

January 30, 2018

Jason Botel  
Principal Deputy Assistant Secretary for Elementary and Secondary Education and  
Acting Assistant Secretary for Elementary and Secondary Education  
U.S. Department of Education  
400 Maryland Ave., SW  
Washington, DC 20202-6100

SUBJECT: Waivers Requested Due to Devastation Caused by Hurricane Harvey

Dear Mr. Botel,

In a letter dated October 17, 2017, the Texas Education Agency requested waivers to certain federal grant requirements for school districts impacted by Hurricane Harvey. This letter contains additional requests for waivers to address issues that continue to challenge these schools.

As you know from our previous letter, Hurricane Harvey hit the Texas Gulf Coast region beginning on August 25, 2017, and heavily impacted operations in over 300 local educational agencies (LEAs). Sixty counties have been identified in the governor's disaster declaration. LEAs that received evacuee students were impacted by the hurricane.

To assist LEAs affected by Hurricane Harvey, I am requesting, on behalf of Texas, waivers to certain requirements under ESSA, IDEA-B, the General Education Provisions Act (GEPA), and the Education Department General Administrative Regulations (EDGAR). The state believes that the following waivers will provide LEAs affected by Hurricane Harvey with greater flexibility to effectively implement their federal education grants to serve the intended beneficiaries.

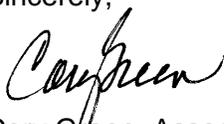
1. **Transportation Costs.** Extraordinary costs are being incurred for transporting students to various campuses because of the increased number of homeless students eligible under the McKinney-Vento Act. These costs include, but are not limited to, additional buses, additional staff such as bus drivers and bus aides, and adaptive equipment. If the law does not already permit, TEA requests that LEAs be granted the flexibility to use any federal funding source to pay for the deficit caused by these additional expenditures.
2. **Equipment Costs.** Specialized equipment required under specific Individual Education Plans (IEPs), programs, and classroom materials used to implement IEPs previously purchased by IDEA-B funds may have been lost or destroyed in the hurricane floods. TEA requests that LEAs be granted the flexibility to use any federal funding source to pay for the replacement costs of such equipment.

3. **Lost or Destroyed Records.** TEA has advised affected LEAs to notify parents or adult students when student records have been lost or destroyed as required by IDEA. TEA has also encouraged LEAs to appropriately document if they have lost any records due to Hurricane Harvey for IDEA or any other federal program. TEA requests that LEA compliance and monitoring findings due to loss of student records or documentation be waived during the applicable limitations period.
4. **IEP Amendment Process.** TEA requests that LEAs be allowed to use the change of IEP process, without restriction, to document any changes made necessary because of the hurricane. To implement this flexibility, however, the LEA would still have to get approval from the parents of any affected student. The requirements for eligibility and the requirement that IEP teams meet at least once during the 2017–2018 school year would not be waived.
5. **Accountability.** TEA requests flexibility from school improvement provisions of ESSA for LEAs in the heaviest impacted areas as we work to provide support and relief to LEAs heavily affected by the storm. TEA may not be providing state accountability ratings for certain campuses in the impacted regions; however, we will continue to identify all campuses in the state as comprehensive and/or targeted as outlined in our ESSA State Plan.

Texas assures that it has provided all LEAs in the State with notice and a reasonable opportunity to comment on this request. Texas provided such notice through a statewide letter to all LEAs posted on the TEA web site and disseminated through the TEA “To the Administrator Addressed” electronic mail list server (Attachment 1). TEA received five responses to our request for comment (Attachment 2).

If you have questions regarding these waiver requests, please contact me via electronic mail at [cory.green@tea.texas.gov](mailto:cory.green@tea.texas.gov) or at (512) 463-8992. Thank you for your consideration.

Sincerely,



Cory Green, Associate Commissioner  
Department of Contracts, Grants and Financial Administration

# **Attachment 1 – To the Administrator Addressed Letter to LEAs**

December 14, 2017

**TO THE ADMINISTRATOR ADDRESSED:**

**SUBJECT:** Additional Waiver Requests Due to Devastation Caused by Hurricane Harvey

This letter is to notify you of TEA's intent to apply for the waivers listed below on behalf of local educational agencies (LEAs) in Texas affected by Hurricane Harvey. These are LEAs located in counties identified in the governor's disaster declaration or LEAs receiving evacuee students.

**Background**

Hurricane Harvey hit the Texas Gulf Coast region beginning on August 25, 2017, and heavily impacted LEA operations in over 300 LEAs. Sixty counties have been identified in the governor's disaster declaration.

The state believes that the following waivers will provide LEAs affected by Hurricane Harvey with greater flexibility to effectively implement their federal education grants to serve the intended beneficiaries of those grants.

**Waivers**

1. **Transportation Costs.** Extraordinary costs are being incurred for transporting students to various campuses because of the increased number of homeless students eligible under the McKinney-Vento Act. These costs include, but are not limited to, additional buses, additional staff such as bus drivers and bus aides, and adaptive equipment. If the law does not already permit, TEA will request that LEAs be granted the flexibility to use any federal funding source to pay for the deficit caused by these additional expenditures.
2. **Equipment Costs.** Specialized equipment required under specific Individual Education Plans (IEPs), programs, and classroom materials used to implement IEPs previously purchased by IDEA-B funds may have been lost or destroyed in the hurricane floods. TEA will request that LEAs be granted the flexibility to use any federal funding source to pay for the replacement costs of such equipment.
3. **Lost or Destroyed Records.** TEA has advised affected LEAs to notify parents or adult students when student records have been lost or destroyed as required by IDEA. TEA has also encouraged LEAs to appropriately document if they have lost any records due to Hurricane Harvey for IDEA or any other federal program. TEA will request that LEA compliance and monitoring findings due to loss of student records or documentation be waived during the applicable statute of limitations.
4. **IEP Amendment Process.** TEA will request that LEAs be allowed to use the change of IEP process, without restriction, to document any changes made necessary because of the hurricane. To implement this flexibility, however, the LEA would still have to get approval from the parents of any affected student. The requirements for eligibility and the requirement that IEP teams meet at least once during the 2017–2018 school year would not be waived.

5. **Accountability.** TEA will request flexibility from school improvement provisions of ESSA for LEAs in the heaviest impacted areas as we work to provide support and relief to LEAs heavily affected by the storm. TEA may not be providing state accountability ratings for certain campuses in the impacted regions; however, we will continue to identify all campuses in the state as comprehensive and/or targeted as outlined in our ESSA State Plan.

### **Comment Period**

Due to the need to provide timely flexibility to LEAs affected by Hurricane Harvey, all comments on these proposed waivers are due by **Friday, January 5, 2018**, by electronic mail to [grants@tea.texas.gov](mailto:grants@tea.texas.gov).

Once TEA reviews any comments received and makes any appropriate modifications, the comments will be submitted to USDE as part of the state's waiver requests. When and if TEA receives USDE approval of the waiver requests, additional information will be provided to LEAs on the implementation of the waivers through a statewide To the Administrator Addressed letter.

### **For Further Information**

If you have any questions regarding the impact of Hurricane Harvey on federal grant funds or for additional information on the proposed waiver requests, please email the Department of Contracts, Grants and Financial Administration at [grants@tea.texas.gov](mailto:grants@tea.texas.gov).

Sincerely,

Cory Green, Associate Commissioner  
Department of Contracts, Grants and Financial Administration

**Attachment 2 – Comments Received by TEA  
Regarding Hurricane Harvey Waiver  
Request**

# ALDINE ISD

## ALDINE INDEPENDENT SCHOOL DISTRICT

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2520 W.W. Thorne Blvd. • Houston, Texas 77073-3406 • 281-449-1011

January 5, 2018

**SUBJECT:** Comments on the Proposed Waivers Due to Devastation Caused by Hurricane Harvey

Aldine ISD supports TEA's intent to apply for waivers on behalf of local education agencies in Texas affected by Hurricane Harvey. Supporting information specific to Aldine ISD is provided below.

### Waivers

#### 1. Transportation Costs:

- We are transporting students across the district who attended a campus that was affected by Hurricane Harvey. This may affect our linear density negatively, thus resulting in less transportation reimbursement from the state. The potential exists for the district's reimbursement to decrease by several hundred thousand dollars.
- We are transporting a record number of students who qualify as Homeless without receiving additional funding. This will ultimately cost the district several hundred thousand dollars.
- Routers have had to work overtime each week to ensure Homeless students' transportation is arranged in a timely manner. This will result in approximately \$15,000 this year.

#### 2. Equipment Costs:

- In the wake of Hurricane Harvey the Aldine Independent School District was actively involved with preparation for the return of students and staff. The storm caused our department to deploy contractors and district personnel to repair and restore post Hurricane Harvey. Our department logged over 3800 overtime man hours. The department purchased over 10,300 dollars of emergency materials and repaired 113,000 dollars of damaged equipment. The department closed out over 910 Hurricane Harvey related work orders and logged over 13,696 miles of vehicle use during the storm. The impact from Harvey was tremendous and called for all stakeholders to work collaborative to restore the district buildings in preparation for the return of all stakeholders.

#### 3. Lost or Destroyed Records: NA

#### 4. IEP Amendment Process: NA

## 5. Accountability:

- Hurricane Harvey's impact was a little different for each district in the impacted areas. In Aldine, most district facilities suffered minor damage if any. We did lose one building on the east side of Interstate 59--Mendel Elementary. This campus is one of our oldest elementaries--60 years old, and the board had voted to close the building in May, 2018. Students were moved to two campuses. Kindergarten students joined PK students at Garcia Leza. The students in grades 1-4 were moved to our newest elementary campus—Greenspoint Elementary.
- Homes in our neighborhoods and the surrounding communities were greatly impacted.
  - 861 staff members impacted
  - 641 instructional staff members impacted
  - 291/641 lost everything
  - 166/641 displaced
  - The Board of Trustees amended local policy to allow staff members to use accrued "sick" days for "personal" days to address Harvey matters.
  - Even though staff members have been diligent about attendance, any staff absence impacts students.
- Many students' families were impacted.
  - 3717 students reported at school that their homes were damaged and many lost everything.
  - 478 students reported they were homeless in 2016-2017/1146 students have reported they are homeless at this time in 2017-2018
  - 1130/1146 displaced.
  - Until the end of October, 11 students were living in the Macy's shelter since the closing of NRG as a shelter.
  - Of the 11, 6 left the district, 5 have been placed in local apartments and housing
  - Numbers of students are misleading....even small numbers have an impact on individual students and campuses.
  - Homeless numbers could be misleading.... Students may have qualified but their parents chose not to self-report and complete the process (form attached)
- Item of description on form- "In a place that does not have windows, doors, heat, electricity, or is overcrowded"--Substandard living conditions
  - Families living in one room or without flooring, complete walls, appliances, etc.
  - Families separated—mother and daughter with one relative, sons living elsewhere
  - One or more parents out of work or just getting back to work
  - Families living above flooded 1st floor apartments—mold, etc.
- Most students returned to school on September 7th or September 11th when counseling, skill reviews and instruction began immediately. Some students returned after September 11th when their circumstances allowed it. Families struggled and campuses worked with them carefully to address tardies, absences, and dress code issues for several weeks.
- We have 232 students living in hotels. Many have indicated their hotel vouchers will last until November 30th. Then they will possibly move again.
- Student movement will continue throughout the year as families get settled. Families without resources will take longer to rebuild and return to normal.

Meanwhile, transportation costs continue to increase for homeless and displaced students.

- The state has set a precedent in past years to exclude students impacted by storms such as Hurricane Katrina and Hurricane Rita. Those students were coded and removed from accountability. We have received crisis codes for Hurricane Harvey but for the reasons that I shared above, there are students who will not be captured in that data. Also, instruction for the year has been impacted because teachers and instructional staff have experienced the same trauma of having damaged or lost homes and possessions.
- I recommend that the state expand the precedent of excluding impacted students from accountability to match the current situation. Each campus and district impacted by Hurricane Harvey should be excluded from the accountability system for the 2017-2018 school year.
- Campuses and districts would instead use the assessment feedback from all exams to monitor growth and make plans to improve instructional services and programs.
- Districts and campuses in each of the Hurricane Harvey disaster counties should not receive a state or federal accountability rating in 2018. Instead, the agency should issue a label of “Not Rated: Other”. In addition to the “Not Rated: Other” label, districts and campuses should be not be sanctioned for this data for PEG, PBMAS, or ESSA.

**From:** [Grants](#)  
**To:** [Villarreal, Christina](#)  
**Subject:** FW: Additional Wavier Requests Due to Devastation Caused by Hurricane Harvey - Comments  
**Date:** Monday, January 8, 2018 9:10:02 AM

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Thanks,  
Gean

**From:** Carol Atwood [mailto:catwood@humbleisd.net]  
**Sent:** Friday, January 5, 2018 2:16 PM  
**To:** Grants <Grants@tea.texas.gov>  
**Subject:** Additional Wavier Requests Due to Devastation Caused by Hurricane Harvey - Comments

Humble ISD supports TEA's action to apply for the waivers listed in the correspondence dated December 14, 2017 on behalf of local education agencies (LEAs) in Texas affected by Hurricane Harvey. Flexibility in implementing our federal education grants to serve our affected students is needed.

Hurricane Harvey had a tremendous impact on the Humble ISD community: 6,000 homes and 3,300 business suffered flood damage. Flooding at Kingwood High School was so extensive that the school is closed for the 2017-18 school year for remediation. The result, 2,700 Kingwood High School students are sharing facilities with 2,200 Summer Creek High School students. Also, impacted younger students have moved between our elementary and middle school campuses within the district. And, some campuses have received students from neighboring districts.

Due to Hurricane Harvey, Humble ISD has an additional \$40,000 in transportation expenses for Homeless Students. Transportation cost for the flexible scheduling for Kingwood High School and Summer Creek High School students has resulted in an additional \$450,000 for operational expenses and \$112,000 for payroll expenses in fall 2017.

Flooding at Kingwood High School has resulted in approximately \$45,000 of specialized equipment under specific Individual Education Plans and programs needing to be replaced.

The administrative offices at Kingwood High School had several feet of water. Academic and attendance records for students as well as staff files were damaged. While some of this information was electronically backed-up, original documents with signature and official seals have been severely compromised. A final decision as to which files can be preserved is still a work in progress.

Student learning continues as our primary focus. Even though there have been missed school days and personal struggles on the part of students, their families and our staff members, teachers and administrators remain committed to providing the best educational opportunities to our students. However, labeling a campus under a new accountability under these extraordinary circumstances this school year is not appropriate. Using state assessment as one of multiple data sources will be needed to assess student progress and acceleration going forward so that future accountability ratings may reflect the quality of the campus.

Thank you in advance for your efforts in seeking the additional waivers to serve our students.

Sincerely,

Carol Atwood  
Assistant Superintendent  
Data Quality & Accountability  
Humble ISD  
281 641 8126 (office)  
281 330 0315 (cell)  
[catwood@humbleisd.net](mailto:catwood@humbleisd.net)



## Texas Association of School Administrators

406 East 11<sup>th</sup> Street • Austin, TX 78701-2617 • 512.477.6361, 800.725.TASA (8272) • Fax: 512.482.8658 • [www.TASAnet.org](http://www.TASAnet.org)

**Buck Gilcrease**  
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**Gayle Stinson**  
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Lindale ISD, 7

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**Kevin L. Dyes**  
Holliday ISD, 9

**Kevin Worthy**  
Royse City ISD, 10

**David Belding**  
Aubrey ISD, 11

**George Kazanas**  
Midway ISD, 12

**Jodi Duron**  
Elgin ISD, 13

**Shaun Barnett**  
Stamford ISD, 14

**Aaron Hood**  
Robert Lee ISD, 15

**Steve Post**  
Tulia ISD, 16

**Keith Bryant**  
Lubbock-Cooper ISD, 17

**Ariel Elliott**  
Greenwood ISD, 18

**Jeannie Meza-Chavez**  
San Elizario ISD, 19

**Brian T. Woods**  
Northside ISD, 20

**Pauline Dow**  
San Antonio ISD, At-Large

**Gonzalo Salazar**  
Los Fresnos CISD, At-Large

**Roland Toscano**  
East Central ISD, At-Large

**Doug Williams**  
Sunnyvale ISD, At-Large

**Johnny L. Veselka**  
Executive Director

January 5, 2018

Mr. Cory Green, Associate Commissioner  
Department of Contracts, Grants and Financial Administration  
Texas Education Agency  
1701 N. Congress Avenue  
Austin, Texas 78701

RE: Additional Waiver Requests Due to Devastation Caused by Hurricane Harvey

Dear Mr. Green:

The Texas Association of School Administrators (TASA) supports the agency's intent to apply for five federal waivers for the 300 plus LEAs in 60 counties whose operations were heavily impacted by Hurricane Harvey. We encourage the agency to seek the maximum amount of flexibility available under each of the five waiver categories.

- 1. Transportation Costs.** Exorbitant transportation costs for districts complying with the McKinney-Vento Act were a key concern during testimony given by superintendents during the Senate and House Public Education hearings on Hurricane Harvey interim charges. LEAs need the flexibility to use *any* federal funding source to pay for these additional transportation-related costs.
- 2. Equipment Costs.** Federal funding should also be permitted for use in complying with federal IDEA statute, e.g., specialized equipment required under a student's IEP.
- 3. Lost or Destroyed Records.** LEA compliance and monitoring findings due to loss of student records or documentation should be waived during the applicable statute of limitations. Student records have been destroyed in both virtual form and in paper form and it is impossible to know exactly which FERPA records are missing.
- 4. IEP Amendment Process.** LEAs should be allowed to use the change of IEP process, without restriction, to document changes made necessary by Hurricane Harvey.
- 5. Accountability.** There are more than 1.9 million students attending public schools in the declared counties, and 1.4 million of them were directly affected by Harvey. Many of these students have experienced significant trauma as well as lost instructional time making it unrealistic that a clear and accurate picture of their academic performance can be captured in an accountability system based on standardized test performance.

TASA supports the precedent set with provisions in 2006 for Hurricane Katrina and Rita, and in 2009 for Hurricane Ike in which the performance of students of affected campuses and districts were excluded from the accountability system and issued a rating of "*Not Rated: Other*".

Respectfully, we do not support the agency's intention to continue to identify all campuses in the state as Comprehensive Support and Improvement (CS&I) Schools as outlined in the state ESSA plan. The state plan itself has not been approved by the USDE and the agency is in the process of responding to peer review critiques, including several areas related to CS&I. In addition, the same rationale for seeking a waiver from accountability ratings for campuses and districts applies to the identification of CS&I schools. There is no way to separate non-academic factors related to the hurricane from the academic performance of these students.

TASA strongly supports the waiver requests that the Texas Education Agency will submit to the United States Department of Education as they will each provide much-needed flexibility to school districts and students struggling during this unprecedented time.

Thank you for the opportunity to provide input during the development of the federal waiver requests. Please do not hesitate to contact me if you need additional information or have any questions.

Sincerely,

A handwritten signature in black ink that reads "Casey McCreary". The signature is written in a cursive style with a large, stylized initial "C".

Casey McCreary, Ed.D.  
Associate Executive Director, Education Policy  
Texas Association of School Administrators

1/5/2018

Kristin McGuire  
TCASE  
5920 W. William Cannon Drive, Building 7, Suite 103  
Austin, TX 78749  
[kristin@tcase.org](mailto:kristin@tcase.org)

Texas Education Agency  
1701 Congress Ave, Austin, TX 78701

To Whom It May Concern:

On behalf of the members of the Texas Council of Administrators of Special Education (TCASE), I am writing to express support of the Agency's additional waiver requests identified in its December 14, 2017 "To the Administrator Addressed" letter. The identified issues are briefly described below.

1) Transportation Costs.

We agree that extraordinary costs are being incurred related to student transportation due to the increased number of students meeting the definition of homeless under the McKinney-Vento Act. Districts should be able to use any federal funding source available to cover these additional costs.

2) Equipment Costs.

Specialized equipment is critical for students in order to receive the free appropriate public education determined by their IEP teams. Districts impacted by Hurricane Harvey have experienced damage or destruction of certain equipment. It is imperative that those directly impacted and those districts that received evacuees have access to any federal funding source to purchase or replace this equipment.

3) Lost or Destroyed Records.

We agree that districts should not receive negative compliance and monitoring findings due to loss of student records as long as proper notification has been submitted to the affected parents or adult students.

4) IEP Amendment Process.

IEP teams, especially those newly formed because of a change in location and district due to the hurricane floods, must be able to use the IEP amendment process without restriction, as TEA suggests.

5) Accountability.

While we support the Agency's overall request related to flexibility in the federal accountability provisions for those heavily impacted by the storms, TCASE encourages the Agency to pursue flexibility to the maximum extent possible, including in both state and federal accountability. Because the state's ESSA plan has yet to be approved by the USDE as of the deadline to submit these comments, I express only that TCASE is in favor of flexibility related to accountability requirements for those impacted by Harvey.

TCASE appreciates the Agency's efforts to assist districts impacted by this monumental event. Please feel free to contact me with any questions or concerns.

Respectfully,



Kristin McGuire  
Director of Governmental Relations  
TCASE

# Thompson & Horton LLP

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Phoenix Tower, Suite 2000  
3200 Southwest Freeway  
Houston, Texas  
77027-7554

January 5, 2018

Commissioner Mike Morath  
Texas Education Agency  
William B. Travis Building  
1701 N. Congress Avenue  
Austin, Texas 78701

Re: TSA comments regarding TEA submission of waiver requests to USDOE

Dear Commissioner Morath:

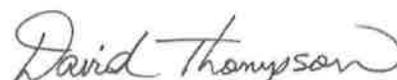
On behalf of our client, the Texas School Alliance, please find enclosed the Alliance's comments to the Agency's plan to submit certain requests for waivers to the United States Department of Education to address issues caused by Hurricane Harvey and its aftermath. As always, the Alliance appreciates your consideration.

Very truly yours,

Thompson & Horton, LLP

  
Christopher P. Borreca

  
Philip D. Fraissinet

  
J. David Thompson

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cc: Wanda Bamberg, President TSA



**PRESIDENT**

Aldine ISD  
Dr. Wanda Bamberg

**PRESIDENT-ELECT**

Allief ISD  
Mr. HD Chambers

**VICE PRESIDENT**

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\*TSA Board Members

January 5, 2018

Commissioner Mike Morath,  
Texas Education Agency  
William B. Travis Building  
1701 N. Congress Avenue  
Austin, Texas 78701

RE: Comments to TEA – Proposed Waiver requests due to Hurricane Harvey

Dear Commissioner Morath:

I am writing this letter and submitting these comments as president and on behalf of the Texas School Alliance (TSA). TSA is an organization of thirty-eight of the largest Texas independent school districts that collectively educate about forty percent of the state's total pupil enrollment (or, about 2.1 million students) including over forty-four percent of the state's economically disadvantaged students who qualify for free and reduced price lunch and are eligible for federal Title I funds. TSA submits these comments regarding the proposed waiver requests as outlined in the Letter to the Administrator, dated December 14, 2017:

**SPECIAL EDUCATION ISSUES**

We fully support the Commissioner's request that LEAs be allowed to use the change of IEP process, without restriction, to document any changes made necessary because of Hurricane Harvey. As a safeguard to implementing this flexibility, the LEA still would have to get approval from the parents of any affected student. The requirements for eligibility and the requirement that IEP teams meet at least once during the 2017–2018 school year would not be waived.

This is an important request. Texas school districts have received differing and sometimes confusing opinions as to what parts of a child's IEP may be changed under the federal law. Federal law states, without reservation, that changes to the IEP may be made either by the entire ARD committee at an ARD Committee Team meeting, or by amending the IEP rather than by redrafting the entire IEP. In making changes to a child's IEP after the annual ARD Committee Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. If changes are made to the child's IEP, the



public agency must ensure that the child's IEP Team is informed of those changes. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

Federal law does not limit the changes that can be agreed upon by the school district and the parent. Length of services, location of services, goals, objectives and the scope of related services, as well as changes of placement are not restricted by federal law. However, many districts in Texas may believe that such changes cannot be agreed to without a meeting due to varying interpretations of the Act's requirements. This clarification would be helpful under ordinary circumstances and would be most welcome in the aftermath of Hurricane Harvey. School districts have had to alter classroom instruction, the length of the school day, the location and duration of related services due to damage to classrooms and to entire schools. This "waiver" or clarification as to the degree of flexibility under current law would benefit school districts immensely. We note again that such flexibility can only be exercised with the agreement of the parent or guardian under any circumstance.

In addition to this request, we also support the following waiver requests to address the following concerns which would greatly assist our school districts:

**CONCERN: EQUIPMENT COSTS**  
**PROPOSED SOLUTION**

Specialized equipment required under specific IEP programs and classroom materials used to implement IEPs previously purchased by IDEA Part B funds may have been lost or destroyed in the floods. Replacement costs should similarly be treated in a flexible manner with federal funding sources able to be used beyond funds under Part B, i.e. Title 1 (any Part), Title II, Title III, IDEA Part B, Free and Reduced Lunch funding, etc. This flexible use of funds also would be in addition to any emergency impact aid provided by the Hurricane Relief bill.

**CONCERN: LOST OR DESTROYED RECORDS**  
**PROPOSED SOLUTION**

Student records have been destroyed in both virtual form and in paper form. Because they were destroyed or lost due to the flooding, it is impossible to know exactly which FERPA records are missing. We ask that a general waiver of all individualized record destruction notification requirements under IDEA or FERPA be granted and that affected school districts be allowed an option of notifying parents or adult students *generally* that the flood may have destroyed their student's documentation and that the districts are attempting to reconstruct missing records. We would similarly request that any accountability requirements related to any missing records be waived for any audits conducted covering the time period preceding the flood, including any FAPE requirements tied to documentation, during the applicable statute of limitations. This would include only records where the district has verified that the natural disaster resulted in the destruction of the records.



**CONCERN: MAINTENANCE OF EFFORT  
PROPOSED SOLUTION**

We believe that school district costs will increase for those affected school districts during the 2017-2018 school year. School districts will be faced not only with equipment replacement costs, but also extra costs related to providing any “compensatory” services, costs related to treating issues which arose due to the flooding such as additional therapy costs, transportation related costs and staff training. These temporary disaster recovery costs should not be factored into the MOE assessments for the 2018-2019 MOE calculation but, rather, an affected school district should be able to look to its expenditures during the 2016-2017 school year. School districts should be able to waive this effect of current MOE provisions. Alternatively, rather than having the waiver option, a school district should be able to apply such calculation if the district is located within one of the affected and designated counties.

**CONCERN: WAIVER OF TIMELINES  
PROPOSED SOLUTION**

The flooding has affected many issues tied to timeline compliance, from having an IEP in place on the first day of school, meeting deadlines for initial and 3 year evaluations, holding annual IEP meetings by their anniversary dates; to sending home 6 or 9 week progress reports. We would ask that a special flexibility be provided by the USDOE in this regard. We request a statement from the Department that districts should attempt to proceed with holding annual IEP committee meetings within timelines, but that strict adherence to such timelines occurring in the Fall semester of 2017 not be required, at least for due process or accountability purposes. If an annual IEP lapses before an IEP committee convenes, reasonable efforts should be made to expedite scheduling a new annual IEP committee meeting date to ensure FAPE is provided, but districts should be allowed to continue existing IEP programs until a proper review meeting could be held. It would help if the Department would indicate in additional guidance that, if there are deviations from legally established timelines, the district will be in compliance if it properly documents in the student’s folder all reasonable efforts that were made to follow timelines.

**CONCERN: COMPENSATORY TIME ISSUES  
PROPOSED SOLUTION**

We do not believe that compensatory time should be required to address school closures that affected the general school population to the same degree as special education students. In addition, if students miss opportunities for related services due to staff being unable to provide services or because of the destruction of therapy areas, school districts should be offered some flexibility in providing any compensatory services so long as valid and documented attempts at providing alternate services have been made by the district.

**CONCERN: MEETING FAPE  
PROPOSED SOLUTION**



In 2006, the Department of Education wrote, in response to comments regarding the FAPE requirement for students in disciplinary alternative setting that it “caution(ed) that we do not interpret *“participate” to mean that a school or district must replicate every aspect of the services that a child would receive if in his or her normal classroom. For example, it would not generally be feasible for a child removed for disciplinary reasons to receive every aspect of the services that a child would receive in his or her chemistry or auto mechanics classroom as these classes are generally taught using a hands-on component or specialized equipment or facilities.*” The Department continued to state that it believed that the Act modifies the concept of FAPE in these circumstances (disciplinary settings) to encompass those services necessary to enable the child to participate in the general curriculum and to progress toward meeting the goals set out in the child’s IEP, but that a school district is not required to provide such children with *“exactly the same services in exactly the same settings as were receiving at the prior time”*. Similarly, in the face of unprecedented damage and disruption, the Department should guide school districts affected by the storm in the same manner and institute a temporary flexibility to the concept of FAPE applied to the students involved in such disrupted activities.

**CONCERN: TRANSPORTATION COSTS  
PROPOSED SOLUTION**

Extraordinary costs are being incurred for transporting students to various campuses as a result of the sharp increase in the number of students eligible under McKinney-Vento. Not only are additional buses required but additional manpower in the form of bus drivers as well as bus aides, along with adaptive equipment needed, etc. will result in hardship to districts affected by the disaster. If the law does not already permit, we would ask that districts be granted the flexibility to use any federal funding source to help address the deficit caused by these additional expenditures. These might include Title 1 (any Part), Title II, Title III, IDEA Part B, Free and Reduced Lunch funding, etc. Rationale: If students cannot come to school, they cannot access any of the other services offered by these other federal programs. This would be in addition to any emergency impact aid provided by the Hurricane Relief bill

**CONCERN: SIMPLIFY THE FEDERAL PROCUREMENT PROCESS  
PROPOSED SOLUTION**

FEMA regulations apparently hold that that when a state law conflicts with the federal law (as it relates to procurement methods) the more "stringent law" applies. This is causing confusion in Texas where it remains unclear as to whether purchasing co-ops, allowed under Texas law, can be used for purchases using FEMA funds. We would propose a simple waiver, ideally from both FEMA and DOE, that would state that for affected school districts, so long as they comply with state procurement requirements during the relevant period, doing so will, per se, satisfy the federal requirement.

**ACCOUNTABILITY**



Thousands of students in Texas displaced because of Hurricane Harvey have had their learning, homes and lives tragically disrupted. TSA supports the following positions regarding accountability:

- All students [even those displaced and whose learning has been disrupted by Hurricane Harvey] should take the state exams because the data will be used for instructional purposes; however the assessments results of the displaced and/or disrupted learnings should be removed from the accountability data.
- Just as TEA did in 2006 with Hurricanes Katrina/Rita and 2009 with Hurricane Ike, TEA should use a rating of “Not Rated: Other” for campuses and districts impacted by Hurricane Harvey.
- Identification of Hurricane Harvey impacted campuses as comprehensive and/or targeted is NOT acceptable, nor it is consistent with past practice. The 2006 and 2009 AYP hurricane provisions show that TEA issues a *Not Rated: Other* for district and all of the campuses within a district if the district would have missed AYP for federal accountability or rated Unacceptable for state accountability.
- An issue that is critically important for multi-year IR campuses that are in the designated disaster areas, for purposes of counting consecutive years of ratings, 2017 and 2019 should be considered consecutive for districts and campuses receiving a *Not Rated: Other* label in 2018 due to hurricane-related issues. Again, the “counting consecutive years” precedent was also set with the 2006 and 2009 AYP hurricane provisions

TSA asks that you include these considerations in the waiver request which Texas Education Agency plans to submit to the United States Department of Education.

Sincerely,

A handwritten signature in black ink that reads "Wanda Bamberg". The signature is written in a cursive style and is located below the word "Sincerely,".

Dr. Wanda Bamberg  
President, Texas School Alliance