



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

**NOV 06 2015**

The Honorable Michael Williams  
Commissioner of Education  
Texas Education Agency  
1701 North Congress Avenue  
Austin, TX 78701

Dear Commissioner Williams:

I am writing in response to your October 9, 2015 letter requesting reconsideration of my decision to place Texas on high-risk status pursuant to 2 C.F.R. §§ 200.207 and 3474.10. Your letter was written in response to my September 29, 2015 letter granting Texas's request to renew approval of its request for flexibility under the Elementary and Secondary Education Act of 1965, as amended (ESEA flexibility), through the end of the 2015–2016 school year, subject to two conditions with respect to its teacher and principal evaluation and support systems, and placing Texas on high-risk status.

After carefully considering your request for reconsideration of my decision to place Texas on high-risk status, I continue to believe that designation is warranted. Therefore, pursuant to 2 C.F.R. §§ 200.207 and 3474.10, Texas remains on high-risk status with respect to ESEA flexibility, as per my letter of September 29, 2015.

In your request for reconsideration, you assert that the U.S. Department of Education (ED) was not clear as to the basis for the decision to place Texas on high-risk status. As articulated in my September 29, 2015 letter, Texas was placed on high-risk status because the State has not yet met the condition placed on its original ESEA flexibility approval and on its approved extension. That condition was to submit final guidelines for teacher and principal evaluation and support systems that meet the requirements of ESEA flexibility, including the use of growth in student learning as a significant factor in determining a teacher's or a principal's summative evaluation rating. Texas's ESEA flexibility renewal request did not meet this condition because the State's guidelines do not demonstrate how they will ensure that all local educational agencies (LEAs) implement teacher and principal evaluation and support systems that meet all requirements of ESEA flexibility Principle 3 by the date set forth in its ESEA flexibility request – that is, no later than the 2016–2017 school year – including the use of growth in student learning as a significant factor and, for teachers of tested grades and subjects, a Statewide approach to measuring growth in student learning based on State assessments. Texas's guidelines also do not ensure that all LEAs will use the results of teacher and principal evaluation and support systems that meet all requirements of ESEA flexibility Principle 3 to inform personnel decisions starting with ratings generated using data from the 2016–2017 school year.

With respect to implementing a Statewide approach to measuring growth in student learning based on State assessments for teachers of tested grades and subjects, you cite Texas Education Code § 21.352,

400 MARYLAND AVE., SW, WASHINGTON, DC 20202  
<http://www.ed.gov/>

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which permits 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. You assert that this law does not authorize you to mandate LEAs to use a Statewide approach.

A Statewide approach to measuring growth in student learning on State assessments for teachers of tested grades and subjects is important to provide a comparable method of determining how much a student has learned as demonstrated by changes in the student's test scores between two points in time, so that teachers and principals have a meaningful way of understanding their students' growth in the context of similar data for other students and educators across the State. The information that comes from a Statewide approach to measuring student growth on the State assessments is also important because it can be used by principals and LEA superintendents to guide professional development and instructional support opportunities, as well as to ensure that all students have equitable access to effective educators. ED does not prescribe the specific, Statewide measure that States must use to meet this requirement; however, ED does require that the evaluation and support systems States and districts are implementing under ESEA flexibility include a Statewide approach so that the benefits articulated above can be realized. ED discussed several approaches to meeting this requirement with your staff in July and September, 2015, and provided information related to other States' approaches to this issue in an email sent on October 8, 2015. ED remains committed to working with you and your staff over the next several months to resolve this condition.

With respect to implementing teacher and principal evaluation and support systems that use growth in student learning as a significant factor, you confirmed that Texas's guidelines permit districts to select one of four measures of growth in student learning for all teachers and principals, including those teachers of grades and subjects in which assessments are required under ESEA section 1111(b)(3), and that only one of those four measures represents growth in student learning based on the State assessment. Accordingly, Texas's guidelines permit teachers of tested grades and subjects and principals to be evaluated and supported based on the results of systems that need not necessarily include growth in student learning based on the State assessments. ESEA flexibility does not require growth in student learning based on the State assessments to be the singular or majority factor in determining the summative rating for teachers of tested grades and subjects and principals; however, ESEA flexibility requires that growth in student learning based on the State assessments be a factor in determining the summative rating for teachers of tested grades and subjects and principals. This foundational requirement of ESEA flexibility is set forth in the definition of "student growth" provided in ED's ESEA Flexibility Policy Document of June 7, 2012<sup>1</sup>.

Finally, with respect to using data derived from the teacher and principal evaluation and support systems to inform personnel decisions beginning with ratings using data from the 2016–2017 school year, you state that the Texas teacher evaluation and support system (T-TESS) and the Texas principal evaluation and support system (T-PESS) require the use of appraisal results to inform the individualized goal-setting and professional development components of each system. Additionally, Texas Education Code § 21.203(a) requires the use of appraisal data in teacher contract renewal decisions based on appraisal-related performance. The use of the results of T-TESS and T-PESS to inform individualized goal-setting, professional development, and contract renewal decisions constitutes using these systems to inform personnel decisions and therefore addresses the specific component of Principle 3 that requires the teacher and principal evaluation and support systems that States and districts develop be used to inform personnel decisions. Nevertheless, because the underlying T-TESS and T-PESS frameworks on

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<sup>1</sup> <http://www2.ed.gov/policy/eseaflex/approved-requests/flexrequest.doc>, p.7.

which these personnel decisions are made fail to meet the threshold requirements of ESEA flexibility Principle 3, Texas has not adequately addressed the ESEA flexibility Principle 3 requirement that its districts develop, adopt, pilot, and implement systems that meet all requirements and are used to inform personnel decisions. Since Texas has not provided guidelines that meet all requirements of ESEA flexibility Principle 3, nor has it provided a plan to develop guidelines that will ensure that all districts develop, adopt, pilot, and implement systems that meet all requirements of ESEA flexibility Principle 3, the State has not demonstrated that systems that meet all requirements of ESEA flexibility Principle 3 will be used to inform personnel decisions. Should Texas submit guidelines that meet all requirements of ESEA flexibility Principle 3, the personnel decisions that Texas' systems include – individualized goal-setting, professional development, and contract renewal decisions – are sufficient to satisfy the personnel decisions component of ESEA flexibility Principle 3.

If Texas requests renewal of its ESEA flexibility request beyond the 2015–2016 school year, I would not be able to grant that request until the conditions specified in my September 29, 2015 letter are met. If those conditions cannot be resolved by January 15, 2016, Texas will not be able to continue implementing ESEA flexibility beyond the 2015–2016 school year and will be required to resume implementing the ESEA in the 2016–2017 school year.

I appreciate our continued relationship with Texas and remain committed to working on your request for ESEA flexibility, which I hope will lead to removal of the conditions and its high-risk status. If you have any additional questions, please do not hesitate to contact Jameel A. Scott or Erin Shackel of my staff at: [OSS.Texas@ed.gov](mailto:OSS.Texas@ed.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Ann Whalen', with a large, stylized initial 'A'.

Ann Whalen

Delegated the authority to perform the functions  
and duties of Assistant Secretary for Elementary  
and Secondary Education

cc: Lizette Reynolds, Chief Deputy Commissioner