



December 21, 2020

Frank T. Brogan
Assistant Secretary
Office of Special Education Programs
Elementary and Secondary Education

Washington, DC 20202

Dear Mr. Brogan:

I am writing to request a waiver of section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), of the requirements that a State may not assess using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS) more than 1.0 percent of the total number of students in the State. The Texas Education Agency (TEA) is requesting a waiver of this requirement because it anticipates that Texas will exc 0 g0 00.0691 Tc[,)TJET@.00000912 0 612 92 reW*nBT

TEA provided all LEAs in Texas with notice and a reasonable opportunity to comment on this request. Notice of the waiver request and a 30-day public comment period on the waiver was sent to all LEAs in Texas and posted on the [TEA website](#). A summary of public comments is

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Introduction

Title 1 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act of 2015 (ESSA) [ESEA §111(b)(2)(D) and 34 CFR 200.6(c) and (d)], modifies the provision that students with the most significant cognitive disabilities may participate in alternate assessments based on alternate academic achievement standards (AAAAS). Federal policy limits the number of students who may participate in alternate assessments to no more than 1.0 percent of students in the grades assessed in a state. States who anticipate exceeding the 1.0 percent cap must submit a waiver request to the U.S. Department of Education (USDE).

Texas develops and administers the State of Texas Assessments of Academic Readiness (STAAR®) Alternate 2 and its AAAAS. Due to the impact of the COVID pandemic, the spring 2020 STAAR Alternate 2 test administration was cancelled. Therefore, the most recent participation data the Texas Education Agency (TEA) has to report are from the 2018-19 school year. STAAR Alternate 2 participation rates for the 2018-19 school year were 1.5 percent.

One Percent Waiver Request Requirements

- I. In accordance with §200.6(c)(4)(i): Submission Days Prior to State Testing Window
A state waiver request must be submitted at least 90 days prior to the start of the state's testing window for the relevant subject

The STAAR Alternate 2 testing window for the 2021 administration is from March 30 to May 7, 2021. At least 90 days prior to the start of Texas' alternate assessment window (December 29, 2020), the state will submit a waiver request to USDE to assess more than 1.0 percent of its assessed population in mathematics, RLA, and science.

- II. In accordance with §200.6(c)(4)(ii): State Level Data

Without

are adopting the theory of “least dangerous assumption” when considering assessment decisions for younger students, TEA expects to see participation rates decrease in the 2020 school year and the years ahead as these students move through the school system.

In addition to analyzing participation data by grade and subject, TEA gathered disability data to find where the participation rates are increasing or decreasing. Table 3 shows data for students with primary disabilities of Intellectual Disability (ID), Autism (AU), and Other Health Impaired (OHI). These disability categories are important to note because students with these primary disabilities are the most likely to be assessed with an AAAS. Although there were increases in the number of students identified with a primary disability of ID, AU, or OHI, the percentage of these students assessed with an alternate assessment decreased.

The data in Table 3 increases the state’s confidence that ARD committees using the knowledge they have received through multi-level trainings to make participation decisions for students with specific disabilities. Texas expects participation rates to continue to decrease for subpopulations as students in upper grades move out of the system and as better informed assessment decisions are made for students just entering the tested grades.

TABLE 3. STAAR ALTERNATE 2 DISABILITY DATA COMPARED TO STATEWIDE DISABILITY DATA

DISABILITY CATEGORY	2016-17	2017-18	2018-19
Intellectual Disability (ID)	*17,026/ 24,341	*18,257/ 26,353	*18,828/ 28,642
Students with ID assessed with AAAS	69.9%	69.3%	65.7%
Autism (AU)	*9,751/ 27,230	*10,444/ 29,398	*10,948/ 31,687
Students with AU assessed with AAAS	35.8%	35.5%	34.6%
Other Health Impaired (OHI)	*3,705/ 35,949	*3,915/ 38,275	*3,994/ 41,597
Students with OHI assessed with AAAS	10.3%	10.2%	9.6%

*Students assessed with alternate assessment out of students assessed with general assessment

- A. A state must provide state-level data, from the current or previous year, to show the number and percentage of students in each subgroup who took an alternate assessment. Table 4 shows Texas’ state-level participation data from 2018-19 indicating the number and percentage of students in each subgroup who took an alternate assessment by content area in grades 3-8 and 3 high school.

TABLE 4. 2018-19 SUBGROUP PARTICIPATION DATA

CONTENT SUBGROUP AREA	ASSESSMENT WITH GENERAL ASSESSMENT
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B. A state must provide statelevel data, from the current or previous year, to show the state has measuredthe achievementof at least95percentof all studentsandstudentswith disabilitiesenrolled in the grades for which the AAAS is required. Texas follows the federal requirements for participation in statewide assessments outlined in ESEA. All students in grades 3 including students with disabilities, are required to take mathematics and reading assessments annually. All students in grades 5 and 8 must take a science assessment. All school students are required to take end of course

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- x Students with the most significant cognitive disabilities are included, to the extent possible, in the general curriculum and assessments aligned with ~~curriculum~~ curriculum.
- x Your district or charter school disseminates information and promotes the use of appropriate accommodations to increase the number of students with the most significant cognitive disabilities who are tested against ~~grade~~ grade level academic achievement

C.

Additional phase one resources available to all Texas LEAs include:

- x [STAAR Alternate 2 Resources](#)
- x [STAAR Alternate 2 Participation Requirements Companion Doc](#)(English)
- x [STAAR Alternate 2 Participation Requirements Companion Doc](#)(Spanish)
- x [STAAR Alternate 2 for Families](#)

Phase two of Texas' plan targets special education administrators and district testing coordinators. With the assistance of specialists at educational regions across the state, TEA is providing direct technical support to LEAs whose data shows increases in STAAR Alternate 2 participation rates for two years in a row or unusually high participation rates in 2018

TABLE 7. TIMELINE

August 2020	Provide training for regional testing coordinators and regional special education coordinators
August 2020-August 2021	Conduct bimonthly meetings with TEA Special Education collaborative
August 2020-June 2021	Provide technical assistance to LEA personnel
November 2020-August 2021	Coordinate collaborative project to determine LEA responsibility for overidentification of students and disproportionality of data
November 17, 2020	Post waiver request for public comment
December 1, 2020	Submit waiver to USDE
December 28, 2020	Publish new online training module "STAAR Alternate 2: Eligibility"
March 29-May 7, 2021	Administer STAAR Alternate 2 during testing window
May 2021	Check in with regional special education coordinators regarding technical assistance plan and adjustments to the plan
August 2021	Send communication to LEAs regarding disproportionality in local STAAR Alternate 2 participation data
August 2021	Review and analyze 2021 STAAR Alternate 2 participation data
October 2021	

Public Comments Regarding Texas One Percent Cap Waiver Request

11/17/20–12/17/20

Number	Date	Subject	Commenter	District or Organization	Comment
1	11/18/20	Needwaiver for 1%	District Testing Coordinator, Counselor	Chillicothe ISD	I am the DTC for a small rural district. With 200 student we have had 4 students (2%) the last two years and this year we have 6 students (3%) who will need to take the STAAR Alt 2 assessment. The 1% guideline does not encompass the individual needs of our students.
2	11/18/20	Against waiver process	Special Education Director	Central ISD	It bothers methat as a district, we have to waste time completing a form every year when we will almost always be over the 1% because we are a small school and only 1 or 2 students will throw us into this category. That time spent going through data to report that it is due to being a small school is time tha 42B0.6 ()-5.5n tolt(s)-Brownsville
4	11/19/20	Supports waiver request	Superintendent	Jourdanton ISD	I support the Texas One Percent Cap Waiver Request because a child's needs do not warrant limitations. Unfortunately, we do not have the power to control a child's disability therefore; we should not hinder with a cap. If a child merits a service, we mps provide. It is our duty to bestow a service that will enable a child to succeed. The focus must be progress and the success of a child versus a number and/or limit. Thank you.
				ISD	

Public Comments Regarding Texas Case Percent Cap Waiver Request

11/17/20–12/17/20

Number	Date	Subject	Commenter	District or Organization	Comment

Public Comments Regarding Texas Case Percent Cap Waiver Request

11/17/20–12/17/20

Number	Date	Subject	Commenter	District or Organization	Comment
					<p>Percentage calculation for assessed students with current values as published.</p> <p>Note the over 100% values as the assessed students are higher than the population counts.</p> <p>Values in two columns switched to now match your percentages.</p> <p>Item 2</p> <p>Also, table 4, page 7 has two percentage values that don't match the values. See the table below for reference</p>
7	12/11/20	Providing input on 1% cap	District Testing Coordinator	Dallas ISD	<p>Dallas ISD would like to give input regarding the 1% Cap Waiver for STAAR Alternate 2.</p> <p>1. Dallas ISD offers ongoing professional development related to IEP decision-making throughout the school year. This includes training on making appropriate assessment decisions for students receiving special education services. The audiences for these trainings include administrators, teachers, central staff, and test coordinators.</p>