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December 6, 2010

The Honorable Barack Obama
President of the United States
1600 Pennsylvania Avenue NW
Washington, D.C. 20500
Facsimile: (202) 456-2461

VIA U.S. POSTAL MAIL & FACSIMILE

RE: U.S. Dept. of Education Reference No. 06-10-1487 (El Paso Independent School District)

Dear President Obama:

My name is Eliot Shapleigh. Since the 1840s, El Paso has been my family's home. For more than a decade, I have proudly represented Texas' Senate District 29, a remarkable community of resilient, hardworking and patriotic families—85 percent of whom are Hispanic.

When you ran for the highest office in our land, you ran on education. For you, for me, and especially for the wonderful children who dream about sitting in your Oval Office one day, public education is America's greatest gift to the world. With a quality education, hard work, and some luck, any child's dream can become reality.

Here in El Paso, a perverse strain of *No Child Left Behind* has put public education at serious risk. At the El Paso Independent School District (EPISD), a handful of shamefully ambitious administrators "disappear" children from classrooms to report gains on TAKS tests. Our children are taught to cheat, not compete.

Here's how it works. Imagine a class of 100 freshmen entering high school. During the spring semester of sophomore year, each student must take TAKS—a high stakes test that determines if the school passes strict laws about every child getting an education. Imagine that a superintendent and "priority school directors" then scheme to keep 55 percent of that class from taking the sophomore TAKS exam by transferring hard-to-teach limited English proficiency (LEP) students to other schools or keeping many students back in the 9th grade. Then, on test



day, only the top half of the class sits for TAKS. If this virulent strain of shameful ambition succeeds, the majority of students that I proudly represent will have been significantly damaged by a public education system that has failed to prepare them to succeed in today's globally competitive world.

During the past year, my office has written to every federal, state and local entity that might have civil or criminal jurisdiction over these issues. On May 19, 2010, we wrote to Secretary Arne Duncan and the U.S. Department of Education (USDOE) requesting an investigation of the El Paso Independent School District based on numerous complaints our office received from teachers, administrators, and data personnel that students were being "disappeared" at Bowie High School—the iconic Mexican American high school in El Paso—and at several other "priority" high schools. A month later, we wrote the USDOE asking for a broader investigation based on additional information that our office had received:

- before the start of the school year, priority school directors use INOVA and LEP data to profile and target students who are not likely to pass TAKS;
- targeted students (e.g., special education, LEP, Hispanic) are then "reclassified" so as to remove them from their class cohort for the taking of the TAKS test; under *No Child Left Behind*, class cohorts are the key to testing as all classes and categories of students in a class cohort must pass with basic minimum scores in order to avoid imposition of sanctions; further, keeping class cohorts together is an important value in *No Child Left Behind* and quality education because research shows that students who stay in their class cohort are much more likely to graduate and succeed;
- certain "targeted" students are kept back in the 9th grade, so that they will not take the TAKS test in the spring semester of sophomore year;
- other "targeted" students are "turbomastered" from the 9th grade directly into the 11th grade so as to avoid the 10th grade TAKS exam altogether;
- during TAKS week, squads of truant officers are dispatched to a list of up to one hundred 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 schools to charter or different feeder patterns altogether;
- seniors who fail 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; and

- other students have TAKS tests "picked up" due to allegations of cheating or failure to follow protocols; these "picked up" tests are not counted in TAKS scores.

Other methods may have been deployed but the ones described above were detailed to us by teachers, counselors and administrators from several campus locations and form the basis of our letters to the U.S. Secretary of Education.

In addition, during the past month, credible administrators have contacted our office to let us know that Pupil Services has been "shredding documents." By law, the district is required to store documents for five years.

Finally, the Research and Evaluation Planning Coordinator at EPISD has reported to us an alleged \$80 million discrepancy in the official accounting of American Recovery and Reinvestment Act (ARRA) monies given by the district to various reporting entities.

After receiving our letters, the USDOE directed the Texas Education Agency (TEA) to investigate EPISD. TEA's investigation of the allegations was limited to a "desk review" of information submitted by EPISD and their own agency records. Although our office provided TEA with information from various individuals employed by EPISD, the agency did not contact a single person. However, this did not stop TEA from issuing baseless findings.

As we have stated repeatedly to staff at the U.S. Department of Education, out here, we have no trust in TEA, TCEQ or other state agencies tied to Rick Perry's political agenda. TEA's new Texas Projection Measure formula miraculously "passed" half of the one million students who failed TAKS last year. Bill White aptly called that the "Texas Education Agency's Enron-style accounting on school accountability measures."

As citizens across the South have learned for generations, we need federal authorities to protect and ensure our basic Constitutional rights. Texans cannot rely on the extreme ideologues appointed by Rick Perry to conduct a thorough, comprehensive, by-the-book investigation. Our office has already appealed both of TEA's Letters of Findings (dated September 20, 2010 and October 8, 2010).

Without the involvement of the federal government and the ability to subpoena records, serious allegations regarding the illegal reclassification of special education students, the questionable profiling of LEP students, the illegal deployment of truant officers, the forging of attendance records, and the "turbomestering" of students will never be investigated. We believe that these actions taken by EPISD are in direct violation of the 14th Amendment, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990.

For several months, our office has been in contact with three different branches of the USDOE (the DC office, Region VI OCR, Region VI OIG). However, we will not be able to maintain this level of effort as I am retiring from the Texas Senate at the end of my fourteenth year on the job (January 11, 2011).

Over the last hundred years, the federal government has been the guarantor of education equality and justice when extremists in southern states have literally locked the door to equal opportunity. At EPISD, the Garcia model systematically targets and then disappears the very children who need help the most, thereby leaving behind up to 55 percent of the class by design.

Therefore, we need your office to spur the U.S. Department of Education to concrete action. Our community, our state, and our nation need *No Child Left Behind* to guarantee quality education for all our students.

For our children's sake, please get the U.S. Department of Education moving now to conduct an objective, independent investigation of the facts to determine what violations have occurred at EPISD, and what remedies will best address what we believe is the systemic denial of equal access to a quality education by a protected class of El Paso students.

We look forward to your response—and more importantly, to action.

Very truly yours,



Eliot Shapleigh

ES/sjs

cc: Mr. Juan Sepulveda (Executive Director, White House Initiative on Educational Excellence for Hispanic Americans), Secretary Arne Duncan (U.S. Dept. of Education), Deputy Assistant Secretary Carl Harris (Office of Elementary and Secondary Education), Ms. Patricia McKee (Acting Director, Student Achievement and School Accountability Programs), Mr. Keith M. Maddox (Regional Inspector General for Audit, Region VI), and Mr. Taylor August (Director, Office for Civil Rights, Region VI)