

Matthew G. Bevin
Governor



Hal Heiner
Secretary
Education and
Workforce Development Cabinet

Stephen L. Pruitt, Ph.D.
Commissioner of Education

KENTUCKY DEPARTMENT OF EDUCATION

300 Sower Boulevard • Frankfort, Kentucky 40601
Phone: (502) 564-3141 • www.education.ky.gov

August 7, 2017

Millie Bentley-Memon, Ph.D.
Office of State Support, OESE, USDE
400 Maryland Ave., SW
Washington, DC 20202
202-401-1427
Millicent.Bentley-Memon@ed.gov

Curtis J. Kinnard, Ed.D
U.S. Department of Education
Office of Special Education Programs
400 Maryland Ave., SW
Washington, DC 20202
202-245-7472
Curtis.Kinnard@ed.gov

Dear Ms. Bentley-Memon and Mr. Kinnard:

The *Every Student Succeeds Act* (ESSA) amended a provision of Title I of the Elementary and Secondary Education Act of 1965 related to students participating in alternate assessments of each State Education Agency's (SEA's) statewide assessment. The ESSA requires SEAs to submit waiver requests to the United States Department of Education in the event they have more than 1% of their students participating in the alternate assessment.

The Kentucky Department of Education (KDE) has conducted an extensive review of data from Kentucky's statewide assessment - the Kentucky Performance Rating for Educational Progress (K-PREP) - for school year 2015-16. The purpose of the review was to determine the participation rates of students taking the alternate assessments aligned with alternate academic achievement standards (AA-AAAS).

The data revealed that just over one percent of Kentucky students participated in each of the content areas included of the AA-AAAS in 2015-16. Table 1 below displays participation rates by subject for the 2015-16 AA-AAAS. Based on these data, the state anticipates exceeding the one percent threshold enacted by the ESSA for school year 2017-18. Because Kentucky's state assessment window for the AA-AAAS begins in November 2017 and due to the requirement that states submit a waiver at least 90 days prior to the assessment window, there was insufficient time to analyze participation data of the

2016-17 assessment. When 2016-17 data are available, KDE will review, analyze and submit the results of this analysis to the US Department of Education.

TABLE 1: Participation in Alternate Assessment by Content

Content	Number Participating in Alternate Assessment	Number Participating in Statewide Assessment	Percent Participating in Alternate Assessment
Reading (Elem/Mid)	3,501	302,981	1.16%
Math (Elem/Mid)	3,501	302,981	1.16%
Writing (Elem/Mid/High)	2,855	245,452	1.16%
Language Mechanics (Elem/Mid/High)	1,751	147,512	1.19%
Social Studies (Elem/Mid)	1,190	99,399	1.20%
English II (High)	665	50,172	1.33%
Algebra II (High)	577	46,610	1.24%
Biology (High)	520	47,920	1.09%
US History (High)	537	46,613	1.15%

Pursuant to 34 C.F.R. §200.6(c)(4), the Kentucky Department of Education (KDE) is seeking a waiver for all subject areas for the 2017-2018 school year from the Secretary for the United States Department of Education. Kentucky has two testing windows for the AA-AAS during the fall and spring of each school year. The start date for each subject is scheduled for November 6, 2017. Submission of the KDE waiver request comes 90 days prior to the start of the first testing window.

The KDE sought public comment on its request for a waiver on the number of students who can participate in the AA-AAAS of K-PREP test. The KDE issued a news release on July 19, 2017 to seek public input on the waiver request. The news release was also posted on KDE’s website, shared on listservs for district assessment coordinators and directors of special education, and disseminated via e-mail to other advisory groups and partners. The notice was posted for two weeks, the usual amount of time the agency posts such notices for public comment.

During the public comment period the KDE received a total of 12 comments: one oral and 11 written comments. The documents are included in the following attachments:

Attachment 1 includes KDE's news release of the public notice and comment period.

Attachment 2 includes the public notice of waiver request posted for public comment.

Attachment 3 includes e-mails that were shared with various stakeholders soliciting feedback.

Attachment 4 includes public comments received by the KDE.

Attachment 5 includes KDE's response to public comments.

Kentucky follows the federal participation requirements for assessment and requires all students enrolled in public K-12 schools be assessed with accommodations, without accommodations or with AA-AAAS. The only exception to participation for *any* student is to receive a medical or extraordinary circumstances non-participation waiver. To date, Kentucky has met or exceeded the federal guidelines set at 95% participation rate of all students, including students with disabilities in the K-PREP assessment. For the 2015-16 school year Kentucky's participation rate for students with disabilities was 99.8%.

Local district data was reviewed and analyzed. There were 94 of 173 districts that assessed more than one percent of its assessed students with an AA-AAAS during the 2015-16 school year. KDE's Division of Learning Services (DLS) has reached out to each district with a participation rate greater than one percent and requested written assurances that each Individual Education Program (IEP) Team, known in Kentucky as the Admissions and Release Committee (ARC), in the district is following the *Alternate Assessment Participation Guidelines* when making assessment participation decisions. The correspondence sent to the local districts is included in *Attachment 6*.

To further assist the KDE with ensuring all students are appropriately assessed, the KDE formed an Alternate Assessment and Diploma Advisory Group. The advisory group was designed to assist with developing statewide processes for:

- Assuring the state has verified that each district followed the state's guidelines;
- Addressing disproportionality in the percentage of students in each subgroup;
- Developing a plan and timeline for:
 - Improving the implementation of the state's guidelines for participation in alternate assessment,
 - Reviewing and revising the state's definition of students with the most significant cognitive disabilities,
 - Describing the steps the state will take in providing appropriate oversight to each district 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;
 - Addressing any disproportionality in the percentage of students taking an alternate assessment;
 - Developing and distributing resources for parents that includes information on Kentucky's Alternate Assessment Participation Guidelines, requirements of the AA-AAAS, and accommodations that enable students to participate in the general assessment to the maximum extent possible; and
 - Reporting assessment data publicly.

The advisory group consists of renowned experts in the field of low incidence disabilities from the Human Development Institute at the University of Kentucky, consultants who specialize in low

incidence disabilities from the state's special education divisions of the regional educational cooperatives, and special education directors from local education agencies. KDE staff from the Office of Teaching and Learning, Division of Learning Services (DLS) and the Office of Assessment and Accountability participate in advisory group meetings. An external facilitator leads the meetings. The initial convening of the advisory group occurred on July 7, 2017 at the KDE office building. The context for the advisory group was set through a careful review of the requirements of the Every Student Succeeds Act (ESSA), as well as recent state legislation. During the initial meeting, the group began the review and revision of the state's *Alternate Assessment Participation Guidelines (Attachment 7)*; definition of a student with the most significant cognitive disabilities (*Attachment 8*); and development of the state's oversight and monitoring procedures for each district that the state anticipates will assess more than one percent using the AA-AAAS. A meeting agenda is included as *Attachment 9*.

A subsequent meeting was held on August 1, 2017. The meeting focused on the procedures the state will implement to ensure appropriate oversight of each local school district and how it will respond to the districts that exceed the one percent cap. The August 1st agenda is included as *Attachment 10*. Future meetings of the advisory group are scheduled for August 14 and 24, 2017. The final recommendations are expected to be provided to KDE during the advisory group meeting scheduled for August 24, 2017. The final versions will be presented to the Kentucky Commissioner of Education for approval on September 6, 2017.

Once the state's definition and *Alternate Assessment Participation Guidelines* are officially approved, the DLS will continue collaboration with the advisory group to develop a training plan for extensive statewide support in the area of professional development around the alternate assessment as a whole. KDE will involve stakeholders and experts in the field of low incidence disabilities to assist with implementation of the training plan. Stakeholders include the special education divisions of the regional educational cooperatives; institutes of higher education, including the University of Kentucky and the University of Louisville; the KDE's Local Director of the Special Education Advisory Group, and other stakeholders.

Statewide universal training and support will be provided to regional cooperatives and local districts. Training will include:

- Implementing the requirements set forth in the ESSA, including:
 - Using the Alternate Assessment Participation Guidelines (developed by KDE to determine if a student will take part in the AA-AAS) to make assessment participation decisions;
 - Selecting, implementing and evaluating 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 of their disability; and
 - Understanding implications of student participation in the alternate assessment as it applies to the type of diploma the student earns, as well as the student's postsecondary and career pathway.
- Understanding the state's definition of students with the most significant cognitive disabilities;
- Using the Learning Characteristics Inventory (LCI) as a tool for investigating the true learning characteristics of students participating in the AA-AAS;
- 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-AAS;

- Informing and engaging parents in the conversations and decisions around participating in the AA-AAS;
- Publicly reporting statewide AA-AAS data while maintaining student confidentiality; and
- Addressing any disproportionality in the percentage of students taking an AA-AAS.

The training plan will be developed no later than December 1, 2017. Full dissemination and implementation of the plan will begin immediately following the development. While the extensive, universal training plan is being developed, the KDE will simultaneously begin training special education cooperative and local district staff on the state's definition of students with the most significant cognitive disabilities and the *Alternate Assessment Participation Guidelines* no later than September 15, 2017.

The KDE will take additional steps to support and provide oversight to each district that exceeds the one percent threshold to ensure that only students with the most significant cognitive disabilities participate in the AA-AAAS. An annual review of local district data on participation rates in each subject of the alternate assessment will be conducted by the KDE. Districts that exceed the one percent participation rate will be required to provide KDE with a detailed justification for exceeding the one percent cap. Data from the *Alternate Assessment Participation Guidelines* and *Learning Characteristics Inventory (LCI)* may be included in the justification. The *LCI* will be completed and analyzed at the local level to assist districts in ensuring only the students with the most significant cognitive disabilities are participating in the AA-AAS.

Districts with unusual patterns or higher participation rates may require additional examination by the KDE to determine if there are unique reasons for higher percentages of students participating in the AA-AAAS. The KDE will implement a targeted monitoring process based on the following approach:

- If the total number of districts exceeding the participation rate of one percent is 10 or fewer, KDE will monitor all districts exceeding the one percent.
- If the total number of districts exceeding the participation rate of one percent is greater than 10, up to 100, KDE will select 10 districts to be monitored based on the districts with the highest level of disproportionality among the various subgroups based on their risk ratios (*Risk ratios are described below.*).
- If the total number of districts exceeding the participation rate of one percent is greater than 100, KDE will select 10 districts to be monitored based on the districts with the highest level of disproportionality among the various subgroups based on their risk ratios.

The monitoring team will conduct on-site visits or desk monitoring to ensure districts are utilizing the *Alternate Assessment Participation Guidelines* to make appropriate decisions for students who are participating in the AA-AAS. Data from the monitoring visits will be used to develop targeted, content-specific training and support aimed at addressing each district's unique needs. For districts that continue to exceed the one percent threshold, a more intensive approach will be taken. The KDE and collaborative partners will provide intensive ongoing training, coaching and support developed specifically for local directors of special education, ARC chairpersons and other IEP team members, to ensure appropriate assessment of all students.

The monitoring process will be shared with local districts as part of the universal training plan. As part of the training and monitoring plan, local districts will be required to address disproportionality among subgroups of students participating in the AA-AAAS. Monitoring will begin in the spring of 2018.

To determine if disproportionality of students participating in the AA-AAAS of Kentucky's statewide assessments exists, the KDE will use a risk ratio method to analyze the participation of students taking the alternate assessment in each of the following subgroups:

1. Racial and Ethnic Groups
 - a. White
 - b. Black or African American
 - c. Hispanic
 - d. Native American or Alaska Native
 - e. Asian
 - f. Pacific Islander
 - g. Two or More Races
2. Socio-Economic Status (As determined by students' eligibility for Free and Reduced Price Meals)
3. English Language Learners
4. Gender
 - a. Female
 - b. Male

To determine a risk ratio for these various subgroups, the KDE will examine the risk of each subgroup to participate in the AA-AAAS, compared to the risk of students not in the subgroup to participate in the AA-AAAS. The risk analysis of the various subgroups will identify if any of the subgroups are more likely than others not in the subgroup to participate in AA-AAAS. The analysis will provide the KDE with information on the student subgroups, to focus initiatives on reducing the percentage of students participating in this assessment.

Participation rates for all students participating in K-PREP are included in *Attachment 11*. The KDE has extracted the participation rates for subgroups of students assessed with the AA-AAAS. Data reviewed for each of the subgroups is from the 2015-16 statewide assessments, as Kentucky has not yet completed its analysis of the 2016-17 assessments. The KDE used the process described below to determine the level of disproportionality of students participating in AA-AAAS by subgroup and content area as reported in *Attachment 12*. The subgroup with overwhelming disproportionality are those eligible for free or reduced meals. This subgroup is followed in order by males, English Language Learners, Homeless students, African American and white students.

Kentucky administers statewide assessments in each of the following areas:

- Reading
- Mathematics
- Writing
- Language Mechanics
- Social Studies
- Science

Kentucky also administers statewide *End-of-Course* assessments for high school students for these classes:

- English II
- Algebra II
- Biology

- United States History

The KDE's disproportionality analysis will examine data for each of the content areas above for as many of the subgroups for which data are available. The KDE will determine whether a subgroup has disproportionate participation in the AA-AAAS by using a risk ratio analysis. The risk ratio method is the same analysis used by the KDE in determining disproportionate representation for Indicators 9 and 10 in its State Performance Plan. See https://education.ky.gov/specialed/excep/IDEA/Documents/FFY_2014_APR.pdf. The risk ratio method is described beginning on page 64.

A risk ratio of 1.00 for a subgroup means there is no disproportionality and the rate of participation of the subgroup in the AA-AAAS is neither more nor less likely than the likelihood of students not in the subgroup. A risk ratio of greater than 1.00 means students in the subgroup are more likely to participate in the AA-AAAS than students not in the subgroup. The higher the risk ratio, the greater the chance that students in the subgroup will participate in the AA-AAAS as compared to students not in the subgroup.

The KDE considers there to be disproportionality for a subgroup when the risk ratio exceeds a threshold of 2.0. This means for any subgroup that participates in alternate assessment at a rate that is greater than twice the rate of students not in that subgroup, KDE assumes the group has been disproportionately identified for participation in the AA-AAAS at this rate and it should be examined. Because of the small numbers of students who may be participating in the AA-AAAS at an LEA, the KDE does not require any minimum cell or n-sizes when calculating the risk ratio.

Below is the formula KDE will use to calculate the risk ratio for each subgroup in each school district:

A. The risk of participating in the AA-AAAS by students in the subgroup:

The number of students in the subgroup participating in AA-AAAS (Cell Size) divided by the number of students in the subgroup participating in the statewide assessment (N-Size) multiplied by 100 = the subgroup's risk of participating in the AA-AAAS.

B. The risk of participating in the AA-AAAS for all other students (the comparison group):

The number of students in the comparison group participating in the AA-AAAS (Cell Size) divided by the number of students in the comparison group participating in the statewide assessment (N-Size) multiplied by 100 = the comparison group's risk of participating in the AA-AAAS.

C. The risk ratio for the subgroup:

The risk of the subgroup (A) divided the risk of the comparison group (B) determines the risk ratio for the subgroup. Because Kentucky has a risk-ratio threshold of 2.0, any subgroup with a risk ratio of greater than 2.0 is considered to have disproportionality that must be reviewed.

The KDE believes its plan of:

- identifying districts with more than 1% of its students taking the AA-AAAS;
- providing training and technical assistance to districts to ensure appropriate decisions for participation in the AA-AAAS are made by IEP teams;
- identifying districts with subgroups that disproportionately participate in the AA-AAAS; and
- monitoring districts with more than 1% of their students participating in the AA-AAAS

will act to reduce the percentage of Kentucky students participating in the AA-AAAS to the 1% limit required by the ESSA.

Please contact Gretta Hylton at Gretta.Hylton@education.ky.gov or via phone at (502) 564- 4970 to discuss the content of this waiver request or to get any questions addressed. We look forward to working with U.S. Department of Education staff to achieve a positive response to the request.

Sincerely,



Stephen L. Pruitt, Ph. D.
Commissioner of Education