

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

Pursuant to 34 C.F.R. §200.6(c)(4), the Arkansas Department of Education (ADE) is seeking a waiver extension of 34 C.F.R. §200.6(c)(2) for the 2018-19 school year from the Secretary for 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 October 22, 2018, to November 23, 2018.

You may send written comments on the proposed waiver to: Wendy Pascoe, Curriculum and Assessment Advisor; Arkansas Department of Education; 1401 West Capitol, Suite 450; Little Rock, Arkansas 72201. Ms. Pascoe may be reached by telephone at 501-682-4221, by fax at 501-682-4248, or via email at wendy.pascoe@arkansas.gov.

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. The ADE is requesting a waiver extension in response to the requirements set forth in 34 C.F.R. §200.6(c)(4) because the most recent data on the percentage of students taking Arkansas's alternate assessments is 1.21% in literacy and 1.20% in mathematics.

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

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

The ADE is submitting a waiver extension request to the U.S. Department of Education 90 days prior to the start of Arkansas's summative testing window for its alternate assessment in the areas it was over 1.0%. The subject areas are Literacy and Mathematics. The assessment start date for each subject will be March 11, 2019.

Requirement 2 (§200.6(c)(4)) State-Level Data

(ii) 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 section 1111(c)(2)(A), (B), and (D) of the Act who took the alternate assessment aligned with alternate academic achievement standards;

Count of students participating in the Arkansas Alternate Assessment in school year 2017-18 by subgroups and subject matter:

| Subject | Alternate Assessment Student Count | Federal Race Category | | | | | | | Gender | | English Learner Status | | Free/Reduced Lunch Status | |
|-----------------------|------------------------------------|-----------------------|---------------------------------|-------|-------|-----------------------------|-------|-------------------|--------|--------|------------------------|------|---------------------------|-----|
| | | Hispanic | American Indian / Alaska Native | Asian | Black | Hawaiian / Pacific Islander | White | Two or More Races | Male | Female | Yes | No | Yes | No |
| Reading Language Arts | 3564 | 413 | 26 | 49 | 931 | 26 | 2042 | 77 | 2364 | 1200 | 273 | 3285 | 2730 | 834 |
| Math | 3549 | 409 | 25 | 50 | 920 | 26 | 2042 | 77 | 2354 | 1195 | 271 | 3278 | 2722 | 827 |
| Science | 1567 | 177 | 8 | 17 | 419 | 11 | 897 | 38 | 1018 | 549 | 106 | 1461 | 1234 | 333 |

Percent of students participating in the Arkansas Alternate Assessment in school year 2017-18 by subgroups and subject matter:

| Subject | Alternate Assessment Student Count | Federal Race Category | | | | | | | Gender | | English Learner Status | | Free/Reduced Lunch Status | |
|-----------------------|------------------------------------|-----------------------|---------------------------------|-------|-------|-----------------------------|-------|-------------------|--------|--------|------------------------|------|---------------------------|------|
| | | Hispanic | American Indian / Alaska Native | Asian | Black | Hawaiian / Pacific Islander | White | Two or More Races | Male | Female | Yes | No | Yes | No |
| 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 |
| 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 |
| 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 |

(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 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, grades 3-10, enrolled in public K-12 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 2017-18:

| Subgroups grade 3-10 | Students Tested English Language Arts (ELA) | Students Tested in Math |
|---------------------------|---|-------------------------|
| All Students | 99.38% | 99.43% |
| Hispanic | 99.51% | 99.56% |
| Black | 98.76% | 98.90% |
| White | 99.54% | 99.57% |
| English Learner Status | 99.56% | 99.63% |
| Free/Reduced Lunch Status | 99.24% | 99.31% |
| Special Education | 98.76% | 98.83% |

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

(iii) 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—

(A) Followed each of the State's guidelines under paragraph (d) of this section, except paragraph (d)(6); and

LEAs that assessed more than 1.0% of their tested population in 2017-18 with the alternate assessment have submitted justification for those assessment decisions. As part of this justification, LEAs were asked to confirm the use of the Guidance for IEP Teams on Participation Decisions for the Arkansas Alternate Assessment Program for making assessment determinations for students, including the Participation Decision Documentation form. This document provides guidelines for qualifying students to take the Alternate Assessment (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 Program 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)*

* Disability category, Poor attendance, Native language/social/cultural or economic difference, Expected poor performance on the general assessment, Academic and other services student receives, Educational environment or instructional setting, Percent of time receiving special education services, English Learner status, Low reading level/achievement level, Anticipated disruptive behavior, Impact of student scores on accountability system, Administrator decision, Anticipated emotional duress, Need for accommodations

Based on the LEA justifications submitted this fall, a tiered set of actions will be required for the LEAs that assessed more than 1.0% of their tested population in 2017-18 on the alternate assessment. After completing the required actions, the district's special education supervisor and the district's superintendent must provide signature assuring, "All special education teachers who guide IEP teams in making alternate assessment decisions use the alternate assessment guidelines with fidelity."

(B) 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;

The ADE gathered district data on the current and previous years' participation rates for the alternate assessment. It is important for ADE to identify whether students taking Arkansas's alternate assessment are students clustered in "subgroups," such as category of disability under the Individuals with Disabilities Education Act (IDEA); racial/ethnic groups; gender; English Learners; or economically disadvantaged. The ADE 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, English Learner (EL) status, and other sub groups as needed, for purposes of analysis. For districts that are over the 1.0% threshold, this data will help ADE identify any trends that may contribute to potential disproportionality in specific subgroups and grade levels of students taking alternate assessments.

The ADE 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

(iv) Include a plan and timeline by which—

(A) 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;

The ADE convened an advisory group of stakeholders to examine the state definition of “students with the most significant cognitive disabilities” who participate in alternate assessments. The advisory group recommended revisions to the ADE’s Participation Guidelines used to determine if a student meets the standard to participate in the alternate assessment. The advisory group met on October 19, 2017; November 15, 2017; December 7, 2017; and January 11, 2018.

The ADE monitored alternate assessment data and requested justification from districts that exceeded the 1.0% cap for the 2017-18 school year. The ADE provided professional learning opportunities for IEP team members and other educators, including the nature of the alternate assessment and the students who are eligible to participate under the revised Guidance for IEP Teams on Participation Decisions for the Arkansas Alternate Assessment Program. These trainings were provided at educational service cooperatives across the state on the following dates during the summer of 2018: June 4, June 5, June 8, June 20, June 21, June 22, July 10, July 17, July 20, July 30, July 31, and August 2.

*(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*

During the 2018-19 school year the ADE will continue to provide professional learning opportunities for IEP team members and other educators. These learning opportunities will focus on the purpose of the alternate assessment and the characteristics of students who are eligible to participate in the alternate assessment, based on the revised Guidance for IEP Teams on Participation Decisions for the Arkansas Alternate Assessment Program.

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. The ADE 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.

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

- Explanation of the Guidance for IEP Teams on Participation Decisions for the Arkansas Alternate Assessment Programs;

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

The ADE will continue to monitor data and require annual justifications from LEAs that exceed the 1.0% cap. Justifications include confirmation of training specific to the Guidance for IEP Teams on Participation Decisions for the Arkansas Alternate Assessment Program. Those LEAs that are significantly over the 1.0% threshold and those that do not provide adequate justification will receive more intense monitoring and technical assistance. A tiered set of actions will be required for the LEAs that assessed more than 1.0% of their tested population in 2017-18 in order to ensure that assessment decisions are correctly made.

(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; and

LEAs who are significantly over the 1.0% threshold in school year 2017-18 will be required to analyze the data by subgroup to determine whether disproportionality exists for students participating in the alternate assessment. Analysis will consist of reviewing current and previous years' alternate assessment participation rates to determine if assessment decisions are consistently made regardless of eligibility category, race, gender, economic status, English Learner status or placement.

For LEAs who are significantly over the 1.0% threshold and whose data indicate disproportionate representation, more intense monitoring and/or technical assistance will be provided. ADE Special Education Staff will review assessment decision documentation with staff from affected districts for students who will participate in the alternate assessment in the 2018-19 school year, to include:

- Eligibility category
- Federal placement code
- Race
- Gender
- English learner status
- Economic status

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.

The Arkansas Department of Education has made substantial progress toward meeting the 1.0% cap on Alternate Assessment participation since our original waiver was submitted. Evidence below confirms Arkansas's progress in reducing the number of students participating in the Arkansas

Alternate Assessment Program. Arkansas has decreased in the number of districts exceeding the 1.0% cap from 2016-17 to 2017-18 as indicated in the tables below.

Comparison of Districts exceeding 1.0% cap for 2016-17 and 2017-18 School Years:

| Content Area | Number of LEAs Exceeding 1.0% cap in 2016-2017 | Number of LEAs Exceeding 1.0% cap in 2017-18 | Difference in Number | Difference in Percentage |
|--------------|--|--|----------------------|--------------------------|
| ELA | 143 | 140 | -3 | -2.1 |
| Math | 145 | 140 | -5 | -4.1 |

Comparison of Participation Rate Percentages for 2016-17 and 2017-18 School Years:

| Content Area | AA Participation Rate Percentage 2016-2017 | AA Participation Rate Percentage 2017-2018 | Difference in Percentage |
|--------------|--|--|--------------------------|
| ELA | 1.37% | 1.21% | -0.16 |
| Math | 1.39% | 1.20% | -0.27 |

Comparison of ELA Arkansas AA Participation rate Percentages for 2016-17 and 2017-18:

| Student Sub-Group | AA Participation Rate Percentage 2016-2017 | AA Participation Rate Percentage 2017-2018 | Difference in Percentage |
|--------------------------------|--|--|--------------------------|
| All Students | 1.37% | 1.21% | -0.16 |
| Hispanic | 1.17% | 1.05% | -0.12 |
| American Indian/Alaskan Native | 1.51% | 1.39% | -0.12 |
| Asian | 0.95% | 1.03% | +0.08 |
| Black | 1.76% | 1.58% | -0.18 |
| Hawaiian/Pacific Islander | 0.95% | 1.07% | +0.12 |
| White | 1.30% | 1.13% | -0.17 |
| Two or more races | 1.18% | 1.04% | -0.14 |
| English Learner Status | 1.23% | 1.16% | -0.07 |
| Free/Reduced Lunch Status | 1.67% | 1.45% | -0.22 |
| Male | 1.76% | 1.57% | -0.19 |
| Female | 0.96% | 0.84% | -0.12 |

Comparison of *MATH* Arkansas AA Participation rate Percentages for 2016-17 and 2017-18:

| Student Sub-Group | AA Participation Rate Percentage 2016-2017 | AA Participation Rate Percentage 2017-2018 | Difference in Percentage |
|--------------------------------|--|--|--------------------------|
| All Students | 1.39% | 1.20% | -0.19 |
| Hispanic | 1.18% | 1.04% | -0.14 |
| American Indian/Alaskan Native | 1.56% | 1.34% | -0.22 |
| Asian | 0.96% | 1.05% | +0.09 |
| Black | 1.78% | 1.56% | -0.22 |
| Hawaiian/Pacific Islander | 0.91% | 1.07% | +0.16 |
| White | 1.33% | 1.13% | -0.20 |
| Two or more races | 1.16% | 1.04% | -0.12 |
| English Learner Status | 1.22% | 1.15% | -0.07 |
| Free/Reduced Lunch Status | 1.69% | 1.44% | -0.25 |
| Male | 1.79% | 1.56% | -0.23 |
| Female | 0.97% | 0.84% | -0.14 |

In addition, data analysis revealed the following changes in the number and percentages of students assessed with the Arkansas Alternate Assessment.

- Number of Districts that Exceeded the 1.0% cap in 2016-17, but *did not Exceed* the cap in 2017-18
 - ❑ ELA: 12
 - ❑ Math: 13
- Number of Districts that Exceeded the 1.0% cap in the 2016-2017 and 2017-18 School Years but *maintained or reduced* their AA participation rates in the 2017-18 School Year
 - ❑ ELA: 69
 - ❑ Math: 71
- Number of Districts that Exceeded the 1.0% cap in 2016-17 who *increased* the percentage of Exceeding the 1.0% cap in 2017-18 School Year

- ❑ ELA: 51
 - ❑ Math: 49
- Number of Districts that Exceeded the 1.0% cap for the *first time* during the 2017-18 School Year
 - ❑ ELA: 20
 - ❑ Math: 19