

# CENTER FOR LAW AND EDUCATION

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To: MA DESE

From: Kathleen Boundy, Center for Law and Education

Re: Comments on MA DESE's Intent to Apply for a Waiver of 1 Percent Cap on AA-AAAS

The Center for Law and Education (CLE) appreciates the opportunity to comment upon the MA Department of Elementary and Secondary Education (DESE)'s intent to seek a waiver of the federally imposed one percent cap on student participation in the statewide alternate assessment MCAS-ALT. CLE is a non-profit resource, advocacy and support organization that strives to make high quality education a reality for all students and help low-income communities to address their education problems effectively. CLE represents low-income students and their families and submits these comments on behalf of those who are students with disabilities who are participating on the MCAS ALT or vulnerable to being found eligible for such participation under MA DESE's current policy.

It is our position that MA DESE should not be granted a waiver. MA DESE has not met the criteria for a waiver of this significant safeguard, and time is of the essence for compliance with the 1 percent cap to ensure that those students with disabilities who are not eligible for the MCAS-ALT, but have been so identified, are effectively taught and assessed based on the grade level achievement standards set for all students. This is not the time for a waiver –DESE has already been operating under a *de facto* waiver with respect to these students.

DESE's use of the MCAS-Alt is not consistent with requirements of the Every Student Succeeds Act (ESSA), which amended and reauthorized the Elementary and Secondary Education Act. ESSA requires that with the *singular* exception of assessment of students with the "most significant cognitive disabilities," the same academic assessments must be administered and used: to measure the achievement of *all* public elementary school and secondary school students in the State; to provide coherent and timely information about student attainment of the State standards and whether the student is performing at the student's grade level; and allow parents, teachers, principals, and other school leaders to understand and address the specific academic needs of students. 20 U.S.C. §6311 The language of the statute and its regulations are clear. Only a single Alternate Assessment based on Alternate Academic Achievement Standards is authorized.

ESSA and its regulations require any State that provides for an alternate assessment, i.e., an assessment aligned with challenging State academic content standards and alternate academic achievement standards (AA-AAAS), to ensure that participation in the AA-AAAS is limited to students identified by their IEP Team with the "most significant cognitive disabilities." Furthermore, the total number of students with the "most significant cognitive disabilities" who are assessed in each subject using the AA-AAAS shall not exceed 1 percent of the total number of all students in the State who are assessed in each subject area. 20 U.S.C. § 6311(D)(i)(1); 34 C.F.R. § 200.6.

Contrary to ESSA and its regulations, MA DESE continues to allow the MCAS-Alt, a portfolio assessment, to assess certain students with disabilities based on grade level standards and to assess a range of other students with disabilities. With apparent disregard for ESSA and its regulations, MA DESE provides no

evidence that there is even a plan to ensure that the MCAS-Alt will be used to assess only students identified by their IEP Teams as having the “most significant cognitive disabilities” against Alternate Academic Achievement Standards. See March 2017 memo distributed from the Commissioner’s office, under “Criteria for Designating a Student for an Alternate Assessment” the provision reads as follows: “[a] student with a disability should take the **MCAS-Alt** if he or she

- is working on *learning standards* in the content area that have been *substantially modified* due to the severity of the disability; **and**
- is receiving *intensive, individualized instruction* in order to acquire, generalize, and demonstrate knowledge and skills; **and**
- is *unable to demonstrate knowledge and skills on a standardized paper or online test*, even with accommodations.

This description is not limited to those students with the “most significant cognitive disabilities” who require extensive, direct individualized instruction and substantial supports to achieve measurable gains on the challenging State academic content standards for the grade in which the student is enrolled, and consequently are being assessed against AAAS.

Similarly, in its 2018 Educator’s Manual for MCAS-Alt, Guidelines for IEP Team Decision-making: Which Students Should Take the MCAS-Alt? [Section] A. MCAS Participation Guidelines, pp. 8-10, there is not a single reference to the eligibility determination for students with the “most significant cognitive disability.” On page 11 in this same section, the Educator’s Manual identifies examples of unique circumstance intended to “expand the team’s understanding of the appropriate use of alternate assessments.” [E.g., “A student with severe emotional, behavioral, or other documented disability is unable to maintain sufficient concentration to participate in standard testing, even with accommodations.”]

The August 2017 Requirements for the Participation of Students with Disabilities and English Language Learners in the 2017-18 MCAS High School Tests: A Guide for Educators and Parents/Guardians does not include a single reference to students with the “most significant cognitive disabilities” –the only students who are eligible for consideration to participate in a State’s AA-AAAS. See Option 2: “If a student is a) generally unable to demonstrate knowledge and skills on a paper-and-pencil test, even with accommodations, and is (b) working on learning standards that have been substantially modified due to the nature and severity of his or her disability, and is (c) receiving intensive, individualized instruction in order to acquire, generalize, and demonstrate knowledge and skills, [look to adjacent column] Then the student should take the MCAS Alternate Assessment (MCAS-Alt) in this subject.” Option 3 describes a student who the team may recommend to participate in the “MCAS-Alt grade-level or competency portfolio” because the severity and complexity of the disability prevent the student from fully demonstrating knowledge and skills on the standard test, even with accommodations. While this particular assessment is not legal as an Alternate Assessment under the new ESSA provisions, use of a portfolio assessment at grade level standards can be used as one of multiple measures to help ensure more accurate valid result for certain students with disabilities whose knowledge and skills cannot otherwise be validly assessed by a paper or computer-based test.

The effect of MA DESE’s failure to take immediate steps to implement the safeguards created by ESSA and its regulations – i.e. , to limit the State’s use of a single Alternative Assessment which shall be based on AAAS, to authorize only that very small population of students with the “most significant cognitive disabilities” to participate in the assessment based on AAAS, and to cap the number of these students in the State to one percent of all students assessed in the subject area, is evidenced in the high percentages of students with disabilities in certain school districts who are currently participating in the MCAS-Alt and not being taught or assessed based on the same State achievement standards set for all.

Although MA DESE indicates that only 1.6 percent of students with disabilities in MA participated in the 2016 MCAS-Alt, a review of the urban and rural school districts that serve disproportionately high percentages of students who are economically disadvantaged, members of racial and ethnic minority groups, and English learners tell a different story. For example, see Boston, Brockton, Fall River, Greenfield, Lawrence, Springfield.

The March memorandum from the Commissioner's office—despite the new legal mandates under ESSA barely references the law and its regulations, the seriousness of the data showing districts with two, three and four hundred percent higher than the cap on the State participation rate, or the implications of such high proportions of students with disabilities being assessed on the MCAS-Alt based on AAAS. Instead, the memo merely states that “While we affirm the authority of IEP teams to act without undue external influence to make final determinations ... it is reasonable to assume that *some* students who were designated for the MCAS-Alt in the past may be more suited in 2017-2018 to either

- take the standard MCAS next-generation test, either with or without accommodations, now that new accessibility features and accommodations are available; or
- prepare a "grade-level" or "competency" portfolio for students with significant disabilities who are performing *at or near grade-level expectations* but are unable to demonstrate knowledge and skills on a paper- or computer-based test. (Note: Additional details on these assessment options are available in the attachments.)

There is no discussion in the materials presumably supporting the Request for Waiver—including the State Plan --concerning how the MCAS-ALT will be modified to comply with the mandates under ESSA, or how it will [hopefully] be modified in light of the development of the Next Generation MCAS. Nor is there any description or discussion about how those students who do not meet the definition of those with the most significant cognitive disability and who comprise in some cases up to 3-5 percent of all students being assessed based on the MCAS-Alt in their primarily urban school districts will be prepared to be included among those who will take the Next Generation MCAS.

MA DESE's request for a waiver of the 1 percent State cap ought to be denied based on the State's failure to address the serious educational implications for the significant overrepresentation of such students being assessed based on the MCAS-Alt [AAAS]. As presented, MADESE's request does not meet the criteria set forth in the regulations under ESSA. DESE has failed to address the number of students—far in excess of 1 percent --being assessed based on the MCAS Alt, to present this information disaggregated by subgroup and to address the disproportionality, to establish State guidelines for implementing the ESSA mandates limiting the subset of students to those with the “most significant cognitive disabilities” and restricting use of the MCAS Alt as an assessment of AAAS. Moreover, MA DESE has not offered any plan or timeline to turnaround those school districts assessing 2, 3 and 4 percent of all their students on the MCAS-Alt.