

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 20, 2022.

Written comments on the proposed waiver may be submitted to 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.

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.

As presented in Table 1, the NCDPI anticipates exceeding the 1.0 percent cap on alternate assessment participation in science at grades 5 and 8 for the 2021–22 school year. The data in Table 1 is the reported data from the 2020–21 school year. While the data suggests exceeding the 1.0 percent cap only in the area of science at grades 5 and 8, the NCDPI recognizes that due to the circumstances related to COVID-19, the participation percentages in other subject and grades may rise.

Table 1. *North Carolina Anticipated Alternate Assessment Participation for the 2021–22 School Year*

Subject and Grade(s)	Numerator	Denominator	Percent
Mathematics Grades 3–8	6,775	658,235	1.0%
Mathematics Grade 11	152	80,927	.2%
ELA/Reading Grade 3–8	6,773	661,596	1.0%
ELA/Reading Grade 10	876	104,025	0.8%
Science Grades 5 & 8*	2,346	221,649	1.1%
Science Grade 11	146	65,056	.2%

* Subject areas that exceed 1.0 percent of test population.

Since testing was waived in the 2019–20 school year, not all grade 10 students participated in the NCEXTEND1 Alternate Assessment, resulting in a lower number of students being reported in the

numerator for mathematics and science at Grade 11. The grade 10 mathematics and science NCEXTEND1 Alternate Assessment scores are banked and utilized the following year in grade 11 reporting. The NCDPI anticipates the mathematics and science participation percentages to rise for the 2021–22 school year.

(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 a comparison of the 2018–19 and 2020–21 school year participation data, which includes 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. *North Carolina Alternate Assessment 2018–19 and 2020–21 School Year Participation by Subgroup*

Subgroup	Total Number of Alternate Assessments Administered		Total Number of Assessments Administered		Percentage of Alternate Assessments Administered	
	2018–19	2020–21	2018–19	2020–21	2018–19	2020–21
English Learners	2,337	2,095	129,526	134,809	1.8%	1.6%
Economically Disadvantaged Students	12,969	8,181	935,158	690,781	1.4%	1.2%
Students with Disabilities	21,405	16,759	251,172	221,681	8.5%	7.6%
Hispanic	3,484	3,042	370,722	354,594	0.9%	0.9%
Asian	615	553	68,340	65,106	0.9%	0.8%
Black	7,454	5,691	502,266	437,831	1.5%	1.3%
White	8,894	6,694	946,540	822,998	0.9%	0.8%
Native American	245	206	22,695	19,992	1.1%	1.0%
Multiple Ethnicities	985	846	89,287	88,517	1.1%	1.0%

(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 using the general assessment under standard conditions, the general assessment with accommodations, or the alternate assessment aligned with alternate academic achievement standards with or without accommodations. The only exception to participation is for medical exceptions approved by the NCDPI medical exception committee. As previously stated, North Carolina in the 2017–18 and 2018–19 school years, met the ninety-five percent (95%) participation rate requirement of all students and in the subgroup of students with disabilities under section 1111(c)(2)(C) of the Act who are enrolled in grades for which the assessment is required under §200.5(a). For the 2019-20 school year, the NCDPI Accountability Services Division submitted a request to the United States Department of Education (USED) seeking approval to waive federal testing and accountability requirements and the waiver request was approved. As a subsequent result of the waiver approval, the NCDPI rescinded the 1.0 Percent Participation extension waiver that had been submitted to the USED for the 2019–20 school year. Also, as a result of the approved federal testing and accountability waiver, state testing did not occur in North Carolina schools at the end of the 2019–20 school year, and therefore, the NCDPI did not have test data to share with the USED. Due to COVID-related circumstances during the 2020–21 school year, the NCDPI experienced an influx of medical exceptions coupled with a lower rate of test participation across the state.

As shown in Table 3, data from all required assessments in the 2017–18 and 2018–19 school years show testing greater than ninety-five percent (95%) of all students and within the students with disabilities subgroup. While the 2020–21 school year does not show greater than ninety-five percent (95%) in all areas, the percentages are at or above ninety-three percent (93%) for all students and at or above eighty-nine percent (89%) for the students with disabilities subgroup.

Table 3. *North Carolina Statewide General Assessment Participation Rates for the 2017–18, 2018–19, and 2020–21 School Years*

Subject and Grade(s)	Student Group	2017–18 Percent Participation	2018–19 Percent Participation	2020–21 Percent Participation
Mathematics Grades 3–8	All Students	>95%	>95%	93%
	Students with Disabilities	>95%	>95%	91%
Mathematics Grade 11	All Students	>95%	>95%	>95%
	Students with Disabilities	>95%	>95%	>95%
ELA/Reading Grades 3–8	All Students	>95%	>95%	93%
	Students with Disabilities	>95%	>95%	91%
ELA/Reading Grade 10	All Students	>95%	>95%	93%
	Students with Disabilities	>95%	>95%	89%
Science Grades 5 & 8	All Students	>95%	>95%	93%
	Students with Disabilities	>95%	>95%	90%
Science Grade 11	All Students	>95%	>95%	>95%
	Students with Disabilities	>95%	>95%	95%

(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 is 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 public school unit 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 public school units Exceptional Children (EC) 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 public school units and the public in understanding this determination process. This document is updated regularly with new information as needed. An Individualized Education Program (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 who may have a significant cognitive disability. This tool was implemented statewide in the 2018–19 school year. The EC Division completed and posted a webinar to the state’s website which included information about students who may be appropriate for the alternate assessment. In addition, the EC Division has provided guidance and information to Exceptional Children Directors at the Directors’ Advisory Council, the Regional Directors Meeting, and the 70th Exceptional Children Conference Institute (2021).

North Carolina will conduct course enrollment cross checks to ensure that every student enrolled in courses using the Extended Content Standards is assessed using the alternate assessment, which is based on those standards. The cross enrollment cross checks will be conducted using course codes that are specific to class enrollment and school level. (Courses that use the Extended Content Standards, 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.) Findings from the Course Enrollment Cross Checks are designed to prompt appropriate guidance, support, and continued monitoring of specific public school units as needed.

In the 2019–20, 2020–21, and 2021–22 school years, the Exceptional Children’s Division continued to collaborate with the Accountability Services Division to implement concentrated monitoring to include reviewing public school units (with an n-size greater than fifteen) who identify students with atypical eligibility categories and rates higher than two percent. Some public schools in North Carolina will continue to provide instruction remotely during the 2021–22 school year and the EC Division will implement virtual desk monitoring for these select public school units.

(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 EC Division and the Accountability Division will continue to address disproportionality in the percentage of students participating in the alternate assessment aligned with alternate academic achievement standards by requiring a justification from each district and charter school that exceeds the 1.0 percent cap. Public school units were encouraged to analyze their data for disproportionality to include, but not limited to, internal audits and compliance checks to ensure students taking the NCEXTEND1 Alternate Assessment meet the eligibility criteria. The NCDPI will continue to provide professional development opportunities through face-to-face and webinar format to present current data as well as updated training on the eligibility criteria. In addition, the NCDPI will provide technical assistance as needed to individual districts and charter schools where disproportionality is present.

The NCDPI will require public school units that exceed the 1.0 percent cap for the total student population assessed in a subject area using an alternate assessment to complete the disproportionality excel worksheet to assist in identifying student and subject areas of concern. Staff members tasked with deciphering the disproportionality data will be provided guiding questions to help pinpoint concerns. Public school units are expected to submit the worksheets along with an action plan that address how the areas of concern will potentially be rectified in future years.

(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;

Exceptional children educators are 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 that should be answered 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 Alternate Assessment Eligibility Criteria is reviewed annually using the latest scholarly research, state partnerships, and district and school level input. 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 October 2020, the EC Division developed and disseminated a Canvas course to professionals in the field titled, *North Carolina Extended Content Standards*. Module 1 of the course provides an in depth focus on legislation, definitions, and IEP team decisions, including a video, review, and quick assessment of the IEP Team Decision-Making and Consideration Process Tool. The Canvas course is updated by the EC Division annually to incorporate any updated information and additional guidance.

In preparation for the 2021–22 school year, the EC Division created a video for school-based administrators. The video is titled, *Administration Support Video for the ECS Classroom*, elaborates on the following topics:

- ESSA requirements,
- who should be instructed using the Extended Content Standards,
- the IEP Team Decision-Making and Consideration Process Tool,
- a resource titled, *Using the Least Dangerous Assumption in Educational Decisions*, from the TIES Center,
- district and teacher matrix identifying needs in professional learning opportunities,
- identifying communication needs for students, and
- analyzing core instructional time in the ECS classroom.

The video was sent out via the quarterly EC Director's Meeting, the EC Director's Weekly Memo, and the significant cognitive disabilities Listserv in August 2021.

In the 2019–20, 2020–21, and 2021–22 school years, the EC Division collaborated with the Accountability Services Division to implement the following:

1. Providing targeted assistance to identified public school units.
2. Facilitation of a webinar with Testing Coordinators and EC Directors in public school units.
3. Coordination of targeted monitoring of some public school units through the Policy, Monitoring, and Audit section within the EC Division.
4. Coordination of desk reviews for the additional public school units identified.

Implementation of the above steps provided a focused review of public school units that have continued to exceed the 1.0 percent participation. The NCDPI identified twenty-one public school units (nineteen LEAs and two charter schools) who are at or above 1.6% for participation on the NCEXTEND1 Alternate Assessments during the 2020–21 school year.

Additionally, as part of the plan and timeline, the NCDPI will provide comprehensive training annually for all professionals involved with identifying students as having a significant cognitive disability. This training includes the eligibility criteria defined by the state, and 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 public school units 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.

Informational resources are available to parents of students with disabilities to assist them when considering which assessment(s) their student will take. Parent resources 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.

(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 comprehensive training annually for all staff involved with identifying students as having a significant cognitive disability. This training includes 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 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* requires each public school unit that anticipates exceeding 1.0 percent participation on the AA-AAAS to address disproportionality found in a data analysis. After the 2021–22 school year testing window, the NCDPI will analyze participation data in each subject for the alternate assessment aligned to alternate academic achievement standards to determine the anticipated participation rates for the 2022–23 school year.

(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 2020–21 school year in each subject for the alternate assessment aligned to alternate academic achievement standards to determine the participation rates for the 2021–22 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 21, 2021—Waiver submitted for public comment

December 21, 2021—January 20, 2022—Written public comments accepted

January 24, 2022—January 28, 2022—Incorporate public comments

February 1, 2022—Waiver submitted to the United States Secretary of Education