



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

March 11, 2024

The Honorable Arsenio Romero  
Secretary  
New Mexico Public Education Department  
300 Don Gaspar Ave.  
Santa Fe, NM 87501-2786

Dear Secretary Romero:

I am writing in response to the New Mexico Public Education Department's (NMPED's) request on December 8, 2023, for a waiver of section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965 (ESEA), which stipulates that a State may not assess more than 1.0 percent of all students in the grades assessed using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS). NMPED requested this waiver because, based on State data for school year (SY) 2022-2023, NMPED has concluded that it may exceed the 1.0 percent cap on AA-AAAS in reading/language arts (R/LA), mathematics, and science.

After reviewing NMPED's waiver request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, for SY 2023-2024, a waiver of section 1111(b)(2)(D)(i)(I) of the ESEA so that the State may assess more than 1.0 percent of the total number of students in the State with an AA-AAAS in R/LA, mathematics, and science.

As part of this waiver, NMPED assured that it:

- Will continue to meet all other requirements of section 1111 of the ESEA and implement regulations with respect to all State-determined academic standards and assessments, including reporting student achievement and school performance, disaggregated by subgroups, to parents and the public.
- Had assessed in SY 2022-2023 at least 95 percent of all students and all students with disabilities who are enrolled in grades for which the R/LA, mathematics, and science assessments are required.
- Will require that a local educational agency (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 an AA-AAAS.
- Will provide appropriate oversight of an LEA that is required to submit such information to the State.
- Will verify that each LEA that is required to submit such information to the State is following all State guidelines in 34 CFR § 200.6(d) – excluding (d)(6) – and will address any subgroup disproportionality in the percentage of students taking an AA-AAAS.

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<http://www.ed.gov/>

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- Will implement, consistent with the plan submitted in NMPED’s waiver request, system improvements and will monitor future administrations of the AA-AAAS to avoid exceeding the 1.0 percent cap.

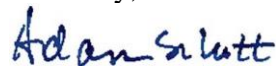
As a reminder, 34 CFR § 200.6(c)(3)(iv) requires a State to make publicly available the information submitted by an LEA justifying the need to assess more than 1.0 percent of its students on the AA-AAAS, provided that such information does not reveal personally identifiable information about an individual student. I also encourage you to publish your State’s plan, timeline, and progress in reducing the percentage of students taking the AA-AAAS.

Given the workplan submitted by NMPED, I expect to see positive results of this plan in SY 2023-2024 and beyond. Future requests for an extension of this waiver will be contingent on both continued progress implementing your plan and progress in reducing the percentage of students taking the AA-AAAS in all tested subjects.

There is currently a condition on the State’s Title I grant award because the State assessed more than 1.0 percent of the total number of students with an AA-AAAS in the 2021-2022 school year without receiving a waiver. Because the State has a small reduction in the number of students taking the AA-AAAS but still remains above 1.0 percent, the condition on NMPED’s Title I grant award will continue until the State demonstrates that it assessed less than 1.0 percent of its students with an AA-AAAS in R/LA, mathematics, and science.

I appreciate the work you are doing to improve your schools and provide a high-quality education for your students. If you have any questions, please contact my staff at [ESEA.Assessment@ed.gov](mailto:ESEA.Assessment@ed.gov).

Sincerely,



Adam Schott  
Principal Deputy Assistant Secretary  
Delegated the Authority to Perform the  
Functions and Duties of the Assistant Secretary  
Office of Elementary and Secondary Education

cc: Lynn Vasquez, NMPED Division Director, Assessment, Research, Evaluation, & Accountability