

# Issue Brief: Students with the Most Significant Cognitive Disabilities and Participation in the Alternate Framework

## GUIDING QUESTIONS:

What statewide policies, standards and guidance should MSDE establish and provide for the appropriate identification of students eligible to take the alternate assessment and to improve the educational experiences and long-term outcomes for students with the most significant cognitive disabilities?

## THE LAW

### 1. ESSA

The Every Student Succeeds Act,<sup>1</sup> or ESSA, (the 2015 reauthorization of the Elementary and Secondary Education Act) requires that States:

- “adopt challenging academic content standards and aligned academic achievement standards” that define the knowledge and skills and performance level expectations for all students [ESSA 1111(b)(1)]
- implement assessments to measure the performance level of all students in reading, math, and science, with the first required general assessment being given in 3<sup>rd</sup> grade [ESSA 1111(b)(2)]

and allows States to:

- “adopt alternate academic achievement standards for students with the most significant cognitive disabilities, provided those standards—
  - (I) are **aligned with the challenging State academic content standards** ...;
  - (II) **promote access to the general education curriculum**...;
  - (III) reflect professional judgment as to the highest possible standards achievable by such students;
  - (IV) are **designated in the individualized education program** developed ... for each such student as the academic achievement standards that will be used for the student; and
  - (V) are aligned to ensure that a student who meets the alternate academic achievement standards is **on track to pursue postsecondary education or employment**, consistent with the purposes of Public Law 93–112 [Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act], as in effect on July 22, 2014.” [ESSA 1111(b)(1)(E)]
- “provide for alternate assessments aligned with the challenging State academic standards and alternate academic achievement standards described in paragraph (1)(E) for students with the most significant cognitive disabilities, if the State—
  - (I) ... ensures that, for each subject, the total number of students assessed...using the alternate assessments **does not exceed 1 percent** of the total number of all students...assessed;
  - (II) ensures that the **parents of such students are clearly informed**, as part...developing the individualized education program...—
    - (aa) that their child’s academic achievement will be measured based on such alternate standards; and

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<sup>1</sup> [Every Student Succeeds Act](#), Public Law 114–95—Dec. 10, 2015

- (bb) how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma;
- (III) promotes...the involvement and progress of students with the most significant cognitive disabilities in the general education curriculum;
- (IV) describes in the State plan the steps the State has taken to incorporate universal design for learning, to the extent feasible, in alternate assessments;
- (V) describes in the State plan that general and special education teachers, and other appropriate staff—
  - (aa) know how to administer the alternate assessments; and
  - (bb) make appropriate use of accommodations for students with disabilities on all assessments required under this paragraph;
- (VI) develops, disseminates information on, and promotes the use of appropriate accommodations to increase the number of students with significant cognitive disabilities—
  - (aa) participating in academic instruction and assessments for the grade level in which the student is enrolled; and
  - (bb) who are tested based on challenging State academic standards for the grade level in which the student is enrolled; and
- (VII) **does not preclude a student with the most significant cognitive disabilities who takes an alternate assessment based on alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.**

## 2. Individuals with Disabilities Education Act (IDEA)

Much of the language and intent found in ESSA was incorporated into the IDEA. The Appendix of this pre-reading includes the provisions related to the participation of students with disabilities in State assessments, including students with the most significant cognitive disabilities in the alternate assessment (IDEA 300.160).

## 3. Maryland Law and Code of Maryland Regulations (COMAR)

While the Code of Maryland Regulations (COMAR) does not contain any specific items related to identifying students to participate in the alternate assessment, Maryland law does require parental consent for participation. Maryland Code, Education [§ 8-405](#) provides:

“(g)(1) Except as provided in paragraph (2) of this subsection, an individualized education program team shall obtain written consent from a parent if the team proposes to:

- (i) Enroll the child in an alternative education program that does not issue or provide credits toward a Maryland high school diploma;
- (ii) Identify the child for the alternative education assessment aligned with the State's alternative curriculum.”

COMAR Sec. 13a.03.02.09.E. Diplomas and Certificates, Maryland High School Certificate of Program Completion, notes:

“(4) A student with significant cognitive disability may not meet high school graduation requirements, in accordance with §B of this regulation, if a student

- (a) Participates in an Alternative Assessment based on Alternative Academic Achievement Standards (AA-AAAS); and
- (b) Continues to receive instruction based on Alternative Academic Achievement Standards through high school.”

**Why 1%:** As noted above, The Elementary and Secondary Education Act (ESEA) sets a cap of 1% participation on the alternate assessment and requires States that anticipate exceeding the cap to request a waiver of this requirement from the U.S. Department of Education (ED). The cap is set at 1% “based on converging scientific evidence from multiple sources...” and it was determined that “a one percent limitation would allow for normal State and LEA (Local Education Agency) variations in the occurrence of students with the most significant cognitive disabilities” (Federal Register, 2003, Mar 20, pp. 13798-13799). In 2019, a report from the National Center for Educational Outcomes describes the derivation of the statement that 85%-90% of students with disabilities can meet the same standards as other students, leaving the remainder of between 10%-15% of students with disabilities (or about 1% of all students) “possibly not being able to achieve grade-level performance, even if provided the best instruction, supports, and accommodations.”<sup>2</sup>

**Waiver Request:** Each year, the U.S. Department of Education publishes requirements for states that are seeking a new waiver, waiver extension, or both for the one percent cap.<sup>3</sup> Requirements for a waiver include making the request available for public comment; data on student subgroups; 95% assessment participation rate for all students and students with disabilities; verification that each LEA has followed the participation guidelines and will address any disproportionality, and any LEA expected to exceed the 1% cap have submitted justifications; and that the State will improve the guidelines for identifying students for participation in alternate assessments. A waiver extension request also requires demonstration of substantial progress on the prior year’s plan and activities be submitted to the ED, including improving the guidelines for participation, how the State supported and provided oversight to LEAs, addressed any disproportionality, and demonstrated a reduction in alternate assessment participation rate compared to prior years.

## MARYLAND’S CONTEXT

### 1. ALTERNATE FRAMEWORK

In Maryland, students who are determined eligible to take the alternate assessment participate in the “Alternate Framework.” All students are taught the content and skills outlined in the Maryland College and Career Ready Standards (MCCRS). Most students with disabilities are expected to demonstrate mastery of the general standards through participation in the general state assessment. However, a small number of students with the most significant cognitive disabilities may not be able to demonstrate their learning and progress on the standard assessment, even with intensive support. For these students, learning is assessed according to the alternate academic achievement standards (AAAS).

The skills measured through the AAAS are derived from the grade-level MCCRS and Next Generation Science Standards (NGSS); they do not represent a separate set of content standards. The AAAS on which Maryland

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<sup>2</sup> Quenemoen, R. F., & Thurlow, M. L. (2019). [Students with disabilities in educational policy, practice, and professional judgment: What should we expect?](#) (NCEO Report 413). Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes. Appendix A: Derivation of the Statement that 85%–90% of Students with Disabilities Can Meet the Same Standards as Other Students, p. 43-44.

<sup>3</sup> See, for example: U.S. Department of Education. (2024). [Requirements to Request a Waiver or Waiver Extension for the 2024-25 School Year from the 1.0 Percent Cap on the Percentage of Students with the Most Significant Cognitive Disabilities Who May Be Assessed with an Alternate Assessment Aligned with Alternate Academic Achievement Standards.](#)

students participating in the Alternate Educational Framework are assessed are known as the “Essential Elements” (EEs) and are developed by Dynamic Learning Maps (DLM). An EE is a representation of the essential “core” or big idea of the content standard in the MCCRS and NGSS. Each EE was identified by examining hypothesized learning progressions. Each EE is a specific statement of knowledge and skill linked to grade band expectations. EEs address a small number of standards, representing the breadth but not the depth of coverage across the entire standards framework. For each EE, DLM has identified a set of “linkage levels” that reflect either precursor/prerequisite skills less complex than the EE itself or extensions of the skill.

## 2. DETERMINING ELIGIBILITY IN MARYLAND: APPENDIX A

In order to determine appropriate participation in the alternate assessment rather than the general assessment, States are required to establish a definition for students with the most significant disabilities and a tool to determine eligibility. The creation of such a tool is critical, given the very high stakes associated with this decision, and challenging because of the variability in this student population. DLM, which produces the alternate assessments used in Maryland and 21 other states, reported on this variability in a recent report describing some common characteristics of the student population who used its assessments in 2018-19. DLM’s report focuses on receptive and expressive communication, attention, sensory characteristics and access needs (e.g., vision, hearing, mobility), academic knowledge, skills, and understandings.<sup>4</sup>

Determining a most significant cognitive disability involves a holistic understanding of a student’s development and abilities across different environments. Student records should indicate one or more disabilities that significantly impact cognitive function, educational performance, and adaptive behavior. Although formal, individually administered standardized assessments play a key role, they are not the sole factor in determining eligibility for the alternate assessment. Both standardized results and additional evidence of the student’s performance must reflect the substantial impact of the disability on intellectual, adaptive, and academic functioning, distinguishing the student’s needs from same-aged peers.

In November 2023, Maryland updated [Appendix A](#),<sup>5</sup> a tool used by Individualized Education Program (IEP) teams to determine eligibility for students to participate in the “Alternate Framework.” Each year, the IEP team completes Appendix A to confirm that the student still qualifies, during the annual IEP review or a separate meeting, taking enough time to fully review and discuss both the student’s eligibility to participate in the Alternate Framework and the ramifications of the decision. The team should include a specialist (e.g., school psychologist) who can interpret key assessment results, including cognitive and adaptive evaluations.

The IEP team is required to gather a broad range of evidence from various sources, including individual assessments, school records, and insights from family members and educators, needed to make a well-informed eligibility decision. The IEP team is to rule out other factors that might affect the student’s performance or influence the decision. If any of the following is not true for the student, they do not meet the definition and they participate in the general assessment:

1. The student has an Individualized Education Program (IEP).
2. The student has a “significant cognitive disability” that has a pervasive impact on intellectual, educational, and adaptive performance that is evident across time, setting, contexts, and tasks.

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<sup>4</sup> Burnes, J. J., & Clark, A. K. (2021). [Characteristics of students who take Dynamic Learning Maps® alternate assessments: 2018–2019](#) (Technical Report No. 20-01). University of Kansas, Accessible Teaching, Learning, and Assessment Systems (ATLAS).

<sup>5</sup> MSDE, Appendix A: Participation Criteria and Checklist, <https://marylandpublicschools.org/programs/Documents/Special-Education/IEP/Appendix-A-Participation-Criteria-and-Checklist-A.pdf>

Determining a significant cognitive disability means looking at the student's development and performance in various environments. This typically involves intellectual functioning well below average, along with needs in adaptive skills, those basic skills needed for daily life and independence. It's essential that the IEP team distinguishes cognitive disabilities from sensory or physical impairments, which might impact a student's ability to show what they know but do not meet the definition of a significant cognitive disability.

3. The student requires significant modifications to curriculum in order to access knowledge and skills and demonstrate progress on the Maryland and College Career Ready Standards. This involves major adaptations to both the curriculum content and the way it's delivered.
4. The student requires extensive, direct, repeated, and individualized instruction to gain and retain essential skills. This support often includes breaking tasks down into small steps, repetition of practice, and prompting to reinforce learning.

Appendix A also helps IEP teams confirm which factors should not affect eligibility. Students whose challenges are primarily related to sensory or physical disabilities don't meet criteria for the Alternate Framework unless the student has a significant cognitive disability. When evaluating Multilingual Learners, assessments should be conducted in the student's primary language whenever possible. If an interpreter or translation is used, results should be carefully interpreted to avoid misdiagnosing cognitive ability. IEP teams should also ensure that a student's need for augmentative or alternative communication (AAC) is not mistaken as evidence for eligibility. The student should have access to and appropriate intervention and support in utilizing AAC to allow an accurate assessment of their cognitive abilities.

Family participation is also key to this process, and parental consent is required for any instruction or assessment based on alternate academic achievement standards. LEAs are responsible for ensuring that parents can actively participate in this decision-making and are fully informed of the factors leading to the determination and all the outcomes from the decision. These responsibilities include access to the IEP meeting and IEP meeting materials in the parent's native language. Parents should also be informed of their right to revoke consent at any time, and the ramifications of that decision as well. If a parent does decide to revoke consent for their child to participate in the Alternate Framework, the LEA must provide prior written notice before implementing that decision. If a parent refuses consent for participation in the Alternate Framework, the IEP team is not permitted to independently implement a program of study aligned to instruction or assessment on the alternate standards. The LEA may decide to access formal dispute resolution procedures (mediation/due process hearing) if they feel that the only way that a free appropriate public education (FAPE) can be provided to the student is for them to participate in the Alternate Framework. Both parents and LEAs should be reminded that participation in the Alternate Framework does not dictate placement, and the two (participation in the Framework, placement and LRE) should be separated when making decisions for the student.

The completed Appendix A form is saved in the student's electronic record in the IEP system. If the team finds that the student does not meet the criteria, the form documenting that decision is also kept in the record. Teams should provide a blank copy of Appendix A to the family prior to the meeting in which the team plans to review it and, if the student is determined eligible, a completed version along with the approved IEP and Prior Written Notice within five days after the meeting.

The Division of Early Intervention and Special Education Services (DEI/SES) developed [\*Guidance for IEP Teams Working with Students with the Most Significant Cognitive Disabilities: Assessment and Eligibility for the Alternate Framework\*](#) (2023) to guide IEP teams when using the Appendix A. Once the updated Appendix A was released to LEAs, professional learning sessions were held across the state and virtually to ensure that all

LEAs and staff were prepared to complete Appendix A accurately and with fidelity, beginning in the Fall of 2023. Virtual office hours, individual LEA sessions, and a Canvas course have also been offered and provided.

### 3. PARTICIPATION DATA

#### Maryland’s Overall Alternate Framework Participation Data

School Year	R/LA	Mathematics	Science
2017 – 2018	1.08	1.07	1.15
2018 – 2019	1.09	1.08	1.20
2019 – 2020	**	**	**
2020 – 2021 (administered Fall 2021)	1.03	1.04	1.16
2021 – 2022	1.17	1.19	1.49
2022 – 2023	1.08	1.10	1.13
2023 – 2024	1.08	1.08	1.02

\*\* Testing did not occur during the 2019-2020 school year due to the COVID-19 pandemic school closures.

**Exceeding the 1% Cap:** Since the 1% cap requirement was implemented, per ESSA, beginning with the 2017-18 school year (SY), Maryland has requested waivers or extensions for 2017-18, 2020-21, 2021-22, 2023-24 and 2024-25 SYs. (A blanket waiver was provided to all states for 2019-20. For the 2022-23 school year, Maryland did not submit a waiver request but released an Action Plan to decrease participation rates.)

**MSDE Monitoring:** As a component of the ESSA oversight, MSDE requires each LEA to project the percentage of students participating in one or more of the alternate academic assessments as compared to the total number of students participating in all academic assessments. Any LEA that anticipates exceeding the 1% threshold for students participating in the alternate assessment is required to submit a justification. These LEAs are required to review the development and implementation of local policies, guidance, and professional development, and provide coaching to ensure the quality of IEP team decision-making.

The MSDE and local systems regularly monitor the IEP team decision-making process related to eligibility and participation in instruction and/or assessment aligned to alternate academic achievement standards. The Policy and Accountability Branch within the DEI/SES has developed a specific Alternate Framework Audit Tool that is used to evaluate LEAs’ level of compliance with all areas of Alternate Framework participation requirements. The Audit Tool consists of several items that address eligibility, parental consent, IEP development, and the Least Restrictive Environment (LRE). Items are either marked “compliant” or “noncompliant” throughout the record review process. Following the completion of the audit, results are shared with leadership within the LEA and corrections are required to be made based on identified noncompliance.

#### A. Identification of Young Children

Students Determined Eligible for Participation in Alternate Assessment, by Grade Level 2021-2022 (Includes all LEAs except Wicomico and Anne Arundel):

Grade	Total
PreK	55

K	472
1	354
2	436
3	591
4	619
5	573
6	958
7	728
8	699
9	1,000
10	785
11	1,146
12	1,816
<b>Total</b>	<b>10,232</b>

The alternate assessments provided for in ESSA and IDEA are created to allow for participation in the State's assessment program which begins in the 3<sup>rd</sup> grade. The data tables above indicate that hundreds of children in Maryland are being determined eligible to participate in the alternate assessment years prior to the student's first assessment, dozens as early as four years prior when the student is in pre-K. For an LEA-level breakdown of alternate assessment participation by ELA, see page 18 of this report.

MSDE advises teams through guidance and in the Maryland Online IEP (MOIEP) to exercise "extreme caution" when completing Appendix A for children prior to 3<sup>rd</sup> grade. However, the guidance also notes Appendix A may appropriately be completed for students not in tested grades because "the participation decision impacts both instruction and assessment."<sup>6</sup>

One factor contributing to early identification for participation in the alternate assessment is the need to administer the English proficiency assessment, the WIDA Access, to young children. Children unable to use the WIDA Access because of a significant cognitive disability may be administered the WIDA Alternate Access, but participation in that assessment is limited to those determined eligible to take the State's alternate assessment. The WIDA Alternate Access became available in 2023-24 for children as early as kindergarten, it is anticipated that early identification for the alternate assessment will likely increase as the multilingual learner population grows and the use of Appendix A for very young children becomes more commonplace.

Other factors contributing to the identification of younger students in the Alternate Framework are the difficulty in assessing young children who may not have reliable communication skills and the placement in segregated buildings for students with complex needs where the AAAS are implemented throughout the entire school.

The appropriateness of specific criteria in Appendix A for very young children is an area for consideration. For example, consider the applicability of the following Appendix A criteria for a 5 year old student:

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<sup>6</sup> Maryland State Department of Education. (2023). [Guidance for IEP Teams Working with Students with the Most Significant Cognitive Disabilities: Assessment and Eligibility for the Alternate Framework](#), p. 76.

- “The student has significant difficulty with learning academic content and may require instruction that is designed by clustering grade-level standards into life applied units of study with intensive accommodations for access.”
- “The student requires layers of support (accommodations, scaffolding, and assistive technologies) to follow directions and daily routine activities.”
- “The student often uses behaviors to communicate.”

**B. Significant Disproportionality**

Black/African American students are significantly disproportionate in participation rates for the alternate assessment (see table). Some elements of the MSDE Blueprint Special Education Workgroup’s recommendation to address Significant Disproportionality overall could address this area (e.g., identifying root causes including implicit and explicit bias in tools and staff, development of standardized eligibility checklists, and innovative uses of Comprehensive Coordinated Early Intervening Services (CCEIS) funds). The 2024-25 Maryland waiver extension request contains “action items” with respect to this disproportionality, including data analysis of participation rates and trends, desk audits, engagement with stakeholders, and technical assistance for LEAs that are demonstrating disproportionality.

Group:	Total Number Assessed in Grades 3-8 & HS	Number Taking Alternate Assessments in Grades 3-8 & High School	Percent Taking Alternate Assessments in Grades 3-8 & High School
All Students	450,446	4,871	1.08
American Indian or Alaska Native	1,080	8	0.74
Asian	31,757	410	1.29
Black/African American	145,529	2,029	1.39
Hispanic/Latino of Any	100,247	930	0.93
Native Hawaiian or Other Pacific Islander	585	3	0.51
White	147,282	1,256	0.85
Two or More Races	23,845	235	0.99

**C. Placement**

Participation in the Alternate Framework should not be linked to decisions around placement (i.e. how much of the instructional day a student spends with their nondisabled peers). As previously mentioned, the Essential



Elements are themselves derived from the state instructional standards, but reduced in depth, breadth, and complexity. As such, access to the essential elements can be provided across the continuum of services, including LRE-A, where a student spends 80% of the day or more alongside their non-disabled peers. Participation in the Alternate Framework and a student's LRE placement are two separate but important conversations.

Despite these conversations being separate, as noted in the June session of the Blueprint Special Education Workgroup on LRE, students who take the alternate assessment are the most segregated student group (see table below). Statewide, just 3.2% are in general education classrooms 80% or more of the day; 12.7% are in general education classrooms between 40% and 79% of the day; 62.4% are in separate classes; and 20.4% attend separate schools. This segregation persists despite MSDE's work from 2018–2023 with the [TIES Center](#), an Office of Special Education Program (OSEP)-funded technical assistance center focused on inclusive practices for students with the most significant cognitive disabilities. The TIES Center worked in two Maryland LEAs (Montgomery and Carroll counties). While Carroll County has continued to expand capacity and the meaningful time that students who take the alternate assessment spend in general education classrooms (notably, from elementary through high school), these changes have not been significantly advanced statewide.<sup>7</sup>

	80% or more of day in Regular Classroom (LRE A)	40–79% of day in Regular Classroom (LRE B)	Less than 40% of day in Regular Classroom (LRE C)	Separate Public Day	Separate Private Day
Statewide	3.2	12.7	62.4	11.8	8.6
Allegany	8.2	11.0	58.9	*	21.9
Anne Arundel	*	12.8	54.9	28.6	2.3
Baltimore City	1.1	3.2	66.4	16.9	11.3
Baltimore	4.4	9.4	58.2	13.7	11.2
Calvert	6.5	29.3	46.7	9.8	5.4
Caroline	*	34.1	65.9	*	*
Carroll	*	33.1	47.1	5.8	12.8
Cecil	15.7	31.5	42.6	*	8.3

<sup>7</sup> Maryland Online Special Services Information System (SSIS)

Charles	4.3	11.4	75.7	*	7.6
Dorchester	6.1	72.7	9.1	*	9.1
Frederick	6.5	22.9	51.4	11.5	5.9
Garrett	*	33.3	66.7	*	*
Harford	4.5	23.6	35.5	22.6	12.2
Howard	8.0	60.9	12.7	16.7	1.4
Kent	*	*	81.8	*	9.1
Montgomery	1.8	6.3	78.6	6.9	5.5
Prince George's	1.4	1.7	68.8	15.4	12.6
Queen Anne's	1.9	14.8	72.2	*	11.1
Saint Mary's	*	20.2	73.0	*	3.7
Somerset	8.5	34.0	53.2	*	*
Talbot	*	19.4	77.4	*	3.2
Washington	6.6	12.8	68.9	7.3	4.0
Wicomico	*	32.1	67.2	*	*
Worcester	23.2	16.1	19.6	39.3	*

#### D. Achievement and Outcomes

The chart below outlines the results from indicator 3C, proficiency on the Alternate Assessments. As the data below shows, there is a statewide need to improve proficiency across both reading and math, with an especially urgent need for improvement in grade 4 reading and grade 8 math.

Subject	Group Name	FFY 2020*	FFY 2021	FFY 2022
Reading	Grade 4	15.57%	6.40%	5.33%
Reading	Grade 8	16.55%	14.87%	15.14%

Reading	Grade HS	47.55%	24.50%	36.58%
Math	Grade 4	10.68%	20.10%	21.45%
Math	Grade 8	11.23%	6.83%	7.78%
Math	Grade HS	52.78%	23.28%	39.37%

\*Note: FFY 2020 is the current Annual Performance Report (APR) baseline year. The baseline was set on a shortened version of the MCAP (testlets). For that reason, in the FFY 2023 APR MSDE will set FFY 2022 as its revised baseline. State targets for FFY 2024 and FFY 2025 will be set and also included in the submission.

Currently, there is no regularly collected data available on long-term outcomes for students who take the alternate assessment. The federal indicator associated with post-school outcomes, Indicator 14,<sup>8</sup> cannot be disaggregated to review these outcomes specifically for students who took the alternate assessment.

## EVIDENCE-BASED BEST PRACTICES FOR EDUCATING STUDENTS WITH THE MOST SIGNIFICANT COGNITIVE DISABILITIES

To improve the educational experiences and long-term outcomes for students with the most significant cognitive disabilities, evidence-based practices for these students should be central to the efforts of systems, schools, and educators.

### 1. Multi-Tiered Systems of Support (MTSS)

Evidence-based instructional frameworks critical to schools and classrooms for all students are also foundational for this student population, including multi-tiered systems of support (MTSS) and universal design for learning (UDL). To intentionally include students with significant cognitive disabilities in MTSS, “the framework has to include aligned general education and special education delivery systems where supplemental special education supports simplify, magnify, and possibly modify what is taught in general education.” The table below exemplifies inclusive academic and behavioral tiers for all students as well as aligned supplementary strategies for students with the most significant cognitive disabilities.<sup>9</sup>

<sup>8</sup> Indicator 14: Percent of youth who are no longer in secondary school, had IEPs in effect at the time they left school, and were: A. Enrolled in higher education within one year of leaving high school. B. Enrolled in higher education or competitively employed within one year of leaving high school. C. Enrolled in higher education or in some other postsecondary education or training program; or competitively employed or in some other employment within one year of leaving high school.

<sup>9</sup> Thurlow, M. L., Ghere, G., Lazarus, S. S., & Liu, K. K. (2020, January). *MTSS for all: Including students with the most significant cognitive disabilities*. Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes/TIES Center.

**Table 2: MTSS Framework: Further Details for an Academic and Behavioral/Social Emotional System Inclusive of All Students**

Tiers	For All Students/ School-wide Focus	Aligned Supplementary Strategies for Students with the Most Significant Cognitive Disabilities
<b>Academic</b>		
<b>Tier 1</b> – Standards-based Curriculum and Instruction	<ul style="list-style-type: none"> <li>• Priority learning targets identified and taught</li> <li>• Effective teaching practices in place</li> <li>• Universal Design for Learning implemented</li> </ul>	<ul style="list-style-type: none"> <li>• Focus on the high priority learning targets</li> <li>• Differentiate how students express what they learn</li> <li>• Integrate concepts and vocabulary with Augmentative Communication system</li> </ul>
<b>Tier 2</b> – Targeted Instruction	<ul style="list-style-type: none"> <li>• Use of flexible grouping within class focused on priority learning targets</li> <li>• School-wide supports</li> </ul>	<ul style="list-style-type: none"> <li>• Pre-teach to build prior knowledge</li> <li>• Reteach to reinforce priority learning</li> </ul>
<b>Tier 3</b> – Individualized Instruction	<ul style="list-style-type: none"> <li>• Intensive instruction to eliminate/ minimize gaps</li> </ul>	<ul style="list-style-type: none"> <li>• Focus on skill gaps related to priority learning targets and additional academic IEP goals (e.g., reading skills)</li> </ul>
<b>Behavior and Social Emotional Growth</b>		
<b>Tier 1</b> – School-wide Positive Behavior and Supports	<ul style="list-style-type: none"> <li>• School and classroom positive expectations, behaviors and routines are articulated, displayed and specifically taught</li> <li>• Positive school culture developed and supported</li> <li>• School-family partnerships developed</li> </ul>	<ul style="list-style-type: none"> <li>• Simpler language of same content used, visuals added, steps chunked into smaller steps</li> <li>• Self-regulation skill building taught</li> <li>• Concepts and vocabulary for the school-wide system integrated with Augmentative Communication system</li> </ul>
<b>Tier 2</b> – Targeted Instruction	<ul style="list-style-type: none"> <li>• Supports for self-regulation and social skill development increased</li> <li>• School-wide services and supports available</li> </ul>	<ul style="list-style-type: none"> <li>• Pre-teach</li> <li>• Reteach</li> <li>• Provide sensory breaks and tools</li> </ul>
<b>Tier 3</b> – Individualized Instruction	<ul style="list-style-type: none"> <li>• Functional behavioral assessment completed</li> <li>• Wrap-around supports added</li> </ul>	<ul style="list-style-type: none"> <li>• Behavior Intervention Plan developed as part of IEP</li> </ul>

**2. Inclusion in General Education Classrooms**

As noted in the June Blueprint Special Education Workgroup Issue Brief on LRE, the research literature has identified that educating students with disabilities in general education classrooms alongside non-disabled peers results in higher academic achievement and better long-term outcomes.<sup>10</sup> These benefits also accrue to students who are most frequently placed in more restrictive educational environments, including students with the most significant cognitive disabilities.<sup>11</sup> The evidence suggests that “more students can and should be included than presently are in our schools and that a more rigorous monitoring of the district, school,

<sup>10</sup> See: Hehir, T. et al. (2016). *A Summary of Evidence on Inclusive Education*. Abt Associates. SWIFT (2017). *Research Support for Inclusive Education and SWIFT*. National Council on Disability (2018). *The Segregation of Students with Disabilities* (IDEA Series). As well as: specific recent studies on academic and high school outcomes like Cole, S.M., Murphy, H.R., Frisby, M.B., & Robinson, J. (2022). The relationship between special education placement and high school outcomes. *The Journal of Special Education*. Cole, S.M., Murphy, H.R., Frisby, M.B., Grossi, T.A., & Bolte, H.R. (2021). The relationship of special education placement and student academic outcomes. *The Journal of Special Education*, 54(4), pp. 217–227.

<sup>11</sup> Kleinart, H. Towles-Reeves, E., Quenemon, R., Thurlow, M., Fluegge, L., Weseman, L, & Kerbel, A. (2015). Where students with the most significant cognitive disabilities are taught: Implications for general curriculum access. *Exceptional Children*, 81, 3, pp. 312-28. Kleinart, H., & Kearns, J. (2022). *Reconsidering LRE: Students with the most significant cognitive disabilities and the persistence of separate schools*. TIES Center

classroom, and student factors and characteristics that interact in predictable ways to influence this process should be undertaken.”<sup>12</sup>

### 3. Instructional Best Practices

As suggested above with respect to inclusive MTSS, there are specific evidence- and research-based instructional practices for students with the most significant cognitive disabilities. A 2014 literature review found strong evidence for the use of systematic instruction for teaching students with severe disabilities academic content and functional life skills, “delivered by peers, in general education settings, and with grade-aligned academic content” and for teaching social and communication skills, providing positive behavioral support, and learning self-determination skills.<sup>13</sup> In 2020, the TIES Center issued a report updating this review with the most recent research and found:

“Embedded trial instruction and constant time delay were found to be evidence-based practices; system of least prompts, task analytic instruction, chained tasks taught using task analytic instruction with embedded system of least prompts, simultaneous prompting, and peer support interventions were found to be research-based practices; and technology-aided instruction and graphic organizers were found to be promising practices.”<sup>14</sup>

Additional instructional resources:

- The IRIS Center, an OSEP-funded center that develops and disseminates online resources about evidence-based instructional and behavioral practices to support the education of all students, particularly students with disabilities, has a module on [Inclusion of Students with Significant Cognitive Disabilities: Supports in the General Education Classroom](#).
- The TIES Center has extensive resources related specifically to instruction for students with the most significant cognitive disabilities including the [TIES Inclusive Practice Series](#) that includes resources on high-leverage practices, grading, behavior supports, and specific teaching and learning strategies.
- The [MIDAS Project](#), or Making Improved Decisions for Students on the Cusp of Alternate Assessment Participation Using Multiple Measures of Academic Achievement from Multiple Sources, at the National Center for Educational Outcomes, is a project to create professional learning and materials for educators on using data to inform instructional decision-making for students with disabilities, including English learners with disabilities, who move from the alternate assessment to the general statewide assessment.

## AREAS FOR ADDITIONAL CONSIDERATION

### 1. Content Standards vs. Achievement Standards

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<sup>12</sup> Cole et al. (2021), p. 7.

<sup>13</sup> Browder, D. M., Wood, L., Thompson, J., & Ribuffo, C. (2014). [Evidence-based practices for students with severe disabilities](#) (Document No. IC-3). University of Florida, Collaboration for Effective Educator, Development, Accountability, and Reform Center

<sup>14</sup> Saunders, A. F., Wakeman, S., Reyes, E., Thurlow, M. L., & Vandercook, T. (2020). [Instructional practices for students with the most significant disabilities in inclusive settings: A review of the literature](#) (TIES Center Report 104). Minneapolis, MN: University of Minnesota, The TIES Center.

Maryland's Alternate Framework pairs participation in the alternate assessment with "instruction aligned with the alternate academic achievement standards." And Maryland's parental consent law, as noted above, uses terms like "alternative education program" and "the State's alternative curriculum." Yet these state provisions and interpretations stand in contrast to the federal requirements that all students are instructed in the State's challenging academic content standards.

The distinction between the challenging content standards that define the curriculum for all students ("what" is taught) and the alternate academic achievement standards that define proficiency ("how much" at a minimum students are expected to learn to be proficient) is consistently made by the U.S. Department of Education and federally funded technical assistance (TA) centers.<sup>15</sup>

- For example, an [Office of Special Education and Rehabilitative Services \(OSERS\) Transition Guide](#) from 2020 notes: "[S]tudents with the most significant cognitive disabilities who are working towards an alternate diploma **must receive instruction that is aligned with the State's challenging academic content standards** and that promotes their involvement and progress in the general education curriculum, consistent with the IDEA" [emphasis added].
- An [IRIS Center module](#) notes: "All students, including students with significant cognitive disabilities, should **learn from the general education curriculum based on the grade-level content standards**. However, when it comes to standardized state assessments, students with significant cognitive disabilities typically take an *alternate assessment* that measures their mastery of a different set of performance expectations—the *alternate achievement standards*. Some states call these extended standards, connectors, essence statements, essential elements, or access points."

The interpretation underlying Maryland's Alternate Framework that instruction is aligned with proficiency standards prevents students who take the alternate assessments from access to the State's challenging content standards, and may lead to the creation of separate programs where "alternate curriculum" is the basis of instruction, limiting access to nondisabled peers and general education classrooms.

## 2. Do Not Preclude: "Diploma Track" and "Certificate Track"

An additional area for consideration relates to how aligning instruction with proficiency standards rather than the challenging content standards may contradict the requirement that the State must "not preclude a student with the most significant cognitive disabilities who takes an alternate assessment aligned with alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma." The IEP is constructed so that graduation outcomes, participation in the alternate standards, and participation in the alternate assessments are separate discussions. A student should never be assumed to be graduating with a certification of program completion solely on the bases of participation in the alternate assessments or standards.

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<sup>15</sup> U.S. Department of Education (Department), Office of Special Education and Rehabilitative Services, A Transition Guide to Postsecondary Education and Employment for Students and Youth with Disabilities, Washington, D.C., 2020.

Other similar examples can be found in : Sabia, R., Thurlow, M. L., & Lazarus, S. S. (2020, July). [The general education curriculum—not an alternate curriculum!](#) (Brief #5). TIES Center.

Center for Parent Information and Resources (CPIR) and The Advocacy Institute, [Assessments for Students with the Most Significant Cognitive Disabilities: ESSA Fact Sheet](#).

It is certainly true that if participation in the alternate assessments continues into high school where demonstrating proficiency on the Maryland Comprehensive Assessment Program (MCAP) is required, and/or a student's classwork and regular classroom assessments are modified to the point where a student cannot earn required course credits, a student will not earn a diploma. (These very significant ramifications for a student's educational program and experience, and potentially for post-school opportunities and outcomes, making the decision for a student to take the alternate assessment a very significant one.)

However, considering what the "not preclude" provision should mean in the real world would seem to be critically important. Examples are available from the TIES Center and work happening in Carroll County Public Schools and elsewhere, of students with the most significant cognitive disabilities being included in general education classrooms through high school, with appropriate modification and adaption of materials and assessment, while having exposure to the full challenging content standards of the curriculum and their nondisabled peers. This model provides for students going as far as they can go, and may better reflect the intent and letter of the law outlined in the first section of this pre-reading.

### 3. Are Students with the Most Significant Cognitive Disabilities Part of "All Students"?

Many of the biggest educational initiatives underway in Maryland today are intended for "all students." For example,

- The overarching Blueprint Outcome is that "**All Maryland students** will leave high school globally competitive and prepared for success in postsecondary education, work and life."
- As noted in the Literacy Policy, "Per the Blueprint for Maryland's Future, the Ready to Read Act, Education Article 7-202 and COMAR 13A.03.08, it is the ultimate goal of the General Assembly that **every student** read at or above grade level by the end of grade 3."

As these initiatives are implemented and their constituent parts—the College and Career Ready (CCR) Standard, individual reading plans for struggling readers, career counseling, support pathways—it's worthwhile to consider how (or if) students with the most significant cognitive disabilities are considered — and how conception of these programs and initiatives might change if they were.

## DISCUSSION QUESTIONS

What statewide policies or guidance could MSDE implement to ensure that only students with the most significant cognitive disabilities are being determined eligible for participation in the alternate assessments?

What recommendations do you have for adjustments to existing Maryland policies, practices, and procedures in Maryland to ensure that students participating on the Alternate Framework:

- A. Are receiving instruction aligned to content standards,
- B. Are not precluded from attempting to complete the requirements of a high school diploma,
- C. Are not determined eligible for the Alternate Framework at a very young age (especially prior to 3<sup>rd</sup> grade)?

What statewide standards and guidance based on evidence-based practices could MSDE establish and disseminate to improve the educational experiences and long-term outcomes of students with the most significant cognitive disabilities?

What recommendations are suggested to ensure that areas of focus, initiatives, and policies of the Blueprint and MSDE include consideration of students with the most significant cognitive disabilities?

## APPENDIX: STUDENTS WITH THE MOST SIGNIFICANT COGNITIVE DISABILITIES IN THE IDEA

### Individuals with Disabilities Education Act

300.160 Participation in assessments.

(a) General. A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

(b) Accommodation guidelines.

(1) A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.

(2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must—

(i) Identify only those accommodations for each assessment that do not invalidate the score; and

(ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

(c) Alternate assessments.

(1) If a State has adopted alternate academic achievement standards for children with disabilities who are students with the most significant cognitive disabilities as permitted in section 1111(b)(1)(E) of the ESEA, the State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation in alternate assessments of those children with disabilities who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.

(2) For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that—

(i) Are aligned with the State's challenging academic content standards and challenging student academic achievement standards;

(ii) If the State has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards; and

(iii) Except as provided in paragraph (c)(2)(ii) of this section, a State's alternate assessments, if any, must measure the achievement of children with disabilities against the State's grade-level academic achievement standards, consistent with 34 CFR 200.6(a)(2)(ii)(A).

(3) Consistent with 34 CFR 200.1(e), a State may not adopt modified academic achievement standards for any students with disabilities under section 602(3) of the Act.

(d) Explanation to IEP Teams. A State (or in the case of a district-wide assessment, an LEA) must—

(1) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of State and local policies on a student's education resulting from taking an alternate assessment aligned with alternate academic achievement standards, such as how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma; and



(2) Not preclude a student with the most significant cognitive disabilities who takes an alternate assessment aligned with alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.

(e) Inform parents. A State (or in the case of a district-wide assessment, an LEA) must ensure that parents of students selected to be assessed using an alternate assessment aligned with alternate academic achievement standards under the State's guidelines in paragraph (c)(1) of this section are informed, consistent with 34 CFR 200.2(e), that their child's achievement will be measured based on alternate academic achievement standards, and of how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma.

(f) Reports. A State Education Agency (SEA) (or, in the case of a district-wide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

(2) The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards in school years prior to 2017-2018.

(3) The number of children with disabilities, if any, participating in alternate assessments aligned with modified academic achievement standards in school years prior to 2016-2017.

(4) The number of children with disabilities who are students with the most significant cognitive disabilities participating in alternate assessments aligned with alternate academic achievement standards.

(5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards (prior to 2017-2018), alternate assessments based on modified academic achievement standards (prior to 2016-2017), and alternate assessments aligned with alternate academic achievement standards if—

(i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

(g) Universal design. An SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

(Authority: 20 U.S.C. [1412](#)(a)(16))

[72 FR 17781, Apr. 9, 2007, as amended at 80 FR 50785, Aug. 21, 2015; 82 FR 29760, June 30, 2017]

## Students Eligible for Participation in Alternate Assessment, by Grade Level, by LEA, 2021-2022

2021-2022	Allegany	Baltimore City	Baltimore County	Calvert	Caroline	Carroll	Cecil	Charles	Dorchester	Frederick	Garrett	Harford	Howard	Kent	Montgomery	Prince George's	Queen Anne's	Saint Mary's	Somerset	Talbot	Washington	Worcester
PK	*	*	55	*	*	*	*	*	*	*	*	*	0	*	*	*	*	*	*	*	*	*
K	*	*	75	*	*	*	*	*	*	*	*	13	2	*	245	130	*	*	*	*	*	*
1	*	*	85	*	*	*	*	*	*	*	*	*	17	*	163	63	*	*	*	*	*	*
2	*	*	110	*	*	*	*	*	*	*	*	11	40	*	142	75	*	*	*	*	15	*
3	*	46	81	*	*	11	*	*	*	24	*	26	86	*	161	85	*	19	*	*	19	*
4	*	53	100	*	*	*	*	11	*	30	*	21	116	*	125	83	*	13	*	*	18	*
5	*	39	86	*	*	*	*	15	*	26	*	22	146	*	68	98	*	10	*	*	20	*
6	10	86	94	*	*	20	11	22	*	50	*	41	165	*	258	123	*	14	*	*	21	*
7	*	64	108	*	*	21	13	14	*	39	*	36	101	*	146	117	*	20	*	*	17	*
8	*	43	110	*	*	16	*	15	*	34	*	42	175	*	74	113	*	*	*	*	24	*
9	*	123	55	*	*	25	21	25	*	55	*	47	118	*	287	147	*	18	*	*	30	*
10	*	71	82	*	*	18	*	22	*	48	*	36	100	*	171	122	*	24	*	*	35	*
11	19	86	95	22	*	26	15	28	*	48	*	41	124	*	172	390	12	15	*	*	26	*
12	30	201	142	22	16	46	34	42	12	115	*	103	330	*	472	87	20	18	17	14	66	22
<b>Grand Total</b>	<b>111</b>	<b>822</b>	<b>1278</b>	<b>102</b>	<b>55</b>	<b>205</b>	<b>124</b>	<b>208</b>	<b>42</b>	<b>479</b>	<b>28</b>	<b>447</b>	<b>1520</b>	<b>12</b>	<b>*</b>	<b>*</b>	<b>65</b>	<b>166</b>	<b>58</b>	<b>39</b>	<b>295</b>	<b>59</b>