Texas Education Agency

Texas Education Agency

NCLB Program Coordination

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Supplemental Educational Services (SES) Implementation Guidance

DIVISION OF NCLB PROGRAM COORDINATION
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Supplemental Education Services
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INTRODUCTION

A. GENERAL INFORMATION

A-1. What are supplemental educational services (SES)?

Supplemental educational services (SES) are additional academic instruction designed to increase the academic achievement of students in campuses 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 educational 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. Supplemental educational services must be high-quality, research-based, and specifically designed to increase student academic achievement [Section 1116(e)(12)(C)].

A-2. What is the purpose of supplemental educational services?

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.

The State is 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 supplemental educational services 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 choice 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 served campuses identified for improvement are given the option of (1) transferring to another public school, or (2) receiving supplemental educational services, depending on the eligibility of the student and the status of the school. (The state may also require non-Title I schools to offer supplemental educational services and public school choice. Texas requires non-Title I schools to amend their campus improvement plan to address the area that caused the school to miss AYP.)

The option to transfer to another public school is available to all students enrolled in Title I schools that are in the first year of school improvement status and for the subsequent years that the school remains identified for improvement. The provision of supplemental educational services, discussed in this document, is available to students from low-income families who are enrolled in Title I schools in the Stages 2 and above of school improvement. These options continue until the school has made AYP for two consecutive years.

In circumstances where choice is not possible (i.e., if all campuses at a grade level are in school improvement, if the LEA has only a single campus at that grade level, or if campuses in an LEA are remote from each other), LEAs are encouraged to consider offering supplemental educational services during the first year of school improvement. When both options are available, parents have the choice of which option they would prefer for their child. For more information on the public school choice requirement, see the School Choice section above.

Another educational choice exists for parents when their children are in campuses that have been identified as persistently dangerous, or when a child has been the victim of a violent crime on school property. Such students have the option of transferring to a different, safer public school campus. The State must identify campuses that are persistently dangerous in time for LEAs to notify parents and students, at least 14 days prior to the start of the school year that their school has been identified. For more information on the unsafe school choice option, go to the TEA NCLB web site at http://www.tea.state.tx.us/nclb/ and select the blue "Title IX – USCO, School Safety Choice Option" button on the bottom of the left side of the screen.

A-4. When must districts make supplemental educational services available?

In general, LEAs must make supplemental educational services available for eligible students attending campuses in stage 2 and above of school improvement (three or more years of not making AYP). For example, if a campus did not meet adequate yearly progress in the 2005, 2006, and 2007 AYP release, the LEA was required to make available supplemental educational services to eligible students in the campus at the beginning of the 2007-08 school year.

Campuses must continue offering supplemental educational services to their eligible students until the campuses are no longer identified for school improvement, corrective action, or restructuring. Campuses are no longer identified for improvement, corrective action, or restructuring after they have met AYP for two consecutive years for the indicator which initially identified the campus for School Improvement identification.

A-5. Who is eligible to receive supplemental educational services?

Eligible students are all students from low-income families who attend Title I campuses that are in stage 2 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 campus the student attends. Eligibility is not dependent on whether the student is a member of a subgroup that caused the campus to not make AYP or whether the student is in a grade that takes the statewide assessments as required by Section 1111 of the ESEA as reauthorized by NCLB.

If the funds available are insufficient to provide supplemental educational services to each eligible student whose parent requests those services, the LEA must give priority to providing services to the lowest-achieving eligible students. In this situation, the LEA should use objective criteria to determine the lowest-achieving students. For example, the LEA may focus services on the lowest-achieving eligible students in the subject area that caused the campus to be identified. The services should be tailored to meet the instructional needs of eligible students in order to increase their academic achievement and help them attain proficiency in meeting the State's achievement standards. (For more information on student eligibility, please see Section F.)

B. OVERVIEW OF THE STATE'S RESPONSIBILITIES FOR IMPLEMENTATION

B-1. What is the responsibility of the State in providing supplemental educational services?

The State has a number of responsibilities in ensuring that eligible students receive additional academic assistance. The State must identify providers, maintain a list of providers, display certain information on its Web site, monitor its LEAs' implementation of SES, and monitor the quality and effectiveness of providers. Specifically, the State 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.

The State consults with the Title I Committee of Practitioners, members of the Supplemental Educational Services Task Force, LEAs, ESCs, and Supplemental Educational Services Providers on an on-going basis. The state also conducts parent focus groups around the state.

2. Provide and disseminate broadly, through an annual notice to potential providers, information on the opportunity to provide Supplemental Educational Services and the process for obtaining approval to be a provider of supplemental educational services (see Section C for additional information).

Supplemental Educational Services Provider application information is disseminated annually on various state and national email lists and web sites.

3. Develop and apply objective criteria for approving potential providers (see question C-1 for additional information).

The state's Title I Committee of Practitioners implements a scoring rubric when reviewing the provider applications. This common scoring rubric determines the providers that are recommended to the Texas Education Agency for approval to the state's approved list. More information the provider approval process is available at http://www5.esc13.net/ses/index.html.

4. Maintain an updated list of approved providers, across the State, for each school district, from which parents may select, and indicate which providers are able to serve students with disabilities or limited English proficient (LEP) students (see question C-2 for additional information).

The state's approved list, updated twice each year, is available at http://www5.esc13.net/ses/index.html.

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 Supplemental Educational Services. (See B-8.)

6. Develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of services offered by approved supplemental educational services 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 (see question D-1 for additional information).

The provider evaluation information is available at http://www5.esc13.net/ses/provider_evaluation.html.

7. Develop, implement, and publicly report on standards and techniques for monitoring an LEA's implementation of SES. (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). (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. (See L-16.)

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

The state considers ways that it can help parents understand and access SES for their child. The state does this directly, through its own actions and outreach, as well as indirectly, by providing technical assistance to its LEAs (provided through SIRC) sand by encouraging LEAs to provide outreach and assistance to help parents make informed decisions about SES.

The State works directly to help parents understand SES and how they can enroll their child in an SES program by:

- Providing information through SIRC that can be shared with parents.
- Posting on the State's NCLB Web site [http://ritter.tea.state.tx.us/nclb/] 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 [http://ritter.tea.state.tx.us/nclb/], in English and Spanish, an SES registration form that parents can download, complete, and return to their LEAs. A list of providers is also available to

parents. Each LEA is required to translate the state's uniform form into any other languages in which the LEA normally sends parent notifications. LEAs are required to accept the state's uniform enrollment form. Additionally, the State provides technical assistance to 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.
- Providing a model parent notification letter for LEAs that meets the requirements of the statute and regulations,

Finally, the State strongly encourages 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 (minimum of 60 calendar days), 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--
    1) Providing timely, accurate notice; and
    2) 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 (minimum of 60 calendar days) to enable parents to make informed decisions about SES and selecting a provider;
- 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.) and
- Seek approval from the Texas Education Agency prior to spending remaining portions of its 20 percent obligation on other allowable expenses.
- 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, USDE and the State believe they are good, sound practices that would improve implementation of SES in any LEA.

B-3. May the State require that supplemental educational service 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.

While the State does have the authority to establish program design criteria for SES providers it is important to note that LEAs may not impose requirements on program design.

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

The State has developed 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 State's policy 1) applies equally to all providers, including public entities, 2) does not prohibit activities by private providers that are allowed by public entities, and 3) does not bar standard marketing practices.

Providers may only 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, providers are prohibited from giving any financial incentive or gift to a student or parent for enrolling in a specific program or to switch enrollment to another program. Additionally, providers are prohibited from offering cash or other incentives to campuses for signing up students for their programs.

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

The State also requires that providers do not engage in unfair business practices. For example, actions such as a provider offering "kickbacks" to district officials, principals, or teachers who encourage parents to select that provider; or a provider is engaging in false advertising about its program or other providers' programs is clearly prohibited.

The State's policy is designed so that both providers and LEAs know up front what is not allowed.

The State also monitors for LEA practices that give preferential treatment to certain providers due, for instance, to their long-standing relationship with the school district, or give preferential treatment to an LEA's own program over other providers' programs. For example, an LEA allowing some providers access to school facilities free-of-charge, while charging rent to others, or an LEA advertising its program to parents, but not allowing other providers to advertise in the same way is prohibited. Each of these practices will unduly encourage participation in one program over other State-approved programs.

B-6. May the State define hourly rates for providers?

As explained above in B-3, the State may, if it so chooses, define acceptable ranges for program design parameters that influence the hourly rates providers charge throughout the State, in order to prohibit grossly exorbitant charges or unrealistically low rates. The state Title I Committee of Practitioners, in the provider application scoring rubric, reviews the hourly rate charged by the provider applicant. Due to the state's implementation of the statewide EZSES management system, the state does require each provider to state an hourly rate for services.

The state avoids arbitrarily setting uniform pricing or hourly rates and, when defining acceptable program design parameters for providers, considers 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.

The state avoids 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 State accepts range of rates for program design parameters rather than creating a uniform hourly rate.

Furthermore, the State's focus is not on micromanaging the SES marketplace as a whole. Rather, the State strives to ensure 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 does the State set some program design parameters without inadvertently limiting parental choice?

The State ensures 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 is accomplished by ensuring that such parameters take into account the type of factors described above in B-3 and B-6 and by consulting with providers who are currently providing services within the State, prior to setting such parameters. The state's Supplemental Educational Services Task Force, composed of five providers and five LEA representatives, serves this function to review, discuss, and recommend policy and procedures regarding the implementation of Supplemental Educational Services in Texas.

The State also works with LEAs in the state 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. The provider information made available to LEAs is located at http://www5.esc13.net/ses/index.html.

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

The State must post on its Web site [http://ritter.tea.state.tx.us/nclb], 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).

Note 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.

B-9. What responsibilities does the State 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, the State is required to post this information on behalf of the LEA.

If an LEA required to offer Supplemental Educational Services does not have its own Web site, the LEA must notify the School Improvement Unit in the Division of NCLB Program Coordination at TEA prior to the start of the school year. The State may choose to post the LEA's information on TEA's SES Web page, on another page linked to TEA's SES Web page, or on the Regional ESC's Web site so that parents can easily find the information.

B-10. Is the State subject to any reporting requirements regarding SES?

Yes, the State 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. The State must also provide this information through the Education Data Exchange Network (EDEN/ED*Facts*) for each individual LEA required to offer SES.

C. STATE-LEVEL OPERATIONS, INCLUDING IDENTIFICATION AND APPROVAL OF PROVIDERS

C-1. How does the State approve SES providers?

In accordance with USDE Guidance, the State has developed and applies objective criteria that are based on statutory and regulatory requirements for approving supplemental educational service providers and makes these criteria publicly available to prospective providers. The criteria for approving providers, as well as the list of approved providers, are available at http://www5.esc13.net/ses/index.html.

The Texas Education Agency accepts applications through December 1 of each school year from potential supplemental educational service providers for consideration for inclusion on the state's list of approved providers. Provider applications received are reviewed and scored by the Title I Committee of Practitioners, using a common scoring rubric, to determine if the provider should be approved to be included in the state's list of providers. The state's list of approved providers is updated periodically as new applications are approved.

Eligible potential providers include non-profit entities, for-profit entities, faith-based and community-based organizations, regional service centers, and local educational agencies that meet the following criteria:

1. Has a demonstrated record of effectiveness in increasing student academic achievement of students in subjects relevant to meeting the State's academic content (TEKS) and student academic achievement standards (TAKS). [Section 1116(e)(12)(B)(i)];

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)]*. (See C-16.)

(b) Consistent with the instructional program of the LEA *[Section 1116(e)(5)(B), (12)(B)(ii)]*. (See C-17.)

(c) Aligned with State academic content (TEKS) and student academic achievement (TAKS) standards *[Section 1116(e)(5)(B)]*. (See C-17.)

(d) Secular, neutral, and nonideological *[Section 1116(e)(5)(D)]*.

3. Is financially sound [Section 1116(e)(12)(B)(iii)]. (See C-18.)

4. Will provide supplemental educational services consistent with applicable Federal, State, and local health, safety, and civil rights laws (see C-3 for additional information) [Section 1116(e)(5)(C)]. (See C-19)

Additionally, in approving a provider, the State 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 the State uses to approve SES providers have been 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)]*.

USDE Guidance allows the State flexibility in developing its 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)]*. The State currently has two application periods for new providers annually.

The State establishes a reasonable period of time during which additional providers may apply, be evaluated for approval, and be added to the list.

USDE Guidance prohibits, as a condition of approval, the state from requiring a provider to hire only staff who meet the "highly qualified teacher" requirements in Sections 1119 and 9101(23) of the ESEA.

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

The State must maintain a list of all approved providers in the State. This information must identify which providers have been approved to deliver supplemental educational services in each LEA. The list must indicate those providers that are able to serve students with disabilities or LEP students. The list must also identify those providers whose services are accessible through technology such as distance learning.

The list should 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. The State maintains an updated list and provider descriptions at http://www5.esc13.net/ses/index.html.

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

A provider of supplemental educational services may be any public or private (nonprofit 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 for approval by the State to provide SES.

All potential providers are held to the same criteria. LEAs, charter schools, and other public schools are not automatically considered approved providers; they must meet the State's established criteria, and they must 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 supplemental educational service providers (see C-7 and C-10 for additional information).

C-4. May an individual or group of individuals be a supplemental educational service provider?

Yes, an individual or group of individuals may be a supplemental educational service provider if the individual or group meets the applicable statutory and regulatory requirements, as well as the State's criteria for approval.

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

Yes. A faith-based organization (FBO) is eligible to become a provider of supplemental educational services on the same basis as any other private entity, if it meets the applicable statutory and regulatory requirements. The State may not discriminate against potential supplemental educational service providers on the basis of the entity's religious character or affiliation. Additionally, a provider, including an FBO, may not discriminate against students receiving supplemental educational services 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 supplemental educational services are provided. See 34 C.F.R. §80.36(j) (

Neither Title I nor other Federal funds may be used to support religious practices, such as religious instruction, worship, or prayer. (FBOs may offer such practices, but not as part of the supplemental educational services.) FBOs, like other providers, must ensure that that the instruction and content they provide are secular, neutral, and non-ideological.

C-6. May providers using technology to deliver supplemental educational services be approved as eligible providers?

Yes. The statute permits providers, including those that are not based within the LEA, to use alternate methods for delivery of services, which may include online, Internet-based approaches as well as other distance-learning technologies. Rural districts or districts with limited availability of service providers are especially encouraged to work with providers using these technologies. LEAs must be flexible in implementing local policies and procedures to ensure that all eligible online or internet-based providers are 1) offered to parents and 2) have equitable access to serving eligible students.

In addition, the USDE's guidance allows for a provider that uses technology to deliver tutoring services to provide students with computers for the students to use or keep as part of the provider's instructional program. (See C-30.)

Furthermore, it is allowable for the student to keep the computer at the completion of the Supplemental Educational Services program, if stipulated by the provider, if the computer's primary purpose is instructional.

C-7. May an LEA identified as in need of improvement be a supplemental educational service 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. However, schools within such an identified LEA that are not identified for improvement, corrective action, or restructuring may apply to be approved providers.

The State notifies LEAs of their improvement status, and the State should make this notice prior to the beginning of the school year and provide LEAs as much advance notice as possible, so that an LEA that was previously serving as a supplemental educational service provider can act quickly to offer parents who signed up for its services the option of selecting another provider. The State may not keep an LEA on its approved provider list if that LEA is identified as in need of improvement under Section 1116 [34 CFR 200.47(b)(1)(iv)(B)]. The State, based on either preliminary or final AYP information, should immediately remove from its provider list an LEA that is identified as in need of improvement.

Due to the disruption in services for students created when an LEA provider is identified for improvement and thus may no longer provide services, the State is well advised by USDE guidance to 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 supplemental educational services to disabled or limited English proficient 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 the LEA's identification for improvement status was the performance of its disabled or limited English proficient students on assessments, then it would be preferable for the LEA to serve those students through a contractor rather than by 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.

The State may approve as an SES provider an entity that is affiliated with an LEA in improvement or corrective action, provided the State determines that the entity is separate and distinct from the LEA in which it is operating. In making that determination, the State considers 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 the State uses 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, the State must document the justification it uses to award approval to an entity that is affiliated with an LEA identified for improvement or corrective action. The state may add a question to its provider application that would help it 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 the State 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 after the beginning of the school year, may it continue providing supplemental educational services through the end of the school year?

No. If an LEA has been approved as a supplemental educational service provider and is then identified as in need of improvement, the State must require the LEA to cease offering its supplemental educational services. This should be done as soon as possible, but no later than the start of the next semester of the school year [34 CFR 200.47(b)(iv)(B)].

C-10. May a public school identified as in need of improvement be a supplemental educational service provider?

No. If a public school is identified as in need of improvement, corrective action, or restructuring, the school may not be an approved supplemental educational service provider.

The State notifies LEAs of a campus' improvement status prior to the beginning of the school year, and provides 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. The State 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. The State, based on either preliminary or final AYP determinations, immediately removes 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 State's criteria. The status of the school does not affect the eligibility of an independent entity housed in the school. The State considers 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 in need of improvement serve as SES tutors?

Yes. Individual or groups of teachers who work in a school or an LEA identified as in need of improvement may apply to the State for approval as an SES provider or may be hired by any State-approved provider (including an LEA provider that is not in need of improvement) to serve as a tutor in its program.

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

No. The State 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. The State does not need to require a provider approved by an SEA prior to November 28, 2008, to re-apply. Since the State requires approved providers to renew their approval every two years, the State will consider the new criteria in 34 C.F.R. §200.47(c) when evaluating applications for renewal.

It is important to note that most of the criteria that the State 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 the State' approval process. Additionally, the State must examine two of the criteria (items 6 and 7 in C-1) in its monitoring of SES providers. (See D-1.)

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

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

C-15. Who is responsible for determining whether providers have a "demonstrated record of effectiveness" in improving 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. The State considers whether a potential provider can demonstrate that its program meets this standard for approval.

In doing so, the State may 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. The State also might require an applicant to submit qualitative data (such as feedback from parents or students served) to demonstrate its program's effectiveness; the State 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, the State 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, the State requires 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.)

The State currently has a third-party evaluator conducting an evaluation of SES providers to determine the record of effectiveness.

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. The State has the authority and the responsibility to approve only entities that will contribute to increased student achievement.

In approving an SES provider, the State considers the following types of 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 consistent with the LEA's instructional program and aligned with State student academic achievement standards?

States are responsible for determining whether a provider can deliver supplemental instruction that is aligned with State student academic achievement (TAKS) standards. 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 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 State, 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 does the State determine whether a provider is "financially sound"?

The State is responsible for developing criteria to determine whether a provider is "financially sound" for the purposes of this program. The State could require potential supplemental educational service providers to submit audited financial statements or other evidence of their financial soundness. The State could also employ site audits to verify the accuracy of the information submitted. To determine financial soundness, the State is not required to 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 Title I, a supplemental educational service 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).

A supplemental educational service 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 supplemental educational service 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 supplemental educational services. 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 the State and LEAs, as recipients of Federal financial assistance or as public entities. As such, the State and LEAs have the responsibility for ensuring that there is no discrimination in their supplemental educational services programs.

What this means in terms of supplemental educational services for students with disabilities, students covered under Section 504, and limited English proficient 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". (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 the State 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 the State to gather information from a potential provider regarding whether the entity has been removed from another State's list of approved providers is for the State 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, the State may 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. The State will 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 the State to use parent information and evaluation results in considering whether to approve a provider?

Parents can be objective and reliable sources of information for the State to consider in approving providers. The regulations require that the State 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. Although parent feedback, by itself, may not provide a sufficient basis for the State to determine whether a provider should be approved, it can be an important component of the State's decision.

The State may consider parent feedback obtained through a provider, LEA, or other parties. The State 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, the State may 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 the State uses, it should take into account the validity and reliability of the information it receives.

In addition to parent feedback, the State must consider evaluation results, if any, in making its decision to approve a provider. USDE Guidance provides the State 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 the State 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 of Sections 1119 and 9101(23) of the ESEA do not apply to supplemental educational service providers.

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

No. Section 200.47(b)(3) of the Title I regulations (34 C.F.R. 200.47(b)(3)) specifically prohibits the State from requiring a provider to hire only staff who meet these requirements.

C-25. May there be only one approved supplemental educational service provider in an LEA?

The State strives to identify more than one supplemental educational service provider for each LEA. The inclusion of distance-learning providers is one way to expand the pool of providers. However, in a limited number of cases only a single provider might be available.

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

The State 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, the State has the option to decide to require each franchise to apply separately. Alternatively, the State could choose to accept one application that would cover all the franchises.

C-27. May the State 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, the State weighs 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 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.

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

No. The State 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, or English language proficiency (for LEP students).

C-30. May the State 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 is appropriate for the State 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 is considered an unallowable incentive under State policy. The State monitors SES providers and determines whether providers are using computers as incentives in a way that violates State policy. (See B-4.)

C-31. What are the obligations of the State and LEAs in providing Supplemental Educational Services 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).

The State and each LEA that arranges for supplemental educational services 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 Supplemental Educational Services, and that they receive appropriate accommodations in the provisions of SES. The State must indicate on its list of approved Supplemental Educational Services providers, and LEAs must indicate in their notice to parents on SES, those providers that are able to serve students with disabilities.

Furthermore, the supplemental educational services program within each LEA 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 supplemental educational services with necessary accommodations. Such services and necessary accommodations must be available, but not necessarily from each provider. Rather, the State and LEA is responsible for ensuring that the supplemental educational service providers made available to parents 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 LEA. If no provider is able to make the services with necessary accommodations available to an eligible student with a disability, the LEA would need to provide these services, with necessary accommodations, either directly or through a contract. (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.

Supplemental educational services must be consistent with a student's individualized education program (IEP) under Section 614 of the Individuals with Disabilities Education Act (IDEA) or a student's individualized services under Section 504. However, these services are 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 individualized education programs under IDEA or into any 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 the State and LEAs for providing options for parents of students with limited English proficiency (LEP)?

LEAs that arrange for SES must ensure that LEP students receive appropriate SES and language assistance in the provision of those services. The State must indicate on its list of approved providers, and LEAs must indicate in their notice to parents on SES, those providers that are able to serve LEP students. The State 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 State. 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. (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) supplemental educational services to children with disabilities or children with limited English proficiency because there are no other providers available that can do so, must the LEA or its contractor meet the State's criteria for approved providers?

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 supplemental educational services (such as the requirement to establish and measure progress against specific goals for students, and the requirement to regularly inform parents of a student's progress). The LEA may count funds spent providing supplemental educational services 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 its disabled or limited English proficient 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 is located within the area served by the LEA can do so.

C-34. What information should the State use to meet the requirement that the State 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?

The State is allowed to rely on self-reported information from a provider regarding its ability to serve students with disabilities or LEP students. To obtain this information, the State may include a question in its provider application asking applicants to report if they are able to serve students with disabilities or LEP students. For States that already require this information in their provider application, no additional data collection should be necessary.

Note that an SES provider should inform the State 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 State'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 the State's responsibility with respect to monitoring SES providers?

The State 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. 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 State;
2. Addresses students' individual needs as described in students' SES plans;
3. Has contributed to increasing students' academic; and
4. Is aligned with the State's academic content and student academic achievement standards.

Additionally, the State 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.

The State 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 State; student enrollment (including enrollment of students with disabilities and LEP students); and attendance in a provider's program. The State's monitoring criteria must be publicly reported, and the State should report any findings resulting from such monitoring.

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

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

The State 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. Additionally, the State must monitor whether a provider is addressing students' needs as described in their individual student learning plans. The State 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 must be specified publicly (ideally in the State's notice inviting entities to apply to become SES providers) so that all providers know how the State 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?

The State has standards and techniques for withdrawing approval of an SES provider and removing the provider from the State-approved list

The statute requires States 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 achievement standards. In addition, a provider must be removed from the list if it fails to provide supplemental educational services 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.

A provider may also be removed from the state list if the organization fails to comply with the requirements outlined in the provider's approval letter, the Code of Ethics included in the SES provider application, or the Assurances included in the Supplemental Educational Services provider application.

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

The State is required to develop, implement, and publicly report on the standards and techniques it will use to monitor LEAs' implementation of SES. The State 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 the State conducts of its LEAs.

As part of its regular Title I monitoring of LEAs, the State 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. Further, the State 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. (See L-1 and L-16.)

The State considers tools and strategies it can use throughout the year to monitor LEAs' progress in meeting the requirements of the law. The State requires an LEA to submit to the State the parental notification letters the LEA has disseminated. The State also requires that an LEA implement the EZSES statewide SES management system and maintain updated information 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 U.S. Department of Education, as part of its auditing and on-site and desk monitoring of Title I, requests evidence documenting that states are effectively monitoring the implementation of SES by their LEAs.

D-5. What steps should the State take if it determines that an LEA is failing to implement supplemental educational services in a manner that is consistent with the statute, regulations, and guidance?

The State is responsible for ensuring that supplemental educational services are properly implemented by LEAs in the State. If the State determines that an LEA is failing to fully implement its supplemental educational services responsibilities, the State might provide technical assistance (which may be through SIRC), institute peer-to-peer oversight and technical assistance by another LEA that the State determines to be in compliance with the law and implementing effective practices in supplemental educational services. Additionally, a State should, pursuant to Section 1116(b)(14)(B), take such corrective actions as the State determines to be appropriate and in compliance with State law.

The State acts 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 states 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 state is satisfied that program requirements will be met; (2) suspending payments to an LEA, in whole or in part, if the state 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 state finds, after reasonable notice and opportunity for a hearing, that an LEA has failed substantially to comply; 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

E. OVERVIEW OF LEA RESPONSIBILITIES

E-1. What is the responsibility of an LEA in implementing the supplemental educational services requirements?

An LEA must:

1. Notify parents about the availability of services, at least annually. (See G-2 for additional information.) This information should be easily understandable; in a uniform format; including alternate formats, upon request; and in a language the parents can understand.

   If an LEA rejects a completed application request for Supplemental Educational Services for any reason, the LEA must provide the parent and the provider selected with detailed information explaining why the application was rejected. For example the information must contain a valid reason for the rejection such as the student is not eligible for SES or the minimum number of students set by the provider was not met. In the event of the latter, the LEA must notify the parent and allow the parent to select a new provider if a second choice was not indicated on the original request.

2. Help parents choose a provider, if requested.

3. Apply fair and equitable procedures for serving students if not all students can be served. (See F-3 for additional information.) Note that the only time the LEA may set criteria for eligibility is if the requests for Supplemental Educational Services exceeds the 20% set-aside for services. The LEA must contact the Division of NCLB Program Coordination at TEA and discuss its implementation of these criteria before denying services to any eligible student.

4. Ensure that eligible students with disabilities and LEP students receive appropriate services. (See C-31 through C-33.)

5. Enter into an agreement with a provider selected by parents of an eligible student. (See H-1 or additional information.)

6. Assist the State in identifying potential providers within the LEA. (See C-1 for additional information.)

7. Protect the privacy of students who are eligible for or receive supplemental educational services (See H-16 through H-18 for additional information.)

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 State to serve in the LEA and the locations where services are provided. (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). (See L-1.)

10. The LEA must implement procedures to ensure that a minimum of 90% of students selecting Supplemental Educational Services begin to receive the services within 30 days of the parent submitting the completed application.

11. The LEA must implement procedures to ensure the prompt payment of all SES invoices for services provided. Procedures are to include the prompt processing of all data and information in the EZSES state management system to facilitate prompt payment of invoices.

12. If the LEA has a complaint or concern with an approved SES provider, the LEA must immediately contact the provider regarding the complaint or concern and attempt to quickly resolve the issue(s). The LEA must make a good faith effort to resolve any complaint or concern regarding an SES provider at the local level before submitting a formal complaint against a provider to TEA through the NCLB Complaint Procedures at http://ritter.tea.state.tx.us/nclb/Complaints.pdf.

The LEA must demonstrate and show activities that it has initiated which ensure that every eligible student has been provided access and opportunities to receive Supplemental Educational Services. The LEA must maintain this documentation at all times and provide to the State upon request, that it has fully met the LEA responsibilities listed above.

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

In general, an LEA may only 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.)

The LEA must contact the Division of NCLB Program Coordination at TEA and discuss its implementation before denying services to any eligible student.

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

No. An LEA may not impose requirements that relate to whether a provider has an effective educational program; doing so would undermine the State's authority to establish standards for approval of providers as having effective programs and to determine which providers meet those standards.

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, that providers employ only State-certified teachers as tutors, or 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 and undermines parents' opportunity to select the most appropriate provider and services for their child.

Under no circumstances should 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 specific concerns regarding a provider's program design, the LEA should convey those concerns to the State.

However, as explained in B-3, the State may establish parameters on program design.

E-4. May an LEA require providers on the State-approved list to meet additional program design criteria or 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 or impose additional program design requirements, 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, as required by state law. 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, as long as they are reasonable, do not subject supplemental educational service 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 issues such as the fees charged to providers for the use of school facilities, the frequency of payments to providers, and the issue of whether payments will be based, in whole or in part, on student attendance.

The Division of NCLB Program Coordination in consultation with the legal department at TEA has determined that following types of activities are allowable and unallowable respectively.

Allowable operational and administrative requirements include but are not limited to requiring providers to:

- fulfill national background checks required by the Texas Education Code, and
- attend face-to-face meetings in order to receive forms and information.

Unallowable program design parameters would include but are not limited to requiring:

- all tutors to meet state certification requirements or the federal highly qualified teacher requirements, or
- the Supplemental Educational Services to be provided only at the campus rather than the locations approved by the state in the provider's application.

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

The U.S. Department of Education 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 supplemental educational services?

All students from low-income families who attend Title I campuses that are in Stage 2 or above 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 caused the campus to not make AYP, or whether the student is in a grade that takes the statewide assessments as required by Section 1111 of 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 supplemental educational services 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)]. As noted in A-5, the LEA should use fair and equitable procedures in determining which students are the lowest achieving, and should use professional judgment in applying those criteria. 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 supplemental educational services. Rather, the LEA should notify all eligible families of their children's eligibility. Only if more families request supplemental educational services than there are funds available to serve should the LEA set priorities or criteria to determine which eligible students can get services. The LEA should review the information available about the performance of eligible students and apply those priorities or criteria in a manner that is careful, fair, and objective.

The LEA must contact the Division of NCLB Program Coordination at TEA and discuss its implementation of these criteria before denying services to any eligible student.

F-4. What data must be used to identify low-income students?

For the purposes of determining eligibility for supplemental educational services, an LEA must determine family income on the same basis that the LEA uses to make allocations to campuses under Title I.

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

The law specifically requires LEAs to use the same data to determine eligibility for supplemental services that they use for making within-district Title I, Part A allocations; generally, most LEAs use school lunch data for that purpose. However, determining student eligibility for supplemental services (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 supplemental educational services while abiding by the student privacy provisions of the School Lunch Program.

Section 9 of the Richard B. Russell National School Lunch Act (NSLA) establishes requirements and limitations regarding the release of information about children certified for free and reduced price meals provided under the National School Lunch Program. 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 new Title I supplemental educational services 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. Campus officials must 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" for proper administration and enforcement of a Federal education program. As such, campuses should establish procedures that limit access to a child's eligibility status to as few individuals as possible.

Campus officials, prior to their disclosing individual information on the School Lunch Program 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 would 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 including 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 LEAs that operate school lunch programs under Provisions 2 and 3 of the National School Lunch Act determine which students are eligible for supplemental educational services?

"Provision 2" and "Provision 3" 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. National School Lunch Program 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 supplemental educational services, campus officials would 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 supplemental educational services?

Homeless students, like other students, are eligible to receive supplemental educational services if they are from low-income families (which will most likely be the case for every homeless child) and are enrolled in a campus in stage 2 of improvement or undergoing corrective action or 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", an LEA may not yet have available all of the required SES information to provide to parents at that time. The USDE and State 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?

In general, an LEA should work to ensure that parents have comprehensive, easy-to-understand information about supplemental educational services. At least annually, an LEA must provide notice to the parents of each eligible student regarding the availability of supplemental educational services. Specific information about services should be provided directly to the parents of eligible students so that there is sufficient time to allow them to select providers.

This notice must –

1. Explain how parents can obtain SES for their child.
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.
3. Describe briefly the services, qualifications and evidence of effectiveness for each provider. (See G-4.)
4. Indicate providers that are able to serve students with disabilities or LEP students. (See G-4.)
5. Include an explanation of the benefits of receiving (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 the LEA anticipates that it will not have sufficient funds to serve all students eligible to receive services, it should also include in the notice information on how it will set priorities in order to determine which eligible students do receive services (see F-3).

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

LEAs may want to consider multiple avenues for providing general information about supplemental educational services, including newspapers, Internet, or notices mailed or sent to the home. LEAs that are most effective in reaching eligible families are those that provide information to parents through various means, including less traditional forms of communication, 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. In providing this information, the LEA must take precautions that it does not disclose, to the public, the identity of any student eligible for supplemental educational services without the written permission of the student's parents.

An LEA should make its supplemental educational services enrollment form easily available for parents to access and should widely distribute the form. For example, an LEA could post the form on its website and mail the form home to parents, as well as leave copies of the form at the schools that have students eligible for supplemental educational services and at other district offices and sites where parents may go. Additionally, an LEA should not restrict the distribution of enrollment forms (including the photocopying of forms) by non-LEA individuals. Finally, LEAs should ensure that they have an open, adequate, and reasonable process for parents and providers to submit application forms.

Information requested on the SES application forms that is not essential for the processing of the request, i.e., Student Identification Number, gender, ethnicity, etc., may not prevent or deter the approval of the request. This type of information may be provided by the parent at a later date if necessary.

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; and
2. Clear and concise, and clearly distinguishable from other information on school improvement that an LEA sends to parents.

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. 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. 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 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.

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.

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, LEAs may notify parents of their SES options through regular mail; however, the LEA is not required to do so. The LEA may 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, 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. The 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.

In any case, 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 LEA must

maintain documentation/evidence that would 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. (See L-1.)

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

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 State strongly 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.)

LEAs that did not spend an amount equal to 20 percent of their Title I allocation on choice-related transportation and supplemental education services during the immediate preceding school year may not

limit the service enrollment period without the State's prior approval of the planned enrollment period and enrollment process. LEAs will also be expected to demonstrate that full parent demand for the immediate preceding school year was met by providing evidence of the LEA's substantial efforts to recruit and service eligible students. For example, documentation must be provided in cases where the LEA claims that high percentages of parents of eligible students declined services.

In any case, the LEA must allow a minimum of 60 calendar days for parents to choose to take advantage of SES.

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; 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.

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.

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. 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 State must display the required information, on behalf of the LEA, on the State's Web site. An LEA that is required to offer SES but does not maintain a Web site should notify its State 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 State 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 State'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 supplemental educational services process for parents. For example, an LEA should consider having staff or volunteers on hand to help parents understand and complete the enrollment application. 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 post information about supplemental educational services on its website and let parents register for the services 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, it may be useful for an LEA to evaluate its outreach efforts and consider the extent to which its efforts reflect these six communication goals for designing and implementing an effective outreach strategy to parents: (1) get parents' attention; (2) inform them about their supplemental educational services options; (3) help them understand how to obtain services; (4) motivate parents to take action to exercise their options; (5) encourage parents to follow and communicate about their children's progress; and (6) influence parents to provide feedback regarding the

impact and quality of the services their children receive. (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 be included in the agreement with a provider?

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

1. Specific achievement goals for the student, which must be developed in consultation with the student's parents and the provider;
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;
3. A timetable for improving the student's achievement;
4. A provision for terminating the agreement if the provider fails to meet student progress goals and timetables;
5. Provisions governing payment for the services, which may include provisions addressing missed sessions;
6. A provision prohibiting the provider from disclosing to the public the identity of any student eligible for or receiving supplemental educational services without the written permission of the student's parents; and
7. An assurance that supplemental educational services will be provided consistent with applicable health, safety, and civil rights laws. (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 individualized education program (IEP) under Section 614(d) of the IDEA. In the case of a student covered by Section 504, they must be consistent with the student's individualized services under Section 504. However, these services are 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 individualized education programs under IDEA or into any Section 504 plans.

Because the State already reviews provider rates for eligibility purposes (see B-4), LEAs may not negotiate hourly rates with providers nor may it coerce or require, or imply that a provider provide services below its state approved hourly rate (see D-5).

LEAs are strongly encouraged to enter into agreements with approved providers as early in the year as possible.

- For providers in the second year of their two-year approval period, and especially providers who worked in the LEA the prior year, the LEA is encouraged to execute generic contracts/agreements in order to facilitate earlier implementation of Supplemental Educational Services. This generic contract/agreement may be executed prior to parents selecting the provider for services and may later be amended to include more specific details related to participating students.
- For providers who have completed their two-year approval and have re-applied for approval on the state list, and especially providers who worked in the LEA the prior year, the LEA is encouraged to

execute generic contracts/agreements in order to facilitate earlier implementation of Supplemental Educational Services. This generic agreement may be executed prior to parents selecting the provider for services and may later be amended to include more specific details related to participating students or later be terminated in the event that the provider is not re-approved by the state.

• For providers who have applied to be approved providers for the first time or have been previously removed from the state list, the LEA would need to enter into an agreement as early in the year as possible after the state releases the approved provider list for that year.

In any case, the LEA is not required to wait until the parent selects a provider before executing a contract/agreement with the provider. LEAs should begin to execute contracts/agreements with providers as soon as the state releases the approved provider list in July of each year.

H-2. Who is responsible for developing the student learning plans 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 (student learning plan) for the student, how the student's progress will be measured, and a timetable for improving achievement".

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 one of the approved providers, 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 learning plan?

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?

No, statute does not specifically require a parent signature as evidence that consultation on a student learning plan has occurred. Rather, the LEA must offer parents a legitimate opportunity to consult on the terms of their student's learning plan.

The LEA cannot use the consultation requirement to deny Supplemental Educational Services to a student whose parents have not participated in the development of the student learning plan but have otherwise requested Supplemental Educational Services for their student. 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.

Since the state requires all student learning plans to be aligned to TAKS objectives, the parent may choose to designate the LEA and the provider the authority to develop and identify the specific academic achievement goals for the student, the measures of student progress, and the timetable for improved student achievement—all based on the student's TAKS data. The parent may choose this involvement at the time Supplemental Educational Services are requested, when the provider of choice is selected, or at anytime contacted by the campus or LEA.

If the parent chooses to actively participate in the development of the student learning plan, the parent must ensure his/her active and timely participation in order to facilitate the student's receiving the services at the earliest possible date. At the same time, the LEA should actively pursue consultation of the parent through various communications including, but not limited to, telephone calls, electronic mail, U.S. Postal Mail, facsimile, or sending notes home in student backpacks or folders. A minimum of two different methods for contacting the parent must be used. The LEA is required to contact the parent a minimum of three times seeking consultation on the student learning plan. The LEA should also allow for reasonable time, such as one week, for parents to respond.. If, after three attempts, the parent is unresponsive (this does not include requests from the parent for more time or the need to answer questions), the LEA and provider shall develop and identify the specific academic achievement goals for the student, the measures of student progress, and the timetable for improved student achievement—all based on the student's TAKS data. The student learning plan is to be approved expeditiously through the EZSES Management System. The parent shall also receive an approved copy of the learning plan and information indicating whom the parent may contact at the LEA if the parent wishes to discuss the plan.

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?

A provider must continue to provide supplemental educational services 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)]]. However, the availability of funds and the intensity of services selected (i.e. the number of sessions per week) may limit the availability 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 child's teacher(s) about the child's progress. The intent of this requirement is to ensure that students are improving their academic achievement and 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 supplemental educational services their child is receiving, or with the child's academic progress, may they request and receive a new provider?

Although neither the law nor the regulations require LEAs to allow students to move from one service provider to another provider during the course of a school year, LEAs may want to 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 State may 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 supplemental educational services 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.

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

The State's list of providers currently includes many "statewide" providers. However, if none of these "statewide" providers were to be available, an LEA may request a waiver from the state for all or part of the supplemental educational services requirement. The State may only grant a waiver if it determines that: (1) that none of the approved providers can make their services available in the LEA, within the general geographic location of the LEA or via distance learning; and (2) the LEA provides evidence that it cannot provide these services.

The state must notify the LEA of approval or disapproval of its waiver request within 30 days of receiving the request, and if it has disapproved the request, the reasons for the disapproval. Where services seem

limited, the state would seek to include providers who deliver services using e-learning, online, or distance learning technologies. Prior to approving a waiver, the state would require the LEA to explain why it is unable to use distance-learning technologies to make supplemental educational services available to eligible students.

H-12. How long is an LEA's exemption from supplemental educational services in effect?

States are required to update at least annually the list of approved supplemental educational service providers. TEA currently updates the list at least twice per year. 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 the supplemental educational services requirements.

H-13. If an LEA cannot provide school choice to students in a campus in stage 1 of school improvement (because there are no eligible campuses to which students could transfer) and the LEA voluntarily decides to offer supplemental educational services a year early, do the supplemental services requirements in section 1116 apply?

A limited number of LEAs may have no schools available to which students can transfer for Title I public school choice. This situation may occur when all schools at a grade level are in school improvement, when the 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 cannot provide school choice but may wish to offer supplemental educational services to students who are enrolled in schools that are only in their first year of school improvement. However, because an LEA is not required to offer supplemental educational services to eligible students enrolled in a school in its first year of school improvement, the requirements of Section 1116(e) do not apply. In other words, such an LEA would not need to provide supplemental educational services only to low-income students, to contract only with State-approved providers, or to fund supplemental educational services at the per-student amount set forth in that subsection.

However, because the LEA will be required to offer supplemental educational services (that meet all the statutory requirements) to students in that campus the next year if the campus remains in improvement status, it would help avoid confusion and administrative complexity if the LEA, in that first stage, 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.

H-14. May an LEA offer supplemental educational services 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 for non-low-income students toward meeting its 20 percent obligation for supplemental educational services and transportation for public school choice. Moreover, if the LEA uses Title I funds to provide supplemental educational services to students not covered under the requirements in section 1116(e), those services must meet all other Title I requirements. In addition to Title I funds, the LEA could use other appropriate Federal, State, or local funds to provide supplemental educational services 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 supplemental educational services programs that are held in their child's school building, because this eliminates the need to transport their child to another site after school has ended. The USDE, therefore, encourages LEAs to allow providers in the school building, either free of charge or for a reasonable fee. LEAs should ensure that the use of the school building by providers is on the same basis and terms as are available to other groups that seek access to the school building. However, if many providers are approved to serve an LEA, or if other after-school programs are housed in the 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 the system 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 turn over a list of eligible students to an approved supplemental educational service 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. 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.

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 service providers from promoting their programs and the general availability of supplemental educational services?

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. LEAs 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 supplemental educational services for their children. Such coordination should ensure that providers have ample time to market their services and that parents are able to make informed choices of supplemental educational service providers. An LEA should also share its registration forms with providers so that they can help sign up students for services.

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

Yes, but only under limited circumstances. An LEA may terminate the supplemental services a provider is providing to a 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. The agreement between the LEA and the provider must specify the terms and process for terminating services, including good faith efforts by either one or both parties to resolve any disagreements at the local level as stated in the LEA's NCLB complaint resolution procedures, and when an agreeable resolution is not reached, including filing a formal complaint with the state for investigation. 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 State. 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 the State 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.

I. THE ROLE OF PARENTS

I-1. How do parents select a supplemental educational service 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; tutors' qualifications; and how student progress will be measured.

Parents may request assistance from their LEA in selecting a provider. In such cases, LEAs that also serve as providers must be careful to offer unbiased assistance focused on the specific academic needs of the student and the preferences of the parent. LEAs are not permitted merely to assign those students whose parents request assistance to a district- or campus-administered program.

In the event that the LEA is an approved provider, the LEA must ensure that different staffs at the LEA have responsibility for 1) the implementation of the supplemental services program, and 2) serving as a provider. Only the implementation staff may assist parents in selecting a provider, not staff who actually serve as the provider.

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. However, parents are not required to accept the LEA's recommendation of an SES provider.

I-3. What is the role of parents in supplemental educational services?

Parents are to be active participants in the supplemental educational services 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.

At the local level, parents must be able to choose among all supplemental educational service providers identified by the State for 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. 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 consult on the development and identification specific academic achievement goals for the student, measures of student progress, and a timetable for improving achievement (student learning plans.

All parents whose children receive supplemental educational services must be regularly informed of their child's progress.

I-4. What is the parents' role in supporting student attendance at supplemental service sessions? If the student does not attend the SES sessions, may the LEA terminate the services?

Parents should ensure that their children attend the supplemental services sessions in which they are enrolled. The LEA should ensure that parents are notified if their child is not attending regularly.

J. PROVIDING SUPPLEMENTAL EDUCATIONAL SERVICES

J-1. What is required of supplemental educational service providers?

A provider is responsible for meeting the terms of its agreement with the LEA (see item 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).
2. Measuring the student's progress, and regularly informing the student's parents and teachers of that progress.
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.
4. Ensuring that it does not disclose to the public the identity of any student eligible for or receiving supplemental educational services without the written permission of the student's parents.
5. Providing supplemental educational services consistent with applicable health, safety, and civil rights laws (see items C-19, C-31, C-32.)
6. Providing supplemental educational services that are secular, neutral, and nonideological.

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 individualized education program (IEP) under Section 614(d) of the IDEA. 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.

J-2. May a supplemental educational service provider offer services in the summer?

Yes. In most cases it will be preferable to provide services that take place over the course of the school year and that augment and enhance 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. 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. For this reason, TEA approves both programs that provide services during the school year and those that provide them in the summer.

An LEA may not "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. An LEA must also allow students who are receiving services from a state approved provider that has been approved for services in the summer to participate in SES throughout the summer.

LEA end-of-year closeout timelines and procedures must accommodate service providers that have been approved by the state to provide services in the summer and for those services to be invoiced and all applicable data entered into the state's EZSES management system in a timely manner.

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

In approving a prospective provider, the State must consider information from the provider on whether it has been removed from any State's list of approved providers. A prospective provider should honestly and completely provide this information to the State through the application process or through any other means that the State 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 potential providers become State-approved, and to help current providers strengthen the quality of their programs?

The State and SIRC offer workshops and other forms of technical assistance to entities interested in becoming providers. This assistance may be useful in helping potential providers understand the procedures they will have to go through to become approved 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 State (e.g., in terms of educational program, pupil/tutor ratio, intensity of services, etc.). If the SES program design approved by the State 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.

K. FUNDING ISSUES

K-1. How much must an LEA spend on supplemental educational services?

The law establishes a joint funding mechanism for choice-related transportation and supplemental educational services. Unless a lesser amount is needed to meet demand for choice-related transportation and to satisfy all requests for supplemental educational services, an LEA must spend up to 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) Supplemental educational services; 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. (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.

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.

K-2. Must an LEA reserve a portion of its Title I allocation to pay for supplemental educational services?

No. The statutory phrase "an amount equal to" means that the funds required to pay the costs of choice-related transportation and supplemental educational services need not come from Title I allocations, but may be provided from other Federal, State, local, and private sources. In other words, an LEA may use other, non-Title I sources of funding to meet the requirement to spend an amount equal to 20 percent of its Title I, Part A allocation, when such amounts are needed for choice-related transportation or supplemental educational services.

K-3. Does funding made available for Title I, Part A through the transferability provisions authorized under Section 6123 change the base that must be used to calculate required spending on choice-related transportation and supplemental educational services?

Yes. An LEA must include funds transferred to Title I under Section 6123(b) in the base used in calculating the "amount equal to 20 percent" of its Title I allocation that it must use for choice-related transportation and supplemental educational services. In other words, funds that an LEA transfers into Title I, under the transferability authorization, become part of the base against which all Title I set-asides (including the set-aside for supplemental educational services and choice-related transportation) are calculated.

In addition, an LEA may transfer funds to Title V, Part A or Section 1003, if the LEA receives Section 1003 funds, to increase the amount of flexible funds available for supplemental educational services 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 should an LEA reserve Title I funds to help pay the costs of choice-related transportation and supplemental educational services?

An LEA that is required to provide or pay for choice-related transportation, SES, or parent outreach and assistance (and that elects to use Title I, Part A funds to do so) may (1) reserve any Title I, Part A funds needed for this purpose "off the top" prior to making allocations to campuses, or (2) adjust allocations to campuses to make available the required funds.

If an LEA chooses the second method – adjusting allocations to campuses – it may reserve funds from all Title I campuses or only from campuses identified for improvement, corrective action, or restructuring (subject to the limitation described under K-3).

K-5. In reserving Title I, Part A funds for choice-related transportation and supplemental educational services, LEAs are not permitted under Section 1116(b)(10)(D) to reduce Title I, Part A allocations to campuses identified for corrective action or restructuring by more than 15 percent. How should LEAs calculate this 15 percent limit?

LEAs 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 campus identified for corrective action or restructuring. Under this approach, an LEA reserving Title I, Part A funds for choice-related transportation and supplemental educational services would not be permitted to reduce its allocation to an affected campus below this 85-percent floor.

Under the second method, in making allocations to campuses for a given year, an LEA would calculate two allocations. For the first allocation, the LEA would determine a "pre-reservation" allocation to campuses before setting aside funds for choice-related transportation and supplemental educational services (but after any other reservations, such as those made for administrative costs and district-wide activities like professional development and parental involvement). Then, for campuses identified for corrective action or restructuring, the LEA would calculate what 85 percent of those campuses' "pre-reservation" allocation would be. The LEA would determine a second allocation for all campuses after reserving funds for choice-related transportation and supplemental educational services. For campuses 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 campuses.

K-6. How do the carryover rules described in Section 1127 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 funds from one fiscal year to the next. This 15 percent cap applies to the LEA's entire Title I, Part A allocation, and therefore covers any funds reserved, but not spent due to lack of demand, for supplemental educational services, choice-related transportation, or parent outreach and assistance. If the combination of unused funds reserved in Title I, Part A for choice-related transportation, supplemental educational services, or parent outreach and assistance and other unspent Title I, Part A funds exceeds 15 percent of an LEA's total allocation, the excess funds must be returned to the State for redistribution to other LEAs, unless the state grants the LEA a one-year waiver 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 Program) to pay for supplemental educational services?

Yes. Supplemental educational services are an authorized activity under Section 1116, and an LEA may use SIP funds to provide those services.

In addition, LEAs receive funds under Section 1003(g) (SIP Academy Grants), which authorizes additional funding for school improvement, LEAs may also use those funds to support supplemental educational services.

K-8. What Federal program dollars other than Title I, Part A may be used to pay for supplemental educational services?

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) (Funding Transferability) 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 the School Improvement Program (Section 1003(a)) and SIP Academy grants (Section 1003(g)) of the ESEA for SES. The LEA may also transfer funds under Section 6123(b) of the ESEA into Section 1003(a)

and 1003(g), if the LEA receives those funds, to increase the amount of flexible funds available for SES or other school improvement activities.

K-9. If an LEA does not incur any choice-related transportation costs, must it use the full 20-percent amount to pay for supplemental educational services?

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.

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.

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 supplemental educational services to students enrolled in campuses in their first stage of improvement (as discussed in H-13), may it count the cost of those services toward the 20-percent requirement?

Yes, the LEA may count the cost of providing SES to students in schools in the first year of improvement

toward the 20 percent requirement, so long as the services meet all the requirements of section 1116(e) and so long as it is meeting the full demand for supplemental services from students enrolled in campuses in stage 2 of improvement or subject to corrective action or restructuring.

K-12. If the cost of meeting the demand for supplemental educational services and choice-related transportation in an LEA equals or exceeds the full 20-percent obligation, must an LEA spend 20 percent on those activities?

Yes. If there is sufficient demand in an LEA for supplemental educational services and public school choice transportation, the LEA must spend the full 20-percent obligation on those activities, subject to the exception that it may spend up to 1 percent (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.

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 supplemental educational services?

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.

The per-pupil allocations are posted to the TEA NCLB SIP web site once they are calculated each year.

Note that this cap applies to the cost of instructional services only. LEAs may incur additional per-child costs related to the administration of supplemental educational services, 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 supplemental educational services?

An LEA must calculate the per-pupil cap on supplemental educational services costs by dividing its Title I, Part A allocation by the number of children residing within the LEA ages 5-17 who are from families below the poverty level, as determined by the most recent census estimates from the Department of Commerce.

The U.S. 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.

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 provide a lower per-pupil cap for supplemental educational services?

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 supplemental educational services?

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-child limitation on funding for supplemental educational services?

Yes, in some LEAs the per-child "tuition" charged by certain providers that have been approved by the State and are available to serve students in the LEA may exceed the per-child amount the LEA can spend (pursuant to the calculation made in K-18). 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 supplemental educational services 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 of its Title I, Part A funding that must be spent for supplemental educational services and choice-related transportation. In other words, if the cost of enrolling a child with a provider is $1,500 and the LEA's per-child cap (calculated as described in K-18) 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 the 20 percent obligation.

K-19. Must an LEA pay for or provide transportation to service providers?

No. An LEA may provide transportation to service providers, 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 supplemental educational services. Also, the costs of transportation may not be counted toward satisfying an LEA's obligation to spend up to an amount equal to 20 percent of its Title I, Part A allocation on choice-related transportation and supplemental educational services, 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). 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. An existing after-school program has been approved by the State as a supplemental educational service provider. May the LEA count any funds that it is already paying that provider toward the 20 percent supplemental educational services and choice requirement?

Yes. However, selection of a supplemental educational service provider is always up to the parent. An LEA may not merely have its existing after-school program provide supplemental educational services 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 the 20 percent, money that it is paying a provider for eligible "supplemental educational services" received by children who are eligible to receive those services (children from low-income families enrolled in eligible campuses). 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 supplemental educational services funds are used only for eligible activities.

An existing provider that qualifies to be a supplemental educational service 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, towards the 20-percent requirement, State or local funds used to provide supplemental educational services to eligible students. However, it could cause supplanting if the LEA were to use Title I funds to replace State or local funds it had spent previously to provide services to eligible Title I students. In addition, an LEA may not exclude eligible Title I students from the services it is providing with State or local funds merely because those students are eligible for supplemental educational services under section 1116.

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.

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:

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 (minimum of 60 calendar days) 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, and must notify the Division of NCLB Program Coordination at TEA that it has met the criteria and intends to spend the remainder of its 20 percent obligation on other allowable activities. The LEA must include in its notice to the State the amount of that remainder. An LEA does not need to obtain approval from the State to spend less than its 20 percent obligation.

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

Yes. The state may require an LEA to meet criteria in addition to those in 34 C.F.R. §200.48(d)(2)(i) (described above in L-1) in order for the LEA to spend less than its 20 percent obligation. For example,

the State may 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 the State 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 the State 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, the State 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 the State if it spends less than its 20 percent obligation, the State has the authority to require such approval from its LEAs.

The State implements the following additional procedures as identified in Question E-4 above. LEAs that did not spend an amount equal to 20 percent of their Title I allocation on choice-related transportation and supplemental education services during the immediate preceding school year may not limit the service enrollment period without the State's prior approval of the planned enrollment period and enrollment process. LEAs will also be expected to demonstrate that full parent demand for the immediate preceding school year was met by providing evidence of the LEA's substantial efforts to recruit and service eligible students. For example, documentation must be provided in cases where the LEA claims that high percentages of parents of eligible students declined services.

In any case, the LEA must allow a minimum of 60 calendar days for parents to choose to take advantage of SES.

In addition, the LEA must implement procedures to ensure that a minimum of 90% of students selecting Supplemental Educational Services begin to receive the services within 30 days of the parent submitting the completed application. The LEA must also implement procedures to ensure the prompt payment of all SES invoices for services provided. Procedures are to include the prompt processing of all data and information in the EZSES state management system to facilitate prompt payment of invoices.

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 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)(*1*) 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. (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. (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. TEA has defined this as a minimum of 60 calendar days. 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 where access to school staff to ask questions is 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 USDE and the State encourage 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 the State 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 State 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 State 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 the State 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 State would not expect any LEA notification to the State to occur prior to December or January. An LEA that has an open enrollment all year long should notify the State only after several months of open enrollment.

The State implements the following additional procedures as identified in Question E-4 above. LEAs that did not spend an amount equal to 20 percent of their Title I allocation on choice-related transportation and supplemental education services during the immediate preceding school year may not limit the service enrollment period without the State's prior approval of the planned enrollment period and enrollment process. LEAs will also be expected to demonstrate that full parent demand for the immediate preceding school year was met by providing evidence of the LEA's substantial efforts to recruit and service eligible students. For example, documentation must be provided in cases where the LEA claims that high percentages of parents of eligible students declined services.

L-16. What are the responsibilities of the State 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. However, the SEA ***must*** review any LEA that:

1. The State determines has spent a significant portion of its 20 percent obligation for other activities; and
2. Has been the subject of multiple (two or more) complaints, supported by credible evidence, regarding implementation of the public school choice or SES requirements.

The State 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). Additionally, the State may choose to review any LEA that the State believes is not implementing public school choice or SES in accordance with the law or regulations.

L-17. For purposes of the State's determining when it must review an LEA, what is a "significant portion" of the 20 percent obligation?

USDE Guidance provides the State with discretion to determine what constitutes a "significant portion" of the 20 percent obligation when considering which LEAs to review. For example, the State may 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 State also may 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 the State's determining when it must review an LEA, how does the State determine what is a "complaint supported by credible evidence"?

The State has procedures in place for reviewing NCLB complaints regarding LEA implementation of Title I programs and activities, and follows 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. The State 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 State determines has not met the criteria for spending less than the amount needed to meet its 20 percent obligation?

If the State 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); 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 State 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).

The State 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 State has confirmed the LEA's compliance with the criteria in 34 C.F.R. §200.48(d)(2)(i).

L-20. May the State 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. The State 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!

Insert Date [prior to start of school, 2009]

Insert School District and Campus Name

Dear Parent/Guardian,

Help your child succeed in school – sign up for free SES 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.

Why?
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.

When?
Now—***free*** SES academic tutoring is available anytime between [enter school start date] 2009 and [enter last day of summer] 2010.

What Time?
You decide—before school, after school, during school holiday or vacation breaks, and/or during the summer.

Who Provides *Free* SES Tutoring?
You decide—attached is a list of SES tutors.

[Attach list of SES providers, include: 1) brief description of their services, qualifications, and evidence of effectiveness; 2) indicate which providers serve students with disabilities/LEP; and 3) type of service (e.g., technology, distance learning, etc.).]

SES Sign-up!

1. *Call:* Enter district and/or campus contact person name and telephone number
2. *E-mail:* Enter district and/or campus SES e-mail/mailbox address
3. *Stop by:* List the name and address of building, include hours of operation
4. *Mail:* List the mailing address, include contact person/attention line
5. *Visit:* List a website (if available)

SES Sign-up Deadline: List date, if applicable

SES Questions?

List contact person name and contact information

Need Additional Information?

www5.esc13.net/ses/index.html

List where additional SES information can be found (e.g., district website, etc.)

Need Help Deciding?

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?

Thank you.

[District official]

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

Tutoría gratis para su niño/a

Insert Date [prior to start of school, 2009]

Insert School District and Campus Name

Estimado padre/tutor,

Ayude a su hijo/a a tener éxito en la escuela -¡Inscríbase en tutoría SES gratis! Esta es una gran oportunidad para ayudar a su hijo/a en la escuela sin ningún costo para usted. Como resultado del acto federal "Que Ningún Nino Se Quede Atrás", su puede recibir tutoría académica gratis para ayudarle mejorar en la escuela.

Usted puede elegir un programa de tutoría gratuita que se ajuste mejor a las necesidades de su hijo/a de la lista de los programas de tutoría en su zona. Estos programas, que han sido aprobadas por el Departamento de Educación del Estado, proporcionará a su hijo/a con la tutoría que se coordina con lo que se está enseñando en la escuela y puede ayudar a mejorar sus habilidades académicas.

¿Por qué?
Investigación del gobierno federal ha demostrado que los estudiantes que participaron en este programa de tutoría gratuito realizaron importantes avances académicos y los estudiantes que participaron en varios años lograron aún mejor.

¿Cuándo?
Ahora tutoría académica SES está disponible en cualquier momento entre el [fecha de inicio de la escuela] y 2009 [último día de entrar en el verano] de 2010.

¿A qué hora?
Usted decide, antes de la escuela, después de la escuela, durante las vacaciones escolares o durante el verano.

¿Quién ofrece tutoría SES gratis?
Usted decide, se adjunta una lista de tutores SES.
[Attach list of SES providers, include: 1) brief description of their services, qualifications, and evidence of effectiveness; 2) indicate which providers serve students with disabilities/LEP; and 3) type of service (e.g., technology, distance learning, etc.).]

¡Registrase!

*1. Llame a:*Enter district and/or campus contact person name and telephone number

2. Mande por correo electrónico: Enter district and/or campus SES e-mail/mailbox address
3. Darle una vuelta por:List the name and address of building, include hours of operation
4. Mande por correo: List the mailing address, include contact person/attention line
5. Visite: List a website (if available)

Plazo de Registrar: List date, if applicable

¿Preguntas de SES?
List contact person name and contact information

¿Necesita Más Información?
www5.esc13.net/ses/index.html
List where additional SES information can be found (e.g., district website, etc.)

¿Necesita ayuda para decidirse?
Al decidir el programa de tutoría que es mejor para su hijo/a, usted puede querer hacer estas preguntas:

- ¿Cuándo y dónde se llevará a cabo la enseñanza (en la escuela, el hogar, un centro comunitario)?
- ¿Con qué frecuencia y por cuántas horas en total recibirá su hijo/a los tutelados?
- ¿Qué programas, por los grados y áreas temáticas, se encuentran disponibles para su hijo/a?
- ¿Qué tipo de instrucción usa el tutor (pequeño grupo, uno a uno, o la computadora)?
- ¿Cuáles son las calificaciones de los tutores?
- ¿Puede ayudar el tutor si su niño tiene una discapacidad o está aprendiendo inglés?
- ¿Se dispone transporte desde y hacia el lugar donde se llevará a cabo la tutoría?

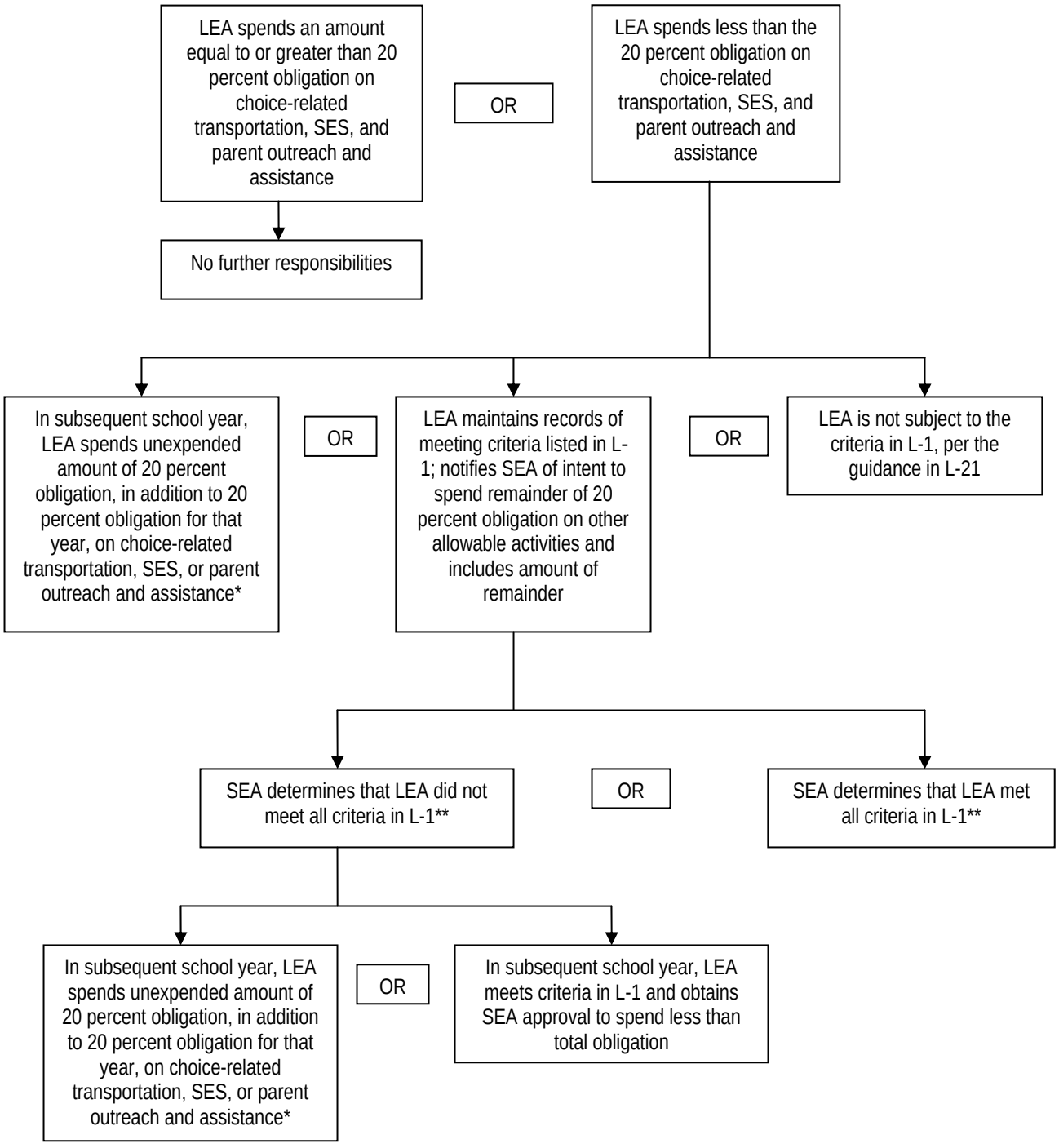
Gracias.

[District official]

Anexos:

Aprobado Lista de Proveedores
Forma de Selección de Proveedores
carta de notificación de Elección de Escuela Pública
Carta de Mejoramiento Escolar

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 id 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.

Appendix D:

Help your child succeed in school!
Request for Free SES Tutoring

No Child Left Behind Supplemental Educational Services (SES) Program

Instructions to Parents/Guardians:

- *Complete all the information and return this form to the main office at your child's school.*
- *Please PRINT the following information. Providers will use this information to contact you for tutoring services.*
- *Complete and submit a separate form for each student. Submit only one form per student.*

If multiple forms are received, the district will process the first form received.

District Name:		
Campus Name:		
Student Name: (First, Middle, Last)		
Student ID: (Optional)	**Grade:**	**Student Date of Birth: (Month, Day, Year)**
Home Address: **City, Texas ZIP:**		

Yes, I want free SES tutoring for my student. By signing below, I agree to the following:

- Tutorials for my child will end when the required per-pupil amount of money has been spent.
- Attendance is important. If my child misses three (3) or more sessions, he/she may be withdrawn from tutoring.
- I agree for my child's TAKS and other school records related to student achievement to be shared with the provider selected below. This includes low-income status.

All student learning plans are required to be based on TAKS objectives by the state. *Choose one option below*:

☐ I choose for the school and tutoring provider to develop my child's student learning plan and send me a copy.

☐ I will actively participate in the process to help the school and tutoring provider to develop my child's student learning plan and can be reached at the telephone number and/or e-mail address below.

List up to three tutoring providers, from the list provided by your school, that you would like to provide the free tutoring services to your student and select the subject area requested for the tutoring. The district will try to provide your first choice, but if that is not possible it will go down the list to the next provider listed.

First Choice:	**Provider Name:**	
	Subject Area Requested:	☐ math ☐ reading ☐ science ☐ ESL ☐ special education
Second Choice:	**Provider Name:**	
	Subject Area Requested:	☐ math ☐ reading ☐ science ☐ ESL ☐ special education
Third Choice:	**Provider Name:**	
	Subject Area Requested:	☐ math ☐ reading ☐ science ☐ ESL ☐ special education

Parent Signature	**Print Name**	**Date Signed**
Telephone	**e-mail, if available**	

No, I do not want my student to receive free SES tutoring. Complete the Campus Name and Student Name above and sign.		
Parent Signature	**Print Name**	**Date Signed**

Return this completed form to the district central office or the main office at your child's school as soon as possible.

Appendix D:

Help your child succeed in school!
Request for Free SES Tutoring

No Child Left Behind Supplemental Educational Services (SES) Program

Who is eligible for the free Supplemental Educational Services (SES) tutoring?

Student Eligibility: All students from low-income families are eligible to request free SES tutoring if they attend a Title I, Part A campus that has not met Adequate Yearly Progress (AYP) standards for three or more consecutive years.

Definition of SES: Free tutoring under the Supplemental Educational Services (SES) program is a great opportunity to help your student in school at no cost to you. This free tutoring helps your student to help improve his/her academic achievement (TAKS scores). The tutoring must be provided outside of the regular school day and be high-quality, research-based, and specifically designed to improve student academic achievement.

How to choose a SES Tutor:

1. Review the approved tutors on the list provide by the school district.
2. If you wish, attend any provider fairs or other information sessions offered by the school district.
3. If you wish, ask the school district for help in choosing a tutor.
4. Complete the form on the other side of this sheet and turn it in to the school your student attends by the deadline.

The complete list of state-approved SES providers (tutors) is also available at www.esc13.net/ses/.

Parent Notification: Parents must be notified of the availability of SES tutoring annually at the beginning of the school year and must be allowed a minimum of 60 calendar days to select a provider. Once a parent has submitted a request for a provider, services for the student must begin within 30 calendar days.

Additional information on SES and approved SES providers is available on the School Improvement Resource Center (SIRC) web site at http://www.esc13.net/ses/.

DISTRICT USE ONLY		
Date Request Received:	Date Assigned to Provider:	Dates of contact with parent by staff.
Eligible ☐ Yes ☐ No	Provider Assigned:	Date: By:
Reviewed by:	Date SLP Received:	Date: By:
Date form entered into EZSES:	Date SLP Approved:	Date: By:
Entered by:	Tutoring Start Date:	Date Tutoring Completed:

Return this completed form to the district central office or the main office at your child's school as soon as possible.

¡Ayude a su hijo tener éxito en la escuela!
Petición para Tutoría Gratuita de SES

No Child Left Behind - Servicios Educativos Suplementarios (SES)

Instrucciones a Padres o Guardianes:

- *Complete esta forma con toda la información y entréguela a la oficina de la escuela de su hijo/a.*
- *Por favor use letras de BLOQUE. Proveedores de tutoría usarán esta información para ponerse en contacto con Usted.*
- *Complete y entregue una forma distinta para cada estudiante. Entregue sólo una forma por cada estudiante.*

Si el distrito recibe varias formas, el distrito usará la primera forma que reciba.

Nombre del Distrito Escolar:		
Nombre de la Escuela:		
Nombre del Estudiante: (Propio, Segundo, Apellido)		
Identificación del Estudiante: (Opcional)	**Nivel:**	**Fecha de Nacimiento del Estudiante: (Mes, Día, Año)**
Domicilio: **Ciudad, Estado, Código Postal:**		

Sí, quiero la tutoría gratuita del programa SES para mi estudiante. Por medio de firmar abajo, muestro que estoy de acuerdo que:

- La tutoría para mi hijo/a terminará cuando se ha gastado la cantidad de dinero requerida por cada estudiante.
- La asistencia es importante. Si mi hijo/a falta tres (3) o más sesiones, es posible que se termine la tutoría.
- Estoy de acuerdo que la información de TAKS y otros datos relacionados al logro académico de mi hijo/a serán compartidos con el proveedor de tutoría seleccionado abajo. Esto incluye datos de bajo ingreso.

Todos los planes de aprendizaje para los estudiantes tendrán que ser basados en los objetivos de TAKS estatales. *Escoja una de las opciones que sigue:*

☐ Yo elijo que la escuela y el proveedor de tutoría desarrollen el plan de aprendizaje de mi hijo/a y que me envíen una copia.

☐ Yo participaré en el proceso de ayudar a la escuela y el proveedor de tutoría desarrollar un plan de aprendizaje para mi hijo/a. Se podrán comunicar conmigo por el teléfono o el correo electrónico escrito abajo.

Haga una lista de tres proveedores de tutoría, de la lista que le proporcionó su escuela, que a usted le gustaría que proporcione servicios de tutoría a su hijo/a. El distrito tratará de ofrecerle su primera elección, pero si eso no es posible, el distrito pasará la lista al proveedor próximo.

Primera Elección:	Nombre del Proveedor: Tema Solicitada: ☐ matemáticas ☐ lectura ☐ ciencia ☐ Inglés como segundo idioma ☐ educación especial
Segunda Elección:	Nombre del Proveedor: Tema Solicitada: ☐ matemáticas ☐ lectura ☐ ciencia ☐ Inglés como segundo idioma ☐ educación especial
Tercera Elección:	Nombre del Proveedor: Tema Solicitada: ☐ matemáticas ☐ lectura ☐ ciencia ☐ Inglés como segundo idioma ☐ educación especial

Firma de un Padre	**Escriba su Nombre en Letra de Imprenta**	**Fecha de la Firma**
Teléfono	**Correo electrónico, si es disponible**	

No, yo no quiero que mi hijo/a reciba tutoría gratuita de SES. Arriba, complete el nombre de la escuela y de su hijo/a y firme aquí.

Firma de un Padre	**Escriba su Nombre en Letra de Imprenta**	**Fecha de la Firma**

Entregue esta forma completa a la oficina central del distrito o a la oficina de la escuela de su hijo/a tan pronto que sea posible.

¡Ayude a su hijo tener éxito en la escuela!
Petición para Tutoría Gratuita de SES

No Child Left Behind - Servicios Educativos Suplementarios (SES)

¿Quien es elegible para tutoría gratuita del programa Servicios Educativos Suplementarios (SES)?

Elegibilidad del Estudiante: Todos los estudiantes de familias de bajos ingresos son elegibles para solicitar tutoría gratuita del programa SES si asisten a una escuela que recibe fondos del programa Titulo I, Parte A que no ha cumplido con las normas del Progreso Adecuado Anual, AYP por sus siglas en inglés, por tres años consecutivos.

Definición de SES: Tutoría gratuita bajo el programa Servicios Educativos Suplementarios (SES) es una gran oportunidad para ayudar a su estudiante en la escuela, a ningún costo a Usted. Esta tutoría gratuita ayuda a su estudiante mejorar su logro académico (calificación de TAKS). La tutoría debe ser proporcionada fuera del horario regular de la escuela y debe ser de alta calidad, demostrada efectiva por investigación y diseñada específicamente para mejorar el logro académico del estudiante.

Cómo escoger un tutor SES:

5. Revise los tutores aprobados en la lista proporcionada por su distrito escolar.
6. Si gusta, asista a las ferias de información por los proveedores de tutoría, o asista sesiones de información ofrecidas por su distrito escolar.
7. Si gusta, pídale al distrito escolar que le ayude a escoger un tutor.
8. Complete la forma al otro lado de esta hoja y entréguela a la escuela que asiste su estudiante por la fecha indicada.

La lista completa de los proveedores (tutores) del programa SES también es disponible en el siguiente sitio web: www.esc13.net/ses/.

Notificación de Padres: Los padres deben ser notificados anualmente al comienzo del año escolar de la disponibilidad de tutoría del programa SES, y se les debe permitir un mínimo de 60 días para elegir un proveedor de tutoría. En cuanto un padre someta su petición para un proveedor de tutoría, servicios para el estudiante deben empezar dentro 30 días.

Más información sobre el programa SES y los proveedores de tutoría SES aprobados por el estado se puede encontrar en el sitio de web del School Improvement Resource Center (SIRC) http://www.esc13.net/ses/.

PARA EL USO DEL DISTRITO SOLAMENTE		
Date Request Received:	Date Assigned to Provider:	Dates of contact with parent by staff.
Eligible ☐ Yes ☐ No	Provider Assigned:	Date: By:
Reviewed by:	Date SLP Received:	Date: By:
Date form entered into EZSES:	Date SLP Approved:	Date: By:
Entered by:	Tutoring Start Date:	Date Tutoring Completed:

Entregue esta forma completa a la oficina central del distrito o a la oficina de la escuela de su hijo/a tan pronto que sea posible.