

October 9, 2015

Via email (OSS.Texas@ed.gov) and First Class U.S. Mail

Ann Whalen
U.S. Department of Education
Office of Elementary and Secondary Education
400 Maryland Ave. SW
Washington, D.C. 20202

Re: Request for reconsideration of high-risk designation – State of Texas

Dear Acting Assistant Secretary Whalen:

On September 29, 2015, I received your response to Texas' request for renewal of flexibility under the Elementary and Secondary Education Act of 1965 (ESEA). In that response, the United States Department of Education (USDE or Department) renewed the approval of Texas's ESEA flexibility request through the end of the 2015-2016 school year; however, the Department placed Texas on high-risk status. Your letter indicates that Texas may request reconsideration of its high-risk designation by submitting to you a letter detailing the basis for that request by October 9, 2015. While your letter cites generally to 2 CFR §§200.207 and 3474.10, it does not cite to a subsection of 2 CFR § 200.207 that forms the basis of the Department's determination that Texas' award status is high risk.

I agree with your statement that Texas has been able to "carry important reforms to improve student achievement" and, accordingly, disagree that Texas should be placed on high-risk status under 2 CFR § 200.207. Without knowing the basis of this status, I am at a disadvantage in responding directly to the basis of this preliminary determination, and I would reserve the right to supplement upon receiving greater clarification. However, I will attempt to respond to your concerns; please consider this letter Texas' request for reconsideration of the high-risk designation.

During the last three years, the agency and Texas educators have thoughtfully and deliberately worked to build new state-recommended teacher and principal appraisal systems that meet the needs of Texas' campuses and districts. In response to the perceived shortcomings of the current state teacher appraisal system, the Professional Development Appraisal System (PDAS), our educators have uniformly asked for an appraisal system that goes beyond simply bearing the load of nonrenewal decisions. What Texas educators seek are processes that provide accurate, evidence-based feedback, allow for collaborative and collegial dialogue between educators and their appraisers, and that support educators as they work to continuously improve. Texas' state-

recommended appraisal systems need to respond to the needs of our educators and provide them with tools through which they can, above all else, refine their practices so they can provide the best educational experience for their students. All of our decisions in building the new state-recommended teacher and principal appraisal systems (T-TESS and T-PESS, respectively) have been made through that lens.

Based on your September 29, 2015 letter, USDE has determined that Texas' plans for implementing teacher and principal evaluation and support systems do not fully meet your internal guidelines for ESEA flexibility in three areas:

- 1) Ensuring that all Texas LEAs implement teacher and principal evaluation and support systems that meet all requirements of USDE (a statewide system);
- 2) Ensuring that LEAs use the results of their teacher and principal evaluation and support systems to inform personnel decisions (personnel decisions); and
- 3) Adopting a statewide approach to measuring student growth based on State assessments in grades and subjects for which student assessments are required (state assessments and student growth)

A Statewide System

Texas Education Code §21.352 requires LEAs to use the state-developed evaluation system or a locally developed system that meets the same statutory requirements of the state-developed appraisal system. Approximately 86 percent of Texas school districts presently use PDAS, Texas' state-developed instrument for teacher evaluation. Texas Education Code §21.352(c-1) requires that each locally developed system must contain specific appraisal components, including measures of student performance, and classroom observations and walk-throughs that must be conducted more frequently for new teachers and teachers who show deficiencies in evaluation results. Without specific changes in Texas law, that cannot happen prior to the Texas Legislature meeting in the spring of 2017, I am not authorized to mandate LEAs to utilize a statewide appraisal system.

In a state with over 5 million students, 8,600 campuses, and 1,200 independent school districts and charter schools—including some districts as large as 210,000 students and some as small as 13 -- state education policy must strike a balance between meeting the collective needs of the students of Texas, providing the support educators need, and allowing the flexibility districts deserve to respond to the context of their communities. Some districts will want and need appraisal systems with a slightly different focus than the state-recommended systems, and Texas law provides them that flexibility and control. It is precisely because of that ability to innovate that the state was able to learn from and build upon the locally developed systems of its districts when designing T-TESS and T-PESS.

Although Texas recognizes that certain principles underpin any successful appraisal process, the six specific and prescriptive mandates sought by the Department on the components and use of appraisal systems within waiver guidelines go beyond what will be uniformly successful for all

school districts within the State of Texas. Simply put, when it comes to appraisal, what serves the needs of our districts in Dallas, Houston, or Austin doesn't necessarily serve the needs of our districts in Ballinger, Port Arthur, or Sweetwater.

As I stated above, Texas law does not provide for a statewide appraisal system. At the core, Texas believes in the ability of local districts to implement comprehensive evaluation systems that work best in their communities and for their students. Despite that flexibility, TEA believes that most of the state's more than 1,200 independent school districts and charter schools that have used the state-approved appraisal system will continue to do so. Due to the quality of new tools and new training provided by TEA and the state's regional Education Service Centers (ESCs), the cost-effectiveness of using the state system, the desire from districts for a better measure of teacher and principal effectiveness, historical precedent, and the fact that many districts have already embraced the systems during the pilot and refinement years because the systems were designed, improved, and implemented collaboratively and not as opposed to a top-down approach, TEA anticipates that most districts will use the newly-approved teacher and principal evaluation systems regardless if a mandate is in place.

Information received from the state's 20 regional education service centers indicates that over 1,050 LEAs will participate in the state-developed systems in the 2016-2017 school year. The remaining districts will use an evaluation system targeted to their own local needs that also meets the appraisal system requirements currently in statute.

If the Department has designated Texas as high-risk due to its failure to mandate that each of the state's more than 1,200 school districts and charters implement an appraisal system that adheres to the specific conditions of the waiver, I request reconsideration of that determination. If this does not meet the conditions of the waiver, I would appreciate specific direction of how the Department's waiver conditions would enable the state to mandate a single uniform system of appraisal when state law does not allow such a mandate.

Personnel Decisions

The nature of appraisal requires all districts to use the data collected throughout the process to inform personnel decisions, but appraisal's home should be professional development. When it resides there, it has value for all teachers and principals. While it still retains its ability to support a range of personnel decisions, appraisal that lives in professional development becomes more than a process with which to comply or a process to fear. School districts are able to use those systems as the foundation for integrated efforts to develop educators, improve instruction and campus leadership, and, most importantly, improve student performance.

Local, independent school districts make personnel decisions informed by daily interactions with educators that yield a level of understanding that can't be assumed or accounted for at the state level. They must respond to the cultural needs of the communities in which they reside, and that broad decision-making process should not be usurped or unnecessarily restricted by state mandate.

As I've indicated in the waiver application, I believe that Texas meets the requirements of the waiver because Texas Education Code §21.203(a) requires the use of appraisal data in teacher contract renewal decisions based on appraisal-related performance. The Department indicates, however, that this statutory requirement does not go far enough in dictating how local school districts use appraisal results for personnel decisions. The Department cited that Texas has not satisfied this condition of the waiver. I request that USDE reconsider its decision to designate Texas as high-risk due to its failure to require the use of appraisal results to inform personnel decisions. As the waiver request indicates, and I reiterate above, T-TESS and T-PESS require the use of appraisal results to inform the individualized goal-setting and professional development components of each system, and state statute requires the use of appraisal data in teacher contract renewal decisions based on appraisal-related performance.

If the USDE requires the use of appraisal results beyond professional development and renewal decisions as a condition of waiver, I request clarification on what specific types of personnel decisions based on appraisal results the USDE requires the Texas Education Agency to mandate to our independent school districts and charter schools.

Considering how many variables go into the decision-making process to compensate and reward educators, the unique local contexts that require three-dimensional views of an educator's impact on a campus, and the campus needs that a state agency can't possibly anticipate for every school district and all 350,000 teachers and principals in the state, I also request guidance on how a state agency can anticipate in rule the exigencies over 1,200 districts and charter schools face in making the personnel decisions that best address the needs of their students.

State Assessments and Student Growth

As I indicated in the waiver application, T-TESS, T-PESS, and all locally developed appraisal systems will require the inclusion of student growth measures beginning with the 2017-2018 school year. How students progress academically in response to an educator's instructional and professional practices should be a part of any appraisal process that supports the growth of teachers and principals.

Texas has designed and included student growth measures in T-TESS and T-PESS to further the purpose of both systems – that is, to help teachers and principals determine what specific practices and actions they can improve upon to better impact student performance moving forward.

For T-TESS, the new teacher appraisal system, student growth can be measured using any one of four metrics or processes: student learning objectives, portfolios, district pre- and post-tests, and value-added scores based on state assessments.

For teachers, the state's approach views the primary value of student growth measures as providing instructionally valuable feedback that can lead to improved practice and improved outcomes. As all four measures listed above, when used thoughtfully, can meet that standard, the state's approach does not favor any one measure over another. Teachers can learn just as much

about the impact of their instruction from student learning objectives as they can by looking at diagnostic value-added data.

The state's approach does not treat state assessments as the sole or preferred means of providing pedagogical feedback to teachers. Many forms of assessment, both formal and informal, occur throughout the school year that can produce accurate and actionable student growth feedback for educators on the impact of their instruction and leadership.

For these reasons, I request that the USDE reconsider its decision to designate Texas as high-risk due to its failure to mandate the use of state assessments in the calculation of student growth scores for teachers of tested grades and subjects.

If the USDE is unwilling to reconsider this decision, I request clarification on what policy justification the USDE bases its view that student growth measures based on state assessment results are more valid and valuable than student growth measures that aren't based on state assessment results.

If the USDE denies the implicit claim that student growth measures based on state assessment results are more valid and valuable than measures not based on state assessment results, I request clarification on why teachers of tested grades and subjects would have to use student growth measures based on state assessments and not other growth measures that can provide commensurate feedback.

If the USDE acknowledges the implicit claim that student growth measures based on state assessment results are more valid and valuable than measures not based on state assessment results, I request clarification on how the state should adopt guidance on the use of student growth results in high-stakes personnel decisions when some teachers' appraisal results are based on less valid and valuable measures than other teachers' appraisal results.

Stakeholder Collaboration

In addition, your letter mentions the importance of meaningfully collaborating with stakeholders on the implementation of this flexibility request. Texas has engaged stakeholders in great depth as it relates to the development and implementation of the teacher and principal evaluation and support systems. I have consistently emphasized to these stakeholders that I do not have the authority to compel local school districts to use one uniform teacher and principal evaluation system statewide. With that said, I maintain that the system Texas is implementing substantially meets the Department's guidance statements while meeting the demands of our stakeholders for local control. Ultimately, I am convinced that student achievement, the primary concern of ESEA, will benefit more from the approach Texas has taken rather than a more heavy-handed alternative.

While I believe that Texas can demonstrate that it is certainly in compliance with the spirit of the USDE's various guidance statements, I must strongly disagree that Texas has failed to meet the letter of any law or rule regarding teacher and principal evaluation system requirements.

As Texas moves forward with the implementation of our new state-recommended appraisal systems and responds to the needs of Texas' students and educators, I look forward to your reconsideration of and clarification on the issues raised in this letter.

Sincerely,

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

Michael Williams
Commissioner of Education

cc: Erin Shackel
Jameel Scott