



Supplemental Educational Services (SES)

Provider Handbook
September 2011



SUPPLEMENTAL EDUCATIONAL SERVICES (SES)

PROVIDER HANDBOOK

SEPTEMBER 2011



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SES LEGISLATION



TITLE I, PART A –SECTION 1116(e)

1. SUPPLEMENTAL EDUCATIONAL SERVICES

In the case of any school described in paragraph (5), (7), or (8) of subsection (b), the local educational agency serving such school shall, subject to this subsection, arrange for the provision of supplemental educational services to eligible children in the school from a provider with a demonstrated record of effectiveness, that is selected by the parents and approved for that purpose by the State educational agency in accordance with reasonable criteria, consistent with paragraph (5), that the State educational agency shall adopt.

2. LOCAL EDUCATIONAL AGENCY RESPONSIBILITIES

Each local educational agency subject to this subsection shall:

- a. provide, at a minimum, annual notice to parents (in an understandable and uniform format and, to the extent practicable, in a language the parents can understand) of—
 - i. the availability of services under this subsection;
 - ii. the identity of approved providers of those services that are within the local educational agency or whose services are reasonably available in neighboring local educational agencies; and
 - iii. a brief description of the services, qualifications, and demonstrated effectiveness of each such provider;
- b. if requested, assist parents in choosing a provider from the list of approved providers maintained by the State;
- c. apply fair and equitable procedures for serving students if the number of spaces at approved providers is not sufficient to serve all students; and
- d. not disclose to the public the identity of any student who is eligible for, or receiving, supplemental educational services under this subsection without the written permission of the parents of the student.

3. AGREEMENT

In the case of the selection of an approved provider by a parent, the local educational agency shall enter into an agreement with such provider. Such agreement shall:

- a. require 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 that, in the case of a student with disabilities, is consistent with the student's individualized education program under section 614(d) of the Individuals with Disabilities Education Act;
- b. describe how the student's parents and the student's teacher or teachers will be regularly informed of the student's progress;
- c. provide for the termination of such agreement if the provider is unable to meet such goals and timetables;
- d. contain provisions with respect to the making of payments to the provider by the local educational agency; and
- e. prohibit the provider from disclosing to the public the identity of any student eligible for, or receiving, supplemental educational services under this subsection without the written permission of the parents of such student.

4. STATE EDUCATIONAL AGENCY RESPONSIBILITIES

A State educational agency shall:

- a. in consultation with local educational agencies, parents, teachers, and other interested members of the public, promote maximum participation by providers to ensure, to the extent practicable, that parents have as many choices as possible;
- b. develop and apply objective criteria, consistent with paragraph (5), to potential providers that are based on a demonstrated record of effectiveness in increasing the academic proficiency of students in subjects relevant to meeting the State academic content and student achievement standards adopted under section 1111(b)(1);
- c. maintain an updated list of approved providers across the State, by school district, from which parents may select;
- d. develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by approved providers under this subsection, and for withdrawing approval from providers that fail, for 2 consecutive years, to contribute to increasing the academic proficiency of students served under this subsection as described in subparagraph (B); and

- e. provide annual notice to potential providers of supplemental educational services of the opportunity to provide services under this subsection and of the applicable procedures for obtaining approval from the State educational agency to be an approved provider of those services.

5. CRITERIA FOR PROVIDERS

In order for a provider to be included on the State list under paragraph (4)(C), a provider shall agree to carry out the following:

- a. Provide parents of children receiving supplemental educational services under this subsection and the appropriate local educational agency with information on the progress of the children in increasing achievement, in a format and, to the extent practicable, a language that such parents can understand.
- b. Ensure that instruction provided and content used by the provider are consistent with the instruction provided and content used by the local educational agency and State, and are aligned with State student academic achievement standards.
- c. Meet all applicable Federal, State, and local health, safety, and civil rights laws.
- d. Ensure that all instruction and content under this subsection are secular, neutral, and nonideological.

6. AMOUNTS FOR SUPPLEMENTAL EDUCATIONAL SERVICES

The amount that a local educational agency shall make available for supplemental educational services for each child receiving those services under this subsection shall be the lesser of:

- a. the amount of the agency's allocation under subpart 2, divided by the number of children from families below the poverty level counted under section 1124(c)(1)(A); or
- b. the actual costs of the supplemental educational services received by the child.

7. FUNDS PROVIDED BY STATE EDUCATIONAL AGENCY

Each State educational agency may use funds that the agency reserves under this part, and part A of title V, to assist local educational agencies that do not have sufficient funds to provide services under this subsection for all eligible students requesting such services.

8. DURATION

The local educational agency shall continue to provide supplemental educational services to a child receiving such services under this subsection until the end of the school year in which such services were first received.

9. PROHIBITION

Nothing contained in this subsection shall permit the making of any payment for religious worship or instruction.

10. WAIVER

a. REQUIREMENT

At the request of a local educational agency, a State educational agency may waive, in whole or in part, the requirement of this subsection to provide supplemental educational services if the State educational agency determines that:

- i. none of the providers of those services on the list approved by the State educational agency under paragraph (4)(C) makes those services available in the area served by the local educational agency or within a reasonable distance of that area; and
- ii. the local educational agency provides evidence that it is not able to provide those services.

- b. NOTIFICATION– The State educational agency shall notify the local educational agency, within 30 days of receiving the local educational agency's request for a waiver under subparagraph (A), whether the request is approved or disapproved and, if disapproved, the reasons for the disapproval, in writing.

11. SPECIAL RULE

If State law prohibits a State educational agency from carrying out one or more of its responsibilities under paragraph (4) with respect to those who provide, or seek approval to provide, supplemental educational services, each local educational agency in the State shall carry out those responsibilities with respect to its students who are eligible for those services.

12. DEFINITIONS

In this subsection:

- a. the term eligible child' means a child from a low-income family, as determined by the local educational agency for purposes of allocating funds to schools under section 1113(c)(1);
- b. the term provider' means a non-profit entity, a for-profit entity, or a local educational agency that:

- i. has a demonstrated record of effectiveness in increasing student academic achievement;
 - ii. is capable of providing supplemental educational services that are consistent with the instructional program of the local educational agency and the academic standards described under section 1111; and
 - iii. is financially sound; and
- c. the term supplemental educational services' means tutoring and other supplemental academic enrichment services that are:
 - i. in addition to instruction provided during the school day; and
 - ii. are of high quality, research-based, and specifically designed to increase the academic achievement of eligible children on the academic assessments required under section 1111 and attain proficiency in meeting the State's academic achievement standards.

THE *NO CHILD LEFT BEHIND ACT OF 2001* (NCLB) AND ADEQUATE YEARLY PROGRESS (AYP)

HISTORY OF AYP

AYP was established as the accountability measure for Title I schools and districts in the 1994 reauthorization of the Elementary and Secondary Education Act of 1965. Each State was required to develop its own formula based on State assessments in at least reading and mathematics. Many different approaches were used, with the result that Title I schools and districts were held to different standards in each State.

Michigan's formula was developed by the Title I Committee of Practitioners, with input from educators across the State. It established a very rigorous system that held Title I schools and districts accountable for substantial yearly progress in each of the subject areas of reading, mathematics, science and writing. Many Title I schools were identified for improvement - more than in any other State. These schools were expected to use their AYP information to strengthen their school improvement plans and focus their professional development activities.

The most recent reauthorization of Title I in NCLB made major changes in the AYP requirements to bring more consistency to the approaches used by individual States. The new legislation also made dramatic changes in how AYP results are used, with a focus on identifying low-performing Title I schools and districts and offering other educational options to their students.

In response to the 2001 legislation, Michigan changed its approach to AYP to concentrate on English language arts and mathematics, and to use the new Federal formula for establishing annual Statewide achievement objectives that apply to each Title I school and district. Schools and districts that do not meet these achievement objectives can still demonstrate AYP by showing adequate improvement in the percentage of students who meet state standards in English language arts and mathematics, in combination with acceptable attendance or graduation rates.

THE PURPOSE OF AYP

AYP is one of the cornerstones of the Federal NCLB Act. In Michigan, it's a measure of year-to-year student achievement on the Michigan Education Assessment Program (MEAP) test. According to NCLB, Michigan and other States had to develop target starting goals for AYP and then had to "raise the bar" in gradual increments so 100 percent of the students in the State are proficient on State assessments by the 2013-14 school year. While responsibility for making AYP is focused on the core subjects of English language arts and mathematics, schools and districts are encouraged to examine their progress in all subjects and use the information to help focus their school improvement planning and professional development activities.

NCLB also requires other indicators to be used in determining AYP. For elementary and middle schools in Michigan, attendance rates are used. For high schools, graduation rates are used.

AYP applies to each district and school in the State; however, NCLB sanctions for schools that do not make AYP for two or more years in a row only apply to those districts and schools that receive Title I funds. Because Michigan had an AYP definition in place before 2001-02, Title I schools that did not make AYP prior to that year may be identified for corrective action as defined in NCLB.

Each school receives its AYP status as a whole, but that's just part of the status report. Schools also receive their disaggregated AYP status for subgroups of students based on the following categories: race/ethnicity, students with disabilities, limited English proficiency (LEP) and economically disadvantaged. According to the Michigan State Board of Education, each subgroup must include at least 30 students to ensure student confidentiality and statistical reliability.

HOW AYP IS USED

AYP is used to track the success of Title I schools and districts in improving student achievement. Schools and districts that exceed their AYP goals for two or more consecutive years are eligible for recognition and are encouraged to share their successful programs. Schools and districts that fail to make AYP for two consecutive years are identified for improvement and required to implement improvement plans. They are also required to use a portion of their Title I funds for professional development to support their plans.

NCLB also established new educational options for students who attend Title I schools that are identified for improvement. School districts must offer these students the option to transfer to another school in the district that is not identified for improvement and must provide or pay for transportation. If the district does not have space to accommodate all transfer requests, it must give priority to low-achieving students from low-income families.

If the district does not have any other school to which students can transfer, it is required to attempt to make arrangements with neighboring districts and is expected to make additional efforts to improve the services in the identified schools.

Schools that fail to make AYP for a third consecutive year are also subject to new requirements for "supplemental educational services (SES)," which are instructional services provided outside of the school day by an educational service provider selected by the parents from a State-approved list. These services are available only to low-income students, with priority given to low-achieving students.

If schools fail to make AYP for a fourth or fifth year, the district must continue to offer the transfer option and SES. It must also take one or more specific actions to make major changes in the school, such as providing a new curriculum and appropriate professional development, decreasing the school's decision-making authority, appointing an outside expert to advise the school, or changing the structure of the school.

If districts that have been identified for improvement continue to fail to make AYP, the Michigan Department of Education is required to take one or more corrective actions with respect to the district. These actions are similar to those required for individual schools.

[illegible]

REQUIREMENTS FOR TITLE I SCHOOLS IDENTIFIED FOR IMPROVEMENT, CORRECTIVE ACTION, OR RESTRUCTURING

NOT IDENTIFIED FOR SCHOOL IMPROVEMENT	IDENTIFIED FOR SCHOOL IMPROVEMENT – YEAR ONE	IDENTIFIED FOR SCHOOL IMPROVEMENT – YEAR TWO
Does not have two consecutive years of “No AYP”	No AYP for two consecutive years	No AYP for three consecutive years
No Requirements	REQUIREMENTS	
	<ul style="list-style-type: none"> • Parent Notification • Choice/Transfer • Technical Assistance • Implement Revised School Improvement Plan • Use 10% of School’s Title I Allocation for Professional Development 	<ul style="list-style-type: none"> • Parent Notification • Choice/Transfer • Supplemental Educational Services • Technical Assistance • Implement Revised School Improvement Plan • Use 10% of School’s Title I Allocation for Professional Development

IDENTIFIED FOR CORRECTIVE ACTION	IDENTIFIED FOR RESTRUCTURING - PLANNING	IDENTIFIED FOR RESTRUCTURING- IMPLEMENTATION
No AYP for four consecutive years	No AYP for five consecutive years	No AYP for six or more consecutive years
REQUIREMENTS		
<ul style="list-style-type: none"> • Parent Notification • Choice/Transfer • Supplemental Educational Services • Technical Assistance • Corrective Action Information to Public and Parents 	<ul style="list-style-type: none"> • Parent Notification • Choice/Transfer • Supplemental Educational Services • Develop Restructuring Plan • Technical Assistance 	<ul style="list-style-type: none"> • Parent Notification • Choice/Transfer • Supplemental Educational Services • Implement Restructuring Plan

Strengthening Choice and Free Tutoring

How the final regulations for Title I improve Public School Choice and Supplemental Educational Services (SES) in the *No Child Left Behind Act*

October 2008

The reforms introduced into the Elementary and Secondary Education Act of 1965 (ESEA) by the No Child Left Behind Act of 2001 (NCLB) fundamentally changed the way that states and districts approach the challenge of educating all students to achieve high standards. The U.S. Department of Education announced new regulations for Title I of the No Child Left Behind Act that respond to the lessons learned from six years of implementing these reforms and build on the advancements of state assessment and accountability systems. The Department carefully considered the more than 400 comments received after issuing the proposed regulations in April 2008 and made several substantive changes based on those comments.

The final regulations establish a uniform and more accurate measure of calculating high school graduation rate that is comparable across states; strengthen public school choice and supplemental educational services requirements; and increase accountability and transparency.

Proposed Regulations for Public School Choice and Supplemental Educational Services

➤ Timely and Clear Notification to Parents

Early notification to parents of their public school choice options is essential for parents to have time to make an informed decision about whether to transfer their child to another public school. Additionally, it is important that a district's communication to parents about their SES options be as straightforward and easy for parents to understand as possible.

- ✓ The **final regulations** supplement the regulatory provisions regarding notice to parents of the availability of public school choice and SES to require that notice be timely and clear. Districts must:
 - Notify parents of eligible children of the option to transfer their child to another public school not identified for improvement and provide details about the available options as far in advance as possible, but no later than 14 days before the start of the school year; and
 - Notify parents of eligible children of the availability of SES in a manner that is clear and concise, as well as clearly distinguishable from other school-related information that parents receive.

➤ Access to Information on District Implementation of Public School Choice and SES

Requiring districts to post on their Web sites current information about available Title I public school choice options and SES will make this information more widely accessible to parents and other interested parties.

- ✓ The **final regulations** require districts to include on their Web sites the following information in a timely manner in order to ensure that parents have current information on their public school choice and SES options:

- The number of students who were eligible for and who participated in SES and public school choice, beginning with data from the 2007–08 school year and for each subsequent year;
- A list of SES providers approved to serve the district, as well as the locations where services are provided for the current school year; and
- A list of available schools to which students eligible for public school choice may transfer for the current school year.

➤ **State Responsibilities for SES**

Requiring each state to post on its Web site the funds available to support public school choice, SES, and parent outreach, and identify the providers that can serve students with special needs will provide valuable information for all stakeholders. In addition, requiring each state to report publicly on the criteria it uses to monitor districts' implementation of SES will help ensure that all states set rigorous and clear expectations for their districts, which, in turn, will lead to more effective implementation of SES.

- ✓ The **final regulations** require each state to:
 - Post on its Web site, for each district, the amount of funds the district must spend on choice-related transportation, SES, and parent outreach, and the maximum per-pupil amount available for SES;
 - Indicate on its list of approved SES providers those that are able to serve students with disabilities or limited English proficient students; and
 - Develop, implement, and publicly report the standards and techniques it uses to monitor how districts implement the SES requirements.

➤ **SES Provider Approval Process**

The final regulations will help ensure that states use a rigorous approval process that considers all relevant information before they approve entities to serve as SES providers in the state.

- ✓ The **final regulations** supplement the requirements for approving applications from potential SES providers by requiring each state to consider:
 - Evidence from a provider that its instructional methods and content are aligned with state academic content and student academic achievement standards, and are of high quality, research-based, and specifically designed to increase the academic achievement of eligible children;
 - Information from a provider on whether it has been removed from any state's approved provider list;
 - Parent recommendations or results from parent surveys, if available, regarding the success of a provider's instructional program in increasing student achievement; and
 - Any evaluation results demonstrating that a provider's instructional program has improved student achievement.

➤ **State Monitoring of SES Provider Effectiveness**

The final regulations will help create a more uniform, evidence-based process across states for monitoring SES providers.

- ✓ The **final regulations** require a state, before renewing or withdrawing approval of a provider, to examine, at a minimum, evidence that the provider's instructional program:
 - Is consistent with the instruction provided and content used by the district and the state;
 - Addresses students' individual needs as described in their SES plans;
 - Has contributed to increasing students' academic proficiency; and
 - Is aligned with state academic content and student academic achievement standards.

States must also take into account parent recommendations, results from parent surveys, or other evaluation results, if any, regarding the success of a provider's program in increasing student achievement.

➤ **Costs for Parent Outreach Related to Public School Choice and SES**

Under the statute, districts are required to spend an amount equal to at least 20 percent of their Title I, Part A allocation on choice-related transportation and SES (the "20 percent obligation"). By permitting districts to count costs of parent outreach and assistance toward meeting their 20 percent obligation, the final regulations encourage districts to provide more parent outreach and other assistance to help parents take advantage of their public school choice and SES options.

- ✓ The **final regulations** permit a district to count a portion of its costs for parent outreach and assistance (up to an amount equal to 0.2 percent of its Title I, Part A allocation) toward meeting its 20 percent obligation.

➤ **Use of Funds for Public School Choice and SES**

The final regulations help to ensure that parents of eligible students have a genuine opportunity to transfer their child to another school or to obtain SES before a district may use any unspent funds from its 20 percent obligation for other allowable activities.

- ✓ The **final regulations** require a district, before it uses unspent funds from its 20 percent obligation for other allowable activities, to:
 - Meet, at a minimum, the following criteria:
 - Partner, to the extent practicable, with outside groups to help inform students and parents of the opportunities to transfer to another public school or receive SES.
 - Ensure that students and their parents have had a genuine opportunity to sign up to transfer to another school or obtain SES by
 - + Providing timely, accurate notice to parents;
 - + Ensuring that sign-up forms are made widely available and accessible and that they have been distributed directly to all eligible students and their parents; and
 - + Providing a minimum of two enrollment "windows," at separate points in the school year, that are of sufficient length to enable parents of eligible students to make informed decisions about requesting SES and selecting an SES provider.
 - Ensure that SES providers are given access to school facilities on the same terms as are available to other groups that seek to use school facilities.
 - Maintain records demonstrating that the district has met these criteria and has notified the state education agency (SEA) that it has met the criteria.
 - Inform the SEA of the amount of funds remaining from the 20 percent obligation that it intends to spend on other allowable activities.
- ✓ The **final regulations** require that each state:
 - Ensure, through its regular monitoring process, that a district that uses unspent funds from its 20 percent obligation for other allowable activities meets the criteria listed above.
 - In addition to regular monitoring, review, by the beginning of the next school year, the activities of any district that spends a significant portion of its 20 percent obligation for other allowable activities and that has been the subject of multiple complaints regarding its implementation of the public school choice and SES requirements.

For more information, visit www.ed.gov, or call 1-800-USA-LEARN

SES GUIDANCE





Supplemental Educational Services *Non-Regulatory Guidance*



January 14, 2009

SUPPLEMENTAL EDUCATIONAL SERVICES
Title I, Section 1116(e) of the Elementary and Secondary Education Act

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PURPOSE OF GUIDANCE AND SUMMARY OF MAJOR CHANGES

This guidance updates and expands upon the SES Guidance that the Department released on June 13, 2005. It includes a number of new and modified questions that address issues related to the Title I regulations released in October 2008 (hereafter referred to as the 2008 Title I regulations), as well as other major policy guidance the Department has issued since 2005. Responses to other questions are revised to make them clearer or more responsive to issues based on experience gained from the implementation of the Title I SES provisions.

The following are new questions that were not in the 2005 guidance: B-4, B-5, B-8, B-9, B-10, C-8, C-13, C-20, C-21, C-22, C-28, C-29, C-30, C-34, D-1, D-2, D-4, E-2, G-3, G-4, G-5, G-6, G-7, G-8, G-10, G-11, G-12, G-13, H-2, H-4, H-5, H-6, H-19, J-3, J-5, J-6, K-20, K-21, and all of Section L.

The responses to the following questions include significant new information or changes from the 2005 guidance: A-2, B-1, B-2, B-3, C-1, C-3, C-4, C-10, C-11, C-15, C-16, C-17, C-31, C-32, C-33, D-3, E-1, E-6, F-2, G-1, G-2, G-9, G-14, H-1, H-3, H-7, H-8, H-9, H-10, H-15, H-16, H-17, H-18, H-21, I-1, I-3, J-4, K-1, K-3, K-6, K-8, K-9, K-10, K-12, K-13, K-14, K-15, and K-16.

The following sections were re-arranged in this version of the guidance: Section G has become Section H, Section H has become Section I, and Section I has become Section G. Additionally, several other questions have been moved to another section or re-ordered within a section.

The following questions from the 2005 guidance are not included in this new version (numbering reflects the format of the 2005 guidance): A-6, D-1, D-2, D-3, D-5, D-6, G-14, I-1, J-3, K-1, K-19, K-21, and K-25.

This guidance represents the Department's current thinking on SES requirements. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required to comply with applicable law or regulations. If you are interested in commenting on this guidance, please e-mail us your comment at OIGuidanceDocument@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

This guidance document supersedes the following guidance issued by the Department:

- Supplemental Educational Services Non-Regulatory Guidance, issued on June 13, 2005;
- Questions and Answers on the Participation of Private Schools in Providing Supplemental Educational Services (SES) Under *No Child Left Behind*, issued on May 1, 2006, to the extent the issues covered in the private schools guidance are covered in this guidance;

- Letter to State Chiefs on District-Affiliated Entities Becoming SES Providers, issued on May 10, 2006;
- Letter to School Districts Regarding SES Providers Contacting Parents, issued on August 10, 2007;
- Letter to State Chiefs Regarding Individual Student Agreements and Computers Used in SES Programs, issued on August 20, 2008; and
- All previous guidance on the SES provisions that the Department has issued informally, to the extent the issues covered by such informal guidance are covered in this guidance.

Supplemental Educational Services

Title I, Section 1116(e) of the Elementary and Secondary Education Act

I. INTRODUCTION

A. GENERAL INFORMATION

A-1. What are supplemental educational services?

Supplemental educational services (SES) are additional academic instruction designed to increase the academic achievement of students in schools in the second year of improvement, corrective action, or restructuring. These services, which are in addition to instruction provided during the school day, may include academic assistance such as tutoring, remediation and other supplemental academic enrichment services that are consistent with the content and instruction used by the local educational agency (LEA) and are aligned with the State's academic content and achievement standards. SES must be high quality, research-based, and specifically designed to increase student academic achievement [Section 1116(e)(12)(C); 34 §C.F.R. 200.45(a)].

A-2. What is the purpose of SES?

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), calls for parents of eligible students attending Title I schools that have not made adequate yearly progress (AYP) in increasing student academic achievement for three years to be provided with opportunities and choices to help ensure that their children achieve at high levels. SES provide extra academic assistance for eligible children. Students from low-income families who are attending Title I schools that are in their second year of school improvement (i.e., have not made AYP for three years), in corrective action, or in restructuring status are eligible to receive these services.

State educational agencies (SEAs) are required to identify entities, both public and private, that qualify to provide these services. Parents of eligible students are then notified, by the LEA, that SES will be made available, and parents may select any approved provider in the geographic area served by the LEA or within a reasonable distance of that area that they feel will best meet their child's needs. The LEA will sign an agreement with the provider selected by the parent, and the provider will then provide services to the child and report on the child's progress to the parents and to the LEA.

The goal of SES is to increase eligible students' academic achievement in a subject or subjects that the State includes in its ESEA assessments under Section 1111 of the ESEA, which must include reading/language arts, mathematics, and science, as well as English language proficiency for students with limited English proficiency (LEP).

A-3. What other educational options are available to students and parents under NCLB?

NCLB provides several options for parents. Two options address educational issues and one addresses the issue of student safety.

Students attending Title I schools identified for improvement are given the option of (1) transferring to another public school, or (2) receiving SES, depending on the eligibility of the student and the status of the school. (An SEA may also require non-Title I schools to offer SES and public school choice.) The option to transfer to another public school is available to all students enrolled in Title I schools that are identified for improvement, corrective action, or restructuring. SES, as discussed in this document, are available to students from low-income families who are enrolled in Title I schools in the second year of school improvement and for subsequent years. These options continue until the school has made AYP for two consecutive years. In circumstances where public school choice is not possible (i.e., if all schools at a grade level are in school improvement, if an LEA has only a single school at that grade level, or if schools in an LEA are remote from each other making it impractical to transfer to a new school), we encourage LEAs to consider offering SES during the first year of school improvement. When both options are available, parents of students eligible for SES have the choice of which option they would prefer for their child. For more information on public school choice requirements, go to: <http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc>.

Another educational choice exists for parents when their children are in schools that have been identified as persistently dangerous, or when a child has been the victim of a violent crime on school property [Section 9532]. Such students have the option of transferring to a different, safer public school. States must identify schools that are persistently dangerous in time for LEAs to notify parents and students, at least 14 days calendar prior to the start of the school year, that their school has been identified [68 Fed. Reg. 35671 (June 16, 2003)]. For more information on the unsafe school choice option, go to: <http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.doc>.

A-4. When must an LEA make SES available?

In general, an LEA must make SES available for eligible students attending Title I schools that do not make AYP after one year of school improvement (three years of not making AYP). For example, if a school did not make AYP in the 2005-2006 and 2006-2007 school years, it would be identified for improvement. If the school did not make AYP again in the 2007-2008 school year, the school would be identified for its second year of improvement and the LEA would have to make SES available to eligible students in the school at the beginning of the 2008-2009 school year.

A school must continue offering SES to its eligible students until the school is no longer identified for school improvement, corrective action, or restructuring. A school is no longer identified for improvement, corrective action, or restructuring when it has made AYP for two consecutive years.

A-5. Who is eligible to receive SES?

Eligible students are all students from low-income families who attend Title I schools that are in their second year of school improvement, in corrective action, or in restructuring. Eligibility is not dependent on whether a student is a member of a subgroup that did not make AYP or whether a student is in a grade that takes the statewide assessments required by Section 1111 of the ESEA.

If the funds available are insufficient to provide SES to each eligible student whose parent requests those services, an LEA must give priority to the lowest-achieving eligible students [Section 1116(b)(10)(C); 34 C.F.R. §200.45(d)]. In this situation, the LEA should use objective criteria to determine

which students are the lowest-achieving. For example, the LEA may focus services on the lowest-achieving eligible students in the subject area that resulted in the school being identified for improvement, corrective action, or restructuring. The services should be tailored to meet the instructional needs of eligible students in order to increase their academic achievement. (See Section F for additional information.)

II. STATE EDUCATIONAL AGENCY RESPONSIBILITIES

B. OVERVIEW OF SEA RESPONSIBILITIES

B-1. What is the responsibility of an SEA in ensuring that SES are made available to all eligible students?

An SEA has a number of responsibilities in ensuring that SES are available to all eligible students. The SEA must approve SES providers, maintain a list of approved providers, display certain information on its Web site, monitor its LEAs' implementation of SES, and monitor the quality and effectiveness of providers. Specifically, the SEA must:

1. Consult with parents, teachers, LEAs, and interested members of the public to promote maximum participation by providers to ensure, to the extent practicable, that parents have as many choices as possible [*Section 1116(e)(4)(A); 34 C.F.R. §200.47(a)(1)(i)*].
2. Provide and disseminate broadly, through an annual notice to potential providers, information on the opportunity to provide SES and the process for obtaining approval to be an SES provider [*Section 1116(e)(4)(E); 34 C.F.R. §200.47(a)(1)(ii)*]. (See Section C for additional information.)
3. Develop and apply objective criteria for approving potential providers [*Section 1116(e)(4)(B); 34 C.F.R. §200.47(a)(2)*]. (See C-1.)
4. Maintain an updated list of approved providers across the State, for each LEA, from which parents may select, and indicate which providers are able to serve students with disabilities or LEP students [*Section 1116(e)(4)(C); 34 C.F.R. §200.47(a)(3)(ii)*]. An SEA should also give each LEA a list of approved providers in its general geographic location. (See C-2.)
5. Post on its Web site, for each LEA, the amount equal to 20 percent of the LEA's Title I, Part A allocation available for SES and choice-related transportation (also known as the "20 percent obligation") and the per-pupil amount available for SES [*34 C.F.R. §200.47(a)(1)(ii)(B)*]. (See B-8.)
6. Develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of services offered by approved SES providers, and for withdrawing approval from providers that fail, for two consecutive years, to contribute to increasing the academic proficiency of students served by the providers [*Section 1116(e)(4)(D); 34 C.F.R. §200.47(a)(4)*]. (See D-1.)
7. Develop, implement, and publicly report on standards and techniques for monitoring an LEA's implementation of SES [*34 C.F.R. §200.47(a)(4)(iii)*]. (See D-4.)

8. Monitor each LEA's implementation of SES, including any LEA that spends less than the amount needed to meet its 20 percent obligation and chooses to spend the remainder of that obligation on other allowable activities to ensure that the LEA complies with the criteria in 34 C.F.R. §200.48(d)(2)(i) [34 C.F.R. §200.48(d)(3)]. (See L-1.)
9. In addition to its regular monitoring, review by the beginning of the next school year any LEA that spends significantly less than the amount needed to meet its 20 percent obligation and has been the subject of multiple complaints, supported by credible evidence, regarding implementation of the public school choice and SES requirements [34 C.F.R. §200.48(d)(3)(ii)(A)]. (See L-16.)

B-2. How can an SEA help ensure that parents have a genuine opportunity to obtain SES for their child?

An SEA should consider ways that it can help parents understand and access SES for their child. It can do this directly, through its own actions and outreach, as well as indirectly, by providing technical assistance to its LEAs and by encouraging LEAs to provide outreach and assistance to help parents make informed decisions about SES.

An SEA might work directly to help parents understand SES and how they can enroll their child in an SES program by:

- Developing a public service announcement on SES, or developing brochures or other media that can be shared with parents.
- Posting on the SEA Web site clear and useful information about providers approved to serve in the State, questions a parent might consider in selecting a provider, a list of schools whose students are eligible for SES, and contact information for LEA and State SES coordinators.
- Working with local parent organizations in the State, such as the State's Parent Information and Resource Center(s) (PIRC) and other outside groups, to develop resources for parents. (See <http://www.nationalpirc.org/directory/index.html> for a list of the PIRCs funded by the U.S. Department of Education.)
- Posting on its Web site an SES registration form that parents can download, complete, and return to their LEAs. Such a form would list the providers available to parents and could be accepted by all LEAs in the State.

Additionally, an SEA could provide technical assistance to its LEAs in the areas of parent outreach and improving access to SES by:

- Providing LEAs with model practices on how LEAs can display information for parents on their Web sites, in a manner that is easy for parents to access and understand, about SES participation and eligibility rates and about approved providers in the LEA.
- Developing a model parent notification letter for its LEAs that meets the requirements of the statute and regulations, and a uniform contract that all LEAs in the State could use with SES providers to ensure that LEAs use fair and equitable contracts and do not unfairly marginalize providers or limit providers' abilities to promote their programs and services.
- Developing model procedures for allowing providers to operate their programs in school buildings.

Finally, an SEA could encourage its LEAs to implement policies that likely will improve parents' understanding of and access to SES, such as:

- Holding “provider fairs” to give parents an opportunity to meet and learn about providers and their programs and to assist parents in gathering information on SES and signing up for services. Any such fairs should be scheduled at times and locations that are convenient to parents.
- Providing teachers and principals with information about SES and local providers, so that these educators can be a resource for parents and encourage parents to enroll their child in SES.
- Providing multiple enrollment periods, of sufficient length, so that parents have sufficient time to make decisions about SES programs for their child.
- Making the registration process as open and accessible as possible by making registration materials widely available to parents and providers.

Note that if an LEA spends less than its 20 percent obligation and wishes to use the funds for other allowable activities, the LEA **must**, among other things:

- Partner, to the extent practicable, with outside groups, such as faith-based organizations, other community-based organizations, and business groups, to help inform eligible students and their families of the opportunity to receive SES;
- Ensure that eligible students and their parents have a genuine opportunity to obtain SES, including by--
 - Providing timely, accurate notice; and
 - Ensuring that sign-up forms for SES are distributed directly to all eligible students and their parents and are made widely available and accessible through broad means of dissemination;
- Provide a minimum of two enrollment “windows,” at separate points in the school year, that are of sufficient length to enable parents to make informed decisions about SES and selecting a provider; and
- Ensure that SES providers are given access to school facilities, using a fair, open and objective process, on the same basis and terms as are available to other groups that seek access to school facilities [34 C.F.R. §200.48(d)(2)(i)]. (See L-1.)

Although these practices are not required for LEAs that spend their full 20 percent obligation or spend the unexpended amount in the subsequent school year, the Department believes they are good, sound practices that would improve implementation of SES in any LEA.

B-3. May an SEA require that SES providers adhere to specific program design parameters?

Yes. As part of its responsibility to approve providers, an SEA may establish certain program design criteria for providers to meet aimed at ensuring that all approved providers offer high-quality services. An SEA could, for example, set a range of acceptable student/tutor ratios. If it does so, an SEA should define acceptable ranges (e.g., 1-10:1 ratio) as opposed to absolute values (e.g., 6:1) so as not to unduly restrict providers’ service delivery options.

An SEA also could establish a range of (or a cap on) acceptable rates that providers may charge in the State to prohibit exorbitant or unrealistically low rates. The use of ranges would help ensure the delivery of quality services while providing necessary flexibility to accommodate fluctuations in attendance and variations in per-pupil funding among LEAs. In all cases, an SEA should strive to maintain a variety of program configurations (e.g., online and offline, individualized and small group, short and long program lengths) so that parents’ choice of providers and programs is not limited, consistent with Section 1116(e)(4)(A) of the ESEA.

Although SEAs have the authority to establish program design criteria for SES providers, it is important to note that LEAs may not impose requirements on providers' program design.

B-4. May an SEA develop a policy with regard to SES providers' use of incentives?

Yes. An SEA may develop a policy with regard to providers' use of financial incentives or other gifts directed to families or to school or LEA personnel to encourage enrollment in an SES program. The Department suggests that an SEA consult with providers on this issue. An SEA should ensure that its policy applies equally to all providers, including public entities, does not prohibit activities by private providers that are allowed by public entities, and does not bar standard marketing practices.

For example, an SEA might want to allow providers to offer nominal incentives to parents or students to attend information sessions and provider fairs, for regular student attendance, or for student academic achievement. On the other hand, an SEA might want to prohibit providers from giving any financial incentive or gift to a student or parent for enrolling in a specific program or changing enrollment to another program. Additionally, an SEA might want to prohibit providers from offering cash or other incentives to schools for signing up students for their programs.

B-5. What business practices of providers should an SEA guard against?

An SEA should ensure that providers do not engage in unfair or illegal business practices. For example, an SEA should clearly take action if it learns that a provider is offering "kickbacks" to LEA officials, principals, or teachers who encourage parents to select that provider, or if it learns that a provider is engaging in false advertising about its SES program or other providers' programs. An SEA's requirements for providers should expressly prohibit such practices so that both providers and LEAs know up front that they are not allowed.

An SEA should also ensure that LEA practices do not give preferential treatment to certain providers due, for instance, to their long-standing relationship with the LEA, or give preferential treatment to its own program over other providers' programs. For example, an SEA should guard against an LEA's advertising its SES program to parents, but not allowing other providers to advertise in the same way. Each of these practices could unfairly encourage participation in one program over other State-approved programs.

B-6. May an SEA define hourly rates for providers?

As explained in B-3, an SEA may, *if it so chooses*, define parameters for acceptable program designs that affect the hourly rates providers charge throughout the State, in order to prohibit grossly exorbitant or unrealistically low rates. An SEA should avoid arbitrarily setting uniform pricing or hourly rates, however, and, if defining acceptable program design parameters for providers, should consider the following factors:

- Pupil/tutor ratio;
- Variation in per-pupil allocations among LEAs in the State;
- Number of instructional hours;
- Qualifications (and therefore cost) of the tutoring staff;
- Cost of instructional materials and equipment (books, computers, manipulatives, etc.);
- Rental fees or other overhead costs (including variations throughout a State);

- LEAs' payment policies regarding attendance; and
- Variation in the cost of doing business among LEAs in the State.

An SEA should avoid setting uniform rates within the State because this could ultimately limit parents' choices of providers or reduce services provided to students. Uniform hourly rates do not accommodate local variations in charges and payment schedules and could result in rates that underpay providers in more expensive markets and overpay them in less expensive ones. In the case of underpayment, this may lead to providers being unable or unwilling to serve a particular market, which would then limit parental choice.

For these reasons, the Department encourages SEAs to determine acceptable ranges for program design parameters rather than create uniform hourly rates. Furthermore, an SEA's focus should not be on micromanaging the SES marketplace as a whole. Rather, the SEA should make sure that no provider charges a fee that is grossly exorbitant, or a fee that is so low that it is unlikely students will be served well by the provider's program.

B-7. How may an SEA set some program design parameters without inadvertently limiting parental choice?

An SEA that desires to set program design parameters should ensure that such parameters do not result in the inability of a wide variety of providers, including non-profits, for-profits, LEAs, and faith-based and community organizations, from being able to participate as eligible providers, thereby limiting parental choice. This can be accomplished by ensuring that such parameters take into account the type of factors described in B-3 and B-6 and by consulting with providers who are currently providing services within the State prior to setting such parameters.

An SEA should inform prospective providers about the program parameters (e.g., provider's cost, pupil/tutor ratio) it will allow and can include such information in its request for applications. An SEA should also work with its LEAs to ensure that parents have as much information as possible about providers' programs, including the number of hours of service, the pupil/tutor ratio, and the style of instruction being offered.

B-8. What information must an SEA display on its Web site regarding the amount of funds available for SES in each LEA in the State?

An SEA must post on its Web site, for each LEA in the State: (1) the 20 percent obligation that the LEA must spend for choice-related transportation and SES; and (2) the maximum per-pupil allocation for SES in the LEA (the LEA's Title I, Part A allocation divided by the number of children in low-income families as determined by the Census Bureau) [34 C.F.R. §200.47(a)(1)(ii)(B)].

An SEA should be able to easily calculate each LEA's 20 percent obligation and per-pupil allocation from data the SEA has available. The posting of this information will help give all stakeholders a better understanding of the resources available to support SES and public school choice in an LEA.

For example, an SEA might provide the information in the following format:

State Name

Local educational agency	Title I, Part A allocation	20 percent obligation	Per-pupil allocation for SES
School District A	\$1,000,000	\$200,000	\$1,000
School District B	\$500,000	\$100,000	\$950
School District C	\$750,000	\$150,000	\$1,200
School District D	\$250,000	\$50,000	\$1,100

An SEA also might want to clarify that the per-pupil allocation for an LEA is the dollar amount of free tutoring an eligible student could receive and is not an out-of-pocket expense for parents. The SEA should post this information in a timely manner before the start of the school year as soon as the SEA determines its Title I, Part A allocations for LEAs.

B-9. What responsibilities does an SEA have if an LEA cannot post SES data because it does not have a Web site?

As discussed in G-10 through G-12, an LEA is required to prominently display on its Web site information on several aspects of SES. This includes data on student eligibility and participation in SES, as well as a list of SES providers approved by the State to serve the LEA and the locations where services are provided. However, if an LEA that is required to offer SES to eligible students does not have its own Web site, an SEA must post this information on behalf of the LEA [34 C.F.R. §200.39(c)(2)]. An SEA that must post this information on behalf of one or more LEAs must do so as early in the school year as possible, particularly with respect to information on approved providers, so that parents can access this information when making decisions about their child's participation in SES. Additionally, the SEA should post this information on its SES Web page, on another page linked to its SES Web page, or at another prominent location on its Web site so that parents can easily find the information.

B-10. Are SEAs subject to any reporting requirements regarding SES?

Yes. Each SEA must include, in its annual Consolidated State Performance Report, information on SES, including the number of schools with students eligible for SES, the number of students eligible for and participating in SES, and the amount of funds spent on SES [Section 1111(h)(4)]. States must also provide this information through the Education Data Exchange Network (EDEN/EDFacts) for each individual LEA required to offer SES.

C. PROVIDER ELIGIBILITY AND APPROVAL

Overview of State Approval

C-1. How does an SEA approve SES providers?

An SEA must develop and apply objective criteria that are based on statutory and regulatory requirements for approving providers and make these criteria publicly available to prospective providers. In addition, the SEA must publish its list of approved providers.

In conducting its approval process, the SEA must ensure that each provider it approves:

1. Has a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the State's academic content and student academic achievement standards *[Section 1116(e)(12)(B)(i); 34 C.F.R. §200.47(b)(1)(i)]*. (See C-15.)
2. Is capable of providing instructional services that are:
 - (a) High quality, research-based, and designed to increase student academic achievement *[Section 1116(e)(12)(C); 34 C.F.R. §200.47(b)(2)(ii)(C)]*. (See C-16.)
 - (b) Consistent with the instructional program of the LEA *[Section 1116(e)(5)(B), (12)(B)(ii); 34 C.F.R. §200.47(b)(1)(ii), (b)(2)(ii)(A)]*. (See C-17.)
 - (c) Aligned with State academic content and student academic achievement standards *[Section 1116(e)(5)(B); 34 C.F.R. §200.47(b)(2)(ii)(B)]*. (See C-17.)
 - (d) Secular, neutral, and nonideological *[Section 1116(e)(5)(D); 34 C.F.R. §200.47(b)(2)(ii)(D)]*.
3. Is financially sound *[Section 1116(e)(12)(B)(iii); 34 C.F.R. §200.47(b)(1)(iii)]*. (See C-18.)
4. Will provide SES consistent with applicable Federal, State, and local health, safety, and civil rights laws *[Section 1116(e)(5)(C); 34 C.F.R. §200.47(b)(2)(iii)]*. (See C-19.)

Additionally, in approving a provider, an SEA must consider, at a minimum:

5. Information from the provider on whether the provider has been removed from any State's approved provider list *[34 C.F.R. §200.47(b)(3)(i)]*. (See C-21.)
6. Parent recommendations or results from parent surveys, if any, regarding the success of the provider's instructional program in increasing student achievement *[34 C.F.R. §200.47(b)(3)(ii)]*. (See C-22.)
7. Evaluation results, if any, demonstrating that the provider's instructional program has improved student achievement *[34 C.F.R. §200.47(b)(3)(iii)]*. (See C-22.)

The criteria that an SEA uses to approve SES providers should be developed in consultation with LEAs, parents, teachers, and other interested members of the public, and promote participation by the maximum number of providers to ensure, to the extent practicable, that parents have as many choices as possible *[Section 1116(e)(4)(A); 34 C.F.R. §200.47(a)(1)(i)]*.

SEAs have flexibility in developing their approval process, but must provide an opportunity at least annually for new providers to apply for inclusion on the State list and must ensure that interested providers are adequately informed of the procedures potential providers must follow when applying for State approval *[Section 1116(e)(4)(E); 34 C.F.R. §200.47(a)(1)(ii)]*. SEAs may establish a reasonable period of time during which additional providers may apply, be evaluated for approval, and be added to the list.

SEAs may not, as a condition of approval, require a provider to hire only staff who meet the "highly qualified teacher" requirements in Sections 1119 and 9101(23) of the ESEA *[34 C.F.R. §200.47(b)(4)]*.

C-2. How may an SEA meet the requirement to maintain and update its list of approved providers?

An SEA must maintain an updated list of all approved providers in the State. This information must identify which providers have been approved to deliver SES in each LEA [Section 1116(e)(4)(C); 34 C.F.R. §200.47(a)(3)(i)]. The list must indicate those providers that are able to serve students with disabilities or LEP students [34 C.F.R. §200.47(a)(3)(ii)]. The list must also identify those providers whose services are accessible through technology, such as distance learning programs [34 C.F.R. §200.47(a)(3)(i)]. The Department recommends that the list include a brief description of the services, qualifications, and demonstrated effectiveness of each provider, because LEAs must include this information in their notice to parents.

Provider Eligibility

C-3. Who may apply to be an approved provider?

A provider of SES may be any public or private (non-profit or for-profit) entity that meets the State's criteria for approval. Public schools (including charter schools), private schools, LEAs, educational service agencies, institutions of higher education, faith-based organizations, community-based organizations, business groups, and individuals are among the types of entities that may apply to the SEA for approval to provide SES.

All potential providers should be held to the same criteria. LEAs, charter schools, and other public schools may not automatically be considered to be approved providers; they must meet the SEA's established criteria and go through the same approval process as all other potential providers. However, schools and LEAs that have been identified for improvement, corrective action, or restructuring may not be SES providers. (See C-7 and C-10.)

C-4. May an individual or group of individuals be an SES provider?

Yes. An individual or group of individuals may be an SES provider if the individual or group meets the applicable statutory and regulatory requirements, as well as the SEA's criteria for approval.

C-5. Are faith-based organizations, including entities such as religious private schools, eligible to be SES providers?

Yes. A faith-based organization (FBO) is eligible to become a provider of SES on the same basis as any other private entity, if it meets the applicable statutory and regulatory requirements. An SEA may not discriminate against potential SES providers on the basis of the entity's religious character or affiliation. Additionally, a provider, including an FBO, may not discriminate against students receiving SES on the basis of religion. An FBO is not required to give up its religious character or identity to be a provider; it may retain its independence, autonomy, right of expression, religious character, and authority over its governance. An FBO, for example, may retain religious terms in its name, continue to carry out its mission, and use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from areas where SES are provided. (See 34 C.F.R. §80.36(j) (<http://www.ed.gov/policy/fund/reg/fbci-reg.html>) for more information.)

Neither Title I nor other Federal funds may be used to support religious practices, such as religious instruction, worship, or prayer. (FBOs may implement such practices, but not as part of SES.) FBOs, like other providers, must ensure that the instruction and content they provide are secular, neutral, and non-ideological [*Section 1116(e)(5)(D); Section 1116(e)(9); 34 C.F.R. §200.47(b)(2)(ii)(D)*].

C-6. May entities that use technology to deliver educational services be SES providers?

Yes. The statute permits providers, including those that are not physically located within an LEA, to use alternate methods for delivery of services, which may include online, Internet-based approaches, as well as other distance-learning technologies. Rural LEAs or LEAs with limited availability of SES providers are especially encouraged to work with providers using these technologies. In addition, 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. (See C-30.)

C-7. May an LEA identified as in need of improvement or corrective action be an SES provider?

No. Federal regulations do not allow an LEA that is identified as in need of improvement or corrective action to be approved as an SES provider [*34 C.F.R. §200.47(b)(1)(iv)(B)*]. However, schools within such an identified LEA that are not identified for improvement, corrective action, or restructuring may apply to be approved providers.

SEAs must notify LEAs of their improvement status prior to the beginning of the school year, and should provide LEAs as much advance notice as possible so that an LEA that is identified as in need of improvement and that is serving as an SES provider can act quickly to offer parents who signed up for its services the option of selecting another provider. An SEA may not keep an LEA on its approved provider list if that LEA is identified as in need of improvement or corrective action under Section 1116 [*34 C.F.R. §200.47(b)(1)(iv)(B)*]. An SEA, based on either preliminary or final AYP determinations, should immediately remove from its approved provider list any LEA that is identified as in need of improvement or is in corrective action.

In order to avoid a disruption in services for students that is often created when an LEA provider is identified for improvement and, thus, may no longer provide SES, an SEA should consider using preliminary AYP data to provide early warning to LEA providers that have not made AYP in the prior year that they should make alternate arrangements for the students they are serving. In this way, parents would have an adequate opportunity to select another provider before services begin.

The only exception to the prohibition on LEAs in improvement or corrective action status serving as SES providers occurs if an LEA must provide SES to students with disabilities, students covered under Section 504, or LEP students because no approved providers are available to do so. In these cases, the LEA must provide those services (either directly or through a contractor) even if it has been identified as in need of improvement or corrective action. (See C-31 through C-33.) If the cause of an LEA's identification for improvement or corrective action is the performance of its students with disabilities or LEP students, it would be preferable for the LEA to serve those students through a contractor rather than directly serving them.

C-8. May an entity that is affiliated with an LEA that has been identified for improvement or corrective action apply to become an SES provider?

If an entity is affiliated with an LEA that is identified for improvement or corrective action but is separate and distinct from the LEA, it is eligible to apply to become an SES provider. Such an entity might be a 21st Century Community Learning Center, a community education program, a parent information and resource center, or another entity that is loosely affiliated with an LEA.

An SEA may approve as an SES provider an entity that is affiliated with an LEA in improvement or corrective action, provided the SEA determines that the entity is separate and distinct from the LEA in which it is operating. In making that determination, an SEA should consider whether the entity satisfies criteria such as the following:

- State law establishes the entity as separate and legally distinct from the LEA.
- The entity has decision-making authority independent from the Superintendent. (It may, however, be accountable to the school board.)
- The entity has a separate stream of funding and does not rely on the LEA for its financial stability.
- The entity has its own hiring capabilities and does not need to abide by the LEA's hiring obligations and requirements.
- The entity has its own operating structure (e.g., a means of communicating with the public separate from the LEA).
- The entity has a separate and independent advisory committee.
- The entity has status as a 501(c)(3) non-profit organization.

An entity does not have to meet all of these criteria in order to be considered separate and distinct from its LEA, but an SEA should use these criteria in determining whether an entity is sufficiently independent from its LEA to be eligible to serve as an SES provider. A stronger case may be made for an entity that meets multiple criteria. Whatever the case, an SEA should document the justification it uses to award approval to an entity that is affiliated with an LEA identified for improvement or corrective action. An SEA may want to consider adding a question to its provider application that would help the SEA determine whether a prospective provider is affiliated with an LEA and the nature of that affiliation.

Additionally, entities that are affiliated with an LEA must meet the criteria that an SEA requires for all SES providers in the State, including providing high-quality instruction and demonstrating a record of effectiveness. Moreover, as a condition of approval, such an entity would need to function as any other SES provider in the LEA. For example, the entity, despite its LEA affiliation, could not have access to information unavailable to other providers, such as student addresses for outreach purposes.

C-9. If an LEA that is a State-approved provider is identified as in need of improvement or corrective action after the beginning of the school year, may it continue providing SES through the end of the school year?

No. If an LEA has been approved as an SES provider and is then identified as in need of improvement or corrective action, the SEA must require the LEA to cease offering its SES program [34 C.F.R. §200.47(b)(1)(iv)(B)]. This should be done as soon as possible, but no later than the start of the next semester of the school year.

C-10. May a public school identified as in need of improvement, corrective action, or restructuring be an SES provider?

No. If a public school is identified as in need of improvement, corrective action, or restructuring, the school may not be an approved SES provider [34 C.F.R. §200.47(b)(1)(iv)(A)].

SEAs must notify LEAs of a school's improvement status prior to the beginning of the school year, and should provide LEAs as much advance notice as possible so that an LEA in which a public school was previously serving as an SES provider can act quickly to offer parents who signed up for the school's services the option of selecting another provider. An SEA may not keep a public school on its approved provider list if that school is identified as in need of improvement, corrective action, or restructuring under Section 1116 [34 C.F.R. §200.47(b)(1)(iv)(A)]. An SEA, based on either preliminary or final AYP determinations, should immediately remove from its approved provider list any public school that is identified as in need of improvement, corrective action, or restructuring.

C-11. May an after-school program housed in a school building be an SES provider if the school in which the program is housed is identified as in need of improvement, corrective action, or restructuring?

Programs that operate *independently* from a school identified as in need of improvement, corrective action, or restructuring and are not a part of the school's regular education program may become SES providers if they meet the SEA's criteria. The status of the school does not affect the eligibility of an independent entity housed in the school. An SEA should consider the factors listed in C-8 in determining if an after-school program housed in a school identified as in need of improvement, corrective action, or restructuring is sufficiently separate and distinct from that school to operate independently.

C-12. May teachers who work in a school or in an LEA identified as in need of improvement, corrective action, or restructuring serve as SES providers?

Yes. An individual or group of teachers who works in a school or an LEA identified as in need of improvement, corrective action, or restructuring may apply to the SEA for approval as an SES provider or may be hired by any State-approved provider (including an approved LEA provider) to serve as a tutor in the provider's SES program.

SEA Approval Requirements

C-13. Must an SEA require that a provider approved prior to the release of the 2008 Title I regulations re-apply so that the SEA can consider all of the approval criteria, outlined in C-1, for the provider?

No. An SEA is required to implement the provider approval requirements specified in 34 C.F.R. §200.47(b) (see C-1) for all *new* providers beginning with its next approval cycle after November 28, 2008. An SEA does not need to require a provider approved by an SEA prior to November 28, 2008 to re-apply. SEAs that require approved providers to renew their approval every few years would then consider the new criteria in 34 C.F.R. §200.47(c) when evaluating applications for renewal. An SEA that does not have renewal processes, however, does not need to create one.

It is important to note that most of the criteria that SEAs must consider in approving new providers are statutory requirements (items 1, 2, 3, and 4 in C-1). Thus, they pre-date the 2008 Title I regulations and are criteria that existing providers already have met as part of an SEA's approval process. Additionally, SEAs must examine two of the criteria (items 6 and 7 in C-1) in their monitoring of SES providers. (See D-1.)

C-14. Must an SEA use the same criteria to approve all entities that wish to become providers?

Yes. The SEA must develop and use the same criteria for determining whether an entity can be included on the State's approved provider list.

C-15. What does it mean for an SES provider to have a “demonstrated record of effectiveness” in increasing student academic achievement?

An approved SES provider must have a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the State's academic content and student achievement standards [Section 1116(e)(12)(B)(i); 34 C.F.R. §200.47(b)(1)(i)]. An SEA must consider whether a potential provider can demonstrate that its program meets this standard for approval [Section 1116(e)(4)(B)]. In doing so, an SEA might require an applicant to submit empirical evidence, as well as information about the methodology used to collect such evidence, that the provider's instructional program has increased student academic achievement. An SEA also might require an applicant to submit qualitative data (such as feedback from parents or students served) to demonstrate its program's effectiveness; an SEA must consider available feedback from parents, whether submitted by an applicant or available from an LEA or other party, as part of the approval process. (See C-22.)

Applicants that are seeking to become first-time providers may not have a history of providing services from which they can develop a demonstrated record of effectiveness. In these cases, an SEA has discretion to determine how it will evaluate whether the applicant can meet this requirement. It could, for example, require the applicant to submit what it anticipates to be the effects of its instructional program on student achievement and an explanation for why it anticipates such effects; such information might be based on the demonstrated effectiveness of the applicant's instructional program as it was implemented by *another* entity or the soundness of the research on which the program is based. Additionally, an SEA could require an applicant to submit information on how the applicant will measure the effectiveness of its instructional program in increasing student achievement.

Note that, with regard to determining whether a provider has a demonstrated record of effectiveness, an LEA *may not* make such a determination for the purposes of contracting and working with State-approved providers. Nor may an LEA refuse to permit a State-approved provider to serve students in the LEA because the LEA disagrees with the provider's program design. (See E-3.)

C-16. By definition, SES must be of “high quality, research-based, and specifically designed to increase the academic achievement of eligible students.” How does an SEA determine whether the instruction provided by a particular SES provider meets these requirements?

One of the most important considerations in assessing the educational practices of a potential provider is whether those practices result in improved academic achievement for students in the subject areas of the State's academic assessments required under Section 1111 of the ESEA. A provider applicant should submit, as part of the State approval process, any academic research supporting the particular instructional program it will use. An applicant should submit, for example, research that demonstrates

how its curriculum, instructional strategies, materials, and size and structure are designed to increase the academic achievement of students. An SEA has the authority and the responsibility to approve only entities that will contribute to increased student achievement [Section 1116(e)(4)(B); 34 C.F.R. §200.47(b)(1)(i)].

In approving an SES provider, an SEA may also want to consider the following questions regarding a provider's proposed instructional practices and program:

1. Will the progress of students receiving these services be regularly monitored?
2. Will the instruction be focused, intensive, and targeted to student needs?
3. Will students receive constant and systematic feedback on what they are learning?
4. Will instructors be adequately trained to deliver SES?
5. How will the provider measure whether students and parents participating in the program are satisfied with the instructional program?

C-17. What does it mean to provide instruction that is consistent with an LEA's instructional program and aligned with State academic content and student academic achievement standards?

SEAs are responsible for determining whether a provider can deliver SES that are consistent with an LEA's instructional program and aligned with State academic content and student academic achievement standards [Section 1116(e)(5)(B); 34 C.F.R. §200.47(b)(1)(ii), (b)(2)(ii)]. This does not mean that the instructional content and methods of a potential provider must be identical to those of the LEA, but they must share a focus on the same State academic content and student academic achievement standards and be designed to help students meet those standards. One of the virtues of SES is that public and private providers offer a diversity of programs from which parents may choose that are consistent with, but not necessarily identical to, the LEA's instructional program and are aligned with State academic standards. In its application to the SEA, a provider should describe the connections between its SES program and the State's academic standards and, where possible, cite the specific academic standards the program addresses.

C-18. How can an SEA determine whether a provider is "financially sound"?

An SEA is responsible for developing criteria to determine whether a provider is "financially sound" for the purposes of providing SES. An SEA might require potential SES providers to submit audited financial statements or other evidence. An SEA might also employ site audits to verify the accuracy of the information submitted. To determine financial soundness, an SEA need not examine or monitor a provider's daily expenditures.

C-19. What Federal civil rights requirements apply to SES providers?

Under Section 1116(e)(5)(C) of the ESEA, an SES provider must meet all applicable Federal, State, and local civil rights laws (as well as health and safety laws). With respect to Federal civil rights laws, most apply generally to "recipients of Federal financial assistance." These laws include Title VI of the Civil Rights Act of 1964 (discrimination on the basis of race and national origin), Title IX of the Education Amendments of 1972 (discrimination on the basis of sex), Section 504 of the Rehabilitation Act of 1973 (Section 504) (discrimination on the basis of disability), and the Age Discrimination Act of 1975 (discrimination on the basis of age).

An SES provider, merely by being a provider, is not a recipient of Federal financial assistance. As a result, the above-referenced Federal civil rights laws are not directly applicable to a provider unless the provider otherwise receives Federal financial assistance for other purposes.

The provisions of two Federal civil rights laws, however, may apply to SES providers despite the fact that a provider is not a “recipient of Federal financial assistance.” Title II of the Americans with Disabilities Act of 1990 (ADA) would apply to public entities, but not private entities, that provide SES. Under Title III of the ADA, which is enforced by the U.S. Department of Justice, private providers that operate places of public accommodation (except for religious entities) must make reasonable modifications to their policies, practices, and procedures to ensure nondiscrimination on the basis of disability, unless to do so would fundamentally alter the nature of the program. Likewise, these providers must take those steps necessary to ensure that students with disabilities are not denied services or excluded because of the absence of auxiliary aids and services, unless taking those steps would fundamentally alter the nature of services or would result in an undue burden (i.e., significant difficulty or expense). In addition, an entity that employs 15 or more employees is subject to Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin, except that Title VII does not apply to the employment of individuals of a particular religion by a religious organization.

All the Federal civil rights laws, however, apply to SEAs and LEAs, as recipients of Federal financial assistance or as public entities. As such, SEAs and LEAs have the responsibility for ensuring that there is no discrimination in their SES programs.

What this means in terms of SES for students with disabilities, students covered under Section 504, and LEP students is addressed in items C-31 and C-32.

C-20. Why is an entity that provides SES not considered to be a recipient of Federal financial assistance?

Under the regulations that define “Federal financial assistance,” an SES provider, merely by being a provider, is not a recipient of Federal financial assistance. That is because an entity that serves as an SES provider receives a contract from an LEA procuring its services to provide SES. But the regulations that define “Federal financial assistance,” for example, those implementing Section 504 and the Age Discrimination Act, specifically exclude procurement contracts from the definition of “Federal financial assistance” [34 C.F.R. §104.3(h); 34 C.F.R. §110.3]. (See also 34 C.F.R. §100.13(f); 34 C.F.R. §106.2(g).) This is because a procurement contract is not intended to provide assistance to the contractor but, rather, to obtain a service for the issuer of the contract, which, in this case, is the LEA.

C-21. How should an SEA gather information from a potential provider regarding whether the entity has been removed from another State’s list of approved providers, and what should an SEA consider in reviewing this information?

The simplest way for an SEA to gather information from a potential provider regarding whether the entity has been removed from another State’s list of approved providers is for an SEA to request such information from a potential provider in its application for approval as an SES provider. In addition to asking applicants whether they have been removed from another State’s list of approved providers, an SEA should ask applicants to describe the reason(s) for such removal. For example, if a provider was removed from one State’s list because the provider did not serve any eligible students (because no students signed up for the provider), that might not be sufficient to deter a second State from approving

that provider. However, a State would likely be more concerned about a provider that was removed from a State's list due to health or safety violations, or for failing to improve student academic achievement, for example. An SEA should also take into account the rigor of another State's evaluation when considering a provider that was removed from another State's list as the result of evaluation findings.

C-22. Why do the regulations require an SEA to use parent information and evaluation results in considering whether to approve a provider?

Parents can be objective and reliable sources of information for an SEA to consider in approving providers. The regulations require that an SEA consider, in approving a provider, results from parent surveys or parent recommendations, if any exist, regarding the success of the provider's instructional program in increasing student achievement [34 C.F.R. §200.47(b)(3)(ii)]. Although parent feedback, by itself, may not provide a sufficient basis for an SEA to determine whether a provider should be approved, it can be an important component of an SEA's decision.

An SEA may consider parent feedback obtained through a provider, LEA, or other parties. An SEA has discretion in reviewing feedback by parents, and might consider different forms of feedback given the manner in which SES are implemented in its LEAs. For example, an SEA might rely on interviews or focus groups of parents in considering whether to approve potential providers that are small, local community-based organizations, while it might consider survey data more appropriate in reviewing an applicant that is a large, for-profit company. Whatever method an SEA uses, it should take into account the validity and reliability of the information it receives.

In addition to parent feedback, an SEA must consider evaluation results, if any, in making its decision to approve a provider [34 C.F.R. §200.47(b)(3)(iii)]. An SEA has some flexibility in determining the type of evaluation results it will consider, and should consider only the results from evaluations that it believes were obtained using objective methodologies and scientifically valid methods. Evaluation results, like parent feedback, are only one component of an array of information an SEA should consider in approving providers.

C-23. Do staff employed by SES providers have to meet the highly qualified teacher requirements in Sections 1119 and 9101(23) of the ESEA?

No. The highly qualified teacher requirements in Sections 1119 and 9101(23) of the ESEA do not apply to SES providers.

C-24. May an SEA require that staff employed by SES providers meet the highly qualified teacher requirements in Sections 1119 and 9101(23) of the ESEA?

No. 34 C.F.R. §200.47(b)(4) of the Title I regulations specifically prohibits an SEA from requiring a provider to hire only staff who meet these requirements.

C-25. May there be only one approved SES provider in an LEA?

An SEA should strive to identify more than one SES provider for each LEA. The inclusion of distance-learning providers is one way to expand the pool of providers. However, it is possible that only a single provider will be available in an LEA.

C-26. Often, large providers have multiple franchise operations that provide services. May an SEA require separate applications from franchises?

An SEA has discretion in determining how it will consider and approve providers with multiple operations. Although the same curriculum and instructional methods may be used by all franchises of a particular provider, an SEA may decide to require each franchise to apply separately. Alternatively, an SEA could choose to accept one application that would cover all the franchises.

C-27. May an SEA approve an SES provider whose program relies on an LEA's having certain equipment or instructional resources available in order for students to receive SES?

Yes. However, in deciding whether to approve such providers, an SEA should weigh the benefits of the potential services against the need to ensure that providers do not impose unreasonable costs on LEAs. For example, some potential providers may offer distance-learning programs that would require an LEA to have computers for students to use to obtain the instruction. Although this type of arrangement may result in the provision of high-quality services, the LEA might not have the equipment, personnel, or other resources required by an SES provider to implement the program. If an LEA does provide resources to enable an SES provider to serve the LEA's students, the LEA may charge the costs of such resources against the per-pupil allocation that the provider receives.

C-28. In what subject areas may an SES provider offer services to eligible students?

The statute defines SES as services that are in addition to instruction provided during the school day and are of high quality, research-based, and specifically designed to increase the academic achievement of children on the academic assessments required under Section 1111 of the ESEA and help them meet the State's academic achievement standards [*Section 1116(e)(12)(C); 34 C.F.R. §200.47(b)(2)(ii)(C)*]. Section 1111 requires assessments in, at a minimum, reading or language arts, mathematics, science, and English language proficiency (for LEP students). Accordingly, an SES provider may offer services in any one or more of those subjects. If a State includes other subjects in its ESEA assessments, an SES provider may offer students services in those subject areas, as well.

C-29. May an SEA deny approval to a provider who applies to offer SES in only certain subject areas included in the State's ESEA assessment system?

No. An SEA may not prohibit an SES provider wishing to provide services only in certain of the subject areas included in the State's ESEA assessment system--e.g., science--from applying for and gaining approval if the provider meets the State's approval criteria and the statutory and regulatory requirements. A provider may provide services in one or more of the following subject areas: reading/language arts, mathematics, science, English language proficiency (for LEP students), or any other subject area the State includes in its ESEA assessment system.

C-30. May an SEA approve an entity that allows students enrolled in its program to keep a computer upon completion of the SES program?

Yes. If the primary purpose of a computer in the SES program is instructional, it would be appropriate for SEAs to approve an entity that allows students to keep the computer upon completion of the SES program. However, if the computer's primary purpose is not instructional, the computer may be an unallowable incentive under State policy. SEAs should continue to monitor SES providers and

determine whether providers are using computers as incentives in a way that violates State policy. (See B-4.)

Serving Students with Disabilities and LEP Students

C-31. What are the obligations of SEAs and LEAs in providing SES to students with disabilities who are eligible for services under the Individuals with Disabilities Education Act (IDEA) or students covered under Section 504 of the Rehabilitation Act of 1973 (Section 504)?

LEAs that arrange for SES must ensure that eligible students with disabilities who are eligible for services under IDEA and eligible students covered under Section 504 have an equal opportunity to participate in SES, and that they receive appropriate accommodations in the provision of SES [34 C.F.R. §200.46(a)(4)]. SEAs must indicate on their lists of approved SES providers, and LEAs must indicate in their notice to parents on SES, those providers that are able to serve students with disabilities [34 C.F.R. §§200.47(a)(3)(ii); 200.37(b)(5)(ii)(B)].

Furthermore, the SES program within each LEA and within the State may not discriminate against these students. Consistent with this requirement, an LEA may not, through contractual or other arrangements with a private provider, discriminate against an eligible student with a disability or an eligible student covered under Section 504 by failing to provide for appropriate SES with necessary accommodations. Such services and necessary accommodations must be available, but not necessarily from each provider. Rather, SEAs and LEAs are responsible for ensuring that the available SES providers include some providers that can serve students with disabilities and students covered under Section 504 with any necessary accommodations, with or without the assistance of the SEA or LEA. Note that if no provider is able to provide SES with necessary accommodations to an eligible student with a disability or a student covered under Section 504, the LEA would need to provide those services, with the necessary accommodations, either directly or through a contract [Section 1116(e); 34 C.F.R. §200.46(a)(4)]. (See C-33.) However, the LEA's obligation to provide services to an eligible student with a disability or a student covered under Section 504 does not apply if there are no approved providers able to serve *any* students in the LEA; students with disabilities and students covered under Section 504 have no greater right to receive SES than any other students in an LEA.

SES must be consistent with a student's individualized education program (IEP) under Section 614 of IDEA or a student's individualized services plan under Section 504 [34 C.F.R. §200.46(b)(3)]. However, these services must be in addition to, and not a substitute for, the instruction and services required under IDEA and Section 504 and should not be written into IEPs under IDEA or into Section 504 plans. In addition, parents of students with disabilities (like other parents) should have the opportunity to select a provider that best meets the needs of their child. An LEA can help facilitate the participation in SES of a student with disabilities by providing a copy of the student's IEP, or relevant portion of the IEP, to the provider selected by the student's parents, with the parents' written consent.

C-32. What are the obligations of SEAs and LEAs in providing SES to LEP students?

LEAs that arrange for SES must ensure that LEP students receive appropriate SES and language assistance in the provision of those services [34 C.F.R. §200.46(a)(5)]. SEAs must indicate on their list of approved providers, and LEAs must indicate in their notice to parents on SES, those providers that are able to serve LEP students [34 C.F.R. §§200.47(a)(3)(ii); 200.37(b)(5)(ii)(B)]. The SEA and each LEA are responsible for ensuring that eligible LEP students receive SES and language assistance in the provision of those services through either a provider or providers that can serve LEP students with or

without the assistance of the LEA or SEA. Note that if no provider is able to provide such services, including necessary language assistance, to an eligible LEP student, the LEA would need to provide these services, either directly or through a contract [Section 1116(e); 34 C.F.R. §200.46(a)(5)]. (See C-33.) However, the LEA's obligation to provide services to an eligible student LEP student does not apply if there are no approved providers able to serve *any* students in the LEA; LEP students have no greater right to receive SES than any other students in an LEA.

C-33. If an LEA must provide (either directly or through a contractor) SES to students with disabilities or LEP students because there are no providers available that can do so, must the LEA or its contractor become a State-approved provider?

As discussed in C-31 and C-32, if no provider is able to provide SES with necessary accommodations to an eligible student with a disability or a student covered under Section 504, or if no provider is able to provide SES with language assistance to an eligible LEP student, the LEA would need to provide those services, with the necessary accommodations, either directly or through a contract. If an LEA or its contractor is providing SES to students with disabilities, students covered under Section 504, or LEP students because there are no approved providers available that can do so, the LEA or its contractor does not need to be formally approved by the State to provide SES in this instance. However, an LEA that must provide SES to students with disabilities, students covered under Section 504, or LEP students because there are no approved providers available to do so should communicate to the State its intention to provide these services.

Such an LEA should make every effort to ensure that the services it provides meet the standards of quality that apply to approved providers in the State. The LEA or its contractor must also abide by all other requirements applicable to the provision of SES (such as the requirement to establish and measure student progress against specific goals and the requirement to regularly inform parents of their child's progress). The LEA may count funds spent providing SES in this situation toward the LEA's 20 percent obligation.

It is also important to stress that an LEA should only determine that there are no approved providers available to provide services to students with disabilities and LEP students after completing an exhaustive review of the providers on the State's approved list. It is possible, for instance, that nearby providers (that is, providers located close to, but not within, the geographic jurisdiction of the LEA) or those that offer distance learning services will be able to provide services to those two populations of students, even if no provider located within the area served by the LEA can do so.

C-34. What information should an SEA use to meet the requirement that an SEA indicate in its list of providers, and an LEA indicate in its notice to parents, those providers that are able to serve students with disabilities or LEP students?

An SEA may rely on self-reported information from a provider regarding its ability to serve students with disabilities or LEP students. To obtain this information, an SEA could include a question in its provider application asking applicants to report if they are able to serve students with disabilities or LEP students. Many SEAs already require this information in their application and, for these SEAs, no additional data collection should be necessary. An SEA must collect this information from new providers, as well as those providers approved prior to November 28, 2008. Note that an SES provider should inform the SEA if its ability to serve students with disabilities or LEP students changes from what it previously reported.

An LEA should use the information on its SEA's list of approved providers to meet its own responsibility to include in its notice to parents information on those providers able to serve students with disabilities or LEP students.

D. MONITORING REQUIREMENTS

D-1. What is an SEA's responsibility with respect to monitoring SES providers?

An SEA is responsible for monitoring the quality and effectiveness of services of an approved provider and removing any provider that fails, for two consecutive years, to contribute to increasing academic achievement among the students it serves [Section 1116(e)(4)(D); 34 C.F.R. §200.47(c)]. Such monitoring must include, at a minimum, examination of evidence that the provider's instructional program:

1. Is consistent with the instruction provided and the content used by the LEA and the SEA [Section 1116(e)(5)(B), (e)(12)(B)(ii); 34 C.F.R. §200.47(c)(1)(i)];
2. Addresses students' individual needs as described in students' SES plans [Section 1116(e)(3)(A); 34 C.F.R. §200.47(c)(1)(ii)];
3. Has contributed to increasing students' academic proficiency [Section 1116(e)(4)(D); 34 C.F.R. §200.47(c)(1)(iii)]; and
4. Is aligned with the State's academic content and student academic achievement standards [Section 1116(e)(5)(B), (e)(12)(B)(ii); 34 C.F.R. §200.47(c)(1)(iv)].

Additionally, an SEA must consider, if available, parent recommendations or results from parent surveys regarding the success of the provider's instructional program in increasing student achievement and evaluation results demonstrating that the provider's instructional program has improved student achievement [34 C.F.R. §200.47(c)(2)].

An SEA may also want to consider monitoring the extent to which a provider's program, as implemented, reflects its program design, as proposed in its application to the SEA; student enrollment (including enrollment of students with disabilities and LEP students); and attendance in a provider's program. An SEA's monitoring criteria must be publicly reported [Section 1116(e)(4)(D); 34 C.F.R. §200.47(a)(4)(iii)], and an SEA should report any findings resulting from such monitoring.

An SEA is ultimately responsible for monitoring providers, and should request assistance from its LEAs only in collecting and reporting data to the SEA, not in monitoring the effectiveness of providers.

D-2. How may an SEA meet its monitoring responsibility to measure a provider's performance in increasing student academic proficiency?

An SEA must examine a provider's effectiveness in improving student academic proficiency as part of its responsibility to monitor a provider's performance for purposes of renewing or withdrawing approval of a provider [34 C.F.R. §200.47(c)(1)(iii)]. Additionally, an SEA must monitor whether a provider is addressing students' needs as described in their individual student plans [34 C.F.R. §200.47(c)(1)(ii)]. An SEA may use State assessment results, LEA assessments, provider assessments, or other measures to assess the academic achievement gains of students receiving SES. Whatever measure is used, it should be specified publicly (ideally in the SEA's notice inviting entities to apply to become SES providers) so that all providers know how the SEA will measure providers' performance in increasing student academic proficiency.

D-3. Under what circumstances must an SEA withdraw approval of a provider that is not meeting the statutory requirement to increase students' academic proficiency?

An SEA must have standards and techniques for withdrawing approval of an SES provider and removing the provider from the State-approved list [34 C.F.R. §200.47(a)(4)(ii)]. The statute requires an SEA to remove from the approved list any provider that fails, for two consecutive years, to contribute to increased student proficiency relative to State academic content and student academic achievement standards [Section 1116(e)(4)(D)]. In addition, a provider may be removed from the list if it fails to provide SES consistent with applicable health, safety, and civil rights requirements, or fails to meet any other regulatory or statutory requirements, particularly after more than one violation.

D-4. What is an SEA's responsibility regarding monitoring an LEA's implementation of SES?

An SEA is required to develop, implement, and publicly report on the standards and techniques it will use to monitor LEAs' implementation of SES [34 C.F.R. §200.47(a)(4)(ii)]. An SEA must ensure that its LEAs meet the requirements of the statute and its implementing regulations. Monitoring LEAs to ensure that they meet all requirements for implementing SES should be part of the regular Title I monitoring that SEAs conduct of their LEAs [see 34 C.F.R. §80.40].

As part of its regular Title I monitoring of LEAs, an SEA must ensure that an LEA meets the criteria in 34 C.F.R. §200.48(d)(2)(i) if the LEA spends less than its 20 percent obligation for choice-related transportation and SES and uses the unexpended amount for other allowable activities [34 C.F.R. §200.48(d)(3)(i)]. Further, an SEA must review, before the beginning of the subsequent school year, any LEA that has spent a significant portion of its 20 percent obligation for other allowable activities and has been the subject of multiple complaints, supported by credible evidence, regarding implementation of public school choice or SES requirements [34 C.F.R. §200.48(d)(3)(ii)]. (See L-1 and L-16.)

An SEA should consider tools and strategies it can use throughout the year to monitor LEAs' progress in meeting the requirements of the law. An SEA might choose, for example, to require an LEA to submit to the SEA the parental notification letters the LEA has developed, or an SEA might request that an LEA provide it with updates throughout the year on how many students in the LEA are eligible for SES, and how many students sign up for and receive services.

The Department, as part of its auditing and on-site and desk monitoring of Title I, requests evidence documenting that SEAs are effectively monitoring the implementation of SES by their LEAs.

D-5. What steps should an SEA take if it determines that an LEA is failing to implement SES in a manner that is consistent with the statute and regulations?

An SEA is responsible for ensuring that SES requirements are properly implemented by LEAs in the State. If an SEA determines that an LEA is failing to implement SES in a manner consistent with the statute and regulations, an SEA might provide technical assistance to the LEA, or institute peer-to-peer oversight and technical assistance by another LEA that the SEA determines to be in compliance with the law and implementing effective SES practices. Additionally, an SEA should, pursuant to Section 1116(b)(14)(B) of the ESEA, take such corrective actions as the SEA determines to be appropriate and in compliance with State law. An SEA should act promptly to rectify a situation in which an LEA is out of compliance with the statute or regulations so that such compliance problems do not delay eligible students from enrolling and participating in SES programs.

The enforcement mechanisms available to SEAs under Federal law and regulations in carrying out this responsibility include: (1) withholding approval, in whole or in part, of the application of an LEA until the SEA is satisfied that program requirements will be met; (2) suspending payments to an LEA, in whole or in part, if the SEA has reason to believe that the LEA has failed substantially to comply with program requirements; (3) withholding payments, in whole or in part, if the SEA finds, after reasonable notice and opportunity for a hearing, that an LEA has failed substantially to comply with program requirements; and (4) ordering, in accordance with a State audit resolution, repayment of misspent funds. Sections 432 and 440 of the General Education Provisions Act (20 U.S.C. 1231b-2, 1232c) provide more detailed information on these enforcement mechanisms, including due process requirements.

III. LOCAL EDUCATIONAL AGENCY RESPONSIBILITIES

E. OVERVIEW OF LEA RESPONSIBILITIES

E-1. What are the responsibilities of an LEA in implementing the SES requirements?

An LEA must:

1. Notify parents about the availability of services, at least annually [*Section 1116(e)(2)(A); 34 C.F.R. §200.46(a)(1)*]. (See G-2.)
2. Help parents choose a provider, if requested [*Section 1116(e)(2)(B); 34 C.F.R. §200.46(a)(2)*].
3. Apply fair and equitable procedures for serving students if not all students can be served [*Section 1116(e)(2)(C); 34 C.F.R. §200.46(a)(3)*]. (See F-3.)
4. Ensure that eligible students with disabilities and LEP students receive appropriate services [*34 C.F.R. §200.46(a)(4), (5)*]. (See C-31 through C-33.)
5. Enter into an agreement with a provider selected by parents of an eligible student [*Section 1116(e)(3); 34 C.F.R. §200.46(b)*]. (See H-1.)
6. Assist the SEA in identifying potential providers within the LEA [*Section 1116(e)(4)(A); 34 C.F.R. §200.46(a)(2)*]. (See C-1.)
7. Protect the privacy of students who are eligible for or receive SES [*Section 1116(e)(2)(D); 34 C.F.R. §200.46(a)(6)*]. (See H-16 through H-18.)
8. Prominently display on its Web site, in a timely manner to ensure that parents have current information: (a) beginning with data for the 2007–2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in SES; and (b) for the current school year, the list of providers approved by the SEA to serve in the LEA and the locations where services are provided [*34 C.F.R. §200.39(c)(1)(ii), (iii)*]. (See G-10 through G-12.)

9. Meet its 20 percent obligation. If an LEA spends less than the amount needed to meet its 20 percent obligation, then it must either: (a) spend the remainder of that obligation in the subsequent school year; or (b) meet the criteria in 34 C.F.R. §200.48(d)(2)(i) [34 C.F.R. §200.48(d)(1), (2)]. (See L-1.)

E-2. May an LEA restrict the choice of subjects in which an eligible student may receive SES?

In general, an LEA may restrict the subjects in which an eligible student may receive SES only if the LEA does not have sufficient funds to provide services to all eligible students whose parents request services. (See A-5 and F-3.)

E-3. May an LEA impose requirements on a provider that affect the design of the provider's program?

No. An LEA may not impose requirements that relate to the design of a provider's educational program; doing so would undermine the SEA's authority to approve providers. The involvement of LEAs in program designs is not provided for in the statute or regulations.

For example, an LEA may not require that providers offer a certain number of hours of services to receive the statutory per-pupil amount for services, or employ only State-certified teachers as tutors. Likewise, an LEA may not require that providers' programs have certain student-teacher ratios. These types of requirements may create a "one-size-fits-all" model of services that does not effectively take into consideration the varied needs of students, which would undermine parents' opportunity to select the most appropriate provider and services for their child.

Under no circumstances should an LEA refuse to offer any provider on the State-approved list as an option to parents because of program design concerns. If an LEA has specific concerns regarding a provider's program design, the LEA should convey those concerns to the SEA.

As explained in B-3, SEAs may establish certain parameters on program design.

E-4. May an LEA require providers on the State-approved list to meet additional program design criteria or to go through an additional approval process before providing services within the LEA?

No. Once a provider is on the State-approved list, an LEA may not require an additional approval process or impose additional program design requirements on the provider, except the requirement to abide by applicable local health, safety, and civil rights laws.

E-5. May an LEA impose reasonable administrative and operational requirements through its agreements with providers?

Yes. For example, an LEA may require that all employees of a provider undergo background checks if the LEA requires this for all entities with whom it enters into contracts for direct services to students. Or, an LEA might require that each provider carry a reasonable amount of liability insurance if the LEA requires this of other contractors that serve its students. These types of conditions are allowable, so long as they are reasonable, do not subject SES providers to more stringent requirements than apply to other contractors of the LEA, and do not have the effect of inappropriately limiting educational options for parents. Similarly, an LEA may include in its contracts with providers administrative

provisions dealing with such issues as the fees charged to providers for the use of school facilities, the frequency of payments to providers, and whether payments will be based, in whole or in part, on student attendance.

E-6. What resources are available to help an LEA inform parents and implement SES well?

The Department has produced a guidebook to assist LEAs with meeting their obligations to notify parents about SES and public school choice and to implement the requirements of the two provisions. The guidebook, Giving Parents Options: Strategies for Informing Parents and Implementing Public School Choice and SES Under *No Child Left Behind*, is available at <http://www.ed.gov/admins/comm/choice/options/index.html>.

F. IDENTIFYING ELIGIBLE STUDENTS

F-1. Who is eligible to receive SES?

All students from low-income families who attend a Title I school that is in its second year of school improvement, in corrective action, or in restructuring are eligible to receive SES. Eligibility is not dependent on whether a student is a member of a subgroup that did not make AYP, or whether the student is in a grade that takes the statewide assessment required by Section 1111 of the ESEA.

F-2. How does an LEA determine eligibility for SES in schoolwide programs and targeted assistance programs?

Whether a school implements either a Title I schoolwide program or a targeted assistance program, if the school is identified as in its second year of school improvement, corrective action, or restructuring, all students from low-income families attending the school are eligible for SES. In other words, in a targeted assistance school, eligibility does not depend on whether the student is receiving Title I services. Note that in a schoolwide program, although all students are eligible for Title I services, only students from low-income families are eligible for SES.

F-3. Which children may receive SES if the demand for services exceeds the level that funds can support?

If sufficient funds are not available to serve all eligible children, an LEA must give priority to the lowest-achieving eligible students [*Section 1116(b)(10)(C); 34 C.F.R. §200.45(d)*]. As noted in A-5, an LEA must use fair and equitable procedures in determining which students are the lowest achieving, and should use professional judgment in applying those criteria [*34 C.F.R. §200.46(a)(3)*]. One possible approach to prioritizing students would be for an LEA to establish a cut-off score (on the State's assessments under Section 1111 of the ESEA or another assessment), either on a school-by-school basis or for all schools across the LEA, and make SES available to students whose scores fall below the cut-off level. Alternatively, as noted in A-5, an LEA might decide to focus services on students who are the lowest-achieving in the subject or subjects that resulted in the school being identified for improvement. Or it might decide that the best use of limited SES funds is to focus on the lowest-performing students in particular grades.

An LEA should not assume, before it contacts parents, that it will have limited resources for SES. Rather, the LEA should notify all eligible families of their children's eligibility. Only if more families request SES than there are funds available to provide services should the LEA set priorities to

determine which eligible students can be served. The LEA should review the information available about the performance of eligible students and apply its priorities in a manner that is fair and objective.

F-4. What data must an LEA use to identify low-income students?

For the purposes of determining eligibility for SES, an LEA must determine family income on the same basis that the LEA uses to make allocations to schools under Title I, Part A [*Section 1116(e)(12)(A); 34 C.F.R. §200.45(b)*].

F-5. May an LEA use information from the National School Lunch Program (NSLP) to determine student eligibility for SES?

The law specifically requires an LEA to use the same data to determine eligibility for SES that it uses for making within-district Title I, Part A allocations to schools; historically, most LEAs use school lunch data for that purpose. However, determining student eligibility for SES (unlike determining Title I allocations) requires identifying individual students as coming from low-income families. This has led to questions about whether LEAs may use school lunch data to determine student eligibility for SES while abiding by the student privacy provisions of the NSLP.

Section 9 of the Richard B. Russell National School Lunch Act (NSLA) [*42 U.S.C. 1758*] establishes requirements and limitations regarding the release of information about children certified for free and reduced price meals provided under the NSLP. The NSLA allows school officials responsible for determining free and reduced price meal eligibility to disclose *aggregate* information about children certified for free and reduced price school meals. Additionally, the statute permits determining officials to disclose *the names of individual children* certified for free and reduced price school meals and the child's eligibility status (whether certified for free meals or reduced price meals) to persons directly connected with the *administration or enforcement of a Federal or State education program*.

Because Title I is a *Federal education program*, determining officials may disclose a child's eligibility status to persons directly connected with, and who have a need to know, a child's free and reduced price meal eligibility status in order to administer the Title I SES requirements. The statute, however, does not allow the disclosure of any other information obtained from the free and reduced price school meal application or obtained through direct certification. School officials should keep in mind that the intent of the confidentiality provisions in the NSLA is to limit the disclosure of a child's eligibility status to those who have a "need to know" to properly administer and enforce a Federal education program. As such, schools should establish procedures that limit access to a child's eligibility status to as few individuals as possible.

School officials, prior to disclosing individual information on the NSLP eligibility of individual students, should enter into a memorandum of understanding or other agreement to which all involved parties (including both school lunch administrators and educational officials) would adhere. This agreement should specify the individuals who would have access to the information, how the information would be used in implementing Title I requirements, and how the information would be protected from unauthorized uses and third-party disclosures, as well as include a statement of the penalties for misuse or improper disclosure of the information.

Additional information on this issue is provided in a December 17, 2002 letter from the Departments of Education and Agriculture (available at <http://www.ed.gov/programs/titleiparta/letter121702.html>).

F-6. How may an LEA that operates school lunch programs under Provisions 2 and 3 of the NSLA determine which students are eligible for SES?

“Provision 2” and “Provision 3” of the NSLA allow schools that offer students lunches at no charge, regardless of the students’ economic status, to certify students as eligible for free or reduced price lunches once every four years and longer, under certain conditions. NSLP regulations prohibit schools that make use of these alternatives from collecting eligibility data and certifying students on an annual basis for other purposes.

For the purpose of identifying students as eligible for SES, school officials may deem all students in Provision 2 and Provision 3 schools as “low-income.” Additional information on this issue is provided in a February 20, 2003 letter from the Departments of Education and Agriculture (available at <http://www.ed.gov/programs/titleiparta/22003.html>). However, as set forth in F-3, LEAs must give priority to serving the lowest-achieving eligible students if the level of demand for SES exceeds the level that available funds can support.

F-7. How does an LEA determine the eligibility of homeless students for SES?

Homeless students, like other students, are eligible to receive SES if they are from low-income families (which will most likely be the case for almost every homeless child) and are enrolled in a Title I school in its second year of improvement, in corrective action, or in restructuring. The place of residence of a student (or the lack of a permanent residence) is not an issue in determining eligibility for any child.

F-8. Are children who attend private schools eligible to receive SES?

No. Only children from low-income families attending Title I public schools identified for improvement, corrective action, or restructuring – not all children participating in Title I – are eligible to receive SES.

G. PROVIDING INFORMATION TO PARENTS

G-1. When should an LEA notify parents about their child’s eligibility for SES, and when should services begin?

At least annually, an LEA must provide notice to the parents of each eligible student regarding the availability of SES. Specific information about the timing of services should be provided directly to the parents of eligible students so that there is sufficient time to allow them to select an SES provider.

Ideally, an LEA should notify parents about their options to transfer their child to another public school or to receive SES (provided their child is eligible) at the same time so that parents can make an informed decision about which option would be best for their child. However, because an LEA must provide notice regarding public school choice “sufficiently in advance of, but no later than 14 calendar days before, the start of the school year” [34 C.F.R. §200.37(b)(4)(iv)], an LEA may not yet have available all of the required SES information to provide to parents at that time. The Department strongly encourages that, at a minimum, an LEA acknowledge in its public school choice notification to parents that SES are also an option for eligible students and that additional information about SES will be forthcoming. The LEA should then provide the required information as early as possible in the school year, and begin offering SES in a timely manner thereafter. (See G-2.)

G-2. What information must an LEA include in its notice to parents about SES?

An LEA should work to ensure that parents have comprehensive, easy-to-understand information about SES [Section 1116(e)(2)]. An LEA's notice to parents must:

1. Explain how parents can obtain SES for their child [Section 1116(e)(2)(A)(i); 34 C.F.R. §200.37(b)(5)(i)].
2. Identify each approved SES provider within the LEA or in its general geographic location, including providers that are accessible through technology, such as distance learning [Section 1116(e)(2)(A)(ii); 34 C.F.R. §200.37(b)(5)(ii)(A)].
3. Describe briefly the services, qualifications and evidence of effectiveness for each provider [Section 1116(e)(2)(A)(iii); 34 C.F.R. §200.37(b)(5)(ii)(B)]. (See G-4.)
4. Indicate providers that are able to serve students with disabilities or LEP students [34 C.F.R. §200.37(b)(5)(ii)(B)]. (See G-4.)
5. Include an explanation of the benefits of receiving SES [34 C.F.R. §200.37(b)(5)(ii)(C)]. (See G-5.)

Additionally, an LEA should describe the procedures and timelines that parents must follow to select a provider to serve their child, such as where and when to return a completed application, when and how the LEA will notify parents about enrollment dates and start dates; and whom to contact in the LEA for more information. If an LEA anticipates that it will not have sufficient funds to serve all eligible students, it should also include in the notice information on how it will set priorities in order to determine which eligible students receive services. (See F-3.)

LEAs may provide additional information in the notice to parents, as appropriate. However, any additional information should be balanced and should not attempt to dissuade parents from exercising their option to obtain SES for their child.

G-3. Are there requirements for the form of an LEA's SES notice?

Yes. An LEA's notice to parents regarding their option to obtain SES for their child must be:

1. Easily understandable, in a uniform format, including alternate formats upon request, and to the extent practicable, in a language the parents can understand [Section 1116(e)(2)(A); 34 C.F.R. §200.36(b)]; and
2. Clear and concise, and clearly distinguishable from other information on school improvement that an LEA sends to parents [34 C.F.R. §200.37(b)(5)(iii)].

An LEA should ensure that it provides informative content to parents, including providing all required SES information, as described in G-2, as well as a clear explanation of the LEA's SES procedures and timelines that may be helpful to parents. Equally essential to any parent notice is readability; an SES notice with legal and professional education terms may prove uninformative and intimidating to parents. To ensure that the notice is "clear and concise," an LEA should use terms that parents easily understand, such as "free tutoring" instead of, or in addition to, "supplemental educational services,"

and include other key phrases that clearly convey the benefits of SES, such as “help your child succeed in school.” An LEA may want to assess a notice’s readability against readability indexes; the notice should use simple, plain language and, if practicable and appropriate, be translated into multiple languages.

The SES notice to parents must also be “clearly distinguishable” from other school improvement information [34 C.F.R. §200.37(b)(5)(iii)]. This does not preclude an LEA from including the SES notice in the same mailing as other information about school improvement, but the SES notice must stand out so that parents can easily recognize and understand it, apart from the other information they receive on their school’s improvement status. For example, an LEA might print its SES notice on brightly colored paper and in large, bold font so that parents are more likely to read it.

G-4. What information should an LEA include in its notice to parents about each provider that is available to serve students in the LEA?

An LEA must include in its notice to parents information about the services, qualifications, and evidence of effectiveness for each SES provider able to serve students in the LEA [Section 1116(e)(2)(A)(iii); 34 C.F.R. §200.37(b)(5)(ii)(B)]. In describing each provider’s services, either in the letter itself or in an accompanying document, an LEA should include information on the grade levels each provider will serve; the subjects in which services will be provided; where and when each provider will offer its program; how many sessions each provider will offer and how long each session will last; the pupil/tutor ratio for each provider; qualifications of a provider’s tutors, if available; whether a provider operating off-site will offer transportation for students; and, as required in 34 C.F.R. §200.37(b)(5)(ii)(B), whether a provider is able to serve students with disabilities or LEP students. Many LEAs develop a provider brochure containing this information that is colorful and easy for parents to understand and use in selecting an appropriate provider.

G-5. What information should an LEA include in the notice in order to meet the requirement that the notice explain the benefits of receiving SES?

An LEA has discretion in determining what information regarding the benefits of SES to include in its notice to parents. In addition to benefits substantiated by research conducted by the Department or by States, LEAs, or other entities related to improving student academic proficiency, an LEA’s notice could include, for example, the fact that SES are free tutoring that can be tailored to the particular academic needs of each participating student, are available at no cost to parents, and make productive use of a student’s out-of-school time in a safe environment. Additionally, an LEA could note that SES allow parents to select the approved provider of their choice that best meets their child’s academic needs.

G-6. How must an LEA notify parents of their SES options?

Federal regulations require that, throughout the school improvement process, an LEA provide information to parents (1) directly, through such means as regular mail or e-mail (see G-7) and (2) through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families. LEAs must distribute information to parents regarding SES through both of these means [34 C.F.R. §200.36(c)].

LEAs that are most effective in reaching eligible families are those that provide information to parents through as many means as practicable, including less traditional forms of parent outreach, such as

radio and TV ads and notices at venues that parents may frequent, such as movie theaters, shopping malls, beauty parlors, and places of worship. LEAs should also enlist schools in their efforts to reach parents. For example, an LEA could use back-to-school nights as forums to explain SES to parents and offer them advice about enrolling their children. As part of this effort, an LEA should educate teachers and principals about SES so as to be sure that they can effectively and objectively assist parents in making their selections if parents request such assistance.

In providing this information, LEAs must take care not to disclose to the public the identity of any student eligible for SES without the written permission of the student's parents [*Section 1116(e)(2)(D); 34 C.F.R. §200.36(d)*].

G-7. How may an LEA meet the requirement to notify parents directly of their SES options?

To meet the requirement to provide information directly to parents, an SEA may require that LEAs notify parents of their SES options through regular mail; however, the SEA is not required to do so. In the absence of such a requirement from its SEA, an LEA may voluntarily decide to meet its responsibility to inform parents directly by notifying parents through other means, such as through e-mail or by sending a notice home in a student's backpack.

In setting policy in this area, an SEA and its LEAs should consider which method of direct communication is likely to be most effective in reaching parents of eligible students and, in doing so, may wish to take into account such factors as family mobility, student grade level, and access to the Internet. An SEA and LEA may together find that the particular circumstances of the LEA, or of a subgroup of eligible students within the LEA, may favor one type of direct communication over another. LEAs are encouraged to notify parents through multiple means, so as to further increase the likelihood of reaching parents.

Additionally, SEAs and LEAs should bear in mind that an LEA must be able to demonstrate that it has met the parent notification requirement. If an LEA chooses to send notices home in a student's backpack, the SEA and LEA should consider the evidence that would be sufficient to verify that the LEA has met its responsibility. An LEA could, for instance, ask for signed responses from parents acknowledging that they have received the notice. Alternatively, the LEA could show that it has met the requirement to notify parents by demonstrating a sufficient level of demand for SES, through the number of students who request or participate in SES.

G-8. How should an LEA distribute sign-up forms to parents?

An LEA should make its SES sign-up form accessible to parents and should widely distribute the form. For example, an LEA could post the form on its Web site and mail the form home to parents, as well as leave copies of the form at the schools that have students eligible for SES, at LEA offices, and at sites where parents may go, such as libraries or community centers. Additionally, an LEA should not restrict the distribution of sign-up forms (including the photocopying of forms) by individuals and organizations outside the LEA. Finally, LEAs should ensure that they have an open, reasonable, and convenient process for parents to return completed sign-up forms.

Note that an LEA that spends less than its 20 percent obligation and uses the unexpended amount for other allowable activities *must*, among other things, ensure that sign-up forms for SES are distributed directly to all eligible students and their parents and are made widely available and accessible through

broad means of dissemination, such as the Internet, other media, and communications through public agencies serving eligible students and their families [34 C.F.R. §200.48(d)(2)(i)(B)(2)]. (See L-1.)

G-9. May an LEA set a deadline by which parents must request SES?

Yes. For any “enrollment window” an LEA provides, an LEA may establish a reasonable deadline by which parents must sign up for services. To ensure that parents can make informed decisions about requesting SES and selecting a provider, an LEA should make certain that parents have sufficient time, information, and opportunity to make these decisions. The Department encourages all LEAs to provide more than one enrollment window, at separate points during the school year, in order to expand SES enrollment opportunities for families, or to allow enrollment throughout the year. An open enrollment process that lasts throughout the school year would accommodate students who are newly enrolled in a school that is identified for improvement at the beginning of or during the school year and would also meet the criterion in 34 C.F.R. §200.48(d)(2)(i)(B)(3) for LEAs that spend less than their 20 percent obligation. (See L-10.) Whatever procedures an LEA uses, it must ensure that it meets all demand for SES from eligible students, consistent with the LEA’s obligation to spend an amount equal to 20 percent of its Title I allocation for choice-related transportation, SES, and parent outreach and assistance.

Note that an LEA that spends less than its 20 percent obligation and uses the unexpended amount for other allowable activities *must*, among other things, provide a minimum of two enrollment windows, at separate points in the school year, that are of sufficient length to enable parents of eligible students to make informed decisions about requesting SES and selecting a provider. (See L-1.)

G-10. What information must an LEA include on its Web site about SES?

An LEA is required to prominently display on its Web site the following information regarding SES:

1. Beginning with data from the 2007-2008 school year, and for each subsequent school year, the number of students who were eligible for and the number of students who participated in SES [34 C.F.R. §§200.39(c)(1)(ii); 200.42(b)(5); 200.43(b)(5); 200.43(c)(1)(iii)]; and
2. For the current school year, a list of SES providers approved by the State to serve the LEA and the locations where services are provided [34 C.F.R. §§200.39(c)(1)(iii); 200.42(b)(5); 200.43(b)(5); 200.43(c)(1)(iii)].

An LEA should display this information on its Web site in a place that is visible and easy for parents to locate. Note that an LEA must list on its Web site all SES providers approved by the State to serve the LEA. This includes SES providers approved by the State that are located within the LEA, as well as in its general geographic location, and providers accessible through distance learning technology [34 C.F.R. §§200.37(b)(5)(ii)(A); 200.39(c)(1)(iii)].

An LEA also must display on its Web site information on aspects of public school choice. For more information, see the Public School Choice Non-Regulatory Guidance, D-8, at: <http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc>.

G-11. By when must an LEA post this information on its Web site?

An LEA must post the information, described in G-10, in a timely manner to ensure that parents have current information on their options [34 C.F.R. §200.39(c)(1)]. An LEA must post information on

approved providers as early in the school year as possible so that parents can access this information when making decisions about their child's participation in SES, and update this information periodically throughout the school year, as updates become necessary. Regarding the number of students who were eligible for and who participated in SES in prior years, an LEA should display this information as soon as it becomes available.

Beginning with the 2008-2009 school year, an LEA must post data on the number of students who were eligible for and participated in SES during the 2007-2008 school year, and must post the list of SES providers for the 2008-2009 school year. For the 2009-2010 school year, the LEA must post data on the number of students who were eligible for and participated in SES during the 2007-2008 and 2008-2009 school years, and must post the list of providers for the 2009-2010 school year. An LEA must continue posting historical data on SES participation and eligibility, and its current list of providers, in subsequent school years accordingly.

G-12. Do all LEAs have to display the SES information on their Web sites?

All LEAs must prominently display information on student eligibility and participation in SES, and the list of approved SES providers and location of services, unless the LEA (1) does not have any Title I schools in year two of improvement, in corrective action, or in restructuring; (2) is not able to offer SES because there are no approved providers able to serve in the LEA; or (3) is required to offer SES, but does not maintain a Web site, in which case the SEA must display the required information, on behalf of the LEA, on the SEA's Web site [34 C.F.R. §200.39(c)(2)]. An LEA that is required to offer SES but does not maintain a Web site should notify its SEA before the start of the school year that it does not have a Web site. An LEA must provide the information required so that the SEA can meet its obligation to post the required information on its own Web site. (See B-9.)

An LEA that no longer has any Title I schools identified for school improvement, corrective action, or restructuring, or is no longer able to offer SES because it has no available providers, is encouraged to continue to display on its Web site historical data on student eligibility for and participation in SES from prior school years, although it is not required to do so.

G-13. What other information should an LEA display on its Web site to help parents understand their SES options?

An LEA's Web site should include information on which providers are able to serve student with disabilities or LEP students, and other information, such as the LEA's SES timeline and procedures for student enrollment, to help parents make informed decisions about their SES options. Additionally, an LEA could include information, obtained from the SEA's Web site, on the LEA's 20 percent obligation and per-pupil allocation.

G-14. How can LEAs make their outreach to parents more successful?

Whenever possible, an LEA should try to personalize the SES process for parents. For example, an LEA could consider having staff or volunteers on hand to help parents understand and complete the enrollment application. In addition, parent outreach centers and community- and faith-based organizations may be particularly well-suited to help parents with the process. An LEA should have a specific and designated contact person, with a phone number and email address whom parents can contact with questions. Additionally, an LEA could let parents register for SES online. These options are in addition to the required actions an LEA must take to implement SES by notifying parents in a

way that is clear and concise, and clearly distinguishable from other school improvement information, and by prominently displaying certain SES information on its Web site. In addition, LEAs spending less than their 20 percent obligation may be required to partner with outside groups, if practicable, to help inform parents about SES. (See L-1.)

If few eligible parents sign up for services, an LEA should evaluate its outreach efforts and consider the extent to which its efforts meet the following six communication goals for designing and implementing effective outreach strategy to parents: (1) get parents' attention; (2) inform them about their SES options; (3) help them understand how to obtain services; (4) motivate parents to take action to exercise their choices; (5) encourage parents to follow and communicate with the provider about their child's progress; and (6) encourage parents to provide feedback regarding the impact and quality of the services their child receives. (These communication goals are adapted from *Innovations in Education: Creating Strong Supplemental Educational Services Programs*, available at: <http://www.ed.gov/admins/comm/suppsvcs/sesprograms/index.html>.)

H. ARRANGING FOR SUPPLEMENTAL EDUCATIONAL SERVICES

H-1. What must an LEA include in its agreement with a provider?

Once parents select a provider for their child, an LEA must enter into an agreement with the provider that includes the following:

1. Specific achievement goals for the student, developed in consultation with the student's parents and the provider [Section 1116(e)(3)(A); 34 C.F.R. §200.46(b)(2)(i)(A)];
2. A description of how the student's progress will be measured and how the student's parents and teachers will be regularly informed of that progress [Section 1116(e)(3)(A), (B); 34 C.F.R. §200.46(b)(2)(i)(B), (ii)];
3. A timetable for improving the student's achievement [Section 1116(e)(3)(A); 34 C.F.R. §200.46(b)(2)(i)(C)];
4. A provision for terminating the agreement if the provider fails to meet the student's specific achievement goals and timetables [Section 1116(e)(3)(C); 34 C.F.R. §200.46(b)(2)(iii)];
5. Provisions governing payment for the services, which may include provisions addressing missed sessions [Section 1116(e)(3)(D); 34 C.F.R. §200.46(b)(2)(iv)];
6. A provision prohibiting the provider from disclosing to the public the identity of any student eligible for or receiving SES without the written permission of the student's parents [Section 1116(e)(3)(E); 34 C.F.R. §200.46(b)(2)(v)]; and
7. An assurance that SES will be provided consistent with applicable health, safety, and civil rights laws [Section 1116(e)(5)(C)]. (See C-19, C-31, C-32.)

In the case of a student with a disability, the achievement goals, measurement and reporting of progress, and timetable described in items 1 through 3 above must be consistent with the student's IEP under Section 614(d) of the IDEA [Section 1116(e)(3)(A); 34 C.F.R. §200.46(b)(3)]. In the case of a student covered by Section 504, the achievement goals, measurement, and reporting must be consistent with the student's individualized services under Section 504 [34 C.F.R. §200.46(b)(3)]. SES must be in addition to, and not a substitute for, the instruction and services required under the IDEA and Section 504, and should not be written into a student's IEP or Section 504 plan.

H-2. Who is responsible for developing the individual agreements for students receiving SES?

Section 1116 of the ESEA requires “*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” [Section 1116(e)(3)(A) (*emphasis added*)].

It is the responsibility of the LEA, not the responsibility of a provider, to ensure that an agreement is completed for each student participating in SES and that each agreement includes 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 is responsible for reviewing and approving all agreements, and for making sure that all agreements, whether developed by the LEA or by a provider on behalf of the LEA, are completed for all students participating in SES and include the required information.

H-3. If an LEA is an approved provider, what is its responsibility with respect to a student agreement?

An LEA that is a provider must prepare an agreement that contains the required information listed in H-1. Although the LEA is not formally entering into an agreement with itself as the provider, the information is necessary so that parents of a student receiving services from the LEA know, for example, the achievement goals for the student, how progress will be measured, and the timetable for improving the student’s achievement.

H-4. Must an LEA consult with parents in the development of a student’s individual agreement?

Yes, subject to the qualifications discussed in H-5. Section 1116(e)(3)(A) of the ESEA requires consultation with a student’s parents in developing the student’s individual agreement. The term “parent” as defined in Section 9101(31) of the ESEA, includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare).

H-5. Must an LEA obtain a parent’s signature as evidence of meeting the consultation requirement?

The statute does not specifically require a parent’s signature as evidence that consultation on a student’s agreement has occurred. Rather, an LEA must offer parents a genuine opportunity to consult on the terms of their child’s individual student agreement.

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 that outlines 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 be met. An SEA could also develop a broad definition of “consultation” that includes conversations with parents by phone or email. We encourage SEAs to establish reasonable requirements for their LEAs in this area and to ensure that services for students are not delayed because LEAs (or providers on behalf of LEAs) have not yet consulted with parents.

H-6. How can an LEA facilitate parents’ participation in the consultation process?

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.

H-7. For how long must a provider offer services?

In general, a provider must continue to provide SES to eligible students who are receiving such services until the end of the school year in which such services were first received [*Section 1116(e)(8); 34 C.F.R. §200.45(c)(3)*]. However, the availability of funds and the intensity of services selected (i.e., the number of sessions per week) may limit the provision of services to a shorter period of time. In such case, the parent should be made aware of the anticipated duration of services and this information should be detailed in the child’s individual student agreement.

H-8. How often should parents and teachers receive information about student progress?

As part of the agreement described in H-1, the LEA and provider, after consultation with the parents, must agree to a schedule for informing parents and the student’s teacher(s) about the student’s progress. The intent of this requirement is to ensure that instructional goals are being met and that parents and teachers are aware of whether SES are helping the student improve his or her academic achievement.

H-9. If parents are not satisfied with the SES their child is receiving, or with their child’s academic progress, may they request and receive a new provider?

Although neither the law nor the regulations require an LEA to allow students to change providers during the course of a school year, an LEA may allow for such changes if, for example, a parent believes the provider is unlikely to be able to meet their child’s progress goals. If a number of parents request a change of a particular provider because of the provider’s likely inability to meet students’ goals, the SEA may need to monitor more carefully the provider’s provision of SES. Additionally, an LEA may want to consider reimbursing providers for services provided, rather than paying providers up-front for an entire semester or year, in order to make it easier to arrange for students to change providers during the year.

H-10. What actions must an LEA take if the demand for SES from a particular provider is greater than the provider can meet?

An approved provider might not have the capacity to serve all the students who select that provider. In anticipation of such a situation, LEAs must use a fair and equitable process for selecting students to receive services [Section 1116(e)(2)(C); 34 C.F.R. §200.46(a)(3)].

H-11. What happens if there are no approved providers that offer services in an LEA?

If there are no approved providers that offer services in an LEA, the LEA may request a waiver from the SEA of all or part of the SES requirement. An SEA may only grant a waiver if it determines that: (1) none of the approved providers can make their services available in the LEA or within a reasonable distance of the LEA; and (2) the LEA provides evidence that it cannot provide these services itself [Section 1116(e)(10)(A); 34 C.F.R. §200.45(c)(4)(i)].

The SEA must notify the LEA in writing of its approval or disapproval of an LEA's waiver request within 30 days of receiving the request and if it has disapproved the request, the reasons for the disapproval [Section 1116(e)(10)(B); 34 C.F.R. §200.45(c)(4)(ii)]. Where services appear limited, an SEA should seek to include on its list of approved providers those providers who deliver services using e-learning, online, or distance learning technologies. Prior to approving a waiver, an SEA should require the LEA to explain why it is unable to use distance-learning technologies to make SES available to eligible students.

H-12. For how long is an LEA's waiver from implementing the SES requirements in effect?

States are required to update at least annually the list of approved SES providers. Because of this requirement, a waiver may not extend beyond the next timeframe for updating the list. With each updated list of providers, the LEA must request a waiver from implementing the SES requirements [34 C.F.R. §200.45(c)(4)(iii)].

H-13. If an LEA cannot provide Title I public school choice to students in a school in its first year of school improvement and the LEA voluntarily decides to offer SES one year earlier than is required under the statute, do the SES requirements in Section 1116(e) apply?

Some LEAs may have no schools available to which students can transfer for Title I public school choice. This situation might occur when all schools at a grade level are in school improvement, when an LEA has only a single school at that grade level, or when an LEA's schools are so remote from one another that choice is impractical. In these situations, an LEA may wish to offer SES to students who are enrolled in schools that are only in their first year of improvement. Because an LEA is not required to offer SES to eligible students enrolled in a school in its first year of school improvement, the requirements in Section 1116(e) of the ESEA do not apply. In other words, such an LEA would not need to provide SES only to low-income students, to contract only with State-approved providers, or to fund SES at the per-pupil amount set forth in Section 1116(e)(6) of the ESEA.

However, because an LEA will be required to offer SES consistent with the statutory requirements in Section 1116(e) of the ESEA to students in that school the next year if the school remains in improvement status, it would help avoid confusion and administrative complexity if the LEA, in that first year, abides by the requirements of Section 1116(e) as much as possible. If an LEA uses Title I funds to provide SES-like services outside the requirements of Section 1116(e), it must ensure that

those services meet all the requirements governing the use of Title I, Part A funds, such as serving only students who are at-risk of failing to meet the State's academic achievement standards in a targeted assistance program [see generally Sections 1114, 1115].

H-14. May an LEA offer SES to students who are at risk of failing to meet the State's academic achievement standards, but who are not low-income?

Yes. However, an LEA may not "count" funds spent on providing SES to non-low-income students toward meeting its 20 percent obligation. Moreover, if an LEA uses Title I funds to provide SES to students not covered under the requirements in Section 1116(e) of the ESEA, those services must meet all other Title I requirements. In addition to Title I, Part A funds, an LEA could use other appropriate Federal, State, or local funds to provide SES to students who are not from low-income families.

H-15. How may an LEA fairly select providers to work in school buildings if there is not enough room in the schools for all SES providers to deliver their programs on-site?

Experience has demonstrated that many parents want to enroll their child in SES programs that are delivered in their child's school building because this eliminates the need to transport their child to another site after school has ended. The Department, therefore, encourages LEAs to allow providers to use school facilities to deliver SES, either free of charge or for a reasonable fee. LEAs should ensure that the use of the school facilities by providers is on the same basis and terms as are available to other groups that seek access to the school facilities. However, if many providers are approved to serve an LEA, or if other after-school programs use an LEA's schools, it may not be possible to have all providers provide SES in an LEA's school buildings.

Therefore, an LEA should select providers to operate on-site in a manner that is fair, open, and objective. Whatever process an LEA uses, it should strive to provide parents with as diverse and large a group of on-site providers as possible, including faith-based and other community-based organizations, and business groups.

Note that an LEA that spends less than its 20 percent obligation and uses the unexpended amount for other allowable activities *must*, among other things, ensure that SES providers are given access to school facilities, using a fair, open, and objective process, on the same basis and terms as are available to other groups that seek access to school facilities. (See L-1.)

H-16. May an LEA provide a list of eligible students to an approved SES provider so that the provider can contact parents regarding its services?

No. An LEA must comply with the prior written consent requirements of the Family Educational Rights and Privacy Act (FERPA) when disclosing information on students eligible for SES. Those provisions require the written consent of a parent before an LEA may disclose the identity of an eligible student. (For more information, see 34 C.F.R. § 99.30, available at http://www.ed.gov/policy/gen/reg/ferpa/rights_pg4.html.) Furthermore, Title I of the ESEA contains specific safeguards to protect the privacy of each child who is eligible for or receives SES. An LEA may not disclose to the public or to an approved provider the identity of any student who is eligible for, or receiving, SES without the written permission of the student's parents [Section 1116(e)(2)(D); 34 C.F.R. §200.46(a)(6)]. In addition, an SES provider is prohibited from disclosing to the public the identity of

any student who is eligible for, or receiving, SES without the written permission of the student's parents [Section 1116(e)(3)(E); 34 C.F.R. §200.46(b)(1)(v)].

H-17. How may an LEA help providers disseminate information on their services to parents?

There are a number of ways in which an LEA may ensure that information on SES providers is made available to parents of eligible students. For example an LEA may:

1. Ask providers to give the LEA stamped envelopes containing information about the program to be mailed by the LEA to parents of eligible students. Before doing so, the LEA could let the provider know *how many* students are eligible, but not the students' names.
2. Give providers "directory information" on all students in the LEA (whose parents have not opted out of "directory information") and allow providers to send a mailing to all parents of students in the LEA. (Note, however, that parents of students who are not eligible would also receive such a mailing.)
3. Hold an "open house" or "provider fair" and invite parents to come meet with providers about their SES programs.
4. Provide information about providers to parents in school newsletters.
5. Leave information about each provider at eligible schools for parents to review when they visit the school. Many providers have brochures and promotional materials that can be left at school sites for parents to read.

H-18. May an LEA disclose the identity of a student, as well as educational records regarding the student, to an SES provider selected by the student's parents?

An LEA may disclose pertinent information to an SES provider about a student whose parents have selected the provider, but only after the student's parent has provided written consent. With the consent of a parent, the LEA may disclose information about the student's academic record in order to assist the provider in determining the student's strengths and weaknesses. An LEA might want to consider including a parental consent signature line on its SES application form so that parents can provide consent to share information with providers at the same time that they express their interest in receiving services from a specific provider. Acknowledgment of the consent must be signed and dated and specify the records that may be disclosed by either the LEA or the provider; state the purpose of the disclosure; and identify the party or class of parties to whom the disclosure may be made. (For more information, see 34 C.F.R. §99.30, available at http://www.ed.gov/policy/gen/reg/ferpa/rights_pg4.html.)

H-19. Does the Family Educational Rights and Privacy Act (FERPA) prohibit an SES provider from contacting parents of students to whom it previously provided SES?

FERPA does not prohibit SES providers from using contact information for parents of students they previously served to contact those parents again regarding their services. Thus, an SES provider may use information it legally obtained under FERPA to contact parents for the purpose of recruitment. However, FERPA does not permit a provider to disclose to third parties the identity of any student who received or is receiving SES, without the written consent of the student's parent.

H-20. May an LEA prohibit or limit approved providers from promoting their programs and the general availability of SES?

No. Providers are allowed to market their services directly to members of the community or to provide general information to the public about the availability of SES; an LEA may not restrict them from doing so. An LEA should provide logistical and program information to providers in order to ensure that advertising includes correct information on such issues as the procedures parents must follow in obtaining SES for their children. Such coordination should help ensure that providers have ample time to market their services and that parents are able to make informed choices of SES providers. An LEA should also share its registration forms with providers so that providers can help sign up students for services.

H-21. May an LEA terminate the services provided to an individual student?

Yes. An LEA may terminate a provider's provision of SES to an individual student if the provider is unable to meet the student's specific achievement goals and the timetable set out in the agreement between the LEA and provider [*Section 1116(e)(3)(C); 34 C.F.R. §200.46(b)(2)(ii)*]. The agreement between an LEA and a provider must specify the terms and processes for terminating services. An LEA's authority to terminate an agreement is limited to services provided to an individual student (or students) and should not cover all students served by a provider.

An LEA may also terminate its agreement with a provider if the provider violates provisions in the agreement, such as provisions regarding student progress reports, invoicing payment for services, protecting student privacy, and complying with applicable health, safety, and civil rights laws. Further, LEAs may terminate an agreement if a provider fails to meet additional administrative or operational terms that may be included in the agreement, such as conducting background checks on the provider's employees, provided those terms are reasonable, do not subject the provider to more stringent requirements than apply to other contractors of the LEA, and do not have the effect of inappropriately limiting educational options for students and their parents.

If an LEA terminates a provider's services, the LEA should, if possible, allow the students the provider served to receive SES from another provider. The LEA might accommodate students with their second or third choice of provider if their original provider is no longer able to serve them.

However, as explained in E-3, under no circumstances may an LEA refuse to offer as an option to parents any provider on the State-approved list because of program design concerns. If an LEA has general concerns about the quality of a provider's services, the LEA should make its concerns known to the SEA. Additionally, it is not within an LEA's authority to remove a provider from the approved provider list or to terminate an agreement with a provider for generally failing to raise student achievement. Only an SEA may withdraw approval of a provider if, for two consecutive years, the provider does not contribute to increasing the academic proficiency of the students it serves [*Section 1116(e)(4)(D); 34 C.F.R. §200.47(a)(4)(ii)*].

I. THE ROLE OF PARENTS

I-1. How do parents select an SES provider?

In choosing a provider from the State-approved list, parents may want to consider, among other things: where and when the provider offers services, how often and for how long students will be served, how students are grouped during tutoring, whether the provider can meet the academic needs of their child, the qualifications of tutors, and how student progress will be measured.

Parents may request assistance from their LEA in selecting a provider. In such cases, an LEA that also serves as an SES provider should offer unbiased assistance focused on the specific academic needs of the student and the preferences of the parent. An LEA is not permitted merely to assign students whose parents request assistance to an LEA- or school-administered SES program.

I-2. May parents select any provider that appears on the State-approved list?

Yes. Parents may select any provider from the State-approved list, so long as the provider is able to provide services in or near the area served by the LEA; such services may include e-learning, online, or distance learning technology.

If requested by parents, an LEA must assist parents in the selection of a provider [Section 1116(e)(2)(B); 34 C.F.R. §200.46(a)(2)]. However, parents are not required to accept the LEA's recommendation of an SES provider.

I-3. What is the role of parents in SES?

Parents are to be active participants in the SES program.

At the *State level*, parents must be consulted in order to promote participation by a greater variety of providers and to develop criteria for identifying high-quality providers [Section 1116(e)(4)(A); 34 C.F.R. §200.47(a)(1)(i)].

At the *local level*, parents must be able to choose from among all SES providers approved by the State and available to serve students in the area served by the LEA or within a reasonable distance of that area. In addition, if they so choose, parents may obtain assistance from the LEA in selecting a provider [Section 1116(e)(2)(B); 34 C.F.R. §200.46(a)(2)]. Parents should also have an option to change or terminate services, if they are not satisfied with the services they are receiving.

At the *provider level*, parents, the LEA, and the provider chosen by the parents must develop and identify specific academic achievement goals for the student, measures of student progress, and a timetable for improving achievement [Section 1116(e)(3)(A); 34 C.F.R. §200.46(b)(2)(i)]. All parents whose children receive SES must be regularly informed of their child's progress [Section 1116(e)(3)(B); 34 C.F.R. §200.46(b)(2)(ii)].

I-4. What is the role of parents in supporting student attendance at SES sessions?

Parents should ensure that their child attends the SES sessions in which he or she is enrolled. The LEA should ensure that parents are notified by the provider if their child is not attending regularly.

IV. PROVIDER RESPONSIBILITIES

J. PROVIDING SUPPLEMENTAL EDUCATIONAL SERVICES

J-1. What is required of SES providers?

An SES provider is responsible for meeting the terms of its agreement with the LEA (see H-1), including:

1. Enabling the student to attain his or her specific achievement goals (as established by the LEA, in consultation with the student's parents and the provider) [Section 1116(e)(3)(A); 34 C.F.R. §200.46(b)(2)(i)(A)].
2. Measuring the student's progress, and regularly informing the student's parents and teachers of that progress [Section 1116(e)(3)(A), (B); 34 C.F.R. §200.46(b)(2)(i)(B), (ii)].
3. Adhering to the timetable for improving the student's achievement that is developed by the LEA in consultation with the student's parents and the provider [Section 1116(e)(3)(A); 34 C.F.R. §200.46(b)(2)(i)(C)].
4. Ensuring that it does not disclose to the public the identity of any student eligible for or receiving SES without the written permission of the student's parents [Section 1116(e)(3)(E); 34 C.F.R. §200.46(b)(2)(v)].
5. Providing SES consistent with applicable health, safety, and civil rights laws [Section 1116(e)(5)(C); 34 C.F.R. §200.47(b)(2)(iii)]. (See C-19, C-31, C-32.)
6. Providing SES that are secular, neutral, and nonideological [Section 1116(e)(5)(D); 34 C.F.R. §200.47(b)(2)(ii)(D)].

In the case of a student with a disability served under the IDEA, the achievement goals, measurement and reporting of progress, and timetable described in items 1 through 3 above must be consistent with (although not included in) the student's IEP under Section 614(d) of the IDEA [Section 1116(e)(3)(A); 34 C.F.R. §200.46(b)(3)]. In the case of a student covered by Section 504, the goals, measurement and reporting of progress, and timetable must be consistent with (although not included in) the student's individualized services under Section 504 [34 C.F.R. §200.46(b)(3)].

J-2. May an SES provider offer services in the summer?

Yes, although in most cases it will be preferable to provide services that take place over the course of the school year and that augment the instruction a child receives through the regular school program because the purpose of SES is to increase the academic achievement of students on the State assessments required under Section 1111 of the ESEA [Section 1116(e)(12)(C)(ii); 34 C.F.R. §200.45(a)(2)(i)]. Summer programs, however, can also augment school-year instruction and can help reduce "summer learning loss," which is frequently an issue for educationally disadvantaged children. SEAs may thus approve programs that provide services during the school year as well as during the summer. An LEA may not effectively reject an approved provider whose program is approved to provide services in the summer by setting dates of service that exclude services from being provided in the summer timeframe.

J-3. How may a prospective SES provider meet the requirement to provide information to an SEA on whether the provider has been removed from any State’s approved provider list?

In approving a prospective provider, an SEA must consider information from the provider on whether it has been removed from any State’s list of approved providers [34 C.F.R. §200.47(b)(3)(i)]. A prospective provider should honestly and completely provide this information to the SEA through the application process or through any other means that the SEA requests. If the provider has been removed from any State’s list of approved providers, the provider should explain why it was removed. (See C-21.)

J-4. What resources are available to help prospective providers become State-approved and to help approved providers strengthen the quality of their programs?

Many SEAs offer workshops and other forms of technical assistance to prospective and approved SES providers. This assistance may be useful in helping prospective providers understand the process they will have to go through to become approved in a particular State and better equip approved providers to work in the State.

J-5. May an approved SES provider offer tutoring services to non-SES eligible students alongside the eligible students that it serves in its SES program?

Yes. An approved provider may provide tutoring services to non-SES eligible students alongside the eligible students that it serves so long as the services that are provided to SES-eligible students are consistent with the SES program design approved by the SEA (e.g., in terms of educational program, pupil/tutor ratio, intensity of services, etc.). If the SES program design approved by the SEA provides, for example, for two one-hour sessions per week and a pupil/tutor ratio of 5:1, the provider must meet those terms for all SES-eligible students. If, however, there are only four SES-eligible students receiving services, the provider could add a non-SES eligible student to the session and still fulfill its approved program design of a 5:1 ratio.

J-6. How may a provider use the funds it receives from an LEA for providing SES?

The funds that an SES provider receives for providing SES are essentially income for the provider in exchange for its providing services to public school students. The funds may be used at the discretion of the provider for any allowable costs.

V. FUNDING

K. FUNDING ISSUES

K-1. How much must an LEA spend on SES?

The law establishes joint funding for choice-related transportation and SES [Section 1116(b)(10)]. Unless a lesser amount is needed to meet demand for choice-related transportation and to satisfy all requests for SES, an LEA must spend an amount equal to 20 percent of its Title I, Part A allocation (the “20 percent obligation”), before any reservations, on:

1. Choice-related transportation;

2. SES; or
3. A combination of (1) and (2).

In addition to paying for choice-related transportation and SES, an LEA may spend up to 1 percent of its 20 percent obligation on parent outreach and assistance [34 C.F.R. §200.48(a)(2)(iii)(C)]. (See K-20.)

This flexible approach means that the amount of funding that an LEA must devote to SES depends on how much it spends on choice-related transportation. If the demand from parents of eligible students for choice-related transportation exceeds 5 percent of the allocation, the LEA must spend the equivalent of at least 5 percent of its allocation on choice-related transportation. Similarly, if the cost of satisfying all requests for SES exceeds 5 percent of an LEA's Title I, Part A allocation, the LEA may not spend less than an amount equal to 5 percent of its allocation on those services. The LEA may spend the remaining 10 percent on a combination of choice-related transportation and SES [34 C.F.R. §200.48(a)(2)(iii)(A)].

The 20 percent obligation is a minimum requirement; an LEA may spend an amount exceeding 20 percent of its Title I, Part A allocation if additional funds are needed to meet all demand for choice-related transportation and SES [34 C.F.R. §200.48(a)(3)].

If an LEA spends less than the amount needed to meet its 20 percent obligation, it must meet the criteria in 34 C.F.R. §200.48(d)(2)(i) before it may use unexpended funds from the 20 percent obligation for other allowable activities. (See L-1.) These criteria specify the minimum conditions an LEA must meet in order to be considered as having met all demand for choice-related transportation and SES. An LEA that does not meet the criteria must spend the unexpended amount of its 20 percent obligation in the subsequent school year on choice-related transportation or SES, in addition to the funds it is required to spend to meet its 20 percent obligation in the subsequent school year [34 C.F.R. §200.48(d)].

K-2. Must an LEA reserve a portion of its Title I, Part A allocation to pay for SES?

No. The statutory phrase "an amount equal to" means that the funds an LEA uses to pay the costs of choice-related transportation, SES, or parent outreach and assistance need not come from its Title I, Part A allocation, but may be provided from other allowable Federal, State, local, and private sources.

K-3. Does funding available for Title I, Part A through the transferability provisions authorized under Section 6123 of the ESEA change the base that must be used to calculate the 20 percent obligation for choice-related transportation and SES?

Yes. An LEA must include any funds transferred to Title I under Section 6123(b) of the ESEA in the base used in calculating its 20 percent obligation.

In the alternative, an LEA may transfer funds to Title V, Part A or Section 1003 of the ESEA, if the LEA receives Section 1003 funds, to increase the amount of flexible funds available for SES or other school improvement activities. Funds transferred to Title V, Part A or Section 1003 would not be included in the base used to calculate the LEA's 20 percent obligation. Note that an LEA may transfer funds to Title V, Part A only through September 30, 2009 unless Congress appropriates additional funds for this program.

K-4. How may an LEA reserve Title I funds to help pay the costs of choice-related transportation, SES, or parent outreach and assistance?

An LEA that elects to use Title I, Part A funds to pay for choice-related transportation, SES, or parent outreach and assistance may (1) reserve any Title I, Part A funds needed for this purpose “off the top” prior to making allocations to schools, or (2) adjust allocations to schools to make available the required funds. If an LEA chooses the second method – adjusting allocations to schools – it may reserve funds from all Title I schools or only from schools identified for improvement, corrective action, or restructuring (subject to the limitation described in K-3).

K-5. In reserving Title I, Part A funds for choice-related transportation, SES, and parent outreach and assistance, an LEA is not permitted under Section 1116(b)(10)(D) to reduce Title I allocations to schools identified for corrective action or restructuring by more than 15 percent. How should an LEA calculate this 15 percent limit?

An LEA may satisfy this requirement through one of two methods. First, an LEA may simply set a floor of 85 percent of its prior-year allocation for any school identified for corrective action or restructuring. Under this approach, an LEA reserving Title I funds for choice-related transportation, SES, or parent outreach and assistance would not be permitted to reduce its allocation to an affected school below this 85 percent floor.

Under the second method, in making allocations to schools for a given year, an LEA would calculate two allocations. For the first allocation, the LEA would determine a “pre-reservation” allocation to schools before setting aside funds for choice-related transportation, SES, or parent outreach and assistance (but after any other reservations, such as those made for administrative costs and district-wide activities such as professional development and parental involvement). Then, for schools identified for corrective action or restructuring, the LEA would calculate what 85 percent of those schools’ “pre-reservation” allocation would be. The LEA would determine a second allocation for all schools after reserving funds for choice-related transportation, SES, or parent outreach and assistance. For schools in corrective action and restructuring, the LEA would then compare this allocation with 85 percent of their “pre-reservation” allocation and allocate the higher of the two to those schools.

K-6. How do the carryover rules described in Section 1127 of the ESEA affect any Title I funds reserved for choice-related transportation, SES, or parent outreach and assistance?

Section 1127 of the ESEA allows LEAs to carry over no more than 15 percent of unused Title I, Part A funds from one fiscal year to the next. This 15 percent cap applies to an LEA’s entire Title I, Part A allocation, and therefore covers any Title I, Part A funds reserved, but not spent due to lack of demand, for choice-related transportation, SES, or parent outreach and assistance. If the combination of unused funds reserved under Title I, Part A for choice-related transportation, SES, or parent outreach and assistance, and other unspent Part A funds exceeds 15 percent of an LEA’s total allocation, the excess funds must be returned to the State for reallocation to other LEAs. The SEA may grant an LEA a one-year exemption from the carryover limitation once every three years.

LEAs will likely want to use “first in-first out” accounting rules under which funds from the prior year are used before funds for the current year, in order to avoid lapsing any prior-year funds due to the end of the period of availability.

Provided that an LEA has met all demand from parents and students for choice-related transportation and SES and has met the criteria in 34 C.F.R. §200.48(d)(2)(i) (described in L-1), the LEA may use any unused portion of Title I, Part A funds reserved for this purpose for other allowable activities either during the year in which the reservation was made or in the following year, subject to the 15-percent carryover limit. Funds carried over to the following fiscal year are also subject to the equitable services requirements in Section 1120 of the ESEA and 34 C.F.R. §200.64. Funds carried over from one fiscal year to the next do not affect the base used for calculating an LEA's 20 percent obligation in the following year.

An LEA that does not meet its 20 percent obligation and does not meet the criteria described in 34 C.F.R. §200.48(d)(2)(i) (described in L-1) in a given school year must spend the unexpended amount in the subsequent school year on choice-related transportation, SES, or parent outreach and assistance (in addition to the funds it is required to spend to meet its 20 percent obligation in the subsequent school year). LEAs in this circumstance should not run afoul of the carryover limitation, however, because, in addition to the one-year exemption and first in-first out accounting rules available to LEAs as noted above, the requirement to spend unexpended funds in a subsequent school year focuses on the amount that must be spent on choice-related transportation and SES, not the specific funds or source of funds that an LEA uses to satisfy that amount. In other words, what must be "carried over" is a funding commitment, not any actual funds themselves. (See L-23.)

K-7. May an LEA use school improvement funds made available under Section 1003 (School Improvement) to pay for SES?

Yes. Section 1003(a) of the ESEA requires States to reserve four percent of their Title I, Part A allocations to support school improvement activities under Sections 1116 and 1117. States must generally distribute at least 95 percent of these funds to LEAs. SES are an authorized activity under Section 1116, and an LEA may use Section 1003(a) funds to provide those services. An LEA also may use funds received under Section 1003(g), which authorizes additional funding for school improvement, to support SES.

K-8. What Federal dollars other than Title I, Part A funds may be used to pay for SES?

An LEA may use its Title V, Part A Local Innovative Education Program funds to pay for SES but only through September 30, 2009, unless Congress appropriates additional funds for this program. An LEA also may use funds transferred to Title I, Part A from other Federal education programs under Section 6123(b) of the ESEA to pay such costs. Programs eligible to make such transfers include Title II, Part A Improving Teacher Quality State Grants; Title II, Part D Educational Technology State Grants; Title IV, Part A Safe and Drug-Free Schools and Communities State Grants; and Title V, Part A (through September 30, 2009). In addition, an LEA may use funds it receives under Section 1003(a) and (g) of the ESEA for SES. The LEA may also transfer funds under Section 6123(b) of the ESEA into Section 1003(a) and (g), if the LEA receives those funds, to increase the amount of flexible funds available for SES or other school improvement activities.

SEAs also may use their administrative funds reserved under Title I, Part A and their State-level funds under Title V, Part A to assist LEAs in paying the costs of SES [*Section 1116(e)(7); 34 C.F.R. §200.48(a)(4)*], and may transfer additional non-administrative State-level funding from other Federal education programs under Section 6123(b) of the ESEA to Title I, Part A or Title V, Part A and use them for this purpose. Like LEAs, an SEA may only use Title V, Part A funds, or transfer funds into Title V, Part A through September 30, 2009, unless Congress appropriates additional funds for this program.

Additionally, under Section 611(e)(2)(C)(xi) of the IDEA, an SEA may reserve IDEA funds for State-level activities, including SES. SES are one of eleven permissive activities for which an SEA may use State set-aside funds under IDEA. There are also several mandatory uses.

The IDEA provision allows for an SEA to allocate the reserved funds to an LEA with schools identified for improvement based solely on the disaggregated scores of the subgroup of students with disabilities, and for the LEA to use those funds to pay for SES for students with disabilities. An LEA that has received these funds may count them toward meeting its 20 percent obligation.

K-9. If an LEA does not incur any choice-related transportation costs, must it spend its full 20 percent obligation on SES?

Yes. Some LEAs, in a given year, may not be able to provide public school choice because they have no eligible public schools to which students may transfer. An LEA in this situation must spend the amount needed to meet its 20 percent obligation fully on SES, assuming sufficient demand, except that the LEA may spend up to 1 percent of its 20 percent obligation on parent outreach and assistance (see K-21). If such an LEA spends less than the amount needed to meet its 20 percent obligation on SES and parent outreach and assistance and wishes to use the unexpended amount for other allowable activities, it must meet the criteria in 34 C.F.R. §200.48(d)(2)(i) (as described in L-1) or spend the unexpended amount in the subsequent year [34 C.F.R. §200.48(d)].

K-10. May an LEA limit to less than 20 percent of its Title I, Part A allocation the amount that it will make available for SES and choice-related transportation?

In general, an LEA may not limit to less than 20 percent of its Title I, Part A allocation the amount it will make available for SES and choice-related transportation. Rather, an LEA must follow the procedures set forth in K-1; that is, it must spend the equivalent of between 5 and 15 percent of its Title I, Part A allocation on SES and on choice-related transportation (or as much as 20 percent on SES, if it is not able to provide public school choice), with the precise amount dependent on the relative demand for choice-related transportation and for SES and on whether the LEA chooses to spend up to 1 percent of its 20 percent obligation on parent outreach and assistance. An LEA that does not spend its full 20 percent obligation must meet the criteria in 34 C.F.R. §200.48(d)(2)(i), as discussed in L-1, or spend the unexpended amount in the subsequent school year [34 C.F.R. §200.48(d)].

Note, however, that an LEA may limit the amount that it will make available for choice-related transportation and SES to less than its 20 percent obligation if it is able to provide SES or choice-related transportation to all eligible students using less than that amount. In that case, the LEA may immediately use for other allowable activities the difference between its 20 percent obligation and the amount needed to serve all eligible students. (See L-22.)

In determining whether an LEA can provide all eligible students with choice-related transportation or SES without spending its full 20 percent obligation, the LEA must consider student eligibility for the two provisions to be (1) all students enrolled in a Title I school identified for improvement, corrective action, or restructuring (in the case of public school choice eligibility), and (2) all students from low-income families enrolled in a Title I school in year two of improvement, corrective action, or restructuring (in the case of SES). An LEA may not define student eligibility to be a prioritized (i.e., smaller) group of eligible students.

K-11. If an LEA provides SES to students enrolled in schools in their first year of improvement because it cannot provide public school choice (as discussed in H-13), may it count the cost of those services toward its 20 percent obligation?

Yes. An LEA may count the cost of providing SES to students in schools in the first year of improvement toward meeting its 20 percent obligation, so long as the services meet all the requirements in Section 1116(e) of the ESEA and so long as the LEA is meeting the full demand for SES from students enrolled in schools in their second year of improvement, in corrective action, or in restructuring.

K-12. If the cost of meeting the demand for SES and choice-related transportation in an LEA equals or exceeds the LEA's 20 percent obligation, must an LEA spend its 20 percent obligation on those activities?

Yes. If there is sufficient demand in an LEA for SES and public school choice transportation, the LEA must spend its 20 percent obligation on those activities, subject to the exception that it may spend up to 1 percent of the 20 percent obligation (0.2 percent of its Title I, Part A allocation) on parent outreach and assistance.

K-13. If only one school in an LEA has been identified for school improvement, corrective action, or restructuring, must the LEA make available its full 20 percent obligation for choice-related transportation and SES?

In general, an LEA must make available for choice-related transportation and SES its full 20 percent obligation even if the LEA has only one school in improvement. An LEA that does not spend its full 20 percent obligation must meet the criteria in 34 C.F.R. §200.48(d)(2)(i), as discussed in L-1, or spend the unexpended amount in the subsequent school year [34 C.F.R. §200.48(d)].

However, depending on the enrollment in the identified school, the LEA may be able to provide choice-related transportation and SES to all eligible students without spending its full 20 percent obligation. In that case, the LEA may limit the amount that it will make available for choice-related transportation and SES to the amount needed to serve all eligible students and may immediately use for other allowable activities the difference between the 20 percent obligation and the needed amount. (See K-10 and L-22.)

K-14. How much must an LEA spend for each student receiving SES?

An LEA must spend, for each student receiving SES, either an LEA's per-pupil allocation under Title I, Part A (determined as described in K-16) or the actual cost of the services, whichever is less [Section 1116(e)(6)].

The average per-pupil allocation of Title I funds to LEAs is about \$1,300, but the amount varies widely across the Nation, ranging in most LEAs from roughly \$900 to \$2,400. Estimates of the maximum per-pupil amount for SES in each LEA in the Nation are available at <http://www.ed.gov/about/overview/budget/titlei/fy08/index.html>.

Note that this cap applies to the cost of instructional services only. LEAs may incur additional per-pupil costs related to the administration of SES, transportation of students to a provider, or appropriate

accommodations for students with disabilities, but may not count those expenses against the per-pupil amount.

K-15. How must an LEA calculate the per-pupil funding cap on the cost of SES?

An LEA must calculate the per-pupil cap on SES costs by dividing its Title I, Part A allocation by the number of children residing within the LEA aged 5-17 who are from families below the poverty level, as determined by the most recent census estimates from the Department of Commerce [Section 1116(e)(6)(A); 34 C.F.R. §200.48(c)(1)]. The Department of Education uses these poverty estimates to make allocations to LEAs and provides the estimates to States as part of the allocation notification process. (For census data, go to <http://www.census.gov/hhes/www/saipe/district.html>.)

In States that use “alternative poverty data” under Section 1124(a)(2)(B)(iii)(II) of the ESEA for determining allocations to small LEAs (rather than using the Census counts), these LEAs may use the alternative count in making the per-pupil calculation for SES.

Note that an LEA’s per pupil cap will change annually to reflect changes in an LEA’s Title I per-pupil allocation.

K-16. May an LEA establish a lower per-pupil cap for SES?

No. An LEA may not establish a per-pupil cap for SES that is lower than its Title I, Part A per-pupil allocation, which must be calculated as described in K-15. However, if the actual costs of services are less than an LEA’s per-pupil cap, it may spend a lesser amount per student.

K-17. What is meant by “the actual cost” of services in determining the per-pupil cost of SES?

The actual cost of services is simply the amount that a provider charges for services.

K-18. May an LEA pay a provider an amount that exceeds the per-pupil limitation on funding for SES?

Yes, although it is not required to do so. In some LEAs the per-pupil “tuition” charged by some State-approved providers may exceed the per-pupil amount the LEA can spend (pursuant to the calculation made in K-15). In this situation, the LEA may, using funds from Title I, Part A or other sources, supplement the amount available to a child in order to allow that child to receive SES from the provider selected by his or her parents. However, the LEA may not count any amount provided to a child in excess of the per-pupil cap against the 20 percent obligation. In other words, if the cost of enrolling a child with a provider is \$1,500 and the LEA’s per-pupil cap (calculated as described in K-15) is only \$1,000, the LEA may make available to the child the full \$1,500 but it may count only the first \$1,000 toward meeting its 20 percent obligation.

K-19. Must an LEA pay for or provide transportation for students to receive SES?

No. An LEA may provide transportation for students to receive SES, but is not required to do so under the law. In addition, the costs of such transportation may not be used to satisfy the 5 percent minimum expenditure requirement for SES [34 C.F.R. §200.48(a)(2)(iii)(B)], nor may the costs of transportation be counted toward satisfying an LEA’s 20 percent obligation, as described in K-1.

K-20. May an LEA count costs incurred in providing outreach and assistance to parents on public school choice or SES toward the 20 percent obligation?

Yes. An LEA may, but is not required to, count costs for parent outreach and assistance regarding public school choice and SES toward its 20 percent obligation, subject to a cap of 1 percent thereof (0.2 percent of an amount equal to the LEA's Title I, Part A allocation) [34 C.F.R. §200.48(a)(2)(iii)(C)]. An LEA may spend more than the 1 percent on parent outreach activities, but may not count more than the 1 percent toward meeting its 20 percent obligation.

K-21. What costs for parent outreach and assistance may an LEA count toward meeting its 20 percent obligation?

An LEA is in the best position to determine the most effective means of providing outreach and assistance to parents of eligible students, and should use the flexibility provided by 34 C.F.R. §200.48(a)(2)(iii)(C) to make it easier to finance the provision of outreach and assistance to parents to help them take advantage of public school choice and SES. For example, an LEA might count toward meeting its 20 percent obligation the costs of parent notification letters; communication to parents through the media, Internet, and community partners; displaying information on the LEA's Web site; and parent fairs held by the LEA.

K-22. May an LEA count toward meeting its 20 percent obligation administrative costs, other than those for parent outreach and assistance, incurred in providing SES to eligible students?

No. For example an LEA may not count toward meeting its 20 percent obligation the costs of contracting with or arranging for payment to SES providers or costs associated with matching students to respective providers. Such administrative costs may be allowable Title I expenditures but may not be counted toward meeting an LEA's 20 percent obligation.

K-23. If an existing after-school program has been approved by the State as an SES provider, may an LEA count any funds that it is already paying that provider toward meeting the 20 percent obligation?

Yes. However, selection of an SES provider is always up to the parent. An LEA may not merely have an existing after-school program provide SES without giving parents the opportunity to select another provider and the services most appropriate for their children.

An LEA in this situation may count, toward meeting its 20 percent obligation, any funds that it is using to pay a provider for SES received by children who are eligible to receive those services (children from low-income families enrolled in eligible schools). However, it may not count the cost of providing services to other children or the costs of providing other types of services. Moreover, the provider will need to keep appropriate records and use appropriate safeguards to ensure that SES funds are used only for eligible students and activities.

An existing after-school program that qualifies to be an SES provider should also be aware of a potential supplanting issue. It does not violate the Title I supplement-not-supplant requirement for an LEA to count, toward meeting its 20 percent obligation, State or local funds used to provide SES to eligible students. However, it could be supplanting if the LEA were to use Title I, Part A funds to replace State or local funds it had spent previously to provide services to eligible students. In addition,

an LEA may not exclude eligible students from the services it is providing with State or local funds merely because those students are eligible for SES under Section 1116 of the ESEA.

L. REQUIREMENTS FOR LEAS THAT DO NOT MEET THEIR 20 PERCENT OBLIGATION*

* A flowchart, located in Appendix C, provides further information on the requirements and responsibilities for meeting an LEA's 20 percent obligation.

L-1. What are the responsibilities of an LEA if it spends less than its 20 percent obligation on choice-related transportation, SES, and parent outreach and assistance?

Unless it meets the criteria described below, an LEA that does not meet its 20 percent obligation in a given school year must spend the unexpended amount in the subsequent school year on choice-related transportation, SES, or parent outreach and assistance (subject to the limitation described in L-24). The LEA must spend the unexpended amount in addition to the funds it is required to spend to meet its 20 percent obligation in the subsequent school year [34 C.F.R. §200.48(d)(1)].

To spend less than the amount needed to meet its 20 percent obligation and to use the unexpended amount for other allowable activities in a given school year, an LEA must meet, at a minimum, all of the following criteria [34 C.F.R. §200.48(d)(2)(i)]:

1. Partner, to the extent practicable, with outside groups, such as faith-based organizations, other community-based organizations, and business groups, to help inform eligible students and their families of the opportunities to transfer or to receive SES. (See L-4 through L-6.)
2. Ensure that eligible students and their parents have a genuine opportunity to sign up to transfer or to obtain SES, including by: (a) providing timely, accurate notice to parents (see L-7); (b) ensuring that sign-up forms for SES are distributed directly to all eligible students and their parents and are made widely available and accessible through broad means of dissemination, such as the Internet, other media, and communications through public agencies serving eligible students and their families (see G-7 and G-8); and (c) providing a minimum of two enrollment windows, at separate points in the school year, that are of sufficient length to enable parents of eligible students to make informed decisions about requesting SES and selecting a provider. (See L-8 through L-10.)
3. Ensure that eligible SES providers are given access to school facilities, using a fair, open, and objective process, on the same basis and terms as are available to other groups that seek access to school facilities. (See L-11 through L-14.)

In addition, an LEA that spends less than the amount needed to meet its 20 percent obligation and does not intend to spend the unexpended amount in the subsequent school year must maintain records that demonstrate it has met the criteria above [34 C.F.R. §200.48(d)(2)(ii)], and must notify the SEA that it has met the criteria and intends to spend the remainder of its 20 percent obligation on other allowable activities [34 C.F.R. §200.48(d)(2)(iii)]. The LEA must include in its notice to the SEA the amount of that remainder [34 C.F.R. §200.48(d)(2)(iii)]. An LEA does not need to obtain approval from its SEA to spend less than its 20 percent obligation.

L-2. May an SEA require an LEA to meet additional criteria in order for the LEA to spend less than its 20 percent obligation?

Yes. An SEA may require an LEA to meet criteria in addition to those in 34 C.F.R. §200.48(d)(2)(i) (described in L-1) in order for the LEA to spend less than its 20 percent obligation. For example, an SEA could require that an LEA also have an SES or public school choice participation rate that is equal to or higher than a specified amount, or that it receive written confirmation from a specified percentage of eligible families that they were notified about their SES and public school choice options. Note, however, that any other criteria required by an SEA must be in addition to the criteria in 34 C.F.R. §200.48(d)(2)(i) and may not serve as a substitute for these criteria.

L-3. May an SEA establish additional requirements or procedures for an LEA that does not meet its 20 percent obligation?

Yes. As part of its responsibility to implement Title I in accordance with the law and regulations, an SEA may establish its own additional requirements or procedures for ensuring compliance with the criteria in 34 C.F.R. 200.48(d)(2)(i), discussed in L-1, for LEAs that do not meet their 20 percent obligation. For example, although Federal regulations do not require that an LEA obtain approval from an SEA if it spends less than its 20 percent obligation, an SEA could choose to require such approval from its LEAs.

L-4. With which outside groups might an LEA partner to help inform eligible students and their families of the opportunity for SES or public school choice?

To meet the criterion in 34 C.F.R. §200.48(d)(2)(i)(A) that an LEA partner, to the extent practicable, with outside groups, the LEA should consider a range of business and faith-based and other community groups in its area with which it may partner. An LEA should consider forming partnerships with groups that can assist it in reaching and informing parents about their public school choice and SES options in a timely and clear manner, and should carefully consider which outside groups could best assist it in light of the unique circumstances in the LEA. For most LEAs, there likely exist at least one group willing to form a partnership to help inform parents about SES and public school choice options, but it is possible that small and rural LEAs will have few or no options.

L-5. Does an LEA need to form a formal partnership in order to meet the criterion that it partner with outside groups?

No. The criterion that an LEA partner with outside groups should not be significantly burdensome or costly for an LEA, and no formal agreement is needed. Indeed, partnering with an outside group should be a cost-effective way for an LEA to promote SES, as partner groups, such as faith-based organizations, community-based organizations, and business groups already have a presence in the community and thus give an LEA a way to tap into existing resources with little additional effort or costs. An LEA could ask a partner to pass out literature on SES, make announcements about the LEA's upcoming SES events and timelines, or help the LEA write parent-friendly letters. A partner group could assist an LEA with parent outreach with respect to either SES or public school choice, or could assist with communicating to parents on both options.

An LEA should make a good-faith effort to partner with an outside group, which should include attempts to reach several groups in the community that have connections to families of eligible

students. If an LEA cannot form a partnership with an outside group, it should maintain records documenting the reasons why.

L-6. May an LEA partner with an SES provider to meet the criterion that it partner with outside groups?

Yes, an LEA may partner with an SES provider in order to meet the criterion, as discussed in L-1, that an LEA partner with outside groups to help inform eligible students and their families of the opportunities to transfer or receive SES.

As discussed in L-4, the purpose of the criterion that an LEA partner with outside groups is to provide assistance to the LEA in reaching and informing parents about their SES and public school choice options in a timely manner, and an LEA should carefully consider which outside group could best assist it, in light of the unique circumstances in the LEA, as it conducts outreach to parents. An LEA should ensure that a provider serving as a partner with the LEA is able to provide parents with information in a fair and unbiased manner that does not favor one provider's program over another.

An LEA has the discretion to reject the offer of a provider that wants to serve as a partner if the LEA has concerns that the provider, by virtue of its competitive position, would be unable to be fair and unbiased or if the LEA does not believe it is practicable to enter into such a partnership for any other reason.

L-7. How does an LEA provide timely, accurate notice to parents regarding SES?

To meet the criterion in 34 C.F.R. §200.48(d)(2)(i)(B)(I) that an LEA provide timely, accurate notice to parents (see L-1), an LEA must provide notice regarding SES directly, through such means as regular mail or email, and through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families [34 C.F.R. §200.36(c)]. (See G-7.) In addition, the notice must be in an understandable and uniform format and, to the extent practicable, in a language that parents can understand [Section 1116(b)(6); 34 C.F.R. §200.36(b)]. (See G-3.) The notice must include all required information, as described in 34 C.F.R. §200.37(b). (See G-2.) Additionally, as described in G-1, an LEA should notify parents of their SES options at the beginning of the school year and begin offering SES in a timely manner thereafter.

L-8. How can an LEA meet the criterion that it offer at least two SES enrollment windows of sufficient length and at separate points in the school year?

The purpose of the “sufficient length” criterion in 34 C.F.R. §200.48(d)(2)(i)(B)(3) (see L-1) as it relates to SES enrollment windows is to help ensure that parents of eligible students have a genuine opportunity to enroll their children in SES. This means that parents should have a reasonable amount of time to obtain information about providers serving their area, consider their options, and sign up for SES. In general, the Department believes that this requires enrollment windows to be at least two weeks in length. The “sufficient length” criterion also means that enrollment windows must be sufficiently convenient for parents, particularly for working parents and single parents. For example, enrollment periods limited to two hours after school for two or three days would not be deemed of sufficient length to give working parents a genuine opportunity to sign up for SES.

Additionally, the LEA must provide at least two enrollment windows at separate points in the school year. This means, for example, that an LEA might allow students to enroll in SES during the early fall,

coinciding with the start of school, and hold a second enrollment window in late fall or early winter, after a grading period has ended.

L-9. If an LEA provides at least two SES enrollment windows, what information must the LEA provide to parents during each of those enrollment windows?

An LEA is required to notify parents of eligible students, at least annually, of their opportunity to enroll their child in SES. This notification must meet all requirements for the SES notice, as discussed in Section G. An LEA that provides more than one enrollment window should meet the requirements for the content and format of the SES notice each time it notifies parents of their opportunity to enroll their child in an SES program. Additionally, in an LEA's notice to parents regarding its first enrollment window, the LEA should inform parents about if and when it will be providing an additional enrollment window in the future. Doing so will enable parents who do not choose to enroll their child in SES at the beginning of the school year to enroll their child at a later date.

L-10. Does an LEA that provides an "open enrollment" window all year for SES meet the criterion to provide a minimum of two enrollment windows at separate points in the school year?

Yes. If an LEA provides eligible families an opportunity to enroll in SES through an open enrollment window that lasts throughout the school year, the LEA is considered to have met the requirement, as discussed in L-1, that it hold a minimum of two SES enrollment windows, at separate points in the school year, that are of sufficient length to enable parents of eligible students to make informed decisions about requesting SES and selecting an SES provider.

L-11. How can an LEA meet the criterion to give providers access to school facilities using a fair, open, and objective process?

An LEA that spends less than its 20 percent obligation and wishes to use the unexpended amount for other allowable activities must give SES providers access to school facilities in the same manner and on the same basis as it gives access to other outside organizations. The Department encourages an LEA to develop a facilities policy that is public and easily understood by providers and parents. An LEA with many eligible students and schools may need to implement a different policy than one with fewer affected students and schools. An LEA may wish to consult with its SEA on any available guidance regarding fair provider access policies.

L-12. May an LEA that spends less than its 20 percent obligation and wishes to use the unexpended amount for other allowable activities differentiate between an SES provider and a non-SES group in allowing access to its school facilities?

No. The criterion in L-1, that an LEA ensure that SES providers are given access to school facilities, using a fair, open and objective process, on the same basis and terms as are available to other groups that seek access to school facilities means that an LEA that allows non-SES providers to use its facilities for out-of-school purposes must provide the same opportunity for an SES provider to use school facilities, at the same cost and for a comparable period of time. An LEA may operate a first-come, first-served policy with respect to letting outside groups have access to its school facilities.

L-13. May an LEA that spends less than its 20 percent obligation and wishes to use the unexpended amount for other allowable activities differentiate between a for-profit SES provider and a non-profit SES provider in allowing access to its school facilities?

If an LEA's facilities policy, in general, does not differentiate between for-profit and non-profit entities in granting access to school facilities, then the LEA may not differentiate between for-profit and non-profit SES providers. On the other hand, if an LEA's general policy regarding access to school facilities does distinguish entities by their profit status, the LEA may apply that policy to SES providers. We encourage LEAs to give all SES providers access to school facilities on the same basis and terms.

L-14. Does the "facilities" criterion in L-1 *mandate* that an LEA give SES providers access to school facilities?

As discussed in L-11, an LEA that spends less than its 20 percent obligation and wishes to use the unexpended amount for other allowable activities must give SES providers access to school facilities in the same manner and on the same basis as it gives access to other outside organizations. As explained in L-12, an LEA that permits non-SES groups use its school facilities must permit SES providers do so, as well. However, if an LEA does not allow any groups (SES or non-SES) to use its school facilities, the LEA is not required to give SES providers access to school facilities. The "facilities" criterion only requires an LEA to implement the same policies for SES and non-SES entities; it does not require an LEA that does not permit outside groups to use its school facilities to allow SES providers to do so.

L-15. When should an LEA notify the SEA of its intention to spend a portion of its 20 percent obligation for other allowable activities?

An LEA has flexibility in the timing of its notification to the SEA that it intends to use a portion of its 20 percent obligation for other allowable activities. However, an LEA must be careful not to predetermine demand for choice-related transportation and SES before all parents of eligible students have had a genuine opportunity to sign up for public school choice or SES. For example, an LEA should not notify its SEA of its intent to spend a portion of its 20 percent obligation on other allowable activities before holding the second enrollment window for SES. Since this second enrollment window is required to be separate from the first enrollment window, preferably by a grading period or similar period of time (i.e., 2-3 months), the Department would not expect LEA notification to its SEA to occur prior to December or January. An LEA that has an open enrollment all year long should notify its SEA after several months of open enrollment.

L-16. What are the responsibilities of an SEA for ensuring that an LEA spending less than its 20 percent obligation meets the criteria in 34 C.F.R. §200.48(d)(2)(i)?

An SEA must ensure that an LEA spending less than its 20 percent obligation complies with the criteria specified in 34 C.F.R. §200.48(d)(2)(i) (see L-1) through its regular process for monitoring LEAs [34 C.F.R. §200.48(d)(3)(i)]. However, the SEA *must* review any LEA that:

1. The SEA determines has spent a significant portion of its 20 percent obligation for other activities; and

2. Has been the subject of multiple complaints, supported by credible evidence, regarding implementation of the public school choice or SES requirements [34 C.F.R. §200.48(d)(3)(ii)(A)].

The SEA must complete its review of any such LEA by the beginning of the following school year (i.e., the school year following the year in which the LEA spent a significant portion of its 20 percent obligation for other activities) [34 C.F.R. §200.48(d)(3)(ii)(B)]. Additionally, an SEA may choose to review any LEA that the SEA believes is not implementing public school choice or SES in accordance with the law or regulations.

L-17. For purposes of an SEA’s determining when it must review an LEA, what is a “significant portion” of the 20 percent obligation?

An SEA has discretion to determine what constitutes a “significant portion” of the 20 percent obligation when considering which LEAs to review. For example, an SEA could calculate the average portion of the 20 percent obligation that its LEAs spend on choice-related transportation and SES, and then decide that any LEA spending less than half of that amount is thereby using “a significant portion” of its 20 percent obligation for other allowable activities. The SEA also could vary its definition of “significant portion” according to such factors as the size and urbanicity of its LEAs, since such factors are related to the availability of public school choice and SES options, or the number of schools in improvement, which determines need for public school choice and SES.

L-18. For purposes of an SEA’s determining when it must review an LEA, how does an SEA determine what is a “complaint supported by credible evidence”?

An SEA must have procedures in place for reviewing complaints regarding LEA implementation of Title I programs and activities, and should follow those procedures in determining the credibility of one or more complaints related to an LEA’s compliance with the statutory and regulatory requirements for public school choice and SES. An SEA has discretion to establish procedures for reviewing other complaints regarding public school choice and SES that are not directly about violations of statutory and regulatory requirements.

L-19. What actions must be taken by an LEA that the SEA determines has not met the criteria for spending less than the amount needed to meet its 20 percent obligation?

If an SEA determines that an LEA has failed to meet one or more of the criteria for spending less than the amount needed to meet its 20 percent obligation, the LEA must:

1. Spend the unexpended amount in the subsequent school year, in addition to its 20 percent obligation for that subsequent school year, on choice-related transportation costs, SES, or parent outreach and assistance (subject to the limitation described in L-24) [34 C.F.R. §200.48(d)(4)(i)(A)]; or
2. Meet the criteria for spending less than the amount needed to meet its 20 percent obligation in the subsequent year, and obtain permission from the SEA before spending less in the subsequent school year than the total amount it is required to spend (the unexpended amount from the prior school year plus the 20 percent obligation for that year) [34 C.F.R. §200.48(d)(4)(i)(B)].

An SEA may not grant permission to an LEA to spend less than the total amount (i.e., the sum of the unexpended amount from the first year and the amount needed to meet the 20 percent obligation in the subsequent school year) unless the SEA has confirmed the LEA's compliance with the criteria in 34 C.F.R. §200.48(d)(2)(i) [34 C.F.R. §200.48(d)(4)(ii)].

L-20. May an SEA waive one or more of the individual criteria for an LEA that spends less than the amount needed to meet its 20 percent obligation?

No. An SEA does not have authority to waive any of the criteria in 34 C.F.R. §200.48(d)(2)(i).

L-21. Are there LEAs that spend less than their 20 percent obligation that are not subject to the criteria in 34 C.F.R. §200.48(d)(2)(i)?

There may be circumstances in which an LEA does not spend its full 20 percent obligation yet is not subject to the criteria in 34 C.F.R. §200.48(d)(2)(i). Such circumstances may include, but are not limited to, the following:

1. The LEA is not able to provide public school choice because it has only one school at each grade level **and** cannot provide SES because it is not served by any providers, including providers that employ technology, such as distance learning, to deliver their services.
2. The LEA enrolls sufficient numbers of eligible students to spend all funds reserved for choice-related transportation and SES, but has funds left over at the end of the year because one or more providers did not fulfill their contractual obligations or because enrolled students did not begin or complete services. However, if an LEA experiences significant student attrition in its SES program early in the school year, leading to lower than anticipated expenditures, we would expect it to hold a second enrollment period and sign up a sufficient number of students to use its full 20 percent obligation.
3. The LEA is meeting demand by providing choice-related transportation or SES to all eligible students. (See L-22.)

L-22. How do the criteria for spending less than the 20 percent obligation apply in the case of an LEA that can provide choice-related transportation or SES to all eligible students without spending the full 20 percent?

In the case of an LEA that is able to provide choice-related transportation or SES to all eligible students without spending its full 20 percent obligation, the criteria would apply to the LEA only with respect to the amount of funds that is needed to serve all eligible students. The LEA would be permitted to use the difference between the 20 percent obligation and the needed amount immediately for other allowable activities. For example, if an LEA could provide choice-related transportation or SES to all eligible students with an amount equal to 10 percent of its Title I, Part A allocation, it would be required to reserve only that amount and would be able to use the other half of its 20 percent obligation immediately for other allowable activities. To spend less than the amount equal to 10 percent of its Title I, Part A allocation, however, the LEA would need to meet the criteria or spend the unexpended amount in the subsequent school year.

Note that an LEA seeking to use a portion of its 20 percent obligation immediately for other allowable activities must base the amount that it reserves for choice-related transportation and SES on the assumption that **all** eligible students will choose to transfer schools or obtain SES.

L-23. If an LEA must spend the unexpended amount of its 20 percent obligation in a subsequent school year, must it use the same source of funds to meet this requirement?

No. The requirement to spend the unexpended amount of the 20 percent obligation in a subsequent school year focuses on the *amount* that must be spent on choice-related transportation and SES, not the specific funds or source of funds that an LEA uses to satisfy that amount. In other words, what is actually “carried over” is a funding commitment, not actual funds. LEAs not meeting the criteria must add the amount of any unused portion of the 20 percent obligation to the amount that must be spent on choice-related transportation and SES in the subsequent year. For example, if an LEA has \$100,000 in unused fiscal year 2009 Title I, Part A funds that were reserved as part of its 20 percent obligation in the 2009-2010 school year, it does not have to carry over those specific Title I funds to the next school year. Rather, the LEA could use that \$100,000 in fiscal year 2009 Title I funds for other Title I activities in the 2009-2010 school year, so long as it adds the same \$100,000 *amount*--from any allowable Federal, State, or local source--to its 20 percent obligation for the 2010-2011 school year.

L-24. If an LEA must spend the unexpended amount of its 20 percent obligation in a subsequent school year, may it count costs for parent outreach and assistance in the subsequent school year toward meeting its unexpended obligation?

An LEA is able to count costs for parent outreach and assistance toward meeting its unexpended obligation in the subsequent school year, but **only** if it did not reach the 1 percent cap in the first year (based on the LEA’s Title I, Part A allocation in that year). However, we do not expect that many LEAs will find themselves in this situation. In general, if an LEA must spend funds in a subsequent school year because it failed to meet the criteria in 34 C.F.R. §200.48(d)(2)(i), the LEA has probably already spent up to the 1 percent cap on parent outreach and assistance. In this circumstance, the LEA may not count costs for parent outreach and assistance toward meeting its unexpended obligation in the subsequent school year (although it may count costs for parent outreach and assistance toward meeting its 20 percent obligation for the subsequent school year, subject to the 1 percent cap discussed in K-20); the LEA must use all of the unexpended funds in the subsequent school year for SES and choice-related transportation.

For example, if, during the 2009-2010 school year an LEA spent an amount equal to 15 percent of its Title I, Part A allocation on choice-related transportation, SES, and parent outreach and assistance and did not meet all the criteria in 34 C.F.R. §200.48(d)(2)(i), it must spend the remaining 5 percent of its 20 percent obligation from the 2009-2010 school year on choice-related transportation or SES during the 2010-2011 school year, in addition to its 20 percent obligation for the 2010-2011 school year; it may not spend its unexpended funds in the subsequent school year on parent outreach and assistance. However, it may use 1 percent of its 20 percent obligation for the 2010-2011 school year on parent outreach and assistance during the 2010-11 school year.

L-25. Are unexpended funds that an LEA must spend in a subsequent school year subject to the equitable services provisions for private school students?

No. Funds that an LEA must spend in the subsequent school year are not subject to the equitable services requirements for private school students set forth in Section 1120 of the ESEA. That is because equitable services for private school students generally apply to Title I funds spent for instruction for elementary and secondary school students, professional development, and parent involvement. They do not apply, however, to all uses of Title I funds, and they do not apply to Title I funds reserved for choice-related transportation and SES because private school students are not

subject to school improvement and private school students do not receive SES. However, any unspent portion of an LEA's 20 percent obligation that is used for other allowable purposes may be subject to the equitable services provisions of the ESEA.

Appendix A: **Definitions**

20 Percent Obligation: The amount equal to 20 percent of an LEA's Title I, Part A allocation that an LEA must spend, subject to demand, on choice-related transportation, SES, or a combination of the two. If the cost of satisfying all requests for SES exceeds 5 percent of an LEA's Title I, Part A allocation, the LEA may not spend less than an amount equal to 5 percent on those services. Similarly, if the demand from parents of eligible students for transportation needed for public school choice exceeds 5 percent of the allocation, the LEA must spend the equivalent of at least 5 percent on choice-related transportation. An LEA has flexibility in allocating the remaining 10 percent. In addition, an LEA may, but is not required to, spend up to 1 percent of its 20 percent obligation (0.2 percent of its Title I, Part A allocation) on parent outreach and assistance related to public school choice and SES [Section 1116(b)(10); 34 C.F.R. §200.48(a)(2)].

Adequate Yearly Progress: Adequate yearly progress (AYP) is the measure of the extent to which students in a school demonstrate proficiency in at least reading/language arts and mathematics. It also measures the progress of schools in meeting other academic indicators, such as high school graduation or school attendance. The same measure also applies to LEAs. Each State has developed its own definition of AYP; these definitions have been approved by the Department and are available in the State's accountability workbook on the Department's Web site (<http://www.ed.gov/admins/lead/account/stateplans03/index.html>). State definitions must reflect the objective of all students demonstrating proficiency by the end of the school year 2013-2014 [Section 1111(b)(2)].

Corrective Action: A school identified for corrective action is a Title I school that has not made AYP for four years. In order to exit corrective action status, the school must make AYP for two consecutive years. [Section 1116(b)(7)].

Eligible Student: Students eligible for SES are those students from low-income families who attend Title I schools that are in their second year of school improvement, in corrective action, or in restructuring. Eligibility is thus determined by whether a student is from a low-income family and the improvement status of the school the student attends [Section 1116(e)(12)(A)]. Note that this differs from the eligibility criteria for public school choice, which is made available to *all* students in Title I schools in need of improvement, corrective action, or restructuring.

Provider: A provider of SES may be any public or private (non-profit or for-profit) entity that meets the State's criteria for approval. Potential providers include individuals or groups of individuals, public schools (including charter schools), private schools, LEAs, educational service agencies, institutions of higher education, faith-based organizations and other community-based organizations, and business groups. A public school or an LEA that is in need of improvement may not be a provider. An approved provider (1) has a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the State's academic content and student academic achievement standards; (2) is capable of providing instructional services that are (a) of high quality, research-based, and designed to increase student academic achievement, (b) consistent with the instructional program of the LEA, (c) aligned with State academic content and student academic achievement standards, and (d) secular, neutral, and nonideological; (3) is financially sound; and (4) provides SES consistent with all applicable Federal, State, and local health, safety, and civil rights laws [Section 1116(e)(12)(B); Section 1116(e)(5); 34 C.F.R. §200.47(b)].

Public School Choice: Students who attend a Title I school in need of improvement, in corrective action, or in restructuring are eligible to transfer to another public school in the LEA, including a public charter school, that is not in need of improvement, corrective action, or restructuring. LEAs are required to make at least two transfer options available to students, if at least two options exist, and are responsible for paying all or a portion of transportation necessary for students to attend their new school; if not enough funds are available to satisfy all requests for transportation, LEAs must give priority to the lowest-achieving low-income students who request transportation [Section 1116(b)(1)(E)].

Restructuring: A school identified for restructuring is a Title I school that has not made AYP for five or more years [Section 1116(b)(8)]. The first year of restructuring may be used for planning; the plan for the restructured school must be implemented no later than the second year. In order to exit restructuring, the school must make AYP for two consecutive years.

School Improvement: A school is in its first year of school improvement when it has not made AYP for two consecutive years. A school is identified for year two of school improvement if it does not make AYP for a second year after initially being identified as in need of improvement. In order to exit school improvement, the school must make AYP for two consecutive years [Section 1116(b)(1)(A)].

Schoolwide Program: A schoolwide program is a Title I program operated in a school that serves an eligible school attendance area in which not less than 40 percent of the children are from low-income families, or that has a school enrollment of which not less than 40 percent of the children are from such families, and that uses its Title I funds to upgrade the educational program of the entire school, rather than to provide services only to students identified as most at risk of failing to meet State standards [Section 1114].

Supplemental Educational Services: SES are additional academic instruction designed to increase the academic achievement of students from low-income families attending Title I schools in their second year of school improvement, in corrective action, or in restructuring. These services may include academic assistance such as tutoring, remediation and other educational interventions, provided that such approaches are consistent with the content and instruction used by the LEA and are aligned with the State's academic content and student academic achievement standards. SES are in addition to instruction provided during the regular school day. SES must be high quality, research-based, and specifically designed to increase the academic achievement of eligible students [Section 1116(e)(12)(C); 34 C.F.R. §200.47(b)(2)(ii)(C)].

Targeted Assistance Program: A targeted assistance program is a Title I program in which a school uses its Title I funds to provide services only to the children who have been identified as failing or most at risk of failing to meet the State's challenging academic content and student academic achievement standards [Section 1115].

Appendix B: Sample Parent Notification Letter on Supplemental Educational Services

The purpose of this sample notice to parents is to provide LEAs and SEAs with an example of a parent notification letter that includes all required elements and is understandable to parents. The elements that are required in an LEA’s notice to parents are detailed in G-2 of the guidance.

Free Tutoring for Your Child!

Dear Parent/Guardian,

Help your child succeed in school – sign up for free tutoring! This is a great opportunity to help your child in school without any cost to you. As a result of the federal *No Child Left Behind Act*, your child can receive academic tutoring to help him or her do better in school.

You can choose a free tutoring program that best meets your child’s needs from the list of approved tutoring programs in your area. These programs, which have been approved by the state department of education, will provide your child with tutoring that is coordinated with what is being taught in school and may help improve your child’s academic skills. Research from the federal government has shown that students who participated in this free tutoring program made significant gains in student achievement, and those students who participated in multiple years did even better.

The list of tutoring programs gives you a description of each program, the qualifications of the tutors, and information about each program’s effectiveness. It also indicates the programs that serve students with disabilities or limited English proficiency.

When deciding which tutoring program is best for your child, you may want to ask these questions:

- When and where will the tutoring take place (at school, home, a community center)?
- How often and for how many hours in total will your child be tutored?
- What programs, by grade levels and subject areas, are available for your child?
- What type of instruction will the tutor use (small group, one-on-one, or the computer)?
- What are the tutors’ qualifications?
- Can the tutor help if your child has a disability or is learning English?
- Is transportation available to and from the location where the tutoring will take place?

Please call [name and number] if you have any questions about this tutoring program. You also may join us and talk to the tutors on [dates and times of parent fairs] to help you decide which program is best for your child. If you would like to select a tutor now, you can fill out the enclosed provider selection form and mail it back to [name and address] in the stamped

envelope we provide. Applications are due by [date]. After you submit your application, you will receive a letter from [school district] by [date] telling you when the free tutoring will start.

Finally, if you do not wish to sign up for these services, you may also choose to transfer your child to another school in the district. The enclosed Public School Choice letter gives more information about public school choice in our district.

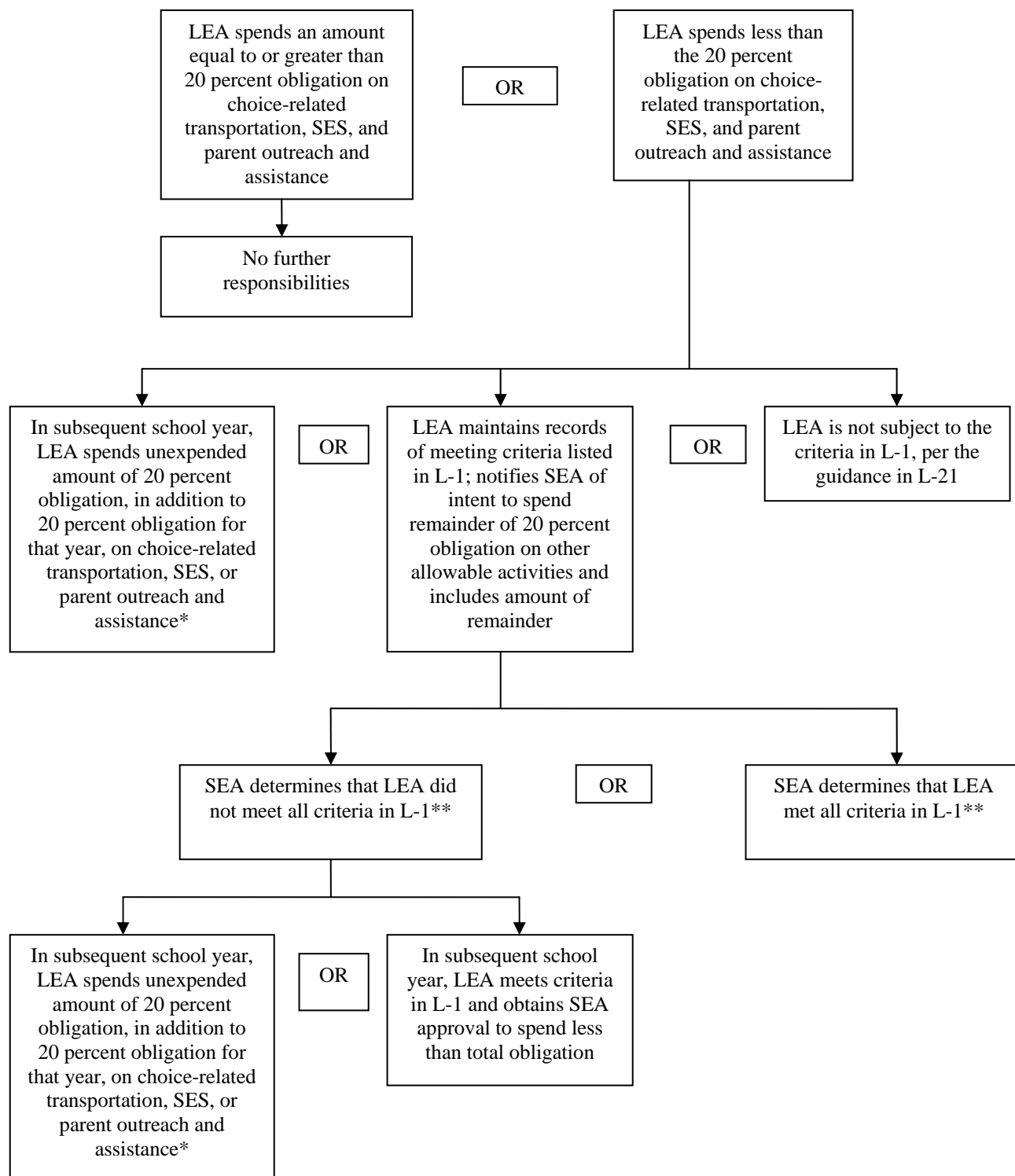
Thank you.

[District official]

Enclosures: Approved Provider List
Provider Selection Form
Public School Choice Notification Letter
School Improvement Letter

Appendix C:

Flowchart: Requirements and Responsibilities for Meeting the 20 Percent Obligation



*An LEA is able to count costs for parent outreach and assistance toward meeting its unexpended obligation in the subsequent school year, but **only** if it did not reach the 1 percent cap in the first year (based on the LEA's Title I, Part A allocation that year). (See L-24.)

**An SEA determines whether an LEA has met the criteria through its regular monitoring process, except that an SEA must review for compliance any LEA that has spent a significant portion of its 20 percent obligation on other allowable activities and has been the subject of multiple credible complaints, and must complete any such review by the start of the next school year.



**Office of Education Improvement
& Innovation**

**District Guidelines for
SES Implementation**
August 2011 Revision

1. Contracting with Approved Providers

Providers are responsible for contracting with each district selected in the application that is required to provide Supplemental Educational Services (SES). Districts should be able to begin contracting with every SES Provider identified on their district list immediately after the Provider receives State approval.

2. Parental Notification

The **Local Education Agency** (LEA) is required by legislation to annually notify parents of the **opportunity for SES** and the option of School Choice/Transfer. The Michigan Department of Education (MDE) imposes an additional requirement that parental notification must take place multiple times, using multiple methods, in the languages represented in the LEA. **The LEA is defined as local boards of education, including public school districts and public school academies, intermediate school districts, and regional educational service agencies.**

The Final Title I Regulations of October 2008 require school districts to post on their websites certain information "in a timely manner" about their Title I schools identified for School Improvement, Corrective Action, or Restructuring. These requirements are outlined below:

1. The number of students who were eligible for and who participated in SES and public school choice, beginning with data from the 2007–08 school year and for each subsequent year,
2. A list of SES providers approved to serve the district, as well as the locations where services are provided for the current school year,
3. A list of available schools to which students eligible for public school choice may transfer for the current school year.

In order to meet requirement #2, school districts should link to the Michigan Department of Education's (MDE) website. MDE has created a unique page for each district that contains the required information for all providers that serve your district. Please contact mde-ses@michigan.gov to obtain the URL for your district's page.

Review of Parental Notification letters - LEAs are required to annually submit template parental notification letters for MDE review. This review typically takes place in June through early August. The MDE sends reminders of the parental notification requirement and review process for the template letters each summer. Questions regarding the submission and approval of the SES and School Choice/Transfer parental notification letters should be directed to MDE-SES@michigan.gov.

Amount of Service - The LEA should consider not printing the hourly rate for Providers and, instead, provide parents with the estimated hours of service they can expect from each Provider. The estimated maximum number of hours of service can be determined by dividing the LEA's per student allocation by the Provider's hourly rate.

Additional Methods of Notification - The LEA should consider the student population being served, and the community, in order to ascertain additional methods of parental notification. These methods might include: radio announcements, public access television, posters within the buildings, Provider fairs, parent-teacher conferences, parent meetings, referrals through the Child Study Team, including the information in enrollment packets, etc.

Return of Enrollment Materials - Parents should have a minimum of thirty days to return enrollment materials related to School Choice or SES or the ongoing opportunity to enroll students in SES.

3. Parent Selection of Providers

Promotion of Providers – The LEA is responsible for ensuring that the SES selection process is parent-driven and does not utilize bias or coercion in order to promote specific Providers. Teachers and administrators may provide information to parents, but the information should be inclusive of all Providers. A teacher can not exclusively recommend or promote a single Provider – especially one for which they are employed. Teachers, who are dually employed by an LEA and a Provider and receive questions from a parent or student, must direct parent questions to the SES building coordinator, another teacher, or an administrator in order to avoid the perception of a conflict of interest.

Completion of Applications – Building representatives should not complete any portion of a parent application for SES, especially the Provider selection component. Incomplete applications should be forwarded to the LEA SES coordinator who is responsible for contacting individual parents to ensure the selection process is parent-driven.

Provider Fairs – A Provider fair is one method that may be utilized for parental notification and selection of SES. If the LEA conducts a Provider fair, the LEA must ensure that:

- All Providers are given equitable opportunity to attend the fair; and
- The fair is in a location and time that is convenient for parents.

In addition, it is the LEA's responsibility to regulate fairs so that parents have time to gather information about all Providers. LEAs should restrict behaviors that are unethical or inappropriate such as:

- Distribution of "sign-on incentives" to parents and/or students;
- **Advertisement of incentives by word-of-mouth or in written materials; and**
- Providers who greet parents at the door and obtain a selection before a parent has had time to view and understand all of the available options.

Parent Questionnaire – An LEA may also want to provide parents with a list of questions to ask Providers (Appendix A).

Selection Options – An LEA should include space on the SES application for parents to select at least a first, second and third choice of Providers. If the parent is only allowed to select one Provider, and that Provider's minimum is not met or they default on their contract, contacting parents for an alternative choice can greatly stall the selection process.

Parent Outreach Strategies –

- Leave information about each Provider at eligible schools for parents to review when they visit the school. Many Providers have brochures and promotional materials that can be left at school sites for parents to read.
- Provide information about Providers to parents in school newsletters.
- Ask Providers to give the LEA stamped envelopes containing information about the program to be mailed by the LEA to parents of eligible students. Before doing so, the LEA could let the Provider know *how many* students are eligible, but not the names.
- Include a parental consent line on the SES application form, so that parents can provide consent to share information with Providers at the same time that they express their interest in receiving services

4. LEA Enrollment Policy and Procedures

LEAs should have clearly stated policies and procedures for SES enrollment. The MDE recommends that the LEA's enrollment policies indicate the parameters for enrollment, including, but not limited to: appropriate venues for recruiting/enrollment (e.g. Provider fairs, school open houses, other school events); and appropriate starting dates for Providers to recruit/enroll students (e.g., beginning of school, after the first open house or Provider fair, other district-defined date).

IMPORTANT: Changes to the Title I regulations (October, 2008) now require LEAs to offer two separate and distinct enrollment periods for SES. The regulations do not stipulate when the enrollment periods are. The MDE suggests that LEAs continue with the traditional "back to school" (September/October) enrollment period as the first window, and offer the second enrollment window in January or February. LEAs are also encouraged to offer a rolling enrollment process for SES. However, doing so requires a great deal of forethought and planning to ensure this is logistically possible.

It is critically important that LEAs disseminate clear guidelines on SES Provider access to school buildings for the purposes of recruitment and enrollment. SES Provider access to individual buildings during the school day must be limited to Provider fairs or other LEA-sponsored/approved events specifically aimed at parent outreach and subsequent enrollment in services. At no time should any Provider be in the school building without the knowledge or consent of the building administrator.

LEAs must use caution not to create or promote any situation which may be construed as fostering an inappropriate relationship with or granting an exclusive privilege to any SES Provider.

5. Community Partnerships

The MDE recommends that each LEA develop community partnerships that will support outreach efforts for SES. Faith-based organizations, community organizations, businesses and assistance centers can distribute SES information to eligible students. **In addition, an LEA may elect to hold a Provider fair or disseminate information related to SES enrollment at a local organization such as a YMCA or local shopping center.**

6. Building Access and Selecting Providers to Serve in a School Building

LEAs should encourage Providers to serve students within the school buildings required to provide SES. Title I regulations (October 2008) require LEAs to offer building access to SES Providers on the same basis as any other outside entity that uses school facilities outside the normal school day.

In the event the LEA does not have enough space to accommodate all Providers, selection of the Providers who will serve in a school building should occur prior to parent enrollment. Selection of Providers must be without bias and may not give preference to certain Providers including an LEA's own program or a Provider that has maintained a long-standing relationship with the LEA. (See number seven for information related to building use fees.)

One such method for determining a Provider who will serve in the building is a random selection drawing or "lottery". **The random selection drawing process should ensure equitable access to all Providers who are interested in serving in school buildings.**

7. Building Use Fees

Building use fees may be imposed on Providers who have access to buildings to provide SES. These fees should be similar to those imposed on other for-profit **or non-profit** agencies/entities that are allowed access to LEA facilities. The LEA should have a building use policy citing charges and apply it consistently to SES Providers and other entities.

The LEA may impose building use fees that cover costs generated by an SES program, but may not impose costs that produce significant financial gain to the LEA.

In addition, it is not appropriate for an LEA to supplant costs originally incurred by the LEA to Providers. For example, if a building is already utilizing security for other evening programs, it would not be appropriate to attribute the entire cost to an SES Provider. It may be appropriate, however, to attribute a fraction of the cost to a Provider.

8. Dual Employment of Instructional Staff

Non-regulatory Federal guidance (Section C-12) clearly states that "... individual or groups of teachers who work in a school or an LEA...may be hired by any State-approved Provider to serve as a tutor in its program."

Per the SES Code of Ethics (Appendix C), school personnel may be hired for instructional purposes only. District personnel hired for instructional purposes shall not recruit students to a Provider's program, engage in marketing activities on behalf of a Provider, distribute or collect enrollment forms, or otherwise promote or encourage students to enroll in a Provider's program. SES Providers shall not employ any district employees who currently serve in the capacity of Principal, Assistant Principal, Building SES Coordinator, or District SES Coordinator, nor may they employ any individuals, including teachers, parents or community leaders, who have any decision-making authority over a school district or school site.

The sole exception shall be in school districts that are considered rural and where there are few Providers. In such cases, the LEA employee must avoid conflicts of interest.

In addition, the LEA is responsible for ensuring that the SES selection process is parent-driven and does not utilize bias or coercion in order to promote specific Providers. Teachers and administrators may provide information to parents, but the information should be inclusive of all Providers. A teacher must not exclusively recommend or promote a single Provider – especially one for which they are employed. Teachers, who are dually employed by an LEA and a Provider and receive questions from a parent or student, should direct parent questions to the SES building coordinator, another teacher or an administrator in order to avoid the perception of a conflict of interest.

9. Student Attendance Sheet Verification

LEAs may require that a parent sign attendance sheets in order to verify student attendance. LEAs should consider, however, allowing students to sign attendance sheets, on-site monitoring or another attendance verification method in order to prevent undue burden to a Provider.

LEAs may require attendance sheets that are submitted without parent signatures to include additional assurances such as notarization, identification of multiple methods used in an attempt to obtain the signatures, signed affidavit of authenticity, etc. An LEA should also consider spot-checking attendance sheets with parents or, if possible, school building representatives for authenticity.

10. Gender-Specific Tutoring Programs

LEAs who choose to enter into an agreement with a Provider offering a gender-specific program incur all responsibilities required by a Federally-funded gender-specific program. Before entering into such an agreement, the MDE strongly recommends the LEA carefully consider the guidance contained in The Federal Register (*34 CFR Part 106: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; Final Rule*) which can be found at <http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html>.

11. Definition of Eligible Students

Eligible students are identified by two criteria: (1) students must be attending a Title I school that is in its third year (Phase 2) of improvement or greater and (2) students must be eligible for free or reduced lunch. LEAs should carefully consider the methods they use to determine which students are eligible in order that the numbers reported to the LEA are as accurate as possible.

Note: To reiterate, students attending the Title I school in Adequate Yearly Progress (AYP) Phase 2 or higher qualify for SES if they are eligible for free or reduced lunch; whether or not the student actually receives free or reduced lunch does not affect his or her qualification to receive SES.

Eligibility for SES is not determined by academic achievement. SES must be offered to all students that meet the two criteria above (attending a Title I school in AYP Phase 2 or higher and in low income status) regardless of achievement level. LEAs may not add an additional criterion of low academic achievement.

The only instance where academic achievement affects SES enrollment is when more eligible students have applied for SES than can be served with the 20% set-aside (demand exceeds funding). **This determination may not be made until all eligible students have been offered the opportunity to enroll in services.** In such an instance, the LEA then must prioritize by greatest academic need. Students who demonstrate the greatest academic need must be provided services first.

12. Ethics and Assurances

Beginning with academic year 2007-08, all approved SES Providers in the State of Michigan are subject to a Code of Ethics (Appendix C) and a set of Assurances (Appendix B). These materials are intended to serve in the best interest of students and relieve some of the administrative burden of SES for LEAs. It is essential that LEAs read and understand both documents. Providers who are found through the formal complaint process, monitoring or evaluation process, to be in violation of the ethics or assurances may incur consequences up to and including removal from the approved list.

13. Contract Disputes between Providers and LEAs

The MDE maintains the responsibility for ensuring that the LEA does not include onerous clauses in contracts with Providers. If the MDE reviews a contract and determines that it is legitimate and appropriate, and a Provider refuses to sign the contract or does not follow the requirements of the contract, the LEA can submit a request to MDE to not allow that Provider to service the LEA that academic year. If the Provider has already signed a contract and is not following it, the LEA should make a written request to MDE that the Provider is suspended from providing services within the LEA for one (1) academic year.

When the LEA enters into a contract dispute with a Provider, and would like to exercise the option to not allow a Provider to service the LEA or suspend a Provider, the LEA must:

- Provide the MDE written notification of the intent to not allow a Provider to service an LEA or suspend a Provider;
- Afford the MDE the opportunity to review the contract;
- Identify, for the MDE, the specific contract violation and all attempts made to rectify the situation.

The MDE will then review the contract to ensure that the contract under consideration is reasonable and issue a determination to the LEA. The MDE's decisions are final.

14. Complaint Resolution

Complaints received by the LEA should first be investigated and resolved at the LEA level. The LEA should have a process for investigating and tracking complaints related to SES. Complaints received by the MDE that involve LEA employees may be referred to the LEA for preliminary investigation.

If a parent or Provider files a formal complaint with the MDE alleging a violation of LEA guidelines, non-regulatory guidance or Federal legislation by an LEA employee or Provider, and it has not been investigated at the LEA level, the MDE will forward a request for inquiry to the LEA.

The request for inquiry will include a copy of the formal complaint as submitted to the MDE and a request for the LEA to investigate the allegations and submit a status update to the MDE within thirty (30) calendar days.

An LEA may also file a complaint against an approved Provider. The LEA should include all pertinent information in the written complaint, including a summary of any investigative or reconciliatory actions up to the date of the complaint. All decisions made by MDE are final. There is no appeal process.

15. SES Tutor Qualifications

Currently, the MDE has determined that SES tutors must have earned a minimum of a high school diploma. Providers are responsible for providing exemplary supervision and professional development to all tutors. The LEA may not require Providers to hire instructors that are "highly qualified" using the definition found in the *No Child Left Behind Act of 2001* (NCLB).

16. Preschool

Title I, Part A funding is intended to serve students in grades K-12. Since SES and School Choice funds are set-aside from Title I, Part A, preschool students are not eligible for SES.

17. Site Visits/Observations

Ideally, an LEA would conduct **at least one formal site visit annually** for each Provider with which they have an executed contract. While on-site, the LEA should monitor the following program components:

- Adherence to the SES contract: student/teacher ratio, instructional materials, staff qualifications, etc.
- Student attendance
- Adherence to individual student goals
- Environmental safety

The MDE should be immediately notified if a site visit produces evidence of a violation of the contract or applicable Federal, State and local health, safety, and civil rights laws. **Copies of any information related to each formal or informal site visits must be provided to the MDE.**

A sample site visit form can be found in Appendix D.

18. Specific Achievement Goals

The **LEA** is required "...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..." LEA representatives should use student assessment data to provide a selection of individualized student learning goals for parents and Providers. The parent, LEA and Provider then should select a specific number of learning goals for each student, which can be **reasonably accomplished in the projected amount of service hours**.

While a Provider is responsible for collaborating with the district and parents, NCLB stipulates the LEA holds final responsibility for developing specific achievement goals. The LEA should not require the Provider to meet with parents or students prior to entering into an executed contract **(see number 19)**.

In the event the parent cannot be contacted to participate in developing specific achievement goals, LEAs may not use the lack of a parent signature on that document 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. This policy is detailed in the MDE communication of December 15, 2008, which addresses the Federal Letter of Clarification Dated August 20, 2008.

Specific Achievement Goals for students who have special needs should consider the content of each student's Individualized Education Program (IEP). If there is not an approved Provider who can meet a specific student's learning needs as identified in the IEP, a district representative may be able to provide services.

19. Student Assessment

The LEA should not require the Provider to assess students prior to entering into an executed contract. After the contract has been executed, the LEA should expect each Provider to, at minimum, pre- and post-test students in order to demonstrate academic growth on the specific individual learning goals. All student assessments may be billed at the hourly rate per student agreed upon in the contract. The LEA is responsible for ensuring that each Provider places emphasis on instructional time, rather than an inordinate number of assessment hours.

20. 20% Set-Aside – Unspent Title I Funds

Per NCLB, LEAs are required to set-aside an amount up to 20% of their district Title I allocation to pay for School Choice/Transfer (Transportation Costs) and SES. The LEA is expected to use the full 20% set-aside for these purposes. However, circumstances may occur that prevent the full expenditure of these funds. In order to reallocate the unspent Title I funds that were set-aside, the LEA must be able to demonstrate that notification was provided to parents multiple times, using multiple methods and in the languages represented by the parent population.

The parental notifications should occur over a number of months and the LEA must offer at least two separate and distinct enrollment windows.

An LEA may request a reallocation of Title I funds from the 20% set-aside in writing to the Office of School Improvement. The request should include the following information:

- Documentation and evidence of the multiple attempts, methods and languages used to notify parents of their options
- Evidence of community partnerships that assisted with the notification process
- The total amount of the allocation that has been/will be spent for School Choice/Transfer (Transportation Costs)
- The total amount of the allocation that has been/will be spent for SES
- The total amount of the allocation that will be reallocated
- The total amount in reserve to accommodate eventualities, ex., a student is referred to SES through the Child Study Team in January
- The intended use(s) of the reallocated set-aside amount

Note: the reallocated amount should be used for a similar program; for example, small group tutoring by qualified LEA personnel. **The program may be conducted during the school day, and if the school is Title I Schoolwide, be offered to all students who fit specific academic eligibility criteria.**

In addition, every participating student is expected to receive SES until their individual allocation is exhausted. LEAs should not end SES services due to school calendar limitations.

21. SES Implementation Timeline

Ideally, SES will begin as early in the year as possible. A recommended calendar for SES implementation is as follows:

July	<ul style="list-style-type: none"> Initiate contracts with Providers
August	<ul style="list-style-type: none"> Continue contracting with Providers Begin notifying parents and assigning students
September	<ul style="list-style-type: none"> Continue contracting with Providers Continue notifying parents and assigning students Begin developing specific achievement goals and parent meetings
October	<ul style="list-style-type: none"> Continue contracting with Providers Continue notifying parents and assigning students Continue developing specific achievement goals and parent meetings
November	<ul style="list-style-type: none"> Continue notifying parents and assigning students Continue developing specific achievement goals and parent meetings Begin service delivery
December	<ul style="list-style-type: none"> Continue developing specific achievement goals and parent meetings Continue service delivery
January	<ul style="list-style-type: none"> Continue service delivery Provide student service data to MDE Apply for 20% set-aside reallocation based on participation
February	<ul style="list-style-type: none"> Continue service delivery Continue to provide student service data to MDE
March	<ul style="list-style-type: none"> Continue service delivery Continue to provide student service data to MDE
April	<ul style="list-style-type: none"> End service delivery for most students Evaluate program delivery Continue to provide student service data to MDE
May	<ul style="list-style-type: none"> End service delivery for all students (unless extending SES through the summer) Evaluate program delivery
June	<ul style="list-style-type: none"> Your month of rest, unless your district is extending SES through the summer

22. Billing/Invoices

The MDE recommends that LEAs include prescriptive contract language detailing the timelines and procedures for the submission of attendance and invoice documents.

It is better to have frequent invoices rather than receiving a five or six figure bill at the cessation of several months of service. The MDE also recommends including language in the Provider contract that stipulates invoices may not be paid if Providers fail to follow the LEA billing/invoicing procedures.

Special thanks to the following contributors to the original and revised versions of Michigan's *District Guidelines for SES Implementation*:

*Battle Creek Public Schools
Benton Harbor Public Schools
Buena Vista School District
Detroit City School District
The Leona Group, LLC
Michigan SES Committee
Muskegon Public Schools*

Sources of additional SES information:

- *Supplemental Educational Services Non-Regulatory Guidance*
<http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc>
- *Michigan Department of Education SES Home Page*
<http://www.michigan.gov/mde-ses>

Insert your group, state,
district, or school logo
here.



CHOOSING AN SES PROVIDER

NOTE TO PARENTS: Use this form to help you choose tutoring services for your child. Ask Providers these questions, and write their answers on this form to help you compare your options. If you would like help choosing a Provider, contact your child's school, your school district, or your local Parent Information Resource Center. To find the Center nearest you, go to www.pirc-info.net or call 866-544-8686. For more information on Supplemental Educational Services (SES), go to www.tutorsforkids.org.

Questions to Ask Providers	Provider Name: _____	Provider Name: _____	Provider Name: _____	Provider Name: _____
Where and when is tutoring?				
How many times per week? For how many weeks?				
Who tutors students? What are their qualifications?				
What subject areas are covered?				
How do I know that your services are effective?				
How would you inform me of my child's progress?				

2011-12 SES ASSURANCES

Approved SES providers in the State of Michigan must certify they have read and understood each of the following statements, agree to be held accountable for the content of each, and understand that the Michigan Department of Education (MDE) may invoke disciplinary action at any time, up to and including removal from the approved list, based upon evidence they have violated any of these Assurances.

1. The applicant entity certifies that the instructional program described in the application is the instructional program that will be offered to students.
2. The applicant entity certifies that the instruction and content that will be offered is secular, neutral, and non-ideological.
3. The applicant entity is responsible for payment of all payroll taxes and other business expenses or fees.
4. The applicant entity will be available to provide services in a district as required by the district's enrollment procedures or contract.
5. The applicant entity will serve all qualified eligible children whose parent(s)/guardian(s) register for services from the applicant entity, on a fair and equitable basis and in accordance with the terms specified in the application.
6. The applicant entity will promptly notify the district, in writing, within three business days, if it does not meet its minimum or exceeds its maximum number of students.
7. The applicant entity will provide parent(s)/legal guardian(s) of children receiving services, and district personnel, information on students' academic progress in an understandable format and language on a regular basis consistent with this application.
8. The applicant entity will provide evidence to the district (before services are delivered) that individuals providing services to children have successfully completed fingerprinting and criminal background checks as required in the district contract.
9. The applicant entity will not disclose to the public the identity of any student eligible for or receiving SES without the written permission of the parent(s)/guardian(s). All public requests for student information should be directed to the district.

10. The applicant entity ensures that the entity is financially sound and agrees to notify the MDE and district, in writing within ten business days, if and when it is no longer financially sound.
11. The applicant entity agrees to follow all applicable Federal, state, and local health, safety, employment, and civil rights laws at all times. This includes, but is not limited to, provision of occupancy permits and fire marshal reports to districts, if requested.
12. The applicant entity will not discriminate on the basis of race, national origin, sex, or disability in accepting students and providing students with SES under Title I (in general, a provider may not, on the basis of disability, exclude a qualified student with disabilities or a student covered under Section 504 if a student can, with minor adjustments, be provided SES designed to meet the individual educational needs of the student).
13. The applicant entity will provide services consistent with the qualified student's individualized education program under the Individuals with Disabilities Education Act (IDEA) if the student is covered under IDEA or Section 504 of the Rehabilitation Act of 1973 if the entity proposes to serve such students.
14. The applicant entity will comply with the MDE Standards for Monitoring SES Providers. The applicant entity agrees to make all documents available to the MDE or district for inspection/monitoring purposes, and participate in site visits at the request of the MDE or the district.
15. The applicant entity agrees to notify MDE and applicable district(s), in writing, of any change in the contact information provided in this application within ten business days.
16. The applicant entity further ensures that it will provide written notification to MDE, when SES will no longer be provided, thirty days prior to termination of services.

2011-12 SES CODE OF ETHICS

Approved SES providers in the State of Michigan must certify they have read and understood each of the following statements, agree to be held accountable for the content of each, and understand that the Michigan Department of Education (MDE) may invoke disciplinary action at any time, up to and including removal from the approved list, based upon evidence they have violated any of section of the SES Code of Ethics.

1. Providers must accurately and completely describe services to consumers in terms that are easy to understand. Reading level for informational materials should be no higher than eighth grade.
2. Providers must create and use promotional materials and advertisements that are free from deception. Deception may include, but is not limited to, misrepresentation through implied or stated endorsement for the provider by a school district, school building or its staff or representative.
3. Providers must not misrepresent to anyone the location of a provider's program or the approval status of a program. If the location of services is dependent upon a minimum student enrollment or the approval of a district, the provider shall indicate the applicable contingencies in its marketing materials.
4. Providers must not publicly criticize or disparage other providers.
5. Providers must not engage in false advertising about other providers' programs.
6. Providers must comply with each district's enrollment procedures.
7. Providers must not distribute a district enrollment form that has the selected provider's name pre-printed as part of the form.
8. The provider may not modify or alter a district enrollment form in any way. The provider is responsible for all district enrollment forms submitted to the district. A Provider that submits a modified or altered district enrollment form is responsible for submission of that form, whether the provider or another entity modified the form. The provider must not submit altered or modified forms.
9. Providers must not encourage or induce students or parents to switch providers, once enrolled, without approval by the district. Providers may not create or distribute enrollment change forms for this purpose.

10. Providers must maintain a system of addressing consumer grievances and concerns and must immediately report any grievances to both the district and MDE.
11. Providers must not charge districts more than the maximum hourly rate identified in the application, nor charge districts any additional fees.
12. Providers must not make payments or in-kind contributions to a district, exclusive of customary fees for facility utilization or transportation.
13. Providers must not compensate district employees in exchange for access to facilities, registration, to obtain student lists, or to encourage any district employee to violate district policies or procedure including conflict of interest.
14. Providers must not solicit or accept an exclusive arrangement with any district or school (including, but not limited to, an exclusive right to conduct in-school assemblies or other marketing activities).
15. Providers may not seek access to individual classrooms or interrupt instructional time during the school day for any reason.
16. Providers may not employ any SES-eligible or enrolled student.
17. Each parent of an eligible student who is hired by a provider must have a written job description and must be compensated on the same basis as all other employees of the provider who perform similar work. No parent may receive any commission or other benefit related to the enrollment of their child in a provider's program, nor may a parent be subject to any employment action by the provider on account of the parent's selection of an SES program for their child.
17. Any school personnel employed by an SES provider shall not recruit students to a provider's program, engage in marketing activities on behalf of a provider, or otherwise promote or encourage students to enroll in a specific provider's program. This restriction does not apply to school districts that are approved SES providers. Please see #21 below for specific guidance regarding marketing and recruiting in school districts that are approved SES providers.
18. Providers shall not employ any school district staff who currently serve in the capacity of Superintendent, Assistant Superintendent, Finance or Business Officer, Principal, Assistant Principal, or other administrative staff in a decision-making capacity, building SES Coordinator, or district SES Coordinator (updated for 2011-2012 school year).
19. Providers are subject to any conflict of interest policy/procedures of the district. Teachers may be employed by a SES provider as a tutor in the same district in which they are employed. See #17 for more information on

prohibited activities of school personnel employed by SES providers (updated for 2011-2012 school year).

20. Providers shall not be or employ any individuals, including parents or community leaders, who have any decision-making authority over a school district or school site in which those individuals are employed and/or hold leadership positions. The sole exception shall be in school districts that are considered rural and where there are few providers (updated for 2011-2012 school year).
21. Where a school district or a school is also an approved provider of SES, district personnel assigned SES provider responsibilities shall avoid all conflicts of interest or favoritism, including the following:
 - a. Individuals employed by the district for this purpose shall not present marketing or recruitment information on any occasion unless all other providers approved for the schools served are offered the same opportunity to present information or recruit students.
 - b. The district shall ensure that the individual has no greater access to parents and students at provider fairs, school assemblies, and other, similar occasions than is afforded to all other providers. "Access" means the amount of speaking time available, the space used, and any other resources allocated to providers.
 - c. Individuals serving as an approved SES provider shall have duties that are entirely distinct from those of any other district employee who performs oversight with respect to the provision of SES. This prohibits the district SES provider from duties such as serving as the district's liaison to all SES providers within a school or schools, or assigning students to other providers.
22. Before or during the registration period, providers must not distribute any objects (such as gift cards, money, pencils, balloons, candy, Frisbees, tote bags, etc.) to parents or students. Informational program materials should be printed on paper.
23. Before or during the registration period, providers must not verbally or nonverbally promise or reference any objects or rewards that will be provided upon registration, program completion or as student rewards during the provision of services.
24. Informational program materials, including the 150-word program summary, must not verbally or non-verbally promise or reference any objects or rewards that will be provided upon registration, program completion or as student rewards during the provision of services.

25. During the provision of SES, providers may not exceed a total of \$20.00 per student annually for rewards. These rewards may not be identified in any written informational material or identified verbally to parents until AFTER enrollment.
26. Technology-based providers may not advertise computers as a reward for program completion. Students may keep computers at the cessation of tutoring services, but providers must fully disclose information about the computers as detailed in the MDE Policy of December 15, 2008. This information may not be included in any written informational material or identified verbally to parents until AFTER enrollment. Computers are not subject to the \$20.00 annual cap on rewards.
27. Providers must not attempt to influence or bias parents when performing an evaluation of the provider's services and achievement of the student's individualized learning goals.
28. A provider shall not use information provided by parents of SES-enrolled students for any commercial purpose without securing the parent's prior written consent for the intended use of the specified information, except that a provider may use parental contact information to communicate about SES with the parents of students served by that specific provider in any prior year.
29. Providers must serve substantially all students registered and immediately communicate to the district any students who cannot be served or who drop out of the program.
30. Providers may not solicit confidential information on minor students without the written consent of parents and/or the school district. This includes, but is not limited to, collecting student or parent information such as addresses, phone numbers, or email addresses.



Office of Education
Improvement & Innovation

**Local Educational Agency Instrument for
Monitoring Supplemental Educational Services
Providers**

Adapted for Districts from the Tennessee Department of Education
Instrument for Monitoring Supplemental Educational Services Providers



District Supplemental Educational Services (SES) On-site Monitoring Report

SES Provider: CEO/Owner:	
Mailing Address:	Telephone/Fax:
	E-Mail:
On-Site Provider Representative:	
Mailing Address:	Telephone/Fax:
	E-Mail:

Monitoring Status (*Check the appropriate box*):

Closed <input type="checkbox"/>	Closed with Suggestions <input type="checkbox"/>	Incomplete Pending Compliance with Approved Compliance Action Plan Agreement <input type="checkbox"/>	Open <input type="checkbox"/>
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Required Signatures:

Printed Name/Signature of On-Site Provider Representative:

Printed Name(s)/Signature(s) of Monitor(s):

Name:	Title/Position:	Date(s) of Monitoring:

SES Provider On-Site Monitoring Summary

Commendations:

Recommendations:

DISTRICT MONITORING INSTRUMENT FOR SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDERS

Provider Requirements	Yes	No	N/A	Evidence
1. The Provider obtained written permission of the parent or legal guardian of SES students before disclosing to the public or unauthorized personnel any confidential information about any students eligible for or receiving SES.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Policy or guidelines <input type="checkbox"/> Letters of parental permission <input type="checkbox"/> Form shows permission <input type="checkbox"/> Other _____ <input type="checkbox"/> N/A is checked – Provider did not disclose to the public or unauthorized personnel any confidential information about any students eligible for or receiving SES
2. The Provider regularly measures the students' progress.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Copies of student progress reports <input type="checkbox"/> Copies pretests and post tests <input type="checkbox"/> Calendar/Timeline for release of progress reports <input type="checkbox"/> Other _____
3. The Provider regularly informs the students' parents and teachers of the students' progress in understandable language and format.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Copies of student progress reports to parents <input type="checkbox"/> Copies of student progress reports to teachers <input type="checkbox"/> Documentation of frequency <input type="checkbox"/> Other _____
4. The Provider communicates with parents, using an understandable and uniform format, and to the extent practicable, expressed in a language parents can understand.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Copies of letters, memoranda and/or other documents used in communicating with parents <input type="checkbox"/> Copies of student progress reports to parents <input type="checkbox"/> Copies of translated documents <input type="checkbox"/> Other _____
5. The Provider's instruction is aligned with the regular school program, as well as with Michigan academic content standards and learning expectations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Lesson plans with references to related Michigan academic content standards and learning expectations. <input type="checkbox"/> Communication with teachers and/or school staff regarding students' regular school program <input type="checkbox"/> Documents showing alignment with Michigan academic standards <input type="checkbox"/> Documents showing alignment of Provider's instruction to district's learning expectations <input type="checkbox"/> Other _____

Provider Requirements	Yes	No	N/A	Evidence
6. The Provider requires a criminal background check for individuals of the organization having contact with or being in close proximity to children related to the provision of services.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <i>**Copies of notification from LEAs regarding status of criminal background checks</i> <input type="checkbox"/> <i>Other _____</i>
7. The Provider offers supplemental educational services that are secular, neutral, and non-ideological.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <i>Samples of students' work</i> <input type="checkbox"/> <i>Current Lesson plans</i> <input type="checkbox"/> <i>Observation of tutoring session and setting</i> <input type="checkbox"/> <i>Other _____</i>
8. The Provider requires all individuals providing tutoring to students, regardless of whether they are the "lead tutor" or an "assistant tutor" to have at least a high school diploma.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <i>**Employee educational records for all tutors on site</i> <input type="checkbox"/> <i>Other _____</i>
9. The Provider complies with all applicable federal, state and local health, safety and civil rights laws. All qualified children, who receive services from the SES organization, are served equitably. Discrimination is prohibited based on race, color, religion, gender, disability, or national origin.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <i>Compliance statements on brochures</i> <input type="checkbox"/> <i>Posters/signs promoting good health practices</i> <input type="checkbox"/> <i>Safety posters</i> <input type="checkbox"/> <i>Other _____</i>
10. The Provider complies with the requirements that the SES organization shall not apply additional admission criteria to eligible students.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <i>Recruitment brochures and information sheets</i> <input type="checkbox"/> <i>Interviews with parents and teachers</i> <input type="checkbox"/> <i>Other _____</i>
11. The Provider has a plan that is communicated to students and staff for emergency situations including fires, weather-related events, evacuations, building intruders, and medical emergencies or other events requiring safety precautions, including a mechanism for communicating with emergency personnel, at all Provider sites.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <i>Posted evacuation instructions in response to fire</i> <input type="checkbox"/> <i>Emergency contact information readily available</i> <input type="checkbox"/> <i>Interview with students</i> <input type="checkbox"/> <i>Employee handbooks and/or policy manuals</i> <input type="checkbox"/> <i>Interview with on-site tutor(s)</i> <input type="checkbox"/> <i>Other _____</i>

Provider Requirements	Yes	No	N/A	Evidence
12. The Provider maintains methods or programs for tracking and documenting enrollment, attendance, and supplemental services provided to eligible students enrolled in the SES program.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Enrollment records of participating students <input type="checkbox"/> Attendance records of participating students <input type="checkbox"/> Copy of cover letter and accompanying records sent to the LEA <input type="checkbox"/> Other _____
13. The Provider maintains liability insurance relative to providing tutoring services and working with children.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> **Copy of current liability insurance certificate <input type="checkbox"/> Other _____
14. The Provider's time of service (frequency of sessions and duration of sessions) is consistent with the Provider's application.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Copy of the Provider's SES application. <input type="checkbox"/> Tutoring schedules <input type="checkbox"/> Observation of tutoring sessions <input type="checkbox"/> Other _____
15. The Provider allocated appropriate materials to deliver services to students without infringing on school sites for copies and materials.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Purchase orders/invoices for tutoring materials <input type="checkbox"/> Expense records for copying <input type="checkbox"/> Tutoring not provided at school site <input type="checkbox"/> Other _____
16. The Provider ensured that students receiving SES are supervised up until the time students return to other authorized, school-based programs via adult supervision or are released into the care of their parent or guardian.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Payroll records for site coordinator <input type="checkbox"/> Contract for site coordinator <input type="checkbox"/> Observation of tutoring session and dismissal of students <input type="checkbox"/> Parent forms specifying person to pick up child <input type="checkbox"/> Parent forms with specific directions for child to use public transportation or other mode of travel <input type="checkbox"/> Other _____
17. The Provider complies with all applicable laws concerning patents and copyrights.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Instructional materials are originals <input type="checkbox"/> Other _____
18. The Provider complies with the LEA's conflict of interest policy related to LEA employees who are dually employed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Payroll records for tutors <input type="checkbox"/> Tutor schedule <input type="checkbox"/> Other _____

Provider Requirements	Yes	No	N/A	Evidence
19. If the Provider uses the Internet for tutoring, the Provider avoids transmitting any material in violation of any U.S. or State regulation or school board policy via the Internet. This includes, but is not limited to copyrighted material and threatening or obscene material.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Copies of LEA policy related to Internet use <input type="checkbox"/> Other _____ <input type="checkbox"/> N/A is checked – The Provider does not use the Internet for tutoring
20. If the Provider uses the Internet for tutoring, the Provider recognizes that Internet files are not private and that the State, LEA, school administrators, as well as parents may review files and communications at any time to ensure that the school network is being used responsibly.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Policy or guidelines <input type="checkbox"/> Copies of communication to parents regarding policy <input type="checkbox"/> Other _____ <input type="checkbox"/> N/A is checked – The Provider does not use the Internet for tutoring
21. If the Provider uses the Internet for tutoring, the Provider obtains written parental permission before communicating with students under the age of 13 via e-mail or Internet. (Title XIII, Children's Online Privacy Protection Act of 1998)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Policy or guidelines <input type="checkbox"/> Letters of parental permission <input type="checkbox"/> Other _____ <input type="checkbox"/> N/A is checked – The Provider does not use the Internet for tutoring
22. The Provider abides by all school/LEA policies and procedures regarding computer/Internet use, if students use a school computer to access information from the Provider.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Policy or guidelines <input type="checkbox"/> Posted copies of LEA policy regarding computer/Internet use <input type="checkbox"/> Other _____ <input type="checkbox"/> N/A is checked – The Provider does not ask students to use the school's computers for accessing the Internet for tutoring

Provider Requirements	Yes	No	N/A	Evidence
23. In the case of a student with a disability, the achievement goals, measurement and reporting of progress, and timetable are consistent with (although not included in) the student's individualized education program under Section 614(d) of the IDEA.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Information from the LEA related to students' IEPs <input type="checkbox"/> Copy of instruction timetable for reaching students' academic goals and reporting student progress <input type="checkbox"/> Documentation that Provider's instruction is aligned with IEP <input type="checkbox"/> Other _____ <input type="checkbox"/> N/A is checked – The Provider does not provide tutoring to students with disabilities
24. In the case of a student covered by Section 504, the achievement goals, measurement and reporting of progress, and timetable are consistent with (although not included in) the student's individualized services under Section 504.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Documentation that services are provided with necessary accommodations to students with disabilities and students covered under Section 504 <input type="checkbox"/> Documentation that SES tutoring is aligned with students' individualized education programs under Section 504 <input type="checkbox"/> Other _____ <input type="checkbox"/> N/A is checked – The Provider does provide tutoring to students covered by Section 504
25. The Provider did not promise or provide gifts or awards as enrollment incentives to eligible SES students, their parents or guardians, teachers or other LEA staff for the purpose of recruiting students for the SES Provider.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Record of incentives awarded <input type="checkbox"/> Interviews with LEA staff/administrators <input type="checkbox"/> Interviews with parents <input type="checkbox"/> Interviews with teachers employed by SES Providers <input type="checkbox"/> Other _____
26. The Provider's grade levels of students receiving tutoring are consistent with the Provider's application.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Interview with students <input type="checkbox"/> Copies of records showing grade levels of students <input type="checkbox"/> Other _____
27. The Provider's place of service where students receive tutoring is consistent with the Provider's application.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> On-site visit <input type="checkbox"/> Schedules of tutoring showing location <input type="checkbox"/> Other _____

Provider Requirements	Yes	No	N/A	Evidence
28. The Provider's mode of instructional delivery (example: group size, individual, computer-aided, and the student/teacher ratio and student/adult ratio) is consistent with the Provider's application.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <i>Observation of tutoring session.</i> <input type="checkbox"/> <i>Tutoring schedules</i> <input type="checkbox"/> <i>Other _____</i>
29. The Provider's cost/fee structure (cost per hour/per student, cost per hour/per student in group, monthly costs) is consistent with the Provider's application.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <i>Interview with LEA NCLB personnel</i> <input type="checkbox"/> <i>Copies of invoices to LEAs</i> <input type="checkbox"/> <i>Tutoring schedules</i> <input type="checkbox"/> <i>Other _____</i>
30. The Provider's students have access to transportation that is consistent with transportation provisions in the Provider's application.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <i>Bus Schedules</i> <input type="checkbox"/> <i>Other Transportation schedules</i> <input type="checkbox"/> <i>Other _____</i>
31. The Provider's assessment instruments and process are consistent with the provisions in the Provider's application.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <i>Provider's assessment instruments</i> <input type="checkbox"/> <i>Description of Provider's assessment program</i> <input type="checkbox"/> <i>Other _____</i>
32. The Provider's instructional program design is consistent with the provisions in the Provider's application.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <i>Provider's program design</i> <input type="checkbox"/> <i>Description of Provider's program design</i> <input type="checkbox"/> <i>Other _____</i>



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 20th, 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 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.

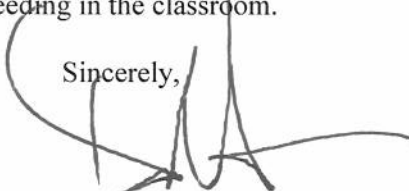
We encourage SEAs to monitor their LEAs carefully with respect to the development of student agreements and to ensure that the agreements are of sufficient quality to drive improvements in student achievement.

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

SES IMPLEMENTATION



FREQUENTLY ASKED QUESTIONS

WHAT ARE SUPPLEMENTAL EDUCATIONAL SERVICES (SES)?

SES is extra academic assistance for eligible students who attend Title I schools that have failed to make Adequate Yearly Progress (AYP) for three or more years (Phase 2 or greater).

SES is tutoring in the core academic areas: **mathematics, English language arts (ELA), science, or social studies**. SES providers must, at a minimum, offer tutoring in **mathematics and/or ELA**. Tutoring in science and social studies is optional. SES providers in Michigan can only offer tutoring in subjects they were approved for in their application.

WHEN CAN SES TAKE PLACE?

Per legislation, instruction must take place outside the regular school day. SES may be provided before school, after school, or on the weekends. No SES related services may take place during regular school hours.

WHO IS ELIGIBLE FOR SES?

Students who are eligible for SES meet two criteria:

1. They are eligible for free or reduced lunch, and
2. They attend identified Title I schools that have failed to make AYP for three or more years (Phase 2 or greater).

Students at non-Title I schools are not eligible for SES, nor are students that aren't eligible for free or reduced lunch.

WHAT HAPPENS WHEN THE DEMAND FOR SES EXCEEDS THE FUNDING TO PAY FOR IT?

When more students request services than the school district can fund, the school district must prioritize and provide services for the lowest achieving students first. In other words, eligible students with lowest test scores are offered tutoring first.

WHAT ARE SOME OF THE RESPONSIBILITIES OF THE SCHOOL DISTRICTS?

The school districts are responsible for notifying parents about the availability of services. They are also responsible for helping parents choose a provider, if such help is requested. They must also determine which students should receive services when all students cannot be served. School districts are also responsible for developing **Individualized Learning Goals** (often called the Individual Learning Plan or ILP) with the parents and SES provider.

WHAT ARE INDIVIDUALIZED LEARNING GOALS?

Individualized learning goals are developed for each student, in consultation with the district, parents and the student's provider. These goals must include the following elements:

1. A timetable for improving achievement
2. An explanation of how the student's progress will be measured

If the student receives special education services, the individualized learning goals must be consistent with the student's **individualized education plan (IEP)**.

WHAT DOES "NOTIFYING PARENTS" MEAN?

School districts are required to notify parents at least once each year about the school's AYP status and SES. The notification usually takes place in the fall. Their notifications must include:

1. SES enrollment and registration information
2. A statement indicating they will allow at least 30 days for SES registration and enrollment
3. Specific information about ALL providers who are servicing the district (provided by the Michigan Department of Education)

HOW LONG MUST SES BE OFFERED?

Title I schools that are in AYP phase 2 or higher must continue to offer SES for as long as they are at that status. As schools improve and make AYP for two consecutive years, they are no longer required to provide these services.

A student who is eligible to receive these services should receive them for the entire school year or until the student's allocation is exhausted. This means SES may continue into the summer.

WHAT IS A "PROVIDER FAIR"

"Provider Fair" is the term school districts use for a meeting or open house held for the purpose of connecting parents with SES providers. These typically take place in the late afternoon or evening at a school site. Each school district should contact you with details of their SES provider fair or open house.

HOW MUCH MONEY DO SCHOOL DISTRICTS HAVE TO PAY FOR SES?

The amount that is spent on SES varies and is dependent on what the total Title I allocation is for the school district. Legislation states that a district is required to spend up to 20% of the total Title I, Part A allocation (minus the amount spent on the Choice/Transfer Option and as needed to meet parent demand.)

A school district must spend the lesser of:

- a. the full amount the district receives in Title I funding per low-income child for SES; or
- b. the actual cost of the services themselves.

The average per-student allocation for SES in Michigan in the 2010-11 school year was \$1,615. The per-student allocation for the same year ranged from \$945 to \$2,905 Statewide.

I PROVIDE SES THROUGH TECHNOLOGY (DISTANCE LEARNING). AM I REQUIRED TO DO ANYTHING DIFFERENTLY THAN OTHER PROVIDERS?

No – providers that utilize distance learning technology do not have different criteria for eligibility. Some school districts may have a limited number of providers, so organizations that provide distance learning technology are allowed and operate on the same basis as all other providers.

WHEN SHOULD SES START EACH YEAR?

Services should begin by November 1 and continue until each student's allocation is exhausted or the end of the school year. If SES funds remain unspent at the end of the school year, the school district may extend SES into the summer.

WHAT ARE MY RESPONSIBILITIES AS AN APPROVED PROVIDER?

Please see the section entitled "Responsibilities of Approved SES Providers."

WHO CAN BE AN APPROVED SES PROVIDER?

A provider may be a:

- School entity (public or private);
- Institution of higher education (public or private);
- Non-profit or for-profit organization;
- Faith-based organization

DO I HAVE TO DO ANY YEARLY UPDATES TO MY APPLICATION INFORMATION?

Yes – all approved SES providers in Michigan must annually re-certify their agreement to follow the SES Code of Ethics and Assurances. Reminders will be sent out to all currently approved SES providers.

WHAT HAPPENS IF I WANT TO CHANGE THE SCHOOL DISTRICTS I SERVE OR MAKE OTHER CHANGES TO MY PROGRAM?

Providers are approved based on what is in the application. If you want to change any part of the application, you must submit a change request in writing to the Michigan Department of Education (MDE). Substantial program changes (i.e.; changing the curriculum or going from K-5 to K-12) will require the provider to submit a new application for approval. The program change requests must be submitted during the annual recertification period.

HOW LONG IS MY APPROVAL GOOD FOR?

Michigan currently has plans to limit the approval period to four years. What that means is that you will have to reapply to be on the approved provider list every four years.

WHAT IS THE COMPLAINT PROCESS?

The complaint process is for parents, schools, and providers to file a complaint with the State for violations of the Code of Ethics, Assurances, or the failure to follow appropriate SES policies as set for by the school district, State, or U.S. Department of Education.

HOW MANY CHILDREN ARE ELIGIBLE FOR SES IN MICHIGAN AND HOW MANY HAVE BEEN SERVED IN THE PAST?

SES eligibility will not be determined at the school district level until the October 31 free and reduced lunch counts for the 2011-12 school year are finalized.

The five year trend data for SES in Michigan is presented below. Please note that the 2010-11 data is not complete at the time of this writing (August, 2011) as some school districts offer SES during the summer. MDE will not have the final numbers until late fall 2011.

MICHIGAN SES FIVE YEAR TREND DATA				
Academic Year	Number of Districts Required to Offer SES	Number of Students Eligible for SES (Estimated)	Number of Students Receiving SES	Percent Receiving Services out of Percent Eligible
2005-06	70	102,502	12,439	12%
2006-07	34	66,637	10,929	16%
2007-08	26	51,069	16,044	31%
2008-09	31	53,333	13,134	25%
2009-10	48	59,932	15,722	26%

PROBATION

All newly-approved Supplemental Educational Service (SES) providers are placed on probationary status for one year.

During the Probationary Period, Providers Must:

- a) Attend the SES new provider orientation session presented by MDE
- b) Participate in any other school district- or State-sponsored SES training that is mandatory for new providers

During the Probationary Period, Providers are subject to:

- a) All applicable local, State, and Federal laws, policies and agreements related to the provision of SES
- b) This includes, but is not limited to:
 - o Title I, Part A, Section 1116
 - o United States Department of Education (USED) SES Non-Regulatory Guidance of January 14, 2009
 - o Michigan's Assurances and Code of Ethics for SES providers
 - o Contracts with individual school districts or public school academies (PSAs)

Failure to meet any of the above requirements will lead to immediate corrective action, leading up to and including removal from the Approved List.

At the conclusion of the probationary year, each newly-approved SES provider will go through a final review process for determination of status.

In order to be granted full approval (non-probationary) status, providers must:

- a) Have met all requirements above or have a valid explanation, if a requirement is not met
- b) Have provided services for eligible students
- c) Be free of any corrective action or pending corrective action

The Michigan Department of Education (MDE) will review provider status and decide on one of the following options:

- a) Full approval
- b) An additional year of probation
- c) Removal from the Approved List

All decisions made by the MDE are final. There is no appeal process.

RESPONSIBILITIES OF APPROVED SUPPLEMENTAL EDUCATIONAL SERVICE PROVIDERS

Title I, Part A, Section 1116 of the *No Child Left Behind Act of 2001* (NCLB) states that in order for a Supplemental Educational Service (SES) provider to be included on the State-approved list, a provider shall agree to carry out the following:

- A. Provide parents of children receiving SES... and the appropriate local education agency with information on the progress of the children in increasing achievement, in a format and, to the extent practicable, in a language that such parents can understand.
- B. Ensure that instruction provided and content used by the provider are consistent with the instruction provided and content used by the local education agency and State, and are aligned with State student academic achievement standards.
- C. Meet all applicable Federal, State, and local health, safety, and civil rights laws.
- D. Ensure that all instruction and content... are secular, neutral, and non-ideological.

SES providers may be removed from the Approved List at any time for cause. Examples of "cause" (i.e., reasons a provider could be removed from the Approved List) include:

- A. Failure to deliver the SES model that is described in the approved application.
- B. Requesting personally-identifiable information about students without receiving permission to do so.
- C. Failure to perform criminal background checks of all employees as required by Michigan statute and the guidance provided by the Michigan Department of Education, Office of Professional Preparation Services.
- D. Failure or refusal to serve student(s) whose parent(s)/legal guardian(s) requested the SES provider's services in a Local Educational Agency (LEA) within the SES provider's service area, **except** when the total number of students requesting services does not meet the minimum number stated in the SES provider's application (i.e., the minimum number stated in the SES provider's application was 5 students and only 3 students requested the SES provider's services) or when additional students would cause the SES provider to exceed its capacity (i.e., additional student(s) would cause the SES provider to exceed the maximum number stated in the SES provider's application or to exceed the number of students the SES provider's site reasonably and safely accommodates).

- E. Providing inaccurate information on the application.
- F. Violating or not meeting any criteria on the Assurances page or violating any of the items listed in the Code of Ethics.
- G. Failure to comply with applicable Federal, State, and local health and safety requirements.
- H. Failure to submit requested data, including progress reports.
- I. Upon conclusion of an investigation of a formal complaint filed with the Michigan Department of Education (MDE) in which the complaint is supported.

MDE will investigate complaints from LEAs, SES providers, parent(s)/legal guardian(s), students, and the general public. When investigating a complaint, the actions the MDE may take include, but are not limited to; an on-site visit, examining relevant documents, and/or interviewing relevant persons. Upon conclusion of the MDE's investigation, the MDE may require the SES provider to take corrective action and/or the MDE may take appropriate action to remedy violations including, but not limited to, removal of approved status. All complaints must be submitted to the MDE in writing to:

Greg Olszta
Education Consultant
Office of Education Improvement & Innovation
608 W. Allegan
Lansing, MI 48933
Telephone: (517) 241-4715
E-Mail: MDE-SES@michigan.gov

SUPPLEMENTAL EDUCATIONAL SERVICES COMPLAINT INVESTIGATION/RESOLUTION PROCESS

A complaint received by the Michigan Department of Education (MDE) related to supplemental educational services (SES) will result in an investigation by the Office of Education Improvement & Innovation (OEII) if the complaint provides adequate information to support an allegation of wrongdoing. The procedures for an investigation are as follows:

1. A completed MDE-SES complaint form and supporting documents are received by the OEII identifying the nature of the complaint, associated allegations, and the responsible party or parties involved.
2. A communication will be sent by email to the involved parties notifying them of the impending investigation within ten (10) business days of receipt of the MDE-SES complaint form. That communication will include, at a minimum, the following information:
 - a. allegations identified in the formal complaint;
 - b. parties involved;
 - c. any other information pertinent to the complaint process or resolution of the complaint.
3. The OEII is authorized to investigate in any of the following ways:
 - a. site visits
 - b. conduct interviews
 - c. conduct telephone investigations
 - d. gather testimony
 - e. examine records
 - f. collect documentation
 - g. conduct hearings
 - h. take any other appropriate actions to gather facts and information necessary to reach resolution
4. The Director of the Office of Education Improvement & Innovation, or designee, shall determine, within sixty (60) days of initiating the investigation, that the investigation proceedings are complete and thorough and approve a report that indicates findings of:
 - a. violation or no violation
 - b. responsible parties (in violation)
 - c. corrective actions in cases of violation

NOTE: MDE reserves the right to extend a complaint investigation for an additional 60 or 90 day period, if necessary, to achieve resolution of an SES complaint.

All decisions and corrective actions issued by MDE are final. There is no appeal process.

Michigan Department of Education Supplemental Educational Services Complaint Form

A complaint may be submitted to the Michigan Department of Education if an individual alleges noncompliance with any of the following:

- *The No Child Left Behind Act of 2001, Section 1116(e) (Supplemental Educational Services)*
- *Federal Non-Regulatory Guidance for SES*
- *The Michigan Assurances for SES Providers*
- *The Michigan Code of Ethics for SES Providers*
- *District SES Policies and Procedures*
- *Services or program delivery as detailed in the State-approved SES provider application*

However, complainants must attempt to resolve issues at the school district level first. This includes, but is not limited to, contact and communication with the following individuals or entities:

- *School building principal or assistant principal (if applicable)*
- *School building SES coordinator or director (if applicable)*
- *School district SES coordinator or director (if applicable)*
- *School district Title I or State and Federal Programs Office (if applicable)*
- *SES Provider (if applicable)*

If resolution cannot be achieved at the local level, please complete the following information.

Name of person filing complaint: _____

Date: _____

Agency person is representing, please circle one: School or District Provider Parent/Guardian

Address of person filing the complaint:

Street *City* *State* *ZIP*

Phone number of person filing the complaint: _____

Email of person filing the complaint: _____

If concern is occurring at a particular school site, please list name of school:

School district: _____

School district address:

Street *City* *State* *ZIP*

Supplemental Educational Services Provider involved:

Provider address:

Street	City	State	ZIP
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Person, school district and/or Supplemental Educational Service Provider alleged to be out of compliance with applicable SES legislation, guidance, policy, or procedure:

Name: _____

Affiliated with:

School District or Supplemental Educational Services Provider

Identify the applicable legislation, guidance, policy, or procedure that has allegedly been violated (check all that apply):

- ☐ *The No Child Left Behind Act of 2001, Section 1116 (Supplemental Educational Services)*
- ☐ *Federal Non-Regulatory Guidance for SES*
- ☐ *The Michigan Assurances for SES Providers*
- ☐ *The Michigan Code of Ethics for SES Providers*
- ☐ *District SES Policies and Procedures*
- ☐ *Services or program delivery as detailed in the State-approved SES provider application*
- ☐ *Other (please explain):*

Provide a brief statement indicating how the district, or the provider, is alleged to be noncompliant. You may attach additional sheets or documentation if necessary.

Explain what steps you have taken to resolve the situation with the person/agency that is believed to be out of compliance. Your explanation should be as specific as possible and include a timeline. You may attach additional sheets or documentation if necessary.

Provide a brief statement that explains the results of the action taken in attempt to resolve the area of concern. You may attach additional sheets or documentation if necessary.

Signature of person filing complaint (electronic signatures are acceptable)

Date

Please send completed form and documentation to the Michigan Department of Education. Complaints may be sent using any of the methods described below.

For complaints sent by email:

mde-ses@michigan.gov

Please put "SES Complaint" in the subject line of the email

For complaints sent by fax:

517-241-0247

Attention: SES Complaint Resolution

For complaints sent via US Mail:

SES Complaints
School Improvement Support
Office of Education Improvement & Innovation
Michigan Department of Education
608 W. Allegan
POB 30008
Lansing, MI 48909

For complaints sent via Fedex, UPS, etc.:

SES Complaints
Supplemental Educational Services
Office of Education Improvement & Innovation
Michigan Department of Education
608 W. Allegan
4th Floor
Lansing, MI 48933

EVALUATION OF SUPPLEMENTAL EDUCATIONAL SERVICES (SES) PROVIDERS

The Michigan Department of Education (MDE) will annually evaluate each SES provider who has served students for one year or more. MDE has adapted a model that assesses three components of SES:

- 1) Quality,
- 2) Performance, and
- 3) Effectiveness.

- **Quality and Performance:** MDE will determine how satisfied stakeholders are with the services provided by individual SES providers. The level of customer satisfaction will be determined for each SES provider based on *survey* data collected from Local Educational Agencies (LEAs) and parents/legal guardians by MDE, or a contractor acting on behalf of MDE, and *complaint resolution history*.
- **Effectiveness:** If MDE determines that the SES provider has failed to contribute to increasing the academic achievement of students for two or more consecutive years, MDE will recommend that the SES provider be removed from the Approved List. Additionally, MDE may monitor quality, performance and effectiveness through on-site visitations.

MDE will determine the SES provider's service delivery rating using predetermined criteria. If the SES provider fails to meet expectations identified MDE, they may be removed from the Approved List. Providers serving children in a private residence must provide MDE with information and make arrangements for MDE to observe instruction. Providers serving children through technology must provide MDE with access to such technology and must make arrangements for MDE to observe instruction.

To assist MDE in fulfilling its legal responsibility to monitor the quality, performance and effectiveness of SES providers, SES providers are required to complete and to return to MDE, or to a contractor acting on behalf of MDE, periodic requests for data, including an end-of-year progress report.

SAMPLE DOCUMENTS



<district/PSA>
Supplemental Educational Services
Sample Individual Learning Plan

DESCRIPTIVE INFORMATION

Student Name:	Student Birth Date	Teacher Name	School
Provider-Developed Student ID # (if applicable)	Parent / Guardian Name	Home Telephone	Work Telephone
Student Address			

STUDENT INFORMATION Part 1: (Completed by Parent/Guardian or with Parental Input*)

Strengths	
Concerns	
Other	
Parent unavailable	<i>*If unable to obtain parent/guardian input, the school (or provider acting on its behalf) may proceed with the plan, but must document the circumstances. The district or provider representative signs here.</i>

STUDENT INFORMATION Part 2: (Completed by the LEA or with input from the School/Teacher/Principal. Student Privacy NOTE: The parent must provide the LEA with prior written consent to disclose information from the student's educational records to the chosen provider. (This may be incorporated into the LEA's SES enrollment form. If parental consent to release information is not incorporated in the SES enrollment form, please see SES Release of Information at the end of this document.)

Student Race	Student Gender	Student Language	Language other than English
<input type="checkbox"/> African American/Black <input type="checkbox"/> Asian or Pacific <input type="checkbox"/> Islander <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> White <input type="checkbox"/> Other	<input type="checkbox"/> Female <input type="checkbox"/> Male	<input type="checkbox"/> English Speaking <input type="checkbox"/> Non English Speaking	
<input type="checkbox"/> Special Education	<input type="checkbox"/> Limited English Proficient	<input type="checkbox"/> 504	<input type="checkbox"/> Prior Grade <input type="checkbox"/> Retained

**<district/PSA>
Supplemental Educational Services
Sample Individual Learning Plan**

Individualized Educational Plan Goals (Section 504 -If Applicable)	
English Language Arts (ELA)	
Strengths	
Concerns	
Assessment Results	
Evaluation Results	
Other	
Individualized Educational Plan Goals (Section 504 -If Applicable)	
Mathematics	
Strengths	
Concerns	
Assessment Results	
Evaluation Results	
Other	
Individualized Educational Plan Goals (Section 504 -If Applicable)	
Science	
Strengths	
Concerns	
Assessment Results	
Evaluation Results	
Other	
Individualized Educational Plan Goals (Section 504 -If Applicable)	
Social Studies	
Strengths	
Concerns	
Assessment Results	
Evaluation Results	
Other	

<district/PSA>
Supplemental Educational Services
Sample Individual Learning Plan

RESULTS OF PROVIDER DIAGNOSTIC ASSESSMENTS

Assessment (Name/Type)	Pre Test		Post Test		Comments
	Score	Date	Score	Date	

PROVIDER INSTRUCTIONAL MATERIALS

Provider Instructional Material or Program	Content Area				Comments
	ELA	Math	Science	SS	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<district/PSA>
Supplemental Educational Services
Sample Individual Learning Plan

ENGLISH LANGUAGE ARTS GOALS AND OBJECTIVES

Prior to beginning tutoring and prior to sending out progress reports, review the evidence of student performance to determine which objectives the student has met. To meet an objective, the student must demonstrate the skill easily and independently over time and in different contexts.

1. Use the following guide to record the objectives the student has or has not met:
2. Use + to indicate objectives the student has met consistently without support or assistance
3. Use - to indicate objectives which the student has met inconsistently, only with support, or has not met at all
4. Leave blank those objectives that have not been introduced instructionally

In designing the learning plan select at least three (3) objectives that the student has not mastered. Select goals that can significantly contribute to a student's success in reading and/or writing. All formative and summative assessments should be aligned to the Michigan Grade Level Content Expectations (GLCEs) or High School Content Expectations (HSCEs) and the district's goals and objectives.

English Language Arts				
				Dates Assessed
Student Progress toward Objective				GLCE (Grade 5)
				R.CM.05.01 connect personal knowledge, experiences, and understanding of the world to themes and perspectives in text through oral and written responses.
				R.CM.05.02 retell through concise summarization grade-level narrative and informational text.
				R.CM.05.03 analyze global themes, universal truths, and principles within and across text to create a deeper understanding by drawing conclusions, making inferences, and synthesizing.

Resources:

Michigan Grade Level Content Expectations:

http://www.michigan.gov/mde/0,1607,7-140-28753_33232---,00.html

Michigan High School Content Expectations:

<http://www.michigan.gov/mde/0,1607,7-140-38924---,00.html>

<district/PSA>
Supplemental Educational Services
Sample Individual Learning Plan

MATHEMATICS GOALS AND OBJECTIVES

Prior to beginning tutoring and prior to sending out progress reports, review the evidence of student performance to determine which objectives the student has met. To meet an objective, the student must demonstrate the skill easily and independently over time and in different contexts.

1. Use the following guide to record the objectives the student has or has not met:
2. Use + to indicate objectives the student has met consistently without support or assistance
3. Use - to indicate objectives which the student has met inconsistently, only with support, or has not met at all
4. Leave blank those objectives that have not been introduced instructionally

In designing the learning plan select at least three (3) objectives that the student has not mastered. Select goals that can significantly contribute to a student's success in math. All formative and summative assessments should be aligned to the Michigan Grade Level Content Expectations (GLCEs) or High School Content Expectations (HSCEs) and the district's goals and objectives.

Mathematics				
				Dates Assessed
Student Progress toward Objective				Math GLCEs (Grade 5)
				N.MR.05.01 Understand the meaning of division of whole numbers with and without remainders; relate division to fractions and to repeated subtraction.
				N.MR.05.02 Relate division of whole numbers with remainders to the form $a = bq + r$, e.g., $34 \div 5 = 6 \text{ r } 4$, so $5 \cdot 6 + 4 = 34$; note remainder (4) is less than divisor (5).
				N.MR.05.03 Write mathematical statements involving division for given situations.

Resources:

Michigan Grade Level Content Expectations:

http://www.michigan.gov/mde/0,1607,7-140-28753_33232---,00.html

Michigan High School Content Expectations:

<http://www.michigan.gov/mde/0,1607,7-140-38924---,00.html>

<district/PSA>
Supplemental Educational Services
Sample Individual Learning Plan

SCIENCE GOALS AND OBJECTIVES

Prior to beginning tutoring and prior to sending out progress reports, review the evidence of student performance to determine which objectives the student has met. To meet an objective, the student must demonstrate the skill easily and independently over time and in different contexts.

1. Use the following guide to record the objectives the student has or has not met:
2. Use + to indicate objectives the student has met consistently without support or assistance
3. Use - to indicate objectives which the student has met inconsistently, only with support, or has not met at all
4. Leave blank those objectives that have not been introduced instructionally

In designing the learning plan select at least three (3) objectives that the student has not mastered. Select goals that can significantly contribute to a student's success in science. All formative and summative assessments should be aligned to the Michigan Grade Level Content Expectations (GLCEs) or High School Content Expectations (HSCEs) and the district's goals and objectives.

Science				
				Dates Assessed
Student Progress toward Objective				Science GLCEs (Grade 5)
				S.IP.05.14 Use metric measurement devices in an investigation.
				S.IP.05.15 Construct charts and graphs from data and observations.
				S.IP.05.16 Identify patterns in data.

Resources:

Michigan Grade Level Content Expectations:

http://www.michigan.gov/mde/0,1607,7-140-28753_33232---,00.html

Michigan High School Content Expectations:

<http://www.michigan.gov/mde/0,1607,7-140-38924---,00.html>

<district/PSA>
Supplemental Educational Services
Sample Individual Learning Plan

SOCIAL STUDIES GOALS AND OBJECTIVES

Prior to beginning tutoring and prior to sending out progress reports, review the evidence of student performance to determine which objectives the student has met. To meet an objective, the student must demonstrate the skill easily and independently over time and in different contexts.

1. Use the following guide to record the objectives the student has or has not met:
2. Use + to indicate objectives the student has met consistently without support or assistance
3. Use - to indicate objectives which the student has met inconsistently, only with support, or has not met at all
4. Leave blank those objectives that have not been introduced instructionally

In designing the learning plan select at least three (3) objectives that the student has not mastered. Select goals that can significantly contribute to a student's success in social studies. All formative and summative assessments should be aligned to the Michigan Grade Level Content Expectations (GLCEs) or High School Content Expectations (HSCEs) and the district's goals and objectives.

Social Studies				
				Dates Assessed
Student Progress toward Objective				Social Studies GLCEs (Grade 5)
				5 – U2.3.1 Locate the New England, Middle, and Southern colonies on a map.
				5 – U2.3.2 Describe the daily life of people living in the New England, Middle, and Southern colonies.
				5 – U2.3.3 Describe colonial life in America from the perspectives of at least three different groups of people (e.g., wealthy landowners, farmers, merchants, indentured servants, laborers and the poor, women, enslaved people, free Africans, and American Indians).

Resources:

Michigan Grade Level Content Expectations:

http://www.michigan.gov/mde/0,1607,7-140-28753_33232---,00.html

Michigan High School Content Expectations:

<http://www.michigan.gov/mde/0,1607,7-140-38924---,00.html>

<district/PSA>
Supplemental Educational Services
Sample Individual Learning Plan

SESSION INFORMATION

(Completed by the Provider)

Total Number of Sessions to Be Provided	Beginning Date	Ending Date
Location of Services	Session Length in Minutes	Days of the Week Sessions will Occur

COMMUNICATION BETWEEN PROVIDER AND PARENT

(Completed by the Provider)

Indicate how and when provider will communicate information about student's academic progress to parents. Methods should include letters sent home, phone calls and flyers. Providers may be required to submit evidence of this communication. Providers must have a minimum of three documented contacts that shows parents have been invited to be involved in the student's learning plan.

Frequency of contact	Type of Contact	Reason for Contact	Outcome / Follow-Up	Parent/Guardian Signature

COMMUNICATION BETWEEN PROVIDER AND SCHOOL

(Completed by the Provider)

Indicate how and when provider will communicate information about student's academic progress to the school. Methods should include electronic or hard copies of the student progress report..

Frequency of contact	Type of Contact	Reason for Contact	Outcome / Follow-Up	District Official Signature

**<district/PSA>
Supplemental Educational Services
Sample Individual Learning Plan**

SIGNATURES

I have reviewed the Learning Plan Agreement. I agree to the statement of goals and timeline stated in this agreement. I have been given the opportunity to participate in the development of this plan*.

***Lack of a parent signature on this form may not be used as grounds to deny SES to any student whose parents have otherwise indicated they wish for their child to receive services. Further, the school may not use the lack of a parent signature on this form to deny payment to the provider for services rendered. Please refer to MDE policy on ILP creation and parent consultation for further information.**

SIGNATURES INDICATE AGREEMENT WITH THE LEARNING PLAN

X	X
Provider Representative Signature and Company Name	Parent Signature
Date	Date
X	X
Teacher Signature	Principal Signature
Date	Date
X	X
Other Signature and Title	Other Signature and Title
Date	Date

**<district/PSA>
Supplemental Educational Services
Sample Individual Learning Plan**

SES RELEASE OF INFORMATION

By signing below, I grant permission for my child to receive services from _____ (Provider). I give permission for _____ (District) to release educational information to design tutoring sessions that meet the needs of my child. This may include individual student information such as Michigan Educational Assessment Program (MEAP) or Michigan Merit Exam (MME) test scores, report cards and academic records, and attendance records. If my child receives special education services or services under Section 504, I give permission for the District to share his/her special education or Section 504 records, including his/her individual education plan (IEP) or Section 504 plan. I also give permission for _____ (Provider) to share any information regarding my child with appropriate personnel of the District. Student records/information will be kept confidential and will not be disclosed to third parties or used for any purpose other than providing supplemental educational services, documenting student progress, and evaluating the program.

Signature of Parent or Legal Guardian

Date

SUPPLEMENTAL EDUCATIONAL SERVICE PROVIDERS SAMPLE CONTRACT

<DISTRICT>

CONTRACT

TITLE I – SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDERS

THIS CONTRACT ("Contract" or "Agreement") is made and entered into on <Month> <##>, 200_, between the _____ (hereinafter referred to as "LEA" [Local Educational Agency] or "District"), a public school district operating under the laws of the State of Michigan, and _____ the Supplemental Educational Service Provider (hereinafter referred to as "PROVIDER") for the purpose of providing certain supplemental educational services to eligible LEA students. "Eligible students" are those students identified by the District who meet specific requirements under Title I.

WHEREAS the federal No Child Left Behind Act, 20 USCA 6301 et seq ("the Act"), requires an LEA to provide certain supplemental educational services under circumstances described in the Act; and

WHEREAS the Act requires the State Education Agency ("SEA") to establish criteria for Supplemental Educational Service Providers and approve individuals or entities from which providers may be chosen; and

WHEREAS the SEA in Michigan, the Michigan Department of Education ("the Department") has established such criteria and approved Supplemental Educational Service Providers; and

WHEREAS PROVIDER is an approved Supplemental Educational Service Provider; and

WHEREAS PROVIDER is willing to provide such services to LEA's eligible students under the terms of this Contract if selected;

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, it is agreed between the parties as follows:

1. Individual Supplemental Educational Services Agreements

An Individual Supplemental Educational Services Agreement (ISESA) shall be developed by LEA in consultation with parent and PROVIDER, for each eligible student whose parent elects to receive supplemental educational services from PROVIDER. Changes in any student's ISESA may only be made with the written consent of LEA in consultation with parent. PROVIDER, LEA or parent may request a review of a student's ISESA. PROVIDER shall provide, to be included in each student's ISESA, information including but not necessarily limited to, a statement of specific achievement goals for each student, a description of how the student's progress will be measured, a timetable for improving achievement that—in the case of a student with disabilities—is consistent with the student's Individual Education Program under section 614(d) of the Individuals with Disabilities Education Act, and a description of how the student's parents and the student's teacher(s) will be regularly informed of the student's progress.

PROVIDER shall not unilaterally terminate any ISESA. PROVIDER shall obtain written authorization from LEA before terminating any ISESA.

Parent shall not be charged for any services rendered under the ISESA unless such services and charges are clearly identified in writing and agreed upon in advance in writing, signed by the parent. In no event shall such changes obligate the LEA financially, nor shall the LEA incur any obligation or expense in excess of the state/federal reimbursement amount set forth in this contract. Services paid for by the LEA are limited to the amount of the District's Title I per pupil allocation or the actual cost of the supplemental educational services, whichever is less.

The form of ISESA to be used under this Agreement is attached hereto as Attachment A.

2. Parent Defined

For the purpose of this Contract, a parent is the natural or adoptive parent, legal guardian, or a surrogate parent appointed by LEA.

3. No Disclosure of Identity

PROVIDER assures that the identity of any student eligible for, or receiving, supplemental educational services will not be disclosed to the public without the written permission of the parent.

4. Student Records

PROVIDER shall keep all student records in a secure location, preventing access by unauthorized individuals. PROVIDER will maintain an access log delineating date, time, agency, and identity of any individual accessing student records who is not in the direct employ of the PROVIDER. PROVIDER agrees to provide access to and copies of student records to LEA and/or the parents of LEA's student. PROVIDER shall not forward to any other person other than parent or LEA any student record without the written consent of the parent or LEA. Upon completion or termination of the ISESA or termination of this Contract, PROVIDER shall immediately turn over to LEA all student records for LEA's eligible students to whom PROVIDER has provided services under this Contract.

5. Access by LEA

PROVIDER shall notify LEA of the location and/or any change in location at which it is providing services to LEA's eligible students. It shall allow access to its facilities for periodic monitoring of each student's instructional program by LEA and shall be invited to participate in the review of each student's progress by LEA. LEA representatives shall have access to observe each student at work, observe the instructional setting, interview PROVIDER, and review each student's progress.

6. Fingerprints

PROVIDER shall conduct a criminal background check of its employees and, upon receipt of those checks, certify to the LEA that no employee of PROVIDER working with students of the school district has been convicted of a violent or serious felony as defined by statutes. PROVIDER shall supply LEA with a list of names of those employees who are cleared to work with students of the LEA. A fingerprint certification form will be submitted with monthly invoices and attendance registers. PROVIDER assures that all staff providing instruction to qualified children meet the state requirements for criminal history check and the state requirements for information regarding previous unprofessional conduct (MCLA 380. 1230, MCLA 380.1230a, MCLA 380.1230b).

7. Independent Contractor Status

This Agreement is by and between two independent agents and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association. PROVIDER understands and agrees that it shall be responsible for providing its own salaries, payroll taxes, withholding, insurance, workers compensation coverage and all other benefits of any kind, as required by law for its own employees, and assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the services to be provided under this agreement.

8. Conflict of Interest

PROVIDER shall furnish LEA with a valid copy of its most recently adopted corporate or partnership agreements or bylaws, or other information satisfactory to LEA so that LEA may determine the identities of decision-making individuals of PROVIDER. Further, PROVIDER shall timely update said information as changes in such governance occur. PROVIDER shall avoid any actual or potential conflict of interest on behalf of itself or its employees providing services hereunder, including, but not limited, to employment with LEA.

9. Accident/Incident Report

PROVIDER agrees to submit a written accident report to LEA immediately, and in all cases within no more than twenty-four (24) hours of an accident or incident when a pupil has suffered an injury, injured another individual, or has been involved in an activity requiring notification of law enforcement or emergency personnel.

10. Discrimination

PROVIDER shall not discriminate on the basis of race, color, religion, gender, national origin or ethnicity, age, disability, height, weight, marital status or any other factor prohibited by law, in employment or operation of its programs.

11. Child Abuse Reporting

PROVIDER assures LEA that all staff members, including volunteers, are familiar with and agree to adhere to child abuse, child neglect and/or missing children reporting obligations and procedures under Michigan law, including but not limited to MCLA 722.621 et seq. PROVIDER agrees to provide annual training to all its employees regarding mandated reporting of child abuse and missing children. PROVIDER agrees that all staff members will abide by such laws in a timely manner.

PROVIDER shall submit immediately by facsimile and mail, within twenty-four (24) hours an accident or incident report to LEA when it becomes aware of circumstances including, but not limited to, allegations of molestation, child abuse or missing children under PROVIDER's supervision. PROVIDER understands and agrees that provision of such accident or incident report is not a substitute for PROVIDER's own compliance with laws relating to child abuse, child neglect and/or missing children.

12. Supplies, Equipment and Facilities

PROVIDER shall be solely responsible for the provision of all appropriate supplies, equipment, and facilities for a pupil as required in his/her ISESA. If PROVIDER desires to use District facilities, it must make a separate application for use of facilities through the District's Use of Facilities procedures.

13. Inspection and Audit

PROVIDER shall provide access to records or reports, or other material relating to the Contract, upon request by LEA. Financial records related to the Contract shall be maintained by PROVIDER for five (5) years and shall be available to LEA or its designee for audit.

14. Indemnification

PROVIDER shall defend, hold harmless, and indemnify LEA and its governing board, officers, agents, and employees from and against all liabilities and claims for damage for death, sickness, or injury to any person(s) or damage to any property, including, without limitation, all consequential damages and expenses (including attorney fees), from any cause whatsoever arising from or connected with its service hereunder, resulting from the negligence or intentional acts of PROVIDER, its agents or employees. It is understood and agreed that such indemnity shall survive the termination of this agreement.

15. Insurance

During the entire term of this agreement and any extension or modification thereof, PROVIDER shall keep in effect a policy or policies of liability insurance, including coverage of owned and non-owned vehicles used in relation to the performance of service(s) by PROVIDER, of at least _____ for each person and _____ for all accidents or occurrences for all damages arising out of death, bodily injury, sickness or disease from any one accident or occurrence, and _____ for all damages and liability arising out of injury to or destruction of property for each accident or occurrence. Not later than the effective date of this Agreement, PROVIDER shall provide LEA with evidence of insurance satisfactory to LEA, naming LEA as additional certificate holder, including a provision for a twenty (20) calendar day written notice to LEA before cancellation or material change, evidencing the above-specified coverage. The PROVIDER shall at its own cost and expense, procure and maintain such insurance as may be required under the Worker's Compensation Law of Michigan, if applicable. LEA reserves the right to revise the requirements of this provision at any time.

16. Monthly Invoices and Payment for Services

PROVIDER shall be paid for services as provided in Attachment B hereto, which is incorporated herein as though set forth in its entirety. PROVIDER shall submit to LEA monthly invoices itemized by name/address of student, service provided and actual number of hours for which services were provided, and amount owed. Such invoices shall be submitted within thirty (30) days of the rendering of services. LEA shall process payments to PROVIDER within forty-five (45) days of submission of such invoices. Such monthly invoices shall be accompanied by a report on each student's progress, together with an attendance report, initialed as accurate by parent, for each student. Further, the fingerprint certification required by Paragraph 6 above shall accompany each invoice.

17. Records of Attendance

PROVIDER shall maintain daily records of student service provided, including the name/address of student, the name of PROVIDER's employee who rendered the service, and the amount of time of such service. In addition to providing the attendance report described in Paragraph 16 above, PROVIDER shall permit access to and/or provide a copy of such records to LEA upon request.

18. Right to Withhold Payment

LEA may withhold payment to PROVIDER, when in the opinion of the LEA:

- a.** PROVIDER's performance, in whole or in part, either has not been carried out or is insufficiently documented.
- b.** PROVIDER has neglected, failed, or refused to furnish information or to cooperate with the inspection, review, or audit of its program, work, or records.
- c.** PROVIDER has breached any provision of this Agreement or its attachments.
- d.** PROVIDER has failed to submit the invoice in a timely manner.

If LEA determines to withhold payment, it shall provide a written notice and explanation of its reason for doing so to PROVIDER, which shall have fourteen (14) calendar days from the date of receipt of said notice to correct such deficiency.

19. Modifications and Amendments

This Contract may be modified or amended only by a written document signed by authorized representatives of PROVIDER and LEA. No change in this Contract or in the ISESA shall result in a LEA financial obligation to PROVIDER in excess of the amount set forth in Attachment B to this Contract.

20. Disputes

PROVIDER and LEA agree that all claims which arise out of or relate to this Agreement between them shall be settled by arbitration in **<County>**, Michigan, administered by and under the Rules of the American Arbitration Association. Such arbitration is intended to be the sole and exclusive remedy and forum for all such claims, and the decision and award of the arbitrator is intended to be final and binding between the parties as to all claims which were or could have been raised at any step in the arbitration procedure. The decision and award of the arbitrator is also intended to be enforceable in any court of competent jurisdiction. In accordance with MCLA 600.5001 et seq and MCR 3.602, upon issuance of the arbitrator's decision and award, judgment in any court of competent jurisdiction shall be rendered on the award and entered so as to enforce its provisions. The selected arbitrator shall be empowered to set a hearing, hear testimony and examine evidence the parties may present. The arbitrator shall have no authority to add to, detract from, change, amend or modify the terms of this Agreement. The arbitrator's fees and expenses shall be shared equally by the PROVIDER and the LEA; each party shall be responsible for its own costs and fees.

21. Termination

This Agreement terminates at 5 p.m. on _____ unless terminated sooner as provided in this Paragraph:

- a.** This Agreement may be terminated by LEA or PROVIDER at any time. It shall be terminated by LEA if PROVIDER is unable to meet the specific student academic achievement goals and timetables for improving student academic achievement, as identified in students' ISESAs.

PROVIDER's exercise of its right to terminate this Contract shall not alleviate its responsibilities to complete any existing ISESAs. To terminate this Contract, either party shall give twenty (20) calendar days written notice as provided herein prior to the date of the termination. Upon termination without default of PROVIDER, LEA shall pay for all unpaid services satisfactorily performed to date of termination.
- b.** In consideration of this payment, PROVIDER waives all rights to any further payment or damage. Upon termination, PROVIDER shall turn over to LEA all student records in its possession generated as a result of services rendered under this Contract, possessed by PROVIDER or under its control at the time of termination, as well as any student records or other documents provided to PROVIDER by the LEA in the course of this Contract.
- c.** An Individual Supplemental Educational Services Agreement may be terminated by PROVIDER only upon consent of the LEA. An ISESA shall terminate if the student ceases to be enrolled in the District. Upon termination under this paragraph, final payment from LEA will be calculated on a straight pro-rata basis by multiplying the percentage of the completed services, as determined by LEA, by the total agreed-upon contract amount, then subtracting any previous payments made on the ISESA by LEA.

22. Compliance with Laws

During the term of this agreement, PROVIDER shall comply with all applicable federal, state and local statutes, laws, ordinances, rules and regulations relating to the provision of supplemental educational services, including securing and maintaining in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Contract.

23. Entire Agreement

This Contract and its attachments constitute the entire agreement between LEA and PROVIDER, and supersede any prior or contemporaneous understanding or agreement with respect to the services contemplated.

24. Governing Law

The terms and conditions of this agreement shall be governed by the laws of the state of Michigan.

25. Severability Clause

If any provision of this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement shall be severable and remain in effect.

26. Notices

Notices required under this Contract shall be valid when mailed via first class postage or personally delivered to the parties' authorized representative, as indicated below.

27. Authorized Representative

The persons signing this Contract certify they are the authorized representatives of the respective parties, and are authorized to sign this document.

Provider: _____

District: _____

BY: _____

(Type/Print Name & Title)

BY: _____

(LEA Representative Name & Title)

Fed ID#: _____

DELIB:2427995.1\099999-90030

GLOSSARY



GLOSSARY

Adequate Yearly Progress (AYP)

A component of the Accountability Profile based on a series of performance goals that every school, Local Education Agency (LEA), and State must achieve within specified timeframes in order to meet the 100% proficiency goal established by the Federal *No Child Left Behind Act of 2001* (NCLB).

Consumers

Any person or group who might utilize supplemental educational services (SES), or marketing material for SES, including, but not limited to: school districts, Intermediate School Districts (ISDs), parents, guardians, students, teachers, school administrators, the Michigan Department of Education (MDE), the United States Department of Education (USED), and other State departments.

Differentiated Instruction

For the purposes of this application, this term means using a variety of strategies to design individual instructional programs which address the diagnosed needs of students with different learning styles and performance levels.

Eligibility

Refers to all students from low-income families who attend Title I schools in phase two (2) of School Improvement, Corrective Action, or in Restructuring. Services must be provided in accordance with established guidelines.

Ethics

The principles of conduct governing an individual or a group.

Grade Level Content Expectations (GLCEs)

The curricular expectations as developed by the MDE in cooperation with representatives from ISDs, LEAs and organizations.

High School Course Content Expectations (HSCEs)

Outlines what students should know and be able to do in English language arts, mathematics and science.

Individuals with Disabilities Education Act (IDEA)

A United States Federal law that governs how States and public agencies provide early intervention, special education, and related services to children with disabilities. It addresses the educational needs of children with disabilities from birth to the age of 21.

Individualized Learning Goals

Specific achievement goals that must be developed for each student, in consultation with the district, parents and the student's provider, that include a timetable for improving achievement, and identify how the student's progress will be measured. For a student with special needs, the individualized learning goals must also be consistent with the student's individualized educational plan.

Individualized Educational Program (IEP)

A written document that describes the educational program that will be provided to a student with special needs. The IEP is a requirement of IDEA and must be designed to provide the child with a Free Appropriate Public Education (FAPE). If a student has an IEP, the Individualized Learning Plan (ILP) must be developed in accordance with the IEP.

Individualized Learning Plan (ILP)

The name commonly used in Michigan for the plan developed in conjunction with the Individualized Learning Goals. The term ILP must not be confused with the term IEP (defined above).

Intermediate School District (ISD)

Public agencies that provide administrative and instructional services to local school districts, particularly in the areas of special and vocational education.

Michigan's 57 ISDs were formed in 1962 by Public Act 190, which took the State's existing 83 county school districts and renamed and reorganized them under the name of intermediate school districts. All Michigan ISDs have elected board members, and has a superintendent who is hired by the board of education.

Local Educational Agency (LEA)

Local School Districts, ISDs, Regional Educational Service Agencies (RESAs), and their Boards of Education.

The No Child Left Behind Act of 2001 (NCLB)

The reauthorization of the Elementary and Secondary Education Act of 1965 - the principal Federal law affecting education from kindergarten through high school. NCLB is designed to improve student achievement and close achievement gaps. States are required to develop challenging academic standards, to educate all students to 100 percent proficiency by 2014, and to create and implement a single, Statewide accountability system.

Parent(s)/Legal Guardian(s)

This is defined as the person or persons legally responsible for the guardianship of the student.

Qualified Instructors

The person or persons employed by an SES provider to deliver instruction in reading, English language arts, and/or mathematics to eligible student(s) enrolled in the provider's program. Instructors may also be referred to as "tutors." An instructor must have a high school diploma; be trained in the instructional program and strategies used by the provider; be trained in monitoring and evaluating student achievement; and be the age of majority.

Regional Educational Service Agency (RESA) and Regional Educational Service District (RESA)

RESAs and RESDs are the same entity as an ISD. They perform the same functions and services. The only difference is their name.

Section 504

Section 504 protects people with disabilities from discrimination based on their disability. A person is disabled within the meaning of Section 504 if he or she, has a mental or physical impairment that substantially limits one or more of such person's major life activities, has a record of such impairment or is regarded as having such impairment.

Standards for Monitoring SES Providers

A set of criteria that SES providers are required to meet in order to demonstrate that the services they provide to students are high-quality.

State Educational Agency (SEA)

This refers to the MDE. The State Superintendent of Public Instruction implements the administrative functions on behalf of the Michigan State Board of Education.

Supplemental Educational Services (SES)

Additional academic instruction provided outside the regular school day that is designed to increase the academic achievement of low-income students (as defined by eligibility for free or reduced-price meals) who attend qualifying schools.

Supplemental Educational Service Providers

Faith-based organizations, profit and non-profit businesses, LEAs, schools, Institutes of Higher Education (IHEs), community groups, and RESAs approved by the Superintendent to provide additional academic instruction designed to increase the academic achievement of eligible Title I students.

Supplemental Educational Services Providers Code of Ethics

The principles of conduct that are required to be followed by all SES providers in Michigan.

Title I

The Federal Elementary and Secondary Education Act program that focuses on improving the academic achievement of the disadvantaged by ensuring that all students have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic standards and State academic assessments.