

Session 2A: 1% Cap Bootcamp (Part 1 and Part 2)

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This session began with a basic overview of the 1.0 percent cap. The 1.0 percent cap is a federal requirement. ESEA authorizes alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities. For each subject, the total number of students assessed using the alternate assessment may not exceed 1.0 percent of the total number of students in the states who are assessed in that subject area.

A state cannot prohibit an LEA from assessing more than 1.0 percent of its assessed students in any subject for which assessments are administered. The IEP team makes this decision, said Dr. Lazarus. LEAs must submit information to justify the need to assess more than 1.0 percent of their students. Slide 9 highlighted a timeline of the ESEA 1.0 percent cap process. Dr. Strunk noted that the National Center on Educational Outcomes (NCEO) has a 1.0 percent toolkit offering guidance on developing a waiver and a waiver extension request. The document also includes IEP decision-making assistance and answers to frequently asked questions (FAQs) (Slide 12).

Mr. Hinkle reviewed ESEA requirements (Slide 15) and the requirements for a waiver or waiver extension (Slide 16). Among other things, states must know when to send the waiver and what data to include. States also must include assurances from LEAs exceeding the 1.0 percent cap that they are following the state participation guidelines and addressing disproportionality. Dr. Lazarus addressed common components of states' definitions (Slide 18). Ms. Rogers highlighted the characteristics that Kansas uses to define a "most significant cognitive disability" in a learner. Among other things, Kansas indicates that these students have severe cognitive disabilities and significant deficits in communication/language, as well as significant deficits in adaptive behavior, typically 2.5 standard deviations below the mean (Slide 19). Responding to a question from session participants, Ms. Rogers said the state has not received any pushback about that because the guidelines say "typically." The state also provides tools and asks the LEAs to review supporting data. Ms. Rogers noted that the term "most significant cognitive disability" is not a separate disability but a designation the state gives to a small number of students for the purpose of participation in state assessments. Similarly, Arkansas says students with the most significant cognitive disabilities are characterized by significantly below-average cognitive functioning (IQ scores typically below 55 or 3 or more standard deviations below the mean). Arkansas was well above the 1.0 percent, according to Ms. Stripling. Students with learning disabilities and attention-deficit/hyperactivity disorder (ADHD) take the alternate assessments. Ms. Stripling also noted that many people think adaptive behavior is misbehavior. Further, a student who does not require communication assistance could most likely participate in the general assessment. In 2018, the state developed updated criteria to clarify which students should take the alternate assessments (Slide 20).

Dr. Lazarus continued the discussion with a review of the common components of states' participation criteria (Slide 21.) A student participating in an alternate assessment typically has an IEP, has a most significant cognitive disability, and requires extensive individual instruction. These students also use modified academic curricula. LEAs must inform the parents of the alternate assessments (Slide 21). Kansas includes these components in its participation guidelines. Ohio took two years to develop a process to determine whether IEP decisions assess the correct students. Ohio's participation decision-making tool uses red, yellow, and green signs to help users complete the form. The form also includes disability categories, such as hard of hearing and emotional disturbance.

Dr. Strunk discussed how to calculate the 1.0 percent cap. The cap is calculated based on a ratio: the total number of students assessed in a subject using an AA-AAAS (numerator) compared with the total number of students assessed in that subject in the state (denominator). Dr. Strunk also highlighted some of the FAQs about the AA-AAAS (Slide 26). A state must require that an LEA submit information justifying the need of the LEA to assess more than 1.0 percent of its assessed students in any subject with such an alternate assessment. The justification processes vary across states. Kansas uses an authenticated application for its alternate assessment justifications (Slide 29). The state provides a variety of data points for the districts to review, such as:

- The number and the percentage of students taking the alternate assessment in each subject;
- The number of students participating in the DLM from each primary disability category; and
- The risk ratio data for disproportionality.

The districts also must provide some information. Among other things, districts must do the following:

- Address any disproportionality identified on risk ratio displays;
- Provide a narrative that includes the data types and processes that the IEP teams use to qualify students for the alternate assessment; and
- Describe next steps to ensure that annually the district administers the appropriate test to each student.

Ohio has had several different iterations of district justification. The current justification starts with this question: Do you anticipate testing students other than those with multiple disabilities, intellectual disabilities, autism, or traumatic brain injury? Ohio also reminds the districts to look at data appropriately to avoid overlooking students. The state offers to provide additional help, but Ms. Stoica noted that additional prompts might boost response.

Dr. Strunk reviewed legal requirements for the public posting of justifications. Justifications must be made publicly available. Kansas posts its justifications on its ESEA webpage. Ohio posts in a spreadsheet every school district's participation data. The information is available on a website. Arkansas notes on its website that information is available upon request.

Ms. Rogers also provided a sample of Kansas's 1.0 percent implementation timeline/process. The process begins in May with an analysis of risk ratio data and continues until January, when the SEA reviews justifications and reaches out to districts if necessary. Justifications are publicly posted. Ohio uses an Excel spreadsheet that shows how a large state coordinates this process. Ohio's process starts in June.

Questions and Comments

Dr. Strunk invited the bootcamp participants to participate in a breakout session. The session concluded with questions and discussion. Participants asked about the origination of 1.0 percent as a threshold. Dr. Lazarus said that in the first years of alternate assessment—in the No Child Left Behind era—most states were below 1.0 percent. Over the years, those numbers began to grow. Districts began to use alternate assessments for students who were chronically absent or pulling down accountability numbers. The federal government may have put in the cap to ensure that states address the needs of those students instead of simply providing an alternate assessment. The federal government is doing a better job of making sure the right student gets the right test, but the process remains a challenge, said Dr. Lazarus.

Part 2 of the bootcamp began with a discussion of the 1.0 percent waiver and waiver extension request. Mr. Hinkle discussed NCEO's 1% Toolkit for waivers published prior to a 2018 convening in Boston. The discussion highlighted the following toolkit requirements:

Requirement 1: Submit the waiver request at least 90 calendar days before the testing window starts for the relevant subject.

Kansas submits a waiver extension request to ED at least 90 days prior to the start of Kansas's instructionally embedded testing window for its alternate assessment in reading/language arts, math, and science as the state anticipates the possibility of being over 1.0 percent.

In Ohio, the initial waiver was in 2017–18. Ohio's alternate assessment participation rates were 1.9 percent in reading, 1.9 percent in math, and 2.0 percent in science. Participation rates in SY 2021–22 were 0.98 percent in reading, 1.0 percent in math, and 1.03 percent in science. Ohio tests in the winter, generally in mid-to-late February, so the state submits its waiver in mid-to-late November.

Arkansas is also an instructionally embedded state that uses DLM, said Ms. Stripling. DLM testing begins in mid-September, so Arkansas submits a waiver 90 days prior, in June, which can be challenging, Ms. Stripling added. Before the state got under 1.0 percent, it was over the cap in literacy, math, and science.

Ohio's participation rate is below 1.0 percent in reading and mathematics and slightly above the 1.0 percent threshold for science. Ohio anticipates minimally exceeding the 1.0 percent threshold for the 2022–23 administration of the alternate assessment in reading, math, and science. The summative alternate assessment test window date is February 13, 2023, for each subject, so the state requested a waiver extension on November 28, 2022.

Requirement 2: Provide data to show that at least 95 percent of all students participated in the general assessment and at least 95 percent of students with disabilities participated in assessment. For alternate assessment, states also must provide the percentage of participation by all of the federal categories of subgroups (Slide 49).

The waiver that Kansas submitted for 2021 included 2018–19 data because collecting assessment data was canceled during the COVID-19 pandemic. For each subject, Kansas provided the number or percentage of all students and students with disabilities who participated in the assessment. Kansas also provided a table for each subject for the subgroup data because they are subject-specific, said Ms. Rogers. Once the data were finalized in November, Kansas had to resubmit data in order to be within the 90 days prior to the opening of the testing window.

Ms. Stoica presented charts from Ohio's current 2022–23 waiver extension request (Slide 51). The first chart detailed participation by subject area across all the different categories. The two additional charts presented reading and math participation by subgroups. Ohio uses color to help its data charts pop off the page, said Ms. Stoica.

Three Arkansas charts highlighted the percentage tested for all students and for students with disabilities (Slide 52). The charts focused on reading, math, and science. The next slide (Slide 53) showed all of the subgroups, noting the total number of students, the total number with disabilities, the number of students who took the alternate test, and the percentage of those students who participated, said Ms. Stripling.

Requirement 3: Provide assurances that the state has verified that each LEA that the state anticipates will assess more than 1.0 percent of its assessed students in a subject using the alternate assessment (A) followed the state's participation guidelines and (B) will address any disproportionality in the students taking the alternate assessment (Slide 54).

Mr. Hinkle noted that this is not the same as justifications. This requirement refers to assurances. Many states will put assurance statements in the justification form.

Ms. Rogers said Kansas notes that LEAs only completed assurances during the 2020–21 school year; there were no justifications because assessments were canceled (Slide 55). For its waiver request, Kansas provided the link to locate the justifications and assurances. The state also noted that it provided LEAs with the data on disability categories taking a DLM assessment, the risk ratio data by subgroup (disproportionality), and the percentage of students performing at target levels or at advanced levels. The state embedded assurances into the justifications. LEAs that anticipated testing over 1.0 percent of their students on a DLM assessment for SY 2021–22 were required to complete DLM assurances.

Ohio also embedded assurances within the district justifications (Slide 56). The problem was that some districts said that they did not anticipate testing more than 1.0 percent and therefore did not do the assurances, said Ms. Stoica. The state fixed that problem last year by requiring all 1,200 districts to note whether they anticipated testing more than 1.0 percent. That question

led the districts to the assurances. The districts that did not respond were turned over to the special education office for follow-up and monitoring. Ultimately, everyone responded, although two districts were unhappy with the process, said Ms. Stoica. Those districts may go into Tier 3 status for failure to comply.

Arkansas embeds assurances in the justification document, said Ms. Stripling. One benefit of being an instructionally embedded state is that students are enrolled in the alternate assessment portal in September. When the districts submit justifications and expect to be under the 1.0 percent cap, the state can point to all the students in the DLM portal, said Ms. Stripling. Through this process, the state has found numerous mismatches, which prompts the districts to resubmit justifications.

Requirement 4: Submit a plan and timeline for how (1) the state will improve the implementation of its participation guidelines and, if necessary, revise its definition of the students with the most significant cognitive disabilities, (2) the state will take additional steps to support and provide appropriate oversight to each LEA that the state anticipates will assess more than 1.0 percent (this must include a description of how the state will monitor and regularly evaluate each of those LEAs to ensure the LEA provides sufficient training for IEP teams), and (3) the state will address any disproportionality in the percentage of students taking the alternate assessment (Slide 58).

Providing further clarity, Mr. Hinkle said states need a plan and timeline for improving the implementation of participation guidelines, taking steps to support and provide the appropriate oversight, and addressing disproportionality. Those states completing a waiver extension request will explain how they implemented the plans reported on previously.

Ms. Rogers shared what Kansas provided for the 2021–22 waiver (Slide 59). The state provided bulleted lists for each of the categories. Under the category “Improving the implementation of participation guidelines,” Kansas noted several points, such as the fact that the Kansas State Department of Education revised its definition of “most significant cognitive disability.” The state provided training, tools, and technical assistance. Kansas also leveraged the concept of least dangerous assumption.

As far as “Oversight to districts anticipated to exceed 1.0 percent,” Kansas implemented a tiered system of technical support in October 2020. The state also noted that districts completed justifications and assurances.

Regarding the category “Addressing any disproportionality,” Kansas examined data on subgroup participation and found that no subgroup had a risk ratio over 3.0 percent for any subject. The Kansas State Department of Education will examine these data annually.

Slide 60 highlighted Ohio’s efforts. In October 2020, the state posted its decision-making tool. The districts were able to use the tool for eligibility for the 2021 alternate assessment. The state also worked with the special education office for about a year to embed assessment within the special education profiles, which are the reports to school districts on the Individuals with

Disabilities Education Act (IDEA) indicators. The state can now cite districts that are above 3.5 percent within the special education profile. These districts must complete an improvement plan and root cause analysis and then submit evidence. The districts submit the plan in March and April and submit evidence in September, said Ms. Stoica.

To meet Requirement 4, Arkansas began by convening a workgroup to revise the state's criteria for the alternate assessment (Slide 61). After legal services approved these changes, the state conducted virtual trainings during the summer of 2020. The state offers ongoing training each year. The state offers tiered supports to those districts that anticipate exceeding 1.0 percent. Arkansas has not had much trouble with disproportionality, said Ms. Stripling. The state's data manager provides training each year. In addition, the state can provide intensive monitoring and technical assistance to any LEA that has disproportionate representation.

Along with the previous four requirements, states must show substantial progress in their plans and timelines. States must reduce the percentage of students taking the alternate assessment in a content area to receive an extension of a waiver of the 1.0 percent cap for that content area. States that continue to move in the wrong direction should still do a waiver, said Mr. Hinkle. The waiver process creates a record and continues the conversation. And states could do better the next year, added Mr. Hinkle.

Ms. Rogers shared Kansas data from SY 2017–18 to SY 2021–22 (Slide 63). Kansas did not request a waiver in 2017–18. In 2018–19, the Kansas State Department of Education found it was out of compliance and needed to develop a plan. Kansas submitted the plan in July 2019 and submitted its first waiver in August. The state also submitted a plan in 2019–20, and COVID happened after that, said Ms. Rogers. The state submitted a waiver for 2020–21. Participation was lower because of COVID, but the state was approved because it met the 95 percent participation rate. Kansas did not submit a waiver in 2021–22.

Ohio was very close to 2 percent when the state submitted its initial request (Slide 64). Substantial progress did not seem possible because the trajectory was exploding, said Ms. Stoica. The state maintained its alternate assessment rate for three years. During that time, the state developed its decision-making tool. In 2021–22, reading and math had a participation rate of 0.9 percent, and the rate was 1.0 percent for science. Ohio hopes to maintain those rates for another three or four years.

The alternate assessment rate for Arkansas started out at 1.32 percent in 2018–19, said Ms. Stripling. This was the first year of the state's new criteria, as well as the state's first year of robust monitoring. The state dropped to 0.83 percent in 2020–21, which was possibly too low, said Ms. Stripling. The state continues to inch back up to appropriate levels. In 2022–23, reading and math had an alternate assessment rate of 0.89 percent, and the rate was 0.87 for science.

Dr. Strunk turned the discussion to supporting IEP team decisions. The 1% Toolkit for IEP teams supports teachers, school psychologists, English language development specialists, and others who participate in IEP team meetings. This tool provides support for the decision about

whether a student with a disability should participate in a general assessment or an alternate assessment.

Kansas customized the tool to include specific state assessments, said Ms. Rogers (Slide 68). Kansas also created intellectual and adaptive functioning tools. Appendices include case studies, DLM participation guidelines, and student information sheets for students eligible and not eligible for the alternate assessment.

Ohio developed a document with answers to FAQs for its alternate assessment participation decision-making tool (Slide 69). This 12-page document, which also includes an appendix and links to resources, supports the IEP teams as they use the decision-making tool. The FAQ document can also provide talking points for administrators or families. Ms. Stoica also highlighted a one-page flyer about the alternate assessment. This document includes links and talking points for families.

Arkansas uses a manual with similar components (Slide 70). This document includes general information, participation criteria, a decision-making tool, and answers to FAQs.

Questions and Comments

After the presentation, participants shared takeaways and asked questions about the 90-day testing window, as well as community stakeholders. Ms. Stoica said the Ohio Department of Education worked with a state advisory panel, content fairness committees, special education testing groups, and other groups to gather input. The state met with 16 stakeholder groups and collected more than 1,000 comments, added Mr. Hinkle. Kansas heard from a special education advisory council. Arkansas talked to its special education advisory council and pulled in groups of educators from around the state. Arkansas also tapped into early childhood and higher education.

Participants also asked whether a 1.0 percent cap on the alternate assessment is a reasonable expectation. Dr. Strunk said states should focus on IEP teams making the right decisions. Even if a state is slightly over 1.0 percent, ED wants students to get the right assessments. Ms. Stoica noted that Ohio has a high incidence of students with disabilities. A lot of students qualify for special education. But do these students require specially designed instruction? That is a place to start, said Ms. Stoica. What are the assumptions and expectations for these students? Making these changes bit by bit also will change the state's perspective, said Ms. Stoica.