



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable Steven L. Paine, Ed.D.  
State Superintendent of Schools  
West Virginia State Department of Education  
1900 Kanawha Boulevard East  
Charleston, WV 21201

**APR - 1 2019**

Dear Superintendent Paine:

I am writing in response to the West Virginia Department of Education's (WVDE's) request on January 9, 2019, for a waiver extension 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 requirement 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. WVDE requested this waiver because, based on State data for the 2016-2017 school year, WVDE has concluded that it will need to assess more than 1.0 percent of students using an AA-AAAS in the 2018-2019 school year.

After reviewing WVDE's request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, a one-year extension of the State's waiver of section 1111(b)(2)(D)(i)(I) of the ESEA for the school year 2018-2019, 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, mathematics and science. WVDE demonstrated substantial progress in carrying out the plan that was submitted when the State initially requested this waiver a year ago.

As part of this waiver, WVDE is assuring that the State educational agency:

- Will continue to meet all other requirements of section 1111 of the ESEA and implementing regulations with respect to all State-determined academic standards and assessments, including reporting student achievement and school performance, disaggregated by subgroups, to parents and the public.
- Assessed in the prior school year (2017-2018) at least 95 percent of all students and 95 percent of students with disabilities who are enrolled in grades for which an assessment is required.
- Will require that a local educational agency (LEA) submit information justifying the need of the LEA to assess more than 1.0 percent of its assessed students in any such subject with an AA-AAAS.
- Will provide appropriate oversight of an LEA that is required to submit such information to the State, and it will make such information publicly available.
- Will verify that each LEA that is required to submit such information to the State is following all State guidelines in 34 CFR 200.6(d) (with the exception of incorporating principles of universal

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design) and will address any subgroup disproportionality in the percentage of students taking an AA-AAAS.

- Will implement, consistent with the plan submitted in WVDE's waiver request, the system improvements and monitor future administrations to avoid exceeding the 1.0 percent cap.

I note that the State demonstrated progress in carrying out the plan submitted in the original request for this waiver. I also note that West Virginia made progress in reducing the number and percentage of students taking an AA-AAAS in 2017-2018 compared to 2016-2017.

In addition, I want to remind you of the requirement in 34 CFR § 200.6(c)(3)(iv) that the State must make publicly available the information submitted by an LEA justifying the need of the LEA to assess more than 1.0 percent of its students on the AA-AAAS, provided that such information does not reveal personally identifiable information about an individual student. I also encourage you to make available your State's plan and timeline and your progress to date in reducing the percentage of students taking the AA-AAAS.

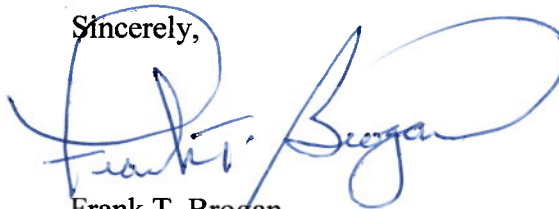
Finally, in order to help all States support implementation of the 1.0 percent participation threshold for AA-AAAS participation, the U.S. Department of Education is supporting work by the National Center on Educational Outcomes (NCEO) and the Center on Standards and Assessment Implementation to host three Peer Learning Groups (PLGs):

- Digging into Your Data: Building a One Percent Data Analysis and Use Plan
- Guiding and Evaluating District Justifications for Exceeding the One Percent Cap
- Building Capacity of IEP Teams and Parents in Making Decisions about Assessment Participation

If you have questions about any of these PLGs, please contact Susan Hayes, NCEO, at [shayes@wested.org](mailto:shayes@wested.org) or (802) 951-8210.

I appreciate the work you are doing to improve your schools and provide a high-quality education for your students. If you have any questions, please contact my staff at: [OSS.WestVirginia@ed.gov](mailto:OSS.WestVirginia@ed.gov).

Sincerely,



Frank T. Brogan  
Assistant Secretary  
For Elementary and Secondary Education

cc: Susan Beck, Executive Director, Office of Special Education  
Dawn Embrey-King, Coordinator, Office of Special Education