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June 14, 2021

The Honorable Frank Brogan
Assistant Secretary for
Elementary and Secondary Education
United States Department of Education
400 Maryland Ave. SW
Washington, D.C. 20202

Dear Assistant Secretary Brogan:

Please find enclosed with this letter Kansas' waiver extension request pursuant to 34 C.F.R. §200.6 (c)(4). The submission of a waiver extension in accordance with 34 C.F.R. §200.6 (c)(4) is warranted for reading/language arts, mathematics, and science for the 2021-2022 school year.

For more information or questions on the attached waiver request for the 2021-2022 school year AA-AAAS 1% participation requirement, please contact Beth Fultz, Assistant Director of Career Standards and Assessment Services for the Kansas State Department of Education at bfultz@ksde.org or 785-296-2325.

Sincerely,

Beth Fultz

Beth Fultz
Assistant Director of Assessments
Career Standards and Assessment Services
Kansas Department of Education

Kansas State Department of Education

AA-AAAS 1% Threshold Waiver Extension

Request Pursuant to 34 C.F.R §200.6(c)(4)

June 2021



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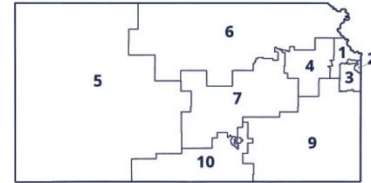


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JAN. 2021

KSDE AA-AAAS 1% Threshold Waiver Extension Request

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KSDE AA-AAAS 1% Threshold Waiver Extension Request

Introduction

Pursuant to 34 C.F.R. 200.6(c)(4), the Kansas State Department of Education (KSDE) is seeking a waiver extension of 34 C.F.R. 200.6(c)(2) for the 2021-2022 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 1.0 percent of the total number of students assessed in the state.

KSDE has adopted alternate academic achievement standards for students with the most significant cognitive disabilities and measures the achievement of those standards with an alternate assessment aligned with alternate academic achievement standards (AA-AAAS). Federal regulation 34 C.F.R. 200.6(c)(2) requires that, for each subject for which assessments are administered, the total number of students assessed in that subject using an AA-AAAS may not exceed 1.0 percent of the total number of students in the State who are assessed in that subject.

One Percent Waiver Extension Request Requirement

Requirements for submitting a request to extend a waiver for an additional year are included in 200.6(c)(4)(v). Specifically, the state is to meet the requirements of 200.6(c)(4)(i)-(iv), as well as, show substantial progress toward the achievement of each component of the previous year's plan and timeline. The KSDE received notification on August 7, 2020 that the United States Department of Education had granted Kansas a waiver of section 111(b)(2)(D)(i)(I) of the ESEA, allowing the State to assess more than 1.0 percent of the total number of students assessed in reading/language arts, mathematics, and science on the AA-AAAS for 2020-2021.

State testing window

KSDE is submitting a waiver extension request to the U.S. Department of Education at least 90 days prior to the start of Kansas' instructionally embedded testing window for its alternate assessment in reading/language arts, math and science as we anticipate the possibility of being over 1.0 percent. Kansas participates in the Dynamic Learning Maps (DLM) instructionally embedded assessment. Reading/language arts and mathematics assessments consist of two instructionally embedded test windows. Kansas' instructionally embedded assessment for reading/language arts and mathematics has a fall test window (September 13, 2021 – December 17, 2021) and a spring test window (February 7, 2022 – May 6, 2022). The science assessment is a summative assessment administered during the spring test window (February 7, 2022 – May 6, 2022).

State-level data on participation

The Kansas State Department of Education requested waivers of accountability, school identification, and related reporting requirements under the Elementary and Secondary Education Act of 1965 (ESEA): Title I, Sections 1111(c)(4) and (d)(2)(C)-(D), and 1111(h) related to accountability, school identification and reporting from the 2020-2021 school year. This includes the requirements that a State measure progress toward long-term goals and measurements of interim progress; meaningfully differentiate, on an annual basis, all public schools, including by adjusting the Academic Achievement indicator based on a participation rate below 95 percent for the 2020- 2021 school year. Kansas still required all districts to test all in-person students on the annual state assessment in Spring of 2021. We also expected the LEAs to continue their local assessments and use all of these data sources to help drive instruction in closing student learning gaps. The KSDE will continue to collect state assessment participation and results data and report what information we have available on our public reporting site.

State-Level Data showing 95% participation overall and for students with disabilities subgroup

Kansas expects all students enrolled in public K-12 schools take assessments with accommodations, without accommodations, or with an alternate assessment in Grades 3-8 and high school. Kansas follows the federal participation requirement and, to date has met or exceeded the federal guidelines set at 95%. The KSDE received an accountability and assessment waiver for the 2019-2020 assessments. The KSDE requested an accountability waiver for the 2020-2021 school year. Due to the state assessment window still being open when the waiver extension needed to be out for public comment, no participation data is included at this time. The KSDE will submit participation data once it is available.

State Assurance

By submitting this request, the Kansas State Department of Education assures that it has verified that each LEA that the state anticipated would assess more than 1.0 percent of its assessed students in a subject using the AA-AAAS followed the state's participation guidelines; and addressed any disproportionality in the students taking the AA-AAAS. Due to assessments being canceled during the 2019-2020 school year, LEAs only completed assurances during the 2020-2021 school year. No justifications were completed due to having no assessment data to report. The KSDE collected assurances from 142 districts that anticipated testing over 1.0 percent of their students on the DLM during the 2020-2021 school year. Justifications and assurances are posted at <http://www.ksde.org/Default.aspx?tabid=567>.

The KSDE will provide LEAs data on disability categories taking the DLM, risk ratio data by subgroup (disproportionality), and percentage of students performing at target or advanced. This data will be provided by subject. Districts will be requested to use this data to complete their 2020-2021 alternate assessment justifications in December 2021. If a LEA has a risk ratio of greater than 3.0, they will be required to explain how they will address the disproportionality.

Assurances are included in the justifications. LEAs that anticipate testing over 1.0 percent of their students on the DLM for the 2021-2022 school year are required to

complete DLM assurances.

The LEA must submit assurances for each of the following five items:

1. Individualized Education Program (IEP) teams have correctly identified students with the Most Significant Cognitive Disability.
<http://www.ksde.org/Default.aspx?tabid=887>.
2. The district has measured the achievement of, at least 95% of all students, including students with disabilities in tested grades.
3. Students who will be participating in an alternate assessment receive instruction aligned to the alternate academic achievement standards, the Essential Elements. https://dynamiclearningmaps.org/erp_ie/ks-ela
https://dynamiclearningmaps.org/sci_resources
4. Parents are informed of their child's participation in an alternate assessment and the implications of participating.
5. The district addressed any disproportionality in the percentage of students in any subgroup taking the alternate assessment.

Outlined below is a summary of the State Plan and Timeline activities included in the 2020 KSDE waiver extension request with a description of how each activity was completed.

Plan and timeline

Plan and timeline for improving the implementation of participation guidelines (and possibly revising definition of *students with the most significant cognitive disabilities*)

The goal of this waiver component is to ensure each student eligible to take a Kansas State Assessment, is administered the appropriate form of the assessment. The KSDEs plan and waiver request outlined several key strategies and action steps toward reaching this goal: revising the state's participation guidelines to emphasize distinct criterion; revising the state-adopted definition of students with the most significant cognitive disabilities in the state; providing training, tools, and technical assistance to improve the implementation of the state's participation guidelines; and leveraging the concept of least dangerous assumption with the field.

The KSDE updated the *DLM participation guidelines*, *Kansas Alternate Assessment Flow Chart*, and *Rubric for Determining Participation on the Kansas Alternate Assessment (DLM)*. The KSDE also created *IEP Team Resource: Making Decisions about Participation in the Alternate Assessment* based on the *NCEO Tool 10 IEP Team Resources: Making Decisions about Participation in the Alternate Assessment*. Beginning with the 2021-2022 school year, the *DLM participation guidelines* will have five criteria that all have to be “yes” for a student to participate in the DLM. The criteria for parent/legal education decision-maker notification were added. The *Alternate Assessment Notification* fact sheet was also created in winter 2021 and shared with the field to assist IEP teams in communicating clearly the necessary information with parents and legal decision-makers. The language for criteria one and two on the *DLM participation guidelines* emphasizes using assessment data to support a most significant cognitive disability and significant deficits in adaptive behavior. A column was added for the IEP team to include supporting evidence for each criterion. These documents are located at <http://www.ksde.org/Default.aspx?tabid=887>.

DLM Participation Guidelines criteria

1. The student has a most significant cognitive disability (intellectual disability).
2. The student has significant deficits in adaptive behavior.
3. The student is primarily being instructed (or taught) using the Dynamic Learning Maps Essential Elements as content standards.
4. The student requires extensive direct individualized instruction and substantial supports to achieve measurable gains in all grade-and age-appropriate curriculum.
5. Parent/legal education decision-maker notification.

The KSDE shared the updated participation guidelines through the following activities:

- April 9, 2021 – Directors Webinar
- April 15, 2021 – DLM webinar
- May 5, 2021 – Curriculum, Instruction, and Assessment Leaders meeting
- Upcoming – July KSDE Leadership Conference

The KSDE consultants presented a breakout session at the 2020 KSDE Leadership Conference titled: Assessments and Accommodations. The updated resources and PowerPoint presentation were shared on directors, superintendents, principals, curriculum leaders, and test coordinators listservs on August 6th.

The KSDE staff participated in the CCSSO-SCASS and meetings sponsored by the

Department to inform state-level policies, practices, and procedures in relation to the state-level 1.0 percent requirement and identifying enhancements or additions to the technical assistance and tools provided to LEAs in the state. Staff attended all CCSSO-ASES meetings during the 2020-2021 school year. Staff has participated in the biweekly 1% CoP calls and the PLGs hosted by NCEO and the TIES Center.

The KSDE consultants provided technical support and training to teachers and administrators throughout the school year.

- Six DLM webinars - August 27, 2020; September 17, 2020; October 15, 2020; December 3, 2020; February 4, 2021; and April 15, 2021. The webinar recordings and materials are available at <http://www.ksde.org/Default.aspx?tabid=887e>
- Seven Directors Webinars addressing DLM and accommodations – August 14, 2020; September 25, 2020; October 30, 2020- accommodations; December 11, 2020; January 18, 2021 – accommodations; February 19, 2021; and April 9, 2021
- Five District Test Coordinators virtual calls addressing DLM and accommodations– October 6, 2020; November 3, 2020; December 1, 2020; March 2, 2021; and April 4, 2021
- Four districts/special educational cooperatives reached out for additional training/support that was provided through Zoom webinars.

Plan and timeline for taking steps to support and provide appropriate oversight to districts anticipated to exceed 1.0 percent

The KSDE took additional steps to support and provide appropriate oversight to LEAs that tested more than 1.0 percent of students with AA-AAAS, had a high number/percentage of red flags, and/or increasing trend in the number/percentage of students taking the AA-AAAS over the previous 3 years to ensure only students with a most significant cognitive disability take the AA-AAAS.

The KSDE implemented a tiered system of technical support for the 1.0 percent in October 2020. Ten districts were assigned targeted technical assistance and nine districts were assigned intensive technical assistance. All districts have access to

universal supports. Each assigned district had a 1.0 percent technical assistance lead from KSDE. Due to restrictions from COVID 19, all training and supports were provided through Zoom. These districts were provided a checklist listing the required steps for targeted technical assistance or intensive technical assistance. Six of the nineteen districts requested more flexibility to allow them to finish part of the requirements in the fall. The KSDE will be identifying additional districts for targeted and intensive technical assistance in the fall of 2021.

The three levels of technical support are listed below.

- Universal – online training and tools are available (recorded DLM training module, student information sheets); justifications and assurances are required; individual recommendations are provided to LEA on request
- Targeted Technical Assistance – appropriate local staff are required to watch the DLM training module; review of what the district’s data shows; Student Information Sheets completed and submitted to KSDE to be used as part of the district data dive; development of a plan to assist the district in identifying the correct students for the DLM; possible DLM test observations completed by KSDE staff – canceled due to COVID 19; justifications and assurances are required
- Intensive Technical Assistance – appropriate local staff required to watch the DLM training module; review of what the district’s data shows; Student Information Sheets completed and submitted to KSDE to be used as part of the district data dive; development of a plan to assist the district in identifying the correct students for the DLM; onsite folder review by KSDE staff during DLM test observations- cancelled due to COVID 19; justifications and assurances are required

The KSDE sent a letter to LEAs on January 7, 2020, advising them to review their 2018-2019 DLM participation data available in the KSDE Authenticated Application-Kansas Integrated Accountability System (KIAS). If the percentage of students taking the DLM exceeded 1.0 percent in any subject area, the LEA completed assurances for the 2020-2021 school year. No justifications were completed due to no new assessment data for the 2019-2020 school year. In December 2021, the KSDE will send a letter to LEAs advising them to review their 2020-2021 DLM participation data on KIAS and complete justifications and assurances if they tested over 1.0 percent of students on the DLM in any subject.

The KSDE provides districts with data displays located within the KIAS. For each subject, districts are provided the percentage of students who took the DLM, the number of students in each disability category that took the DLM, the percentage of students that performed at target or advanced, and subgroup data that includes risk ratios for disproportionality. Districts are encouraged to use this data to complete the DLM justification. Districts are also asked if their LEA needs further guidance in one of several areas.

The KSDE staff will assess each district's justification and respond, as necessary via email or phone call. KSDE makes these justifications publicly available, provided that such information doesn't reveal personally identifiable information about an individual student as is required by 34 CFR 200.6(c)(3)(ii) and (iv). Previous years' justifications and assurances are publicly available online at <http://www.ksde.org/Default.aspx?tabid=567>.

The KSDE created a customized data display template similar to the one developed during the NCEO Peer Learning Group meetings. The data provides KSDE with three years of data on AA-AAAS for each district in Kansas. The KSDE uses this data to flag districts that may be using practices that result in students taking an inappropriate form of Kansas State assessment in reading/language arts and/or mathematics.

The KSDE staff analyzes variables from the DLM First Contact Survey and score report information for students who take the DLM. Identified variables included disability categories that are not usually associated with students with a most significant cognitive disability (SLP, SLD, and ED), instructional setting, reading levels with comprehension, writing skills, computation skills, and performance level on the assessments. Superintendents, special education directors, and district test coordinators were emailed a letter last spring indicating the number of students that were identified with potential red flags based on the DLM First Contact Survey. The assessment performance level was not available for the 2019-2020 school year. Specific student information was then shared on request over the phone and through encrypted email.

KSDE staff utilized this data analysis to:

1. Make personal contact with LEAs whose data reflect a significant number of variables that showed potential red flags.
2. Verify that LEAs are using the most up-to-date DLM participation guidelines, Least Dangerous Assumption, and maximizing available accommodations for the general assessment. Additional training was provided to staff in LEAs upon request.
3. Provide technical support to 10 districts who were assigned targeted technical support and 9 districts who were assigned intensive technical support due to exceeding the 1.0 percent threshold, having high rates of potential red flags, and having a 3-year trend that was increasing.
4. The KSDE plans to complete DLM test observations in both the fall and spring test window in districts identified for technical assistance.

The KSDE will continue to analyze these variables and share them with districts.

Plan and timeline for addressing any disproportionality in percentage of students taking the AA-AAAS

The KSDE examined the data on subgroup participation, as reported in ESSA, on the alternate assessment, to identify and address any disproportionality in the students taking the AA-AAAS. The KSDE analyzed state risk ratio data by subgroup for each subject area for the alternate assessment for 2018-2019. The 2018-2019 state-level data did not reflect any subgroup with a risk ratio greater than 3.0 for any subject. This analysis did not take place for 2019-2020 due to no assessment data being available. The KSDE will continue examining this data for the 2020-2021 school year once it is available.

The KSDE provides data to districts on subgroup participation, as reported in ESSA, on the alternate assessment through the KIAS which is used for completing alternate assessment justifications. The KSDE ensures that all districts with a risk ratio greater than 3.0 communicate how they would address the disproportionality in the DLM alternate assessment justifications. Data from 2018-2019 showed that

97 out of 146 districts had a risk ratio greater than 3.0 in at least one subgroup for at least one subject. Some of these districts indicated that they felt small n-size was the reason they were identified. KSDE will be moving to a three-year rolling average when calculating the risk ratio to help eliminate those districts identified due to small n-size. The 2020-2021 data will be based on a two-year rolling average.

Substantial progress

The KSDE communicated the progress that was made on the plan and timeline for improving the implementation of participation guidelines and definition of *students with the most significant cognitive disabilities*; for taking steps to support and provide appropriate oversight to districts anticipated to exceed 1.0 percent, and for addressing any disproportionality in the percentage of students taking the AA-AAAS.

Due to Kansas having a fall instructionally embedded test window for the DLM, the waiver extension request is due before the KSDE will receive assessment data for 2020-2021. The assessment window for the general assessment was still open when the waiver extension went out for public comment. The KSDE does not have assessment data to show substantial progress in the number of students that were tested on the AA-AAAS. However, the data below shows that Kansas has made substantial progress in lowering the percentage of students enrolled on the AA-AAAS. When compared to the enrollment numbers shared for 2019-2020, enrollment data shows a decrease of 150 students enrolled in ELA and 154 students in math. There was an increase of 18 students enrolled in science on the DLM for the 2020-2021 school year. The total enrollment for science also increased. When calculating the percentage of students enrolled on the DLM for the 2020-2021 school year, the percentage of students enrolled in the DLM is 1.0% for ELA, math, and science. These percentages do not represent actual participation due to the spring assessments still being open when the waiver extension was submitted for public comment. It does appear that participation is down compared to prior school years due to students who are in remote instruction due to COVID 19. Kansas does not have a remote testing option for any of the state assessments.

Kansas may end up under the 1.0 percent threshold, but decided to submit the waiver extension since the 2020-2021 assessment data for calculating the 1.0 percent is not available at this time. We are also unsure of the exact impact that COVID 19 will have on the 2021-2022 assessment data at this time.

Public Comment

The KSDE sought stakeholder input on this waiver extension request from multiple stakeholder groups including: Special Education Advisory Council (SEAC); ESEA stakeholder group; local district administrators in special education and title services; parents and families through dissemination by the state's Parent Training and Information Center, Families Together, Inc.; and from the general public through the KSDE SETS website. Stakeholders were able to provide input from May 7, 2021 until June 10, 2021.

Through these opportunities, the KSDE received input from two stakeholders. The first feedback was in support of the waiver extension. The second feedback was not in support of the waiver extension. The individual stressed the importance of having high expectations for students with disabilities. The KSDE plan does place an emphasis on looking at the data and using the least dangerous assumption.

The KSDE sincerely appreciates the opportunity to improve the state system supporting AA-AAAS implementation. The KSDE will submit the 2020-2021 state-level participation data and subgroup data to the Department once it has been approved by the state board in October 2021. For more information or questions, please contact Beth Fultz, bfultz@ksde.org Assistant Director of Career Standards and Assessment Services, Division of Learning Services, Kansas State Department of Education.

For more information, contact:

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