



STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING



JENNIFER M. GRANHOLM  
GOVERNOR

MICHAEL P. FLANAGAN  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION

December 15, 2008

**MEMORANDUM**

TO: Superintendents and Principals of High Priority Schools  
PSA Management Companies and Authorizers  
Supplemental Educational Services Providers

FROM: Sally Vaughn, Ph.D. *Sally*  
Deputy Superintendent/Chief Academic Officer

SUBJECT: Federal Letter of Clarification Dated August 20<sup>th</sup>, 2008

The United States Department of Education (USED) has provided the state education agencies with a letter of clarification dated August 20, 2008 (attached), regarding Supplemental Educational Services (SES). This communication specifically addresses two issues that have generated questions for the implementation of SES. The first clarification addresses the role of parents in the creation of the Individual Learning Plan (ILP). The second clarification addresses the practice of technology-based SES providers allowing students to keep computers at the cessation of tutoring services. The Michigan Department of Education (MDE) guidelines resulting from that letter is provided in this communication.

**MDE Guidelines on Individual Learning Plans (ILPs) and Parent Consultation**

- 1) The LEA is responsible for the creation of the ILP. The LEA may request that an SES provider conduct the ILP process, but the SES provider is not required to do so. The LEA retains final responsibility for completing the ILP.
- 2) Consultation with parents in creating the ILP is an integral part of the process. The LEA may request that an SES provider conduct the parent consultation, but the SES provider is not required to do so. The LEA retains final responsibility for contacting the parent for participation in creation of the ILP.
- 3) Consultation with parents may take different forms. The accepted methods for consultation with parents are:
  - a) Face to face meetings (in a mutually agreed upon location; the LEA may not limit this to only school grounds/facilities)
  - b) Email
  - c) Telephone
- 4) LEAs (or the SES provider acting on behalf of the LEA) must document the date of the parent consultation and also the method used (face to face, email, or phone). This documentation must be kept with individual student records or in a central file in accordance with each entity's record keeping procedures.

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- 5) LEAs (or the SES provider acting on behalf of the LEA) must make a minimum of three (3) documented attempts to contact parents for purposes of ILP creation/consultation. This documentation must be kept with individual student records or in a central file in accordance with each entity's record keeping procedures.
- 6) If the LEA (or the SES provider acting on behalf of the LEA) is unable to reach the parent for consultation after three documented attempts, it may proceed with the student's ILP creation.
- 7) LEAs may not use the lack of parent involvement in the creation of the ILP as grounds to deny SES to any child whose parents have otherwise requested services, nor may the LEA use this as grounds to deny payment to the SES provider for services rendered.
- 8) LEAs may not use the lack of a parent signature on the ILP as grounds to deny SES to any child whose parents have otherwise requested services nor may the LEA use this as grounds to deny payment to the SES provider for services rendered.

LEAs must remove any language in their SES provider contracts for the 2009-10 academic year that prohibits the initiation of SES or denies payment to SES providers for services rendered in the event parent consultation or signature is not obtained in the ILP process.

As indicated above, the LEA retains final authority on the creation of the ILP, regardless of who has created it (the LEA or the SES provider acting on its behalf).

SES providers **must** follow the instructional plan and goals developed in the ILP. Failure to follow the ILP may result in suspension or removal from the State approved SES provider list.

### **MDE Guidelines on Computers and Incentives**

- 1) SES providers that utilize the internet or other technology for distance tutoring may allow students to keep computers at the cessation of services **ONLY IF** the computers are used for instructional purposes.
- 2) SES providers may not give computers to students as non-instructional incentives.
- 3) SES providers that utilize face to face tutoring may not give computers to students.
- 4) Before or during the registration period, SES providers must not verbally or nonverbally promise or reference the computers that will be provided upon program completion.
- 5) Informational program materials, including the 150 word program summary, must not verbally or non-verbally promise or reference the computers that will be provided upon program completion.
- 6) Effective **IMMEDIATELY**, SES providers that allow students to keep computers at the cessation of tutoring services must fully disclose to the Michigan Department of Education (MDE), schools, and parents the following information:
  - a) Type of equipment (laptop, desktop, handheld)
  - b) Brand/manufacturer of computer or handheld device
  - c) Age/status of computer or handheld device (new, used, refurbished)
  - d) Peripherals including, but not limited to: mouse, keyboard, monitor, cables

- e) Computer/handheld device hardware, including, but not limited to: hard drive size, speed/type of processor, number and type of disc drives, and desktop memory
  - f) Computer/handheld device software, including, but not limited to: operating system, and description of all programs installed
  - g) Appropriate software licenses (i.e. Microsoft Office®)
- 7) Technology based SES providers must also detail the following to the MDE, schools, and parents:
- a) Type of internet connection or service utilized during service period (if applicable; e.g. dial-up, DSL, high speed)
  - b) Terms and conditions for internet service during tutoring, including length of time and use outside of tutoring sessions
- 8) The SES provider may choose to offer additional electronic tutoring or other services after SES has concluded. These may be provided free of charge or at a cost to parents. However, the SES provider must clearly communicate the terms of the continued service(s) to MDE, schools, and parents.

Failure by the SES provider to fully disclose all required information may result in suspension or removal from the State approved SES provider list.

Any technology related service (i.e., internet), hardware or software application that is found to be non-instructional in nature by MDE will be treated as an incentive and result in a violation of SES Code of Ethics. Such violations may result in suspension or removal from the State approved SES provider list.

Thank you for your prompt attention to this policy. If you have questions about this communication or need more information, please feel free to contact Bill Witt at 517-373-4140 or WittB1@michigan.gov.



# UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INNOVATION AND IMPROVEMENT

ASSISTANT DEPUTY SECRETARY

August 20, 2008

Dear Chief State School Officer:

The Department of Education issues this guidance to provide States with information regarding two areas of implementation of the supplemental educational services (SES) provisions of Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB). This guidance concerns (1) the development of individual student agreements, including (a) who bears responsibility for developing the agreements, and (b) how the requirement of “consultation with parents” can be met; and (2) whether computers used as part of an SES program and kept by students at the conclusion of such program may be considered an incentive.

This guidance represents the Department of Education’s current thinking on these topics. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. If you are interested in commenting on this guidance, please email us your comment at [OIIGuidanceDocument@ed.gov](mailto:OIIGuidanceDocument@ed.gov) or write to us at the following address:

U.S. Department of Education  
Office of Innovation and Improvement  
400 Maryland Avenue, SW  
Washington, D.C. 20202

## Individual Student Agreements

**Responsibility for Developing Student Agreements.** The ESEA requires that a local educational agency (LEA) enter into an agreement with each SES provider chosen by a parent. Among other requirements for the agreement, the statute: “require[s] the local educational agency to develop, in consultation with parents (and the provider chosen by the parents), a statement of specific achievement goals for the student, how the student’s progress will be measured, and a timetable for improving achievement.” ESEA section 1116(e)(3)(A).

As this statutory language makes clear, it is the LEA’s responsibility, and not the responsibility of a provider, to ensure that an agreement is completed for each student participating in SES and that each agreement contains the information required under the statute. However, an LEA and a provider may agree that the provider will complete, on behalf of the LEA, the agreement for each student the provider serves. An LEA cannot require a provider to develop the agreements for the students it serves, absent the provider’s consent. Ultimately, the LEA maintains final responsibility for reviewing and approving all agreements developed by providers, and for making sure that all agreements, whether developed by the LEA itself or by a provider on behalf of the LEA, are completed for all students participating in SES and contain all required information.

**Fulfilling the “Consultation with Parents” Requirement.** Section 1116(e)(3)(A) of the ESEA requires consultation with a student’s parents as part of the development of the student’s individual agreement, but it does not define what consultation must entail or how it must occur. Some LEAs are interpreting this provision to require a parent’s signature on the agreement before SES be provided. The statute, however, does not specifically require a parent signature as evidence that consultation has occurred. Rather, we believe that an LEA must offer parents a genuine opportunity to consult on the terms of their child’s

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individual student agreement, but that an LEA cannot use the consultation requirement to deny SES to a child whose parents have not participated in the development of their child's SES plan but who have otherwise requested that their child receive SES.

An LEA must be able to demonstrate that it (or a provider acting on its behalf) has made reasonable efforts to consult with a parent of each student who has requested SES. This may include attempts to reach parents through telephone, email, home visits, at school events, or other means.

An SEA should determine what it considers reasonable efforts by its LEAs to consult with parents, and should provide guidance to its LEAs in terms of when, how often, and through what means an LEA (or a provider on behalf of the LEA) must attempt to consult with parents before it can deem the consultation requirement to have been met. An SEA could also develop a broad definition of "consultation" that would include conversations with parents by phone or email. We encourage SEAs to establish reasonable requirements for their LEAs in this area.

To facilitate parents' participation in the consultation process, an LEA could indicate on its SES enrollment forms that the LEA is required to consult with parents during the development of individual student agreements and that parents' participation in this process is expected and appreciated. Additionally, an LEA could include, on the SES enrollment form or through other means, an opportunity for parents to express their preferred method of consultation.

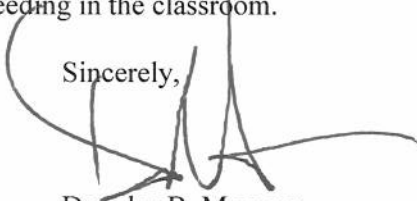
We encourage SEAs to monitor their LEAs carefully with respect to the development of student agreements and to ensure that the agreements are of sufficient quality to drive improvements in student achievement.

#### Computers Used in SES Programs and Incentives

In the Department's Non-Regulatory Guidance on SES, we state that a provider that uses technology to deliver tutoring services may provide students with computers for the students to use or keep as part of the provider's instructional program (Question C-10.). It has come to our attention that some SEAs may be prohibiting providers from allowing students served by the providers to keep a computer at the completion of tutoring because the SEAs view the computers as an unallowable incentive. We believe, however, that it is appropriate for SEAs to allow students to keep the computers upon completion of the SES program if the computers' primary purpose is instructional. If the computers' primary purpose is not instructional, the computers may be an unallowable incentive under State policy. SEAs should continue to monitor SES providers and determine whether providers are using incentives in a way that violates State policy.

SES is an important component of NCLB, and we thank you for your efforts to ensure that students are obtaining quality services and succeeding in the classroom.

Sincerely,



Douglas B. Mesecar  
Assistant Deputy Secretary