

November 28, 2017

The Honorable Betsy DeVos  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dear Secretary DeVos:

The Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act (ESSA) requires states to assess no more than 1.0 percent of students participating in statewide assessments using the alternate assessment aligned with alternate academic achievement standards (AA-AAAS). If a state anticipates that it will assess more than 1.0 percent of students using the AA-AAAS in any subject for which an assessment is given, the state must submit a request to waive the 1.0 percent cap to the United States Department of Education.

Pursuant to 34 C.F.R. § 200.6(c)(4) and section 8401(b) of ESSA, this letter is to request a waiver for the Wisconsin Department of Public Instruction (WDPI) from the 1.0 percent cap on students taking the state's AA-AAAS known as the Dynamic Learning Maps assessment (DLM).

The DLM system is designed to map a student's learning throughout the year. The system also uses items and tasks that are embedded in day-to-day instruction. Instruction for these students is based upon the Wisconsin Essential Elements, the state's alternate achievement standards, and aligns with the Wisconsin Academic Standards. These standards promote access to the general curriculum and are expectations of what students with the most significant cognitive disabilities know and can do. Waiving the 1.0 percent cap on participation will advance student academic achievement by ensuring that students who have been identified as having the most significant cognitive disabilities will be appropriately assessed using the DLM aligned with the Essential Elements. 20 U.S.C. § 7861(b)(1)(C).

Wisconsin has one testing window during the spring of each school year. The start date is scheduled for March 19, 2018. Submission of the WDPI waiver request comes 90 days prior to the start of the testing window.

## **I. PUBLIC NOTICE**

Pursuant to 20 U.S.C. § 7861(b)(3)(A), the WDPI sought public comment on its request for a waiver on the 1.0 percent cap on students who participate in the DLM. In accordance with Wisconsin's open meeting notice requirements and WDPI's standard procedures for providing public notice, the WDPI published notice of the ESSA waiver request hearing and opportunity for public comment on the WDPI website on October 19, 2017 (Attachment 1). Notice was also provided in the weekly email from the department's special education team on October 19, 2017. The email was sent to all directors of special education in the state and to the Wisconsin Council

on Special Education, an advisory council to the State Superintendent of Public Instruction under IDEA. Additionally, the following message was published in the weekly District Assessment Coordinator (DAC) Digest on 10/18/2017, 10/25/2017, and 11/01/2017 (Attachment 2):

**ESSA Waiver Hearing**

Under the Every Student Succeeds Act (ESSA), the number of students who may take the alternate assessment is limited to no more than 1.0 percent of the total of all students in the state who are assessed in a given subject. States are required to seek a waiver of this cap if anticipated that the state will exceed the 1.0 percent cap. The department anticipates the cap will be exceeded for the 2017-18 school year and is requesting a waiver from the secretary of the U.S. Department of Education. The department is seeking public input as part of this process. Please see the DPI website for more information.

The hearing was held on November 2, 2017, and the public comment period was open until November 12, 2017. The WDPI received three written comments in response to the notice. Each commenter spoke in favor or generally in favor of the waiver. No comments were received at the public hearing. The comments received and the WDPI's response are included as Attachment 3.

**II. DATA**

Data from the 2016-17 school year indicates that Wisconsin has met the federal requirement that the state assess at least 95% of all students and at least 95% of students in the children with disabilities subgroup under section 1111(c)(2)(C) of ESSA who are enrolled in grades for which the assessment is required under 34 C.F.R. § 200.5(a). (See Table 1: Participation in Statewide Assessment).

Table 1: Participation in Statewide Assessment

<b>Group</b>	<b>Total Number of Students</b>	<b>Number Participating in Statewide Assessment</b>	<b>Percent Participating in Statewide Assessment</b>
All Students	436,936	430,325	98.5%
Students with Disabilities	61,461	59,357	96.6%

Review of the data revealed that just over one percent of Wisconsin students participated in each of the content areas included on the DLM in the 2016-17 school year. Tables 2 and 3 below display the participation rates of students with disabilities in 2016-17 DLM. Table 2 displays the number and percent of students who participated in the 2016-17 DLM according to test subject. Table 3 displays the number and percent of students in each subgroup defined in sections 1111(c)(2)(A), (B), and (D) of ESSA who participated in the 2016-17 DLM. Based on the data, the state anticipates that it will exceed the 1.0 percent cap for the 2017-18 school year.

Table 2: Participation in DLM Assessment Reported According to Subject

Subject	Number of Students Participating in the Alternate Assessment	Percent of Student Participating in the Alternate Assessment
ELA (Grades 3-8, 11)	5,107	1.2%
Math (Grades 3-8, 11)	5,102	1.2%
Science (Grades 4, 8, 11)	2,245	1.2%

Table 3: Participation in Alternate Assessment Reported According to Subgroup

Group	Number Participating in Alternate Assessment	Percent Participating in Alternate Assessment
Economically Disadvantaged	2,950	1.7%
English Language Learners	385	1.6%
Racial and Ethnic Groups		
White	3,109	1.0%
Black or African American	901	2.2%
Hispanic	657	1.3%
American Indian	84	1.6%
Asian	198	1.2%
Pacific Islander	6	1.7%
Multiracial	157	1.1%

### III. ASSURANCES

In analyzing the data above, the WDPI identified 211 local educational agencies (LEAs) out of 426 LEA and 21 non-district charters that would exceed the 1.0 percent participation cap in any subject for which the DLM is administered. On November 9, 2017, the WDPI notified each identified LEA by letter that the LEA exceeded the 1.0 percent participation cap in one or more given subjects in the 2016-17 school year and provided each such LEA with the data used in making the determination. A sample of the notification letter is enclosed as Attachment 4. The data was broken down according to disability, race, ethnicity, and participation rates. The department required all LEAs receiving the notice to submit a verification form to the department that included the following assurances:

1. The IEP teams correctly identified students with the most significant cognitive disabilities following state criteria and participation guidelines (See Attachment 5);
2. The LEA will measure the achievement of at least 95 percent of all students, including students with disabilities in all grades for which assessment is required;

3. Students who will be participating in the DLM have been instructed according to the Wisconsin Essential Elements, the state's alternate curriculum aligned to the alternate achievement standards;
4. The LEA will inform parents of students with the most significant cognitive disabilities that the student will participate in the DLM and will inform parents of the implications of participation in the DLM; and
5. The LEA will address any disproportionality in the percentage of students in any subgroup taking the DLM.

See Attachment 6 for a sample verification form. LEAs were required to return the completed verification form by November 20, 2017.

#### **IV. PLAN AND TIMELINE**

##### **A. Improve the Implementation of State Guidelines So That the State Meets the 1.0 Percent Cap in Future School Years**

In early 2017, the WDPI met with stakeholder groups to develop the state's criteria for determining whether a student is a student with the most significant cognitive disabilities for the purposes of assessment. On February 15, 2017, the department hosted a webinar to present the changes made by ESSA and to discuss and receive stakeholder feedback on the state's proposed definition of "students with the most significant cognitive disabilities." On May 3, 2017, a second presentation of the webinar was made to Wisconsin Council of Administrators of Special Services and the Wisconsin Council on Special Education. Additionally, the WDPI presented the proposed definition to several teacher groups on January 20 and March 15, 2017. The final definition developed as a result of these meetings was then incorporated into the state's participation guidelines and was provided to districts through communications regarding the new changes under ESSA and through professional development opportunities.

Based on these meetings and the feedback received, the state now defines a student with the most significant cognitive disabilities as a student who:

1. Is typically characterized as functioning at least two and a half to three standard deviations below the mean in both adaptive behavior and cognitive functioning;
2. Performs substantially below grade level expectations on the academic content standards for the grade in which they are enrolled, even with the use of adaptations and accommodations; and
3. Requires extensive, direct individualized instruction and substantial supports to achieve measurable gains, across all content areas and settings.

In addition to the changes made to the state guidelines, the WDPI also revised the form used by IEP teams to appropriately identify students who will participate in the DLM (Attachment 7). The I-7A Participation in Alternate Assessment Guidelines requires IEP teams to verify that (1) the student meets the requirements for being identified as a student with the most significant cognitive

disabilities; (2) the student is instructed using the alternate achievement standards across all content areas; and (3) the parent and the IEP team have discussed the possible implications of participating in the alternate achievement standards and the alternate assessment. If the IEP team determines that the three requirements have been met, then the IEP team may determine that the student will participate in the alternate assessment.

Because this is the first year that the new definition and revised materials are in effect, there is no data regarding the impact on identification of students with the most significant cognitive disabilities. Starting with the 2017-18 assessments, the WDPI will collect and assess data on students taking the DLM to determine the effectiveness of the newly implemented state guidelines and will identify whether further improvements or modifications to the guidelines are necessary.

**B. Support and Provide Appropriate Oversight to Each LEA That the State Anticipates Will Exceed the 1.0 Percent Cap**

As stated above, the WDPI provided a letter to all LEAs that exceeded the 1.0 percent cap on students participating in the DLM in the 2016-17 school year. The letter included LEA-specific data regarding student participation in assessments and required LEAs to complete a verification form with assurances in accordance with 34 C.F.R. § 200.6(c)(4)(iii).

Upon receipt of the verification forms, the WDPI will provide targeted annual review and assistance to specific LEAs in need of additional support and guidance in meeting the 1.0 percent cap. Additionally, the WDPI added an alternate assessment indicator in the state data warehouse that will allow the WDPI to regularly monitor expected participation in all LEAs.

**C. Address Any Disproportionality in the Percentage of Students Taking the DLM**

Under IDEA, the WDPI annually collects data and monitors LEA compliance with Part B indicators as part of the State Performance Plan. Relevant to this waiver, the department requires LEAs to review data under IDEA Part B indicators 9 and 10 to identify and address disproportionate representation in special education that is a result of inappropriate identification.

The WDPI engages in the following ongoing activities to improve the identification process and ensure compliance with the indicators including developing technical assistance resources, providing training on disproportionality data analysis and reviewing and analyzing state and district policies and practices. Through this existing compliance process, the WDPI will continue to monitor and provide technical assistance to LEAs in addressing disproportionalities in students identified for special education. The WDPI will provide targeted assistance to LEAs who have exceeded the 1.0 percent cap to identify why the LEA exceeded the cap and to improve identification methods to ensure compliance in future years.

As noted previously, this is the first year that the state's definition of students with the most significant cognitive disabilities as well as the modified forms and guidance materials are available and in effect. As a result, the WDPI anticipates that the number of LEAs exceeding the cap will decrease over the next few years. The WDPI will collect and assess data from the 2017-18

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assessments and will make appropriate modifications to materials as necessary in order to address disproportionalities for future assessments.

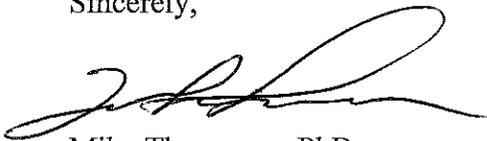
#### **D. Transparency in Reporting**

The WDPI's data reporting will not be affected by the granting of this waiver. Currently the WDPI provides information regarding assessments and accountability on its website, including the state performance plan, annual performance results, and state and district data on the IDEA Part B indicators. Additionally, the WDPI makes assessment data available in WISEdash, a data portal that uses "dashboards," or visual collections of graphs and tables, to provide multi-year education data about Wisconsin schools. Through WISEdash, public users can access state, district, and school data for statewide assessments including the DLM. The department will continue to publish this data on both its website and the WISEdash public portal.

In order to ensure student privacy, and in accordance with FERPA and section 1111(b)(2)(B)(xi) of ESSA, certain data that would reveal personally identifiable information about an individual student such that a reasonable person in the school community would be able to identify the student with reasonable certainty will not be included in the publicly available information. However, this disaggregated data will still be made available to districts so that districts may continue to work towards addressing any disproportionalities in students assessed and improving student identification.

Thank you for your consideration of this waiver request. Please contact Barb Van Haren at [barbara.vanharen@dpi.wi.gov](mailto:barbara.vanharen@dpi.wi.gov) if you have any questions or need additional information.

Sincerely,



Mike Thompson, PhD  
Deputy State Superintendent

cc: Jason Botel  
Acting Assistant Secretary, Office of Elementary and Secondary Education

#### Attachment(s):

- Att. 1 – Waiver Hearing Notice
- Att. 2 – DAC Digests
- Att. 3 – Public Response to Notice
- Att. 4 – Sample Notification Letter
- Att. 5 – Wisconsin State Guidelines
- Att. 6 – Verification Form
- Att. 7 – Form I-7A