UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

MAY 23 2006

The Honorable Shirley Neeley
Commissioner
Texas Education Agency
1701 North Congress
Austin, Texas 78701

Dear Commissioner Neeley:

I am writing in response to Texas's request for a flexibility agreement to create a new subgroup specifically for students displaced by Hurricanes Katrina and Rita and to waive adequate yearly progress (AYP) determinations for campuses and districts that were closed for more than 7 days and that are located in a county designated by the Federal Emergency Management Agency (FEMA) as a disaster area that qualifies for public assistance due to Hurricane Rita. Under option #2 in Secretary Spellings' letter to Chief State School Officers on September 29, 2005, displaced students may be counted in a separate subgroup for reporting and accountability purposes under Title I of the *Elementary and Secondary Education Act* (ESEA), as amended by the *No Child Left Behind Act of 2001* (NCLB). For the 2005–06 school year, these students would not appear in any other subgroup (even the "All Students" subgroup) in which they would normally appear.

It is vital to remain committed to the core principles of NCLB, including holding all States, districts, and schools accountable for educating all children. At the same time, I recognize the unique events facing those affected by Hurricanes Katrina and Rita, which require common sense decisions. Texas was responsible for educating almost 36,000 displaced students this year, with the vast majority concentrated in several districts.

Therefore, I am approving Texas's request for a flexibility agreement under section 9401 of the ESEA to create a separate subgroup for students displaced by Hurricanes Katrina and Rita for making AYP decisions based on assessment data for the 2005–06 school year. Approval is conditioned on Texas's fulfilling the following conditions:

1. Texas will include the Katrina/Rita displaced student subgroup in the 2006 AYP calculation for participation rate at the campus, district, and state level. Texas will identify all campuses and districts that fail to meet AYP due to the Katrina/Rita displaced student group only and will provide this information to the U.S. Department of Education (Department) by August 1, 2006, for review. The Department will reconsider the resulting AYP status for those campuses/districts prior to the release of the 2006 preliminary AYP results. Note that it will be

critical that the Department provide a final response on the status of the affected districts by the August 8 deadline in order to meet Texas's revised release dates.

2. Texas will report participation rate and performance achievement results for the Katrina/Rita displaced student subgroup on the campus, district, and state level AYP data tables as part of the 2005-06 AYP release. The Department recognizes that there will not be a calculation of attendance or graduation rate in 2005-06 for this subgroup due to the fact that Texas uses prior year data for both indicators and this subgroup did not exist in 2004-05. However, in calculating attendance and graduation rates for 2006-07 AYP, Texas must include all students that were in the displaced student subgroup in 2005-06 in all appropriate subgroups.
3. Texas will offer remediation, as required by State law, to all non-proficient displaced students based on the 2006 spring assessment results in either reading or mathematics.

This flexibility agreement also allows districts and their campuses that were closed for 7 or more instructional days and are located in a county designated by FEMA as a disaster area that qualifies for public assistance due to Hurricane Rita to be evaluated separately. If these districts and campuses made AYP using 2005-06 data, they would be given their earned AYP designation. Districts or campuses in this group that miss AYP will receive a 2005-06 AYP status of *Not Evaluated*. If these districts and campuses were identified for improvement in the 2005-06 school year, a 2005-06 AYP result of *Not Evaluated* would allow the 2005-06 school improvement identification to remain in effect for the 2006-07 school year. If those districts and campuses miss AYP again in 2006-07, they would advance on the school improvement timeline in the 2007-08 school year. Those districts and campuses that missed AYP for the first time based on the 2004-05 AYP results and thus have no 2005-2006 school improvement identification would not advance into school improvement due to a 2005-06 AYP status of *Not Evaluated*. If those districts and campuses miss AYP in 2006-07 and 2007-08, they then would enter school improvement in the 2008-09 school year. For a campus or district in improvement that made AYP for the first time in 2004-05 and makes it in 2005-06, it would then exit school improvement.

Accountability determinations for districts and campuses impacted by Hurricane Rita that were closed for less than 7 instructional days will be considered on a case-by-case basis during the AYP appeals process. These districts and campuses will be required to implement the required public school choice and supplemental educational services during the 2006-07 school year based on 2005-06 preliminary AYP results, regardless of the outcome of their AYP appeal. The Department has not reviewed nor approved Texas's appeal guidelines and anticipates the appeals will be conducted in compliance with section 1116 of the ESEA.

In addition, as required by section 9401(b)(3)(A)(iii) of the ESEA, within 30 days of the date of this letter, the State must provide notice and information to the public regarding this flexibility agreement in the manner in which it customarily provides similar notice to the public. The State must also submit a report to the Department detailing the number of displaced students enrolled in remediation.

This letter supersedes my letter of May 18th, 2006. Thank you for continuing the partnership with the Department, and I look forward to working with you to ensure that all of our children receive a high-quality education.

Sincerely,

Henry L. Johnson

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cc: Governor Rick Perry
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