Director of Statewide Assessment