

North Dakota Department of Education
Public Notice and Comment Period
Waiver Request Pursuant to 34 C.F.R. §200.6(c)(4)
November, 2017

Pursuant to 34 C.F.R. §200.6(c)(4), Every Student Succeed Act (ESSA), the North Dakota Department of Public Instruction (NDDPI) will seek a waiver for the 2017-2018 school year from the Secretary for the United States Department of Education. The regulation in question, found at 34 C.F.R. 200.6(c)(2), requires State Education Agencies such as the NDDPI to limit the total number of students assessed in a subject area using an alternate assessment. The limit on the percentage of students assessed by the alternate assessment is set by the federal regulation, stating there shall be no more than one (1) percent of the total number of students taking the alternate assessment assessed in each subject area.

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 percent 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 through November 30, 2017.

The USDE requires states to provide all districts and interested parties in the state with notice and a reasonable opportunity to comment on this waiver request. We are providing this statewide notice by sending an email over the distribution lists and post the waiver application on the North Dakota Department of Public Instruction's website. Any public comments must be submitted prior to 5:00 p.m., CT, on November 30, 2017.

The requirements for a State Education Agency to seek a waiver are set forth at 34 C.F.R. §200.6(c)(4) and reproduced below. The NDDPI is requesting a waiver in response to the requirements set forth at 34 C.F.R. §200.6(c)(4) because its most recent data on the percentage of students taking North Dakota's alternate assessments in English Language Arts and Mathematics subject areas stands at 1.1%.

The waiver requirements are in **bold** lettering below.

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—

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

The NDDPI will submit a waiver request to the U.S. Department of Education 90 days prior to the start of North Dakota's first testing window for its alternate assessment. The subject areas are English Language Arts and Mathematics. The start date for each subject will be March 12, 2018.

(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; and

The NDDPI will gather district data on the current and previous years' participation rates in each subject of the alternate assessment. It is important for NDDPI to identify whether students taking North Dakota'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 eligible for free or reduced price school meals. These data will help NDDPI understand whether there are:

- Districts in which the numbers of students participating in alternate assessments are higher than expected;
- Certain grades in which participation in the alternate assessment is higher than expected; and
- Potential disproportionality in specific subgroups and grade levels of students taking alternate assessments.

The NDDPI will gather data on the characteristics of students participating in the alternate assessment to provide a standard for determining whether students are participating who do not have significant cognitive disabilities.

Districts with unusual patterns or higher rates than other districts may require additional investigation to determine if there are unique reasons for higher percentages of students participating in the alternate assessment. The NDDPI will share the data collected with districts. This will allow districts to compare the percentage of their students participating in the alternate assessment with students in other districts in the state participating in the same assessment. After sharing the data, the NDDPI will provide training to the districts that exceed the one percent cap set forth at 34 C.F.R. §200.6(c)(2).

(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);

North Dakota requires all students enrolled in public K-12 schools be assessed with accommodations, without accommodations or with an alternate assessment. The only exception

to participation for *any* student is for students who receive a medical or extraordinary circumstances non-participation waiver. North Dakota follows the federal participation requirement and, to date, has met or exceeded the federal guidelines set at 95% participation.

(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

The NDDPI will provide professional learning opportunities for IEP team members and other educators, particularly on the nature of the alternate assessment and the students who are eligible to participate under the *North Dakota Alternate Assessment Participation Guidelines*.

(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 NDDPI will use the same process for addressing significant disproportionality with the SPP/APA Indicators 4, 9, and 10. A group of North Dakota stakeholders are currently developing this process under the new significant disproportionality regulations.

(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 NDDPI will annually monitor alternate assessment data. Districts that exceeds the one percent cap, will be required to provide the NDDPI with detailed justification for exceeding the one percent cap. Data from the monitoring will be used to develop targeted, content-specific training and support aimed at addressing each district's unique needs. The NDDPI will provide professional learning opportunities for IEP team members and other educators, particularly on the nature of the alternate assessment and the students who are eligible to participate under the *North Dakota Alternate Assessment Participation Guidelines*.

(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

The NDDPI will provide training and support to local school districts and special education units.

Training will include:

- Implementing the requirements set forth in the ESSA, including:
 - Using the *North Dakota Alternate Assessment Participation Guidelines* to make assessment participation decisions;
 - Selecting, implementing and evaluation accessibility features and accommodations for instruction and assessments;
 - Differentiating instruction and providing better access to academic content;
 - Having high expectations for all students regardless of the category or their disability; and
 - Understanding implications of student participation in the alternate assessment as it applies to the student's postsecondary and career pathway.
- Providing oversight to each district that the state anticipates exceeding the one percent threshold to ensure only students with the most significant cognitive disabilities take the AA-AAAS;
- Informing and engaging parents in the conversations and decisions around participating in the AA-AAAS; and
- Publicly reporting statewide AA-AAAS data while maintaining student confidentiality.

The NDDPI will provide resource that will be made available to parents of student with disabilities so parents can contribute in the IEP decision making process regarding the assessment in which their child participates. Parent information resources will include:

- Explanation of the *North Dakota Alternate Assessment Participation Guidelines*;
- Requirements of the North Dakota Alternate Assessment; and
- Accommodations that enable students to participate in the general assessment.

(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;

The NDDPI will gather district data on current and previous years' alternate assessment participation rates in each subject area and will analyze the data by subgroup to determine whether disproportionality exists for students participating in the alternate assessment.

In the event the data reveal any disproportionality in the percentage of students taking the alternate assessment, the NDDPI will address the issue as follows:

- The NDDPI will provide training on the *North Dakota Alternate Assessment Participation Guidelines* to districts and schools with disproportionality.
- In districts whose data indicate disproportionality in the percentage of students taking the alternate assessment, the NDDPI will randomly monitor districts with the highest rates of disproportionality. The NDDPI will achieve this by reviewing individual student folders of students in the affected subgroup, to determine whether decisions to place students in the alternate assessment were made according to law.

In the event the decision to place the student on the alternate assessment was not made pursuant to the applicable regulations and the *North Dakota Alternate Assessment Participation Guidelines*, the NDDPI will direct the district to reconsider the student's eligibility for the alternate assessment.