

**North Carolina Department of Public Instruction**  
Public Notice and Comment Period  
Waiver Request Pursuant to 34 C.F.R. §200.6(c)(4)

Notice is hereby given that the North Carolina Department of Public Instruction (NCDPI) will submit a request for waiver of section 34 C.F.R §200.6(c)(2) as it requires State Education Agencies to adhere to a 1.0 percent cap for the total number of students assessed Statewide in a subject area using an alternate assessment. Specifically, the state anticipates that it will exceed the cap under paragraph (c)(2) with respect to any subject for which assessments are administered under §200.2(a)(1) in any school year, and is requesting, pursuant to 34 C.F.R §200.6(c)(4), that the Secretary waive the cap for the relevant subject for one year.

**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 January 10, 2021.**

**Written comments on the proposed waiver may be submitted to [alternateassessment@dpi.nc.gov](mailto:alternateassessment@dpi.nc.gov).**

**BACKGROUND**

The Every Student Succeeds Act (ESSA) empowers states to look more carefully at the participation rate on the alternate assessment aligned to alternate academic achievement standards (AA-AAAS) for students with the most significant cognitive disabilities. Under the Act, the total number of students assessed in a subject using an alternate assessment may not exceed 1.0 percent of the total number of students in the state who are assessed in that subject. If a State anticipates that it will exceed the cap with respect to any subject for which alternate assessments are administered in any school year, the State may request a waiver for the cap for the relevant subject for one year.

The regulation in question, 34 C.F.R. §200.6(c)(2), requires State Education Agencies, such as the NCDPI, to adhere to a 1.0 percent cap for the total number of students assessed Statewide in a subject area using an alternate assessment.

At the beginning of March 2020, in response to COVID-19, all North Carolina school districts and schools were instructed by Governor Roy Cooper to shift to virtual instruction for the remainder of the 2019–2020 school year. On March 23, 2020, the Accountability Services Division submitted a waiver to the United States Department of Education (USED) seeking approval for a waiver to include federal testing and accountability requirements for the 2019–2020 school year. The USED approved the waiver for testing and accountability on March 23, 2020. The North Carolina State Board of Education and the General Assembly convened and approved the waiver for testing and certain accountability requirements for the 2019–20 school year. As a result of the waiver approval, North Carolina rescinded the 1.0 Percent Participation extension waiver submitted for the 2019–2020 school year. Due to the circumstances and the approved federal testing and accountability waiver, testing did not occur at the end of the 2019–

2020 school year. In this extension waiver request, North Carolina has provided assessment data from the 2018–2019 school year.

Based on testing data from the 2018–19 school year, North Carolina anticipates exceeding the 1.0 percent cap on alternate assessment participation in English Language Arts (ELA)/Reading and Mathematics at grades 3–8, Math at grade 11, Science at grades 5 and 8, and Science at grade 11 (see Table 1). Pursuant to 34 C.F.R. §200.6(c)(4), the NCDPI will request that the Secretary for the United States Department of Education waive the cap for the relevant subjects for the 2020–21 school year.

The waiver will include a plan and timeline and will be available to the public for comment.

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.

### **WAIVER REQUEST**

The waiver requirements are in **bold** lettering below followed by North Carolina’s response.

**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;**

**Furthermore, a State must—**

- (i) Not prohibit an LEA from assessing more than 1.0 percent of its assessed students in any subject for which assessments are administered under §200.2(a)(1) with an alternate assessment aligned with alternate academic achievement standards;**
- (ii) Require that an 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 such an alternate assessment;**
- (iii) Provide appropriate oversight, as determined by the State, of an LEA that is required to submit information to the State; and**
- (iv) Make the information submitted by an LEA under paragraph (c)(3)(ii) of this section publicly available, provided that such information does not reveal personally identifiable information about an individual student.**

The NCDPI will submit a waiver request to the U.S. Department of Education ninety days prior to the start of the first testing window for the alternate assessment. Based on testing data from 2018–19, North Carolina anticipates testing greater than 1.0 percent of students using the alternate assessment based on alternate academic achievement standards in the subject areas of ELA/Reading and Mathematics at grades 3–8, Math at grade 11, Science at grades 5 and 8, and Science at grade 11. Table 1 shows the anticipated alternate assessment participation for the 2020–21 school year.

Table 1. *North Carolina Anticipated Alternate Assessment Participation for the 2020–21 School Year*

<b>Subject and Grade(s)</b>	<b>Numerator</b>	<b>Denominator</b>	<b>Percent</b>
Mathematics Grades 3–8*	7,881	721,857	1.1%
Mathematics Grade 11*	1,138	100,427	1.1%
ELA/Reading Grade 3–8*	7,897	722,330	1.1%
ELA/Reading Grade 10	1,050	114,986	0.9%
Science Grades 5 & 8*	2,599	240,138	1.1%
Science Grade 11*	1,141	102,871	1.1%

\* Subject areas that exceed 1.0 percent of test population.

**(i) 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;**

Table 2 shows the number and percentage of students in each subgroup of students who took the alternate assessment aligned with alternate academic achievement standards in 2018–19.

Table 2. *North Carolina Alternate Assessment 2018–19 Participation by Subgroup*

Subgroup	Number of Alternate Assessment Participants	Total Number of Students	Percentage of Total Participants
English Learners	2,337	129,526	1.8%
Economically Disadvantaged Students	12,969	935,158	1.4%
Students with Disabilities	21,405	251,172	8.5%
Hispanic	3,484	370,722	0.9%
Asian	615	68,340	0.9%
Black	7,454	502,266	1.5%
White	8,894	946,540	0.9%
Native American	245	22,695	1.1%
Multiple Ethnicities	985	89,287	1.1%

**(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 Carolina requires all students enrolled in a public school to be assessed. Students are assessed using the general assessment under standard conditions, the general assessment with accommodations, or the alternate assessment based on alternate academic achievement standards with or without accommodations. The only exception to participation is for medical exceptions approved by the NCDPI. North Carolina follows the federal participation requirement and has met the 95% participation rate in all areas (See Table 3).

Table 3. North Carolina Statewide General Assessment Participation Rates 2018–19 School Year

Subject and Grade(s)	Student Group	Percent Participation
Mathematics Grades 3–8	All Students	>95
Mathematics Grades 3–8	Students with Disabilities	>95
Mathematics Grade 11	All Students	>95
Mathematics Grade 11	Students with Disabilities	>95
ELA/Reading Grades 3–8	All Students	>95
ELA/Reading Grades 3–8	Students with Disabilities	>95
Science Grades 5 & 8	All Students	>95
Science Grades 5 & 8	Students with Disabilities	>95
Science Grade 11	All Students	>95
Science Grade 11	Students with Disabilities	>95

Data from the 2018–19 school year indicate that North Carolina tested greater than ninety-five percent (95%) of all students and students in the children with disabilities subgroup for all required assessments.

**(ii) 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 §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 NCDPI verifies that each LEA and charter school the State anticipates will assess more than 1.0 percent of its students in any subject using the alternate assessment followed the State’s guidelines for participation in the AA-AAAs. The NCDPI examines and updates the alternate assessment eligibility criteria annually and provides training to all LEA and charter school Exceptional Children and Accountability personnel involved with determining if a student has a significant cognitive disability. The NCDPI created an *Alternate Assessment Frequently Asked Questions* document to support LEAs, charter schools and the public in understanding this determination process. This document is updated regularly with new information as needed. An *IEP Team Decision-Making and Consideration Process Tool* was developed for the 2018–19 school year and beyond for IEP teams to use when considering the appropriate educational program and related assessments for students suspected of having a significant cognitive disability. This tool was implemented statewide in the 2018–19 school year. The Exceptional

Children’s Division (ECD) completed and posted a webinar to the state’s website which covered those students who may be appropriate for the alternate assessment. In addition, the ECD has provided guidance and information to Exceptional Children (EC) Directors at the Directors’ Advisory Council (DAC), the Regional Directors Meeting, March Institute (2019), and the 68<sup>th</sup> Exceptional Children Conference Townhall (2018). Additionally, the Accountability Services Division and the Exceptional Children’s Division created a course of study pathway guidance document to assist Individualized Education Program (IEP) teams in understanding the course of study pathways, to assist in providing information to parents in an easy format and to show what assessments align with the instruction on each learning pathway.

Courses that utilize the Extended Content Standards, on which the Alternate Assessment is based, have an “A” as the fifth digit of the course code. The letter in the sixth digit space denotes whether it is an elementary, middle, or high school course code. In 2017–18, North Carolina began course enrollment cross checks to ensure that every student enrolled in courses using the Extended Content Standards is being assessed using the alternate assessment, which is based on those standards. Furthermore, the Course Enrollment Cross Checks help ensure that every student participating in the alternate assessment has been enrolled in courses that use the Extended Content Standards for a minimum of one hundred twenty school days prior to testing. Findings from the Course Enrollment Cross Checks prompt appropriate guidance, support, and continued monitoring of specific LEAs and charter schools as needed.

In 2019–20 and 2020–21, the Exceptional Children’s Division (ECD) has and will continue to collaborate with the Accountability Services Division to implement more intensive monitoring to include reviewing LEAs and charter schools who identify students with atypical eligibility categories and rates higher than two percent with an n size greater than twenty. The ECD will implement monitoring, to include desk monitoring, for the identified LEAs and charter schools.

**(B) Will address any disproportionality in the percentage of students in any subgroup under section 111(c)(2)(A), (B), or (D) of the Act taking an alternate assessment aligned with alternate academic achievement standards;**

The NCDPI will address any disproportionality in the percentage of students in any subgroup taking the alternate assessment aligned with alternate academic achievement standards by first requiring justification from each district and charter school that exceeds the 1.0 percent cap. The NCDPI will also analyze the data by subgroup to determine whether disproportionality exists for students with significant cognitive disabilities participating in the alternate assessment. In addition, the NCDPI will provide technical assistance as needed to individual districts and charter schools where disproportionality is present. In the justification form submitted by each LEA and charter school, disproportionality is addressed in the percentage of students in any subgroup taking an AA-AAAs.

**(iii) 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 further school years;**

Beginning in the 2018–19 school year, special educators were trained on the use of the *IEP Team Decision-Making and Consideration Process Tool* in order to effectively facilitate IEP team meetings in which decisions about alternate academic achievement standards and alternate assessments may be considered. This tool guides teams through the acceptable data sources and the questions to answer when considering if a student has a significant cognitive disability and is eligible for the instruction and assessment based on alternate academic achievement standards. The learning pathways guidance document also provides IEP teams with the appropriate instructional and assessment alignment information for each of the pathways. Annually, the Alternate Assessment Eligibility Criteria is reviewed using the latest scholarly research, state partnerships, district and school level input, as well as stakeholder feedback. This annual review and revision process will remain active as North Carolina continues to provide schools the tools they need to appropriately determine the educational plan for students with the most significant cognitive disabilities.

In 2019–20 and 2020–2021, the Exceptional Children’s Division will collaborate with the Accountability Services Division to implement the following:

1. Identification of LEAs and charter schools with the subgroup of atypical eligibility categories.
2. Conducting a webinar with Testing Coordinators and EC Directors in LEAs and charter schools identified with atypical student eligibilities.
3. Coordinate targeted monitoring of some LEAs and charter schools through the Policy, Monitoring, and Audit section within the EC Division.
4. Coordinate and conduct desk reviews for the additional LEAs and charter schools identified.

The identified areas above provide a closer look at individual LEAs and charter schools who have continued to exceed the 1.0 percent participation.

**(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;**

The NCDPI provides explicit training annually for all professionals involved with identifying students as having a significant cognitive disability. This training encompasses the eligibility

criteria defined by the state, as well as information about the impact the decision to identify a student with a significant cognitive disability has on a student's graduation and post-secondary opportunities. For districts and charter schools that exceed the 1.0 percent cap, additional monitoring, support, and technical assistance will be provided by the NCDPI to ensure that all students are appropriately educated and assessed based on individual needs. Providing decision-making teams with targeted support will enable the NCDPI to have a better understanding of gaps in information-sharing that exist within the state and will inform plans to strategically address them.

The NCDPI will make 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 resources will include, but are not limited to, post-secondary and transition planning for students with significant cognitive disabilities, implications for selecting the alternate content standards, and supplemental aids and supports that may be available to support participation 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)(iv) of this section.**

The *Justification Process* will require each district and charter school that anticipates exceeding 1.0 percent participation on the alternate assessment aligned with alternate academic achievement standards address disproportionality found in a data analysis.

**(iv) If a 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 NCDPI analyzed participation data from the 2018–19 school year in each subject for the alternate assessment aligned to alternate academic achievement standards to determine the participation rates for the 2020–21 school year. The NCDPI will utilize the participation data results to provide evidence that North Carolina exceeded the 1.0 percent participation cap in the alternate assessment, a report will be created to document progress made on the waiver request and a plan and timeline will be developed for future action.

## **Timeline**

**December 11, 2020**—Waiver submitted for public comment

**December 11, 2020—January 10, 2020**—Written public comments accepted

**January 11, 2020—January 15, 2021**—Incorporate public comments

**February 1, 2021**—Waiver submitted to the United States Secretary of Education