

NYSAA 1% Cap

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Welcome and thank you for participating in the New York State Education Department's Office of Special Education webcast on the 1 percent cap on students participating in the New York State Alternate Assessment (or, NYSAA).

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This webcast will provide an overview of:

- federal assessment requirements under the Individuals with Disabilities Education Act (IDEA) and Every Student Succeeds Act (ESSA) for students with disabilities;
- ESSA's 1.0 Percent State-level Cap on the participation of students with disabilities in alternate assessments;
- Process and eligibility criteria for participation in the NYSAA; and
- Consequences for the State for exceeding the 1.0 percent cap and NYSED's oversight responsibilities under ESSA and implications for local educational agencies that assess more than 1.0 percent of their students with an alternate assessment.

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Under IDEA and ESSA:

- All students with disabilities must be included in general State and districtwide assessment programs, with appropriate accommodations.
 - Alternate assessments must also be administered for students with the most significant cognitive disabilities as necessary and as indicated on their individualized education programs (IEP).

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- States are required to have guidelines for IEP teams in determining on a case-by-case basis whether a student is most appropriately assessed with an alternate assessment
- IEP teams must determine which students will participate in an alternate assessment, consistent with State guidelines.
- In New York State, the committee on special education or CSE is responsible for determining a student's participation in NYSAA consistent with New York State's guidelines, which will be reviewed in later slides.

ESSA also requires that a state's guidelines must include a definition of "students with the most significant cognitive disabilities."

The definition should address factors related to cognitive functioning and adaptive behavior such that:

- Having a particular disability or English learner designation does not determine whether a student is a student with the most significant cognitive disabilities.

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The State's definition should also address that a student is not to be identified solely on the basis of the student's previous low academic achievement or need for accommodations on State or districtwide assessments.

The State's definition should include that students with the most significant cognitive disabilities require extensive, direct individualized instruction, as well as their need for substantial supports to achieve measurable gains on challenging states academic content standards.

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The IEPs of students who are alternately assessed must include a statement of why a student cannot participate in the regular assessment and why a particular alternate assessment selected is appropriate.

States must ensure staff must receive training and know how to: administer assessments, including alternate assessments; and make use of appropriate assessment accommodations.

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ESSA limits the percentage of students that a state may assess with an alternate assessment based on alternate academic achievement standards (AA-AAAS) to no more than 1.0 percent of all assessed students in the grades assessed in a state for each subject assessed (ELA, math and science). This is to ensure that the vast majority of students take a state's general assessments and only students with the most significant cognitive disabilities take an alternate assessment aligned with alternate academic achievement standards.

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Under ESSA, states cannot prohibit school districts from alternately assessing more than 1 percent of all students tested.

However, ESSA requires any local educational agency (or LEA) that assesses more than 1.0 percent of its assessed students in any subject with an alternate assessment to submit information to the state educational agency (which in New York is the New York State Education Department or NYSED) justifying the need to exceed the 1.0 percent cap.

Based on 2017-18 data submitted by the New York State Education Department (NYSED) to the U.S. Department of Education, participation on the alternate assessment was greater than 1.0 percent in reading/language arts, mathematics and science and New York State was determined to be out of compliance with ESSA's 1.0 percent cap requirement that limits the percentage that a state may assess with an alternate 1.0 percent cap requirement in ESSA. In 2019 NYSED was required to submit a plan for reducing the rate of NYSAA participation in future years in order to come into compliance with the 1 percent requirement and a condition was placed on NYSED's Title 1 grant award. Although New York has shown improvement in the percentage of students assessed with the NYSAA, because it has not yet come into compliance. NYSED is required to annually provide an update on its plan for how the state will come into compliance with the 1% compliance with the USDE. NYSED's focus is on ensuring that LEAs are

appropriately assessing students versus meeting a participations target. In examining local data, some LEAs may determine that there is a need to adjust local practices to include intentional periodic communication and professional development around determining appropriate assessment programs for their students.

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Additionally, under ESSA , States must provide appropriate oversight of LEAs submitting justifications and make all justifications publicly available.

As part of the IEP process, parents of students being considered for participation in an alternate assessment must be clearly informed:

that their child’s academic achievement will be measured based on alternate achievement standards; and how participation in the alternate assessment may delay or otherwise affect completing requirements for a regular high school diploma.

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The U.S. Department of Education estimates that approximately 1% of all students have significant cognitive disabilities that qualify them to participate in an alternate assessment. In practice, this very small percentage of the total school population.

Using federally submitted data for the 2017-18 school year, the average participation rate across states for reading was 1.2% with a range of 0.8% to 2.1%. Similar participation rates existed for mathematics. The intent for the 1.0 percent rule is to ensure that IEP teams are correctly identifying students who should participate in an alternate assessment.

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New York State’s Commissioner’s Regulations defines students with severe disabilities to mean “students who have limited cognitive abilities combined with behavioral and/or physical limitations and who require highly specialized education, social, psychological and medical services in order to maximize their full potential for useful and meaningful participation in society and for self-fulfillment. Students with severe disabilities may experience severe speech, language, and/or perceptual-cognitive impairments, and evidence challenging behaviors that interfere with learning and socialization opportunities. These students may also have extremely fragile physiological conditions and may require personal care, physical/verbal supports and/or prompts and assistive technology devices.”

This definition is key to assisting CSEs in making appropriate recommendations for student participation in NYSAA, which will be covered in subsequent slides.

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NYSAA is part of the New York State testing program that measures the attainment of the State’s learning standards in the areas of English language arts (ELA), mathematics, and science for all students with the most severe disabilities in Grades 3-8 and high school. Students eligible to take the NYSAA are assessed annually in ELA and math in grades 3-8, and one time at the secondary level prior to exiting school. NYSAA eligible students are also assessed in science in grades 4 and 8 and one time at the secondary level. It is important to note that beginning in the spring of 2024, the science assessment will be given in grade 5. As the shift is made to the

grade level change for administration of the science assessment, students in elementary school will now be tested in science for the 2022-2023 school year.

Additional information on the NYSAA is available on the Office of State Assessment's NYSAA webpage shown on the slide.

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NYSAA eligible students are assessed using the Dynamic Learning Maps or DLM Alternate Assessment System. DLM alternate assessment is a computer-delivered adaptive assessment measuring a student's achievement of the ELA, Mathematics, and Science State Standards on Essential Elements, which are alternate achievement standards that are reduced in depth and breadth from the learning standards for students with severe disabilities.

This computerized assessment provides the opportunity to customize the assessment to the individual abilities and needs of the student. It is designed to measure a wide range of proficiencies of students and provides useful information to teachers to inform future instruction for the student.

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NYSED provides guidelines that CSEs must use in determining a student's participation in NYSAA. This includes guidance on: the decision-making process; and criteria that apply to students who should participate in the NYSAA.

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The process of determining eligibility begins with the CSE. The CSE must determine on an individual basis whether the student will participate in:
the New York general assessment with or without accommodations;
the NYSAA with or without accommodations; or
a combination of New York's general assessment for some content areas and the NYSAA for other content areas. State data shows very few instances in the past where students have participated in a general assessment for some subjects and the NYSAA for other subjects.

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The CSE must ensure that decisions regarding participation in the State testing program are not based on category of disability; excessive or extended absences; language differences; or cultural or environmental factors.

In addition, the CSE must ensure that each student has a personalized system of communication that addresses his/her needs regarding disability, culture, and native language so the student can demonstrate his/her present level of performance.

Tests and other assessment procedures used to evaluate a student with a disability's need for special education must be conducted according to the requirements of State and federal regulations. According to the National Center on Educational Outcomes, available data confirms that most students with significant cognitive disabilities are in the categories of intellectual disabilities, autism and multiple disabilities. While these are not the only disability categories reflected in the population of students with the most significant cognitive disabilities taking an alternate assessment, they are the most prevalent. Even though disability category cannot

determine whether a student is one with a severe disability, the number of students with learning disabilities, other health impairments, and speech language impairments participating in the NYSAA is one of the factors NYSED will be looking at as part of a deeper District Data Analysis in determining the level of oversight to be provided to a district.

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Only students with severe disabilities as discussed on slide 11 are eligible to take the NYSAA based on NYSED's participation criteria.

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CSEs must determine on an individual basis whether a student with a severe cognitive disability is eligible to take NYSAA based on the following criteria:

The student has a severe cognitive disability and significant deficits in communication/language and significant deficits in adaptive behavior; and

The student requires a highly specialized educational program that facilitates the acquisition, application, and transfer of skills across natural environments (home, school, community, and/or workplace); and

The student requires educational support systems, such as:

assistive technology,
personal care services,
health/medical services, or
behavioral intervention.

If the CSE determines that the student will participate in an alternate assessment on a particular State or district-wide assessment of student achievement, the student's IEP must indicate this and provide a statement of why the student cannot participate in the regular assessment, and why the particular alternate assessment is appropriate for the student.

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At each annual review, CSEs must review and determine student's eligibility to participate in NYSAA based on NYSED's Eligibility and Participation Criteria.

CSEs should thoughtfully consider how participation in NYSAA will impact student's: participation and progress in general curriculum; and opportunity to earn a NYS diploma.

States, districts, schools and CSEs need to think carefully about which students should be included in the NYSAA. NYSED cannot require LEAs to reduce the number of students they identify as participating in the NYSAA but the purpose of this webinar is to ensure LEAs receive appropriate guidance on who should be participating in the NYSAA consistent with New York State's guidelines.

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In accordance with ESSA, parents must also be clearly informed on how their child's participation in an alternate assessment impacts academic achievement and graduation. As a part of the process for developing an IEP, if the CSE determines that a student will participate in

NYSAA, the student's parents must be clearly informed that their child's performance will be measured based on alternate achievement standards that are:
reduced in depth, breadth and complexity; and
do not meet the expectations necessary to earn a regular high school diploma which is a local or Regents diploma in New York.

In addition, parents must be informed that in order to earn a diploma in NYS, students must earn required course credits and take required Regents examinations and that at the high school level, a determination that the student will not take the regular State assessments, and will participate in the NYSAA, means that the student will not meet the requirements to graduate with a regular high school diploma. This may have longer term implications on some post-school opportunities for students, including employment and post-secondary education. This determination is an important one and must be discussed at each annual meeting to review the student's IEP.

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NYSED is committed to ensuring that the vast majority of New York State students are taking the State's general assessment and that the NYSAA is administered only to those students with the most significant cognitive disabilities.

As a means of continued support for LEAs in determining whether the NYSAA is the appropriate assessment for an individual student, in May 2019, NYSED issued more in-depth guidance to the field to assist school districts in determining appropriate participation of students with severe disabilities in NYSAA, including:

- the NYSAA Eligibility Policy Brief, which provides a series of questions and answers related to NYSAA eligibility and participation considerations; and
- the NYSAA decision-making flowchart and NYSAA decision-making checklist, which should be used in the decision-making process to ensure that only those students with the most severe cognitive disabilities are taking the NYSAA.

These resources are to be used in conjunction with Office of State Assessment's [Eligibility and Participation Criteria – NYSAA](#).

To assist LEAs in ensuring that parents are appropriately informed of the implications of taking an alternate assessment, NYSED has also developed the Parent Notification of Participation in the New York State Alternate Assessment (Sample Letter). CSEs should also be discussing this information at each student's annual review meeting.

A link to access these resources is included at the end of this presentation.

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Each year, LEAs assessing more than 1.0 percent of students with NYSAA are required to:

1. Consistent with ESAA, submit information to NYSED justifying the need to exceed the 1.0 percent State-level cap. The LEA must conduct an analyses, including data, to identify possible root causes for the high percentage of students taking the NYSAA. These analyses should also include the examination of student data to determine whether disproportionality is occurring with respect to the students determined eligible to participate in the NYSAA (specifically based on race and ethnicity, socioeconomic status and English language learner status). The information gleaned from the analyses

are to be used to identify factors contributing to the LEA exceeding the 1.0 percent threshold and be the basis for the LEA's justification. These analyses should be maintained by the LEA for review by NYSED upon request. Resources to assist LEAs in conducting these analyses can be found on slides 27-28.

2. Participate in technical assistance; and
3. Submit assurances attesting to participation in technical assistance and adherence to NYSAA CSE processes and eligibility determination guidance.

LEAs submit this justification and assurance by completing the Justification for Exceeding 1.0 Percent State-level Cap on the New York State Alternate Assessment (NYSAA) Participation and Assurance of Participation in Tier 1 Universal Technical Assistance and Supports in NYSED's Information Reporting Services Data Exchange (or IDEx).

As required by ESSA, NYSED reviews and make publicly available all justifications received. LEAs submitting a justification are subject to further review and oversight by NYSED.

NYSED provides oversight of districts that assess more than 1.0 percent of its students with the NYSAA through a system of tiered interventions. The goal of this tiered intervention is to increase understanding and LEA implementation of the NYSED's NYSAA Eligibility and Participation Criteria.

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Tier 1 Universal Technical Assistance and Supports are available to all LEAs to assist in appropriate decision-making regarding participation in the NYSAA. LEAs whose NYSAA participation data exceeds the 1.0 percent cap in one or more subject area, are required to participate in Tier 1 including reviewing the resources related to NYSAA eligibility reviewed on slide 21; having CSE members participate in NYSED's [1.0 Percent Cap Webinar](#); and completing the [New York State Alternate Assessment Online Quiz](#).

LEAs must submit an assurance of participation in Tier 1 activities with their justification form Tier 2 – is provided to LEAs with higher NYSAA participation rates and includes;

- Participation in targeted support/skills regional groups facilitated by the Office of Special Educations Educational Partnership to provide professional development around systems and procedures that promote appropriate decision-making consistent with the NYSAA eligibility criteria.
More information about OSE's educational partnership will be discussed on a later slide;
- Follow-up/progress monitoring

Tier 3 - Intensive Support is Provided to LEAs that are required to participate in Tier 2, who have the highest NYSAA participation rates and have also been determined through follow-up activity to need more focused, ongoing technical assistance and support to change their polices, practices and procedures.

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As a part of Tier 1 technical assistance and supports, all LEAs exceeding the 1.0 percent NYSAA participation cap in ELA, mathematics, and/or science, must:

Review NYSED resources relating to the NYSAA eligibility as discussed on slide 21;

Participate in this webinar;

Complete NYSED's online quiz relating to appropriate decision-making regarding participation in the NYSAA; and

Submit an assurance to NYSED ensuring completion of steps 1-3.

LEAs may also wish to review the DLM video - "Who are students with the most significant cognitive disabilities?" DLM is New York State's vendor for the NYSAA. However, the video does not specifically address New York State's NYSAA participation criteria but provides helpful guidance on identifying the characteristics of students with the most significant cognitive disabilities.

All LEAs, including those who do not exceed 1% for NYSAA participation, are encouraged to review NYSED's NYSAA resources, and review the webinar and DLM video with CSE members who participate in NYSAA decision making process.

LEAs required to participate in Tier 2 will be notified by NYSED in the coming months.

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This slide shows the activities discussed on the previous slides relating to the federal 1.0% cap requirements, including the review of the NYSAA participation data, submission of justifications for exceeding 1.0% and participation in NYSED's tiered system of supports.

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In addition to facilitating targeted Support/ skills, regional groups for Tier 2, support and resources for conducting root cause analyses are also available through the Office of Special Education's (OSE) Educational Partnership. The OSE Educational Partnership is a coordinated and cohesive network of support focused on enhancing services and supports for students with disabilities from early childhood and school-age education to engagement in post-school opportunities. The purpose of the OSE Educational Partnership is to improve outcomes for students with disabilities and provide effective support for educational organizations (e.g., schools, districts, approved private schools, preschools) and families. The OSE Partnership is comprised of regional teams located across the State which include Regional Partnership Centers, Early Childhood Family and Community Engagement Centers and School-age Family and Community Engagement Centers. Contact information for each regional team as well as descriptions of professional development offerings are available on the [OSE Educational Partnership webpage](https://osepartnership.org/) as noted on the slide. (<https://osepartnership.org/>).

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Additional resources to assist school districts in conducting root cause analyses can be found at the sites listed. These resources can also be found on the Office of Special Education's [Information Related to the NYSAA webpage](#)

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For additional information on NYSAA, including the NYSED resources referenced earlier in the presentation, please visit the Office of Special Education's webpage or Office of State Assessment's webpage.

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Thank you for your participation.