Supplemental Educational Services
Non-Regulatory Guidance

January 14, 2009

SUPPLEMENTAL EDUCATIONAL SERVICES

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

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PURPOSE OF GUIDANCE AND SUMMARY OF MAJOR CHANGES

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

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

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

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

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

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

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

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

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

Supplemental Educational Services

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

I. INTRODUCTION

A. GENERAL INFORMATION

A-1. What are supplemental educational services?

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

A-2. What is the purpose of SES?

Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB), calls for parents of eligible students attending Title I schools that have not made adequate yearly progress (AYP) in increasing student academic achievement for three years to be provided with opportunities and choices to help ensure that their children achieve at high levels. SES provide extra academic assistance for eligible children. Students from low-income families who are attending Title I schools that are in their second year of school improvement (i.e., have not made AYP for three years), in corrective action, or in restructuring status are eligible to receive these services.

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

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

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

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

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

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

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

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

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

A-5. Who is eligible to receive SES?

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

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

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

II. STATE EDUCATIONAL AGENCY RESPONSIBILITIES

B. OVERVIEW OF SEA RESPONSIBILITIES

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

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

1. Consult with parents, teachers, LEAs, and interested members of the public to promote maximum participation by providers to ensure, to the extent practicable, that parents have as many choices as possible *[Section 1116(e)(4)(A); 34 C.F.R. §200.47(a)(1)(i)]*.

2. Provide and disseminate broadly, through an annual notice to potential providers, information on the opportunity to provide SES and the process for obtaining approval to be an SES provider *[Section 1116(e)(4)(E); 34 C.F.R. §200.47(a)(1)(ii)]*. (See Section C for additional information.)

3. Develop and apply objective criteria for approving potential providers *[Section 1116(e)(4)(B); 34 C.F.R. §200.47(a)(2)]*. (See C-1.)

4. Maintain an updated list of approved providers across the State, for each LEA, from which parents may select, and indicate which providers are able to serve students with disabilities or LEP students *[Section 1116(e)(4)(C); 34 C.F.R. §200.47(a)(3)(ii)]*. An SEA should also give each LEA a list of approved providers in its general geographic location. (See C-2.)

5. Post on its Web site, for each LEA, the amount equal to 20 percent of the LEA's Title I, Part A allocation available for SES and choice-related transportation (also known as the "20 percent obligation") and the per-pupil amount available for SES *[34 C.F.R. §200.47(a)(1)(ii)(B)]*. (See B-8.)

6. Develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of services offered by approved SES providers, and for withdrawing approval from providers that fail, for two consecutive years, to contribute to increasing the academic proficiency of students served by the providers *[Section 1116(e)(4)(D); 34 C.F.R. §200.47(a)(4)]*. (See D-1.)

7. Develop, implement, and publicly report on standards and techniques for monitoring an LEA's implementation of SES *[34 C.F.R. §200.47(a)(4)(iii)]*. (See D-4.)

8. Monitor each LEA's implementation of SES, including any LEA that spends less than the amount needed to meet its 20 percent obligation and chooses to spend the remainder of that obligation on other allowable activities to ensure that the LEA complies with the criteria in 34 C.F.R. §200.48(d)(2)(i) *[34 C.F.R. §200.48(d)(3)]*. (See L-1.)

9. In addition to its regular monitoring, review by the beginning of the next school year any LEA that spends significantly less than the amount needed to meet its 20 percent obligation and has been the subject of multiple complaints, supported by credible evidence, regarding implementation of the public school choice and SES requirements *[34 C.F.R. §200.48(d)(3)(ii)(A)]*. (See L-16.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State Name

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

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

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

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

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

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

C. PROVIDER ELIGIBILITY AND APPROVAL

<u>Overview of State Approval</u>

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

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

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

1. Has a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the State's academic content and student academic achievement standards *[Section 1116(e)(12)(B)(i); 34 C.F.R. §200.47(b)(1)(i)]*. (See C-15.)

2. Is capable of providing instructional services that are:

   (a) High quality, research-based, and designed to increase student academic achievement *[Section 1116(e)(12)(C); 34 C.F.R. §200.47(b)(2)(ii)(C)]*. (See C-16.)

   (b) Consistent with the instructional program of the LEA *[Section 1116(e)(5)(B), (12)(B)(ii); 34 C.F.R. §200.47(b)(1)(ii), (b)(2)(ii)(A)]*. (See C-17.)

   (c) Aligned with State academic content and student academic achievement standards *[Section 1116(e)(5)(B); 34 C.F.R. §200.47(b)(2)(ii)(B)]*. (See C-17.)

   (d) Secular, neutral, and nonideological *[Section 1116(e)(5)(D); 34 C.F.R. §200.47(b)(2)(ii)(D)]*.

3. Is financially sound *[Section 1116(e)(12)(B)(iii); 34 C.F.R. §200.47(b)(1)(iii)]*. (See C-18.)

4. Will provide SES consistent with applicable Federal, State, and local health, safety, and civil rights laws *[Section 1116(e)(5)(C); 34 C.F.R. §200.47(b)(2)(iii)]*. (See C-19.)

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

5. Information from the provider on whether the provider has been removed from any State's approved provider list *[34 C.F.R. §200.47(b)(3)(i)]*. (See C-21.)

6. Parent recommendations or results from parent surveys, if any, regarding the success of the provider's instructional program in increasing student achievement *[34 C.F.R. §200.47(b)(3)(ii)]*. (See C-22.)

7. Evaluation results, if any, demonstrating that the provider's instructional program has improved student achievement *[34 C.F.R. §200.47(b)(3)(iii)]*. (See C-22.)

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

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

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

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

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

Provider Eligibility

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

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

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

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

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

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

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

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

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

Yes. The statute permits providers, including those that are not physically located within an LEA, to use alternate methods for delivery of services, which may include online, Internet-based approaches, as well as other distance-learning technologies. Rural LEAs or LEAs with limited availability of SES providers are especially encouraged to work with providers using these technologies. In addition, a provider that uses technology to deliver tutoring services may provide students with computers for the students to use or keep as part of the provider's instructional program. (See C-30.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEA Approval Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Serving Students with Disabilities and LEP Students

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. MONITORING REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. LOCAL EDUCATIONAL AGENCY RESPONSIBILITIES

E. OVERVIEW OF LEA RESPONSIBILITIES

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

An LEA must:

1. Notify parents about the availability of services, at least annually *[Section 1116(e)(2)(A); 34 C.F.R. §200.46(a)(1)]*. (See G-2.)

2. Help parents choose a provider, if requested *[Section 1116(e)(2)(B); 34 C.F.R. §200.46(a)(2)]*.

3. Apply fair and equitable procedures for serving students if not all students can be served *[Section 1116(e)(2)(C); 34 C.F.R. §200.46(a)(3)]*. (See F-3.)

4. Ensure that eligible students with disabilities and LEP students receive appropriate services *[34 C.F.R. §200.46(a)(4), (5)]*. (See C-31 through C-33.)

5. Enter into an agreement with a provider selected by parents of an eligible student *[Section 1116(e)(3); 34 C.F.R. §200.46(b)]*. (See H-1.)

6. Assist the SEA in identifying potential providers within the LEA *[Section 1116(e)(4)(A); 34 C.F.R. §200.46(a)(2)]*. (See C-1).

7. Protect the privacy of students who are eligible for or receive SES *[Section 1116(e)(2)(D); 34 C.F.R. §200.46(a)(6)]*. (See H-16 through H-18.)

8. Prominently display on its Web site, in a timely manner to ensure that parents have current information: (a) beginning with data for the 2007–2008 school year and for each subsequent school year, the number of students who were eligible for and the number of students who participated in SES; and (b) for the current school year, the list of providers approved by the SEA to serve in the LEA and the locations where services are provided *[34 C.F.R. §200.39(c)(1)(ii), (iii)]*. (See G-10 through G-12.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. IDENTIFYING ELIGIBLE STUDENTS

F-1. Who is eligible to receive SES?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. PROVIDING INFORMATION TO PARENTS

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

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

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

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

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

1. Explain how parents can obtain SES for their child *[Section 1116(e)(2)(A)(i); 34 C.F.R. §200.37(b)(5)(i)]*.

2. Identify each approved SES provider within the LEA or in its general geographic location, including providers that are accessible through technology, such as distance learning *[Section 1116(e)(2)(A)(ii); 34 C.F.R . §200.37(b)(5)(ii)(A)]*.

3. Describe briefly the services, qualifications and evidence of effectiveness for each provider *[Section 1116(e)(2)(A)(iii); 34 C.F.R. §200.37(b)(5)(ii)(B)]*. (See G-4.)

4. Indicate providers that are able to serve students with disabilities or LEP students *[34 C.F.R. §200.37(b)(5)(ii)(B)]*. (See G-4.)

5. Include an explanation of the benefits of receiving SES *[34 C.F.R. §200.37(b)(5)(ii)(C)]*. (See G-5.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

H. ARRANGING FOR SUPPLEMENTAL EDUCATIONAL SERVICES

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

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

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

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

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

Section 1116 of the ESEA requires "*the local educational agency* to develop, in consultation with parents (and the provider chosen by the parents) a statement of specific achievement goals for the student, how the student's progress will be measured, and a timetable for improving achievement" *[Section 1116(e)(3)(A) (emphasis added)]*.

It is the responsibility of the LEA, not the responsibility of a provider, to ensure that an agreement is completed for each student participating in SES and that each agreement includes the information required under the statute. However, an LEA and a provider may agree that the provider will complete, on behalf of the LEA, the agreement for each student the provider serves. An LEA cannot require a provider to develop the agreements for the students it serves, absent the provider's consent. Ultimately, the LEA is responsible for reviewing and approving all agreements, and for making sure that all agreements, whether developed by the LEA or by a provider on behalf of the LEA, are completed for all students participating in SES and include the required information.

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

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

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

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

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

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

An LEA cannot use the consultation requirement to deny SES to a child whose parents have not participated in the development of their child's SES plan but who have otherwise requested that their child receive SES. An LEA must be able to demonstrate that it (or a provider acting on its behalf) has made reasonable efforts to consult with a parent of each student who has requested SES. This may include attempts to reach parents through telephone, email, home visits, at school events, or other means.

An SEA should determine what it considers reasonable efforts by its LEAs to consult with parents, and should provide guidance to its LEAs that outlines when, how often, and through what means an LEA (or a provider on behalf of the LEA) must attempt to consult with parents before it can deem the consultation requirement to be met. An SEA could also develop a broad definition of "consultation" that includes conversations with parents by phone or email. We encourage SEAs to establish reasonable requirements for their LEAs in this area and to ensure that services for students are not delayed because LEAs (or providers on behalf of LEAs) have not yet consulted with parents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. THE ROLE OF PARENTS

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

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

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

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

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

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

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

Parents are to be active participants in the SES program.

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

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

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

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

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

IV. PROVIDER RESPONSIBILITIES

J. PROVIDING SUPPLEMENTAL EDUCATIONAL SERVICES

J-1. What is required of SES providers?

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

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

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

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

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

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

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

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

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

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

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

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

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

V. FUNDING

K. FUNDING ISSUES

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

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

1. Choice-related transportation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Partner, to the extent practicable, with outside groups, such as faith-based organizations, other community-based organizations, and business groups, to help inform eligible students and their families of the opportunities to transfer or to receive SES. (See L-4 through L-6.)

2. Ensure that eligible students and their parents have a genuine opportunity to sign up to transfer or to obtain SES, including by: (a) providing timely, accurate notice to parents (see L-7); (b) ensuring that sign-up forms for SES are distributed directly to all eligible students and their parents and are made widely available and accessible through broad means of dissemination, such as the Internet, other media, and communications through public agencies serving eligible students and their families (see G-7 and G-8); and (c) providing a minimum of two enrollment windows, at separate points in the school year, that are of sufficient length to enable parents of eligible students to make informed decisions about requesting SES and selecting a provider. (See L-8 through L-10.)

3. Ensure that eligible SES providers are given access to school facilities, using a fair, open, and objective process, on the same basis and terms as are available to other groups that seek access to school facilities. (See L-11 through L-14.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendix A:
Definitions

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

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

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

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

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

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

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

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

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

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

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

Appendix B: Sample Parent Notification Letter on Supplemental Educational Services

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

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Free Tutoring for Your Child!

Dear Parent/Guardian,

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

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

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

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

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

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

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

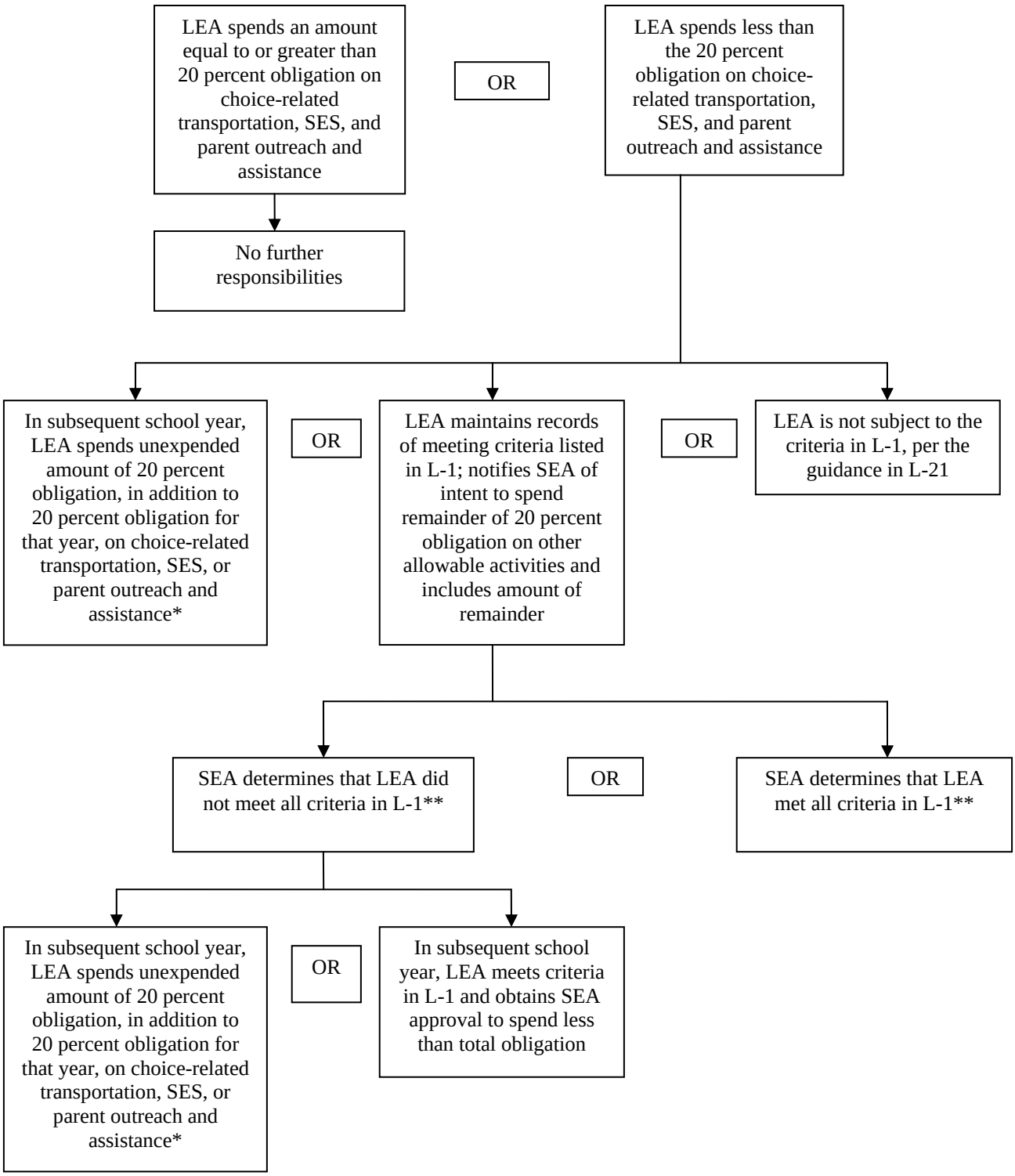
Finally, if you do not wish to sign up for these services, you may also choose to transfer your child to another school in the district. The enclosed Public School Choice letter gives more information about public school choice in our district.

Thank you.

[District official]

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

Appendix C:
Flowchart: Requirements and Responsibilities for Meeting the 20 Percent Obligation



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

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