

TEXAS EDUCATION AGENCY

1701 North Congress Ave. ★ Austin, Texas 78701-1494 ★ 512-463-9734 ★ FAX 512-463-9838 ★ <http://www.tea.state.tx.us>

Shirley J. Neeley, Ed.D.
Commissioner

February 15, 2007

Dr. Robert Kimball
32918 Willenhall Court
Fulshear, Texas 77441

Dear Dr. Kimball:

Thank you for contacting my office regarding your concerns with the Texas Education Agency's compliance of Texas Education Code (TEC) Chapter 37.008 (m) and (m-1).

The Annual Evaluation Reports that you refer to were prepared by the agency from for the 2001-02 and 2002-03 school years pursuant to Subsection 37.008(m) of the TEC. However, the requested reports for the year 2005-2006, per your letter, do not exist. **This is due to House Bill 3459, passed by the 2003 Legislature, which created Section 7.028 of the TEC and limited the agency's monitoring authority over state programs, including DAEP.** The reference to "Subchapter A, Chapter 37" in Section 7.028(a) includes the reports previously developed under Subsection 37.008(m) that you are requesting. The agency therefore discontinued the reports you have requested and is unable to provide them for subsequent years.

The same Legislature did, however, also enact subsection 37.008(m-1) that focuses on monitoring district disciplinary data for inaccuracy or program noncompliance. That had previously been done by comparing data submitted to disciplinary requirements in Chapter 37. However, the 2005 Legislature amended Section 37.001(a)(4), to allow districts discretion to *not* follow the mandatory requirements for removals and expulsions under some circumstances. The agency is attempting to revise its data collection efforts to respond to that change.

Please find enclosed several materials that the agency has produced, per your request, under section m-1. Also, I have included a "DAEP Evaluation and Monitoring: History and Current Status" that you may find useful.

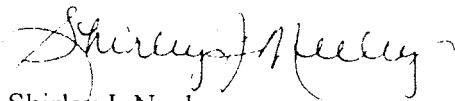
You also requested data for two DAEPs. Data for DAEPs and juvenile justice alternative

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education programs (JJAEPs) are not attributed to the DAEPs and JJAEPs themselves, but are attributed to the home campuses of attending students. TEC §37.011(h) requires TEA to report the data to the regularly assigned campuses for students assigned to JJAEPs. We have followed the same practice for DAEP data as conforming to the Legislature's intent. Houston ISD has submitted teacher qualification reports for these two campuses and it appears that HISD attributes the teacher of record to be the teachers on the home campus. That can be permissible under the "highly qualified" provisions of No Child Left Behind (please see attached document).

Please feel free to contact me with any further questions or concerns.

Sincerely,



Shirley J. Neeley

c: The Honorable Glenn Hegar, Texas Senate

October 7, 2006
Commissioner of Education
Texas Education Agency
1701 N. Congress Ave.
Austin, TX 78701

Dear Commissioner,

Texas Education Code 37 (m and m-1) directs your agency to evaluate each district's alternative education program annually. The evaluation must include student performance on assessment instruments.

On September 22, 2006, I submitted to TEA, under the open records act, a request for a copy of TEA's evaluation on two alternative schools in Houston ISD managed by a private company, Community Education Partners (sent to pir@tea.state.tx.us). I received a call from Perry Weirich (TEA) on October 3, 2006 who said he was looking for the report and would call me again since I had told him I needed the information as part of my testimony to the Senate Education Committee on October 4, 2006. I did not receive a return call or the document requested.

On October 4, 2006, I testified to the Senate Education Committee and reported the following:

1. CEP testified to the committee on September 20, 2006 that 86% of its high school students returned to their schools and graduated.
2. I reported that I had conducted a longitudinal study on a sample of 180 students and found that less than 1% of the students enrolled in CEP in March 2004 had graduated and more disturbing, that 90% of the students were no longer enrolled in HISD two years later.

I provided a copy of my research and other documents to Dr. Cloudt, the Associate Commissioner of Education, after my presentation. I have discussed my belief that CEP schools are dropout factories with the Supt of Schools for HISD and the School Board trustees a year ago. Verification of those discussions were in the packet provided to Dr. Cloudt.

I request that TEA comply with Texas Education Code 37 and evaluate the discrepancy in data provided to TEA, HISD and the Senate Education Committee. The data reported is not consistent. The Code requires that you develop a system and standards for DAEPs. It states that the system must be designed to identify districts that are at high risk of having inaccurate data. The code also states that "If the data reflect that a penal law has been violated, the commissioner shall notify the county attorney. and the attorney general."

Respectfully, Dr. Robert Kimball, 32918 Willenhall Ct, Fulshear, TX 77441

Guidance for the Implementation of NCLB Highly Qualified Teacher Requirements

17. Are teachers in Disciplinary Alternative Education Programs (DAEPs) required to be “highly qualified”?

In order to be in compliance with NCLB, the DAEP teachers of record who provide instruction in core academic subjects must meet the “highly qualified” requirements on the same basis as other teachers, including full state certification. The state requires that all on-campus DAEP teachers be certified, but is phasing in requirements for off-campus DAEP teacher certification. A DAEP teacher subject to meeting “highly qualified” requirements will have to possess both full state certification and demonstrate subject matter competency in each subject taught. There must be a teacher of record for all core academic subjects.

At the elementary level where the DAEP teachers provide instruction and assignments for disruptive or behaviorally challenged students (teachers of record), the DAEP teacher must meet the applicable “highly qualified” requirements for elementary teachers.

At the secondary level, in cases where arrangements are made for independent study or distance learning, the teacher on site at the DAEP may assist with teaching and learning, but does not have to be highly qualified if not the teacher of record. The home campus teachers can be considered the teachers of record for purposes of determining if a student is instructed by a highly qualified teacher under NCLB if local policy provides that the home campus teachers:

- a) assign and evaluate all student coursework;
- b) have final authority to assign a grade to both completed coursework and the final grade for the course;
- c) the student is receiving substantially the same coursework and is subject to the same grading standards as other (non-removed) students in the course;
- d) the teacher of record is available for face-to-face consultation by either the student or the DAEP teacher on a regular basis; and
- e) the teacher physically present at the DAEP meets all applicable SBEC certification requirements under TEC 37.008(a)(7-8).

While using the teacher-of-record strategy meets the highly qualified requirement; however, please be advised that this strategy may not meet the state requirements under TEC 37.008(a)(7-8). (See question 6 for class monitor information that may apply to some DAEPs.)

18. Are teachers in Alternative Education Programs (AEPs) required to be “highly qualified”?

The same strategy used for DAEPs may be used for an Alternative Education Program (e.g., dropout recovery program). There must be a certified teacher of record for all core academic subjects, and the teacher of record must meet the “highly qualified” requirements for elementary or secondary, as appropriate.