Supplemental Educational Services
Non-Regulatory Guidance

FINAL GUIDANCE
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SUPPLEMENTAL EDUCATIONAL SERVICES
Title I, Section 1116(e)

Table of Contents

IV. PROVIDER RESPONSIBILITIES

V. FUNDING

APPENDICES

Supplemental Educational Services

Title I, Section 1116(e):

I. INTRODUCTION

A. GENERAL INFORMATION

A-1. What are supplemental educational services?

Supplemental educational services are additional academic instruction designed to increase the academic achievement of students in low-performing schools. 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 local educational agency (LEA) and are aligned with the State's academic content standards. Supplemental educational services must be provided outside of the regular school day. 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?

When students are attending Title I schools that have not made adequate yearly progress in increasing student academic achievement for three consecutive years, parents of eligible children will be provided opportunities to ensure that their children achieve at high levels. Supplemental educational services are a component of Title I of the Elementary and Secondary Education Act (ESEA) as reauthorized by the *No Child Left Behind Act* (NCLB) that will 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 adequate yearly progress (AYP) for three or more years), in corrective action, or in restructuring status are eligible to receive these services.

The State is required to identify organizations, 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 can select any approved provider that they feel will best meet their child's needs in the area served by the LEA or within a reasonable distance of that area. The LEA (usually a school district) will sign an agreement with providers selected by parents, 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 is to ensure that these students increase their academic achievement, particularly in reading/language arts and mathematics. This component of Title I offers parents choices in addressing their child's educational needs, and offers students extra help.

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

There are several choice options in the ESEA, as amended by the *No Child Left Behind* Act. Two address educational issues and one addresses the issue of student safety.

Students attending schools that have not made AYP in improving student academic achievement will be given the option of (1) attending another public school, or (2) receiving supplemental educational services, depending on the eligibility of the student and the status of the school. The choice to attend another public school is available to all students enrolled in 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 eligible students who are enrolled in schools in the second year of school improvement and for subsequent years. These options continue until the school has made AYP for two consecutive years. In very limited circumstances, where choice is not possible, 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, go to: http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc.

Another educational choice exists for parents when their children are in schools that have been identified as persistently dangerous, or when a child has been the victim of a violent crime on school property. Such students have the option of transferring to a different, safer public school. States must identify schools that are persistently dangerous in time for LEAs to notify parents and students, at least 14 days prior to the start of the 2003-2004 school year, that their school has been identified. For more information on the unsafe school choice option, go to: http://www.ed.gov/about/offices/list/osdfs/resources.html

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

In general, LEAs must make supplemental educational services available for eligible students attending schools that do not make AYP after one year of school improvement (three years of not making AYP). For example, if a school does not make adequate yearly progress in the 2002-03, 2003-04, and 2004-05 school years, the LEA must make available supplemental educational services to eligible students in the school at the beginning of the 2005-06 school year.

For the 2002-03 school year, transition language in the statute required LEAs to make services available at the beginning of that school year to eligible students in certain schools. Schools identified as in need of improvement for two or more years or that were subject to corrective action prior to NCLB enactment (i.e., before January 8, 2002) were required to offer supplemental educational services. However, if a school in improvement or corrective action before January 8, 2002 made AYP for a second consecutive year based on its 2002 assessment results, the LEA was not required to provide supplemental educational services to students in that school. Additionally, to assist with the transition to NCLB, the Department allowed States the option of identifying schools for improvement if they did not make AYP for the second year based on assessment results from the 2001-02 school year.

If a school received its assessment data after the beginning of the 2002-2003 school year and the results indicated that the school had not made AYP for the second consecutive year, the school was required to remain in improvement status, to offer supplemental educational services immediately, and to offer choice as soon as possible, but no later than the beginning of the next term during the 2002-2003 school year. This accommodation for late assessment data applied only to the 2002-2003 school year.

Schools must continue offering supplemental educational services to their eligible students until the schools are no longer identified for school improvement, corrective action, or restructuring. Schools are no longer identified for improvement, corrective action, or restructuring if they have made AYP for two consecutive years.

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

Eligible students are all students from low-income families who attend Title I schools that are in their second year of school improvement, in corrective action, or in restructuring. Eligibility is not dependent on whether the student is a member of a subgroup that caused the school to not make AYP yearly progress 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 school to be identified. The services should be tailored to meet the instructional needs of eligible students in order to increase their academic achievement. (For more information on student eligibility, please see Section F.)

II. STATE (SEA) RESPONSIBILITIES

B. OVERVIEW OF STATE RESPONSIBILITIES

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

The State educational agency (SEA) has a number of responsibilities in ensuring that eligible students receive additional academic assistance. The SEA must identify providers, maintain a list of providers, and monitor services. Specifically, the SEA must:

1. Consult with parents, teachers, LEAs, and interested members of the public to identify a large number of supplemental educational service providers so that parents have a wide variety of choices *[Section 1116(e)(4)(A)]*.

2. Provide and disseminate broadly, through an annual notice to potential providers, the process for obtaining approval to be a provider of supplemental educational services (see Section C for additional information) *[Section 1116(e)(4)(E)]*.

3. Develop and apply objective criteria for approving potential providers (see Section C for additional information) *[Section 1116(e)(4)(B)]*.

4. Maintain an updated list of approved providers (see Section C for additional information) *[Section 1116(e)(4)(C)]*.

5. Give school districts a list of available approved providers in their general geographic locations *[Section 1116(e)(4)]*.

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 (see Section D for additional information) *[Section 1116(e)(4)(D)]*.

C. IDENTIFICATION AND APPROVAL OF PROVIDERS

C-1. How do States identify and approve supplemental educational service providers?

The SEA must develop and apply objective criteria for approving supplemental educational service providers. The criteria for approving providers, as well as the list of approved providers, must be published.

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

1. Has a demonstrated record of effectiveness in improving student academic achievement *[Section 1116(e)(12)(B)(i)]*;
2. Will use instructional strategies that are high quality, based upon research, and designed to increase student academic achievement *[Section 1116(e)(12)(C)],* (see C-15 for additional information);
3. Provides services that are consistent with the instructional program of the LEA and with State academic content and achievement standards *[Sections 11116(e)(5)(B) and 1116(e)(12)(B)(ii)]* (see C-16 for additional information);
4. Is financially sound *[Section 1116(e)(12)(B)]* (see C-17 for additional information); and
5. Will provide supplemental educational services consistent with applicable Federal, State, and local health, safety, and civil rights laws *[Section 1116(e)(5)(C)]* (see C-3 for additional information).

The criteria that the SEA uses should be developed in consultation with LEAs, parents, teachers, and other interested members of the public in order to promote participation by the maximum number of providers and to ensure, to the extent practicable, that parents have as many choices as possible *[Section 1116(e)(4)(A)]*.

States have flexibility in developing their approval process, but must provide an opportunity at least annually for new providers to apply for inclusion on the State list and must ensure that interested providers are adequately informed of the process. States may establish a reasonable period of time during which additional providers may apply, be evaluated for approval, and be added to the list.

States may not, as a condition of approval, require a provider to hire only staff who meet the requirements of Section 1119 of the ESEA as reauthorized by NCLB.

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

The SEA must maintain a list of all approved providers in the State. This information must explain which providers may deliver supplemental educational services in each LEA . The list should also identify those providers whose services are accessible through technology such as distance learning. The list must include a brief description of the services, qualifications, and demonstrated effectiveness of each provider. States must update this list at least once a year.

At a minimum, potential service providers must be notified on an annual basis of the opportunity to provide supplemental educational services, and of the procedures by which potential providers may apply to be considered for inclusion on the approved list.

C-3. What Federal civil rights requirements apply?

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 SEAs and LEAs, as recipients of Federal financial assistance or as public entities. As such, SEAs and LEAs have the responsibility for ensuring that there is no discrimination in their 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-4 and C-5.

C-4. What are the obligations of SEAs and LEAs for providing options for parents of students with disabilities or students covered under Section 504?

An SEA and each LEA that arranges for supplemental educational services must ensure that eligible students with disabilities and students covered under Section 504 may participate. Furthermore, the supplemental educational services program within each LEA and within the State may not discriminate against these students. Consistent with this duty, 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, SEAs and LEAs are 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 SEA or 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.

Supplemental educational services must be consistent with a student's individualized education program 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.

C-5. What are the obligations of SEAs and LEAs for providing options for parents of students with limited English proficiency?

An SEA and each LEA that arranges for supplemental educational services must ensure that eligible students with limited English proficiency (LEP) may participate. The SEA and each LEA are responsible for ensuring that eligible LEP students receive supplemental educational services and language assistance in the provision of those services through either a provider, or providers, that can serve LEP students with or without the assistance of the LEA or SEA; or 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. However, it is always up to the parents to select the provider that best meets the needs of their child.

C-6. 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?

An LEA that must provide supplemental educational services to disabled or limited English proficient students because there are no approved providers available to do so should make every effort to ensure that the services provided (by the LEA or its contractor) 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 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).

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, even if no provider is located within the area served by the LEA can do so.

C-7. Must the same criteria be used to approve all entities that wish to become providers?

Yes. All providers must be evaluated in the same way and meet the same criteria for inclusion on the State list.

C-8. What entities may be considered as supplemental educational service providers?

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 and community-based organizations, and private businesses are among the types of entities that may apply for approval by the SEA.

All potential providers must be held to the same criteria. *LEAs, charter schools, and other public schools* are not automatically considered approved providers. Rather, they can be providers if they meet the SEA'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 may not be supplemental service providers. (See C-11 and C-12.)

Regardless of the identity of a provider, the instruction and content must be secular, neutral, and non-ideological *[Section 1116(e)(5)(D) and Section 1116(e)(9)]*.

C-9. Are faith-based organizations, including entities such as religious private schools, eligible to be supplemental educational service providers?

Yes. Faith-based organizations (FBOs) are eligible to become providers of supplemental educational services if they meet the applicable statutory and regulatory requirements. Providers may not discriminate against individuals receiving Title I supplemental educational services on the basis of religion. FBOs are not required to give up their religious character or identification to be providers. For example, FBOs are not required to remove religious symbols from areas where supplemental services are provided.

In matters of program eligibility, an SEA may not discriminate against potential supplemental educational service providers with regard to religion. Thus, faith-based and community-based organizations are eligible to become providers of supplemental educational services on the same basis as other eligible entities.

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 nonideological. FBOs should also keep records to ensure that Federal funds are not used to support religious activities. For example, FBOs may wish to keep Federal funds in a separate account to ensure that they are not used inappropriately.

C-10. 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.

C-11. May an LEA identified as in need of improvement be a supplemental educational service provider?

No. If an LEA is in need of improvement, corrective action, or restructuring, the LEA may not be a supplemental educational service provider. However, schools within this identified LEA that are making adequate yearly progress may apply to be approved providers.

The only exception occurs in the situation discussed in C-4 through C-6, where 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. If the cause of the LEA's identification for improvement status was the performance of its disabled or limited English proficient on assessments, then it would be preferable for the LEA to serve those students through a contractor rather than by serving them directly.

C-12. 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.

C-13. 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 they organize as a non-profit or for-profit entity and they meet the applicable statutory and regulatory requirements, as well as the State's criteria for approval.

C-14. Who is responsible for determining whether providers have a 'demonstrated record of effectiveness'?

States must determine what constitutes suitable evidence of a demonstrated record of effectiveness for the purposes of approving providers for the State list. The statutory emphasis on the State's responsibility to promote participation by the maximum number of providers to give parents as many choices as possible suggests that States take a flexible approach in determining effectiveness.

C-15. By definition, supplemental educational services must be of 'high quality and research based.' How may States make such determinations?

A major focus of *No Child Left Behind* is to use only those educational practices that have evidence to suggest that they will increase student academic achievement. This means the *most important consideration* in assessing the educational practices of a potential provider should be whether those practices result in improved academic achievement in reading/language arts and mathematics. Whenever possible, a provider should submit, as part of the State approval process, any academic research supporting the particular instructional methods used by the provider.

In addition, the SEA must ensure that the services offered by a potential provider will be consistent with the State's academic content and achievement standards, as is required by the statute. SEAs may also want to consider the following questions when identifying supplemental educational service providers:

1. Is the progress of students receiving these services regularly monitored?

2. Is the instruction focused, intensive, and targeted to student needs?
3. Do students receive constant and systematic feedback on what they are learning?
4. Are instructors adequately trained to deliver the supplemental educational services?
5. Are students and parents participating in the program satisfied with the instructional program?

C-16. 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 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.

C-17. How can a State determine whether a provider is "financially sound"?

States are responsible for developing criteria to determine when any provider is "financially sound" for the purposes of this program. States could require potential supplemental educational service providers to submit audited financial statements or other evidence of their financial soundness. States could also employ site audits to verify the accuracy of the information submitted.

C-18. Are supplemental educational service providers governed by the teacher quality requirements of Section 1119?

No. The requirements of section 1119 do not apply to supplemental service providers.

C-19. May a State require that supplemental educational service-providers meet the teacher quality provisions of section 1119?

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

C-20. May there be only one approved supplemental educational service provider in an LEA?

An SEA should strive 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-21. May an SEA give one-year provisional approvals for supplemental educational service providers?

No. The law does not permit provisional approvals.

C-22. Often, large providers have multiple franchise operations that provide services. May a State require separate applications from franchisees?

Yes. Although the same curriculum and instructional methods may be used by all franchises of a particular provider, a State may decide to require each franchise to apply separately.

C-23. Some after-school programs are housed in public school buildings. May such programs be supplemental educational service providers if the school in which they are housed has been identified as needing improvement, corrective action, or restructuring?

Programs that operate *independently* from the school and are not a part of the school's regular program may become supplemental educational service providers if they meet the State's criteria. The status of the school does not affect the eligibility of an independent entity housed in a school.

D. MONITORING REQUIREMENTS

D-1. How does a State ensure that providers deliver high-quality and effective services?

States have a responsibility to ensure that high-quality services are delivered. In general, SEAs must identify the approved providers and determine whether providers improve student academic achievement. In implementing this principle, the State role can be tailored to the State's needs.

Specifically, the State must develop and implement standards and techniques for monitoring the quality, performance, and effectiveness of the services offered by approved supplemental educational service providers. Such standards and techniques, as well as any findings resulting from such monitoring, must be publicly reported. These quality

control standards and techniques should be consistent with the initial criteria developed for identifying potential providers *[Section 1116(e)(4)(D)]*. States may also want to collect and report information about parent or student satisfaction with services.

D-2. How should States make the determination of continued effectiveness by the provider?

The goal is to ensure that students are offered services that help them achieve at higher levels in reading/language arts or mathematics. In making this judgment, each State can develop its own system for gathering information about effectiveness on an annual or periodic basis. The State may want to request assistance from its LEAs or may want to handle this monitoring at the State level.

D-3. Supplemental educational service providers are required to demonstrate student academic progress. What assessments may they use for this purpose?

Student performance can be measured in a number of ways. For example, providers might use their own assessments, or could use standardized assessments given by the State or district. The best practice would be to specify, in the contract between the LEA and the provider, the assessment or assessments that will be used.

D-4. How may a State terminate approval of a provider that is not meeting the statutory requirement to increase students' academic achievement?

States must use a consistent policy for withdrawing supplemental educational service providers 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 *[Section 1116(e)(4)(D)]*. 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.

D-5. What role do States have in ensuring that LEAs are abiding by the requirements to provide proper notification to all parents of eligible children about the availability of supplemental educational services, to spend the correct amount (of their Title I or other dollars) for those services, and to spend the correct per-pupil amount for the services parents select for their children?

Monitoring LEAs to ensure that they meet these requirements of the law should be part of the regular Title I monitoring that SEAs conduct over

the course of the year. The Department, as part of its on-site and telephone monitoring of Title I, will seek to determine whether SEAs and LEAs are fulfilling this responsibility.

III. LOCAL EDUCATIONAL AGENCY (LEA) RESPONSIBILITIES

E. OVERVIEW OF LEA RESPONSIBILITIES

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

An LEA must:

1. Notify parents about the availability of services, at least annually (see E-2 for additional information) *[Section 1116(e)(2)(A)]*.

2. Help parents choose a provider, if requested *[Section 1116(e)(2)(B)]*.

3. Determine which students should receive services if not all students can be served (see F-3 for additional information) *[Section 1116(e)(2)(C)]*.

4. Enter into an agreement with a provider selected by parents of an eligible student (see G-2 for additional information).

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

6. Provide the information the SEA needs to monitor the quality and effectiveness of the services offered by providers (See D-1 for additional information).

7. Protect the privacy of students who receive supplemental educational services (See F-9and F-10 for additional information) *[Section 1116(e)(2)(D)]*.

E-2. What must the notice to parents contain?

In general, an LEA should work to ensure that parents have comprehensive, easy-to-understand information about supplemental educational services *[Section 1116(e)(2)]*. 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 --

- Identify each approved service provider within the LEA, in its general geographic location, or accessible through technology such as distance learning.

- Describe the services, qualifications and evidence of effectiveness for each provider.

- Describe the procedures and timelines that parents must follow in selecting a provider to serve their child (see E-3).

- Be easily understandable; in a uniform format, including alternate formats, upon request; and, to the extent practicable, in a language the parents can understand.

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, 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. In providing this information, the LEA must take care 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.

E-3. May an LEA set a deadline by which parents must request supplemental educational services?

Yes, an LEA may establish a reasonable deadline by which parents must request services. In establishing this timeframe, the LEA must ensure that the parents have sufficient time, information, and opportunity to make informed decisions about requesting supplemental educational services and selecting a provider. For example, a two-week period, late in the summer, is unlikely to provide sufficient time for parents to make those decisions.

An LEA may allow a rolling enrollment for services, taking care that eligible students are served and priorities are respected. A rolling enrollment process would accommodate students who are newly

enrolled at the beginning of or during the school year. Whatever procedures the LEA uses, it should make supplemental educational services available throughout the school year, and terminate the ability of parents to seek services for their children only when available resources or the demand for services are exhausted, or when necessary to ensure that remaining funds can be used effectively for other purposes.

E-4. What if State law prohibits an SEA from identifying and providing a list of supplemental educational service providers?

If State law prohibits an SEA from identifying supplemental educational service providers, then each LEA must carry out the SEA's responsibilities (see B-1) as well as its own responsibilities (see E-1).

F. IDENTIFYING ELIGIBLE STUDENTS

F-1. Who is eligible to receive supplemental educational services?

Eligible students are all students from low-income families who attend Title I schools that are in their second year of school improvement, in corrective action, or in restructuring. Eligibility is not dependent on whether a student is a member of a subgroup that caused the school 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 is eligibility determined in schoolwide programs and targeted assistance programs?

In both a schoolwide program and a targeted assistance program, all low-income students are eligible. In other words, in a targeted assistance school, eligibility does not depend on whether the student is receiving Title I services.

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 criteria in determining which students are the lowest achieving, and should use professional judgment in applying those criteria. For example, as noted in A-5, an LEA might decide to focus services on students who are lowest-achieving in the subject or subjects that caused the school to be identified as not making AYP. Or it might decide that

supplemental educational services will be most effective if they are concentrated on the lowest-performing students in particular grades.

If an LEA anticipates that it will not have sufficient funds to serve all students eligible to receive supplemental educational services, it should notify parents (in its original notice) that it will set priorities or criteria in order to determine which of the eligible students may receive these services. Then, based on a review of the information available about the performance of eligible students, the LEA should apply those priorities or criteria carefully, fairly, and objectively. One possible approach would be for the LEA to establish a cut-off score (on the State assessment under section 1111, or another assessment), either on a school-by-school basis or for all schools across the LEA, and make supplemental educational services available to students whose scores fall below the cut-off level.

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 schools under Title I.

F-5. May educators use information from the National School Lunch Program in determining 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 allocations; historically, 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. School 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, schools should establish procedures that limit access to a child's eligibility status to as few individuals as possible.

School 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 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.

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, school officials may deem all students in Provision 2 and Provision 3 schools as "low-income." However, as set forth in F-3, LEAs must give priority to serving the lowest-achieving eligible students, if the level of demand for supplemental educational services exceeds the level that available funds can support. For additional information, see http://www.ed.gov/programs/titleiparta/22003.html

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 school in its second year 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. May an LEA turn over a list of eligible students to a potential supplemental educational service provider so that the potential provider can contact parents regarding its services?

An LEA may not disclose a list of students eligible to receive supplemental educational services to possible providers without the prior written consent of the students' parents. LEAs must comply with the prior written consent requirements of the Family Educational Rights and Privacy Act (FERPA) when disclosing information on students under the supplemental educational services program. (For more information please see 34 CFR § 99.30, available at http://www.ed.gov/policy/gen/reg/ferpa/index_pg4.html#9930.)

Furthermore, under the Title I statute, safeguards are in place to protect the privacy of each child who receives supplemental educational services. For example, an LEA may not disclose to the public the identity of any student who is eligible for, or receiving, supplemental educational services without the permission of the student's parents [Section 1116(e)(2)(D)]. In addition, a supplemental educational service provider is prohibited from disclosing to the public the identity of any student who is eligible for, or receiving, supplemental educational services without the permission of the student's parents [Section 1116(e)(3)(E)].

However, there are several ways in which an LEA may make sure that information on potential program providers is made available to parents of eligible students. Here are some suggestions:

1. Ask providers to give the LEA stamped envelopes containing information about the program to be mailed by the LEA to the parents of the eligible students. The LEA could let the provider know how *many* students are eligible, but not the names.
2. Provide providers with "directory information" on all students in the school district (whose parents have not opted out of

"directory information") and allow providers to send a mailing to all parents of students in the district.
3. Hold an "open house" and invite parents to come meet with providers about their supplemental programs.
4. Provide information about providers to parents in school newsletters.

F-9. Once a parent has chosen a provider from the approved list, may the LEA disclose information from the student's educational records to the chosen provider?

Yes, so long as the parent has provided the LEA with prior written consent to make the disclosure. The consent – which may be built into the agreement or contract with the provider – must be signed and dated and must 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 please see 34 CFR § 99.30, available at http://www.ed.gov/policy/gen/reg/ferpa/index_pg4.html#9930.)

The provider may not disclose personally identifiable information about the student without the consent of the parent. Further, the provider is prohibited from disclosing to the public, without the written consent of the student's parent, the identity of any student who is eligible for or receiving supplemental educational services. (See F-7.)

F-10. May an LEA ban or limit approved service providers from promoting their programs and the general availability of supplemental educational services?

No. Although (as set forth in F-8) an LEA cannot provide providers with the names of eligible students, providers are allowed to market their services to members of the community or to provide general information to the public about the availability of supplemental educational services. LEAs 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.

G. ARRANGING FOR SUPPLEMENTAL EDUCATIONAL SERVICES

G-1. 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 that provider is able to provide services in or near the area served by the LEA, which may include approved providers that use e-learning, online, or distance learning technology to provide supplemental educational services.

If requested by parents, LEAs must assist parents in the selection of a provider. However, parents are not required to accept the LEA's recommendation for a supplemental educational service provider.

G-2. 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 *[Section 1116(e)(3)(A)];*
2. A description of how the student's progress will be measured and how the student's parents and teachers will be regularly informed of that progress *[Section 1116(e)(3)(A) and (B)]*;
3. A timetable for improving the student's achievement;
4. A provision for termination of the agreement if the provider fails to meet student progress goals and timetables *[Section 1116(e)(3)(C)]*;
5. Provisions governing payment for the services, which may include provisions addressing missed sessions *[Section 1116(e)(3)(D)]*;
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 *[Section 1116(e)(3)(E)]*; and
7. An assurance that supplemental educational services will be provided consistent with applicable health, safety, and civil rights laws (see C-3 through C-5) .

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 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.

LEAs are encouraged to use cost-effective methods in designing this agreement and fulfilling this obligation. For instance, a district may want to design a generic agreement that can be tailored to a particular student and provider. Also, the district would not need to create new assessments to measure student progress.

G-3. How long must services be provided?

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 sufficiency 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 agree to it.

G-4. 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 enough spaces to serve all the students who select that provider. In anticipation of such a situation, the LEA should establish fair and equitable procedures for selecting students to receive services *[Section 1116(e)(2)(C)]*. Furthermore, the LEA is encouraged to allocate those spaces consistent with the requirement to give priority to the lowest-achieving eligible children.

G-5. What happens if there are no approved providers that offer services in an LEA?

In this case, an LEA may request an exemption from the SEA of all or part of the supplemental educational services requirement. An exemption can only be granted if two conditions are met: (1) the SEA determines 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 *[Section 116(e)(10)(A)]*.

The SEA must notify the LEA of approval or disapproval of its exemption request within 30 days of receiving the request *[Section 1116(e)(10)(B)]*. Where services seem limited, an SEA should seek to include providers who deliver services using e-learning, online, or distance learning technologies. Prior to approving an exemption, the SEA should require the LEA to explain why it is unable to use distance-learning technologies to make supplemental educational services available to eligible students.

G-6. How long is an LEA exemption in effect?

States are required to update at least annually the list of approved supplemental educational service providers. Because of this provision, an exemption may not extend beyond the next timeframe for updating the list. With each updated list of providers, the LEA must request an exemption from the supplemental educational services requirements.

G-7. If an LEA is an approved provider, what is its responsibility with respect to an agreement?

An LEA that is a provider must prepare an agreement that contains the information listed in G-2. 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.

If an LEA fails to meet the student's progress goals, the parent should be able to request services from another provider, if one is available, or should contact the SEA. In such a case, the SEA may need to monitor more carefully the LEA's provision of supplemental educational services or, if warranted, rescind the LEA's approval to be a provider.

G-8. If an LEA cannot provide school choice to students in a school in its first year of school improvement (because there are no eligible schools 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?

No. 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 school the next year if the school remains in improvement status, it would help avoid confusion and administrative complexity if the LEA, in that first year, abides by the requirements of section 1116(e) as much as possible. In addition, if the LEA uses Title I funds to provide supplemental educational services, it must meet all the requirements

governing the use of those funds in schoolwide and targeted assistance programs.

G-9. 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 amount. 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.

G-10. May an LEA require providers on the State-approved list to meet additional 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 cannot require an additional approval or impose additional requirements, except the requirement to abide by applicable local health, safety, and civil rights laws.

G-11. Should an LEA make available to the public, including parents, and to State-approved providers, information on such issues as the LEA's per-pupil allocation for supplemental educational services; how the LEA is determining student eligibility for services; when parents will be notified that their children are eligible for services; and the process that parents will be required to follow in order to obtain services for their children?

Yes. Provision of this information will ensure that parents have the information they need to make informed decisions about supplemental educational services and so that approved providers fully understand the LEA's procedures. Therefore, the Department strongly urges LEAs to make this information available in a timely manner.

H. THE ROLE OF PARENTS

H-1. How do parents select a supplemental educational service provider?

Parents of eligible students choose a provider from the State-approved list. Parents may request assistance from their LEA in selecting a provider, including in identifying providers that can serve children with disabilities and with limited English proficiency. 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 school-administered program.

H-2. 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 *[Section 1116(e)(4)(A)]*.

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, the LEA must assist parents in selecting a provider, if such help is requested *[Section 1116(e)(2)(B)]*. Parents should also have an option to change or terminate services, if they are not satisfied.

At the *provider level*, parents, the school district, and the provider chosen by the parents must develop and identify specific academic achievement goals for the student, measures of student progress, and a timetable for improving achievement *[Section 1116(e)(3)(A*. All parents whose children receive supplemental educational services must be regularly informed of their child's progress *[Section 1116(e)(3)(B)]*. *)]*.

In the case of a student with disabilities, or a student covered under Section 504, the provisions of a supplemental educational services agreement regarding specific academic achievement goals for the student, the measures of student progress, and the timetable for improving achievement must be consistent with the student's individualized educational program (IEP) under IDEA or the student's specialized services under Section 504. However, supplemental educational services are in addition to, and not a substitute for, the instruction and services required under IDEA and Section 504 and should not themselves be part of IEPs or Section 504 plans.

H-3. What is the parents' role in supporting student attendance at supplemental service sessions?

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

I. MONITORING SERVICES

I-1. How often should parents and teachers receive information about student progress?

As part of the agreement described in G-2, 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.

I-2. 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 one during the course of a school year, LEAs may want to allow for such moves. Paying providers on a regular basis, as reimbursement for services provided, may make it easier to arrange for students to change providers than would be the case if providers are paid up-front for an entire semester or year.

I-3. May an LEA terminate the services a provider is providing to individual students?

Yes. 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.

IV. PROVIDER RESPONSIBILITIES

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 G-2), including:

1. Enabling the student to attain his or her specific achievement goals (as established by the LEA, in consultation with the student's parents and the provider)[Section 1116(e)(3)(A)];
2. Measuring the student's progress, and regularly informing the student's parents and teachers of that progress [Section 1116(e)(3)(A) and (B)];
3. Adhering to the timetable for improving the student's achievement that is developed by the LEA in consultation with the student's parents and the provider [Section 1116(e)(3)(A)];
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 [Section 1116(e)(3)(E)];
5. Providing supplemental educational services consistent with applicable health, safety, and civil rights laws (see items C-3 though C-5); and
6. Providing supplemental educational services that are secular, neutral, and nonideological.

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 (although not included in) the student's individualized education program under Section 614(d) of the IDEA. In the case of a student covered by Section 504, they 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. Summer programs, however, can also augment school-year instruction and can help reduce "summer learning loss," which is frequently an issue for educationally disadvantaged children. SEAs may thus approve both programs that provide services during the school year and those that provide them in the summer, as providers whose services extend from the school year into the summer.

J-3. The law states that supplemental educational service providers may include non-profit or for-profit entities *[Section 1116(e)(12)(B)]*. **What is an "entity"?**

A State may determine the definition of "entity." For example, for the purposes of supplemental educational services, a States might define

entities as including all non-profit and for-profit bodies that are incorporated, organized as a 501(c)(3) organization, or hold a business license. A State might also decide that a group of individuals that is not formally incorporated may be considered an entity. Each State may make this decision.

Regardless of how an entity is defined by the State, all entities must meet the requirements established by the State pursuant to section 1116(e)(4)(B) in order to become approved providers. (See Section C.)

V. FUNDING

K. FUNDING ISSUES

K-1. How may an LEA pay for supplemental educational services?

LEAs may use Title I funds as well as other Federal, State, local, and private resources to pay for supplemental educational services required as part of the school improvement process. To augment the amount of funds available to provide supplemental educational services, an SEA may use funds it reserves under Title I, Part A and Title V, Part A to increase the funds available for LEAs to provide supplemental educational services for eligible students requesting such services *[Section 1116(e)(7)]*.

Payment terms must be specified in the agreement between the LEA and the provider, as described in G-2. An LEA may arrange for paying a provider for services in a number of ways. An LEA may pay the provider directly for such services. Alternatively, an LEA may issue certificates or coupons to parents of an eligible student for them to "purchase" services from an approved provider. For example, a certificate may entitle parents to obtain, from a provider of their choice on the States' approved list, a certain number of hours of services or sessions for their student. As the student receives the services, the parent would redeem the certificate, which the provider would then submit to the LEA for payment.

K-2. How much must an LEA pay for 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, before any reservations, on:

(1) Choice-related transportation;
(2) Supplemental educational services; or
(3) A combination of (1) and (2).

This means that the amount of funding that an LEA must devote to supplemental educational services depends in part on how much it spends on choice-related transportation.

However, if the cost of satisfying all requests for supplemental educational services exceeds an amount equal to 5 percent of an LEA's Title I, Part A allocation, the LEA may not spend less than that amount on those services.

An LEA may spend an amount exceeding 20 percent of its Title I, Part A allocation if additional funds are needed to meet all demands for choice-related transportation and supplemental educational services.

K-3. 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, if there is sufficient demand for such services to require the expenditure of the full amount equal to 20-percent of its Title I allocation.

K-4. May an LEA determine the amount that it will spend for supplemental educational services prior to determining the demand for services?

An LEA must follow the procedures set forth in K-2, that is, spend the equivalent of between 5 and 15 percent of its Title I allocation (or as much as 20 percent, if it does not have any demand for choice-related transportation) on supplemental educational services, with precise amount dependent on the relative demand for choice-related transportation and for supplemental educational services.

An LEA may find that the amount it can spend for supplemental services is limited because of the demand for choice-related transportation in the district. For instance, an LEA might have to spend 10 percent of its Title I allocation to transport students who exercise the option to transfer in the previous year and are still enrolled in their new schools; this would leave a total of 10 percent for supplemental services and provision of transportation to any additional students who wish to change schools in the current year. Whatever the situation, an LEA should provide full opportunity for students to change schools (and receive transportation) and to receive supplemental educational services

before determining that a lesser amount of funding (that is, less than 20 percent of its allocation) for these two activities is needed.

K-5. 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.

For example, if an LEA or State already operates a program of supplemental educational services, the LEA would be able to provide the services required by Title I through the existing program, counting the costs of that program (for eligible students) toward the 20-percent requirement, so long as the entity providing the services (the LEA or the State) is an approved State provider of supplemental educational services and so long as the services meet all the criteria for supplemental educational services. In these instances, parents still have the choice to select any approved provider, including a privately operated program, as well as an LEA- or State-sponsored program.

K-6. May an LEA use school improvement funds made available under Section 1003 (School Improvement) to pay for supplemental educational services?

Yes. ESEA Section 1003 requires States to reserve 2 percent of their Title I, Part A allocations (increasing to 4 percent in fiscal year 2004) to support school improvement activities under Sections 1116 and 1117. States must generally sub-allocate at least 95 percent of these funds to LEAs. Supplemental educational services are an authorized activity under Section 1116, and an LEA may use Section 1003 funds to provide those services. If, in future years, States and LEAs receive funds under Section 1003(g), which authorizes additional funding for school improvement, LEAs may also use those funds to support supplemental educational services.

K-7. What other Federal program dollars may be used to pay for supplemental educational services?

LEAs may use their Title V, Part A Local Innovative Education Program funds to pay for supplemental educational services. LEAs also may use

funds transferred to Title I from other Federal education programs under Section 6123(b) 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 State Grants for Innovative Programs.

SEAs also may use their administrative funds reserved under Part A of Title I and their State-level funds under Part A of Title V to assist LEAs in paying the costs of supplemental educational services, and may transfer additional non-administrative State-level funding from other Federal education programs under Section 6123(b) to either Title I or Title V-A and use them for this purpose.

K-8. Does funding made available for Part A of Title I 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 "an amount equal to 20 percent" of the LEA's Title I allocation.

K-9. 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 and supplemental educational services (and that elects to use Title I funds to do so) may (1) reserve any Title I funds needed for this purpose "off the top" prior to making allocations to schools, or (2) adjust allocations to schools to make available the required funds.

If an LEA chooses the second method – adjusting allocations to schools – it may reserve funds from all Title I schools or only from schools

identified for improvement, corrective action, or restructuring (subject to the limitation described under K-8).

K-10. In reserving Title I funds for choice-related transportation and supplemental educational services, LEAs are not permitted to reduce Title I allocations to schools 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 school identified for corrective action or restructuring. Under this approach, an LEA reserving Title I funds for choice-related transportation and supplemental educational services would not be permitted to reduce its allocation to an affected school below this 85-percent floor.

Under the second method, in making allocations to schools for a given year, an LEA would calculate two allocations. For the first allocation, the LEA would determine a "pre-reservation" allocation to schools before setting aside funds for choice-related transportation 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 schools identified for corrective action or restructuring, the LEA would calculate what 85 percent of those schools' "pre-reservation" allocation would be. The LEA would determine a second allocation for all schools after reserving funds for choice-related transportation and supplemental educational services. For schools in corrective action and restructuring, the LEA would then compare this allocation with 85 percent of their "pre-reservation" allocation and allocate the higher of the two to those schools.

K-11. Are private school children receiving Title I services entitled to receive an equitable proportion of any Title I funds reserved by an LEA for supplemental educational services?

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

K-12. 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-2.

K-13. May an LEA count administrative costs incurred in providing choice-related transportation or supplemental educational services toward the 20-percent requirement?

No. Such costs, to the extent they are reasonable and necessary, are an allowable use of Title I funds, but only direct expenditures for choice-related transportation and supplemental educational services may be used to satisfy the 20-percent requirement.

K-14. If an LEA provides supplemental educational services to students enrolled in schools in their first year of improvement (as discussed in G-8), does the cost of those services count toward the 20-percent requirement?

Yes, the LEA may count the cost of those services 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 schools in their second year of improvement or subject to corrective action or restructuring.

K-15. How much must an LEA spend for each student receiving supplemental educational services?

The statute sets the per-child cost for supplemental educational services at the lesser of an LEA's per-child allocation under Part A of Title I (determined as described in K-14) or the actual cost of the services. The per-child allocation of Title I funds to LEAs varies widely across the Nation, ranging from roughly $600 to $1,500. Estimates of the maximum per-child amount for supplemental educational services in each LEA in the Nation are available at http://www.ed.gov/about/overview/budget/titlei/fy02/index.html#reservation

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.

K-16. May an LEA provide a lower per-pupil amount for supplemental educational services?

No. The amount set forth in the statute – that is, the LEA's Title I, Part A per-pupil allocation or the actual cost of services, whichever is less -- is the amount that must be spent, per student, for supplemental educational services, not a maximum amount. LEAs must adjust this amount annually to reflect changes in their Title I per-pupil allocations. In addition, they may not provide a lower amount to students participating in truncated programs (for instance, in summer programs) except as needed to reflect the actual cost of those programs.

K-17. 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 aged 5-17 who are from families below the poverty level, as determined by the most recent census estimates from the Department of Commerce. The Department of Education uses these poverty estimates to make allocations to LEAs, and provides the estimates to States as part of the allocation notification process. (For census data, go to http://www.census.gov/hhes/www/saipe/school/sd97ftpdoc.html)

In States that use "alternative poverty data" under Section 1124(a)(2)(B)(iii)(II) for determining allocations to small LEAs (rather than using the census counts), these LEAs may use the alternative count in making the per-pupil calculation for supplemental 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-13). 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-child cap against the 20 percent of its Title I, Part A funding that it must spend 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-13) 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 requirement.

K-19. If revised cost estimates indicate that an LEA has reserved more Title I funds than are needed to pay for choice-related transportation and supplemental educational services, may the LEA reallocate those excess funds to schools or for other purposes?

Yes, if the demand for choice-related transportation and supplemental educational services, or the costs of those activities, is lower than estimated at the time of the reservation, an LEA may reallocate any unused funds to other allowable activities. If such funds were made available by reducing allocations to specific schools, as described under K-7, then the LEA must reallocate the unused funds to those schools.

Before making the decision that funds can be reallocated from choice-related transportation and supplemental educational services, LEAs should ensure that eligible students and their families have had adequate time to avail themselves of the opportunity to transfer schools or to receive supplemental educational services. In addition, please note that any reallocation of funds is subject to the equitable participation requirements of Title I, Section 1120 and Section 200.64 of the Title I regulations (34 C.F.R. 200.64).

K-20. How do the carryover rules described in Section 1127 affect any Title I funds reserved for choice-related transportation and supplemental educational services?

The law 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 Part A allocation, and therefore covers any funds reserved, but not spent due to lack of demand, for supplemental educational services. If the combination of unused funds reserved in Title I for supplemental educational services and other unspent Part A funds exceeds 15 percent of an LEA's total allocation, the excess funds must be returned to the State for redistribution to other LEAs, unless the SEA grants the LEA an exemption. Funds carried over from one fiscal year to the next do not affect the base used for calculating the required expenditure of funds for choice-related transportation and supplemental educational services in the following year.

Provided that the LEA has met all demand from parents and students for choice-related transportation and supplemental educational services, any unused portion of Title I funds reserved for this purpose may be reallocated to other purposes either during the year in which the reservation was made or, subject to the 15 percent limit, in the following year, subject to the equitable participation requirements of Title I, Section 1120 and Section 200.64 of the Title I regulations (34 C.F.R. 200.64.

K-21. If only one school in an LEA has been identified as needing improvement, must the LEA spend the full 20 percent amount on choice-related transportation and/or supplemental educational services?

Yes, unless a lesser amount is needed.

K-22. May a State approve a provider whose provision of supplemental educational services will require LEAs to pay for equipment or instruction or to meet other costs?

Some potential providers may offer programs through which, for instance, the provider offers distance learning programs but an LEA will have to buy the computers that students will use to obtain the instruction. Although this type of arrangement may result in the provision of high-quality services, the LEA might not have available the equipment, personnel, or other resources required by providers. In deciding whether to approve such providers, an SEA should weigh the benefits of the potential services against the need to ensure that providers do not impose unreasonable costs on LEAs. In addition, LEAs may charge providers for equipment, facilities, personnel, or other resources that they make available to those providers .

K-23. For which fiscal year may the costs of supplemental services be counted?

Because spending requirements for choice-related transportation and supplemental educational services are calculated on the basis of an LEA's annual Title I, Part A allocation, actual costs must be linked to the fiscal year of the allocation used for this calculation.

K-24. An existing after-school program has been approved by the State as a supplemental educational service provider. Can an LEA count any funds that it is already paying that provider toward the 20 percent supplemental educational services and choice amount?

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 schools). However, it may not count the cost of providing services to other children or the costs of providing other types of services. Moreover, the provider will need to keep appropriate records and use appropriate safeguards to ensure that supplemental educational services funds are used only for eligible activities.

Note, in addition, that 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 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.

Appendix A:
Definitions

Eligible Child: Eligible students are 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)]*.

Eligible School: A Title I school that must provide supplemental educational services. This includes (1) a Title I school that does not make adequate yearly progress by the end of the first full school year after having been identified as a school in need of improvement *[Section 1116(b)(5)]*; (2) a Title I school that is in corrective action *[Section 1116(b)(7)];* and (3) a Title I school identified for restructuring *[Section 1116(b)(8)]*.

Provider: A provider of supplemental educational services may be a public or private (non-profit or for-profit) entity that meets the State's criteria for approval. Potential providers include public schools (including charter schools), private schools, LEAs, educational service agencies, institutions of higher education, faith- and community-based organizations, and private businesses. A provider (1) has a demonstrated record of effectiveness in increasing student academic achievement; (2) can document that its instructional strategies are of high quality, based upon research, and designed to increase student academic achievement; (3) is capable of providing supplemental educational services that are consistent with the instructional program of the LEA and State academic content standards, (4) is financially sound, and (5) abides by all applicable Federal, State, and local health, safety, and civil rights laws *[Section 1116(e)(12)(B) and Section 1116(e)(5)(C)]*.

Supplemental Educational Services: Supplemental educational services are additional academic instruction designed to increase the academic achievement of low-income students in low-performing schools. 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 local educational agency and are aligned with the State's academic content standards. Supplemental educational services must be provided outside of the regular school day. Supplemental educational services must be high quality, research-based, and specifically designed to increase the academic achievement of eligible students. *[Section 1116(e)(12)(C)]*.