

## Resolution of NCLB Complaint Investigation

March 7, 2013

**VIA EMAIL**

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RE: Dallas Independent School District  
SES Provider: Academic Myriad  
Complaint Ref. No. 2012-12-026

### Complaint Allegation

Student information was collected from students at Skyline High School and Boude Storey Middle School by Academic Myriad prior to visiting the parents at home to enroll the student, and incentives were offered for the student while recruiting enrollment.

### District Local 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 received calls from parents and campus administrators, obtained flyers Academic Myriad distributed to students, and contacted Academic Myriad via email. The district finds:

The district finds:

1. Representatives of Academic Myriad collected student information from students at Skyline High School and Boude Storey Middle School on a paper form.
2. Representatives of Academic Myriad distributed flyers to students advertising free tutoring via a

mobile device. The flyer includes instructions to sign up online to go to a specified website. The website goes directly to an Academic Myriad enrollment site.

3. Representatives of Academic Myriad required parents to complete a paper enrollment form and informing parents prior to the parent enrolling their child would receive a mobile device to use and would be able to keep it after completing the program.

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

Dallas ISD participates in the on-line enrollment program sponsored by the SES Division of the Texas Center for District and School Support (TCOSS) located at Region 13 Education Service Center.

Region 13 provided training to districts and providers of the three options for on-line enrollment are:

- 1) the parent completes the online enrollment form;
- 2) a campus administrator may assist a student with online enrollment at the campus; and
- 3) the provider may offer technical assistant to assist the parent to enroll the student online. Paper enrollment forms are not accepted for schools participating in the on-line enrollment system.

### **SES Provider Response**

On December 13, 2012, Academic Myriad submitted information to TEA in response to this complaint. The provider denied gathering information from students and offering an incentive to enroll with Academic Myriad.

### **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.

### **The TEA finds and concludes:**

The TEA finds the SES provider, Academic Myriad, 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 Dallas ISD.

Academic Myriad used paper enrollment to collect student information and distributed flyers with a website that took the students straight to the Academic Myriad website.

The website states:

**Step 1:** [CLICK HERE](#)

Enter your name, DOB, school, district

**Step 2:** Pick Math Tutoring and Individual  
Pick **ACADEMIC MYRIAD** as your  
FIRST CHOICE PROVIDER, SUBMIT

**Step 3:** Call 832 278-1737 to confirm.

This action negates and prevents parent choice for providers, which is a violation of federal requirements.

The enrollment data from the state's EZSES Management System indicates that 460 students are assigned to Academic Myriad as of the date of this letter. This investigation did not determine the exact number of students that were subject to this incident.

### **Applicable Requirements**

Under H-21 of the NCLB SES Federal Guidance (2009), the district may immediately terminate its contract with you under certain circumstances and in accordance with the termination clause in the contract. The district does not need approval from TEA to terminate its contract with you. A termination from a district does not necessarily mean you are removed from the state approved list. However, the district must notify TEA of its action and TEA will consider that action in further determinations.

#### ***H-21 of the Federal Guidance states:***

*May an LEA (i.e., school district) terminate the services provided to an individual student?*

**Yes.** *An LEA may terminate a provider's provision of SES to an individual student if the provider is unable to meet the student's specific achievement goals and the timetable set out in the agreement between the LEA and provider [Section 1116(e)(3)(C); 34 C.F.R. §200.46(b)(2)(ii)]. The agreement between an LEA and a provider must specify the terms and processes for terminating services. An LEA's authority to terminate an agreement is limited to services provided to an individual student (or students) and should not cover all students served by a provider.*

*An LEA may also terminate its agreement with a provider if the provider violates provisions in the agreement, such as provisions regarding student progress reports, invoicing payment for services, protecting student privacy, and complying with applicable health, safety, and civil rights laws. Further, LEAs may terminate an agreement if a provider fails to meet additional administrative or operational terms that may be included in the agreement, such as conducting background checks on the provider's employees, provided those terms are reasonable; do not subject the provider to more stringent requirements than apply to other contractors of the LEA, and do not have the effect of inappropriately limiting educational options for students and their parents.*

*If an LEA terminates a provider's services, the LEA should, if possible, allow the students the provider served to receive SES from another provider. The LEA might accommodate students with their second or third choice of provider if their original provider is no longer able to serve them.*

*However, under no circumstances may an LEA refuse to offer as an option to parents any provider on the State-approved list because of program design concerns. If an LEA has general concerns about the quality of a provider's services, the LEA should make its concerns known to the SEA (TEA).*

*Additionally, it is not within an LEA's authority to remove a provider from the State-approved provider list or to terminate an agreement with a provider for generally failing to raise student achievement.*

*Only an SEA may withdraw approval of a provider if, for two consecutive years, the provider does not contribute to increasing the academic proficiency of the students it serves [Section 1116(e)(4)(D); 34 C.F.R. §200.47(a)(4)(ii)].*

Under Item G-9, parents must enroll their child 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.

Dallas ISD participates in the on-line enrollment program sponsored by the SES Division of the Texas

Center for District and School Support (TCOSS) located at Region 13 Education Service Center. The three options for on-line enrollment are: 1) the parent completes the online enrollment form; 2) a campus administrator may assist a student with online enrollment at the campus; and 3) the provider may offer technical assistant to assist the parent to enroll the student online. Paper enrollment forms are not accepted for schools participating in the on-line enrollment system.

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 districts 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.

### **District Terminating a Provider**

The SES Non-Regulatory Guidance states the following with regard to a district terminating a provider:

The SES Agreement between the LEA and SES provider, provisions governing payment for the services, which may include provisions addressing missed sessions [Section 1116(e)(3)(D); 34 C.F.R. §200.46(b)(2)(iv)].

Under Item E-5 of the Guidance, an LEA may impose reasonable administrative and operational requirements through its agreements with providers. An LEA may terminate a provider's provision of SES to an individual student if the provider is unable to meet the student's specific achievement goals and the timetable set out in the agreement between the LEA and provider [Section 1116(e)(3)(C); 34 C.F.R. §200.46(b)(2)(ii)]. The agreement between an LEA and a provider must specify the terms and processes for terminating services. An LEA's authority to terminate an agreement is limited to services provided to an individual student (or students) and should not cover all students served by a provider.

An LEA may also terminate its agreement with a provider if the provider violates provisions in the agreement, such as provisions regarding student progress reports, invoicing payment for services, protecting student privacy, and complying with applicable health, safety, and civil rights laws.

If an LEA terminates a provider's services, the LEA should, if possible, allow the students the provider served to receive SES from another provider. The LEA might accommodate students with their second or third choice of provider if their original provider is no longer able to serve them.

However, as explained in E-3, under no circumstances may an LEA refuse to offer as an option to parents any provider on the State-approved list because of program design concerns. If an LEA has general concerns about the quality of a provider's services, the LEA should make its concerns known to the SEA. Additionally, it is not within an LEA's authority to remove a provider from the approved provider list or to terminate an agreement with a provider for generally failing to raise student achievement. Only an SEA may withdraw approval of a provider if, for two consecutive years, the provider does not contribute to increasing the academic proficiency of the students it serves [Section 1116(e)(4)(D); 34 C.F.R. §200.47(a)(4)(ii)].

### **Conclusion**

The allegation made by Dallas ISD is substantiated. Based on the evidence, Academic Myriad 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 allowing the parent to enroll their student on-line.
4. Did not comply with the ethical business practices the SES providers agreed to as part of their state application.

Dallas ISD requests permission from TEA to terminate the SES Agreement with Academic Myriad.

Dallas ISD may terminate its SES Agreements with the SES provider under certain conditions specified under H-21 of the Federal Guidance. From their investigations, Dallas ISD and TEA did not find that Academic Myriad violated terms or provisions regarding student progress reports, invoicing payment for services, protecting student privacy and health, safety and civil rights laws.

TEA finds that the SES providers failed to meet administrative or operational terms that Dallas ISD included in the SES Agreement.

The TEA places Academic Myriad on a probationary status meaning that the TEA will carefully monitor the SES provider for the remainder of the year. This is based on the number of students involved and the fact that the SES provider failed to identify or admit this violation, self- report it to Dallas ISD, and take immediate corrective actions.

Should the TEA substantiate another complaint concerning the SES provider, the TEA will remove the SES provider 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 Academic Myriad**

The following corrective actions are due to the Dallas 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 on-line 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 and fingerprinting 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 provider send a letter to each parent subject to this complaint, to inform them of Dallas' and TEA's findings and to inform the parent that a school representative from Skyline High School and Boude Storey Middle School will be contacting them to allow the parent to choose their providers using the online options
- 5 Documentation that Academic Myriad guarantees they will no longer require paper enrollment forms, not distribute the documented flyers, and will not discuss what mobile devices will be used until a parent decides to enroll with Academic Myriad

### Notice to Dallas ISD Board of Trustees

- 1 Dallas ISD must report the TEA's investigative findings at the next public meeting of the Dallas ISD Board of Trustees, as a board agenda item.
- 2 Dallas ISD must contact the parents subject to this complaint to allow the parents to select SES provider of their three choices, other than Academic Myriad. Dallas ISD must reassign the students per the parent's choice.
- 3 Dallas 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](mailto: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](mailto:becca.marsh@tea.state.tx.us), or Leticia Govea at (512) 463-1427 or [leticia.govea@tea.state.tx.us](mailto: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](mailto:brandon.spenrath@esc13.txed.net).

Sincerely,

Becca Marsh  
School Improvement and Support

CC: Emi Johnson  
Director of Special Investigations

Sally Partridge, Associate Commissioner  
Accreditation Office, TEA

Leticia Govea, Manager  
School Improvement and TTIPS

Brandon Spenrath  
TCDSS – SES Unit