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Michael L. Williams
Commissioner

Resolution of NCLB Complaint Investigation

February 11, 2013

VIA EMAIL

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RE: Aldine Independent School District SES Providers: 1 to 1 Tutors and 121 Tutors
TEA Complaint Ref. No. 2013-01-076

Complaint Allegation

Student enrollment forms for 1 to 1 Tutors and 121 Tutors collected from Nimitz Senior High School were filled out prior to the parent receiving the form to enroll their student. The bottom section of the enrollment forms where the parent writes the choice of SES providers is filled out in the same handwriting and lists 1 to 1 Tutors or 121 Tutors as one of the student's choices.

District Local (Aldine ISD) Investigation Findings

In accordance with the state-level NCLB/SES Provider complaint process, the district completed its local investigation and submitted its findings to the Agency. As part of its local investigation, the district staff called parents and interviewed students, and obtained certified affidavits from students. The district finds:

1. Representatives of the SES Providers 1 to 1 Tutor and 121 Tutor used SES enrollment forms that were prefilled with three providers as first, second, and third choices for students enrolled at Nimitz High School.
2. The representative for 121 Tutors approached a student in the Nimitz High School cafeteria with the prefilled enrollment forms and requested the student to distribute the enrollment forms to students in her classes.
3. Names at the bottom of the enrollment forms had been completed before the parent received the form to enroll their student.
4. In total, the district found 31 enrollment forms with identical handwriting from 1 to 1 Tutors and 31 enrollment forms filled out by 121 Tutors.

The district submitted documentation as evidence of its findings and conclusions.

State-Level (TEA) Investigation

In accordance with the state-level NCLB/SES Provider complaint process, the TEA completed its investigation –(1) through a desk review to include a review of written information submitted by the district and the SES providers, (2) telephone interviews, and (3) review of data available to the TEA. As part of its state-level investigation, the TEA independently verifies the district's local investigative findings. TEA staff called parents to receive feedback as permitted under C-25 of the Federal Guidance and to determine whether the provider names at the bottom of the enrollment forms had been completed before the parent received the form to enroll their student.

The TEA finds and concludes:

The TEA finds the SES providers, 1 to 1 Tutors and 121 Tutors, violated enrollment requirements under the NCLB Act SES Federal Guidance when they manipulated the enrollment of students for SES services in the fall of 2012 in the Aldine ISD.

1. The TEA found that 1 to 1 Tutors and 121 Tutors used enrollment forms where the provider's names were written in (pre-filled) in all three spaces before the parents were able to choose their provider of choice.
2. From a list of 31 students, a random sampling of parents interviewed stated that the enrollment forms presented to them had three provider names listed as the first, second, and third choice..
3. A student was asked to, and did, in fact pass out enrollment forms for 1 to 1 Tutors and 121 Tutors during classes at Nimitz High School.
4. The enrollment data from the state's EZSES Management System indicates that the students were enrolled with 1 to 1 Tutors or 121 Tutors and the parents have not selected a different SES provider since they were signed up.
5. On January 21, 2013, 1 to 1 Tutors and 121 Tutors submitted information in response to this complaint. The representatives of their companies were terminated. The SES providers

indicate that their training program for their representatives have been “strengthened” and this type of infraction will not reoccur.

Applicable Requirements

Under Item D-3, the TEA has standards and techniques for withdrawing approval of an SES provider and removing the provider from the State-approved list. The TEA may remove an SES provider from the approved list if the provider fails to provide SES consistent with applicable health, safety, and civil rights requirements, or fails to meet any of the regulatory or statutory requirements, particularly after more than one violation.

Under Item E-5 of the Federal Guidance, the district may impose conditions so long as they are reasonable, do not subject SES providers to more stringent requirements than apply to other contractors of the district, and do not have the effect of inappropriately limiting education options for parents. The LEA may include administrative provisions to deal with this issue.

Under Item G-9, parents must sign up for services. Under Item G-14, the district is responsible for personalizing the SES process for parents, to help parents complete the enrollment forms, including having a contact person who can assist them with questions or an easy way for the parents to return the enrollment forms to the school. The district could let parents register for SES online and provide feedback about SES providers and their services.

Under Item H-1, the district may terminate the SES Agreement (contract) of individual students if the SES provider fails to meet the student's specific achievement goals and timetables. In addition, the district's payment for the services under these circumstances is dependent upon the invoicing and payment terms in the contract.

Under H-9, if parents subject to this complaint are not satisfied with the SES provider, the parent may request and receive a new provider any time during the year. It is the district's discretion to allow for such changes. If a number of parents request a change of a particular SES provider, the TEA should be notified so that TEA can monitor the SES provider more carefully.

Conclusion

The allegation made by Aldine ISD is substantiated. Based on the evidence, 1 and 1 Tutors and 121 Tutors manipulated the SES enrollment process and as a result:

1. Violated the district, state, and federal program policies and requirements described above.
2. Denied the parent's their right to choose SES providers.
3. Interfered with the district carrying out its responsibilities to assist and inform parents about the choices and provide a convenient way for parents to return completed enrollment forms.
4. Did not comply with the ethical business practices the SES providers agreed to as part of their state application.

District Termination of the SES Agreement

Aldine ISD requests permission from TEA to terminate the SES Agreements with 1 to 1 Tutors and 121 Tutors.

Aldine ISD may terminate its SES Agreements with the SES providers under certain conditions specified under H-1 of the Federal Guidance. From their investigations, Aldine ISD and TEA did not find that 1 to 1 Tutors and 121 Tutors violated terms or provisions regarding student progress reports, invoicing payment for services, protecting student privacy and health, safety and civil rights laws. In addition, there is no finding that the SES providers failed to meet administrative or operational terms that Aldine ISD included in the SES Agreement, such as conducting background checks on the provider's employees.

The TEA places 1 to 1 Tutors and 121 Tutors on a probationary status meaning that the TEA will carefully monitor the SES providers for the remainder of the year. This is based on the number of students involved and the fact that the SES providers failed to identify this violation, self report it to Aldine ISD, and take immediate corrective actions.

Should the TEA substantiate another complaint concerning the SES providers, the TEA will remove the SES providers from the State-approved list. In addition, substantiated complaints and corrective actions will be considered in evaluation and process for the selection of SES providers for the 2013-2014 school year.

Required Corrective Action for 1 to 1 Tutors and 121 Tutors

The following corrective actions are due to the Aldine ISD within 15 calendar days from the date of this letter:

1. Documentation that all representatives who may be involved in the recruitment of students for enrollment have received training from an approved SES training provider that includes, at a minimum, the required training content material. The representative must participate in any training that is required by the district.
2. Documentation that all representatives who may be in contact or close proximity of students have satisfied all criminal history background record reviews.
3. Provide a current list of all representatives who may be involved in the recruitment of students to all campus administrators throughout the year as representatives change. The roster must include, at a minimum, the full legal name and accurate contact information for each SES provider representative and any other information the district requests.
4. Documentation that the SES providers sent a letter to each parent subject to this complaint, to inform them of Aldine's and TEA's findings and to inform the parent that a school representative from Nimitz High School will be contacting them to allow the parent to choose their providers.

Notice to Aldine ISD Board of Trustees

1. Aldine ISD must report the TEA's investigative findings at the next public meeting of the Aldine ISD Board of Trustees, as a board agenda item.
2. Aldine ISD must contact the parents subject to this complaint to allow the parents to select SES provider of their three choices, other than 1 to 1 Tutors and 121 Tutors. Aldine ISD must reassign the students per the parent's choice.
3. Aldine ISD must notify TEA of the submission of the corrective actions.

The TEA's decision is final and there is no administrative appeal at TEA. Either party may appeal this decision to the Secretary of Education, U.S. Department of Education. The TEA will consider these findings in the selection of providers for the next year.

Should you have any questions concerning the complaint process, you may contact Emi Johnson at (512) 463-9342 or emi.johnson@tea.state.tx.us.

For SES program questions, please contact Becca Marsh at (512) 936-2256 or becca.marsh@tea.state.tx.us, or Leticia Govea at (512) 463-1427 or leticia.govea@tea.state.tx.us.

For SES technical assistance and support, please contact Brandon Spenrath at the SES Unit at the Texas Center for District and School Support (TCDSS) at Education Service Center Region XIII at (512) 919-5169 or brandon.spenrath@esc13.txed.net.

Sincerely,

A handwritten signature in black ink that reads "Emi Johnson". The signature is written in a cursive, flowing style.

Ms. Emi Johnson, Director

CC: Sally Partridge, Associate Commissioner
Accreditation Office, TEA