



TEXAS EDUCATION AGENCY

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Robert Scott
Commissioner

Amended Notice

NCLB Complaint Investigation

July 26, 2010

Ms. Sushma Smith
Mr. Eduardo Hagert
c/o The Honorable Eliot Shapleigh
Texas Senate
P.O. Box 12068
Austin, Texas 78711

Lorenzo García, Ed.D.
Superintendent of Schools
El Paso Independent School District
6531 Boeing Drive
El Paso, TX 79925

This letter serves to acknowledge receipt of the July 20, 2010 complaint filed with the Texas Education Agency (TEA) by Senator Eliot Shapleigh. The complaint concerns the El Paso Independent School District (EPISD) in El Paso, Texas and EPISD's compliance with provisions under the *No Child Left Behind* (NCLB) Act as it pertains to the federal accountability system.

In the July 20, 2010 complaint, Senator Shapleigh alleges that EPISD has taken the following actions:

- a. used INOVA and LEP data to profile students and target which students are not likely to pass Texas Assessment of Knowledge and Skills (TAKS);
- b. reclassified targeted students so as to remove them from their class cohort for the taking of the TAKS tests;
- c. kept back targeted students in the 9th grade so that they will not take the TAKS test in the spring semester of sophomore year;
- d. moved targeted students from the 9th grade directly into the 11th grade so as to bypass the 10th grade TAKS altogether;
- e. dispatched squads of truant officers to homes of targeted students, during TAKS testing week, to inform them to stay away from school on TAKS day and did not afford those students and parents due process;
- f. transferred targeted students out of their high school to charter or different feeder patterns altogether;
- g. enrolled seniors who fail the TAKS in online accredited schools so that TAKS scores are recorded for these seniors;
- h. changed the transcripts of seniors who lack required attendance credits to make them eligible for graduation; and

- i. picked up the TAKS testing documents of other students due to allegations of cheating or failure to follow test administration protocols and did not count (or score) the students' tests.

On July 12, 2010, the TEA received a request from the U.S. Department of Education to investigate similar complaints. In response, the TEA notified the EPISD and the U.S. Department of Education of its investigation and the matters for which the TEA has jurisdiction to address. The July 16, 2010 written notice of investigation is enclosed for your reference.

The TEA will combine the July 12, 2010 and July 20, 2010 complaints as one complaint. The allegation identified for investigation under both complaints remains as stated in the July 16, 2010 notice of investigation:

The "EPISD 'disappeared' 55 percent of the students entering Bowie High School in 2007 through such means as transfers, deportation, sending students to charter schools, holding students back in 9th grade, or promoting students to the 11th grade." The complaint alleges that EPISD has taken these actions to "avoid sanctions, publicity, and enforcement actions under phase four of the NCLB Act."

Additional Concerns

The additional actions alleged in the July 20, 2010 complaint are serious. The allegations concern students' access to educational programs and services, including participation in the statewide assessment program, misrepresentation of information on student records, and potential serious testing violations. In order to adequately review these concerns, additional information is necessary. Based on the additional information received, the TEA will determine any further actions that are needed.

Authorities

Pursuant to 20 USC 7844, Sec 9304 (a)(3)(C), of the *NCLB Act*, the TEA receives and resolves complaints alleging non-compliance with provisions under the *NCLB Act* (Public Law 107-110).

Pursuant to Chapter 97 of the Texas Education Code, all public school campuses, school districts, and the state are evaluated for AYP under the accountability provisions in the federal NCLB Act.

Pursuant to Chapter 101, Subchapter C of the Texas Administrative Code, the TEA ensures the security and confidentiality of tests in its statewide assessment program.

Requested Information

In addition to the information requested in the recent TEA notice (July 16, 2010), please provide facts and documentation related to the additional concerns to assist the TEA in furthering its review of the July 20, 2010 complaint.

The information should include, but is not limited to, the following:

1. Identify the "targeted" group of students, including the names, grade levels, or campuses subject to the additional concerns.
2. The names and position or contact information of district employees, including campus staff involved in or subject to each of the additional concerns.
3. The names and position or contact information of individuals who have direct knowledge of the incidents.
4. Dates of test administrations or time period in which the test administration incidents occurred.
5. Reports of any suspected testing irregularities or incidents.
6. Any public (and parent) complaints received locally related to the additional concerns.
7. Any signed written statements related to the additional concerns.

The TEA will accept and review any relevant information responsive to the allegation identified for investigation and any of the additional concerns.

Process

The appropriate TEA program staff reviews and investigates the complaint and relevant information. When the investigation is complete, the TEA notifies the complainant and the superintendent of the school or charter district in writing regarding the outcome of the investigation. The TEA issues its letter of findings within 60 days of receipt of the complaint, unless an extension is needed because of extenuating circumstances. If a violation has occurred, the TEA identifies and imposes the appropriate consequences or corrective actions as required by regulation to resolve the complaint or discrepancies. A person or organization may request the U.S. Department of Education review TEA's final written decision.

Additionally, the TEA will issue a single letter of findings in response to both complaints. The letter of findings will be issued to the U.S. Department of Education, Senator Shapleigh, and the El Paso Independent School District.

Confidentiality

Any confidential information, including information protected under the Family Educational Rights and Privacy Act (FERPA) must be transmitted in a secure manner. If information will be submitted by email, please contact the Office of Complaints and Special Investigations to access the TEA encrypted email service. Documents submitted to TEA will not be returned.

Extended Timeline

To provide sufficient time and opportunity for all parties to gather and submit additional information in response to the July 20, 2010 complaint, the TEA extends its submission deadline to **Friday, August 6, 2010**. If additional time is needed, please contact me to request an extension. Therefore, the TEA's 60-day timeline for issuing a letter of findings to all parties for this complaint is September 20, 2010.

Information may be submitted by secured email, fax, or mail to the following TEA office:

Emi Johnson, Director
Complaints and Special Investigations
Office of the Commissioner
1701 N. Congress Avenue
Austin, TX 78701-1491
FAX 512.463.9342 | TEL 512.463-9008
complaintsmanagement@tea.state.tx.us

By copy of this notice, the U.S. Department of Education is informed of the extended timeline. Your cooperation in resolving this matter is appreciated. If you have any questions, I can be reached directly at 512.463.9342.

Sincerely,



Emi Johnson
Complaints and Special Investigations

Enc: July 16, 2010 TEA Notice of Investigation
July 20, 2010 Complaint

cc: William F. McGrady, Education Program Specialist
Student Achievement and School Accountability, US Dept. of Ed.

Laura Taylor, Associate Commissioner
Office of Accreditation

Dr. Criss Cloudt, Associate Commissioner
Assessment, Accountability, and Data Quality

M.J. Nicchio, Director
Governmental Relations

Ryan Franklin, Policy Advisor
Office of the Commissioner