

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 2022-23. 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 2023-24 district provided projections and impact on the current learning environments caused by statewide teacher shortages and learning loss that may have occurred due to the effects of the 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, Math, and Science on the 2023 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, Math and Science for school year 2023-24.

**Table 1: Participation in Alternate Assessment by Content**

Subject	Number of Alternate Assessments Given			Number of all Assessments Given			Percent Participation			
	School Year	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	650	68,420	70,298	69,145	1.19	1.04	0.94

Subject	Number of Alternate Assessments Given		Number of all Assessments Given		Percent Participation		
	School Year	2021-22	2022-23	2021-22	2022-23	2021-22	2022-23
English Language Arts (3 – 8, HS)		1716	1775	163,884	163,991	1.05	1.08
Math (3 – 8, HS)		1708	1773	163,771	163,849	1.04	1.08
Science (3 – 8, HS)		705	745	69,667	70,210	1.01	1.06

Table 2: Projected Participation in Alternate Assessment by Content for 2024

(Alternate Assessment participation numbers were provided by districts in their fall submissions of their information as to why they maybe exceeding the 1%, assurances and a plan on how they are going to address being over.)

<b>Subject</b>	<b>Projected Number of Alternate Assessments Given</b>	<b>Projected Number of all Assessments Given</b>	<b>Projected Percent Participation</b>
<b>School Year</b>	<b>2023-24</b>	<b>2023-24</b>	<b>2023-24</b>
<b>English Language Arts (3 – 8, HS)</b>	<b>1809</b>	<b>165,127</b>	<b>1.09</b>
<b>Math (3 – 8, HS)</b>	<b>1809</b>	<b>165,127</b>	<b>1.09</b>
<b>Science (3 – 8, HS)</b>	<b>761</b>	<b>70,983</b>	<b>1.07</b>

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 2023-2024 school year from the Secretary for the United States Department of Education. Nebraska has one testing window during the spring of each year. The start date for each subject is scheduled for April 1, 2024. 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 19 - 31, 2023 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.

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 2022-23 school year Nebraska's participation rate for all students and for students with disabilities exceeded 97% for all content areas. (See Table 3 – 2023 Participation)

**Table 3 – 2023 Participation**

<b>2023 Participation Percentages</b>			
<b>Subject</b>	<b>Overall</b>	<b>Special Education</b>	<b>Alternate Assessment</b>
	<b>3 – 8 and ACT</b>	<b>3 – 8 and ACT</b>	<b>3 - 8 and High School</b>
<b>ELA</b>	<b>98.09%</b>	95.53%	97.63%
<b>Math</b>	<b>98.03%</b>	95.40%	97.52%
<b>Science</b>	<b>97.65%</b>	94.84%	96.50%

<b>2023 Participation Numbers</b>			
<b>Subject</b>	<b>Overall</b>	<b>Special Education</b>	<b>Alternate Assessment</b>
	<b>3 – 8 and ACT</b>	<b>3 – 8 and ACT</b>	<b>3 - 8 and High School</b>
<b>ELA</b>	<b>163,982</b>	26,925	1,775
<b>Math</b>	<b>163,842</b>	26,890	1,773
<b>Science</b>	<b>70,039</b>	10,400	745

Nebraska barely missed the 95% participation requirement for 2022-23 school year for students with disabilities in Science only. Participation data is included in Tables 3 to show what the actual numbers were for the 2022-23 administration of NSCAS. Table 4 shows the actual numbers for the 2021-22 administration. As you can see, we showed an increase of numbers in all areas from 2022 to 2023 administration.

NDE is requesting a waiver to the requirement of 95% participation in Science 2023 administration only for students with disabilities 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."

NDE does predict that we will meet the 95% participation requirement for 2024 NSCAS administration.

**Table 4 – 2022 Participation Data**

<b>2022 Participation Percentages</b>			
<b>Subject</b>	<b>Overall</b>	<b>Special Education</b>	<b>Alternate Assessment</b>
	<b>3 – 8 and ACT</b>	<b>3 – 8 and ACT</b>	<b>3 - 8 and High School</b>
<b>ELA</b>	97.77%	94.41%	96.73%
<b>Math</b>	97.73%	94.57%	96.33%
<b>Science</b>	97.55%	93.82%	95.53%

<b>2022 Participation Numbers</b>			
<b>Subject</b>	<b>Overall</b>	<b>Special Education</b>	<b>Alternate Assessment</b>
	<b>3 – 8 and ACT</b>	<b>3 – 8 and ACT</b>	<b>3 - 8 and High School</b>
<b>ELA</b>	163,965	26,436	1,716
<b>Math</b>	163,852	26,400	1,708
<b>Science</b>	69,748	10,277	705

Local district data was reviewed and analyzed. NDE reviewed assessment data from 2021-22, 2022-23 and district provided projections for 2023-24 by disability.

There were 107 of 244 districts that assessed more than one percent of its assessed students with NSCAS Alternate Assessment during the 2022-23 school year. (In 2022, 100 of 244 districts assessed more than one percent.) Of the 107 districts 50 have 3 or less students who take the alternate assessment. Sixteen of these districts have not administered the assessment to students in the past 3 years. Thirty-eight of the 107 districts have less than 150 students taking the NSCAS assessments with 20 of these testing less than 100 students. This makes it more likely they will exceed the 1% by testing only one student. Fifty-six of the 107 districts are barely over the 1% threshold. (<http://nep.education.ne.gov/>)

NDE reaches out to each district with a participation rate greater than one percent and requests 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;
- Requiring 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 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;
- Gathering 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;
- Providing 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; (TA documents available for districts)
- Differentiating instruction and providing better access to academic content; (NeMTSS site provided, most districts either have implemented an MTSS plan or are in the process of implementing one – statewide support provided on this by regional staff for support)
- 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; (parent signature required after discussion)
- Reviewing the state's definition of students with the most significant cognitive disabilities;
- Assisting LEAs 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 LEAs for information on how they plan to address this and discuss with them how they are identifying students for the NSCAS-AA.

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 2021-22 and 2022-23 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 5 below, the risk ratio analysis identified disproportionality in Native Hawaiian or Other Pacific Islander for 2023.

**Table 5: Participation Disproportionality by Sub-Groups on Alternate Assessment**

<b>Disproportionality by Sub-Groups of Students Participating the NSCAS Alternate Summative Assessments:</b>									
<b>SUB-GROUP</b>	<b>ELA (Grades 3-8 &amp; HS)</b>			<b>MATHEMATICS (Grades 3-8 &amp; HS)</b>			<b>SCIENCE (Grades 5, 8, &amp; HS)</b>		
	<b>2018</b>	<b>2019</b>	<b>2021</b>	<b>2018</b>	<b>2019</b>	<b>2021</b>	<b>2018</b>	<b>2019</b>	<b>2021</b>
<b>All Students</b>	<b>1.12</b>	<b>1.04</b>	<b>1.00</b>	<b>1.12</b>	<b>1.04</b>	<b>1.00</b>	<b>1.19</b>	<b>1.04</b>	<b>0.99</b>
<b>Female</b>	<b>0.81</b>	<b>0.76</b>	<b>0.71</b>	<b>0.81</b>	<b>0.76</b>	<b>0.71</b>	<b>0.86</b>	<b>0.80</b>	<b>0.72</b>
<b>Male</b>	<b>1.41</b>	<b>1.31</b>	<b>1.28</b>	<b>1.41</b>	<b>1.31</b>	<b>1.27</b>	<b>1.51</b>	<b>1.27</b>	<b>1.25</b>
<b>American Indian or Alaska Native</b>	<b>2.14</b>	<b>1.53</b>	<b>1.30</b>	<b>2.14</b>	<b>1.53</b>	<b>1.31</b>	<b>2.37</b>	<b>1.87</b>	<b>1.74</b>
<b>Asian</b>	<b>1.00</b>	<b>0.93</b>	<b>1.14</b>	<b>1.00</b>	<b>0.93</b>	<b>1.14</b>	<b>1.10</b>	<b>0.84</b>	<b>0.98</b>
<b>Black or African American</b>	<b>1.65</b>	<b>1.55</b>	<b>1.42</b>	<b>1.65</b>	<b>1.55</b>	<b>1.42</b>	<b>1.78</b>	<b>1.57</b>	<b>1.50</b>
<b>Hispanic</b>	<b>1.11</b>	<b>0.99</b>	<b>1.05</b>	<b>1.10</b>	<b>0.99</b>	<b>1.05</b>	<b>1.21</b>	<b>0.95</b>	<b>1.10</b>
<b>Native Hawaiian or Other Pacific Islander</b>	<b>0.82</b>	<b>0.88</b>	<b>1.24</b>	<b>0.82</b>	<b>0.88</b>	<b>1.24</b>	<b>1.08</b>	<b>1.01</b>	<b>2.00</b>
<b>White</b>	<b>1.04</b>	<b>0.98</b>	<b>0.92</b>	<b>1.04</b>	<b>0.98</b>	<b>0.92</b>	<b>1.10</b>	<b>1.00</b>	<b>0.90</b>
<b>Two Or More Races</b>	<b>1.33</b>	<b>1.33</b>	<b>1.32</b>	<b>1.33</b>	<b>1.33</b>	<b>1.33</b>	<b>1.39</b>	<b>1.26</b>	<b>1.00</b>
<b>English Learners</b>	<b>0.43</b>	<b>0.20</b>	<b>0.21</b>	<b>0.43</b>	<b>0.20</b>	<b>0.21</b>	<b>0.62</b>	<b>0.13</b>	<b>0.07</b>
<b>Socio-Economic Status</b>	<b>1.42</b>	<b>1.30</b>	<b>1.33</b>	<b>1.42</b>	<b>1.30</b>	<b>1.32</b>	<b>1.48</b>	<b>1.32</b>	<b>1.40</b>
<b>Homeless</b>	<b>1.40</b>	<b>1.46</b>	<b>1.18</b>	<b>1.41</b>	<b>1.46</b>	<b>1.19</b>	<b>1.20</b>	<b>1.98</b>	<b>1.16</b>

<b>Disproportionality by Sub-Groups of Students Participating the NSCAS Alternate Summative Assessments:</b>									
<b>SUB-GROUP</b>	<b>ELA (Grades 3-8 &amp; HS)</b>			<b>MATHEMATICS (Grades 3-8 &amp; HS)</b>			<b>SCIENCE (Grades 5, 8, &amp; HS)</b>		
	<b>2022</b>	<b>2023</b>		<b>2022</b>	<b>2023</b>		<b>2022</b>	<b>2023</b>	
<b>All Students</b>	<b>1.05</b>	<b>1.08</b>		<b>1.04</b>	<b>1.08</b>		<b>1.01</b>	<b>1.06</b>	
<b>Female</b>	<b>0.77</b>	<b>0.80</b>		<b>0.77</b>	<b>0.80</b>		<b>0.77</b>	<b>0.74</b>	
<b>Male</b>	<b>1.31</b>	<b>1.35</b>		<b>1.30</b>	<b>1.35</b>		<b>1.24</b>	<b>1.36</b>	
<b>American Indian or Alaska Native</b>	<b>1.19</b>	<b>1.47</b>		<b>1.20</b>	<b>1.47</b>		<b>1.49</b>	<b>1.29</b>	
<b>Asian</b>	<b>1.16</b>	<b>1.01</b>		<b>1.16</b>	<b>1.01</b>		<b>1.46</b>	<b>0.82</b>	
<b>Black or African American</b>	<b>1.40</b>	<b>1.56</b>		<b>1.41</b>	<b>1.56</b>		<b>1.42</b>	<b>1.65</b>	
<b>Hispanic</b>	<b>1.08</b>	<b>1.10</b>		<b>1.07</b>	<b>1.10</b>		<b>0.95</b>	<b>1.18</b>	
<b>Native Hawaiian or Other Pacific Islander</b>	<b>2.12</b>	<b>2.52</b>		<b>2.13</b>	<b>2.54</b>		<b>2.48</b>	<b>1.72</b>	
<b>White</b>	<b>0.98</b>	<b>1.00</b>		<b>0.97</b>	<b>1.00</b>		<b>0.94</b>	<b>0.95</b>	
<b>Two Or More Races</b>	<b>1.22</b>	<b>1.32</b>		<b>1.22</b>	<b>1.32</b>		<b>1.24</b>	<b>1.31</b>	
<b>English Learners</b>	<b>0.17</b>	<b>0.23</b>		<b>0.17</b>	<b>0.23</b>		<b>0.24</b>	<b>0.23</b>	
<b>Socio-Economic Status</b>	<b>1.30</b>	<b>1.36</b>		<b>1.30</b>	<b>1.37</b>		<b>1.16</b>	<b>1.40</b>	
<b>Homeless</b>	<b>1.24</b>	<b>1.20</b>		<b>1.24</b>	<b>1.14</b>		<b>1.00</b>	<b>1.45</b>	

The NDE believes its updated 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;
- Implementing new participation guidelines in 2024;
- Increase the number of alternate assessment student files reviewed in NDE’s Differentiated Monitoring of Files;
- 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 an increase in the participation percentages from 2022 to 2023. In ELA we went from 1.05% to 1.08%, Math 1.04% to 1.08% and Science 1.01% to 1.06%. NDE continues to carefully watch 1% participation numbers on the alternate assessment. In addition, Nebraska has seen an increase in the number of students identified with disabilities. (2021-22 – 15.92%; 2022-23 – 16.45%)

Please contact Trudy Clark, [trudy.clark@nebraska.gov](mailto:trudy.clark@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.