

April 18, 2005

Jacquelyn C. Jackson, Director
Student Achievement and School Accountability Programs
Office of Elementary and Secondary Education
United States Department of Education
400 Maryland Ave., SW
Washington, DC 20202

Dear Dr. Jackson:

This letter responds to your letter of March 25, 2005, which we received on April 5, 2005, transmitting the United States Department of Education's (USDE) monitoring report of the Texas Education Agency's (TEA) administration of formula programs under Title I of the Elementary and Secondary Education Act (ESEA). Consistent with instructions in your letter, this letter responds within 10 business days to issues related to accountability under Part A of Title I, ESEA. The balance of TEA's reply to other findings in the report will be provided within the 30 business-day deadline specified in your letter. Particularly given the very short period that USDE provided for this response – and the complexity of the issues and data involved – a meeting has been scheduled with Raymond Simon on Wednesday, April 20, 2005, to discuss these issues and Texas' proposed actions before any conclusions are made (and TEA respectfully reserves the right to amend this response based on that meeting and also based on any further actions proposed by USDE).

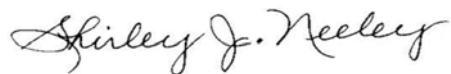
Before responding to the specific findings, I would like to make several general points, particularly as they relate to the assessment of students with disabilities (SWD). First, TEA and the State of Texas are committed to an accountability system that ensures the maximum educational progress for students with disabilities, consistent with the purpose of the No Child Left Behind Act (NCLB). Our prior approach to measure the proficiency of SWD on an individual basis, consistent with the Individualized Education Program (IEP) process, reflected our educational judgment that this was the most responsible way to ensure that schools were held accountable for the educational gains of these students. It also reflected our best effort to harmonize preexisting State law with evolving policies and requirements under NCLB and the Individuals with Disabilities Education Act, which only recently was amended to clarify that State-level alternate achievement standards do constrain the IEP process (Sec. 612(a)(16)(C)).

The regulations limiting to 1% the percentage of students who can be counted as proficient in the Adequate Yearly Progress (AYP) performance measures took effect only in January, 2004, about one month before TEA began administering the tests to three million students, and well after Texas had received its Title I, Part A grants for that school year. It was not remotely possible to develop statewide alternate achievement standards through a documented and validated process in time for these assessments. Nor was it possible

to undo instantly the assessment arrangements that had been made for SWD. Approval of appeals by schools of their 2004 AYP status was designed to avoid false identification of schools that had complied with preexisting State law and made substantial progress in the achievement of all students, including SWD, which Texas believes is a proper substantive basis for granting an appeal under the statutory standard.

Second, we are prepared to work with USDE in fashioning appropriate changes to our approach. As Secretary Spellings has said, this is an area that calls for working closely together to ensure that the needs of all students are met. It is also an area where, with due respect, guidance has been lacking. USDE's policy has shifted repeatedly and USDE has announced recently that it no longer stands behind the existing regulatory limits on students who may be counted as proficient under alternate or modified achievement standards. Texas is not alone in facing significant practical educational problems in seeking to transition to new requirements. TEA has acted in good faith to address this area consistent with Texas law that preceded NCLB. If USDE disagrees, we submit that the answer is to work together prospectively in good faith to secure appropriate changes, perhaps through a flexibility agreement alluded to by USDE in connection with Secretary Spellings' April 7, 2005, speech.

Sincerely,

A handwritten signature in cursive script that reads "Shirley J. Neeley".

Shirley J. Neeley, Ed.D.

Enclosure

cc: Ray Simon
David Dunn
Kerri Briggs
Cory Green