



The Montana Office of Public Instruction (OPI)

AA-AAAS 1% THRESHOLD WAIVER REQUEST

PURSUANT TO 34 C.F.R. §200.6(c)(4)

December 13, 2022

<https://opi.mt.gov/>





The Montana Office of Public Instruction AA-AAAS 1% THRESHOLD WAIVER REQUEST

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Introduction

The Montana Office of Public Instruction (OPI) has adopted alternate academic achievement standards for students with the most significant cognitive disabilities and measures the achievement of those standards with an alternate assessment aligned with alternate academic achievement standards (AA-AAAS). Federal regulation 34 C.F.R. 200.6(c)(2) requires that, for each subject for which assessments are administered, the total number of students assessed in that subject using an alternate assessment with alternate academic achievement standards may not exceed 1% of the total number of students in the State who are assessed in that subject. OPI acknowledges that it is the state's responsibility to ensure that the 1% threshold is met regarding the AA-AAAS student participation rate.

The federal Every Student Succeeds Act (ESSA) caps the percentage of students who can take the alternate assessment at 1% of the total students tested. The ESSA also allows states that may exceed the 1% cap to apply for a one-year waiver. This is an initial waiver request for the state of Montana. However, after reviewing assessment data from the years of 2015-2022, the Montana Office of Public Instruction (OPI) believes the waiver may be necessary for the 2022-2023 school year. Montana will be seeking a 1% waiver for Math, English Language Arts, and Science for the 2022-2023 school year. Consequently, the Montana OPI is submitting this request that the Secretary waive the cap under 34 C.F.R. §200.6(c)(2) for the subjects of ELA Language Arts, mathematics, and science pursuant to 34 C.F.R. §200.6(c)(4). Montana will use the federal and state guidelines and requirements including the necessary information for Montana's initial waiver request per the memo sent to states on September 20, 2022.

The OPI will take into consideration each LEAs individual uniqueness and community circumstances in all cases. Montana is a state that is endowed with a vast and rich cultural variety and therefore, it is understood that not every school and LEA may act in the same manner. OPI does expect all stakeholders to comply with state and federal law and will work in partnership with all educational institutions to ensure that students are treated with respect, dignity, and fairness to enjoy the right to a free and appropriate public education.

1% Waiver Request Requirements

REQUIREMENT 1: Each new request and each extension request of the 1% AA-AAAS participation cap must be made in accordance with ESEA section 8401(b)(3), which explains that a State must provide the public and any interested LEA in the State with notice and a reasonable opportunity to comment and provide input on the entire waiver/waiver extension request, in the manner in which the State customarily provides similar notice and opportunity to comment to the public.





RESPONSE:

Montana will allow for public comment for a 60-day period from November 7, 2022, through January 7, 2023. The written 1% Waiver Request will be published on the OPI website December 1 indefinitely. The public will be made aware of the waiver request through publication on OPI state website, targeted email communications, and a press release in the local newspaper.

On November 9, 2022, a Statewide Special Education Director Meeting was held to discuss the 1% Waiver. The OPI Task Force of Education Advocates and statewide educational stakeholders received an update on the 1% Waiver Request status and process on November 15, 2022. Additionally, two; 1-hour webinars have been hosted by OPI on November 17, 2022, and November 22, 2022, from 4pm to 5pm (MST). Public comment will be collected via webinar chats, and direct emails to OPI and then summarized prior to December 13, 2022, submission date. The OPI Special Education Advisory Panel (SEAP) held a meeting on November 21, 2022, to discuss the 1% Waiver Request and review future actions in the state action plan. A public listening review of the 1% Waiver Request will occur on December 8, 2022, via Zoom. Public comments received after December 13, 2022; submission date will be submitted in an additional addendum to the DOE on or before January 20, 2023.

REQUIREMENT 2: States are required in 34 CFR § 200.6(c)(4)(i) to submit their AA-AAAS waiver request (or extension request) at least 90 days prior to the start of the relevant subject testing windows.

RESPONSE:

Montana will submit the waiver request on or before December 13, 2022, 90 days prior to the opening of the statewide assessment window. The Montana statewide window begins March 13, 2023, and concludes March 28, 2023.

REQUIREMENT 3: States are required in 34 CFR § 200.6(c)(4)(ii) to submit data showing the number and percentage of students in each subgroup of students who took alternate assessments in each required subject.

RESPONSE:

Montana has gathered testing participation data from the 2021 - 2022 school year. This data indicates the following percentages for Special Education students that will be participating in the AA-AAAS.

- Reading AA-AAAS 1.07% of Special Education Students Statewide
- Math AA-AAAS 1.08% of Special Education Students Statewide
- Science AA-AAAS 0.87 % of Special Education Students Statewide

For further data refer to the data **Table #1** (page 5).





In analyzing the data, the OPI identified 64 out of 395 local educational agencies (LEAs) that are projected to exceed the 1% participation cap in any subject for which the AA-AAAS is administered. The department will require all LEAs that receive notice to submit an assurance form to the department. OPI is also preparing a digital folder to include helpful facts, information, and additional documents to assist LEAs in making determinations on 1%. This folder will be available on the OPI website by June of 2023.

Note: Data tables #1-3 are regarding Requirement 3.

Table 1: Overall Rates of Assessment Participation for 2021-22

Group	All Students Grades 3-8 and High School ELA	Students with Disabilities Grades 3-8 and High School ELA
Students Assessed	76624	9180
Students Enrolled	78549	9667
Assessment Participation Rate	97.5%	94.9%
Group	All Students Grades 3-8 and High School Math	Students with Disabilities Grades 3-8 and High School Math
Students Assessed	75716	9091
Students Enrolled	78585	9667
Assessment Participation Rate	96.3%	94.0%
Group	All Students Grades 3-8 and High School Science	Students with Disabilities Grades 3-8 and High School Science
Students Assessed	22715	2735
Students Enrolled	23376	2911
Assessment Participation Rate	97.1%	93.9%

Table 2: Alternate Assessment Participation Rates by Subgroup for 2021-22

Group	Total Number in Grades 3-8 & HS	Num. Taking AA-AAAS in Grades 3-8 & HS	Percent Taking AA-AAAS in Grades 3-8 & HS
ELA			
All Students	78549	893	1.14%
Hispanic	4239	52	1.23%
American Indian/Alaskan Native	8041	152	1.89%





Asian	539	21	3.90%
Black	534	4	0.75%
Hawaiian/Pacific Islander	145	0	0.00%
White	61342	612	1.00%
Two or More Races	3709	52	1.40%
Male	40325	578	1.43%
Female	38224	315	0.82%
English Learner	2088	27	1.29%
Econ. Disadvantaged	30089	545	1.81%
Mathematics			
All Students	78585	894	1.14%
Hispanic	4269	52	1.22%
American Indian/Alaskan Native	8041	152	1.89%
Asian	539	21	3.90%
Black	535	4	0.75%
Hawaiian/Pacific Islander	145	0	0.00%
White	61347	613	1.00%
Two or More Races	3709	52	1.40%
Male	40345	578	1.43%
Female	38240	316	0.83%
English Learner	2124	27	1.27%
Econ. Disadvantaged	30112	546	1.81%
Science			
All Students	33437	290	0.87%
Hispanic	1830	16	0.87%
American Indian/Alaskan Native	3440	43	1.25%
Asian	235	5	2.13%
Black	227	0	0.00%
Hawaiian/Pacific Islander	65	0	0.00%
White	26127	207	0.79%
Two or More Races	1513	19	1.26%
Male	17091	187	1.09%





Female	16346	103	0.63%
English Learner	816	4	0.49%
Econ. Disadvantaged	12158	173	1.42%

Table 3: AA-AAAS Rates by Subject, by Year, based upon enrollment

School Year	ELA	Mathematics	Science
2017-2018	1.11%	1.11%	1.12%
2018-2019	1.07%	1.07%	1.06%
2020-2021	1.06%	1.06%	1.05%
2021-2022	1.14%	1.14%	1.04%
2022-2023 (Estimate)	1.07%	1.08%	.88%

End of Tables

REQUIREMENT 4: 34 CFR § 200.6(c)(4)(ii) also requires that States demonstrate that they have assessed at least 95 percent of all students and 95 percent of all students with disabilities in each required subject.

RESPONSE:

Montana has gathered testing participation data that indicates the following percentages for Special Education students participating in the AA-AAAS.

- Reading/ELA AA-AAAS 94.9% of Special Students Statewide
- Math AA-AAAS 94.0% of Special Students Statewide
- Science 93.9% of Special Students Statewide

OPI will be providing support through technical assistance and professional development opportunities for schools to participate in that will be focused on addressing the 1% cap and 95% participation requirements.

REQUIREMENT 5: 34 CFR § 200.6(c)(4)(iii), requires assurances from the SEA that it has verified that each district with more than 1% participation in the alternate assessment has:

- (A) Followed participation guidelines and,
- (B) Will address any disproportionality in participation in the alternate assessment.





RESPONSE:

- (A) MT OPI will use an LEA Assurance form for each district with more than 1% participation in the alternate assessment ([LEA Assurance Form 2022-2023 SY](#)). The assurance forms will be reviewed by OPI to determine that the LEAs followed participation guidelines. LEAs may also reference the 1% Descriptors Document ([1% Descriptors Document](#)) as a guide in the decision making process for students that will participate in the AA-AAAS.
- (B) For any LEAs not in compliance with the participation guidelines, additional technical assistance, support, and corrective actions as deemed necessary and appropriate by OPI, will be required.

(B) Disproportionality will be assessed on Gender, Economic Disadvantage, Racial/Ethnic Groups and English Learner Status. Disproportionality will be addressed through additional training, technical assistance and corrective actions when required.

REQUIREMENT 6: 34 CFR § 200.6(c)(4) requires a plan and timeline by which:

- (A) The State will improve the implementation of its guidelines for participation in the AA-AAAS (including by reviewing and, if necessary, revising its definition of children with significant cognitive disabilities so that the State is under the cap in each subject in future school years).
- (B) The State will take additional steps to support and provide appropriate oversight to each LEA that the State anticipates will assess more than 1% of its assessed students with an AA-AAAS to ensure that only students with the most significant cognitive disabilities take an AA-AAAS. The State must describe how it will monitor and regularly evaluate each such LEA to ensure that the LEA provides sufficient training such that school staff who participate as members of an IEP team or other placement team understand and implement the guidelines established by the State so that all students are appropriately assessed.
- (C) The State will address any disproportionality in the percentage of students taking an alternate assessment aligned with alternate academic achievement standards as identified through the data provided in accordance with paragraph (c)(4)(ii)(A) of this section

RESPONSE:

- (A) Beginning in the 2023-2024 SY, the Montana OPI will review the guidelines for participation in the AA-AAAS annually by October 31 with any LEA that the state exceeds the 1% cap threshold. Any necessary changes will be made to the guidelines in preparation for the ensuing school year. The updated guidelines will be made publicly available on the state website and communicated to districts.





The first requirement for student participation in the AA-AAAS is that the student has a most significant cognitive disability – a review of student records indicates a disability or multiple disabilities that significantly impact intellectual functioning (typically functioning 2.5 or more standard deviations below the mean). A second requirement is that the student has significant deficits in adaptive behavior – those skills and behaviors essential for someone to live independently and to function safely in daily life (typically functioning 2.5 or more standard deviations below the mean). A “Red Flag” is a data point that stands out or looks questionable when thinking about the most significant cognitive disability. OPI will develop and implement, an additional “Red Flag” criterion review process based upon four categorical variables:

1. Primary Disability
2. Instructional Reading Level with Comprehension
3. Math Computation Skills
4. Writing Skills

(B) MT OPI will review all LEAs who exceed the 1% cap. LEAs will be evaluated into three tiers of compliance.

Tier 1: (Advisory) Description: LEAs are under the 1% requirement. The school meets compliance, and no corrective actions are needed. Support as requested per LEA.

Tier 1 Compliance: LEAs will complete a self-audit of students identified as needing the AA-AAAS. LEAs will submit an LEA Assurance Form ([LEA Assurance Form 2022-2023 SY](#)) to OPI required before October 31 annually.

Tier 1 Technical Assistance: As requested by school and recommended by OPI annually.

Tier 2 (Targeted): Description: LEAs are above 1% and has 1-3 students identified to take the alternate assessment. The school did not meet compliance. OPI will complete a review of the LEA’s assurance forms and provide a letter to the LEA noting the compliance issue and required actions. Corrective actions and support may include professional development training on 1%, student file review, and virtual or on-site visits. OPI Compliance follow up will begin in April of 2023 to be completed prior to the upcoming school year 2023-2024 spring testing window.

Tier 2 Compliance: LEAs will complete a self-audit of students identified as needing the AA-AAAS. For the 2022-2023 SY LEAs will submit the LEA Assurance form by January 31, 2023. Thereafter, LEAs will submit an LEA Assurance Form ([LEA Assurance Form 2022-2023 SY](#)) to OPI required before October 31 annually.

Tier 2 Technical Assistance: As requested by the LEA or may be required by OPI annually prior to February 1, the LEA will receive technical assistance that will include a review of AA-AAAS criteria eligibility ([Appendix A](#)). OPI will also provide support and assistance as necessary to understand opportunities and actions to take, when possible, to reduce the 1% Threshold.





Tier 3 (Intensive): Description: LEA is above 1% and has 4 or more students identified to take the alternate assessment. The LEA did not meet compliance. OPI will complete a review of the LEA's justification forms and provide a letter to LEA noting the compliance issue and required actions. Corrective actions and support may include professional development training on 1%, student file review, and virtual or on-site visits. Compliance follow up will begin in April of 2023 and be completed prior to the upcoming school year 2023-2024 spring testing window.

Tier 3 Compliance: LEAs exceeding the 1% threshold will submit an LEA Assurance form to OPI required before October 31.

Tier 3 Technical Assistance (Required): As required by OPI annually prior to February 1, the LEA will receive Technical assistance that will include a review of AA-AAAS criteria eligibility ([Appendix A](#)) with the LEA. OPI will also provide support and assistance as necessary to develop opportunities for the LEA to take actions, when possible, to reduce the 1% Threshold.

(C) OPI will annually examine the data on subgroup participation, as reported in ESSA, on the alternate assessment, to identify and address any disproportionality in the students taking the AA-AAAS. Building upon the current capacity and work around disproportionality, OPI will utilize a data set to:

1. Annually examine the data on subgroup participation, as reported in ESSA, on the alternate assessment.
2. Provide data to LEAs via the OPI website on subgroup participation, as reported in ESSA, on the alternate assessment. LEAs will provide a written justification regarding any disproportionality that may occur based upon student participation in the AA-AAAS.
3. Ensure LEAs will communicate in writing how they address any disproportionality in the justifications.

Public Comment Summary

At the time of the 1% Waiver Request public publication (December 1, 2022) OPI has received public comments from the following stakeholders and individuals:

- November 17, 2023: Theresa Baldry of the Rural Institute for Montana Deaf & Blind commented to be in support of the OPI 1% Waiver Request during a public comment webinar on November 17, 2023.
- November 23, 2023 Disability Rights of Montana expressed concern that OPI has not complied with the notice and comment requirements of the U.S. Department of Education's (DOE) September 20, 2022 memorandum on these waivers. This comment from Disability Rights of Montana was received via email with an attachment that is available per written request to the Montana OPI.





Note: OPI is extending the public comment period through January 7, 2023, to ensure additional time for public review of the 1% Waiver request document. Public comments received after December 13, 2022, submission date will be submitted by OPI in an additional addendum to the DOE on or by January 20, 2023.

Acknowledgements

The Montana Office of Public Instruction (OPI) sincerely appreciates the opportunity to improve the state system supporting AA-AAAS implementation. OPI will submit the 2022-2023 state-level participation data to the Department once it has been approved by the state Superintendent. For more information or questions, please contact JP Williams jp.williams@mt.gov Montana State Director of Special Education, Division of Student Support Services, the Montana Office of Public Instruction.

