

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 2023-24. 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 the 2024-25 district provided projections and the 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 more than one percent of Nebraska students participated in each of the content areas of ELA, Math, and Science on the 2024 assessment which is provided in Nebraska's Participation in Alternate Assessment (See Table 1).

Based on the data reviewed that was submitted by each district and is included in Table 2, the state anticipates exceeding the one percent threshold enacted by the ESSA in ELA, Math, and Science for school year 2024-25. Nebraska's district projections shows a significant drop in students participating in the alternate assessment in 2024-2025 as shown in Table 2. NDE requires that districts follow the procedures discussed below when providing the information about their projected numbers for the current assessment year.

NDE feels that with the implementation of the updated eligibility requirements, requiring that districts complete the guiding questions document, and training on all NDE guidance districts are doing a better job when determining if a student is a student with a most significant cognitive disability and meets the eligibility requirements. (See Attachments 10, 11 and 12.)

NDE is predicting that the overall number of students taking the NSCAS will increase this year when looking at fall student enrollment numbers. Nebraska's percentage of students being identified as a student with a disability continues to increase. (16.52% in 2022-23 to 16.77% in 2023-24) This is an overall increase of 0.25%.

Table 1: Participation in Alternate Assessment by Content

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	650	68,420	70298	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	2023-24	2021-22	2022-23	2023-24	2021-22	2022-23	2023-24
English Language Arts (3 – 8, HS)	1716	1775	1806	163,884	163,991	164,162	1.05	1.08	1.10
Math (3 – 8, HS)	1708	1773	1798	163,771	163,849	164,032	1.04	1.08	1.10
Science (3 – 8, HS)	705	745	771	69,667	70,210	69,811	1.01	1.06	1.10

Table 2: Projected Participation in Alternate Assessment by Content for 2025

(Alternate Assessment participation numbers were provided by all districts in their required fall submissions of their projected numbers, information that included why they may be exceeding the 1% threshold, assurances, superintendent's signature, and a district plan on how they are going to address being over the 1% Threshold. See Attachments 7 and 8)

Subject	Projected Number of Alternate Assessments Given	Projected Number of all Assessments Given	Projected Percent Participation
School Year	2024-25	2024-25	2024-25
English Language Arts (3 – 8, HS)	1742	167,960	1.04
Math (3 – 8, HS)	1742	167,960	1.04
Science (3 – 8, HS)	738	72,773	1.01

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 2024-2025 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 March 24, 2025. 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 11 - 22, 2024 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 12 days, the usual amount of time the agency posts such notices for public comment.

During the public comment period, the NDE received

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.
 - There was no public comments received by the NDE so this attachment is empty.

Nebraska follows the federal participation requirements for assessment and requires all students enrolled in public K-12 schools be assessed in three different ways: with accommodations, without accommodations or with alternate assessment. These options are also included in the IEP document and districts must select which option is being used for each student with disabilities.

Except during the COVID-19 Pandemic, Nebraska has consistently exceeded the federal guidelines set at 95% participation rate of all students. For the 2023-24 school year Nebraska's participation rate for all students and for students with disabilities exceeded 95% for all content areas. (See Table 3 – 2024 Participation) (Additional data found in Attachment 13)

Table 3 – 2024 Participation

2024 Participation Numbers and Percentages			
SUBJECT	Overall	Special Education	Alternate Assessment
	3 – 8 and ACT	3 – 8 and ACT	3 - 8 and High School
ELA			
Students Assessed	164,157	26,883	1,806
Students Enrolled	165,283	27,292	1875
Assessment Participation Rate	98.31%	95.76%	96.32%
MATH			
Students Assessed	164,028	26,835	1,798
Students Enrolled	165,235	27,280	1874
Assessment Participation Rate	98.26%	95.56%	95.94%

SCIENCE			
Students Assessed	69,810	10,102	771
Students Enrolled	70,775	10,416	807
Assessment Participation Rate	98.14%	95.15%	95.54%

NDE predicts that we will meet the 95% participation requirement for 2025 NSCAS administration.

NDE reviewed and analyzed alternate assessment data for each district from 2022-23, 2023-24 and district provided projections for 2024-25 overall and by disability. Besides looking at each district overall numbers, we wanted to look at the trend data for each year for students with disabilities and their area of identification who are taking the alternate assessment. NDE wanted to see what disability categories had high participation and to see if there were districts who needed to be contacted for more information (See Attachment 17 – State Trend Data for Participation by Disability to see participation numbers and projections by disability for alternate assessment.)

There were 98 of 244 districts that assessed more than one percent of its assessed students with NSCAS Alternate Assessment during the 2023-24 school year. This was a decrease of 9 districts from 2023-2024. (In 2023, 107 of 244 districts assessed more than one percent.) Of the 98 districts 44 have 3 or less students who take the alternate assessment. Thirty-two of the 98 districts have less than 150 students taking the NSCAS assessments with 19 of these testing between 41 and 97 students. This makes it more likely districts will exceed the 1% by testing only one student. Twenty-five of the 98 districts are barely over the 1% threshold.

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

In 2017, NDE started requiring that all districts submit information that provides NDE with their total number of students who would be taking the spring NSCAS Alternate Assessment. Even if districts were not assessing any students, they were still required to complete the Threshold Exception document stating that they were following NDE guidance in identification of students.

NDE continues to reach 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 eligibility requirements 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 threshold 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 (even if they do not have any students taking the assessment); (see Attachments 6, 7, and 8 for documents)
- Requiring districts to provide their process that they use to determine if students meet NDE eligibility requirements to be administered the alternate assessment; (included in the 1% Threshold Justification Document)
- In 2024 NDE released new and updated guidance that districts are to be using for identification of students who qualify for the alternate assessment; (see Attachments 10, 11 and 12)

- Requiring districts to complete the Guiding Questions document so that they can provide the evidence that they have data and information that is needed to support that the student meets the eligibility requirements;
- NDE will annually pull a group of identified students to review the documentation that districts used to make their decisions;
- NDE will review alternate assessment student files during the Special Education Focused Monitoring Process for current year (NDE has increased the number of files to be reviewed starting in the 2024-2025 school year;
- Reviewing and revising (if necessary) the state's guidelines for participation in alternate assessment, including the state's definition of students with the most significant cognitive disabilities;
- NDE will provide 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 (provided in SPED webinars, DAC webinar, Assessment roadshows, etc.;
- NDE gathers district data on current and previous years alternate assessment participation rates by disability in each subject area;
- NDE shares participation trend data with each district annually in the fall; (see Attachment 14)
- NDE requires districts to provide evidence that all staff have been trained on how to use NDE guidance on the eligibility process annually;
- 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. <https://nep.education.ne.gov/#/>
- Posted on NDE website how to request district information for exceeding the 1% ([NSCAS Alternate Summative Assessment – Nebraska Department of Education](#))
- **The timeline can be found in Attachment 4.**

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 eligibility participation decisions;
- Providing guidance on how to look at data and other factors that help districts make the most appropriate decision for identification and eligibility;
- Selecting, implementing, and evaluating accessibility features and accommodations for instruction and assessments; (TA documents available for districts on NDE website)
- Differentiating instruction and providing better access to academic content; (NeMTSS website, most districts either have implemented an MTSS plan or are in the process of implementing one – statewide support provided on this by regional support staff)
- 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 and student signature (if possible) required after discussion on eligibility worksheet)
- Reviewing the state's definition of students with the most significant cognitive disabilities;
- How to determine if a student has a most significant cognitive disability;
- Assisting LEAs in informing and engaging parents in the conversations and decisions around participating in NSCAS-AA (documents on NDE website); and
- Addressing any disproportionality in the percentage of students taking NSCAS-AA. (see Attachment 16 for data)

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. NDE will reach out to districts for additional information if needed. (See Attachment 7)

Districts with unusual patterns or higher participation rates will be required to provide additional data for NDE's examination 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 new and updated guiding questions and eligibility requirements when determining participation in the NSCAS-AA to assist in making 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 districts identify the appropriate assessment for all students with disabilities.

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 that students meet the eligibility requirements for the NSCAS-AA. (See Attachment 5 for additional information)

To determine if districts are disproportionate among subgroups of students participating in the NSCAS-AA of Nebraska's statewide assessments, 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 with 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 2022-23 and 2023-24 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 no areas as a state for 2024 alternate assessment administration. (See Attachment 15 for additional data per content area.)

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

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	0.99
Female	0.81	0.76	0.71	0.81	0.76	0.71	0.86	0.80	0.72
Male	1.41	1.31	1.28	1.41	1.31	1.27	1.51	1.27	1.25
American Indian or Alaska Native	2.14	1.53	1.30	2.14	1.53	1.31	2.37	1.87	1.74
Asian	1.00	0.93	1.14	1.00	0.93	1.14	1.10	0.84	0.98
Black or African American	1.65	1.55	1.42	1.65	1.55	1.42	1.78	1.57	1.50
Hispanic	1.11	0.99	1.05	1.10	0.99	1.05	1.21	0.95	1.10
Native Hawaiian or Other Pacific Islander	0.82	0.88	1.24	0.82	0.88	1.24	1.08	1.01	2.00
White	1.04	0.98	0.92	1.04	0.98	0.92	1.10	1.00	0.90
Two Or More Races	1.33	1.33	1.32	1.33	1.33	1.33	1.39	1.26	1.00
English Learners	0.43	0.20	0.21	0.43	0.20	0.21	0.62	0.13	0.07
Socio-Economic Status	1.42	1.30	1.33	1.42	1.30	1.32	1.48	1.32	1.40
Homeless	1.40	1.46	1.18	1.41	1.46	1.19	1.20	1.98	1.16

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)		
	2022	2023	2024	2022	2023	2024	2022	2023	2024
All Students	1.05	1.08	1.10	1.04	1.08	1.10	1.01	1.06	1.10
Female	0.77	0.80	0.84	0.77	0.80	0.84	0.77	0.74	0.83
Male	1.31	1.35	1.34	1.30	1.35	1.34	1.24	1.36	1.36
American Indian or Alaska Native	1.19	1.47	1.44	1.20	1.47	1.44	1.49	1.29	1.57
Asian	1.16	1.01	1.33	1.16	1.01	1.32	1.46	0.82	1.15
Black or African American	1.40	1.56	1.48	1.41	1.56	1.49	1.42	1.65	1.28
Hispanic	1.08	1.10	1.15	1.07	1.10	1.15	0.95	1.18	1.11

Native Hawaiian or Other Pacific Islander	2.12	2.52	1.46	2.13	2.54	1.47	2.48	1.72	1.67
White	0.98	1.00	1.01	0.97	1.00	1.00	0.94	0.95	1.05
Two Or More Races	1.22	1.32	1.28	1.22	1.32	1.26	1.24	1.31	1.37
English Learners	0.17	0.23	0.35	0.17	0.23	0.34	0.24	0.23	0.15
Socio-Economic Status	1.30	1.36	1.34	1.30	1.37	1.33	1.16	1.40	1.34
Homeless	1.24	1.20	1.28	1.24	1.14	1.28	1.00	1.45	0.90

The NDE believes its updated plan of:

- Implementing new participation eligibility guidelines in fall of 2024;
- Requiring districts to complete data analysis by completing the Guiding Questions to Support Alternate Assessment Participation Decisions;
- Identifying districts with more than 1% of its students participating in NSCAS-AA;
- Requiring districts to provide evidence to support that students meet the eligibility requirements;
- 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;
- Increase the number of alternate assessment student files reviewed in NDE's Differentiated Monitoring of Files (this year any selected district for monitoring who had students participating in the alternate assessment had 2 to 3 files selected for review);
- Districts who are not part of the monitoring process will have files randomly selected to be reviewed by NDE to verify the students meet the eligibility requirements;
- Providing support (emails, zoom meetings, phone calls, onsite visits) 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 (review submitted information, review student files, onsite visits, district conversations with all pertinent staff, etc.);

will 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 2023 to 2024. In ELA we went from 1.08% to 1.10%, Math 1.048% to 1.10% and Science 1.06% to 1.10%. 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 – 16.52%; 2023-24 – 16.77%)

Please contact Trudy Clark, 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.

Sincerely,

Dr. Trudy Clark

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 2024-2025
- Attachment 2 – Alternate Assessment Waiver Public Comment Request 2024-2025
- Attachment 3 – Public Comments Received
- Attachment 4 – NDE Timeline of Activities 2024-2025
- Attachment 5 – SEA Plan for Monitoring Districts One Percent Participation
- Attachment 6 – LEA 2024-2025 AA 1% District Letter
- Attachment 7 – LEA Justification for Exception to the 1 Percent Participation Threshold on NSCAS Alternate Assessment Form 2024-2025
- Attachment 8 – LEA Justification Support Worksheet (Projected disability categories of NSCAS Alternate Assessment participants, supporting student data, and training of staff) 2024-2025
- Attachment 9 – Examples of Completed District Justifications
- Attachment 10 – NDE Procedures and Timeline for Implementation of the New/Updated AAS Eligibility Requirements
- Attachment 11 – AAS Guiding Questions for Alternate Assessment Participation (2024 fall implementation)
- Attachment 12 – AAS Determining Eligibility Worksheet (updated and new format fall 2024 implementation)
- Attachment 13 – Additional 2024 Participation Data
- Attachment 14 – District Data Chart Template and District Data Chart Examples
- Attachment 15 – Additional Alternate Assessment Participation Rates by Subgroup for 2023-2024
- Attachment 16 – Districts Disproportionate for 2023 and 2024
- Attachment 17 – Trend Data for State Participation by Disability
- Attachment 18 – Weekly DAC Newsletter (emailed to all districts DAC)