

Resolution of NCLB Complaint Investigation
March 18, 2013

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VIA EMAIL

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RE: Uvalde Consolidated Independent School District
SES Provider Athena Educational Institute LLC
Pre-filled SES Enrollment Forms

This letter serves to resolve the complaint filed by **Uvalde Consolidated Independent School District** (district) on February 27, 2013, concerning **Athena Educational Institute LLC** (Provider). The complaint allegation is substantiated. The findings and conclusion of the Texas Education Agency (agency) state-level investigation are reported in this letter.

The agency's investigation was conducted under *Title I, Section 1116(e) of the Elementary and Secondary Education Act, No Child Left Behind Act (NCLB) and the Supplemental Educational Services (SES) Non-Regulatory Guidance, January 14, 2009.*

Complaint Allegation

The district alleges that the Provider pre-printed their company name as the only choice on a number of SES enrollment forms prior to the parent having an opportunity to write their own providers of their choice. The Provider submitted the pre-filled forms to the district to enroll the students with the Provider.

District Local Investigation

In accordance with the state-level NCLB/SES Provider complaint process, the district completed

its local investigation and submitted its findings and supporting documentation to include SES student enrollment forms to the agency.

The district's findings and conclusions are as follows:

1. On February 8, 2013, the Provider's representative submitted 11 SES enrollment forms to the district. The district staff did not accept the forms because the first choice provider was pre-printed with the Provider's name. The district returned the original forms and informed the Provider representative that "the parents would have to fill out a completely new form."
2. On February 12, 2013, the District staff stated that the Provider called to explain that "it was hard for [the Provider] to get parents to fill out the forms because several of them are illiterate." However, on review of the pre-filled forms, it is evident that each parent was able to complete all sections of the form in their own handwriting, except for the section where the Provider's name is pre-printed.
3. In a February 14, 2013 email, the District notified the Provider, "We cannot accept any forms that have been pre-printed with [the Provider] as the first choice selection or whited out. The parent or guardian must fill out a new form."
4. As part of the district's investigation, it reviewed the guidance provided by the Texas Center for District and School Support (TCDSS), Education Service Center Region XIII. TCDSS provides SES technical assistance statewide.
 - a. In a December 4, 2012 email, the Director of TCDSS informed the Provider, "We encourage you to remind your staff that filling out the forms for parents who complete other forms at the campus may be considered fraudulent. Should the parent insist on having someone fill out the form for them, consider communicating with the district SES contact person to relay this experience or direct the parent to the district SES contact person."
 - b. In addition, TCDSS cited the federal requirements under G-14 of the federal guidance in the December 4, 2012 email to the Provider. The federal guidance calls for districts to make their outreach to parents, to include "having staff or volunteers on had to help parents understand and complete the enrollment application. The districts should have a specific and designated contact person, with a phone number and email address, whom parents can contact with questions."
5. Following the district's February 14, 2013 email notice to the Provider, the Provider "had the parents fill out a new form. However, "some of the students were already assigned to another provider and some were assigned to [the Provider]."

The district concluded that the Provider violated federal, state, and district requirements by submitting state SES enrollment forms that were pre-filled with the Provider's name as the parent's first choice when in fact, the parent did not choose the Provider on their own. In addition, the district finds that the Provider submitted enrollment forms for students who were already enrolled with another provider or were duplicative of students already enrolled with the Provider.

SES Provider Response

On March 4, 2013, the Provider timely responded to the complaint. The Provider acknowledged that it “had printed the Provider’s name on the enrollment form at the row marked for the First Choice” and “made a few hundred copies and distributed them to few site coordinators including [the District].” The Provider’s Program Director acknowledged that the Program Director and the employee attended many “‘Provider’s fairs’ and trained thoroughly on the job.” The Provider indicated that the Provider is “in the process of arranging formal training for the employee that is offered by TCDSS.” The Provider “assures that the all the pre-printed forms with all the site coordinators have been destroyed before 20th February [2013].” In addition, the Provider explained that “all the employees, Site Coordinators have been counseled and trained proper procedure of filling up a form.”

The Provider did not include any supporting documentation with its response.

TEA State-Level Investigation

The agency completed its investigation by reviewing data available to the agency. As part of its investigation, the agency independently verifies the district’s local investigative findings. In addition, the agency provided all parties involved an opportunity to respond and submit information for consideration in the resolution of this complaint. The agency considered all information provided by providers, former and current employees of providers and schools, parents, students, TCDSS, and any other sources who may have relevant information.

The agency’s findings and conclusions are as follows:

Based on the evidence, the agency finds that the Provider violated enrollment requirements under the federal, state, and District requirements.

1. The Provider pre-filled its Provider name as the first choice prior to parents being able to choose their providers, in violation of SES requirements.

The Provider’s form:

Tutoring Requested through:

You may select more than one method.



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First Choice:

2. The Provider refused to follow the requirements, even after the training (technical assistance) provided by the TCDSS in December 2012.

Provider Name: Athena

Second Choice:

3. Any and all SES enrollment forms containing the Provider name pre-printed on the forms are invalid and void.

Provider Name:

Third Choice:

Provider Name:

In addition, during the course of its investigation, the agency carefully inspected the Provider's enrollment forms.

1. The agency finds that the Provider tampered with the state's (agency's) official "ESEA Supplemental Educational Services (SES) 2012-2013 Program" enrollment form by altering the font type and size on the form and represented the form to parents and schools as the state's official form. The state's form is a government document.
2. The agency creates and requires the use of the agency's official "ESEA Supplemental Educational Services (SES) 2012-2013 Program" enrollment form as a control measure to assure to parents and schools that the free tutoring services are under the auspices of federal, state, and District educational programs. Altering the state's document is a misrepresentation and compromises the controls of the state.
3. Upon review of the forms, the Provider altered the font type and font size in the header and footer of the form.

The State's official SES enrollment form:

ESEA Supplemental Educational Services (SES) 2012-2013 Program
Help your child succeed in school!
Request for Free SES Tutoring

Return this completed form to the main office at your child's school as soon as possible.

The Provider's Form:

4. The Provider attended the required training. The training provided by the agency and TCDSS informed the districts and providers that the state-approved enrollment form is not to be altered. If it appears fraudulent or altered.
5. The Provider violated the state's SES application, in which the Provider signed in assurance that it would comply with the SES Code of Ethics "Not use a district enrollment form that has the selected provider's name pre-printed as part of the form:

ESEA Supplemental Educational Services (SES) 2012-2013 Program

Return this completed form to the main office

at your child's school as soon as possible.

Any facsimile of the enrollment form used to demonstrate how to accurately complete it must be clearly marked as "SAMPLE" and this facsimile shall in no way be used to actually enroll the student

6. All SES enrollment forms that have been altered are invalid and void.

Conclusion and Corrective Actions

The District's allegation is substantiated. The Provider violated federal, state, and District requirements under SES by submitting a number of pre-filled enrollment forms and altering the state's official 2012-2013 ESEA SES Enrollment Form, and misrepresenting the form to schools and parents as the state's form. Any and all enrollment forms pre-filled with Provider's name or forms that have been altered in any way are invalid and void.

Category of Violation(s): Category 2: Systemic | Probation (6 months)

Under the agency's Standards and Mechanism for the Removal of SES Providers, the Provider's violations are a systemic violation, which results in the probation of the Provider for six consecutive months. The Provider remains on the State-approved list during the probation term. A single instance of non-compliance found by TEA during the probation period will elevate the Provider to Category 1 for immediate removal.

1. The district must report the agency's investigative findings at the next public meeting of the district's Board of Trustees, as a board agenda item.
2. The district must reassign all students subject to the pre-filled documents from the Provider to another provider of the parent's choice. The district must contact each of the parents to allow the parents to select the SES provider(s) of their choice.
3. The Provider must provide the district a full and current list of its employees with date of births and any other identifiers necessary for the district to verify that the Provider's representatives, tutors, and recruiters met the district's **fingerprinting and criminal history record review** as required by state law and the state SES application. Specifically, include persons referenced as Kimberly W., Edith Guzman, and Pedro Cruz.

Notice to Districts Served by the Provider

To ensure that the Provider's violation has not and is not occurring in other districts, the agency will request districts served by the Provider to inspect the enrollment forms submitted by the Provider for 2012-2013. The districts must report their findings to the agency for consideration in any further determination, including sanctions.

Notice to the District's Board of Trustees

1. The district must report the agency's investigative findings at the next public meeting of the district's Board of Trustees, as a board agenda item.

2. The district must reassign all students subject to the pre-filled and altered forms from the Provider to another provider of the parent's choice. The district must contact each of the parents to allow the parents to select their SES provider of their choice on the state's official SES enrollment form. The district staff must assist any parent in selecting providers, as requested.

Referral to Other Agencies

Pre-filling the Athena name is a substantive change to the state's SES enrollment form and the agency suspects that the information is deceptive to the school and parents. Therefore, as stated in the March 1, 2013 Notice of Investigation, TEA will refer the matter to the District Attorney's Office in Uvalde County.

Appeal of TEA's Decision

The TEA's decision is final and there is no administrative appeal at TEA. The district or Provider 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 SES application year.

This concludes the agency's state-level investigation. Should you have any questions, please contact us.

Contacts

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Respectfully,



Emi Johnson, *CFE, CGAP, PHR*
Director of Special Investigations

Enclosure(s): Applicable Requirements

Courtesy Copy:

Accreditation Office, TEA
Special Investigations, TEA
TCDSS, Region XIII Education Service Center