THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

OFFICE OF SPECIAL EDUCATION
ASSISTANT COMMISSIONER

May 2019

TO: District Superintendents
Superintendents of Public Schools
Public School Administrators
Charter Schools
Religious and Independent School Administrators
Directors of Special Education
Directors of Pupil Personnel Services
Chairpersons of Committees on Special Education
Organizations, Parents, and Individuals Concerned with Special Education

FROM: Christopher Suriano

SUBJECT: Eligibility Criteria for Participation in the New York State Alternate Assessment (NYSAA)

This memorandum is to inform school districts of the new policy brief, *Eligibility Criteria for Participation in the New York State Alternate Assessment (NYSAA)*, developed by the New York State Education Department (NYSED) to assist school districts in determining the appropriate participation of students with severe disabilities in NYSAA. The federal Every Student Succeeds Act (ESSA) requires that states administer annual statewide assessments in reading/language arts and mathematics to all students in grades 3-8 and at least once in high school, as well as assessments in science once in each grade span (i.e., 3-5, 6-9, 10-12). ESSA includes provisions to ensure that all students are tested, offered appropriate accommodations when needed, and held to the same standards.

To ensure that the vast majority of students take a state's general assessment and **only students with the most significant cognitive disabilities take an alternate assessment aligned with alternate academic achievement standards**, ESSA places a state-level cap on the total number of students with significant cognitive disabilities who are assessed with an alternate assessment to **1.0 percent** of the total number of students in the state who are assessed in the subject. States may not prohibit a school district from assessing more than 1.0 percent of its assessed students with an alternate assessment. However, states must require school districts that assess more than 1.0 percent of their assessed students in any subject with an alternate assessment to submit information to the state justifying the need to exceed the 1.0 percent threshold.

Consistent with the Individuals with Disabilities Education Act (IDEA), committees on special education (CSEs) must follow state guidelines for determining on a case-by-case basis whether a student is most appropriately assessed with an alternate assessment aligned with alternate academic achievement standards. To assist CSEs in determining

whether NYSAA is the most appropriate assessment for an individual student, NYSED has developed the attached policy brief, decision-making flowchart, and decision-making checklist which should be used in conjunction with guidance provided in NYSED's *Eligibility and Participation Criteria - NYSAA* [http://www.nysed.gov/common/nysed/files/programs/state-assessment/8-eligibilityb-19.pdf].

If a student is determined eligible to participate in NYSAA, ESSA requires that, as part of the process for developing the IEP, the student's parents be clearly informed that their child's academic achievement will be measured based on alternate academic achievement standards that do not meet the expectations necessary to earn a regular high school diploma in New York State and how participation in NYSAA will affect their child from completing the requirements for a regular New York State high school diploma. To assist school districts in ensuring that parents are appropriately informed, NYSED has developed the attached *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.

NYSED will annually notify school districts that exceed the 1.0 percent participation cap that they are required to submit information justifying the need to assess more than 1.0 percent of their students with NYSAA in one or more subject areas. As part of the justification, school districts will be required to provide assurance to NYSED that CSEs are using *Eligibility and Participation Criteria - NYSAA* in determining if a student with a disability will participate in NYSAA. As required by ESSA, NYSED will make all submitted justifications publicly available.

Additional information on administering NYSAA to students with severe disabilities is available on the Office of State Assessment's New York State Alternate Assessment (NYSAA) webpage [http://www.nysed.gov/state-assessment/new-york-state-alternate-assessment]. Questions regarding this memorandum may be directed to the Special Education Policy Unit at (518) 473-2878 or to speced@nysed.gov. Information about NYS's procedures for school districts that assess more than 1.0 percent of their students in any subject is posted on the Office of Special Education's News, Announcements and Timely Information webpage [http://www.p12.nysed.gov/specialed/timely.htm].

Attachments: Policy Brief - *Eligibility Criteria for Participation in the New York State Alternate Assessment (NYSAA)*

New York State Alternate Assessment (NYSAA) Participation Decision-Making Flowchart

New York State Alternate Assessment (NYSAA) Participation Decision-Making Checklist

Parent Notification of Participation in the New York State Alternate Assessment (Sample Letter)

The University of the State of New York
New York State Education Department
Office of Special Education

Eligibility Criteria for Participation in the

May 2019

This is one in a series of policy briefs prepared by the New York State Education Department on topics pertaining to implementation of the Individuals with Disabilities Education Act (IDEA) and the Every Student Succeeds Act (ESSA) in New York State.

Which students must participate in State or district-wide assessments?	The federal Every Student Succeeds Act (ESSA) and the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) require that all students, including students with the most significant disabilities, be included in State or district-wide assessment programs. These requirements do not allow students to be excluded from statewide assessments. However, for students who are unable to participate in the State's general assessment system because of the severity of their disabilities, even with accommodations, states are required to develop and implement an alternate assessment. "High-quality assessments are essential to effectively educating students, measuring progress, and promoting equity. Done well and thoughtfully, they provide critical information for educators, families, the public, and students themselves and create the basis for improving outcomes for all learners." (Every Student Succeeds Act Assessments under Title I, Part A & Title I, Part B: Summary of Final Regulations [https://www2.ed.gov/policy/elsec/leg/essa/essaassessmentfactsheet1207.pdf])
What is the New York State Alternate Assessment (NYSAA)?	NYSAA is part of the New York State (NYS) testing program that measures attainment of the State's learning standards for students with the most severe disabilities in grades 3-8 and high school in the areas of English language arts and mathematics, as well as science once in each grade span (i.e., 3-5, 6-9, 10-12).
Which students are eligible to participate in NYSAA?	Students with severe disabilities, as defined in 8 NYCRR section 100.1(t)(2)(iv) [https://govt.westlaw.com], are eligible for participation in NYSAA. "Students with severe disabilities" refers to students who have limited cognitive abilities combined with behavioral and/or physical limitations and who require highly specialized education and/or 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 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 assistive technology devices.

How is a student determined eligible to participate in NYSAA?	The committee on special education (CSE) is responsible for determining whether a student is eligible to participate in NYSAA. At each annual review meeting, the CSE must determine on an individual basis whether the student will participate in: • the State's general assessment with or without accommodations; • the State's alternate assessment with or without accommodations; or • a combination of the State's general assessment for some content areas and the State's alternate assessment for other content areas. The CSE must ensure that decisions regarding participation in the State testing program are **not** based exclusively on category of disability, language differences, excessive or extended absences, cultural or environmental factors, previous low academic achievement, or previous need for accommodations to participate in State or district-wide assessments. Only students with severe cognitive disabilities are eligible for the NYSAA. The CSE must determine annually whether a student with a severe cognitive disability is eligible to take the 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. In some cases, a student who has a severe cognitive disability, as defined in 8 NYCRR section 100.1(t)(2)(iv), may be recommended by the CSE to participate in NYSAA only for selected assessment area(s), such as mathematics, based on such student's unique individual needs. The CSE may determine that the student can achieve the NYS standards for all students for the other assessment area(s) and recommend such student participate in NYS's general statewide assessment program in those area(s). (State data shows very few instances when this has occurred in the past.)
How must a student's participation in NYSAA be documented in his or her individualized education program (IEP)?	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. For example, the IEP of a student with a severe cognitive disability who meets the criteria for participation in NYSAA would indicate that the student will be assessed using NYSAA because the student has a severe cognitive disability, significant deficits in communication/language and adaptive behavior; 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 requires educational

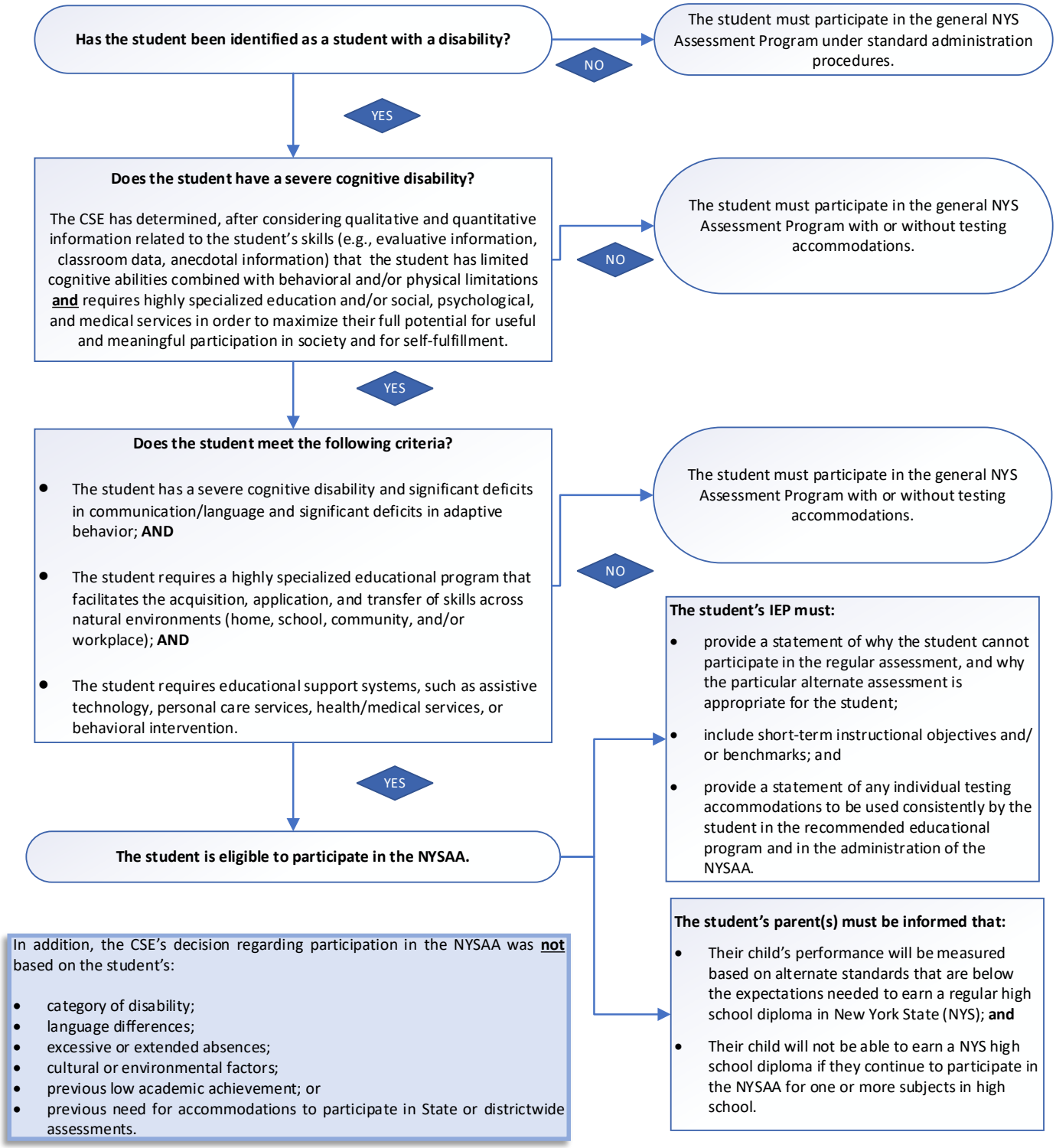
	support systems including assistive technology, personal care services, health/medical services, and behavioral intervention. For a student who is recommended by the CSE for participation in NYSAA, each annual goal on the student's IEP must also include short-term instructional objectives and/or benchmarks (measurable intermediate steps between the student's present levels of performance and the annual goal). The student's IEP must also provide a statement, as appropriate, of any individual testing accommodations to be used consistently by the student in the recommended educational program and in the administration of State assessments of student achievement.
What should a CSE consider when making recommendations on a student's participation in State assessments?	CSEs must carefully consider which students should be included in NYSAA, as these assessments are for students with severe cognitive disabilities. Participation in NYSAA may have implications for a student's participation and progress in the general curriculum. While students recommended for participation in NYSAA must receive instruction in the same State learning standards as students participating in New York State's general assessments, they are instructed and assessed against alternate achievement standards that are at a reduced level of depth, breadth, and complexity. CSEs should thoughtfully consider how a student's participation in NYSAA will impact a student's opportunity to earn a regular high school diploma. CSE meetings where transition goals and services are being developed must include a discussion with the student's parents of the student's progress toward receiving a diploma, and parents must be provided with information explaining graduation requirements.
What do parent's need to know about their child's participation in NYSAA?	In accordance with ESSA, 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 (i.e., local or Regents diploma) in NYS. 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 their child will not be able to earn a NYS high school diploma if they continue to participate in NYSAA in one or more subjects in high school.
Are there any limits on the number of students that a school district may recommend for participation in NYSAA?	ESSA limits the number of students in each state who may take alternate assessments to **1.0 percent** of all tested students in a given subject. 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. There is no cap placed on individual school districts. However, ESSA requires any school district that assesses more than 1.0 percent of its assessed students in any subject with an alternate assessment aligned with alternate academic achievement standards to submit information to the state educational agency justifying the need to exceed the 1.0 percent cap.

What are the NYSAA scores used for?	NYSAA scores show parents and teachers how a student is progressing in the attainment of grade-level alternate achievement standards. These scores can help: • Identify a student's strengths and needs; • Provide information to allow for meaningful discussions surrounding a student's IEP; • Set instructional priorities that inform a student's functional and academic goals and short-term objectives; and • Identify a student's most effective method of communication across multiple settings.
Where can I find additional information on NYSAA administration?	Additional information on administering NYSAA to students with severe disabilities is available on the Office of State Assessment's New York State Alternate Assessment (NYSAA) webpage [http://www.nysed.gov/state-assessment/new-york-state-alternate-assessment]. Information about NYS's procedures for school districts that assess more than 1.0 percent of their assessed students in any subject with NYSAA will be posted at this site and on the Office of Special Education's News, Announcements and Timely Information webpage [http://www.p12.nysed.gov/specialed/timely.htm] when available.
Legal Reference	8 NYCRR §§100.1(t)(2)(iv); 100.3(b)(2)(iii); 100.4(b)(2)(v); and 200.4(d)(2)(iv), (vii) and (ix)(b); ESSA §§1111(b)(2)(B)(vii) and 1111(b)(2)(D)(I)-(II)[1]

[1] Please reference the Official Compilation of Codes, Rules and Regulations of the State of New York (8 NYCCRR) for regulatory language. An unofficial compilation of these regulations can be found at the Department of State, Division of Administrative Rules [https://govt.westlaw.com].

New York State Alternate Assessment (NYSAA) Participation Decision-Making Flowchart

Students with severe disabilities in New York State (NYS) may be determined eligible by the committee on special education (CSE) to participate in the NYSAA. Consistent with the provisions in the Every Student Succeeds Act (ESSA), NYSAA is an appropriate assessment for a very small number of students with the most severe cognitive disabilities. In conjunction with guidance provided in NYSED's *Eligibility and Participation Criteria – NYSAA*, this flowchart should be used in the decision-making process to ensure that only those students with the most severe cognitive disabilities are taking the NYSAA.



New York State Alternate Assessment (NYSAA) Participation Decision-Making Checklist

The checklist below **may** be used in conjunction with guidance provided in the New York State Education Department's (NYSED) *Eligibility and Participation Criteria – NYSSA* in the decision-making process to ensure that only those students with the most severe cognitive disabilities are taking NYSAA. The committee on special education (CSE) must determine annually whether a student will participate in NYSAA on a particular State assessment of student achievement (i.e., English language arts, mathematics, and/or science) and document this decision in the student's individualized education program. If the CSE indicates "YES" for **all** items below, the student may be determined eligible to participate in NYSAA. This checklist is for local use, only. Do **not** submit this form to NYSED. However, a copy should be retained in the student's special education record.

Student: **Date:**

Persons Involved in Decision-Making:

Eligibility Criteria	YES	NO	Comments/Evidence
The student has a severe cognitive disability and significant deficits in communication/language and significant deficits in adaptive behavior.	☐	☐	
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).	☐	☐	
The student requires educational support systems, such as assistive technology, personal care services, health/medical services, or behavioral intervention.	☐	☐	
Both qualitative and quantitative information (e.g., evaluative information, classroom data, anecdotal information) have been considered to inform decisions on the above-listed criteria.*	☐	☐	

Check the recommendation that is most appropriate in meeting the needs of this student:

☐ The student is recommended by the CSE to participate in the general New York State Assessment Program (with or without testing accommodations) for:

☐ English ☐ Math ☐ Science

☐ The student is recommended by the CSE to participate in NYSAA (with or without testing accommodations) for:

☐ English ☐ Math ☐ Science

Parental Understanding: If my child has been determined eligible to participate in NYSAA, I have been informed of and understand the following statements:

☐ My child's performance will be measured against alternate achievement standards that do not meet the expectations needed to earn a regular high school diploma (i.e., local or Regents diploma) in New York State (NYS).

☐ In order to earn a diploma in NYS, students must earn required course credits and participate in required Regents examinations, and my child will not be able to earn a NYS high school diploma if he/she continues to participate in NYSAA for one or more subjects in high school.

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* The decision for the student's participation in NYSAA was **not** based on the following: category of disability, language differences; excessive or extended absences; cultural or environmental factors; previous low academic achievement; or previous need for accommodations to participate in State or district-wide assessments.

Parent Notification of Participation in the New York State Alternate Assessment (Sample Letter)

Date: _____

Dear Parent/Guardian:

This letter serves to inform you that your child, _____, was recommended by the committee on special education (CSE) to participate in the New York State Alternate Assessment (NYSAA), rather than in the general statewide assessment program, in the following subjects:_____.

In making this recommendation, the CSE has determined that your child meets New York State's (NYS) eligibility and participation criteria for NYSAA and that the general statewide assessment program is not an appropriate assessment program for your child to demonstrate his/her knowledge and skills, even with testing accommodations. NYSAA is part of the NYS testing program that measures student performance on alternate achievement standards in the areas of English language arts (ELA), mathematics, and science for students with the most severe cognitive disabilities in grades 3-8 and high school.

Students recommended for participation in NYSAA must receive instruction in the same State learning standards as students participating in NYS's general assessments; however, they are instructed and assessed against alternate standards that are at a reduced level of complexity. Your child will be assessed using the Dynamic Learning Maps (DLM) alternate assessment system. DLM alternate assessment is a computer-delivered, adaptive assessment system that measures student achievement of ELA, mathematics, and science State learning standards at a reduced level of complexity. This computerized assessment provides the opportunity to customize the assessment to the individual abilities and needs of your child.

Your child's CSE, of which you are a member, will make an annual recommendation on whether NYSAA remains an appropriate assessment program for your child. Please be aware that NYSAA assesses learning standards that do not meet the expectations needed to earn a regular high school diploma (local or Regents diploma) in NYS. In order to earn a NYS high school diploma, students must earn required course credits and participate in required Regents examinations. Your child will not be able to meet the requirements for a NYS high school diploma if he/she continues to participate in NYSAA for one or more subjects in high school. Additional information on graduation requirements is available on the New York State Education Department's (NYSED's) Office of Curriculum and Instruction webpage (http://www.nysed.gov/curriculum-instruction/).

If you have any questions about your child's participation in NYSAA, you are encouraged to speak with your child's teacher or special education administrator. For questions on NYSAA, you may also wish to contact NYSED's Office of Special Education Policy Unit at 518-473-2878 or the Office of State Assessment at 518-474-5900. Additional information on NYSAA, including *A Parent's Quick Guide to the New York State Alternate Assessment (NYSAA)* is available on NYSED's Office of State Assessment NYSAA webpage (http://www.nysed.gov/state-assessment/new-york-state-alternate-assessment).

Thank you for your attention to this important matter.

Sincerely,