
El Paso Independent School District's Compliance With the Accountability and Academic Assessment Requirements of the Elementary and Secondary Education Act of 1965

FINAL AUDIT REPORT



ED-OIG/A06L0001
June 2013

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U.S. Department of Education
Office of Inspector General
Dallas, Texas

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Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report, represent the opinions of the Office of Inspector General. Determinations of corrective action to be taken will be made by the appropriate Department of Education officials.

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

AUDIT SERVICES

June 13, 2013

Michael L. Williams
Commissioner of Education
Texas Education Agency
Office of the Commissioner
1701 North Congress Avenue
Austin, Texas 78701

Dear Mr. Williams:

Enclosed is our final audit report, Control Number ED-OIG/A06L0001, "El Paso Independent School District's Compliance With the Accountability and Academic Assessment Requirements of the Elementary and Secondary Education Act of 1965." This report incorporates the comments you provided in response to the draft report. If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following Department of Education officials, who will consider them before taking final Departmental action on this audit:

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It is the policy of the U.S. Department of Education to expedite the resolution of audits by initiating timely action on the findings and recommendations contained therein. Therefore, receipt of your comments within 30 days would be appreciated.

Michael L. Williams
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In accordance with the Freedom of Information Act (5 U.S.C. § 552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

Sincerely,

Keith M. Maddox /s/
Regional Inspector General for Audit

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Abbreviations, Acronyms, and Short Forms Used in This Report

| | |
|------------|---|
| AYP | Adequate Yearly Progress |
| Bowie | Bowie High School |
| Coronado | Coronado High School |
| Department | U.S. Department of Education |
| El Paso | El Paso Independent School District |
| ESEA | Title I, Part A of the Elementary and Secondary Education Act of 1965 |
| LEA | Local Educational Agency |
| SASI | School Administrative Student Information |
| TAKS | Texas Assessment of Knowledge and Skills |
| TEA | Texas Education Agency |
| TEAMS | Total Education Administrative Management Solution |

EXECUTIVE SUMMARY

Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), provides financial assistance to local educational agencies (LEAs) and schools with high numbers or high percentages of children from low-income families to help ensure that all children have an equal opportunity to obtain a high-quality education and reach proficiency on State academic achievement standards and assessments. ESEA requires States and LEAs receiving Title I funds to implement a statewide accountability system based on annual academic assessments that demonstrates State, LEA, and school Adequate Yearly Progress (AYP) towards academic achievement standards. The system must account for not less than 95 percent of students, in specified subgroups, who are enrolled in each school. Texas measures AYP through performance, participation, and graduation rates for Texas high schools. Texas used the 10th grade Texas Assessment of Knowledge and Skills (TAKS) test to comply with ESEA requirements.

The purpose of our audit was to determine the following:

1. whether selected 9th grade students in El Paso Independent School District (El Paso) took the 10th grade TAKS test, and whether those students' results were fully represented in the El Paso performance and participation rate for purposes of AYP; and
2. whether the 2009 graduation rates for Bowie High School (Bowie) and Coronado High School (Coronado) were accurate.

Our audit covered students at Bowie and Coronado who (1) were first-time 9th graders in school year 2007–2008 and (2) graduated in the spring of 2008 and were represented in the 2009 graduation rate. We selected Bowie because it was the subject of allegations from a former Texas State Senator. To determine whether practices found at Bowie were consistent with another El Paso high school, we selected Coronado, which was rated Academically Acceptable for school year 2008–2009.¹

We determined that El Paso, Bowie, and Coronado AYP results for 2009, 2010, and 2011, as well as the graduation rate data used for the 2009 and 2012 AYP calculations, cannot be relied on.

The AYP results cannot be relied on because we determined that not all required students took the 10th grade TAKS test and El Paso put policies in place that prevented all applicable students from taking the 10th grade TAKS test. In addition, the graduation rate data for the 2012 AYP calculation cannot be relied on because student files contained incomplete or no withdrawal documentation. Also, the former El Paso superintendent pled guilty to Federal fraud charges in June 2012 for causing material misrepresentations in El Paso's AYP results that were submitted to the Texas Education Agency (TEA) and the U.S. Department of Education (Department), which further supports our conclusion that the data are not reliable. We concluded that practices preventing

¹ For school year 2008–2009, to be rated Academically Acceptable, a school or district must have the following pass rates on TAKS Subsections: 70 percent in social studies, reading, and writing; 55 percent in mathematics; and 50 percent in science. The school must also have at least 75 percent of the students take the test and no more than a 2-percent dropout rate.

students from taking the test that determined AYP were present at both Bowie and Coronado, but they were more prevalent at Bowie.

We determined that the TEA and El Paso violated the academic and assessment requirements of ESEA by allowing students to graduate from high school without taking the required TAKS test that counts towards AYP. The 2009 graduation rates for El Paso, Bowie, and Coronado are unreliable because of the issues listed under the scope limitations described below.

The El Paso associate superintendent of Priority Schools issued an email directing that all students transferring from out-of-country schools to an El Paso high school be placed and kept in the 9th grade during their initial school year regardless of credit hours obtained from their out-of-country school. According to the El Paso director of secondary schools, schools that missed AYP for two consecutive years and were in School Improvement status were categorized as “Priority Schools.” El Paso students’ civil rights may have been violated because of actions taken in response to that email.

Finally, El Paso leadership designed an inadequate control environment and lacked adequate control activities. This inadequate control environment was insufficient to provide reasonable assurance of compliance with laws and regulations.

We recommend that the Assistant Secretary for Elementary and Secondary Education require TEA to determine the impact of these findings on El Paso, Bowie, and Coronado AYP results for 2009, 2010, 2011, and 2012; reconsider the previous AYP results; and take appropriate action. We also recommend that the Assistant Secretary for Elementary and Secondary Education require TEA to develop policies, guidance, and internal controls (including risk assessments, such as evaluating significant changes in the numbers of students taking an annual assessment from year to year) for LEAs to ensure that AYP results validly reflect schools’ and LEAs’ progress.

We also recommend that the Assistant Secretary for Elementary and Secondary Education require TEA to direct El Paso to implement specific oversight mechanisms and internal controls to address the problems identified in these findings.

Additionally we recommend that the Assistant Secretary for Elementary and Secondary Education work with the Assistant Secretary for Civil Rights to determine whether students (including students from Mexico at Priority Schools), were excluded from, denied the benefits of, or subjected to discrimination related to any Department program in violation of their civil rights.

Scope Limitations

In accordance with Government Auditing Standards (July 2007 Revision) section 7.65, we assessed the reliability of the computer-processed data and the information from student transcripts provided by El Paso officials and determined the data are unreliable. The computer-processed data are unreliable because there was no audit trail in the electronic systems that El Paso used to track grade-level changes during school years 2007–2008 through 2009–2010. Such an audit trail would have shown who made the changes and the rationale for doing so.

In addition, the former El Paso superintendent’s guilty plea further supports this conclusion that the data used for calculating AYP are unreliable. Specifically, the former El Paso superintendent

admitted that beginning in 2006, he manipulated El Paso data by implementing a reclassification program designed to evade 10th grade testing and Federal accountability requirements.

We also could not rely on information provided by El Paso, Bowie, and Coronado officials because the interim superintendent failed to provide us with an appropriate management representation letter. The interim superintendent was the El Paso chief of staff during our audit period. After the former superintendent was arrested on August 1, 2011, the chief of staff became the interim superintendent.

Based on these factors, we determined the computer-processed data and information from student transcripts that El Paso officials provided carry an unacceptably high risk that could lead to an incorrect or improper conclusion about students' grade-level classifications.

TEA and El Paso Comments

TEA concurred with our findings and recommendations in its comments on the draft report. El Paso also concurred with our findings. El Paso provided comments, including corrective actions it has implemented or plans to implement, in response to Recommendations 1.5–1.9 and 2.1–2.3. El Paso did not comment on recommendations that required action from TEA or OESE. We summarize TEA's and El Paso's comments at the end of each finding. The full text of TEA's comments is included as Enclosure 3. The full text of El Paso's comments addressing the findings and recommendations is included as Enclosure 4. We did not include the attachments to El Paso's response because of their length, but those attachments are available upon request.

BACKGROUND

Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) provides financial assistance to local educational agencies (LEAs) and schools with high numbers or high percentages of children from low-income families. It helps to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach proficiency on State academic achievement standards and assessments. For example, funds support extra instruction in reading and math, as well as preschool, after-school, and summer programs to extend and reinforce the regular school curriculum.

El Paso Independent School District (El Paso) received about \$35 million in Title I, Part A funds each for fiscal years 2007–2008 and 2008–2009. In addition, El Paso received about \$31 million in Title I, Part A funds during fiscal year 2009–2010 and about \$25 million during fiscal year 2010–2011.

ESEA section 1111(b) requires each State to implement a statewide accountability system, based primarily on academic assessments, that ensures that all LEAs receiving Title I funds make Adequate Yearly Progress (AYP) towards the State's student academic achievement standards. Specifically, States are required to test all students in reading or language arts and mathematics in grades 3 through 8 and at least once in high school. The State of Texas implemented the ESEA high school testing requirement through a statewide assessment known as the Texas Assessment of Knowledge and Skills (TAKS) test for students in the 10th grade. During school year 2011–2012, the Texas Education Agency (TEA) transitioned to a new accountability system known as the State of Texas Assessment of Academic Readiness.

AYP Indicators for Districts and Schools: Reading, Mathematics, and Graduation Rate

Under ESEA, States define AYP and measure progress at the high school level according to indicators in reading or language arts, mathematics, and the graduation rate. For Texas, the components of the reading and mathematics AYP indicators are performance and participation on the TAKS test. Performance and participation components are measured for all students enrolled and for certain student groups, such as African American, Hispanic, White, economically disadvantaged, special education, and Limited English Proficiency students.

The performance component is based on test results for students enrolled for the full academic year. To measure enrollment in the State of Texas, a fall enrollment “snapshot” is taken near the beginning of the school year. A student is considered enrolled for the full academic year if that student is enrolled on the date the snapshot is taken through the date the TAKS test is administered.

The participation component is a percentage calculated by dividing the number of students who take the test by the number of students enrolled on the day of the test. According to TEA's 2009 AYP guide, the participation component of a student group is measured if the group meets one of the following criteria:

- the group has 50 or more students enrolled (summed across grades 3 through 8 and 10) for the subject and comprises at least 10 percent of all students enrolled on the test date; or
- the group has 200 or more students enrolled, even if that group represents less than 10 percent of all students enrolled on the test date.

All students and student groups who meet the minimum size requirements are required to meet the 95 percent participation standard. Both school districts and schools must meet both the performance and participation components for reading and mathematics each year for each student group or the district or school is considered to have missed AYP for that indicator.

TEA defines the graduation rate as the percentage of students from a cohort who graduate by the expected graduation date. For our audit, a cohort is defined as a group of students who began 9th grade in a given school year through their anticipated graduation 4 years later. Below is the 2009 AYP graduation rate formula:

$$\frac{\text{Number of Graduates}}{\text{Graduates} + \text{Continuers} + \text{General Educational Development Recipients} + \text{Dropouts}}$$

Continuer students are students who are reported as enrolled in the Texas public school system in the fall after their anticipated graduation. A dropout is a student who does not return to public school the following fall; is not expelled; and does not graduate, receive a general educational development certificate, continue school outside the public school system, begin college, or die.

U.S. Department of Education (Department) regulations issued in 2008 established additional requirements for calculating AYP graduation rates, which took effect beginning with AYP determinations for 2012.

Consequences for Missing AYP

Section 1116(b) of the ESEA states that a school that misses AYP, as defined by the State's plan, for 2 consecutive years is identified as "in need of improvement." According to the TEA AYP guide, if a school continues to not meet the AYP standard for the same indicator, it progresses through various stages of School Improvement. Under each stage, it may be provided additional resources to facilitate improvement and may be subject to corrective action. On September 23, 2011, the Department issued a letter to all Chief State School Officers offering the opportunity to request waivers for certain ESEA requirements, including the requirements for school and LEA accountability in sections 1116(b) and (c).² On February 28, 2013, TEA submitted a set of comprehensive waiver requests in response to ESEA flexibility. In accordance with the Department's guidance, State waiver requests must include a plan to implement high-quality assessments that are valid and reliable. As of June 2013, the Department has not yet approved TEA's waiver request.

² See <http://www2.ed.gov/policy/gen/guid/secletter/110923.html>.

As shown in Table 1, TEA implemented five stages to meet the ESEA requirements.³ The actions required in each stage are cumulative, meaning that the required steps for each stage are in addition to continuing the activities from the previous stage.

Table 1. TEA Stages for Schools That Miss AYP

| Stages | Definition and Requirements |
|---------------|--|
| Stage 1 | School does not make AYP for 2 consecutive years. The LEA is required to provide all students enrolled in the school with the option to transfer to another public school served by the LEA, which may include a public charter school that has not been identified for improvement. |
| Stage 2 | School does not make AYP for 3 consecutive years. LEAs with schools in Stage 2 must ensure that supplemental educational services, such as after-school tutoring, are available to eligible students no later than the first day of the school year to increase the academic achievement of students in meeting the State's academic achievement standards. |
| Stage 3 | School does not make AYP for 4 consecutive years. LEAs must take corrective action, such as replacing the school staff who are relevant to the failure to make AYP or implementing a new curriculum. |
| Stage 4 | School does not make AYP for 5 consecutive years. LEAs must prepare a plan and make necessary arrangements to carry out a specified restructuring option if the school moves into Stage 5 in the following school year; for example, the LEA may develop a plan to reopen the failing school as a charter school or replace all or most of the school staff. |
| Stage 5 | School does not make AYP for 6 consecutive years. LEAs must implement the plan for restructuring developed in Stage 4. |

To exit School Improvement status, a school must meet AYP for 2 consecutive years on the AYP indicator that triggered its School Improvement status. Once a school has met AYP for that indicator, the school is removed from the applicable School Improvement status and the process would start over at Stage 1 if needed.

According to El Paso Independent School District (El Paso) director of secondary schools, schools that missed AYP for two consecutive years and were in School Improvement status were categorized as "Priority Schools." In school years 2007–2008 and 2008–2009, 4 of the 13 high schools in El Paso were designated as Priority Schools.

As described above, school districts in Texas are also required to meet specific performance and participation targets each year. Under ESEA section 1116(c)(3), a school district that misses AYP as defined by the State's plan in two consecutive years is designated as in need of improvement. A school district that is designated as in need of improvement must develop or revise a plan to improve its performance. Additionally, States are required to take at least one of a number of specified corrective actions relative to the district, including instituting a new curriculum, replacing relevant personnel, or removing specific schools from the district's jurisdiction.

³ See section 1116 of ESEA for the full set of required corrective actions (<http://www2.ed.gov/policy/elsec/leg/esea02/pg2.html#sec1116>).

ESEA section 1116(c)(2) allows States to provide rewards to districts that exceeded AYP for 2 consecutive years. In addition to these potential district incentives, the former El Paso superintendent's contract stipulated that he would receive annual performance bonuses if El Paso achieved one or more district-wide, Board-approved goals on State or Federal student performance accountability measures.

AYP Results

Bowie High School (Bowie) missed AYP for 6 consecutive years (from 2002–2003 through 2007–2008) and was in Stage 5 of School Improvement during 2008–2009.

- School year 2003–2004: Bowie missed AYP for the performance component of reading and mathematics indicators for the second consecutive year. As a result, Bowie was designated as a Stage 1 school for school year 2004–2005. As required for schools with Stage 1 designation, El Paso developed a 2-year Campus Improvement Plan and notified parents of Bowie's School Improvement status. The Campus Improvement Plan is a plan that incorporates strategies that will strengthen the core academic subjects in the school and addresses the specific academic issues that caused the school to miss AYP.
- School year 2004–2005: Bowie again missed AYP for the performance component of reading and mathematics indicators. As a result, Bowie was designated as a Stage 2 school for school year 2005–2006. As required for schools with Stage 2 designation, Bowie revised its Campus Improvement Plan.
- School year 2005–2006: Bowie again missed AYP for the performance component of reading and mathematics indicators, and it missed the graduation rate indicator. As a result, Bowie was designated as a Stage 3 school for school year 2006–2007. An El Paso official stated that as required for schools with Stage 3 designation, El Paso implemented a new curriculum to help Bowie students improve educational achievement.
- School year 2006–2007: Bowie again missed AYP for the performance component of reading and mathematics, and it missed the graduation rate indicator. As a result, Bowie was designated as a Stage 4 school for school year 2007–2008. As required for schools with Stage 4 designation, El Paso prepared a restructuring plan for Bowie that was to be implemented if the school moved to Stage 5 the following year.
- School year 2007–2008: Bowie again missed AYP for the performance component of reading and mathematics, and it missed the graduation rate indicator. As a result, Bowie was designated as a Stage 5 school for school year 2008–2009. As required for schools with Stage 5 designation, El Paso implemented the restructuring plan and offered supplemental educational services during school year 2008–2009. In addition, as part of the restructuring plan at Bowie, a new principal, seven math teachers, and six reading teachers were hired. Also, five teachers (two math and three reading teachers) resigned or moved to another El Paso school.

- School year 2008–2009: Bowie met AYP but continued to be designated as a Stage 5 school. To exit the School Improvement requirements, a district or school must meet AYP for 2 consecutive years on the same indicators that triggered the School Improvement.
- School year 2009–2010: Bowie met AYP, was removed from Stage 5 school designation, and was no longer considered a school in need of improvement.
- School year 2010–2011: Bowie missed AYP for the performance component of the reading indicator.
- School year 2011–2012: Bowie missed AYP for the performance component of reading and mathematics indicators. As a result, Bowie was designated as a Stage 1 school for school year 2012–2013.

Coronado High School (Coronado) met AYP in school year 2003–2004 and in school years 2005–2006 through 2010–2011. Coronado missed AYP in school year 2002–2003 (for the participation component of the mathematics indicator), school year 2004–2005 (for the performance component of the reading and mathematics indicators), and in school year 2011–2012 (for the performance component of the mathematics indicator). Coronado did not miss AYP for 2 consecutive years and was not designated as in need of improvement.

El Paso met district AYP in school years 2002–2003 through 2006–2007, school year 2008–2009, and in school year 2010–2011. El Paso missed AYP in school year 2007–2008, 2009–2010, and in 2011–2012. El Paso did not miss AYP for 2 consecutive years and was not designated as in need of improvement.

Former Texas State Senator’s Allegations

On May 19, 2010, and June 23, 2010, a Texas State Senator (who left office in December 2010) alleged to the Department that El Paso had violated ESEA by failing to ensure that all students took the 10th grade TAKS test. The Senator alleged that El Paso “disappeared” the lower performing students who entered Bowie as 9th graders in the fall of 2007 to prevent them from taking the 10th grade TAKS test in the spring of 2009. The Senator used the term “disappeared” to describe the decrease in the number of students taking the 10th grade TAKS test in school year 2008–2009 compared to the number of 9th grade students in school year 2007–2008. Specifically, the Senator alleged that certain targeted students were kept back in the 9th grade so they would not take the TAKS test in the spring semester of what would have been their sophomore year. The Senator also alleged that other targeted students were promoted from the 9th grade directly into the 11th grade to avoid the 10th grade TAKS test altogether. The Senator also alleged that students who lacked required attendance credits had their transcripts changed to make them eligible for graduation. The Senator’s allegations were based on enrollment data he obtained from TEA. The data showed that 211 (55.4 percent) of the 381 students who were 9th graders in the fall of 2007 were not in the 10th grade in the fall of 2008 (see Enclosure 1). On July 20, 2010, the Senator reported similar allegations to the TEA Commissioner of Education.

TEA's Desk Reviews of Senator's Allegations

On June 30, 2010, the Department's Office of Elementary and Secondary Education Student Achievement and School Accountability office asked TEA to investigate the complaints made by the Senator. The Inspector General for TEA conducted two desk reviews of El Paso's compliance with the school accountability requirements of ESEA. The director of complaints and special investigations at TEA stated that a desk review is an investigation limited to information and evidence presented in a complaint, any response to a complaint, or otherwise available through TEA records. She stated that TEA did not interview El Paso or Bowie officials or review course credit data when conducting the desk reviews. The desk reviews resulted in two Letters of Findings that were based on a review of data that El Paso officials provided to TEA.

In its first Letter of Findings, dated September 20, 2010, TEA reported that based on the documentation reviewed there was insufficient evidence to substantiate the Senator's May 19, 2010, allegations to the Department. In its second Letter of Findings, dated October 8, 2010, TEA stated it did not find areas of noncompliance with the ESEA requirements associated with AYP at Bowie, and there was insufficient evidence to substantiate the Senator's July 20, 2010, allegations to TEA. Specifically, TEA reported there was no indication that one or more Bowie students were prevented the opportunity to attend school and participate in the Statewide testing.

El Paso Internal Audit Report

In October 2009, a Bowie counselor alleged to the El Paso director of guidance services curriculum and instruction that for 77 Bowie students, the school made improper changes to grades and grade-level classifications and that it was not properly awarding credits for students transferring from Mexico. On May 6, 2011, the El Paso director of internal audit issued an internal audit report to the El Paso superintendent regarding the allegations. The audit stated that student transcripts were potentially problematic and that the Total Education Administrative Management Solution (TEAMS) system had no audit trail. The internal audit found the following.

- Twenty-four students were moved from the 9th grade to 11th grade without the proper number of credits.
- Twelve of the 77 students had credits removed or course grades changed from a passing grade to a nonpassing grade (usually a grade of 69). The changes for all but one student were reversed to their original state about a month later.
- In seven instances, it appeared that Mexico course credits were not properly or consistently transcribed.
- One student was improperly retained in the 9th grade.

The internal auditor determined that some students started the year with an incorrect grade level, credits for courses taken in Mexico were handled inconsistently and not always in compliance with district guidelines, and grades were improperly changed and then changed back. The internal auditor could not determine who made incorrect grade level changes or the intent. However, the internal auditor concluded that nothing came to his attention that would tend to prove that grade levels were intentionally manipulated to affect State and Federal accountability status.

Former El Paso Superintendent Admission of Fraud

On August 1, 2011, the now former El Paso superintendent was arrested for allegedly steering a \$450,000 no-bid contract to an acquaintance. The former El Paso superintendent was El Paso superintendent from school year 2005–2006 through the time of his arrest. On August 4, 2011, the El Paso Board of Trustees named the chief of staff as the interim superintendent and placed the former El Paso superintendent on unpaid administrative leave. On June 13, 2012, the former El Paso superintendent pled guilty to conspiracy to commit fraud concerning the no-bid contract. He also admitted to a scheme to manipulate State and Federal mandated annual performance reporting statistics to ensure El Paso complied with ESEA requirements. By pleading guilty, the former El Paso superintendent admitted that to achieve his contractual bonuses (an amount not to exceed \$18,000 each year), he caused material, fraudulent misrepresentations regarding El Paso's accountability to be submitted to TEA and the Department to make it appear that El Paso was meeting and exceeding AYP.

Specifically, the former El Paso superintendent admitted that beginning in 2006, he manipulated El Paso data by implementing a reclassification program designed to evade 10th grade testing and Federal accountability requirements. The former El Paso superintendent directed others to improperly reclassify student grade levels using partial course credits; require that all transfer students from Mexico be placed in 9th grade, regardless of whether they had sufficient credits to be placed in the 10th grade; change passing grades to failing grades to prevent qualified students from taking the 10th grade TAKS test; and implement course credit recovery programs to help intentionally held-back students catch up before graduation. On October 5, 2012, the former El Paso superintendent was sentenced to 42 months in Federal prison, fined \$56,500 for the bonuses he received, and ordered to pay \$180,000 in restitution.

El Paso Admission of Wrongdoing

According to a news release from El Paso, on April 24, 2012, El Paso's interim superintendent held a news conference and stated that El Paso had found and documented violations of El Paso policies, potential falsifications of government documents, and improper promotion and retention of students to avoid Federal education accountability standards.

TEA Accreditation Status Letter to El Paso

On August 13, 2012, TEA's chief deputy commissioner issued a letter to El Paso board president and interim superintendent lowering El Paso's 2011–2012 accreditation status from Accredited to Accredited-Probation. The Texas Education Code lists four accreditation statuses: (1) Accredited, (2) Accredited Warned, (3) Accredited-Probation, and (4) Not Accredited-Revoked. Accredited-Probation means the district exhibits deficiencies in performance that must be addressed to avoid revocation of its accreditation status. In the letter, the chief deputy commissioner stated that TEA would assign a monitor to El Paso and require El Paso to acquire professional services to address academic assessments, data quality, and governance deficiencies. In August 2012, TEA assigned a monitor to El Paso, and El Paso obtained professional services in October 2012.

AUDIT RESULTS

Results in Brief

We found that El Paso's, Bowie's, and Coronado's AYP results for 2009, 2010, and 2011, as well as the graduation rate data used for the 2009 AYP calculation, cannot be relied on. We also determined that El Paso's, Bowie's, and Coronado's graduation rate data for the 2012 AYP calculation cannot be relied on because student files contained incomplete or no withdrawal documentation.⁴

For the two schools we reviewed, we determined the following.

- A significant number of students did not take the 10th grade TAKS test and therefore were not represented in the AYP performance and participation results for 2009–2011.
- A number of students at the two schools we reviewed graduated without ever taking a high school AYP TAKS test as required by the ESEA.
- Practices preventing students from taking the test that determined AYP were present at both Bowie and Coronado, but they were more prevalent at Bowie. Notably, certain El Paso policies affecting classification of students were established for Bowie but not for Coronado.

For the district, we determined the former El Paso leadership (the El Paso superintendent, associate superintendent of Priority Schools, and chief of staff) created an inadequate internal control environment over El Paso's accountability system.

Scope Limitations

Based on the limitations noted in this section, in accordance with Government Auditing Standards (July 2007 Revision) section 7.65, we assessed the reliability of computer-processed data and the information from student transcripts provided by El Paso officials and determined the data are unreliable. In addition, Government Auditing Standards section 8.11 states that auditors should describe the scope of work and any limitations or significant constraints. Because of the limitations and constraints described below, we must qualify the conclusions that we have drawn based on the information that we reviewed as part of this audit.

According to the El Paso student systems manager, during school year 2007–2008, El Paso used an automated computer system, School Administrative Student Information (SASI) to track student data (such as credits and grades, grade levels, and enrollment). In that school year, the SASI system contained enrollment data that showed when grade-level classification changes were made; however, SASI did not have an automated audit trail that showed who changed the grade-level classification or their rationale for doing so.

⁴ The 2012 graduation rate represents first-time 9th graders in 2007–2008 who graduated in the spring of 2011.

SASI was replaced with the TEAMS system in school year 2008–2009. From school years 2008–2009 through 2009–2010, the TEAMS system had no automated audit trail to show who changed grade-level classifications and when someone made the changes. In September 2010, El Paso added an automated audit trail to track grade-level classifications changes in the TEAMS system. From school year 2010–2011 and forward, the system shows who changed the grade-level classification, when the changes were made, and the rationale for making the change.

Finally, the former El Paso superintendent's guilty plea further supports our conclusion that the data used for calculating AYP are unreliable. Specifically, the former El Paso superintendent admitted that beginning in 2006, he manipulated El Paso data and directed others to improperly reclassify student grade levels, require that all transfer students from Mexico be placed in 9th grade, change passing grades to failing grades, and implement course credit recovery programs to help intentionally held-back students catch up before graduation.

We also could not rely on information provided by El Paso, Bowie, and Coronado officials. The former superintendent originally signed a letter dated June 9, 2011, giving written assurance that there were no irregularities with the information provided by El Paso management or employees. The interim superintendent provided us with a management representation letter⁵ dated March 7, 2012. The interim superintendent subsequently qualified the March 7th letter, with another letter on August 14th noting that the guilty plea of the former superintendent cast doubt on the validity of the information provided to the auditors. Because El Paso did not provide a management representation letter affirming the completeness and accuracy of the records, we cannot complete a required audit step. We must qualify any conclusions we have drawn based on that information.

TEA and El Paso Comments

TEA concurred with our findings and recommendations in its comments on the draft report. El Paso also concurred with our findings. El Paso provided comments, including corrective actions it has implemented or plans to implement, in response to Recommendations 1.5–1.9 and 2.1–2.3. El Paso did not comment on recommendations that required action from TEA or OESE. The full text of TEA's comments is included as Enclosure 3. The full text of El Paso's comments addressing the findings and recommendations is included as Enclosure 4. We did not include the attachments to El Paso's response because of their length, but those attachments are available upon request.

FINDING NO. 1 – El Paso, Bowie, and Coronado Adequate Yearly Progress Results and Graduation Rate Data Cannot Be Relied On

We determined that El Paso, Bowie, and Coronado AYP performance and participation rates for school years 2009, 2010, and 2011, as well as the graduation rate data for 2009 and 2012, cannot be relied on. We based this conclusion on the following facts:

⁵ A management representation letter confirms that the information provided to the auditors is complete and accurate, and it is generally signed by the chief executive officer or manager who has oversight responsibility for the area covered by the audit.

- Not all required students took the 10th grade TAKS test.
- An El Paso official sent two emails establishing policies at El Paso high schools that prevented all applicable students from taking the test that determined AYP.
- Withdrawn students' files contained incomplete or no withdrawal documentation.
- On June 13, 2012, before our exit conference on August 14, 2012, the former El Paso superintendent pled guilty to charges that included manipulating AYP data to meet performance standards.

Not All Required Students Took the 10th Grade TAKS Test

We selected judgmental samples of 400 first-time 9th grade students enrolled in Bowie and Coronado during school year 2007–2008 (200 from each school). The students were selected in order from an alphabetical list of 961 students (303 from Bowie and 658 from Coronado). We found that 128 students (84 [42 percent] from Bowie and 44 [22 percent] from Coronado) did not take the 10th grade TAKS test in school years 2008–2009 through 2010–2011. The remaining 116 students from Bowie and 156 students from Coronado took the 10th grade TAKS test based on our 400 students sampled. Based on information we retrieved from TEAMS and student records (transcripts and withdrawal documentation), we identified numerous reasons that these students did not take the 10th grade TAKS test.

The 84 students at Bowie did not take the test for the following reasons:

- Fifty (59.5 percent) withdrew (32 were listed as having returned to their home country, 9 were listed as dropouts, 2 were listed as transferring to another school outside of Texas, 4 were listed as having joined Job Corps, 2 received high school equivalency certificates, and 1 was listed as a runaway). We determined that withdrawals were not documented as required or reported correctly for 22 students, as described below in the section “El Paso, Bowie, and Coronado 2012 Graduation Rate Cannot Be Relied On.”
- Twenty-nine (34.5 percent) were never in the 10th grade—they were promoted from 9th grade to 11th grade. Eight were promoted from the 9th grade to the 11th grade in school year 2008–2009, and 21 were retained as 9th graders in school year 2008–2009 and then promoted to the 11th grade in school year 2009–2010.
- Two (2.4 percent) were promoted from the 9th grade to the 10th grade after the spring 2009 TAKS testing and were then promoted to the 11th grade the following school year (2009–2010).
- Two (2.4 percent) were promoted from the 10th grade to the 11th grade before the spring 2009 TAKS testing cycle.
- One (1.2 percent) continued to be retained in the 9th grade at Bowie.

The 44 students at Coronado did not take the test for the following reasons:

- Thirty-seven (84.1 percent) withdrew (16 were listed as having returned to their home country, 4 were listed as dropouts, 9 were listed as transferring to another school outside of Texas, 3 were listed as being homeschooled, 3 enrolled in private schools in the State of Texas, 1 was listed as having joined the Job Corps, and 1 was listed as a runaway). We determined that withdrawals were not documented as required or reported correctly for 12 students, as described below in the section “El Paso, Bowie, and Coronado 2012 Graduation Rate Cannot Be Relied On.”
- Three (6.8 percent) were never in the 10th grade because they were retained as 9th graders in school year 2008–2009 and then promoted to the 11th grade in school year 2009–2010.
- Two (4.5 percent) were exempt because of Limited English Proficiency.
- One (2.3 percent) was promoted from the 9th grade to the 10th grade after the spring 2009 TAKS testing and then promoted to the 11th grade the following school year (2009–2010).
- One (2.3 percent) was promoted from the 9th grade to the 10th grade after the spring 2010 TAKS testing and then promoted to the 11th grade the following school year (2010–2011).

We further determined that of the 32 students who bypassed the 10th grade because they were promoted from the 9th grade to the 11th grade, 26 students from Bowie and 1 student from Coronado had met the credit requirements for 10th grade by the start of the spring 2009 semester. Had they been reclassified as 10th graders when they met the credit requirement, they would have been required to take the 10th grade TAKS test in the spring of 2009.

We also determined that Bowie and Coronado registrars changed 38 students’ (33 from Bowie and 5 from Coronado) grade-level classifications (for example, from 9th grade to 10th grade or from 9th grade to 11th grade) in the TEAMS system based on verbal authorizations from the counselors. Bowie and Coronado counselors were unable to tell us why they verbally authorized changes to grade-level classification. Because the schools did not have written authorizations (such as a Request for High School Change-in-Placement forms), we were not able to determine the reasons students’ grade levels were changed in the TEAMS system.

Students Graduated Without Taking the 10th Grade TAKS Test

We determined that 44 students (41 from Bowie and 3 from Coronado) graduated without ever taking the AYP TAKS test at least once in high school. Thirty of these students were from our original samples of first-time 9th graders in the fall of 2007, 27 (13.5 percent of the 200 sampled students) from Bowie and 3 (1.5 percent of the 200 sampled students) from Coronado. In addition to the students in our audit sample, a former counselor at Bowie provided us a list of 93 students whose grade levels she believed were improperly changed. Also, a teacher at Bowie provided us a list of 15 students he believed did not take the 10th grade TAKS test.

From those lists, we identified 14 students who we determined did not take the 10th grade TAKS test before graduating. We determined that these 14 students did not take the test for the following reasons:

- 11 students were promoted from the 9th grade to the 11th grade,
- 1 student was promoted from the 9th grade to the 12th grade,
- 1 student was promoted from the 9th grade to the 10th grade after the spring 2009 TAKS testing cycle and then promoted to the 11th grade the following school year (2009–2010), and
- 1 student was promoted from the 9th grade to the 10th grade after the spring 2010 TAKS testing cycle and then promoted to the 11th grade before the end of the school year.

ESEA section 1111(b)(3)(C) states that annual academic assessments must be used for purposes for which such assessments are valid and reliable and must provide for the participation of all students, including Limited English Proficiency students. In addition, the statewide annual academic assessments must be administered not less than once for students in grades 10 through 12.

According to TEA’s director of division of performance reporting and El Paso officials, their interpretation is that ESEA requires only students in the 10th grade to take the 10th grade TAKS test. This interpretation did not ensure that students who bypassed the 10th grade (that is, those students promoted from the 9th grade to the 11th grade) were given the opportunity to take a test that counted towards AYP.

Given the TEA and El Paso officials’ improper interpretation of the ESEA requirements, we believe that this issue could have occurred at other El Paso and Texas high schools. Because TEA and El Paso did not ensure all students took the 10th grade TAKS test, TEA and El Paso need to assess their policies, procedures, and relevant internal controls to ensure that all students are tested in accordance with the law.

El Paso Policies Kept Students From Taking the TAKS Test

Some students did not take the 10th grade TAKS test because of two emails the former associate superintendent of Priority Schools issued in August 2008. According El Paso director of secondary schools, schools that missed AYP for two consecutive years were categorized as “Priority Schools.” In school years 2007–2008 and 2008–2009, there were four Priority High Schools in El Paso. We concluded these policies affected Bowie but not Coronado because the first email dated August 12, 2008, was sent to Bowie but not Coronado. This email directed that all students transferring from out-of-country schools to an El Paso high school be placed and kept in the 9th grade during their initial school year regardless of credit hours obtained from their out-of-country school. According to the former Bowie principal and a former Bowie counselor who received the August 12, 2008, email the phrase “out-of-country” specifically meant students from Mexico. El Paso officials were unable to explain why the former associate superintendent issued the August 12, 2008, email. We contacted the former associate superintendent, but he would not answer any questions.

El Paso students' civil rights may have been violated because of actions taken in response to the August 12, 2008, email. The policy described in the email also violated the Texas Administrative Code and El Paso district guidelines.

Section 601 of Civil Rights Act of 1964 states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Texas Administrative Code § 74.26(a)(2) requires that a school district must ensure that the records or transcripts of an out-of-state or out-of-country transfer student (including foreign exchange students) or a transfer student from a Texas nonpublic school are evaluated and that the student is placed in appropriate classes promptly. The district may use a variety of methods to verify the content of courses for which a transfer student has earned credit.

In addition, when the first email was sent, El Paso had a policy ("High Intensity Language Training Guidelines for Granting Course Credit and Student Classification") to evaluate student credits earned from Mexico schools, but the policy did not specify a timeline for evaluating and applying credits earned from Mexico schools. On August 31, 2011, El Paso updated the High Intensity Language Training (Guidelines for Granting Course Credit From Foreign Schools) by adding the following:

- Students are assigned a temporary grade placement of 9th grade pending the receipt and review of the appropriate documents.
- The transcript is evaluated and credits are assigned within 20 school days.

The former associate superintendent of Priority Schools sent a second email, dated August 20, 2008, that also prevented some students from taking the 10th grade TAKS test. The second email directed principals at El Paso high schools to remind registrars and counselors to keep retained 9th grade students in the 9th grade regardless of the credits earned during the year. Specifically, the email stated the following.

- It is against district policy to reclassify repeating 9th graders to 10th graders at midyear.
- Registrars and counselors should not tell parents that if their child passes the 2008 fall semester classes, parents can petition to have their child moved to the 10th grade.
- Students retained in 9th grade will be retained through May 2009, regardless of credits earned during the 2008–2009 school year.

On December 5, 2008, El Paso published a district-wide procedure for reclassifying students at midyear. However, on January 5, 2009, El Paso revised this reclassification policy to exclude 9th graders from midyear reclassification. Therefore, 9th graders who subsequently earned sufficient credits for promotion to 10th grade at midyear were not reclassified and thus did not take the required 10th grade TAKS test. On July 29, 2010, El Paso again revised its Academic Retention and Promotion policy to include the reclassification of 9th grade students at midyear. (For a timeline

of all related El Paso emails, memoranda, and policies from February 2007 through July 2010, see Enclosure 2.)

We conclude that practices that prevented students from taking the test that determined AYP were present at both Bowie and Coronado, but were more prevalent at Bowie. Certain El Paso policies affecting classification of students were established for Bowie but not for Coronado. In addition, El Paso's January 5, 2009, reclassification policy that excluded 9th graders from midyear reclassification could have district-wide implications for high school performance and participation AYP results.

El Paso, Bowie, and Coronado 2009 and 2012 Graduation Rate Cannot Be Relied On

Because of the scope limitations described earlier in this report, we concluded that the 2009 graduation rate data for El Paso, Bowie, and Coronado were unreliable. In addition, we determined that the 2012 graduation rate data for El Paso, Bowie, and Coronado were unreliable because withdrawals were not documented as required or were incorrectly reported for 22 students at Bowie and 12 students at Coronado.

We selected a judgmental sample of 70 students from a universe of 303 Bowie students who were first time 9th graders during the 2007–2008 school year and were from the 2012 AYP graduation rate calculation cohort. These 70 students withdrew from Bowie between school years 2007–2008 and 2008–2009. We also selected a judgmental sample of 70 students from a universe of 658 Coronado students who were first time 9th graders during the 2007–2008 school year. These 70 students withdrew from Coronado between school years 2007–2008 and 2008–2009. These students were from the cohort that was represented in the 2012 graduation rate.

We determined that from our sample of 70 files for students who were listed as withdrawals at Bowie, 22 (31.4 percent) lacked adequate documentation or were incorrectly reported to TEA. Specifically,

- 12 had incomplete supporting documentation, such as records request forms or withdrawal forms,⁶
- 8 were incorrectly coded in TEA Public Education Information Management System,
- 1 had no withdrawal documentation, and
- 1 withdrawal was not reported in TEA Public Education Information Management System.

We also determined that from our sample of 70 files for students who were listed as withdrawals at Coronado, 12 (17.1 percent) lacked adequate documentation or were incorrectly reported to TEA. Specifically,

⁶ The records request form is used to request a student's records from the student's prior school, and the withdrawal forms is used to withdraw a student from school.

- 10 had incomplete supporting documentation,
- 1 was incorrectly coded in TEA Public Education Information Management System, and
- 1 had no withdrawal documentation.

The Department revised regulations at 34 Code of Federal Regulations § 200.19(b)(1)(ii)(B) in 2008, which took effect for 2012 AYP graduation rate determinations, state:

To remove a student from the cohort, a school or LEA must confirm in writing that the student transferred out, emigrated to another country, or is deceased. (1) To confirm that a student transferred out, the school or LEA must have official written documentation that the student enrolled in another school or in an educational program that culminates in the award of a regular high school diploma. (2) A student who is retained in grade, enrolls in a General Educational Development program, or leaves school for any other reason may not be counted as having transferred out for the purpose of calculating graduation rate and must remain in the adjusted cohort.

On December 22, 2008, the Department issued guidance on these regulations, “High School Graduation Rate,” which states the following:

- To confirm that a student transferred out, a school or LEA must have “official written documentation” that a student has transferred to another school or to an educational program that culminates in the award of a regular high school diploma (34 Code of Federal Regulations § 200.19(b)(1)(ii)(B)(1)).
- Examples of official written documentation include a request for student records from a receiving public or private high school or an educational program (that culminates in a regular high school diploma); or a written record of a response from an official in the receiving school or program acknowledging the student’s enrollment. With respect to a home schooled student, official written documentation may include, for example, a letter of withdrawal or other written confirmation from the parent or guardian; any documentation that meets the home school notification or compulsory attendance requirements in the State; or any other written documentation accepted in the State to verify a child is home schooled.
- A school or LEA must have written confirmation that a student has emigrated to another country (34 Code of Federal Regulations § 200.19(b)(1)(ii)(B)), but need not obtain official written documentation. For example, if a parent informs a school administrator that the family is leaving the country, the school administrator may document this conversation in writing and include it in the student’s file. The regulations do not require written documentation to be “official” for a student who emigrates to another country because the Department recognizes that it may be difficult, if not impossible, to

obtain transcripts or other official documentation from another country confirming that the student is enrolled in school.

According to Appendix D of the TEA Public Education Information Management System 2007–2008 Data Standards, withdrawal documentation is considered incomplete if it does not have a date, signatures, and destination. Appendix D includes reason codes and the corresponding documentation that is required for students who withdraw for any reason. The same standards were in effect for 2008–2009.

Bowie and Coronado registrars were unable to explain why withdrawals were not documented as required or were incorrectly reported to TEA.

Furthermore, students who were listed as leavers, movers, or dropouts could be coded inaccurately in the SASI or TEAMS systems. “Leavers” are students who left the Texas school system, “movers” are students who moved to other Texas public school districts, and “dropouts” are students who quit attending school and their reasons for leaving school are unknown. These classifications affect the AYP graduation rate calculation; for example, a dropout incorrectly listed as a mover could result in an inaccurate graduation rate for that year. Therefore, it is crucial that student withdrawals be accurately coded.

Based on the information presented above, and due to the scope limitations we described in the Audit Results section, we concluded that El Paso, Bowie, and Coronado 2009, 2010, and 2011 AYP results and their graduation rate data for 2009 and 2012 cannot be relied on and that corrective actions need to be taken. Because we could not rely on the computer-processed data and the information from student transcripts provided by El Paso officials, we could not determine the full extent of the impact on AYP reporting. In addition, we believe further review and appropriate action by the Department’s Office of Civil Rights is required to determine whether El Paso’s students’ civil rights were violated.

Recommendations

We recommend that the Assistant Secretary for Elementary and Secondary Education require TEA to—

1.1 Determine the impact of these findings on El Paso, Bowie, and Coronado 2009, 2010, 2011, and 2012 AYP results, reconsider the previous AYP results, and take appropriate action.

1.2 Develop policies, guidance, and internal controls (including risk assessments, such as evaluating significant changes in the numbers of students taking an annual assessment from year to year) for LEAs to ensure that performance and accountability data, such as AYP results, validly reflect schools’ and LEAs’ progress.

1.3 Ensure that all currently enrolled students in Texas are tested in accordance with ESEA, conduct an annual review of students who have not taken required assessments, determine why those students were not tested, and take appropriate action to test those students as applicable.

1.4 Assess relevant policies, procedures and internal controls concerning student participation in required tests, and make appropriate changes to ensure that each Texas school district system of assessment provides for the participation of all students consistent with the requirements of ESEA.

We also recommend that the Assistant Secretary for Elementary and Secondary Education require TEA to direct El Paso to—

1.5 Immediately begin reviews at appropriate intervals of all students who transferred from foreign countries to determine whether the student credits have been evaluated and recognized to ensure placement in the correct grade level.

1.6 Develop an appropriate review policy for all students who have a change in grade-level classification and grade changes to determine whether the change was completed accurately and in accordance with El Paso policies and procedures.

1.7 Conduct and document annual training of TEA and El Paso withdrawal policies and procedures.

1.8 Conduct reviews at appropriate intervals of withdrawal documentation to determine whether withdrawals were properly documented per the Department's nonregulatory guidance "High School Graduation Rate," and TEA and El Paso withdrawal policies and procedures.

1.9 Develop an alert mechanism in the TEAMS system to remind counselors to reclassify students when they have earned the number of credits necessary for reclassification to the next grade level.

We also recommend that the Assistant Secretary for Elementary and Secondary Education work with the Assistant Secretary for Civil Rights to—

1.10 Determine whether students (including students who transferred from a Mexico school to a Priority School) whose grade-level classifications were changed, or who were withdrawn from school and returned to their home country, were excluded from, denied the benefits of, or subjected to discrimination related to any Department program in violation of their civil rights.

TEA and El Paso Comments

TEA and El Paso concurred with the finding.

Graduation Requirements

In its response, TEA stated that portions of the report were based on what it thought were incorrect assumptions that El Paso students were required to take the 10th grade TAKS test in order to graduate from high school. TEA did not believe any Federal, State, or local policy required 10th graders to take the TAKS test before graduation. TEA attributed this perceived mistake on confusion between the 10th grade AYP and 11th grade TAKS test that is a graduation requirement for students who entered the 9th grade before the 2011–2012 school year. TEA recommended technical changes to address this issue.

Grade Promotion

TEA agreed that all 10th grade students should be given the opportunity to take the 10th grade TAKS test but stated that the ESEA does not require a student legitimately promoted from the 9th to the 11th grade to take the 10th grade test. TEA further stated that they conferred with the Department and were instructed that local school districts should place students in the appropriate grade based on course completion and local policy and administer the appropriate test for that grade.

TEA's Comments on the Recommendations

TEA concurred with the recommendations. Specifically,

- TEA expects to implement Recommendations 1.1, 1.3, and 1.5–1.9 within 60 days of the issuance of the final report.
- TEA expects to implement Recommendation 1.2 within 12 months of the issuance of the final report.
- TEA expects to implement Recommendation 1.4 within 24 months of the issuance of the final report.
- TEA expects to make a referral to the Office of Civil Rights for Recommendation 1.10 within 60 days of the issuance of the final report.

El Paso's Comments on the Recommendations

El Paso did not address Recommendations 1.1–1.4 because they were directed to TEA and 1.10 because it was directed to OESE. For the other recommendation, El Paso stated:

- For Recommendation 1.5, guidance services staff conduct monthly reviews to ensure that student credits have been evaluated and recognized so that transfer students are placed in the correct grade.
- For Recommendation 1.6, guidance services staff conduct monthly reviews of all students who have a change in grade level classification and grade changes.
- For Recommendation 1.7, the Secondary Schools Division will conduct and document annual training on withdrawal policies and procedures.
- For Recommendation 1.8, El Paso will begin monthly reviews of withdrawal documentation to determine whether withdrawals are properly documented.
- For Recommendation 1.9, El Paso is developing an alert mechanism in the TEAMS system to remind counselors each August, before the start of the fall semester, to promote students who have earned the number of credits necessary for reclassification to the next grade level.

OIG Response

TEA's and El Paso's comments are responsive to our findings and recommendations. Although we do not agree with TEA's assessment that portions of the report were based on incorrect assumptions, we made technical changes to the final report to help clarify the issue. ESEA section 1111(b)(2)(C) states that AYP shall be defined by the State in a manner that includes separate measurable annual objectives for continuous and substantial improvement for the achievement of all public elementary school and secondary school students. Also, ESEA section 1111(b)(3)(C) states that annual academic assessments must be used for purposes for which such assessments are valid and reliable and must provide for the participation of all students, including Limited English Proficiency students.

El Paso students who are promoted from the 9th to the 11th grade and do not take the 10th grade TAKS test are not accounted for in the district or school AYP performance and participation rate calculation. ESEA requires that all students be accounted for in the annual academic assessments and makes no exception for policies and procedures that circumvent, undermine, limit, or restrict a student's right to participate in the designated test to assess AYP. As we stated and TEA agreed, the State of Texas used the 10th grade TAKS test to comply with ESEA requirements. Not allowing students to participate in a test that counts towards AYP violates ESEA and does not provide for a full and accurate accountability of all Texas students' progress at the high school level according to indicators in reading or language arts and mathematics.

FINDING NO. 2 – El Paso Leadership Created an Inadequate Internal Control Environment

The former El Paso leadership (the El Paso superintendent, associate superintendent of Priority Schools, and chief of staff) designed an inadequate control environment and compromised control activities. This inadequate control environment was insufficient to provide reasonable assurance of compliance with laws and regulations.

Internal controls provide reasonable but not absolute assurance of compliance with laws and regulations. Therefore, stronger internal controls alone may not have prevented the data and financial fraud perpetrated at El Paso. However, a strong control environment with sufficient control activities can help to ensure compliance with laws and regulations.

Internal control activities, including policies and procedures, were compromised in such a way that fraud could occur without detection. We found the following examples of the inadequate control environment or control activities that did not work as intended:

- The former El Paso superintendent admitted to manipulating AYP data.
- Former El Paso leadership did not acknowledge to the OIG during the course of our audit that it had found violations of El Paso policies, potential falsifications of government documents, and improper promotion and retention of students in an effort to avoid possible Federal education accountability sanctions, among other issues. Rather, the El Paso interim superintendent first disclosed the district's knowledge of this wrongdoing in a press conference on April 24, 2012.
- Registrars changed students' grade classifications based only on verbal authorizations from counselors, in violation of the requirement to maintain adequate documentation to support the reason for the change.
- During a 2-year period (school years 2008–2009 through 2009–2010), TEAMS had no automated audit trail to show who made grade-level classification changes and when the changes were made.
- Two emails sent in August of 2008 from the former El Paso associate superintendent of Priority Schools improperly affected how students grade-level at El Paso high schools were classified.

- El Paso conducted an internal audit (dated May 6, 2011) that found problems with students' grade-level classifications, a lack of support for the changes to grade levels, grades that were improperly changed, and credits earned in Mexico that were not always handled in compliance with district guidelines.
- The August 14, 2012, letter from the interim El Paso superintendent (chief of staff under the former El Paso superintendent) stated that the former El Paso superintendent's guilty plea cast doubt on the validity of written statements in a prior management representation letter about the fair presentation of documents, records, and representations of El Paso officials.

OMB Circular A-133, § 300(b) states that auditees must "[m]aintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs." The El Paso superintendent, as the agency's chief executive officer, is ultimately responsible for the internal control system and sets the ethical tone that affects all the factors of a positive control environment. El Paso's leadership failed to comply with this requirement and instead created an atmosphere in which the internal controls could be manipulated to benefit the leaders rather than safeguarding assets and program integrity. The former superintendent manipulated El Paso data by implementing a reclassification program designed to evade 10th grade testing and Federal accountability requirements.

Furthermore, we concluded El Paso's leadership did not volunteer or acknowledge information about what they were able to identify, clarify, or correct related to data the former superintendent admitted to manipulating to defraud El Paso and the Federal Government.

In October 2012, El Paso sought the services of an auditor to identify the structural defects within El Paso that allowed the improper behavior to occur and remain unchecked. We have not reviewed the work of the auditor. As previously stated, while stronger internal controls alone may not have prevented the data and financial fraud perpetrated at El Paso, continued inadequate controls leave El Paso at increased risk both financially and programmatically. We concluded that given the extent of issues we found in El Paso, the oversight functions need to be fully evaluated. Stronger internal controls should help safeguard assets and prevent and detect future errors and fraud.

Recommendations

We recommend that the Assistant Secretary for Elementary and Secondary Education require TEA to direct El Paso to—

- 2.1 Implement a system of internal controls that are sufficient to provide reasonable assurance of the financial and performance integrity of El Paso's Federal education programs.
- 2.2 Ensure that the internal audit function has the ability to function independently, including considering the opportunity for the internal auditor to report to an independent audit committee.
- 2.3 Obtain, review, and take appropriate action on the audit being conducted on El Paso.

TEA and El Paso Comments

TEA and El Paso concurred with the finding.

TEA's Comments on the Recommendations

TEA concurred with the recommendations and expects to implement them within 60 days of the issuance of the final report.

El Paso's Comments on the Recommendations

El Paso stated:

- For Recommendation 2.1, the El Paso external funding department has established a system of internal controls for monitoring federal education programs.
- For Recommendation 2.2, the internal audit department functions independently and reports directly to the Board of Trustees. The Executive Committee of the Board of Trustees serves as the Audit Committee.
- For Recommendation 2.3, the district will obtain, review, and take appropriate action on audits being conducted by the U.S. Department of Education, Office of Inspector General; the Texas Education Agency; and Weaver & Tidwell, LLP.

OIG Response

TEA's and El Paso's comments are responsive to our findings and recommendations. We did not review their stated corrective actions; however, if implemented they should be responsive to the recommendations.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our audit were to determine the following:

1. whether selected 9th grade students in El Paso took the 10th grade TAKS test, and whether those students' results were fully represented in the El Paso performance and participation rate for purposes of AYP; and
2. whether the 2009 graduation rates for Bowie and Coronado were accurate.

Our audit covered students at Bowie and Coronado who (1) were first-time 9th graders in school year 2007–2008 and (2) graduated in the spring of 2008 and were represented in the 2009 graduation rate.

We selected Bowie because it was the subject of allegations from a former Texas State Senator. Bowie missed AYP six times from school years 2002–2003 through 2007–2008 and was a Stage 5 category school in school year 2008–2009.

To make a limited comparative analysis of another high school in El Paso, we reviewed the AYP status for all El Paso high schools and selected Coronado, which was rated Academically Acceptable for school year 2008–2009.

Scope Limitations

As noted in the Audit Results section of the report, we identified the following scope limitations:

- We could not rely on the computer-processed data. According to the El Paso student systems manager, in school year 2007–2008, the SASI system contained enrollment data that showed when grade-level classification changes were made; however, SASI did not have an automated audit trail that would have shown who changed the grade-level classification or their rationale for doing so. Also, from school years 2008–2009 through 2009–2010, the TEAMS system had no automated audit trail to show who changed grade-level classifications and when someone made the changes.
- We could not rely on the information from student transcripts provided by El Paso officials because they lacked sufficient supporting documentation.
- We could not rely on information provided by El Paso, Bowie, and Coronado officials because the interim superintendent failed to provide an appropriate management representation letter. The interim superintendent was the former chief of staff under the former El Paso superintendent.

To accomplish our objectives, we—

- Reviewed the assessment and accountability provisions of the ESEA and corresponding regulations at 34 Code of Federal Regulations §§ 200.1–200.21, dated July 1, 2007, and July 1, 2010.
- Reviewed TEA’s two Letters of Findings (dated September 20, 2010, and October 8, 2010) and enrollment and attendance documentation for school years 2003–2004 through 2008–2009 for Bowie and Coronado.
- Reviewed TEA’s school year 2004–2005 graduation requirements for students who graduated in school year 2007–2008.
- Reviewed El Paso’s Academic Achievement Retention and Promotion policy dated August 1, 2008.
- Reviewed El Paso written policies and procedures for student leaver, withdrawal, and no-show (dated July 17, 2006).
- Reviewed witness statements and interviewed people who provided information to the former Texas State Senator.
- Interviewed former El Paso officials (the El Paso superintendent, associate superintendent of Priority Schools, and chief of staff) and current and former personnel (principal, assistant principals, teachers, counselors, and registrars) at Bowie and Coronado.
- Interviewed three truant officers and individuals who either (1) provided information to the former Texas State Senator regarding students not taking the 10th grade TAKS test or (2) were referenced during our interview with the individuals who provided the information to the Senator.
- Reviewed Section 601 of the Civil Rights Act of 1964 to follow up on issues raised during the audit to determine whether there were possible civil rights violations.
- Reviewed the records of 400 students judgmentally selected from the universe of 961 students who were first-time 9th graders in school year 2007–2008. We selected the first 200 students from an alphabetical list of 303 Bowie 9th graders and the first 200 students from an alphabetical list of 658 Coronado 9th graders. Specifically, we reviewed (1) the number of credits earned before the spring 2009 semester to determine whether a student’s classification was correct per the August 1, 2008, Academic Achievement Retention and Promotion policy; (2) the timeframe of when credits were recognized for a student who transferred from a school in Mexico to an El Paso school for the Bowie sample of students; and (3) student transcripts and TAKS confidential student reports to determine whether the students took the 10th grade TAKS test.
- Reviewed the records of 140 students judgmentally selected from the universe of 961 students who were first-time 9th graders in school year 2007–2008. We selected the first

70 students from an alphabetical list of 303 Bowie 9th graders and the first 70 students from an alphabetical list of 658 Coronado 9th graders and withdrew between school years 2007–2008 and 2008–2009.

- Reviewed all school year 2007–2008 graduates' (205 at Bowie and 423 at Coronado) transcripts or individual education programs to determine whether the students met the TEA graduation requirements. For each of the continuer students (41 each at Bowie and Coronado), we reviewed the student's transcript and other records to determine whether the students continued high school after the completion of school year 2007–2008, received a general educational development certificate, or had the required withdrawal documentation to support a dropout.
- Reviewed the records of 15 students (11 coded as leavers and 4 coded as movers) judgmentally selected from a universe of 200 students from Bowie coded as leavers and movers who were first-time 9th graders in the fall of school year 2004–2005 and withdrew from Bowie. We reviewed the withdrawal documentation to determine whether the students were accurately coded as leavers or movers or should have been coded as dropouts, which affects the graduation rate.
- Reviewed the records of 15 students (11 coded as leavers and 4 coded as movers) judgmentally selected from a universe of 310 students from Coronado coded as leavers and movers who were first-time 9th graders in the fall of school year 2004–2005 and withdrew from Coronado. We reviewed the withdrawal documentation to determine whether students were accurately coded as leavers or movers or should have been coded as dropouts, which affects the graduation rate.
- Reviewed El Paso's May 6, 2011, internal audit report regarding a Bowie counselor's concerns of improper changes to grades and grade-level classification and alleging credits for students transferring from Mexico were not being properly awarded for 77 Bowie students.
- Reviewed a list (provided by a former Bowie counselor) of 93 students whose grade-levels she believed were improperly changed. Also, reviewed a list (provided by a Bowie teacher) of 15 students for whom he believed of students who did not take the 10th grade TAKS test.
- Reviewed El Paso 9th grade student profile sheets for our audit sample.
- Reviewed the spring 2009 and 2010 TAKS confidential student reports (from Pearson, Inc., a contractor TEA used to score the TAKS test) for our audit sample to determine (1) which TAKS test the students (from Bowie and Coronado) took in spring 2009 and 2010 and (2) whether the students passed or failed the various test subjects (reading, mathematics, social studies, and science).
- Reviewed 10th grade TAKS test results from TEA for the students who transferred from Bowie or Coronado to other Texas schools.
- Reviewed three A-133 single audit reports of El Paso (for fiscal years that ended August 31, 2007, August 31, 2008, and August 31, 2009).

- Reviewed Bowie and Coronado's 2009 AYP graduation rate results to determine which students were included in the graduation rate calculation.
- Reviewed transcripts for 205 students at Bowie and 423 students at Coronado that graduated in school year 2007–2008 to determine whether they met TEA graduation requirements.
- Reviewed transcripts for 41 students from Bowie and 41 students from Coronado to determine whether these students continued school after their cohort graduation year 2007–2008.
- Reviewed students' records to determine whether a student received a general educational development certificate or had the required documentation to support a dropout.

Because we used a nonstatistical judgmental sample for all samples selected, our results may not be representative of or projected to those entire populations.

Reliability of Computer-Processed Data

We could not rely on the computer-processed data (such as Bowie and Coronado fall 2007 enrollment data) and information from student transcripts provided by El Paso officials to answer our audit objectives due to the scope limitations discussed above and the former superintendent's admission that he manipulated El Paso data.

To answer objective one, we used two spreadsheets provided by El Paso. The spreadsheets contained a listing of 9th grade students from Bowie (381) and Coronado (800) enrolled on the fall 2007 enrollment snapshot date. We determined that 78 students from Bowie and 142 students from Coronado (220 total), were not in the 2007–2008 cohorts. Instead, the 220 students were 9th graders before 2007–2008 and were also 9th graders again, in 2007–2008. As such, our universe for first-time 9th graders in 2007–2008 was 961 students.

To determine the completeness of the data, we compared TEA 9th grade enrollment data for fall 2007 to El Paso data. We confirmed that the listing of 381 and 800 students were enrolled in the 9th grade at Bowie and Coronado in the fall of 2007.

To answer objective two, we used two spreadsheets that El Paso provided, which listed students who were represented in Bowie and Coronado 2009 graduation rate. The spreadsheets included students who graduated in the spring of 2008, continued high school after the completion of school year 2007–2008, received a general educational development certificate, or dropped out of school. To determine the completeness of El Paso 2009 graduation rate data for Bowie and Coronado, we obtained TEA student-level 2009 graduation rate data for Bowie and Coronado. We compared TEA student-level 2009 graduation rate data for Bowie and Coronado to El Paso student-level 2009 graduation rate data for Bowie and Coronado. We determined that the TEA universe data matched Bowie and Coronado 2009 graduation rate universe data.

We also used confidential student reports provided by Pearson, Inc., to achieve our audit objectives. We did not assess the reliability of these reports.

We conducted our audit work from December 2010 through April 2013. We held an exit conference with TEA and El Paso officials to discuss the results of the audit on August 14, 2012.

Our audit was performed in accordance with generally accepted government auditing standards appropriate to the scope of the audit described. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Except for the limitations noted in the scope limitations and computer-processed data sections, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Enclosure 1: Bowie Fall Enrollment, Spring Attendance Count, and Enrollment Percentage Change Between Fall of Freshman Year and Fall of Sophomore Year

**Table 2. Bowie Fall Enrollment and Spring Attendance Count for Grades 9–12
From School Years 2003–2004 Through 2008–2009**

| Grade | 2003–2004 | | 2004–2005 | | 2005–2006 | | 2006–2007 | | 2007–2008 | | 2008–2009 | |
|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| | Fall | Spring | Fall | Spring | Fall | Spring | Fall | Spring | Fall | Spring | Fall | Spring |
| 9 | 442 | 420 | 472 | 438 | 399 | 394 | 383 | 386 | 381 | 348 | 388 | 367 |
| 10 | 307 | 301 | 340 | 317 | 369 | 355 | 347 | 302 | 303 | 277 | 170 | 168 |
| 11 | 237 | 204 | 268 | 233 | 273 | 257 | 317 | 303 | 271 | 258 | 271 | 224 |
| 12 | 224 | 228 | 209 | 218 | 243 | 246 | 276 | 262 | 318 | 300 | 221 | 253 |
| Total | 1,210 | 1,153 | 1,289 | 1,206 | 1,284 | 1,252 | 1,323 | 1,253 | 1,283 | 1,183 | 1,050 | 1,012 |

Source: TEA

Table 3. Enrollment Decreases at Bowie from School Years 2003–2004 Through 2008–2009

| Freshman Year | Freshman Fall Enrollment | Sophomore Fall Enrollment | Change in Enrollment | Percent Change in Enrollment |
|---------------|--------------------------|---------------------------|----------------------|------------------------------|
| 2003–2004 | 442 | 340 | -102 | -23.1 |
| 2004–2005 | 472 | 369 | -103 | -21.8 |
| 2005–2006 | 399 | 347 | -52 | -13.0 |
| 2006–2007 | 383 | 303 | -80 | -20.9 |
| 2007–2008 | 381 | 170 | -211 | -55.4 ^a |
| 2008–2009 | 388 | 212 | -176 | -45.4 |

Source: TEA

^a The Senator's allegation was based on enrollment data he obtained from TEA that showed 211 (55.4 percent) of the 381 students who were 9th graders in the fall of 2007 were not in the 10th grade in the fall of 2009.

Enclosure 2: El Paso Emails, Memoranda, and Policies Concerning Retention, Promotion, and Grade Level Classifications

| Date | Subject | Grade-Level Impacted | | | | Midyear Re-classification Allowed? | School Year | Does the Policy/Memo Require that the Student Should Have Already [A] or [B]? | | Bowie's AYP and Stages |
|--------------|--|----------------------|----|----|----|------------------------------------|-------------|---|--|------------------------|
| | | 9 | 10 | 11 | 12 | | | [A] Taken the 10th grade test? | [B] Earned credits for the next grade level? | |
| 02/09/07 (a) | Reclassification of Sophomores | - | X | - | - | Yes | 2006–07 | Yes | Yes | Missed, R/M/G, Stage 3 |
| 02/22/07 (b) | Reclassification of Sophomores | - | X | - | - | Yes | 2006–07 | Yes | Yes | Missed, R/M/G, Stage 3 |
| 08/01/08 (c) | Academic Achievement Retention and Promotion | X | X | X | X | NA | 2008–09 | No | Yes | Met, Stage 5 |
| 08/12/08 (d) | High School Registration | X | - | - | - | No | 2008–09 | No | No | Met, Stage 5 |
| 08/20/08 (e) | Reclassification | X | - | - | - | No | 2008–09 | No | No | Met, Stage 5 |
| 12/05/08 (f) | Reclassifications | X | X | X | X | Yes | 2008–09 | No | Yes | Met, Stage 5 |
| 01/05/09 (g) | Reclassifications | - | X | X | X | Yes | 2008–09 | No | Yes | Met, Stage 5 |
| 02/24/10 (h) | Reclassification of Students | - | X | X | X | Yes | 2009–10 | Yes | Yes | Met, Stage 5 |
| 07/29/10 (i) | Reclassification | X | X | X | X | Yes | 2010–11 | No | Yes | Missed, R |

AYP Column: R – Reading, M – Mathematics, G – Graduation Rate

- (a) 02/09/07 memorandum states that in the future, school officials will be allowed to reclassify these students immediately following the close of the 1st semester. It also states midyear classification allows for a more meaningful, rigorous, and appropriate testing scenario, giving these qualifying students an incentive to excel on the exit-level test in February and April 2007.
- (b) 02/22/07 memorandum states effective immediately, sophomore students who have completed the required number of credits to reclassify as juniors and who have already taken the 10th grade TAKS test at least once should be reclassified as juniors at this time.
- (c) 08/01/08 policy states beginning with the freshman class of 2007–2008, the following credits shall be required for each classification 9th grade (0–6 credits), 10th grade (6 ½–12 credits and a minimum of ½ credit of Algebra 1), 11th grade (12 ½–18 credits), and 12th grade (18 ½–26 credits).
- (d) 08/12/08 email stated all students transferring from out-of-country schools to an El Paso high school must be placed and kept in the 9th grade during their initial school year regardless of credit hours obtained from their out-of-country school.
- (e) 08/20/08 email directed principals at El Paso high schools to remind registrars and counselors to keep repeating 9th grade students in the 9th grade regardless of the credits earned during the year.
- (f) 12/05/08 memorandum states it is for all students in grades 9–12 who have been enrolled at the same grade level for at least two consecutive semesters. It also states these students shall be reclassified into the appropriate grade regardless of any State-mandated tests that have or have not been taken.
- (g) 01/05/09 memorandum states it is for all students in grades 10–12 who have been enrolled at the same grade level for at least two consecutive semesters. It also states these students shall be reclassified into the appropriate grade regardless of any State-mandated tests that have or have not been taken.
- (h) 02/24/10 memorandum refers to reclassifications during the first two weeks of January as “mid-year promotions.”
- (i) 07/29/10 policy states that students “may be” reclassified within the 1st nine weeks of the first semester and/or by the 3rd Friday of the 2nd semester. It does not say students “must be” reclassified.

Enclosure 3: TEA Comments



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Michael L. Williams
Commissioner

May 17, 2013

Keith M. Maddox
Regional Inspector General for Audit
United States Department of Education
Office of Inspector General
1999 Bryan Street, Suite 1440
Dallas, Texas 75201

RE: Draft Audit Report; El Paso Independent School District's Compliance With the Accountability and Academic Assessment Requirements of the Elementary and Secondary Education Act of 1965; Control Number ED-OIG/A06L0001

Dear Mr. Maddox,

This letter on behalf of Michael Williams, Commissioner of Education, is in response to the Draft Audit Report regarding El Paso Independent School District (EPISD) identified above. Except where noted below, the Texas Education Agency (TEA) agrees with the findings and recommendations set forth in the draft report. In response to EPISD's misconduct and mismanagement, the Commissioner appointed a monitor to the district in August 2012. In December 2012, the Commissioner appointed a board of managers to temporarily replace the elected board of trustees, and enhanced the monitor's authority to act as a conservator until the installation of the board of managers. The elected board challenged the Commissioner's actions, which were reviewed through a formal proceeding in February 2013 and upheld. The U.S. Department of Justice also reviewed the appointment of the board of managers and raised no objections. The board of managers was formally installed on May 7, 2013. The Commissioner and the TEA will continue to work with the board of managers and district leadership to ensure appropriate corrective actions are undertaken.

Response to Recommendations

With respect to recommendations, we have the following comments and anticipated completion dates:

Recommendation 1.1 – The TEA expects to implement this recommendation within 60 days of the issuance of the final report.

Recommendation 1.2 – The TEA expects to implement this recommendation within 12 months of the issuance of the final report. In light of the new accountability system that will be implemented for the first time in August 2013, the TEA will review and analyze, in the fall of 2013, its existing policies and internal controls to determine whether they are appropriate for the new accountability system or whether additional policies and internal controls are needed. While any additional policies or controls may be implemented as soon as the winter of 2013/spring of 2014, it is likely this action will be ongoing as additional components are added to the accountability system over the next several years.

Recommendation 1.3 – The TEA expects to implement this recommendation within 60 days of the issuance of the final report. The agency currently ensures that all enrolled students are tested in accordance with ESEA through the accountability system’s 95 percent participation requirement for all students, seven race/ethnicity student groups, economically disadvantaged students, English language learners, and students with disabilities. Additionally, the agency annually monitors districts with high numbers of test answer documents coded absent or “other.”¹

Recommendation 1.4 – The TEA expects to implement this recommendation within 24 months of the issuance of the final report. Based on anticipated legislative changes to the STAAR end-of-course assessment requirements for testing and graduation, the TEA’s Student Assessment program will review test administration policies for the 2013-2014 school year and beyond. The testing program will work with existing district advisory committees and other stakeholders to determine whether existing test administration and test security procedures need to be modified to address the changes in the end-of-course requirements. It is anticipated that any changes in test administration policies would be implemented beginning with the spring 2014 end-of-course test administration.

Recommendations 1.5 to 1.9 – The TEA expects to implement these recommendations within 60 days of the issuance of the final report. The TEA will also monitor compliance with the corrective action plan, and provide additional directives as necessary.

Recommendation 1.10 – The TEA expects to make a referral to the Office of Civil Rights within 60 days of the issuance of the final report.

Recommendations 2.1 to 2.3 – The TEA expects to implement these recommendations within 60 days of the issuance of the final report. The TEA will also monitor compliance with the corrective action plan, and provide additional directives as necessary.

¹ Note that Texas school districts have local discretion to assign students to particular grade levels. However, this should not impact AYP result in the future because, as discussed below, Texas is replacing the 10th grade TAKS test with end-of-course assessments as a basis for measuring AYP in high schools.

Graduation Requirements

Portions of the draft report are based on an incorrect assumption that EPISD students were required to take the 10th grade TAKS test in order to graduate from high school. There is no such requirement under Federal law, Texas law, or El Paso ISD's policies.² The mistake appears to be based on confusion between the 10th grade ("AYP") TAKS test and the 11th grade ("exit-level") TAKS test.

Under the plan approved by the U.S. Department of Education, Texas uses the 10th grade TAKS test to assess Adequate Yearly Progress (AYP).³ The 11th grade "exit-level" TAKS test is a graduation requirement for students entering the ninth grade prior to the 2011-2012 school year.⁴ Students entering the ninth grade during or after the 2011-2012 school year are now required to take end-of-course assessments in order to graduate,⁵ and are no longer required to take either the 10th or 11th grade TAKS tests.⁶

Accordingly, we suggest the report be amended to correctly reflect the graduation requirements under Federal, State and local law and policy. Specifically, we suggest the following changes:

(1) Page 2 of the report contains the sentence "We determined that the TEA and El Paso violated the academic and assessment requirements of ESEA by allowing students to graduate from high school without taking the required TAKS test that counts towards AYP." This should be amended to read "We determined that El Paso ISD violated the academic and assessment requirements of ESEA, which TEA requires school districts to follow, by failing to ensure the district properly classified students in the 10th grade and that qualified 10th grade students were administered the TAKS test that counts towards AYP."

² We have been directed to no federal rule or even informal guidance that supports an assertion that ESEA requires individual completion of the AYP high school level test before conferring a diploma. Given the significance of such a requirement, we would expect an administrative rulemaking process to have been conducted by the Department to implement that policy.

³ See, e.g., 2012 Adequate Yearly Progress (AYP) Guide for Texas Public School Districts and Campuses, pp. 11-12, and the Consolidated State Application Accountability Workbook, pp. 17-19, available at <http://www.tea.state.tx.us/ayp/>.

⁴ Prior to September 1, 2007, Tex. Educ. Code § 39.023(a) required the TEA to adopt or develop "appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science." This section also required all students (unless expressly excepted) to be assessed in mathematics in grades eight through 11 and English language arts in grade 10, as well as "any other subject and grade required by federal law." During this same period, the Tex. Educ. Code § 39.023(c) required the TEA to "adopt secondary exit-level assessment instruments designed to be administered to students in grade 11 to assess essential knowledge and skills in mathematics, English language arts, social studies, and science..."

⁵ Beginning in spring 2012, the State of Texas Assessments of Academic Readiness (STAAR™) replaced the Texas Assessment of Knowledge and Skills (TAKS). The STAAR program at grades 3–8 assesses the same subjects and grades that are currently assessed on TAKS. At high school, however, grade-specific assessments have been replaced with 12 end-of-course (EOC) assessments: Algebra I, geometry, Algebra II, biology, chemistry, physics, English I, English II, English III, world geography, world history, and U.S. history. See <http://www.tea.state.tx.us/student.assessment/staar/>.

(2) Page 11 of the report contains the sentence “A number of students at the two schools we reviewed graduated without ever taking a high school AYP TAKS test as required by the ESEA.” This sentence should be deleted.

(3) Page 14 of the report contains a section title “Students Graduated Without Taking the 10th Grade TAKS Test.” This title should be amended to read “Some Students Who Should Have Been Classified as 10th Graders Were Not Given an Opportunity to Take the 10th Grade TAKS Test.”

(4) Page 14 of the report contains the sentence “We determined that 44 students (41 from Bowie and 3 from Coronado) graduated without ever taking the AYP TAKS test at least once in high school.” This should be amended to read “We determined that 44 students (41 from Bowie and 3 from Coronado) were not given the opportunity to take the 10th grade TAKS test.”⁷

(5) Page 14 of the report contains the sentence “From those lists, we identified 14 students who we determined did not take the 10th grade TAKS test before graduating.” This sentence should be amended to read “From those lists, we identified 14 students who should have been classified as 10th graders and who we determined were not given the opportunity to take the 10th grade TAKS test.”

Grade Promotion

Page 15 of the draft report concludes the TEA misinterpreted the ESEA requirements:

“According to TEA’s director of division of performance reporting and El Paso officials, TEA’s interpretation is that ESEA requires only students in the 10th grade to take the 10th grade TAKS test. This interpretation did not ensure that students who bypassed the 10th grade (that is, those students promoted from the 9th grade to the 11th grade) were given the opportunity to take the 10th grade TAKS test.

Given the TEA and El Paso officials’ improper interpretation of the ESEA requirements, we believe that this issue could have occurred at other El Paso and Texas high schools. Because TEA and El Paso did not ensure all students took the 10th grade TAKS test, TEA and El Paso need to assess their policies, procedures, and relevant internal controls to ensure that all students are tested in accordance with the law.”

⁶ Under current law, the Tex. Educ. Code §39.025(f) requires the commissioner to adopt rules to replace general subject tests with end-of-course assessments beginning with students entering the ninth grade during the 2011-2012 school year. The 2007 changes to Tex. Educ. Code § 39.023(a) removed all references to grade 10, but retained the requirement for students to be assessed in “any other subject and grade required by federal law.” The 2007 changes to Tex. Educ. Code § 39.023(c) removed all references to grade 11, and required the TEA to adopt “end-of-course assessment instruments for secondary-level courses.”

⁷ This paragraph appears to contradict the following paragraph in the draft report. The first paragraph identifies up to 152 students (44 + 93 + 15) who may not have taken the TAKS test. However, the following paragraph indicates that only 14 students may not have taken the TAKS test. It is unclear how these student counts relate to one another, how much overlap there is between the counts, and why and how the auditors selected the final 14. The authors may wish to consider revising this section to clarify these issues.

We agree that all 10th grade students should be given the opportunity to take the 10th grade TAKS test.⁸ Based on guidance from the U.S. Department of Education, we concluded that the ESEA does not require students legitimately promoted from the 9th to 11th grade to take the AYP (10th grade) TAKS test. As part of our intervention with El Paso, we conferred with Department program staff regarding the appropriate assessment of some students who are currently classified as 11th grade students. The Department's Grace Ross and Carlos Martinez informed TEA staff that local school districts should place students in the appropriate grade based on course completion and local policy, and then administer the test that is appropriate to that grade. We were explicitly told it would be inappropriate to administer a test from another grade to a student, including a student who was legitimately promoted from the 9th to the 11th grade and had not taken the 10th grade test. We agree with this analysis, and have advised Texas school districts to follow these procedures.

No Federal, State or local law prohibits the promotion of a student past a grade (e.g. from 9th to 11th grade) when warranted by the student's academic achievements and school district policy. No Federal, State or local law requires a student legitimately promoted from the 9th to the 11th grade to take the 10th grade test. Finally, no Federal, State, or local law requires all high school students to actually take the AYP TAKS test, as long as 10th grade students are given an opportunity to participate in the test⁹.

Accordingly, we suggest the following changes:

- (1) Page 4 of the report contains the sentence "Specifically, States are required to test all students in reading and math in grades 3 through 8 and at least once in high school." This should be amended to read "Specifically, States are required to test students in reading and math in grades 3 through 8 and at least once in high school."
- (2) Page 11 of the report contains the sentence "A significant number of students did not take the 10th grade TAKS test and therefore were not represented in the AYP performance and participation results for 2009–2011." This should be amended to read "A significant number of qualified 10th graders did not take the 10th grade TAKS test and therefore were not represented in the AYP performance and participation results for 2009–2011."
- (3) Delete the two paragraphs quoted above found on page 15 of the draft report.

EPISD Response

On April 19, EPISD provided you with its own response to the Draft Audit Report. Part of EPISD's response consists of a seven page undated letter from Vernon Butler to Keith Maddox. The TEA has the following comments regarding EPISD's response:

⁸ Note that Title I, Part A of the ESEA does not require that all 10th grade students be tested, but rather that "not less than 95 percent of each group of students...who are enrolled in the school are required to take the assessments." Section 1111(b)(2)(I)(ii). Also, note the changes to Texas law discussed above.

⁹ Again, such a requirement would have to be based on a rulemaking process, which could consider the many questions that would arise from student illness during the testing periods, entry into the public schools after completing 10th grade in a private school or another state, students skipping elementary grades, etc.

- (1) Page 1 of 28. The first and second pages of this letter suggest that El Paso Independent School District be referred to as “EPISD,” “El Paso ISD,” or “the District.” The TEA agrees with these suggestions.
- (2) Page 1 of 28. The second page of this letter suggests that the term “policy” be reserved for reference to policies adopted by the EPISD Board of Trustees. The TEA agrees with these suggestions.
- (3) Page 2 of 28. The second page of this letter suggests the report clarify that the email in question was only sent to the Priority High Schools. The TEA does not have any comment regarding this suggestion.
- (4) Page 2 of 28. The second page of this letter suggests the report clarify the phrase “El Paso Leadership.” The TEA does not have any comment regarding this suggestion.
- (5) Pages 2, 11, 20 and 21 of 28. The second and third pages of this letter suggest clarification of the role of Dr. Terri K. Jordan. The TEA does not have any comment regarding this suggestion.
- (6) Page 3 of 28. The third and fourth pages of this letter suggest changes regarding the management representation letter issue. The TEA does not have any comment regarding these suggestions.
- (7) Page 9 of 28. The fourth page of this letter suggests that the report should state EPISD provided a copy of the May 6, 2011 internal audit to the OIG. The TEA does not believe this information is relevant or would add anything to the report.
- (8) Page 9 of 28. The fourth and fifth pages of this letter suggest the report describe the exit conferences, EPISD’s speculations about possible recommendations and requests to the TEA. The TEA does not believe this information is relevant or would add anything to the report.
- (9) Page 10 and 20 of 28. The fifth and sixth pages suggest the report should incorporate EPISD’s assertions and speculations about Dr. Jordan’s understandings and actions. The TEA does not believe this information is relevant or would add anything to the report.
- (10) Page 10 of 28. The sixth and seventh pages of this letter suggest the report incorporate a reference to EPISD’s May 2012 request that TEA serve as the district’s “administrative partner.” Texas law does not authorize such a role for the TEA. Accordingly, the TEA does not believe this information is relevant or would add anything to the report. The first full paragraph on the seventh page suggests the report describe the events occurring on and after December 6, 2012. The TEA agrees that a paragraph setting forth these events should be added to the bottom of page ten of the report. However, EPISD’s statement that a “decision by the Department of Justice is pending at this time” is no longer accurate. The U.S. Department of Justice issued a letter on April 26, 2013 declining to object to the Commissioner’s appointment of a board of managers to EPISD. The board of managers was installed on May 7, 2013.
- (12) Page 21 of 28. The seventh page of this letter suggests the report eliminate the conclusion that EPISD continues to lack adequate internal controls. The TEA has no comment on this suggestion.

The agency has taken the most severe actions available to it to correct the circumstances in El Paso ISD and will continue to implement appropriate corrective actions. We appreciate the opportunity to comment. Please let us know if you require additional items or information. Thank you.

Sincerely,

/s/

David Anderson
General Counsel
Texas Education Agency

cc: Michael L. Williams, Commissioner of Education, Texas Education Agency
Vernon Butler, El Paso Independent School District

Enclosure 4: El Paso Comments



Vernon L. Butler
Interim Superintendent

To: Keith M. Maddox
Regional inspector General for Audit
United States Department of Education
1999 Bryan Street, Suite 1440
Dallas, Texas 75201

From: Vernon L. Butler
Interim Superintendent, El Paso ISO

Subject: Response to Draft Audit Report
El Paso Independent School District's Compliance With the Accountability and
Academic Assessment Requirements of the Elementary and Secondary Education Act
of 1965
Control Number ED-OIG/A06L0001

Date: April 19, 2013

Following are my comments on the findings and recommendations of the Draft Audit Report.

Finding No. 1 – El Paso, Bowie, and Coronado Adequate Yearly Progress Results and Graduation Rate Data Cannot Be Relied On. El Paso Independent School District Leadership concurs with this finding.

Recommendations 1.1 – 1.4 are not addressed here because they are directed to TEA.

Recommendation 1.5

El Paso Independent School District utilizes Project LUCHA, an innovative of U.T. Austin's K-16 Education Center, to obtain and evaluate transcripts of students who have transferred from Mexico. LUCHA works directly with the Ministry of Public Education in Mexico and Mexican educational institutions to locate and provide missing transcripts to school district. These transcripts are analyzed to provide a Graduation Credit Analysis (GSA), including a credit summary and course equivalences. Guidance Services staff conduct monthly reviews to assure that student credits have been evaluated and recognized to ensure placement of transfer students in the correct grade.

Recommendation 1.6

Guidance Services staff conduct monthly reviews of all students who have a change in grade level classification and grade changes to ensure that the change(s) are completed accurately and in accordance with District policy and procedures.

Recommendation 1.7

The Secondary Schools Division will conduct and document annual training of El Paso ISO principals, assistant principals, and counselors on withdrawal policies and procedures.

Recommendation 1.8

In May 2013, El Paso Independent School District will begin monthly reviews of withdrawal documentation to determine whether withdrawals are properly documented per the U.S. Department of Education's nonregulatory guidance "High School Graduation Rate," and TEA and District withdrawal policies and procedures.

Recommendation 1.9

An alert mechanism in the TEAMS system is being developed to remind counselors each August, prior to the start of the fall semester, to promote students who have earned the number of credits necessary for reclassification to the next grade level.

Finding No. 2 – El Paso Independent School District Leadership Created an Inadequate Internal Control Environment. El Paso Independent School District Leadership concurs with this finding.

Recommendation 2.1

A system of internal controls has been established by the El Paso ISO External Funding Department for monitoring federal education programs. Internal audit will verify, on an annual basis, the financial and performance integrity of federal education program data.

Recommendation 2.2

The Internal Audit department functions independently and reports directly to the Board of Trustees. The Executive Committee of the Board of Trustees serves as the Audit Committee.

Recommendation 2.3

The District will obtain, review, and take appropriate action on audits being conducted by the U.S. Department of Education, Office of Inspector General; the Texas Education Agency; and Weaver & Tidwell, LLP.

El Paso provided several attachments with its letter. These attachments will be made available upon request.