Application for Exception to the One Percent Cap on Proficient or Above Scores Based on Alternate Achievement Standards 2012–13

Background Information:

The federal No Child Left Behind Act (NCLB), Part 200 of the Code of Federal Regulations (CFR) limits the number of students in each local educational agency (LEA) who can be counted as proficient using alternate achievement standards to 1.0 percent of the LEA's enrollment in each testing grade in English language arts (ELA) and mathematics. In New York State, this means that only 1.0 percent of student scores used to calculate the Performance Index in ELA or mathematics in Grades 3 through 8 combined or for a cohort (at the secondary level) for a LEA can be New York State Alternate Assessment (NYSAA) Levels 3 or 4.

If a LEA exceeds the cap, one or more student NYSAA score(s) of Level 3 or 4 must be reduced to Level 2 **for accountability purposes only**. Individual student information that is reported to parents or included on the report card must continue to reflect the student's actual score. The federal regulations also allow LEAs to apply each year for an exception to exceed the 1.0 percent limitation by documenting extraordinary circumstances within the LEA.

LEAs must apply for this exception for 2012-13, unless the LEA was already approved in 2011-12 for both 2011-12 and 2012-13. LEAs that were approved in 2011-12 for both 2011-12 and 2012-13 do not need to reapply.

During 2012-13, LEAs again have the option of applying for a two-year approval based on extraordinary circumstances and using current trend data. If approved for an exception, this two-year approval would apply this year, 2012-13 and continue for one additional year, 2013-14.

Exception Eligibility:

To be eligible for an exception to the 1.0 percent cap in 2012-13, the LEA must document that the incidence of students with the most significant cognitive disabilities, who are eligible for NYSAA at the age equivalent levels for Grades 3-8 testing and in the 2009 district accountability cohort, exceeds 1.0 percent of **all** continuously enrolled tested students (with and without disabilities) at those grade levels or in that cohort. The LEA must also document that this higher incidence is significantly different than what would be expected because there are extraordinary circumstances. Documentation of extraordinary circumstances must show that either the:

1) number of Office for People With Developmental Disabilities (OPWDD) licensed residential programs (e.g., Intermediate Care Facilities, Individualized Residential Alternatives) or other similar community or health organizations located within the district has resulted in a large percentage of students with the most significant cognitive disabilities being in the LEA and taking NYSAA in 2012-13; or

2) LEA has very specialized programs for students with significant cognitive disabilities, resulting in a disproportionate number of families of students with the most significant cognitive disabilities residing in the district and taking NYSAA in 2012-13.

In 2012–13, every LEA is automatically allowed to have one student counted as proficient or above on NYSAA in Grades 3 through 8 combined or in the 2009 cohort, even if that one student would cause the LEA to exceed the 1.0 percent cap. It is unnecessary for these LEAs to complete this exception application unless the LEA has more than one eligible NYSAA student and has extraordinary circumstances that would cause it to have a greater number of NYSAA students in the LEA.

Authorization to Grant Exceptions: 34 CFR section 200.13(c)(2)

Application Submission Information

Eligible Applicants:

A LEA (including a Charter School and a Special Act School District) that is subject to the accountability provisions of NCLB may apply. This application does not apply to boards of cooperative educational services (BOCES), State-operated schools, State-supported schools, approved private schools, and other State agency educational programs.

Due Date:

Applications must be postmarked or submitted by e-mail or facsimile by **April 1, 2013.** Applications received after that date will not be considered.

Send Applications To:

New York State Education Department
P-12: Office of Special Education
Special Education Policy Unit
89 Washington Avenue, Room 309 EB
Albany, NY 12234
ATTN: Application for Cap Exception

speced@mail.nysed.gov
Fax (518) 473-5387

Applicants will be notified of approval/disapproval of the exception request by **June 3, 2013**.

Questions regarding the application may be directed to Patricia Ronayne in the Office of Special Education, Special Education Policy at (518) 473-2878.

Application for Exception to the One Percent Cap
2012–13

Local Educational Agency (LEA) Contact Information

LEA _____

BEDS Code _____

Date Submitted _____

Contact Person _____

Address _____
_____

Telephone Number _____

Fax Number _____

Email _____

Superintendent of Schools, Community School Superintendent or Chief Administrative Official of Charter School:

Name: _____

Address: _____

Phone: _____

Application Narrative (attach additional pages if necessary)

I. For all applicants:

1. Provide counts of students (with and without disabilities) continuously enrolled and tested in Grades 3–8 in your LEA in the 2012-13 school year, separately for English language arts (ELA) and mathematics. These numbers are your best projections as of the date you are completing this application:

Grade 3-8: Total # of Students for ELA (All Students with and without disabilities)	
Grade 3-8: Total # of Students for Math (All Students with and without disabilities)	

2. Provide counts of students by disability classification who are at age equivalent levels for Grades 3–8 and Committee on Special Education (CSE) designated as eligible to take the New York State Alternate Assessment (NYSAA) in 2012–13:

Total number of students (grades 3-8) taking NYSAA by disability classification	
# of Students	Disability Classification

3. Provide a count of students (with and without disabilities) who first entered 9th grade (anywhere) during the 2009–10 school year (July 1, 2009 through June 30, 2010) or, in the case of ungraded students with disabilities, reached their 17th birthday during the 2009–10 school year and who are in your LEA or placed by your CSE in a BOCES program, State-operated or State-supported program or in an approved private school program for students with disabilities:

2009-10 Cohort (with and without disabilities)

Total Number: _____

4. Provide a count of students from question 3 above by disability classification who are designated by the CSE to take NYSAA and who have previously taken NYSAA or will take NYSAA in 2012–13 and will use this assessment for accountability purposes:

# in 2009-10 Cohort who have previously taken or will take NYSAA in 2012-13 (By disability classification)	
Number	Disability Classification

II. For applicants who are applying on the basis that the number of Office for People with Developmental Disabilities (OPWDD) licensed residential programs (e.g., Intermediate Care Facilities, Individualized Residential Alternatives) or other similar community or health organizations located within the LEA have resulted in a large percentage of students with the most significant cognitive disabilities residing in the district and taking NYSAA in 2012-13, provide the following information, as applicable:

❑ List the names and addresses of the OPWDD licensed residential programs located in this LEA (add additional lines or attach additional pages if necessary):

Name of Facility	Address of Facility

❑ Provide the number and a description, including ages and disability classifications, of students placed in each of the above OPWDD licensed facilities for whom your LEA has CSE responsibilities (add additional lines or attach descriptive narrative if necessary):

Grades 3 - 8			
Name of Facility	# of Students	Age	Classification

High School			
Name of Facility	#of Students	Age	Classification

- ❑ List other community programs located in this LEA and describe the population served. Explain how these programs impact on the LEA's population of students with significant cognitive disabilities who take NYSAA:

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- ❑ Other documentation:

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III. For applicants applying on the basis that the LEA has very specialized programs for students with significant disabilities, resulting in a large number of families of students with the most significant cognitive disabilities residing in the district who take NYSAA, provide the following information (must complete both sections):

- ❑ Describe in detail the specialized school programs provided by the LEA for students with the most significant cognitive disabilities (add additional lines and/or attach a descriptive narrative if necessary)

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- ❑ Provide information, such as two or three years of trend data, that demonstrates that such programs have resulted in a high percentage of students with the most significant cognitive disabilities residing in the district and taking NYSAA:

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IV. All applicants:

Check if you are applying for a one-year or two-year period for the cap exception: (years and percentage required)

_____ one year

_____ two years

Indicate the cap exception requested:

_____ percent

Provide a rationale for requesting the above percentage cap exception. Your rationale should be based on data and circumstances described in previous questions.

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V. Assurances:

All applications must include this statement of assurances signed by the School Superintendent, or the Chief Administrative Official in the case of a charter school. This statement constitutes an assurance that the LEA is fully and effectively addressing the following requirements of 34 CFR Part 200, section 200.6(a)(2)(iii).

☐ The LEA implements clear and appropriate guidelines, consistent with the New York State Education Department (NYSED) guidelines posted on NYSED's web page for the CSE to use to determine when a child's significant cognitive disability justifies the alternate assessment based on alternate achievement standards. See http://www.p12.nysed.gov/assessment/nysaa/

☐ Parents are informed that their child will be assessed based on alternate achievement standards, including information about the implications of participation in the alternate assessment.

☐ Students with the most significant cognitive disabilities are included, to the extent possible, in the general curriculum and assessments aligned with that curriculum.

☐ The LEA disseminates information and promotes the use of appropriate accommodations to increase the number of students with the most significant cognitive disabilities who are tested against grade-level academic achievement standards.

☐ General and special education teachers and other appropriate staff are knowledgeable about the administration of assessments, including making appropriate use of accommodations for students with the most significant cognitive disabilities.

Name of Superintendent of Schools, Community School Superintendent or Chief Administrative Official of Charter School

_____

Signature: _____

Date: _____

Criteria for NYSED Review and Approval or Disapproval of Exception Requests

NYSED will programmatically review exception requests in consideration of:

- ☐ LEA evidence that more than 1.0 percent of its continuously enrolled tested student population is taking NYSAA.
- ☐ LEA incidence data, particularly the classification rates of students with intellectual disabilities and multiple disabilities. (The national incidence of children with intellectual disabilities is 1.13 percent of all students, with approximately 1/3 of that percentage functioning in the severe/profound range.)
- ☐ LEA incidence data on other disabilities that may include students with significant cognitive disabilities (e.g., traumatic brain injury, autism, deaf-blind).
- ☐ Documentation submitted by the LEA regarding OPWDD licensed facilities, including sufficient verifiable information, such as the names of the facilities and the numbers and descriptions of the students placed in such facilities.
- ☐ Documentation submitted by the LEA regarding specialized education programs that attract large numbers of students with the most significant cognitive disabilities, ensuring that the documentation is credible and persuasive and describes the characteristics and the numbers of students served in such programs.
- ☐ Submission of a complete application, which includes the original or electronic signature of the Superintendent of Schools or Chief Administrative Official of a Charter School.

FOR NYSED USE ONLY

Exception Granted: ☐ YES ☐ NO

If yes, cap percentage exception approved for 2012–13:

☐ _____ percent

Date of approval: _____

NYSED Authorizing Signature: _____

Attachment

Questions and Answers

1. **Does the 1.0 percent cap place a limitation on the number of students with disabilities who can take the New York State Alternate Assessment (NYSAA)?**

   No. There is no cap on the number of students who may be assessed using NYSAA. The Committee on Special Education (CSE) determines the assessment that is most appropriate for the student with a disability. All students who are designated as eligible to take NYSAA, whether they attend schools in the district or are placed by the CSE in out-of-district placements (e.g., BOCES programs, approved in-State or out-of-State private schools), must take that assessment at the appropriate age and must be reported as ungraded.

2. **Which students are eligible to take NYSAA?**

   NYSAA assesses students with the most significant cognitive disabilities to evaluate their mastery of skills and attainment of knowledge. This assessment measures a student's level of performance based on alternate grade level indicators for students with significant cognitive disabilities. In order for the CSE to determine whether or not a student is eligible to take NYSAA, the student must:

   - have a significant cognitive disability and significant deficits in communication/language and significant deficits in adaptive behavior; <u>and</u>
   - require a highly specialized educational program that facilitates the acquisition, application, and transfer of skills across natural environments (home, school, community, and/or workplace); <u>and</u>
   - require educational support systems, such as assistive technology, personal care services, health/medical services, or behavioral intervention.

   Additionally, the individualized education program (IEP) of the student with a significant cognitive disability will indicate why the student cannot participate in the regular assessment and why the alternate assessment is appropriate for the student.

3. **Does the 1.0 percent cap on proficient and advanced scores on NYSAA relate to the school district or to individual schools within a school district?**

   The 1.0 percent cap pertains to the school district, not to individual schools within that district, but it could affect an individual school if the district exceeds the cap. For example, in the 2012–13 school year if a school has more than 1.0 percent of its continuously enrolled tested students at age equivalent levels for Grades 3–8 combined on NYSAA scoring at a proficient or advanced level on NYSAA in mathematics, but the district as a whole does not exceed the 1.0 percent cap at these grade levels in mathematics, the proficient and advanced scores of all the school's students will be used when determining adequate yearly progress (AYP). However, if a district has more than 1.0 percent of its continuously enrolled tested students at the combined Grades 3–8 levels score at a proficient or advanced level on NYSAA in mathematics, some of those students will be counted as performing at Level 2 when determining AYP for the district. If these students attend in-district schools, the

students will also have to be counted as performing at Level 2 when determining AYP for the school they attend.

4. How will the New York State Education Department (NYSED) determine if a school district has exceeded the 1.0 percent cap on proficient and advanced scores on NYSAA for the 2012–13 school year?

To compute if a school district has exceeded the 1.0 percent cap for a particular year, grade levels and subject:

- ***Grades 3–8 Levels:*** The denominator is the number of continuously enrolled students (disabled and nondisabled) with a valid score on any of the accountability measures (NYSAA, general assessments, and New York State English as a Second Language Achievement Test (NYSESLAT) when taken in lieu of the general assessment, if applicable[1]) in the subject (e.g., English language arts (ELA) or mathematics) in Grades 3–8. The numerator is the number of students from the denominator who achieved a score at Level 3 or 4 on NYSAA.

- ***Secondary Level:*** The denominator is the number of students (disabled and nondisabled) in the district accountability cohort. The numerator is the number of students from the denominator who scored at Level 3 or 4 on NYSAA in the subject (e.g., ELA or mathematics) at the secondary level. For the 2012–13 school year, the 2009 cohort results will be reported. The 2009 cohort includes graded students who first entered 9th grade (anywhere) during the 2009–10 school year (July 1, 2009 through June 30, 2010) or, in the case of ungraded students with disabilities, reached their 17th birthday during the 2009–10 school year, who meet the criteria for inclusion in the cohort.

5. If a school district exceeds the 1.0 percent cap on proficient and advanced scores on NYSAA, which scores are reallocated and how?

If a district exceeds the 1.0 percent cap in ELA or mathematics at Grade levels 3–8 combined, sufficient numbers of Level 3 or 4 scores must be counted at Level 2 to reduce the percentage of remaining Level 3 and 4 scores to 1.0 percent or less. The reduction will be made by NYSED.

The effect on the accountability status of the district and component schools may depend on which students' scores are counted at the lower level. As such, NYSED will make every effort to designate students whose scores can be counted at Level 2 without changing the AYP status of the district or a component school. For example, students who are placed out of district or students who are attending in-district schools

[1] "Only those LEP/ELL students who, on January 3, 2007, were enrolled in school in the United States (excluding Puerto Rico) for less than one year, may take the NYSESLAT in lieu of the ELA test. For purposes of determining adequate yearly progress, such students will be counted for participation only; NYSESLAT results will not be included in the calculation of the ELA Performance Index for a subgroup, school, or district." For more information refer to the August 4, 2006 memorandum regarding *LEP/ELL Student Statewide Assessment Policy/Title I Requirements* posted at the following address. www.p12.nysed.gov/assessment/nyseslat/nclbmemo8-4-06.pdf - 2012-08-21

that would not make AYP even with the student counted at the proficient level will be chosen first.

If a district has been granted an exception to exceed the 1.0 percent cap, but exceeds the cap granted under the exception, similar procedures will be used to reduce the percentage of Level 3 and 4 NYSAA scores to the permitted level.

6. How are the results for students whose NYSAA scores had to be reduced to Level 2 for accountability purposes reported on school report cards?

A student's earned performance levels are recorded on the student's permanent record, reported to the student's parent, and reported in the counts of students taking NYSAA at each grade equivalent level on the school report card. The performance indices in the accountability-report part of the report card reflect the reallocated performance levels when a school district exceeds the 1.0 percent cap or the cap provided through an approved exception.