



# TEXAS EDUCATION AGENCY

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Shirley J. Neeley, Ed.D.  
Commissioner

November 30, 2005

Assistant Secretary Henry L. Johnson  
Office of Elementary and Secondary Education  
U.S. Department of Education  
400 Maryland Avenue, SW, Suite 3W305  
Washington, DC 20202

Dear Dr. Johnson:

Enclosed is the flexibility agreement regarding Texas' inclusion of students with disabilities in the calculation of Adequate Yearly Progress (AYP). I have signed this agreement with the understanding that, per your email of November 23, 2004, and our telephone conversation of November 22, 2005, the U.S. Department of Education (USDE) will not withhold 8% of Texas' Title I, Part A administrative funds due to USDE monitoring findings. Instead, Texas will be instructed to direct these funds toward educating students displaced by Hurricanes Katrina and Rita.

Henry, thank you for going above and beyond the call of duty to bring closure to the USDE and Texas agreement. I appreciate your continued support and friendship!

Sincerely,

  
Shirley J. Neeley

*"Good, Better, Best—never let it rest—until your good is better—and your better is BEST!"*

AGREEMENT ON INCLUSION OF CERTAIN STUDENTS  
WITH DISABILITIES IN AYP UNDER TITLE I  
OF THE ELEMENTARY AND SECONDARY EDUCATION ACT  
BETWEEN THE UNITED STATES DEPARTMENT OF EDUCATION  
AND THE TEXAS EDUCATION AGENCY

**Introduction**

Title I of the Elementary and Secondary Education Act of 1965 (Title I), as amended by the No Child Left Behind Act of 2001 (NCLB), requires each State to hold all students, including students with disabilities, to the same challenging academic content and student achievement standards in reading/language arts and mathematics. Title I also requires each State to implement a set of annual academic assessments to measure whether students are meeting the State's academic achievement standards. These assessments must provide for the participation of all students, including students with disabilities who may be provided reasonable accommodations or assessed with an alternate assessment. Student results from the State's assessments must be used to measure the adequate yearly progress (AYP) of each school and school district in the State. AYP is based on the achievement of all students as well as students in specific subgroups, including students with disabilities. In December 2003, the U.S. Department of Education (ED) published final regulations permitting students with the most significant cognitive disabilities to be held to alternate achievement standards and assessed with an alternate assessment aligned with those standards. Under the regulations, a State may include the proficient scores of students with the most significant cognitive disabilities in determining AYP, subject to a cap of 1.0 percent of all students in the grades assessed for AYP purposes at the district and State levels. On April 20, 2005, ED announced its intent to propose regulations to permit a State to develop modified achievement standards for additional students with disabilities and to include their proficient scores in determining AYP, subject to a cap of 2.0 percent of all students in the grades assessed for AYP purposes at the district and State levels.

Predating enactment of NCLB, Texas law established a system of alternate assessments for students with disabilities. That system provided assessments for students with disabilities that measured their achievement based on their Individualized Education Programs (IEPs) under the Individuals with Disabilities Education Act (IDEA). In that way, students were assessed based on their individual academic expectations. Using this approach, Texas assessed students with disabilities representing approximately eight to nine percent of all students in the grades assessed for AYP purposes. This practice reflected Texas policymakers' belief, as embodied in preexisting State law, that the most appropriate measure of achievement was assessment of the curriculum being taught as required in the students' IEPs. Further efforts are needed to harmonize Texas' approach to these assessments with Title I and the recently reauthorized IDEA.

In order to reconcile Texas' use of standards and assessments for certain students with disabilities in AYP with the Title I statute and regulations and the recently reauthorized IDEA, ED and TEA have entered into this agreement under 20 U.S.C. §1234f. As noted in the terms below and included in Attachment A, this agreement permits TEA to transition from its preexisting system to an accountability system that is fully consistent with the Title I statute and regulations with respect to students with disabilities who are held to alternate achievement standards.

A related activity is the ED peer review of State assessment systems, including the assessments designed for students with disabilities. TEA plans to develop new, or modify its current, alternate assessments. Until these new or modified assessments are developed and implemented, TEA will continue to use the State-Developed Alternative Assessment (SDAA) and Locally Determined Alternate Assessments (LDAA) for assessing some students with disabilities for AYP participation and performance purposes, subject to the conditions in this agreement. Attachment B provides guidance to complete the peer review of TEA's current alternate assessments. Once the new or modified assessments are implemented, they will be subject to peer review by ED in accordance with the law and regulations in effect at that time.

On August 5, 2005, ED conducted a public hearing in Austin, Texas, to determine whether full implementation consistent with Title I is genuinely not feasible until a future date and whether this agreement can be implemented in two years. Based on testimony provided at the hearing, ED has decided that TEA cannot implement the accountability provisions in 2004-05 in a manner fully consistent with Title I and that TEA—given its good faith commitment to resolving this matter and to reconciling its current approach for the inclusion of alternate assessments for students with disabilities in AYP with that reflected in Title I—will be able to implement fully the agreement within a two-year period, consistent with 20 U.S.C. §1234f.

### **Terms of Agreement**

A. ED and TEA agree that TEA will meet, and document that it has met, the following requirements:

1. In calculating AYP, count as proficient or above the results of students assessed using alternate achievement standards, including the existing SDAA and LDAA, that equal no more than 5% of all students in the grades assessed for AYP purposes in school year 2004-05, no more than 3% of all students in the grades assessed for AYP purposes in school year 2005-06, and no more than 1% (plus an additional 2%) of all students in the grades assessed for AYP purposes in school year 2006-07 (consistent with the terms below).
  - These caps apply at the State and LEA levels. Individual schools may exceed these caps, provided that the LEA as a whole complies with the caps. In those cases when the caps are exceeded, the following regulatory provisions apply:
    - Regardless of how an individual student's score is treated in AYP calculations, the parent must be informed of the actual academic achievement level earned by his or her student.
    - All scores based on alternate achievement standards for students who have been enrolled in a school or district, respectively, for a "full academic year" must be included in school, LEA, and State AYP calculations.
    - An individual student's results from such assessments must be counted in all appropriate subgroups.
    - Each student's score used for calculating AYP must remain the same at each level of the educational system – school, LEA, and State--and for each subgroup of which the student is a member for which AYP is calculated.

- TEA may grant exceptions to exceed these caps at the LEA level, provided that the caps are not exceeded on a statewide basis, if the LEA justifies an exception such as school, community, or health programs in the district's service area, or special arrangements with surrounding districts that account for a higher incidence of students with disabilities in the district.
- TEA will not grant any appeals of LEA accountability determinations under section 1116(c)(5) of ESEA, or authorize any LEA to grant any appeals of school accountability determinations under section 1116(b)(2) of ESEA, on the basis that the application of the caps caused the LEA or school to miss making AYP.
- For the 2004-05 and 2005-06 school years, TEA will ensure that all proficient (or above) scores based on alternate achievement standards that exceed the caps described in this paragraph, or any exceptions provided for in this paragraph, are counted as non-proficient, and that such non-proficient scores are appropriately distributed among LEAs and schools responsible for students who are assessed against alternate achievement standards and included in each applicable student group at the school, LEA, and State level. All scores from alternate achievement standards (from students who have been enrolled for a full academic year) will be included in AYP decisions and identification of schools and districts for improvement, consistent with the terms of this agreement regarding percentage caps on proficient (or above) scores based on such standards.
- For the 2006-07 school year, in calculating AYP, TEA may count for AYP purposes the proficient or above scores of students with the most significant cognitive disabilities based on alternate achievement standards measured by, the SDAA, subject to the 1% cap permitted in 34 C.F.R. §200.13(c)(1)(ii). TEA may not count as participants any students with disabilities who take the current LDAs but may count as participants any students with disabilities taking field tests of newly developed State alternate assessments that are consistent with NCLB peer review standards. TEA may also count the proficient (or above) scores of students with disabilities based on the SDAA, up to an additional 2% of all students assessed at the LEA and State level, provided that TEA complies with the terms of this agreement and the following core principles – or any applicable standards that apply at that time:
  - Participation rates for students with disabilities on the Statewide assessment are at or above 95%;
  - TEA does not have any special conditions (other than possible conditions related to the terms of this agreement) on its IDEA grant award that cannot be resolved by July 1, 2007;
  - Appropriate accommodations are available for students with disabilities, as provided in paragraph 4;
  - Texas' minimum group size for accountability purposes is no larger for students with disabilities than for other groups;
  - TEA can demonstrate that achievement for students with disabilities is increasing and/or the State has taken action to improve achievement;
  - TEA demonstrates that it is on-track to developing modified achievement standards that are consistent with federal regulations and developed according to the State's timeline; and

- TEA will ensure that all proficient or above scores that exceed the above caps for the 2006-07 school year are counted as non-proficient, and that such non-proficient scores are appropriately distributed among LEAs and schools responsible for students who are assessed against alternate achievement standards and included in each applicable student group at the school, LEA, and State level.

2. Continue to actively monitor LEAs in complying with the Title I assessment and accountability requirements.
3. Distribute clear and appropriate guidelines to assist IEP teams and schools in identifying appropriate assessments for students with disabilities.
4. Ensure that all students with disabilities are included in Texas' accountability and assessment systems through grade-level assessments or alternate assessments with a wide variety of appropriate accommodations.
5. Report separately under section 1111(h)(4) of the ESEA the number and percentage of students with disabilities taking –
  - Alternate assessments based on alternate achievement standards;
  - Alternate assessments based on grade-level achievement standards; and
  - Regular assessments, including those administered with appropriate accommodations.

B. Notwithstanding the possibility that ED may seek to withhold an amount of Title I, Part A State administrative funds under section 1111(g)(2) related to TEA's implementation of the Title I standards, assessment, and accountability requirements through school year 2004-05, TEA will continue to receive full funding under Title I, Part A, assuming it complies with the terms and conditions of this agreement, as well as other applicable federal statutory and regulatory requirements. TEA must submit documentation to ED upon completion of each action step incorporated in this agreement. The action steps may be amended by joint agreement of the parties provided the agreement can be fully implemented by its expiration date.

If TEA does not comply with the terms and conditions of this agreement, including the action steps, ED may consider the agreement to be no longer in effect and may take any action authorized by law and consistent with the extent of compliance. TEA reserves its rights to contest any such action and may renegotiate the terms of this agreement if it becomes necessary.

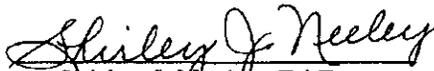
The terms and conditions of this agreement, including the action steps in Attachment A, may be amended by joint agreement of the parties, provided full implementation can be accomplished within three years of the date of execution of the agreement. In the event that changes in federal regulations or policies make it significantly more difficult for TEA to implement the terms of this agreement on a timely basis, the parties will renegotiate this agreement in good faith.

In addition, TEA reserves the right to avail itself of any prospective flexibility policies developed by ED through regulations or otherwise. If such policies provide greater

flexibility to states than the terms of this agreement, the parties will renegotiate this agreement in good faith. In applying any such flexibility policies with specific regard to assessments for students with disabilities or in any other areas, ED will not deny any requests for flexibility from TEA based on the facts and issues underlying this agreement, provided that TEA complies with the terms of this agreement.

The effective date of this agreement shall be December 1, 2005. The agreement shall expire no later than December 1, 2007.

For the Texas Education Agency:

  
Shirley J. Neeley, Ed.D.  
Commissioner of Education

November 30, 2005  
Date

For the United States Department of Education:

  
Henry Johnson  
Assistant Secretary  
Office of Elementary and Secondary Education

December 1, 2005  
Date

## AYP Action Plan to Address Requirements 1 through 5 of Agreement

Requirement	Completion Date	Evidence/Deliverables
<p><b>1. AYP Calculation</b></p> <p>A. Continue to publish annual Adequate Yearly Progress (AYP) Guides to inform districts of the details of the calculation and conditions under which appeals of AYP status will be evaluated, consistent with the Consolidated State Application Accountability Workbook and paragraph A.1 of the terms of this agreement.</p> <p>B. Continue to produce summary statistics of annual preliminary AYP status and Title I School Improvement (SIP) designations that were released before the uniform school start date.</p> <p>C. Continue to produce summary statistics of annual final AYP status and Title I School Improvement (SIP) designations that reflect appeal decisions.</p> <p>D. Develop guidelines for application for exception and guidelines for granting exceptions to exceed the cap as permitted by regulation.</p>	<p>July 2005 July 2006 July 2007</p> <p>September 2005 September 2006 September 2007</p> <p>December 2005 December 2006 December 2007</p> <p>December 2005 December 2006 December 2007</p>	<p>Annual AYP Guide posted to TEA website</p> <p>Summary statistics on number and percentage of campuses and districts that meet AYP and miss AYP, including reason for missing AYP, based on preliminary AYP status are posted to TEA website</p> <p>Summary statistics on number and percentage of campuses and districts that meet AYP and miss AYP, including reason for appeal, based on final AYP status are posted to TEA website</p> <p>Guidelines for application of exceptions, guidelines for granting exceptions, and annual list of districts granted exceptions posted to TEA website</p>
<p><b>2. Monitoring</b></p> <p>A. Continue to implement indicators and standards for Performance-Based Monitoring Analysis System (PBMAS)* and include in annual monitoring and interventions related to district special program performance, effectiveness, and compliance with state and federal policy.</p> <p>B. Continue to implement indicators and standards for Performance-Based Monitoring Data Integrity System (PBMDIS) and include in annual monitoring and interventions related to district compliance with state and federal testing policy.</p>	<p>September 2005 September 2006 September 2007</p> <p>January 2006 January 2007</p>	<p>Annual PBMAS Manual posted to TEA website. Summary data on district performance on PBMAS performance and program effectiveness indicators provided to USDE</p> <p>Annual PBM Data Integrity Manual posted to TEA website. Summary data on district performance on PBM Data Integrity indicators related to assessment provided to USDE</p>

### AYP Action Plan to Address Requirements 1 through 5 of Agreement

Requirement	Completion Date	Evidence/Deliverables
<p><b>3. Guidelines and Training for IEP Teams</b></p> <p>A. Update the <i>ARD Decision-Making Process for the Texas Assessment Program Reference Manual</i> (ARD manual) that explains to ARD committees</p> <ul style="list-style-type: none"> <li>▪ How to place students in the assessment program</li> <li>▪ How to determine which accommodations documented in the IEP are appropriate for the assessments</li> <li>▪ How a student's achievement is determined</li> <li>▪ How the assessment of students with disabilities will be transitioning</li> </ul> <p>B. Develop section for ARD manual to train teachers on placing students with the most significant cognitive disabilities in the new alternate assessment.</p> <p>C. Develop training module to accompany the ARD manual for the alternate assessment that trains teachers in</p> <ul style="list-style-type: none"> <li>• Accessing the general curriculum</li> <li>• Observing student performance</li> <li>• Recording anecdotal notes and samples of student work</li> <li>• Making fair observations</li> <li>• The rating and expectations</li> <li>• Time management</li> <li>• Effective planning for focused classroom observation</li> <li>• Evidence or data for the observation evaluation</li> <li>• Documentation of observations</li> </ul> <p>D. Provide training to Education Service Centers (ESCs) in trainer of trainers model</p> <ul style="list-style-type: none"> <li>• Eligibility participation</li> <li>• Guidelines document including alternate content standards and access to general curriculum</li> </ul> <p>E. Provide training for the module described in C above to Education Service Centers in trainer of trainers model</p> <p>F. Monitor IEP decisions by using the annual audit of evidence accompanying the alternate assessments.</p>	<p>Annually beginning Fall 2005</p> <p>Beginning Fall 2006</p> <p>Beginning Fall 2006</p> <p>Fall 2006</p> <p>Fall 2007</p> <p>Annually beginning Spring 2008</p>	<p>Guidelines and training materials published in annual manual which is distributed to Education Service Centers and school districts and appropriate training materials posted on the TEA website.</p> <p>See above</p> <p>See above</p> <p>ESCs and Districts will be provided with videotape/DVD of the training and published materials of the training will be distributed. The training materials will be posted on the TEA website.</p> <p>ESCs and Districts will be provided with videotape/DVD of the training and published materials of the training will be distributed. The training materials will be posted on the TEA website.</p> <p>Findings from the annual audit reported after test administration</p>
<p><b>4. Assessment Inclusion</b></p> <p>A. Continue to publish annual District and Campus Coordinator Manuals directing districts to test all students.</p>	<p>December 2005 December 2006 December 2007</p>	<p>Annual District and Campus Coordinator Manuals posted to TEA website</p>
<p><b>5. Reporting</b></p> <p>A. Continue reporting data related to the participation of students with disabilities in the statewide assessment system</p>	<p>2005 2006 2007</p>	<p>AYP State Data Table and/or the Education Data Exchange Network</p>

## **AYP Action Plan to Address Requirements 1 through 5 of Agreement**

\*The Performance-Based Monitoring (PBM) system is used by TEA to ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services (including the administration of appropriate assessments). PBM Analysis System (PBMAS) is the set of performance and program effectiveness indicators for each of the special program areas TEA is authorized to monitor. Under PBMAS, every special program is evaluated every year in every school district. PBM Data Integrity System (PBMDIS) is the set of data integrity indicators used to evaluate data used in performance indicators, including assessment data. The number, severity, and duration of problems identified determine the extent of the activities districts and campuses must engage in and the level of TEA involvement. The extent to which districts must engage in compliance review activities to ensure state and federal statute and regulations are being implemented is determined on a program-by-program basis based on program compliance requirements and the extent of district performance problems.

**Attachment B**

**Guidance Related to Alternate Assessments and the Peer Review under NCLB**

<b>Essential Requirements</b>	<i>Examples of acceptable evidence</i>
<p><b>1. The alternate assessment(s)</b></p> <ul style="list-style-type: none"> <li>• Yield results separately in reading and math</li> </ul>	<p>Report card, assessment reports</p>
<p><b>2. For the alternate assessment(s), the State provides</b></p> <ul style="list-style-type: none"> <li>• Clear guidelines for student participation to all LEAs</li> </ul>	<p>Participation guidelines</p>
<p><b>3. The alternate assessment(s) is</b></p> <ul style="list-style-type: none"> <li>• Designed and implemented in a manner that supports use of results for AYP               <ul style="list-style-type: none"> <li>○ Evidence includes test blueprint, test administration manual or administrator training materials, scoring rubric and scoring procedures</li> <li>○ Aligned with state content standards</li> </ul> </li> </ul>	<p>Scoring rubric or other scoring guidelines, administration manual,</p> <p>Alignment study results or reports</p>
<p><b>4. For the alternate assessment(s), the State provides</b></p> <ul style="list-style-type: none"> <li>• Evidence of technical quality:               <ul style="list-style-type: none"> <li>○ Including, to the extent available, evidence of validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical standards;</li> <li>○ Description of the standard-setting process employed; the judges that participated in standard setting and their qualifications; and state adoption of the resulting alternate achievement standards</li> </ul> </li> </ul>	<p>Cut scores, standard error information, other item statistics (cut scores with pass rates)</p> <p>Standards-setting report containing data, forms used for ratings; overview of standards setting process, delineation of achievement descriptors by content area, participant information form, summary of participants by content area and specialty</p>
<p><b>5. For the alternate assessment(s), the State</b></p> <ul style="list-style-type: none"> <li>• Reports results to teachers and parents in a manner consistent with the alternate achievement standards</li> </ul>	<p>Reports with achievement standards</p>
<p>If the state chooses to define multiple alternate achievement standards, it must also provide documentation of the relationship among the alternate achievement standards as part of its coherent assessment plan.</p>	

Note: All statutory requirements, including the expectation of technical quality, will apply to new alternate assessment reviewed in the future.