

## USDE Monitoring Response

### Indicator 1.2 Finding

The Texas Legislature established the requirements for the development and implementation of the state's current assessment and accountability systems, including the assessment of students with disabilities. The legislature is currently in session and is considering options for amending existing statutory requirements to better align the state assessment program with the requirements of the December 2003 federal regulations for No Child Left Behind (NCLB) related to the assessment of students with disabilities. The Texas Education Agency (TEA) is working with legislative leadership to secure these amendments. The TEA agrees with the United States Department of Education (USDE) that Texas needs to take steps to revise the standard-setting process for alternate assessments for students with disabilities.

Given the requirements of state statute, TEA has completed an equivalency study that aligns performance of on-grade level State-Developed Alternative Assessment II (SDAA II) administrations to performance on the comparable Texas Assessment of Knowledge and Skills (TAKS) grade level and subject area assessments. Students who meet the TAKS Equivalency Standard on an SDAA II assessment will have the results indicated on their confidential student report. The information also will be available on the data file containing test results that districts receive following test administrations and will be reported to USDE when the spring 2005 results are available.

Currently TEA is considering various assessment options contingent on changes in state statute and the guidelines announced by Secretary Spellings on April 7, 2005. TEA has not yet received the results of the USDE's peer review of its assessment system, which took place February 16-18, 2005, but certainly will be considering these results in implementing any necessary modifications to the program. Upon careful deliberation of these three critical components, TEA will move forward to take action to address areas of need, including any necessary documentation and validation of standard setting. Nevertheless, TEA does not believe that any regulations or guidance – including the appendix to the December 9, 2003, regulations, 68 Federal Register 68703 – clarifies what is entailed by a "documented and validated standards-setting process," in a manner that would clearly exclude our individualized Admission, Review, and Dismissal (ARD) committee process, and does not concede that that process does not comply with the regulatory standard.

### Indicator 1.3 Finding 1

TEA administered the English language arts SDAA II assessment to enrolled tenth graders on February 23, 2005. This test currently is being scored. SDAA II mathematics assessments will be administered to students enrolled in grades 3-10 on April 19, 2005. Evidence documenting that the February 2005 SDAA II English language arts administration took place and that the April 2005 SDAA II mathematics administration will take place is available on the TEA website:

Attachment 1: 2004–2005 Student Assessment Calendar

<http://www.tea.state.tx.us/student.assessment/admin/calendar/0405.pdf>

Attachment 2: [District and Campus Coordinator Manual 2005](#)

<http://www.tea.state.tx.us/student.assessment/resources/guides/coormanual/index.html>

Attachment 3: ARD Committee Decision-Making Process for the Texas Assessment Program  
[http://www.tea.state.tx.us/student.assessment/admin/sdaa/ardtrain/ARD\\_manual0405.pdf](http://www.tea.state.tx.us/student.assessment/admin/sdaa/ardtrain/ARD_manual0405.pdf)

If further documentation is necessary, TEA can provide results of these test administrations to USDE once they are available.

### **Indicator 1.3 Finding 2**

The category significantly cognitively disabled was defined de facto through the state's well-documented ARD committee decision-making process. The reference manual for 2004-2005, entitled ARD Committee Decision-Making Process for the Texas Assessment Program, is provided as Attachment 3 and can be found at the agency website: <http://www.tea.state.tx.us/student.assessment/admin/sdaa/ardtrain/phase2/index.html>. Pages 17 and 30 provide flowcharts for school districts to use in determining which students are in this category. At the same website address is evidence of training that was provided for school districts about the ARD committee process related to assessment, which is provided as Attachment 4.

TEA believes these materials meet the minimum requirements but plans to establish and implement additional guidance and training to school districts. TEA will engage committees of educators and special education advocates to assist in developing eligibility requirements for testing students with the most significant cognitive disabilities using alternate achievement standards. TEA also plans to begin development of a state-developed replacement for the current Locally Determined Alternate Assessment (LDAA) option for students receiving special education services. TEA will further provide continued training to districts on assessing students with the most significant cognitive disabilities through the annual ARD training process. The timeline for these activities is dependent on the state's consideration of the recent changes announced by Secretary Spelling, including provision for a combined 3% cap, and the results of the state's peer review of assessments.

### **Indicator 1.4 Finding 1**

As an initial matter, TEA will consider any district requests for exceptions to the cap based on prevalence of students with disabilities in the grades tested, consistent with standards established in federal regulations or guidance. The district will be required to document that the prevalence of students with disabilities exceeds the cap in the grades tested and explain why the prevalence of such students exceeds the cap. Examples of explanations might include school, community, or health programs in the district or campus attendance boundaries that have drawn large numbers of families with disabilities; and/or such a small overall student population in the district or campus that it would take only a very few students with such disabilities to exceed the cap.

As a completely separate matter, TEA and Texas school districts may continue to consider appeals of accountability determinations for technical or other substantive reasons, including appeals related to campuses or districts using alternative assessments, consistent with State law, at a rate that exceeds the cap imposed on the school district. It will do so consistent with the standards for reviewing such appeals in Sections 1116(b)(2)(B) or 1116(c)(5)(B) of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act (NCLB), 34 CFR Sections 200.31 or 200.50(c), and the approved Texas Consolidated State Application Accountability

Workbook. In reviewing appeals, the state will begin moving toward the reduction in use of alternative assessments consistent with USDE's AYP cap, while changes to the state assessment program are being implemented. In 2005, campuses or districts that do not meet the performance rate criteria for reading and/or mathematics due to application of the cap, and that appeal based on appropriate testing under state policy, will be evaluated in relation to the following three conditions.

1. Meet a predetermined cap for use of alternative assessments (5% or lower).
2. Meet state performance standards on all monitoring indicators related to testing of students with disabilities.
3. Show an increase from the prior year in overall expectations for students with disabilities.

Our intent is that by 2006, we will have completed the transition to an approach whereby--although not required by law--appeals will be constrained by federal regulations and guidance concerning the cap and exceptions to it. USDE has announced plans to issue proposed regulations providing for a combined 3% cap on proficient scores based on alternate or modified achievement standards. TEA and others may recommend a higher cap based on our own review of the research.

Texas supports the goals of NCLB and believes that all students can learn and should be given the opportunity to receive high quality instruction in rigorous content from a highly qualified teacher. TEA regards the actions taken through the appeals process relating to the 2004 assessment results to be educationally sound, consistent with the law, and in good faith. Consistent with its July 27, 2004, Consolidated State Application Accountability Workbook, TEA implemented the 1% cap on inclusion of results based on alternative assessments, made AYP determinations based on the 1% cap, and applied NCLB consequences – including public school choice and supplemental educational services – for Title I schools that missed AYP based on the 1% cap. Those consequences were applied throughout the 2004-2005 school year. However, in considering appeals "for technical or other substantive reasons," the standard for appeals in NCLB, TEA acted within its authority and in good faith based on concern to harmonize Texas law, NCLB, and the Individuals with Disabilities Education Act (IDEA) and the individualized process called for in that law. This action also ensured that schools were not falsely identified as having underperformed, which could have unintended consequences that are educationally harmful.

There is no statutory language, regulation, or guidance from USDE that restricts this use of appeals or establishes restrictions on the very broad statutory standards for such use. Rather, the state acted within its responsible authority under the law to ensure that accountability determinations were most educationally sound in the Texas context. Moreover, USDE has since announced that it no longer stands behind its regulatory restriction on how many students with disabilities may be counted as proficient under alternate or modified achievement standards, and is providing an additional 2% cap for modified academic achievement standards in addition to the 1% cap for alternate achievement standards.

Two documents are attached that provide the justification for appeals pertaining to the 1% cap in 2004 (Attachment 5 – 2004 Adequate Yearly Progress Appeals Guidelines) and number and results of all 2004 appeals (Attachment 6 – Summary of Final 2004 AYP Results). These documents are available on the TEA website at: <http://www.tea.state.tx.us/ayp/2004>. TEA will be able to compute the percentage of students statewide who were counted as proficient based on the SDAA or LDAA but those data could not be produced within the 10-day response period.

## **Indicator 1.4 Finding 2**

TEA will discontinue the practice of granting appeals to districts and campuses that fail to meet the AYP mathematics participation rate standard or performance rate standard due to the exemption of students with limited English proficiency (LEP) who have been in United States schools for more than one year from the TAKS test by the language proficiency assessment committee (LPAC) under state assessment policy. In 2005, under new state policy, these students will be tested on the secure TAKS test with linguistic accommodations. Test answer documents will be submitted to the assessment contractor for scoring and the results will be included in the AYP mathematics participation and performance measures.

Again, the TEA regards the actions taken through the appeals process relating to the 2004 assessment results to be educationally sound, consistent with the law, and in good faith. The TEA acted within its authority and in good faith based on concern to harmonize Texas law and NCLB regarding mathematics testing of unschooled recent immigrant students with limited English proficiency. Furthermore, a new state policy for mathematics testing with linguistic accommodations was being phased in.

Two documents are attached that provide the justification for appeals pertaining to LEP mathematics testing in 2004 (Attachment 5 – 2004 Adequate Yearly Progress Appeals Guidelines) and number and results of all 2004 appeals (Attachment 6 – Summary of Final 2004 AYP Results). These documents are available on the TEA website at: <http://www.tea.state.tx.us/ayp/2004>.

## **Indicator 1.4 Finding 3**

TEA has discontinued the practice of administering released tests as the basis for linguistically accommodated testing (LAT). In spring 2005, qualifying recent immigrant LEP students took the secure, operational state mathematics assessments with state-approved linguistic accommodations. When the spring 2005 results are available, TEA will report to USDE the number and percent of LEP students that took LAT mathematics tests and the results for this group of students.

## **Indicator 1.5 Finding 1**

TEA will release 2005-2006 Title I School Improvement (SIP) designations to school districts no later than August 15, 2005. Under Texas statute (Texas Education Code §25.0811) the first day of instruction for the 2005-2006 school year is August 22, 2005. Districts will be informed in advance that they must implement required Title I SIP provisions before the beginning of the next academic year, including notifying parents before the beginning of the school year if students are eligible for transfer to another school in the district for the 2005-2006 school year. The Texas Title I School Improvement Resource Center will assist districts in preparing for the parental notification.

The ability to meet this calendar is contingent upon no delays resulting from new USDE requirements – both those specific to Texas and those that apply nationwide – related to calculation of AYP status and Title I SIP designations that cannot be incorporated into the existing work plan. The TEA did not propose any amendments to the approved Texas AYP Plan before

April 1, 2005, in part to avoid delays that resulted in late notification for 2004. TEA needs stable ground rules to perform the massive data functions needed to meet the 2005 projected timeline.

Regarding the late SIP notification for the 2004-2005 school year, the timing of Texas' SIP determinations was based in large part on the late approval by USDE of the Texas AYP Plan (as well as the late publication of related USDE policies and guidance). Texas SIP determinations were made prior to September 30, 2004, which TEA in good faith believed was sufficient to meet USDE's requirements based on repeated communications and unique circumstances, including our efforts to align Texas' state and federal accountability determinations. A chronology of the process Texas engaged in for approval of amendments to our AYP plan in 2004 and release of SIP is provided in a February 10, 2005, letter to Secretary Spellings, which is provided here as Attachment 7.

## Indicator 1.5 Finding 2

The Consolidated State Application Accountability Workbook approved by USDE in July 2003 and July 2004 reflects the phasing in of the proficiency requirements on the TAKS under the following Critical Elements (text in italics is exactly as it appears in the workbook):

Critical Element 1.3: The state response on this critical element provides an overview of the TAKS standards-setting process with a link under Links to Supporting Evidence. Attachment 8 is a hard copy of the documents available at this link.

*The SBOE set standards for student achievement in November 2002.*

*Link to Supporting Evidence: Information related to the performance standards set by the State Board of Education is found at*

*<http://www.tea.state.tx.us/student.assessment/taks/standards/board111402.html>.*

Critical Element 9.2: The state response on this critical element describes how changes in assessments will be incorporated into the AYP definition, including the following statement and the same link found under Critical Element 1.3.

*The AYP calculation has been defined to accommodate the following types of changes to the system.*

- *Proficiency on the TAKS is defined as the proficiency level for the year set by the SBOE that is in place at the time the test is administered.*

*Link to Supporting Evidence: Information related to the performance standards set by the State Board of Education is found at*

*<http://www.tea.state.tx.us/student.assessment/taks/standards/board111402.html>.*

NCLB vests the establishment of standards and what constitutes proficiency in the States. Under Texas statute, authority to set student proficiency standards on the TAKS rests with the State Board of Education (SBOE). There is no possible violation of law in use of the SBOE student proficiency standards for 2003 and 2004 AYP determinations. Furthermore, use of the proficiency level for the year set by the SBOE is not at all contradicted by the USDE approved workbook.

In addition, data are requested showing the number of campuses that would not have made AYP in 2003 and 2004 if the Panels' Recommended proficiency standards had been in place. TEA cannot produce AYP determinations under alternative student passing standards for previous years. The need to produce these data was not anticipated and this flexibility was not built into the computer programs written to calculate 2003 and 2004 AYP status. TEA will be able to produce an estimate of the number of campuses that would not have met AYP in 2004 under the Panels' Recommended proficiency standards, but those data could not be produced within the 10-day response period. Data on student performance at the different student passing standards are provided. Attachments 9 and 10 are the state Academic Excellence Indicator System (AEIS) reports for 2002-2003 and 2003-2004, respectively. These reports show TAKS performance at different student performance standards. The AEIS TAKS indicators are performance summed across grades, as with the AYP indicators, but include grades that are not part of the AYP indicators. The AEIS TAKS indicators do not include SDAA, LDAA, or Reading Proficiency Tests in English (RPTE) results that are part of the AYP indicators. Also, in 2003 the accountability subset definition used for AEIS indicators differed from the definition for full academic year used in AYP. Nevertheless, the AEIS reports give an indication of student performance in 2002-2003 and 2003-2004 at different student performance standards on the following pages:

2002-03 AEIS State Report: pages 3 – 5

2003-04 AEIS State Report: pages 4 – 5

The AEIS reports for districts and campuses are available at the following link:  
<http://www.tea.state.tx.us/perfreport/aeis>.

### **Indicator 1.7**

The state and LEA report card requirements of NCLB are met by the use of the existing Student Assessment reports and the AYP and Highly Qualified Reports developed by TEA. The number of students tested, disaggregated by student group, is available in the student assessment reports available at: <http://www.tea.state.tx.us/student.assessment/reporting>. A sample Grade 3 report is available at: [http://www.tea.state.tx.us/student.assessment/reporting/results/summary/sum05/taks/grade3\\_feb05.pdf](http://www.tea.state.tx.us/student.assessment/reporting/results/summary/sum05/taks/grade3_feb05.pdf). Attachment 11 is a hard copy of the sample report available at this link.

The number and percentage of students tested is reported in disaggregated form in the AYP state and district reports. The state data is on page 2 of the state data tables report, which is available on TEA's web site at <http://www.tea.state.tx.us/ayp/2004/state04.pdf> where "Number Participating" represents the number of students tested and the percentage is provided. The district level data is on page 2 of the district report which can be generated for any district at: <http://www.tea.state.tx.us/ayp/2004/district.srch.html>. Attachments 12 and 13 are the state report and a sample district report that are available at this link. The Agency also provides campus level AYP reports. Additional testing data is included in the AEIS reports which are available at: <http://www.tea.state.tx.us/perfreport/aeis>.

Attachment 14 is the sample template of the corrected highly qualified teacher report. For both the state and LEAs, the report will be three pages in length describing the total aggregate results, the results for low-poverty districts/campuses, and the results for high-poverty districts/campuses. The

Agency also agrees to submit the completed highly qualified teacher report cards to USDE in fall 2005 after the district highly qualified teacher reports are submitted to TEA.

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