

ARKANSAS DEPARTMENT OF EDUCATION
DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
WAIVER EXTENSION REQUEST
PURSUANT TO 34 C.F.R. §200.6(c)(4)

April 30, 2021

Pursuant to 34 C.F.R. §200.6(c)(4), the Arkansas Department of Education, Division of Elementary and Secondary Education (DESE) is seeking a waiver extension of 34 C.F.R. §200.6(c)(2) for the 2021-22 school year from the Secretary of the United States Department of Education. This regulation limits the total number of students assessed in a subject area using an alternate assessment to no more than one percent (1.0%) of the total number of students assessed in the state.

Specifically, 34 C.F.R. §200.6(c)(2) provides --

For each subject for which assessments are administered under §200.2(a)(1), the total number of students assessed in that subject using an alternate assessment with alternate academic achievement standards under paragraph (c)(1) of this section may not exceed 1.0 % of the total number of students in the State who are assessed in that subject.

NOTICE OF PUBLIC COMMENT PERIOD

Any individual or organization may submit written comments on the proposed waiver pursuant to 34 C.F.R. §200.6(c)(4). Written comments shall be accepted from May 3, 2021, to June 2, 2021.

You may send written comments on the proposed waiver to Robin Stripling, Curriculum and Assessment Coordinator; Arkansas Department of Education; 1401 West Capitol, Suite 450; Little Rock, Arkansas 72201. Ms. Stripling may be reached by telephone at 501-682-4221, by fax at 501-682-4248, or via email at robin.stripling@ade.arkansas.gov.

On March 20, 2020, DESE submitted a request to the U.S. Department of Education for a waiver of statewide assessment, accountability, and reporting requirements in the Elementary and Secondary Education Act (ESEA) for the 2019-2020 school year due to widespread school closures related to the novel Coronavirus disease (COVID-19). On March 27, 2020, DESE's request was approved. Since there was no 2019-2020 testing data to report and final 2020-2021 testing data is not yet available, this waiver extension request will be based on 2018-2019 testing data and enrollment data from 2020-2021.

The requirements for a state education agency to seek a waiver extension are set forth in 34 C.F.R. §200.6(c)(4) and reproduced below. DESE is requesting a waiver extension in response to the requirements set forth in 34 C.F.R. §200.6(c)(4) because the 2018-2019 data on the percentage of students participating in Arkansas's alternate assessments was 1.32% in literacy, 1.32% in mathematics, and 1.29% in science. When compared with the 2019-2020 and 2020-2021 enrollment data, Arkansas has made significant progress.

State alternate assessment percentages for 2018-2019, 2019-2020, and 2020-2021:

	2018-2019 Assessment Data	2019-2020 Enrollment Data	2020-2021 Enrollment Data
ELA	1.32%	1.13%	0.85%
Math	1.32%	1.13%	0.85%
Science	1.29%	1.13%	0.85%

Alternate assessment percentages for 2018-2019 assessed grade levels and 2020-2021 enrollment by grade level:

2019 % ELA Alt Participation	2021 % ELA Alt Enrollment	2019 % Math Alt Participation	2021 % Math Alt Enrollment	2019 % Science Alt Participation	2021 % Science Alt Enrollment
3rd - 1.43	3rd -0.88%	3rd - 1.43	3rd -0.88%	3rd - 1.4	3rd -0.88%
4th - 1.36	4th - 0.90%	4th - 1.36	4th - 0.90%	4th - 1.34	4th - 0.90%
5th - 1.32	5th -0.83%	5th - 1.32	5th -0.83%	5th - 1.3	5th -0.83%
6th - 1.39	6th - 0.84%	6th - 1.39	6th - 0.84%	6th - 1.37	6th - 0.84%
7th - 1.35	7th - 0.83%	7th - 1.35	7th - 0.83%	7th - 1.32	7th - 0.83%
8th - 1.16	8th - 0.83%	8th - 1.15	8th - 0.83%	8th - 1.13	8th - 0.83%
9th - 1.2	9th - 0.87%	9th - 1.21	9th - 0.87%	9th - 1.17	9th - 0.87%
10th - 1.36	10th - .79%	10th - 1.35	10th - .79%	10th - 1.32	10th - .79%
Total - 1.32	Total - 0.85%	Total - 1.32	Total - 0.85%	Total - 1.29	Total - 0.85%

If a State anticipates that it will exceed the cap under paragraph (c)(2) of this section with respect to any subject for which assessments are administered under § 200.2(a)(1) in any school year, the State may request that the Secretary waive the cap for the relevant subject, pursuant to section 8401 of the Act, for one year. Such request must—

Requirement 1 (§200.6(c)(4)) Submission 90-Days Prior to State Testing Window Opening

- *Be submitted at least 90 days prior to the start of the State's testing window for the relevant subject;*

Reading Language Arts	1.21	1.05	1.39	1.03	1.58	1.07	1.13	1.04	1.57	0.84	1.16	1.21	1.45	0.79	1.09	1.20	1.41	1.20
Math	1.20	1.04	1.34	1.05	1.56	1.07	1.13	1.04	1.56	0.83	1.15	1.21	1.44	0.78	1.09	1.20	1.42	1.19
Science	0.54	0.45	0.43	0.36	0.72	0.46	0.50	0.51	0.68	0.38	0.45	0.54	0.66	0.32	0.43	0.53	0.58	0.53

- *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 section 1111(c)(2)(C) of the Act who are enrolled in grades for which the assessment is required under § 200.5(a);*

Arkansas requires that all students enrolled in public schools be assessed with the general assessment, the general assessment with accommodations, or with an alternate assessment. Arkansas follows the federal participation requirement and, to date, has met or exceeded the federal guidelines set at 95% participation. See chart below for evidence.

Percent of students participating in the general assessment, the general assessment with accommodations, or with an alternate assessment in school year 2018-2019:

Subgroups grade 3-10	Percent of Students Tested ELA	Percent of Students Tested in Math	Percent of Students Tested in Science
All Students	99.13	99.19	99.06
Hispanic	99.29	99.36	99.25
Black	98.7	98.82	98.63
White	99.24	99.29	99.17
English Learner Status	99.33	99.41	99.32
Free/Reduced Lunch Status	99.01	99.09	98.93
Special Education	98.71	98.84	97.95
Migrant	98.54	98.64	98.64
Homeless	97.85	97.91	97.74

Foster Children	96.27	96.49	95.75
Male	99.01	99.08	98.91
Female	99.26	99.31	99.22

Requirement 3 (§200.6(c)(4)) Assurances

- *Include assurances from the State that it has verified 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 § 200.2(a)(1) in that school year using an alternate assessment aligned with alternate academic achievement standards—*
 - *Followed each of the State's guidelines under paragraph (d) of this section, except paragraph (d)(6);*

LEAs that assessed more than 1.0% of their tested population in 2018-2019 with the alternate assessment submitted justification for those assessment decisions in the fall of 2020. As part of the justification, LEAs were asked to confirm the use of the Arkansas Alternate Assessment Participation Manual for making assessment determinations for students, including the Participation Decision Documentation form. This document provides guidelines for qualifying students to take the AA and states --

IEP Team Statement of Assurance: Our decision was based on multiple pieces of evidence that, when taken together, demonstrated that the Arkansas Alternate Assessment is the most appropriate assessment for this student; that his/her academic instruction will be based on the Essential Elements linked to the Arkansas Academic Standards; that the Additional Considerations listed above were not used to make this decision; and that any additional implications of this decision were discussed thoroughly. Each of us agrees with the participation decision in the Arkansas Alternate Assessment Program: *(signatures of participants)*

LEAs that completed justification documentation in the fall of 2020 were required to submit 2019-2020 assessment data plus the percentage of students who were anticipated to participate in the alternate assessment for the 2020-2021 school year.

- *Will address any disproportionality in the percentage of students in any subgroup under section 1111(c)(2)(A), (B), or (D) of the Act taking an alternate assessment aligned with alternate academic achievement standards;*

DESE gathered district data on the current and previous years' participation rates for the alternate assessment. It is important for DESE to identify whether students taking Arkansas's alternate assessment are students clustered in "subgroups," such as racial/ethnic groups, gender, English learner status, or economically disadvantaged. DESE will continue to review data collected through the State reporting system on the demographics of students participating in the alternate assessment to identify

patterns and outliers such as educational environment, disability type, EL status, etc., for purposes of analysis. For districts that are over the 1.0% threshold, this data will help DESE identify any trends that may contribute to potential disproportionality in specific subgroups and grade levels of students taking alternate assessments.

DESE will address any disproportionate representation of students taking the alternate assessment by undertaking the following activities:

- Monitoring alternate assessment data;
- Requiring justification from districts that exceed the one percent threshold; and
- Providing training to districts on participation guidelines for alternate assessments.

Requirement 4 (§200.6(c)(4)) State Plan and Timeline

- *Include a plan and timeline by which—*
 - *The State will improve the implementation of its guidelines under paragraph (d) of this section, including by reviewing and, if necessary, revising its definition under paragraph (d)(1), so that the State meets the cap in paragraph (c)(2) of this section in each subject for which assessments are administered under § 200.2(a)(1) in future school years;*

On January 14, 2020, DESE Special Education Unit (DESE-SEU) presented alternate assessment data to the Arkansas Advisory Council for the Education of Children with Disabilities. The purpose of the presentation was to ascertain whether or not the State should begin work to update the alternate assessment participation criteria. The advisory group indicated that the participation criteria should be updated.

A workgroup of special education directors and DESE staff met on February 14, 2020, to review the previous criteria and to provide recommendations for the updated criteria. The updated criteria was submitted to and approved by the DESE Office of Legal Services. The DESE Special Education Unit released the updated alternate assessment participation criteria to the state's special education directors on April 1, 2020. Nineteen online trainings pertaining to the new criteria were provided virtually during the summer of 2020. A recorded training has also been made available on the DESE-SEU website. Many LEAs have made watching the recording and responding to the associated survey mandatory for all special educators.

- *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*

During the summer and fall of 2021, DESE will continue to provide professional learning opportunities for IEP team members and other educators. These learning opportunities will focus on

inclusive practices, including instructional supports for students with significant cognitive disabilities.

All educators, including those who are not currently members of IEP teams, must have a solid understanding of how to make appropriate instruction and assessment decisions for all students, including students who may be candidates to participate in an alternate assessment. DESE has made resources available on the accessibility features and accommodations for the general assessment, as those features and accommodations enable most students with disabilities to meaningfully participate in the general assessment.

DESE has made informational resources available to parents of students with disabilities regarding the assessment in which their child will participate so parents can contribute to the IEP decision-making process. Parent informational resources include

- “A Family's Guide to Special Education in Arkansas”
- Requirements of the alternate assessment; and
- Accommodations that enable students to participate in the general assessment.

DESE will continue to monitor data and require annual justifications from LEAs that have exceeded the 1.0% cap. If final assessment data indicate that Arkansas administered the alternate assessment to more than 1.0% of its students in 2020-2021, justifications will be required from each LEA that administered the alternate assessment to more than 1.0% of its students. These justifications will be submitted in fall 2021 and will include confirmation of training specific to the Arkansas Alternate Assessment Participation Manual. Those LEAs that were significantly over the 1.0% threshold in 2021 and those that do not provide adequate justification will receive more intensive monitoring and technical assistance. Based on each local school district’s justification documentation and anticipated percentage of students who will take the alternate assessment in 2021-2022, tiers of required actions will be put into place. The required actions for the 2021-2022 year have yet to be determined; the 2020-2021 required actions were as follows:

- Districts provided training for all special education staff. This training included the State’s definition of students with the most significant cognitive disability with specific guidance pertaining to deficits in adaptive skills and the State’s alternate assessment guidance document.
- Districts completed a student information document for each student who participated in the alternate assessment. The following student information was submitted:
 - IDEA eligibility category
 - An indication of whether or not the student’s IDEA eligibility category includes intellectual or cognitive impairment as a characteristic
 - Adaptive skill deficits and the instrument(s) used to determine adaptive skill deficits
 - An answer to the question, “Did the IEP team determine that the student will likely not be able to live independently?”
- Districts who are significantly over the 1% had an onsite monitoring. District staff and the DESE Special Education Unit staff reviewed data used to make assessment decisions for students who were scheduled to participate in the alternate assessment in 2020-2021.
- The DESE Special Education Unit staff reviewed district level student data to determine any disproportionality in the group of students who participated in the alternate assessment.
 - *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; and

LEAs who were significantly over the 1.0% threshold in school year 2018-2019 were required to analyze the data by subgroup to determine whether disproportionality existed for students participating in the alternate assessment. Analysis consisted of reviewing current and previous years' alternate assessment participation rates to determine if assessment decisions were consistently made regardless of eligibility category, race, gender, economic status, English Learner status or placement.

For LEAs whose data indicated disproportionate representation, more intensive monitoring and/or technical assistance was provided. The DESE Special Education Unit staff encouraged these districts to attend the 2019 Disproportionality Institute provided by the Arkansas IDEA Data and Research Office. The DESE Special Education Unit staff reviewed assessment decision documentation with LEAs for students who participated in the alternate assessment in the 2018-2019 school year. The review included:

- Race
- Gender
- English learner status
- Economic status
- Homeless status
- Migrant status

A similar process will be conducted during the fall of 2021 based on 2020-2021 assessment data to determine disproportionate representation. For those LEAs found to have disproportionate representation, intensive monitoring and technical assistance will be provided.

Requirement 5 (§200.6(c)(4)(v)): Substantial Progress

(v) If the State is requesting to extend a waiver for an additional year, meet the requirements in paragraph (c)(4)(i) through (iv) of this section and demonstrate substantial progress towards achieving each component of the prior year's plan and timeline required under paragraph (c)(4)(iv) of this section.

While there is no official data available for the 2019-2020 school year, enrollment data in the two testing portals indicate that the percentage of Arkansas students participating in the alternate assessment would have gone down significantly. The 2019-2020 DESE Assessment Unit data indicated that 298,241 students were enrolled in the Arkansas general assessment, ACT Aspire. Dynamic Learning Maps (DLM), the Arkansas alternate assessment, reports that 3,412 students were enrolled in early March 2020. Therefore, 1.13% of the students enrolled in a testing portal were enrolled in the DLM. This was a significant drop from 1.32% in 2018-2019. With the alternate assessment participation criteria that was updated in January 2020, the DESE Special Education Unit expected to see even further reduction in 2020-2021. The 2020-2021 enrollment data substantiates this expectation. As of April 5, 2021, 292,771 students are enrolled and expected to take the Arkansas general assessment (ACT Aspire) and 2,502 students are enrolled and expected to take the alternate

assessment (Dynamic Learning Maps). As of April 5, 2021, 0.85% of students enrolled in a testing portal were enrolled in the alternate assessment.

Comparison of Participation Rate Percentages for 2018-2019 School Year and Enrollment Percentages for 2019-2020 and 2020-2021:

	2018-2019 Assessment Data	2019-2020 Enrollment Data	2020-2021 Enrollment Data
ELA	1.32%	1.13%	0.85%
Math	1.32%	1.13%	0.85%
Science	1.29%	1.13%	0.85%