



# The Senate of the State of Texas

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**Senator Eliot Shapleigh**  
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July 16, 2010

Dr. Zollie Stevenson, Jr., Ph.D.  
Director  
Student Achievement and School Accountability Programs  
United States Department of Education  
Washington, D.C. 20202-6132

VIA: U.S. mail, facsimile, e-mail

RE: U.S. Department of Education's EPISD investigation

Dear Dr. Stevenson:

On July 7, 2010, my office wrote you to ask that the U.S. Department of Education and the U.S. Attorney General's, Civil Rights Division, investigate cheating at the El Paso Independent School District (EPISD). On June 28, 2010, you wrote to inform me that your office had referred the Bowie complaint to the Texas Education Agency (TEA). Once again, we ask that the U.S. Department of Education and the U.S. Attorney General (AG) undertake this critical investigation instead of TEA. Let me explain why:

\*TEA has conflicts in the EPISD case that would taint its investigation. On June 24, 2010, Superintendent Lorenzo Garcia at EPISD told a group of principals that TEA personally called him and said to "stay calm and [they] will put out information that will make you look good." On June 22, 2010, Mr. Garcia told reporters that "TEA staff has told him that our 'disappeared student' claims are 'unsubstantiated';

\*on July 1, our office called TEA Director Robert Scott to determine whether TEA had done any investigation of EPISD. Mr. Scott informed us that Mr. Garcia had asked him to review the Bowie numbers and find no fault. He responded by directing Mr. Garcia to get an independent audit. What these conversations demonstrate is that Mr. Garcia has longstanding contacts at TEA whom he asked to intervene on his behalf long before our complaint ever arrived on your desk. Prior contacts and communications coupled with comments like "unsubstantiated" by at least staff members at TEA judging a serious complaint prior to any



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investigation taints the process such that we have lost any faith in TEA to do objective and independent work on accountability at EPISD;

\*further, TEA itself is embroiled in a statewide accountability issue involving the controversial new "Texas Projection Measure" (TPM) that allows a student who answered every TAKS question wrong to receive a passing grade. This TPM resulted in 500,000 TAKS tests that students had failed to be counted as passing for the purpose of rating schools and districts. In a speech to the National Council of La Raza, Bill White, the Democratic candidate for Texas Governor had this to say about the TPM:

*"They decided to cheat, and then once caught cheating they failed to acknowledge responsibility and accept accountability. They counted failing scores as passing, how can you teach individual responsibility to students, or emphasize the importance of parental responsibility, if the state's CEO and his appointees don't accept responsibility? How can you hold teachers, principals and school boards accountable if accountability does not start at the top?"*

\* further, TEA is presently a defendant in *US v. Texas*, 6:71-cv-05281 (W.D. Tex.), a suit brought by the Mexican American Legal Defense Fund (MALDEF) under the Equal Educational Opportunities Act of 1974. In the lawsuit, TEA is charged with providing an ineffective monitoring and enforcement system for English Language Learner programs, as well as a failed ESL program for secondary students. That case was recently remanded by the Fifth Circuit Court of Appeals, which required MALDEF and the government to include individual school districts as defendants in order to determine who—TEA, the districts, or both—was responsible for the dismal failure of Texas secondary ELL students.

How serious are the allegations against EPISD? Enclosed you will find a brief titled "How a Superintendent at EPISD Disappears Students to Improve TAKS Scores" based on interviews and information provided to us. Briefly, the evidence shows that:

- prior to the school year, priority division directors use INOVA and LEP data to profile students and target which students are not likely to pass TAKS;
- targeted students are then 'reclassified' so as to remove them from their class cohort for the taking of the TAKS tests; under NCLB, class cohorts are the key to testing as all classes and categories of students in a class cohort must pass basic minimum scores in order to avoid imposition of sanctions; further, keeping class cohorts together is an important value in NCLB and quality education because research shows that students that stay at grade are much more likely to graduate and succeed;

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- certain 'targeted' students are kept back in the 9<sup>th</sup> grade, so that they will not take the TAKS test in the spring semester of sophomore year;
- other 'targeted' students are moved from the 9<sup>th</sup> grade directly into the 11<sup>th</sup> grade so as to bypass the 10<sup>th</sup> grade TAKS altogether;
- during TAKS week, squads of truant officers are dispatched to homes of targeted students to inform them to stay away from school on TAKS day; normally, residency challenges occur during the first week of school, and must by law include five day appeal letters to both the school and district. Based on information provided to us, due process was not afforded to targeted students and parents;
- other targeted students are transferred out of their high school to charter or different feeder patterns altogether;
- seniors who fail the TAKS are enrolled in 'online accredited' schools that operate outside the TAKS system entirely, so that no TAKS scores are recorded for these students;
- seniors who lack required attendance credits have transcripts changed to make them eligible for graduation;
- other students have TAKS tests 'picked up' due to allegations of cheating or failure to follow protocols, so that these 'picked up' tests are then not counted in TAKS scores.

Witnesses who came and reported to us now fear retaliation. What this case needs is professional, civil rights investigators to take evidence, protect whistleblowers and determine the facts. For these reasons, we strongly urge that the U.S. Department of Education and the U.S. Attorney General undertake an independent and thorough investigation. What is happening in Texas, and specifically at the El Paso Independent School District, guts NCLB and violates the equal protection rights of thousands of Texas students to a quality public education. We ask you to act now.

Very truly yours,



Senator Eliot Shapleigh

cc: Secretary Arne Duncan  
Deputy Secretary Anthony Miller  
Mr. Taylor August  
Mr. Gary Whitman  
Mr. Thomas Utz, Jr.