



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

MAY 23 2006

The Honorable Shirley Neeley
Commissioner
Texas Education Agency
1701 North Congress
Austin, Texas 78701

Dear Commissioner Neeley:

Thank you for the opportunity to review the proposed amendments to your State accountability plan. The information in this letter presents feedback from the U.S. Department of Education (Department) regarding Texas' amendment requests, reflecting the requirements of the *Elementary and Secondary Education Act*, as amended by the *No Child Left Behind Act of 2001* (NCLB), and final Department regulations.

Acceptable amendments

We have reviewed your request to amend the Texas accountability plan and found the following amendments aligned with the regulations and statute. These may be included in Texas' approved accountability plan.

- **Conforming changes to accountability plan (Elements 1.2, 9.3, 10.1)**: Texas has noted several places in its workbook that must be updated to reflect the compliance agreement with the Department. These changes reduce possible confusion by bringing together the most current information about calculation of adequate yearly progress (AYP) for 2006 and 2007 in one document to avoid school districts and policymakers having to apply provisions in the compliance agreement to the workbook.
- **Achievement Standards (Element 1.3)**: Texas has proposed to clarify its system for establishing achievement standards. This is in response to findings from a Title I monitoring visit by the Department.

Amendments that are not fully aligned with the regulations and statute

The following amendments do not comply with the statute or regulations and do not meet the 'bright lines' required for additional flexibility as set forth in the letter from Secretary Spellings to the Chief State School Offices on May 10, 2005 (refer to: www.ed.gov/policy/elsec/guid/secletter/050510.html). Therefore, they may not be included in Texas's approved accountability plan.

- **State definition of “full academic year” for including students in AYP decisions. (Element 2.2):** Texas has proposed to revise the definition of full academic year (FAY) to require students to have been enrolled in the same district at least one day the previous school year. The most recent district attended the previous year, based upon student attendance data, will be used to determine the student’s FAY status. Impact data provided by Texas indicate that this change in FAY will lead to a 10 percent decrease in the number of students in the State who are included in AYP determinations. This decrease in the percentage of students included in accountability determinations is unacceptably high. The Department also believes this proposed change would have a disproportionate effect on the ability of the State to include mobile or migrant children in accountability determinations. While the Department recognizes that Texas currently has a short FAY definition, the proposed change would require each student to have been in the school or district for one day in the previous school year. Texas conducts its assessments in the spring, based upon material taught in the school during that academic year. It is not clear how requiring a student to have been in the district one day during the prior year more accurately measures the student’s achievement during the current school year.
- **AYP definition (Element 3.2):** Texas has proposed to include the application of a 75 percent confidence interval in its calculation of the “safe harbor” provision for determining AYP. Texas will base the safe harbor calculations on a “matched profile” of students from the prior year. Texas, as you know, has a minimum group size of 200 students or 50 students if the group comprises 10 percent of the school population, one of the largest approved minimum groups sizes. The purpose of these group sizes is to increase the reliability of AYP determinations. Given the large group size approved in Texas, the Department believes the use of a confidence interval on the safe harbor calculation is unnecessary. In addition, the Department questions the validity and methodology of using a “matched profile” to calculate safe harbor for determining AYP. Finally, Texas has proposed to use the Wald formula for calculating the safe harbor confidence interval. This formula is more likely than not to reject the null hypothesis; that is, the formula design is more likely than other possible formulas to accept that a school or district had made AYP through the safe harbor calculations.
- **Use of other subgroups when making “safe harbor” decisions (Element 3.2):** Texas has proposed that a district, charter school, or campus will have made AYP on the other academic indicator for purposes of the safe harbor calculation if it shows gains on that measure or meets the AYP graduation and attendance rate standard for all student groups, including the “all students” group, that meet the subgroup size criteria. The determination of whether a school or district makes AYP requires, under 34 CFR §200.20(a)(1)(ii), that “the school or LEA, respectively, meets or exceeds the State’s other academic indicators under §299.19.” This indicates that the schools and districts do not have the flexibility to select among the other academic indicator or to only show progress for select subgroups. In order to make AYP, the school or district must reach the annual measurable objectives in reading and mathematics and the

other academic indicators for the total population and each subgroup that meets the minimum group size requirement.

- **Including students with disabilities in AYP determinations (Element 4.1):** Texas has proposed to include in the students with disabilities (SWD) subgroup, for an additional two years, students who were previously identified as having disabilities but who no longer receive services. This proposal is based upon the Department's recently proposed federal regulation. As this regulation has not yet been finalized and may be further revised, this request cannot be approved for AYP determinations based on assessments during the 2005–06 school year.

Texas will receive a separate letter regarding the State's request to create a separate hurricane subgroup and to waive AYP decisions for campuses and districts impacted by Hurricane Rita.

I look forward to our continued conversations regarding this pending request. As soon as we have reached a decision on its acceptability, I will contact you with further instructions on submitting for approval an amended State accountability workbook reflecting Texas's acceptable amendment requests.

NCLB has provided a vehicle for States to raise the achievement of all students and to close the achievement gap. We are seeing the results of our combined endeavor; achievement is rising throughout the nation. I appreciate Texas' efforts toward this goal. I wish you continued success in your school improvement efforts. If you need any additional assistance in your efforts to implement the standards, assessment, and accountability provisions of NCLB, please do not hesitate to contact Catherine Freeman (Catherine.Freeman@ed.gov) or Zollie Stevenson (zollie.Stevenson@ed.gov) of my staff.

Sincerely,



Henry L. Johnson

cc: Governor Rick Perry
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