

June 17, 2024

U.S. Department of Education
Mr. Patrick Rooney
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Director Rooney,

The *Every Student Succeeds Act* (ESSA) amended a provision of Title I of the Elementary and Secondary Education Act of 1965 related to students participating in alternate assessments for each State Educational Agency's (SEA's) statewide assessment. ESSA requires SEAs to submit waiver requests to the U.S. Department of Education (ED) in the event they have more than 1.0 percent of their students participating in the alternate assessment according to 20 U.S.C. § 6311(b)(2)(D)(i)(I) and - (b)(2)(D)(ii)(IV). ESSA and its implementing regulations contain requirements for the participation of students with the most significant cognitive disabilities in the alternate assessment based on alternate academic achievement standards (AA-AAAS) as outlined in 20 U.S.C. § 6311(b)(1)(E) and 34 C.F.R. § 200.6(c)-(d). 20 U.S.C. § 6311(b)(2)(D)(i)(I) limits the total number of students with the most significant cognitive disabilities who are assessed statewide with an AA-AAAS to 1.0 percent of the total number of students in the State who are assessed in that subject. As described in 34 C.F.R. § 200.6(c)(3), a State may not prohibit a Local Educational Agency (LEA) from assessing more than 1.0 percent of its assessed students with an AA-AAAS. However, a State must require an LEA that assesses more than 1.0 percent of its assessed students in any subject with an AA-AAAS to submit information to the State justifying the need to exceed the 1.0 percent threshold. See 34 C.F.R. § 200.6(c)(3)(ii). States must provide appropriate oversight of each LEA required to submit such a justification and make it publicly available, provided that it does not reveal personally identifiable information (PII) about an individual student. See 34 C.F.R. § 200.6(c)(3)(iii)-(iv).

The Tennessee Department of Education (department) conducted an extensive review of data from its statewide assessment system for the 2023-24 school year and determined that the anticipated participation rates of students taking the AA-AAAS exceeded one (1.0) percent of the total tested population. Therefore, the department applied for a waiver of 20 U.S.C. § 6311(b)(2)(D)(i)(I) for 2021-22 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 reading/language arts (R/LA) and mathematics. According to correspondence from ED, the waiver was denied due to a lack of sufficient progress.

Table 1

Tennessee Projected AA-AAAs Participation, 2022-23 SY			
	Total Enrollment	AA-AAAS Projected	Projected Participation Rate
Grade 3	74970	804	1.07%
Grade 4	75449	956	1.27%
Grade 5	75028	1057	1.41%
Grade 6	73560	1041	1.42%
Grade 7	73672	1068	1.45%
Grade 8	74482	1187	1.59%
Grade 10	78233	1156	1.48%

Grade 11	72615	1222	1.68%
Total	598009	8491	1.42%

The department then reviewed participation rates from the 2023-24 school year. The review aimed to determine if the participation rates of students taking the AA-AAAS exceeded 1.0 percent of the total tested population. Based on the data analyzed, the state, exceeded the one percent state cap. Tennessee assessed **1.35 percent of students in English language arts, 1.36 percent in math, and 1.38 percent in science.**

Table 2

Tennessee Alternate Assessment Participation Rate (Percentage of Participation)					
	2017-18	2018-19	2020-21	2021-22	2022-23
R/LA	1.42	1.45	1.35	1.35	1.36
Math	1.43	1.47	1.36	1.36	1.36
Science	1.36	<i>*field test*</i>	1.33	1.33	1.38

Analysis of current individualized education program (IEP) data specific to AA-AAAS eligibility and state enrollment data was completed to project the 2024-25 statewide AA-AAAS participation rate.

Tennessee anticipates a participation rate of **1.11%** for the 2024-25 school year using enrollment data. This rate is an estimate and does not account for changes to the general school population, as state initiatives for school choice may result in an increase of more students transferring to private schools.

In accordance with 34 C.F.R. § 200.6(c)(4), a State waiver request must:

- Provide State-level data, from the current or previous school year, to show -
 - A. The number and percentage of students in each subgroup of students defined in 20 U.S.C. § 6311(c)(2)(A), (B), and (D) who took the alternate assessment aligned with alternate academic achievement standards; and
 - 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 under 20 U.S.C. § 6311(c)(2)(C) who are enrolled in grades for which the assessment is required under 34 C.F.R. § 200.5(a);
- Include assurances from the State that it has verified that each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject for which assessments are administered under 34 C.F.R. § 200.2(a)(1) in that school year using an alternate assessment aligned with alternate academic achievement standards -
 - A. Followed each of the State's guidelines under 34 C.F.R. § 200.6(d), except paragraph (d)(6); and
 - B. Will address any disproportionality in the percentage of students in any subgroup under 20 U.S.C. § 6311(c)(2)(A), (B), or (D) taking an alternate assessment aligned with alternate academic achievement standards;
- Include a plan and timeline by which -
 - A. The State will improve the implementation of its guidelines under 34 C.F.R. § 200.6(d), including by reviewing and, if necessary, revising its definition under paragraph (d)(1), so that the State meets the cap in 34 C.F.R. § 200.6(c)(2) in each subject for which assessments are administered under 34 C.F.R. § 200.2(a)(1) 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 1.0 percent of its assessed students in a given subject in a school year using an alternate assessment aligned with alternate academic achievement standards to ensure that only students with the most significant cognitive disabilities take an alternate assessment aligned with alternate academic achievement standards. 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 under paragraph (d) of this section so that all students are appropriately assessed; and
- 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 34 C.F.R. § 200.6(c)(4)(ii)(A).

Additionally, the USDOE issued a memo for states, *Information Regarding the Requirements to Request a Waiver or Waiver Extension for the 2022-2023 School Year (SY) from the One Percent Cap on the Percentage of Students with the Most Significant Cognitive Disabilities Who May Be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS)*, on September 20, 2022. States seeking extension of a waiver must:

1. Provide updated information regarding each requirement in 34 C.F.R. § 200.6(c)(4)(i)-(iv). Specifically, the State must provide the overall assessment participation rates for all students enrolled and for students with disabilities in the grades assessed in each subject for SY 2021-2022.
2. Assure that it has verified that each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject for which assessments are administered in that school year using an AA-AAAS followed each of the State's guidelines and will address any disproportionality in the percentage of students in any subgroup taking an AA-AAAS.
3. Report on the progress of its plan and timeline under 34 C.F.R. § 200.6(c)(4)(iv) including milestones achieved. As noted above, the Department strongly recommends that the plan and report of progress be posted on the State's website.
4. Have reduced the percentage of students taking an AA-AAAS in a content area in order to receive an extension of a waiver of the 1.0 percent cap for that content area.

34 C.F.R. § 200.6(c)(4)(i) Requirement 1: Be submitted at least 90 days prior to the start of the State's testing window for the relevant subject

The Tennessee statewide alternate assessment testing window is anticipated in late September or early October 2024. This will be the second year using the newly procured alternate assessment. A waiver was not submitted for the 2023-24 school year due to a change in alternate assessment, lack of significant progress, and in preparation for this waiver submission. In October 2024, in accordance with the state procurement rules, the competitive request for proposals resulted in a new state alternate assessment and a change of testing window. Previously, Tennessee contracted with the Multi-State Collaborative Alternate Assessment (MSAA, administered in the spring for grades 3-8 and 11).

The new state alternate assessment is the Dynamic Learning Maps, DLM, embedded form, meaning administration occurs throughout the school year. The Tennessee contract was completed in the middle of the testing window. Also, Tennessee changed state IEP vendors, resulting in new challenges in

securing predictive data for participation. Thus, it was not possible to submit a waiver 90 days prior to the start of state-wide summative testing. The first year of test administration has resulted in changes to the data processes internally and timelines. The new data processes of DLM and adjusted timelines created unique challenges to preparing this waiver, however, it is the priority work of the department. Upon receipt of the DLM data, the department prioritized the waiver draft and posted the draft for public comment within two weeks. The waiver was posted for public comment for 30 days. Despite this priority of effort and resource allocation, this waiver is being submitted **XX days** prior to the anticipated testing window.

34 C.F.R. § 200.6(c)(4)(ii) Requirement 2: Provide State-level data, from the current or previous school year, to show:

- A. The number and percentage of students in each subgroup of students defined in 20 U.S.C. § 6311(c)(2)(A), (B), and (D) who took the alternate assessment aligned with alternate academic achievement standards;**

Table 3

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
R/LA			
All Students	510,210	6,885	1.35%
Hispanic	71,997	793	1.10%
American Indian/Alaskan Native	2,374	25	1.05%
Asian	13,716	204	1.49%
Black	119,246	2,257	1.89%
Hawaiian/Pacific Islander	1,302	16	1.23%
White	301,548	3,569	1.18%
Two or More Races	N/A	N/A	N/A
Unknown Races	27	21	77.78%
Male	261,421	4,614	1.76%
Female	248,785	2,267	0.91%
Unknown Gender	4	4	100.00%
English Learner	31,517	314	1.00%
Econ. Disadvantaged	150,199	2,640	1.76%
Mathematics			
All Students	507,157	6,877	1.36%
Hispanic	73,673	794	1.08%
American Indian/Alaskan Native	2,393	25	1.04%
Asian	13,081	203	1.55%
Black	119,735	2,253	1.88%

Hawaiian/Pacific Islander	1,289	16	1.24%
White	296,960	3,565	1.20%
Two or More Races	N/A	N/A	N/A
Unknown Races	26	21	80.77%
Male	260,345	4,606	1.77%
Female	246,808	2,267	0.92%
Unknown Gender	4	4	100.00%
English Learner	34,039	315	0.93%
Econ. Disadvantaged	152,719	2,638	1.73%
Science			
All Students	508,052	7,036	1.38%
Hispanic	72,829	833	1.14%
American Indian/Alaskan Native	2,388	26	1.09%
Asian	13,742	198	1.44%
Black	118,704	2,283	1.92%
Hawaiian/Pacific Islander	1,295	15	1.16%
White	299,088	3,681	1.23%
Two or More Races	N/A	N/A	N/A
Unknown Races	6	0	0.00%
Male	260,525	4,714	1.81%
Female	247,527	2,322	0.94%
Unknown Gender	0	0	N/A
English Learner	33,034	313	0.95%
Econ. Disadvantaged	149,963	2,710	1.81%

*Tennessee does not collect "two or more race" data on the general achievement tests.

- 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 under 20 U.S.C. § 6311(c)(2)(C) who are enrolled in grades for which the assessment is required under 34 C.F.R. § 200.5(a);**

Tennessee follows the federal participation requirements for assessment and requires all students enrolled in public K-12 schools to be assessed with accommodations, without accommodations, or with AA-AAAS. The only allowable exception to participation for any student is to receive a medical exemption due to a medical necessity.

Table 4

Group	All Students Grades 3-8 and High School R/LA	Students with Disabilities Grades 3-8 and High School R/LA
Students Assessed	510,210	64,688
Students Enrolled	515,849	65,931
Assessment Participation Rate	98.91%	98.11%
Group	All Students Grades 3-8 and High School Math	Students with Disabilities Grades 3-8 and High School Math
Students Assessed	507,157	65,374
Students Enrolled	513,084	66,711
Assessment Participation Rate	98.84%	98.00%
Group	All Students Grades 3-8 and High School Science	Students with Disabilities Grades 3-8 and High School Science
Students Assessed	508,052	64,629
Students Enrolled	514,196	66,272
Assessment Participation Rate	98.81%	97.52%

34 C.F.R. § 200.6(c)(4)(iii) Requirement 3: Include assurances from the State that it has verified that each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject for which assessments are administered under 34 C.F.R. § 200.2(a)(1) in that school year using an alternate assessment aligned with alternate academic achievement standards.

- A. Followed each of the State's guidelines under 34 C.F.R. § 200.6(d), except paragraph (d)(6); and**
- B. Will address any disproportionality in the percentage of students in any subgroup under 20 U.S.C. § 6311(c)(2)(A), (B), or (D) taking an alternate assessment aligned with alternate academic achievement standards;**

Using the 2022-23 assessment results, the department sent notices to each LEA that contributed to the state exceeding 1.0 percent participation in the AA-AAAS. The LEAs were required to submit a justification for their participation rate exceeding 1.0 percent and assurances that the district would adhere to the state guidelines for participation. In accordance with the September 20, 2022 memo and the feedback during the waiver process in 2021-22, the state has revised the notification letter to include demographic data (Attachment 1). While the justification always asked LEAs to address disproportionality, the additional data will support LEAs in deeper analysis, particularly for the subgroups

that are universally participating at rates above the state rate in Tennessee: black, male, and economically disadvantaged (Table 1). (Note: while the category of unknown gender appears in the data to be 100%, the state general assessment does not allow for this option, and therefore, the data is misleading.) Every district contributing to the state exceeding one percent was required to submit the justification by January 31, 2024. The justifications are publicly available for a year in accordance with 34 C.F.R. § 200.6(c)(3)(iv) on the [Tennessee alternate assessment webpage](#).

For the 2022-23 school year, all districts that contributed to the state exceeding one percent were sent a notice (Attachment 1) and completed a justification (Attachment 2). The justification requires LEAs to project their alternate assessment participation rate for the future year. Due to the change in alternate assessment contracts occurring during the assessment window timeframe, the 2022-23 justifications will be reporting the participation rate of students already engaged in testing. The LEA responses are publicly available in accordance with 34 C.F.R. § 200.6(c)(3)(iv).¹

In October 2023, partway into the DLM testing window, the state of Tennessee changed alternate assessments. The LEAs were given one-week notice weeks notice, and district special education directors and test coordinators were provided synchronous training to train their staff to train their staff quickly quickly. This was a significant change in assessment practices for schools and teachers. This was particularly challenging as the state IEP system had also changed on July 1, 2024, and there were technical issues that still needing to be addressed for a seamless user interface. Given the new IEP system, new alternate assessment, and significant change to testing window and waiver deadlines, the department decided to prioritize supporting the implementation of the alternate assessment, reduce the burden of completing a participation justification twice within a school year and delay submitting a waiver until the 2024-25 request (this waiver request).

34 C.F.R. § 200.6(c)(4)(iv) Requirement 4: Include a plan and timeline by which -

- A. The State will improve the implementation of its guidelines under 34 C.F.R. § 200.6(d), including by reviewing and, if necessary, revising its definition under paragraph (d)(1), so that the State meets the cap in 34 C.F.R. § 200.6(c)(2) in each subject for which assessments are administered under 34 C.F.R. § 200.2(a)(1) in future school years;**

Guidelines for Participation on the AA-AAS

The department has consistently engaged stakeholders in training and technical assistance using the criterion guidance documents², file reviews, and technical assistance resources. A portion of the technical assistance provides additional in-depth guidance on the difference between a significant cognitive disability and *the most* significant cognitive disability. The department reviewed the criteria and determined that the criteria are appropriate; however more training is needed in the field to adhere to the criteria. Specifically, the technical assistance requires districts and IEP teams to consider the full body of data, including but not limited to normative assessments, when determining the student's eligibility. This requires the IEP team to engage in a full conversation. Despite the technical assistance, participation rates were not significantly lower. Therefore, in 2021-22, the state completed a root cause analysis and

² <https://www.tn.gov/education/assessment/alternate-assessment.html>
https://www.tn.gov/content/dam/tn/education/testing/alt/Criterion_1_Considerations.pdf
https://www.tn.gov/content/dam/tn/education/testing/alt/Criterion_2_Considerations.pdf
https://www.tn.gov/content/dam/tn/education/testing/alt/Criterion_3_Considerations.pdf

found three contributing factors that will be addressed during the next year to reduce participation in the AA-AAAS. The root causes identified were:

1. A need for clear assessment provisioning independent of LRE placement decisions,
2. a need for increased expectations for postsecondary engagement of individuals with cognitive disabilities and
3. incorrect assumptions of qualification based on the current alternate assessment design.

To address the root causes, Tennessee proposed and implemented a four-prong plan in 2022-23 (Table 5). Progress is noted for each item, and a summary of the work follows Table 5.

Table 5

	Population Growth Analysis	Alternate Assessment Design Analysis	Comprehensive Technical Assistance	Resource Tools Aligned with IEP Development	2022-23 Progress
November 2022		Analysis of reading passages in grade 2 (state developed assessment) using new validation data and student performance reliability test data	Training on LRE at statewide special educator institute	Meet internally to design an improved IEP template	Completed: all items
December 2022	Begin analysis discussions with data team	Identify alternative alternate assessment options and set up times to review the product.	Develop new training and align current trainings to inform IEP team members. Deliver training on service delivery options and IEP development of service delivery plans at statewide legal conference.	Identify new IEP system vendor	Completed: professional development In process: competitive bid process required due to contract expiring and analysis of assessment design
January 2023	Data collected	Internal determination of most appropriate alternate assessment	Contact district with highest alternate assessment participation to set up professional development for their LEA	Meet with new vendor to share the new IEP template including alternate assessment worksheet for teams	Completed: data analysis and setting up professional development with targeted LEAs

					In process: competitive bid process to identify alternate assessment
February 2023	Data analysis internally including comparison to indicator 10 data	If MSAA is continued, develop new technical assistance and guidance to offset the current incorrect assumptions. If a new assessment is selected, begin the procurement process.	Coaching TAS schools and continuing professional development	Develop new guidance to support the implementation of the new IEP system and adherence to the alternate assessment eligibility	Completed: data analysis In process: professional development, procurement process to identify alternate assessment, and coaching Delayed: guidance and support of the new state IEP system
March 2023	Prepare findings	If MSAA continues, launch new technical assistance. If there is a new assessment, begin communication to the field.	Coaching TAS schools and continuing professional development	Release new guidance. Develop decision-making tools to integrate with the new IEP.	Completed: prepared finding In process: procurement process to identify alternate assessment and coaching Delayed: guidance and support of the new state IEP system
April 2023	Share findings with stakeholder groups-family engagement and Governors Council for Students with Disabilities.	If MSAA continues, ongoing new technical assistance If new assessment, ongoing communication to the field	Professional development on alternate assessment with the family engagement partner and other family-focused stakeholders	Release decision-making tools and integrate into the new professional development. Develop K-4 course requirements for students who participate	Completed: findings shared In process: procurement process to identify alternate assessment

				in the alternate assessment.	Delayed: guidance and support of the new state IEP system and professional development with family-focused stakeholders due to change in leadership for the stakeholders
May 2023	Share findings with other states.	<p>If MSAA continues, ongoing new technical assistance</p> <p>If new assessment, ongoing communication to the field</p>	Refine professional development to create asynchronous options	Seek input from stakeholders for additional tools, guidance, or resources needed. Develop K-4 course requirements for students who participate in the alternate assessment.	<p>Completed: findings shared stakeholder input on K-4 course requirements and additional resources needed</p> <p>In process: procurement process to identify alternate assessment</p> <p>Delayed: development of asynchronous training delayed</p>
June 2023	Share findings with USDOE	<p>If MSAA continues, ongoing new technical assistance</p> <p>If there is a new assessment, begin training on the new assessment.</p>	TAS intensive training cohort 1	Develop tools to meet the request from stakeholders. Release K-4 course requirements	<p>Completed: TAS training</p> <p>In process: procurement process to identify alternate assessment</p> <p>Delayed: share findings with USDOE and development of tools requested</p>
July 2023		If MSAA continues, ongoing new	TAS intensive training cohort 2	Develop tools to meet the	Completed: TAS training

		technical assistance If new assessment, training on new assessment		request from stakeholders	In process: procurement process to identify alternate assessment Delayed: development of tools requested
August 2023		If MSAA continues, ongoing new technical assistance If new assessment, training on new assessment	Professional development by region leveraging asynchronous training and the virtual PLC model	Integrate tools and resources into professional development work stream.	Completed: TAS training In process: procurement process to identify alternate assessment Delayed: professional development and integration of tools
September 2023		If MSAA continues, ongoing new technical assistance If new assessment, training on new assessment	Professional development by region leveraging asynchronous training and the virtual PLC model		Delayed in procurement process. Completed in October 2023 Delayed: professional development

Summary of progress and next steps

Population growth analysis

Analysis of growth indicates that the population of students with significant cognitive disabilities is complicated. First, it is difficult to determine which students should be included in the analysis. Students with a significant cognitive disability are included within a variety of eligibility categories, most commonly intellectual disability, multiple disabilities, and autism, but may be potentially identified as other health impairments, blind, deaf-blind, visually impaired, speech and language impaired, developmental disability, traumatic brain injury or orthopedic impairment. Second, the state participation rate is significantly above one percent, and therefore, the sample including all participants may be misleading and include students who do not meet the criteria for participation as defined in guidance. Third, the state school choice initiatives may disproportionately impact the general population growth. In general, private schools do not support students with significant cognitive disabilities, and thus, fewer families of students with significant

cognitive disabilities may be leveraging the school choice options. Given the new school funding formula and state initiatives, data is a preliminary estimate or unavailable. Finally, comparing APR indicator 10 findings and the alternate assessment participation rates did not result in a clear correlation. It was hypothesized that districts that proportionately identify students in the categories of intellectually disabled or autistic would also have the highest rates of participation. However, this was not consistently true.

The analysis results reveal the need for future work in eligibility standards revision and codification and in revision of the alternate assessment guidance. The current eligibility standards in Tennessee are guidance-only documents. Codifying the standards into policy will clarify for districts the need to adhere to the standards. In other states historically exceeding the one percent cap, a revision of alternate assessment guidance has resulted in renewed attention to the criteria of families. Revision of the guidance in Tennessee should elicit the same response from the field.

Alternate assessment design analysis

The analysis of the alternate assessment design included stakeholder feedback on the design and the use of the data for instructional decision-making. Survey questions, eligibility guidance, and opportunities for feedback were added to training and stakeholder engagement sessions to better understand the impact of the assessment design on eligibility decisions and the impact of assessment data on instruction. The engagement revealed that the design of the current alternate assessment (MSAA) indicated that it was most appropriate for students with higher cognitive skills due to the length of each subtest, the complexity of the questions, and the length of reading passages. Also, the student data was not available to the teacher until the following school year and was most meaningful only when the teacher had been the one who administered the assessment. As a result, the data was too late to inform individually responsive instruction as many students had matriculated and were with a new teacher.

Simultaneously, the state contract with MSAA ended, and the state procurement process requires a competitive bid if there is more than one potential vendor to provide the services. The process to develop, release, review, and award a new contract was informed by the analysis of the assessment design and the need for formative data. The procurement process was longer than anticipated but did result in a contract with Dynamic Learning Maps (DLM) in October 2023. To meet the formative data need, the DLM embedded assessment was the choice of the state. Typically, the DLM embedded assessment begins in September, a month before when Tennessee's contract was signed and executed. Training began the week after it was signed, and then teachers began student assessment. The focus of the assessment office and low incidence coordinator has been on providing the districts with the needed resources to begin alternate assessment testing. The informal feedback about the change has been positive, despite the sudden change to the timeline.

The shift to the DLM is a key action toward reducing participation in the alternate assessment for several reasons. First, the shift to a new assessment created interest and opportunities to engage with more stakeholders and reinforced the expectations for eligibility. Prior to the new assessment, many educators opted out of these trainings, believing they knew the content. Second, the DLM design more accurately reflects the target population of students. The DLM test questions are embedded in instruction. Students performing above the instruction level will be more apparent to the teachers, encouraging them to the more appropriate general assessment. IEP case managers will be able to advocate for the general assessment using their experience in the DLM. Finally, the DLM scaffolding and data results will identify students performing above the targeted participant to the teacher, school, district, and state. This data is critical for the state to identify students whose performance indicates they do not meet eligibility

standards. These students can be flagged for each district special education director. Guidance will be developed to help district special education directors and IEP case managers determine when to reconvene an IEP team meeting to reconsider eligibility for the alternate assessments. Tools will be created to guide the conversation using student performance on the DLM. Other states within the DLM consortium have reduced their alternate assessment participation rate using the same method. Tennessee has spoken with these partners in the DLM meetings and NCEO 1% calls. The state will continue collaborating with states and technical assistance centers until the participation rate is below 1%.

Comprehensive technical assistance

Technical assistance has been one of the key actions in the Tennessee plan annually. However, the technical assistance is revised or changed based on the findings from the LEA justifications. In the 2023-24 school year, the training focused on criterion three, the student's need for extensive, substantial, individualized support and services regardless of the student's least restrictive environment (LRE). This work aligns with other work streams in the department: increase LEA capacity to support students with disabilities within the general education environments and increase instructionally appropriate IEPs that lead to postsecondary readiness. The widespread staffing shortages, high turnover rates, and increase of school administrators with less than three years of leadership experience are a few factors that must be considered in the planning and delivery of technical assistance. Ideally, technical assistance will continue to increase in depth and complexity, but this is a challenge when the attending staff do not continue to work in the schools. Three key revisions to the technical assistance have been identified by the participants as the most impactful: a discussion of statewide and LEA-specific participation data, focusing on criterion three, and using the normal curve to identify the one percent better regardless of eligibility category (e.g., intellectually disabled eligibility is not sufficient evidence).

The state is continuing to expand technical assistance. The department restructured the special populations and intervention team to establish a team specifically focused on professional development using a three-prong approach. The first prong is focused on increased access to information, guidance, and implementation tools. The second prong will be focused on using the information and guidance within the LEAs. This second prong is critical to address the staffing turnover rates. The third prong is an intensive investment in developing expertise and systemic change at a sustained level. Restructuring the team and the work streams of subject-matter experts is a critical strategy to reducing alternate assistance participation, specifically increasing a focus on the guidance and information available to families, general education teachers, and school administrators as IEP team members.

The state restructure also resulted in a team focused on supporting LEAs in using their data to impact APR, with an intensive focus on indicators 3, 5, and 6. The alternate assessment participation rate is one of the symptoms of districts' need for systemic change in the least restrictive environment (indicator 5) and student assessment performance (indicator 3). Embedding the alternate assessment within this work will add weight and urgency for district leadership and provide them with the tools to self-monitor.

Resource tools aligned with IEP development

One of the major work streams of the department has been the procurement and development of a new statewide IEP system. The Tennessee Investment in Schools Achievement, TISA, is a new funding formula calculated for each student and includes additional funding for unique learning characteristics such as a disability, English learner status, or identified characteristics of dyslexia. The new statewide IEP system also includes planning tools for other unique learning needs to support the TISA system. This

project's scope is large, and thus, the procurement timeline was extended to address all TISA and LEA needs adequately. One change made was developing a new alternate assessment decision-making worksheet. (Attachment 3). The prior worksheet focused only on criterion one, the student has a significant cognitive disability including an adaptive behavior delay. Previously, criteria two and three did not require evidence or justification.

The new statewide system and the revised alternate assessment worksheet have increased educators' awareness and questions. States reported the same effect at the fall CCSSO alternate assessment team convening for all states that revised guidance documents. Reengaging with CCSSO was one of the department's efforts to reduce the alternate assessment participation rate.

The department will revise alternate assessment guidance to support IEP team members in three ways: guidance on how to effectively document decisions within the new statewide IEP system, adding clarity on the three criteria, and leveraging the DLM data and instructional resources to inform decisions and move students from the alternate to the general assessments. The act of revising and releasing guidance has been shown across states to renew interest and focus. Tennessee plans to leverage this effect with the new resources and tools to effect change.

Next steps action plan

The following is a summary of the anticipated work and a timeline. The timeline is designed for the short-term goals of implementing an embedded assessment and reducing alternate assessment participation.

2024-25 Action Plan and Timeline to Reduce Alternate Assessment Participation

Month	Policy and Guidance	Building Capacity
June 2024	Waiver posted for public comment	Finalize plan to significantly reduce alternate assessment participation and post on the website.
	Drafted alternate assessment guidance available for public comment	State special education director and low incidence coordinator attend CCSSO ASES.
July 2024	Waiver submitted to ED	Develop tools for school administrators as IEP team members regarding alternate assessment eligibility.
	Analyze alternate assessment participation and student performance data to establish new LEA notification and flag system based on the DLM data.	Professional development for parents/families on new eligibility guidance document
August 2024	Develop tools for internal alternate assessment eligibility and participation monitoring using the statewide IEP system, DLM platform and reports, and student performance data.	Provide guidance to LEA leadership and special education teachers on the DLM instructional planning resources.

	<p>Begin engaging with stakeholder groups to revise alternate assessment guidance for IEP team decision-making</p> <p>LEAs with an alternate assessment participation rate are notified and required to submit a justification</p>	<p>Develop professional development for educators on using the DLM instructional resources, state standards, and high-quality instructional materials to engage learners in rigorous, meaningful instruction.</p>
September 2024	<p>LEA alternate assessment justifications are posted online.</p> <p>Internal work to add LEA alternate assessment participation into the calculations for LEA determinations begins.</p>	<p>Release tools and professional development for general educators related to the revised alternate assessment guidance</p>
October 2024	<p>Begin eligibility standards revision for remaining disabilities</p>	<p>Professional development on the use of administrator guidance and tools during IEP team meetings.</p> <p>State special education director and low incidence coordinator attend CCSSO ASES.</p>
November 2024	<p>Revised eligibility standards for specific learning disability, speech and language impairment, autism, developmental delay, and emotional disturbance submitted to the state board of education for first read.</p>	<p>Begin intensive professional development for LEAs with the highest participation rate and/or significant discrepancy.</p>
December 2024	<p>Stakeholder feedback is solicited regarding incorporating alternate assessment participation in the LEA determinations.</p>	<p>Analyze mid-year data to adjust professional development as needed.</p>
January 2025	<p>Use mid-year analysis to inform LEA determinations for 2024-25.</p> <p>LEA determination calculations begin internally. External communication regarding the formulas, data sources, and inclusion of alternate assessment participation is shared with external stakeholders.</p>	<p>Continue professional development</p>
February 2025	<p>Revised eligibility standards for specific learning disability, speech and language impairment, autism, developmental delay, and emotional disturbance submitted to the state board of education for approval.</p>	<p>Continue professional development</p> <p>State special education director and low incidence coordinator attend CCSSO ASES.</p>
March 2025	<p>Analyze third-quarter data for progress toward reducing participation in alternate assessments.</p> <p>State Board approved revisions to eligibility standards are submitted to the Secretary of State's Office.</p>	<p>Use participant data to revise or add professional development to address needs and reduce alternate assessment participation below one percent.</p>
April 2025	<p>Preliminary alternate assessment participation rate calculated to determine if a wavier will be needed</p>	<p>Finalize revisions to professional development based on participant feedback and progress toward reducing alternate assessment participation.</p>
May 2025	<p>Alternate assessment wavier posted for public comment (if needed)</p>	<p>Begin professional development with revised content.</p>

June 2025	Alternate assessment waiver submitted to ED (if needed)	The state special education director and low incidence coordinator attend CCSSO ASES.
	The revised eligibility standards take effect statewide.	

The State will take additional steps to support and provide appropriate oversight to each LEA 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 aligned with alternate academic achievement standards to ensure that only students with the most significant cognitive disabilities take an alternate assessment aligned with alternate academic achievement standards. 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 under paragraph (d) of this section so that all students are appropriately assessed;

The participation rates in Tennessee have not been reduced. A root cause analysis has identified three root causes:

- IEP team members are not adequately knowledgeable of the three criteria and implications of participation,
- the former state alternate assessment design misled IEP teams about the intended participant and
- the statewide IEP did not require teams to justify the decision that the student met all three criteria.

The statewide IEP changes and the DLM procurement for the English language art and math assessment address the root causes. As mentioned previously, the DLM will also identify students performing above the target for the population. This new data will be instrumental in reducing the statewide participation rate. It is the first time Tennessee will have data to guide targeted recommendations and identify district opportunities to increase student participation in the general assessment based on the student's performance and readiness. The action plan proposed will align policies and guidance related to student identification, access to general education, and IEP decision-making, thus further reducing the statewide participation rate. Reengaging with CCSSO was an important step in informing state personnel. The membership will be renewed, and another added to provide both the state special education director and the low-incidence coordinator access to technical assistance, inter-state collaboration, and professional development to further inform the action plan for reducing participation.

B. 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 34 C.F.R. § 200.6(c)(4)(ii)(A);

1. **Provide updated information regarding each requirement in 34 C.F.R. § 200.6(c)(4)(i)-(iv). Specifically, the State must provide the overall assessment participation rates for all students enrolled and for students with disabilities in the grades assessed in each subject for SY 2021-2022.**

The 2023-24 data was analyzed to determine the risk ratio within student subgroups. The department uses a risk ratio of 2.0 to determine significant disproportionality. Given this threshold, no subgroup was determined disproportionate, however, male, black, and educational disadvantage were consistently above the state participation rate. (See Table 3). Additionally, the department provides each LEA contributing to the state exceeding the one percent with a table like the one below to identify

potential disproportionality practices by disability, including those that would be highly unexpected, such as specific learning disability. (Table 6)

Table 6

Disability Category	State Count	State Alt. Distribution	X District Count	X District Alt. Distribution
Autism	1978	24.67%		
Blind	1	0.01%		
Deaf-Blindness	7	0.09%		
Deafness	8	0.10%		
Developmental Delay	76	0.95%		
Emotional Disturbance	37	0.46%		
Functional Delay	110	1.37%		
Hearing Impairments	9	0.11%		
Intellectual Disability	4289	53.49%		
Language Impairments	130	1.62%		
Multiple Disabilities	906	11.30%		
Orthopedic Impairments	34	0.42%		
Other – Health Impairments	343	4.28%		
Specific Learning Disability	20	0.25%		
Speech Impairments	2	0.02%		
Traumatic Brain Injury	53	0.66%		
Visual Impairments	9	0.11%		

(Incomplete or Error)	7	0.09%		
(blank)				
Grand Total	8019	100%		

Assure that it has been verified that each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject for which assessments are administered in that school year using an AA-AAAS followed each of the State’s guidelines and will address any disproportionality in the percentage of students in any subgroup taking an AA-AAAS.

The state is fully committed to ensuring all districts that assess more than one percent of its assessed students on the alternate assessment followed the state guidance. Tennessee is also committed to ensuring the IEP team members are informed and work collaboratively with our family engagement partner as well as LEAs to provide training, guidance, and technical assistance. This will continue as outlined in Action Plan and Timeline above. Furthermore, the guidance and professional development will be informed by the ongoing monitoring data through the statewide IEP and DLM platforms.

- Report on the progress of its plan and timeline under 34 C.F.R. § 200.6(c)(4)(iv) including milestones achieved. As noted above, the Department strongly recommends that the plan and report of progress be posted on the State’s website.**

The work outlined in this waiver is encompassed within the department project plan, Increasing Instructional Access for Students with Significant Cognitive Disabilities. This project plan can be provided to the public upon request. The work completed in the Action Plan and Timeline will be posted on the website and incorporated into the professional development.

- Have reduced the percentage of students taking an AA-AAAS in a content area in order to receive an extension of a waiver of the 1.0 percent cap for that content area.**

While Tennessee’s participation rate did not decrease, this does not mean more students participated in the assessment. The number of students participating in the AA-AAS did not increase; however, the number of students in Tennessee schools decreased. This means that the denominator decreased and thus, the data appears to indicate that the rate increased, but in fact, it stayed relatively stable, decreasing slightly more than the population as a whole.

Table 7

	ELA (R/LA)	Math	Science
Number of students assessed in 2020-21	533313	530465	488014
Number of students assessed in 2021-22	513192	511406	510226*
Number of students assessed in 2022-23	510210	507157	508052
Percent change in population between 2020-21 to 2022-23	-4.33%	-4.39%	4.11%*

Number of students assessed with the AA-AAAS 2020-21	7212	7191	6503
Number of students assessed with the AA-AAAS 2021-22	7173	7172	7047*
Number of students assessed with the AA-AAAS 2022-23	6885	6877	6877
Percent change in population between 2020-21 to 2022-23	-4.53%	-4.37%	-2.41%

*Note, while this is an increase, Tennessee previously did not meet the 95% requirement in science and therefore, this increase is a result of accountability compliance.

The changes in the technical assistance, analysis of the alternate assessment design, increased data to LEAs for justification, and changes to the IEP system are all aligned to decrease the Tennessee AA-AAAAS participation rate further. Furthermore, as schools recover from the pandemic, they have been plagued with staff turnover, shortages, and parent hesitation to move from the alternate assessment to the general assessment. The state has released guidance to support schools in maintaining high expectations during staffing shortages (Attachment 4).

The state is committed to meeting the one percent threshold while also assuring that LEAs are not prohibited from assessing more than 1.0 percent of its assessed students with an AA-AAAS. The state will provide increased guidance and technical assistance aligned with and integrating postsecondary outcomes, high expectations, and LRE ([see 2024-25 Action Plan and Timeline to Reduce Alternate Assessment Participation](#)). Granting the waiver will give the state the time to implement this plan, analyze progress, adjust the plan accordingly, and significantly reduce participation.

Information Regarding the Requirements to Request a Waiver or Wavier Extension for the 2022-2023 School Year (SY) from the One Percent Cap on the Percentage of Students with the Most Significant Cognitive Disabilities Who May Be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards (AA-AAAS), on September 20, 2022. State seeking extension of a wavier must:

- 1. Provide updated information regarding each requirement in 34 C.F.R. § 200.6(c)(4)(i)-(iv). Specifically, the State must provide the overall assessment participation rates for all students enrolled and for students with disabilities in the grades assessed in each subject for SY 2021-2022.**
- 2. Assure that it has verified that each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject for which assessments are administered in that school year using an AA-AAAS followed each of the State's guidelines and will address any disproportionality in the percentage of students in any subgroup taking an AA-AAAS.**
- 3. Report on the progress of its plan and timeline under 34 C.F.R. § 200.6(c)(4)(iv) including milestones achieved. As noted above, the Department strongly recommends that the plan and report of progress be posted on the State's website.**

Have reduced the percentage of students taking an AA-AAAS in a content area in order to receive an extension of a waiver of the 1.0 percent cap for that content area. Requirements 1-3 have been met and addressed within the content of this waiver request. The state participation rate did not significantly change nor decrease to one percent. The state has completed a root cause analysis and developed a multi-faceted plan to reduce participation in the coming year.

In its request, the State must include:

- information regarding each requirement in 34 C.F.R. § 200.6(c)(4) (see section B), and
- evidence that the State provided notice and a reasonable opportunity for the public and LEAs to comment and provide input on the request. This evidence must include:
 - evidence or a description of the manner in which that the State provided such notice to the public and interested LEAs;
 - copies of all comments that the State received from LEAs in response to this notice, with a description of how the State addressed the comments; and
 - evidence that the State also provided notice and a reasonable opportunity to comment to the public and LEAs in the manner in which the State customarily provides similar notice and opportunity to comment.

Requirement 1: Information regarding each requirement in 34 C.F.R. § 200.6(c)(4) (see section B), and

The department has met the requirements outlined in accordance with 34 C.F.R. § 200.6(c)(4) and provided the evidence in the narrative of this request.

Requirement 2: Evidence that the State provided notice and a reasonable opportunity for the public and LEAs to comment and provide input on the request. This evidence must include:

- evidence or a description of the manner in which the State provided such notice to the public and interested LEAs;
- copies of all comments that the State received from LEAs in response to this notice, with a description of how the State addressed the comments; and
- evidence that the State also provided notice and a reasonable opportunity to comment to the public and LEAs in the manner in which the State customarily provides similar notice and opportunity to comment.

The department has posted the drafted request for a waiver on department's website for public comment for 30 days. No public comments were received. (Attachment 5)

Please contact Jennifer Jordan at Jennifer.Jordan@tn.gov or (615) 238-1401 to discuss the content of this waiver request or to have any questions addressed. We look forward to working with the U.S. Department of Education staff to achieve a positive response to the request.

Sincerely,

Lizzette Reynolds
Commissioner of Education

Attachment 1

TO: Name(s) of Recipient
FROM: Jennifer Jordan, Assistant Commissioner of Special Education and Intervention Programs
DATE: January 13, 2022
SUBJECT: **Notice of District Alternate Assessment Participation Exceeding One Percent**

LEA NAME has contributed to the state exceeding the cap of one percent alternate assessment participation during the 2020-21 school year. The Every Student Succeeds Act (ESSA) limits statewide participation rates to one percent of the total students assessed. Tennessee's statewide alternate assessment participation rates for the 2020-21 school year were 1.35% in English language arts, 1.36% in math, and 1.33% in science. The alternate assessment participation rates for your district are as follows:

English language arts alternate assessment participation rate: ____%
Math alternate assessment participation rate: ____%
Science alternate assessment participation rate: ____%

As a result of contributing to the state exceeding the one percent cap, your district must submit a justification and assurances form to Alison.Gauld@tn.gov by **January 28, 2022**. Justification letters will be publicly posted in accordance with the Office of Special Education and Rehabilitative Services (OSERS) memo, [Requirements for the Cap on the Percentage of Students who may be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards, May 16, 2017](#).

Department staff will review the data, completed district justification forms, and LEA policies and practices related to student eligibility and participation in the alternate assessment. After review, the department will provide differentiated technical assistance to identified districts. Technical assistance will be available to all districts through webinars, guidance documents, and regional trainings. Districts with the most intensive needs and/or highest rates of participation will be identified for onsite technical assistance including file reviews and will be notified by Alison Gauld.

Participation rate calculation rules

All students in grades 3-8 and high school are expected to participate in the state accountability assessments, TNReady/EOC or the alternate assessments (MSAA/TCAP-Alt). However, each year there are students who, while expected to participate, do not complete the assessments for a variety of reasons. Therefore, in order to calculate the participation rate, students who were assessed and received a score for their performance are included within the participation rate calculation.

English language arts participation rate calculation:

$$\frac{\# \text{ of MSAA Tested Students (ELA)}}{\# \text{ of students assessed in ELA TNReady, EOC, and MSAA grades 3-8 and ELA II}} \times 100$$

"MSAA tested students" is the number of students in grades 3-8 and 11 who were assessed on the MSAA and received a performance level score (1-4).

"Assessed in ELA TNReady" is the number of students in grade 3-8 who were assessed on the TNReady and received an ELA performance score.

"Assessed in ELA EOC" is the number of students who were assessed on the ELA II EOC and

received a performance score.

Math participation rate calculation:

$$\frac{\# \text{ of MSAATestedStudents (math)}}{\# \text{ of students assessed in math TNReady, EOC, and MSAA grades 3-8 and Algebra I or Integrated Math I}} \times 100$$

“MSAA tested students” is the number of students in grades 3-8 and 11 who were assessed on the MSAA **and** received a performance level score (1-4).

“Assessed in math TNReady” is the number of students in grade 3-8 who were assessed on the TNReady **and** received a math performance score.

“Assessed in math EOC” is the number of students who were assessed on the Algebra I **or** Integrated Math I EOC **and** received a performance score.

Science participation rate calculation:

$$\frac{\# \text{ of TCAP-Alt Tested Students (Science)}}{\# \text{ of students assessed in science TNReady, EOC, and TCAP_Alt grades 3-8 and Biology I}} \times 100$$

“TCAP-Alt tested students” is the number of students in grades 3-8 and 10 who were assessed on the TCAP-Alt **and** received a performance level score (1-3).

“Assessed in science TNReady” is the number of students in grade 3-8 who were assessed on the TNReady **and** received a science performance score.

“Assessed in science EOC” is the number of students who were assessed on the Biology I **and** received a performance score.

The statewide data and your district data are summarized in the following two charts. One is a disaggregation of the data by disability category and the other is the participation rate over time. This data should support you in the development of a plan for reducing participation rates to include only those students who meet the three eligibility criteria and for whom participation in the alternate assessment is the most appropriate assessment.

Disability Category	State Count	State Alt. Distribution	District X Count	District X Alt. Distribution
Autism	1978	24.67%	62	26.05%
Blind	1	0.01%		
Deaf-Blindness	7	0.09%		
Deafness	8	0.10%	3	1.26%
Developmental Delay	76	0.95%		
Emotional Disturbance	37	0.46%		
Functional Delay	110	1.37%		
Hearing Impairments	9	0.11%		
Intellectual Disability	4289	53.49%	143	60.08%
Language Impairments	130	1.62%		
Multiple Disabilities	906	11.30%	12	5.04%
Orthopedic Impairments	34	0.42%		
Other - Health Impairments	343	4.28%	11	4.62%
Specific Learning Disability	20	0.25%		
Speech Impairments	2	0.02%		
Traumatic Brain Injury	53	0.66%	7	2.94%
Visual Impairments	9	0.11%		
(Incomplete or Error)	7	0.09%		
(blank)				
Grand Total	8019	100%	238	100%

Assessment Year	State Rate	District X Rate
2017-2018	ELA 1.42% Math 1.43% Science 1.36%	ELA x.xx% Math x.xx% Science x.xx%
2018-2019	ELA 1.45% Math 1.47%	ELA x.xx% Math x.xx%

Attachment 2

2020-21 Alternate Assessment Justification

The following must be completed by districts that contribute to the state exceeding the 1% cap for students participating in the alternate assessment and will be posted on the department website upon receipt.

District Name: _____

	% of Alternative Assessments 2017-18 Administration	% of Alternate Assessments 2018-19 Administration	% of Alternate Assessments 2020-21 Administration	Projected % of Alternate Assessments 2021-22 Administration
MSAA ELA				
MSAA Math				
TCAP-Alt Science		<i>*Field test year, no data available</i>		

1. **Eligibility Determination Process:** Describe the policies, training and supports in place to ensure IEP teams appropriately identify students for participation on the alternate assessments related to each of the three criteria. *Completing the form in EasyIEP is not sufficient justification. The description should include training or processes to ensure the IEP team is carefully considering both the student's data and the implication of participation in the alternate assessment.*
 - a. Criterion One: The student has a significant cognitive disability. Only students with the most significant cognitive disabilities should be considered for the alternate assessment.
 - b. Criterion Two: The student is learning content linked to (derived from) state content standards.
 - c. Criterion Three: The student requires extensive direct individualized instruction and substantial supports to achieve measurable gains in the grade- and age-appropriate curriculum.

2. **Disproportionality:** Using your data by primary eligibility, describe your district data, including disproportionate participation on the alternate assessment and a plan for reducing/eliminating disproportionality.

3. **Informed Parent Participation:** Describe the process and practices used to adequately inform parents of the eligibility requirements and implications of participation to ensure active parent participate in the IEP team discussion.

4. **Support Requested:** Please detail any support needed from the department. (All reasonable requests for supports will be considered.)

Assurance: The district is committed to ensuring all students are participating in the most appropriate assessments. Students determined eligible for the alternate assessment will meet the three criteria.

Signed: _____

Date: _____

DRAFT



DRAFT

Individual Education Program (IEP)

Statewide Assessments

Will the student be taking the general education assessment? No, Student will participate in Alternate Assessment

TENNESSEE ALTERNATE ASSESSMENT ELIGIBILITY DETERMINATION WORKSHEET

Psychologist who completed the File Review: psych

Date of Review: 07/31/2023

Individual Cognitive Ability Test

Test Name	Date	Total Battery Score
example	07/03/2023	34
Highest Composite Score	Highest Composite Score Area	
45	50	
Lowest Composite Score	Lowest Composite Score Area	
24	49	

Adaptive Behavior Skills Assessment

Test Name	Date	Total Battery Score
example	07/12/2023	36
Highest Composite Score	Highest Composite Score Area	
65	56	
Lowest Composite Score	Lowest Composite Score Area	
42	19	

Criterion 1: The student has a *significant cognitive disability*. Only students with the most *significant cognitive disability* should be considered for the alternate assessment.

Does the student have the Most significant cognitive disability, including adaptive behavior? Yes, criterion one is met.

Summary of Evidence: evidence

Criterion 2: The student is learning content linked to (derived from) state content standards. There is sufficient data to indicate the student is learning content linked to (derived from) state content standards.

Yes, criterion two is met.

Attachment 4



Special Education Staffing Shortages Guidance

Introduction

Individualized education program (IEP) teams should carefully consider the needs of the student when developing an IEP. As the team reviews the data and determines services are necessary, the team should clearly communicate services within the service delivery plan (refer to the service delivery guidance for more info). The IEP team's decisions should be driven by the data and needs of the student. Staffing availability or shortages should not influence or impact IEP team decisions, even when there is a known shortage or vacancy. This guidance is intended to provide schools with considerations and strategies for providing IEP services in the event of staffing shortages.

Considerations

Section 300.317 of the Individuals with Disabilities Education Act (IDEA) implementing regulations defines a free and appropriate public education (FAPE) as special education and related services that:

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

The IDEA does not have any provisions that alter FAPE requirements during widespread staffing shortages. IEP team decisions should be based on student data, not on staffing or resources. Therefore, there may be times that the IEP team knows one or more of the services needed may not be provided until the additional staff is hired. Yet, *the IEP service delivery plan should still reflect the needed services.*

Typically, during the IEP meeting, the team determines the necessary services and then plans how and when to meet the services. When the team has identified a needed service and knows that there is currently no provider available, they should clearly and transparently communicate with the parent(s). Furthermore, the IEP team should plan to reconvene once a provider is hired or within a reasonable and agreed-upon timeframe to

Attachment 5

No public comments received.

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