



Supplemental Educational Services ***Non-Regulatory Guidance***



June 13, 2005

SUPPLEMENTAL EDUCATIONAL SERVICES

Title I, Section 1116(e)

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SUMMARY OF MAJOR CHANGES

This guidance updates and expands upon the Supplemental Educational Services Guidance that the Department released on August 22, 2003. It includes a number of new questions that address issues that were undeveloped or unaddressed in the 2003 guidance, and it responds to inquiries the Department received from State and local officials on issues subsequent to issuance of the 2003 guidance. 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 supplemental educational services provisions.

The following are new questions that were not in the 2003 guidance: A-6, B-2, B-3, B-4, B-5, C-12, C-15, D-6, D-7 E-3, G-3, G-4, G-7, G-15, I-1, I-2, J-4, K-15, K-20, K-21. Additionally, a sample parent notification letter is included in Appendix B.

In addition, the responses to the following questions include significant new information or changes from the 2003 guidance: A-3, A-4, B-1, C-6, C-9, C-10, C-11, C-16, C-20, C-23, D-1, D-2, D-5, E-2, F-3, F-8, G-12, H-1, I-5, K-4, K-5, K-6, K-14, K-24, K-26, K-27.

The following questions from the 2003 guidance are not included in this new version (numbering reflects the format of the original guidance): C-21, E-4.

Supplemental Educational Services

Title I, Section 1116(e)

I. INTRODUCTION

A. GENERAL INFORMATION

A-1. What are supplemental educational services?

Supplemental educational services are additional academic instruction designed to increase the academic achievement of students in schools in need of improvement. These services may include academic assistance such as tutoring, remediation and other educational interventions, provided that such approaches are consistent with the content and instruction used by the local educational agency (LEA) and are aligned with the State's academic content standards. Supplemental educational services must be provided outside of the regular school day. Supplemental educational services must be high quality, research-based, and specifically designed to increase student academic achievement [Section 1116(e)(12)(C)].

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

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

A State educational agency (SEA) is required to identify organizations, both public and private, that qualify to provide these services. Parents of eligible students are then notified, by the LEA, that supplemental educational services will be made available, and parents can select any approved provider that they feel will best meet their child's needs in the area served by the LEA or within a reasonable distance of that geographic area. The LEA (usually a school district) will sign an agreement with the provider selected by a 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 is to ensure that these students increase their academic achievement, particularly in reading/language arts and mathematics. This component of Title I offers parents choices in addressing their child's educational needs, and offers students extra help.

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

There are several choice options in the ESEA, as amended by NCLB. 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 supplemental educational services, depending on the eligibility of the student and the status of the school. (An SEA may also require non-Title I schools to offer supplemental educational services and public school choice.) The choice to transfer to another public school is available to all students enrolled in Title I schools that are in the first year of school improvement status and for the subsequent years that the school remains identified for improvement. The provision of supplemental educational services, discussed in this document, is available to students from low-income families who are enrolled in Title I schools in the 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 choice is not possible (i.e., if all schools at a grade level are in school improvement, if the LEA has only a single school at that grade level, or if schools in an LEA are remote from each other), LEAs are encouraged to consider offering supplemental educational services during the first year of school improvement. When both options are available, parents have the choice of which option they would prefer for their child. For more information on the public school choice requirement, go to:

<http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc>.

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

<http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.doc>

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

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

A school must continue offering supplemental educational services 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 if it has made AYP for two consecutive years.

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

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

If the funds available are insufficient to provide supplemental educational services to each eligible student whose parent requests those services, the LEA must give priority to providing services to the lowest-achieving eligible students. In this situation, the LEA should use objective criteria to determine the lowest-achieving students. For example, the LEA may focus services on the lowest-achieving eligible students in the subject area that caused the school to be identified. The services should be tailored to meet the instructional needs of eligible students in order to increase their academic achievement (see Section F for additional information).

A-6. Do the new guidelines, “Raising Achievement: A New Path for No Child Left Behind,” apply to implementation of supplemental educational services?

Yes, the Department expects to develop criteria to use in evaluating questions of supplemental educational services implementation.

II. STATE (SEA) RESPONSIBILITIES

B. OVERVIEW OF STATE RESPONSIBILITIES

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

The SEA has a number of responsibilities in ensuring that eligible students receive additional academic assistance. The SEA must identify providers, maintain a list of providers, and monitor services [Section 1116(e)(4)]. 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.
2. Provide and disseminate broadly, through an annual notice to potential providers, the process for obtaining approval to be a provider of supplemental educational services (see Section C for additional information).
3. Develop and apply objective criteria for approving potential providers (see Section C for additional information).
4. Maintain an updated list of approved providers, across the State, by school district, from which parents may select (see Section C for additional information).
5. Develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of services offered by approved supplemental educational services providers, and for withdrawing approval from providers that fail, for two consecutive years, to contribute to increasing the academic proficiency of students served by the providers (see Section D for additional information).

An SEA should also give school districts a list of approved providers in their general geographic locations.

B-2. How can an SEA improve parents' understanding of and access to supplemental educational services?

An SEA should consider ways that it can help parents understand and access supplemental educational services for their children. To assist parents in gathering information on supplemental educational services and signing up for services, an SEA should encourage LEAs to hold "provider fairs" to give parents an opportunity to meet and learn about

providers and their programs. These fairs should be scheduled at times and locations that are convenient to parents.

Additionally, many parents may take advantage of supplemental educational services most enthusiastically when educators from their schools encourage them to enroll their children. To that end, an SEA should encourage LEAs to provide teachers and principals in their district with information about supplemental educational services and local providers, so that these educators can act as a resource for parents. An SEA also may wish to develop a uniform contract that all districts in their State could use 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. State guidance might also cover procedures for allowing providers to operate their programs in school buildings.

An SEA can also provide technical assistance to its LEAs on removing barriers to parent participation in supplemental educational services. For example, an SEA could encourage LEAs to make the registration process as open and accessible as possible by making registration materials widely available to parents and providers and by making the registration process as convenient as possible. An SEA might even wish to consider posting on its website a supplemental educational services registration form that parents could download, complete, and turn in to their district. Such a form should list the providers available to parents and could be accepted by all districts in the State.

Finally, an SEA can work directly with local parent organizations in the State, such as a Parent Information and Resource Center funded by the Department (www.pirc-info.net), to improve parental outreach or can encourage LEAs in their State to work with such organizations themselves.

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

Yes, as part of its process to approve providers and ensure that supplemental educational services are of the highest quality, an SEA may establish certain program design criteria for providers to meet. An SEA could, for example, set a range for acceptable student/tutor ratios. If establishing criteria for student/tutor ratios, an SEA should define acceptable ranges (e.g. 1-10:1 ratio) as opposed to absolute values (e.g. 6:1) in order to not unduly restrict providers' service delivery options.

An SEA also could establish a range for acceptable rates that providers may charge in the State to prohibit exorbitant charges or unrealistically low rates. The use of ranges would ensure quality services while

providing the necessary flexibility to accommodate attendance fluctuation and variation in per-pupil funding among LEAs. In all cases, an SEA should strive to maintain a balanced variety of program configurations (online and offline, individualized and small group, short and long program lengths) so that parents have extensive options to consider and that parental choice of providers is not limited, as is required under Section 1116(e)(4)(A) of the ESEA.

Additionally, an SEA may consider developing a policy with regard to providers' use of financial incentives or other gifts. We suggest 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 to switch enrollment to another program. Additionally, an SEA might prohibit providers from offering incentives (such as cash for school improvement) to schools for signing up students for their programs.

An SEA should also ensure that providers do not engage in unfair business practices. For example, an SEA should clearly take action if it learns that a provider is offering "kickbacks" to district 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 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 watch for LEA practices that give preferential treatment to certain providers due, for instance, to their long-standing relationship with the school district, or give preferential treatment to an LEA's own program over other providers' programs. For example, an SEA should guard against an LEA allowing some providers access to school facilities free-of-charge, while charging rent to others, or an LEA advertising its program to parents, but not allowing other providers to advertise in the same way. Each of these practices will unduly encourage participation in one program over other State-approved programs.

While SEAs do have the authority discussed above, it is important to note that LEAs may not impose requirements on program design.

B-4. May an SEA define hourly rates for providers?

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

- The pupil/tutor ratio;
- The variation in per-pupil allocations among LEAs in the State;
- The number of instructional hours;
- The qualifications (and therefore cost) of the tutoring staff;
- The cost of instructional materials and equipment (books, computers, manipulatives, etc.);
- The amount of rent charged by the LEA and other landlords (including variations throughout a State);
- The LEAs' payment policies regarding attendance; and
- The 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 may 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 service the market, which will 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 supplemental educational services marketplace as a whole. Rather, it 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-5. How can 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-4 and by consulting with providers who are currently providing services within the State, prior to setting such parameters.

An SEA should also work with LEAs in the State to ensure that parents have as much information as possible about providers' programs, including the number of hours of service, the pupil-tutor ratio, and the style of instruction being offered.

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

C-1. How does an SEA identify and approve supplemental educational service providers?

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

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

1. Has a demonstrated record of effectiveness in increasing student academic achievement [*Section 1116(e)(12)(B)(i)*];
2. Will use instructional strategies that are high quality, based upon research, and designed to increase student academic achievement (see C-17 for additional information) [*Section 1116(e)(12)(C)*];
3. Provides services that are consistent with the instructional program of the LEA and with State academic content and achievement standards (see C-18 for additional information) [*Sections 1116(e)(5)(B) and 1116(e)(12)(B)(ii)*];
4. Is financially sound (see C-19 for additional information) [*Section 1116(e)(12)(B)(iii)*]; and
5. Will provide supplemental educational services consistent with applicable Federal, State, and local health, safety, and civil rights laws (see C-3 for additional information) [*Section 1116(e)(5)(C)*].

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

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 process [34 CFR 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 of Sections 1119 and 9101(23) of the ESEA [34 CFR 200.47(b)(3)].

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

An SEA must maintain a list of all approved providers in the State. This information must identify which providers have been approved to deliver supplemental educational services in each LEA. The list should also identify those providers whose services are accessible through technology such as distance learning. The list should include a brief description of the services, qualifications, and demonstrated effectiveness of each provider, because LEAs must include this information in their notice to parents. SEAs should maintain an updated list.

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

C-3. What Federal civil rights requirements apply?

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

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

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

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

What this means in terms of supplemental educational services for students with disabilities, students covered under Section 504, and limited English proficient students is addressed in items C-4 and C-5.

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

SEAs and LEAs that arrange for supplemental educational services must ensure that eligible students with disabilities and students covered under Section 504 may participate. Furthermore, the supplemental educational services program within each LEA and within the State may not discriminate against these students. Consistent with this duty, an LEA may not, through contractual or other arrangements with a private provider, discriminate against an eligible student with a disability or an eligible student covered under Section 504 by failing to provide for appropriate supplemental educational services with necessary accommodations. Such services and necessary accommodations must be available, but not necessarily from each provider. Rather, SEAs and LEAs are responsible for ensuring that the supplemental educational

service providers made available to parents include some providers that can serve students with disabilities and students covered under Section 504 with any necessary accommodations, with or without the assistance of the SEA or LEA. If no provider is able to make the services with necessary accommodations available to an eligible student with a disability, the LEA would need to provide these services, with necessary accommodations, either directly or through a contract.

Supplemental educational services must be consistent with a student's individualized education program under Section 614 of the Individuals with Disabilities Education Act (IDEA) or a student's individualized services under Section 504. However, these services are in addition to, and not a substitute for, the instruction and services required under IDEA and Section 504 and should not be written into individualized education programs under IDEA or into any Section 504 plans. In addition, parents of students with disabilities (like other parents) should have the opportunity to select a provider that best meets the needs of their child.

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

SEAs and LEAs that arrange for supplemental educational services must ensure that eligible students with limited English proficiency (LEP) may participate. The SEA and each LEA are responsible for ensuring that eligible LEP students receive supplemental educational services and language assistance in the provision of those services through either a provider or providers that can serve LEP students with or without the assistance of the LEA or SEA; or, if no provider is able to provide such services, including necessary language assistance, to an eligible LEP student, the LEA would need to provide these services, either directly or through a contract. However, it is always up to the parents to select the provider that best meets the needs of their child [*34 CFR 200.46(a)(5) and (6)*].

C-6. If an LEA must provide (either directly or through a contractor) supplemental educational services to children with disabilities or children with limited English proficiency because there are no other providers available that can do so, must the LEA or its contractor become a State-approved provider?

No, the LEA or its contractor does not need to be formally approved by the State to provide supplemental educational services in this instance. However, an LEA that must provide supplemental educational services to students with disabilities or limited English proficiency because there are no approved providers available to do so should communicate its intention to the State to provide these services.

Such an LEA should make every effort to ensure that the services it provides meet the standards of quality that apply to approved providers in the State. The LEA or its contractor must also abide by all other requirements applicable to the provision of supplemental educational services (such as the requirement to establish and measure progress against specific goals for students, and the requirement to regularly inform parents of a student's progress). The LEA may count funds spent providing supplemental educational services in this situation toward the LEA's requirement to spend an amount equal to 20 percent of its Title I, Part A allocation on supplemental educational services and transportation for public school choice.

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

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

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

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

A provider of supplemental educational services may be any public or private (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 and community-based organizations, and private businesses are among the types of entities that may apply for approval by the SEA.

All potential providers should be held to the same criteria. LEAs, charter schools, and other public schools are not automatically considered approved providers. Rather, they can be providers if they meet the SEA's established criteria, and they must go through the same approval process as all other potential providers. However, schools and LEAs that have been identified for improvement may not be supplemental educational service providers (see C-11 and C-13 for additional information).

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

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

Yes. A faith-based organization (FBO) is eligible to become a provider of supplemental educational services on the same basis as any other private entity, if it meets the applicable statutory and regulatory requirements. An SEA may not discriminate against potential supplemental educational service providers on the basis of the entity's religious character or affiliation. Additionally, a provider, including an FBO, may not discriminate against students receiving supplemental educational services on the basis of religion. An FBO is not required to give up its religious character or identity to be a provider; it may retain its independence, autonomy, right of expression, religious character, and authority over its governance. An FBO, for example, may retain religious terms in its name, continue to carry out its mission, and use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from areas where supplemental educational services are provided. See 34 C.F.R. §80.36(j) (<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 offer such practices, but not as part of the supplemental educational services.) FBOs, like other providers, must ensure that the instruction and content they provide are secular, neutral, and non-ideological.

C-10. May providers using technology to deliver supplemental educational services be approved as eligible providers?

Yes. The statute permits providers, including those that are not based within the LEA, to use alternate methods for delivery of services, which may include online, Internet-based approaches, as well as other distance-learning technologies. Rural districts or districts with limited availability of service providers are especially encouraged to work with providers using these technologies. 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.

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

No. If an LEA is in need of improvement or corrective action, the LEA may not be a supplemental educational service provider. 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, and SEAs should make this notice prior to the beginning of the school year and provide LEAs as much advance notice as possible, so that an LEA that was previously serving as a supplemental educational service provider can act quickly to offer parents who signed up for its services the option of selecting another provider. An SEA may not keep an LEA on its approved provider list if that LEA is identified as in need of improvement under Section 1116 [34 CFR 200.47(b)(1)(iv)(B)]. An SEA, based on either preliminary or final AYP information, should immediately remove from its provider list an LEA that is identified as in need of improvement.

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

The only exception occurs in the situation discussed in C-4 through C-6, in which an LEA must provide supplemental educational services to disabled or limited English proficient students because no approved providers are available to do so. In these cases, the LEA must provide those services (either directly or through a contractor) even if it has been identified as in need of improvement. If the cause of the LEA's identification for improvement status was the performance of its disabled or limited English proficient students on assessments, then it would be preferable for the LEA to serve those students through a contractor rather than by directly serving them. (See the Federal Register notice of December 2, 2002, page 71,758 for more information.)

C-12. If an LEA that is a State-approved provider is identified as in need of improvement after the beginning of the school year, may it continue providing supplemental educational services through the end of the school year?

No. If an LEA has been approved as a supplemental educational service provider and is then identified as in need of improvement, the SEA must require the LEA to cease offering its supplemental educational services.

This should be done as soon as possible, but no later than the start of the next semester of the school year [34 CFR 200.47(b)(iv)(B)].

C-13. May a public school identified as in need of improvement be a supplemental educational service provider?

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

C-14. May an individual or group of individuals be a supplemental educational service provider?

Yes, an individual or group of individuals may be a supplemental educational service provider if they organize as a non-profit or for-profit entity and they meet the applicable statutory and regulatory requirements, as well as the SEA's criteria for approval.

C-15. May teachers who work in a school or in an LEA in need of improvement serve as supplemental educational service tutors?

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

C-16. Who is responsible for determining whether providers have a “demonstrated record of effectiveness” in improving student academic achievement?

An SEA must determine what constitutes suitable evidence of a demonstrated record of effectiveness for the purposes of approving providers [Section 1116(e)(4)(B)]. An LEA *may not* make such a determination for the purposes of contracting and working with State-approved providers. An LEA may not refuse to permit a State-approved provider to serve because the LEA disagrees with the provider's program design. See G-3 for more information on this topic.

The statutory emphasis on an SEA's responsibility to promote participation by the maximum number of providers to give parents as many choices as possible suggests that the SEA take a reasonably flexible approach in determining effectiveness.

C-17. By definition, supplemental educational services must be of “high quality and research based.” How does an SEA make such determinations?

A major focus of NCLB is to use only those educational practices that have evidence to suggest that they will increase student academic achievement. This means that one of the *most important considerations* in assessing the educational practices of a potential provider should be whether those practices result in improved academic achievement in reading/language arts and mathematics. Whenever possible, a provider should submit, as part of the State approval process, any academic research supporting the particular instructional methods used by the provider.

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

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

C-18. What does it mean to provide instruction consistent with an LEA's instructional program and aligned with State student academic achievement standards?

SEAs are responsible for determining whether a provider can deliver supplemental instruction that is aligned with State student academic achievement standards. This does not mean that the instructional content and methods of a potential provider must be identical to those of the LEA, but they must share a focus on the same State academic content and achievement standards and be designed to help students meet those standards.

C-19. How can an SEA determine whether a provider is "financially sound"?

SEAs are responsible for developing criteria to determine whether a provider is "financially sound" for the purposes of this program. SEAs could require potential supplemental educational service providers to submit audited financial statements or other evidence of their financial

soundness. SEAs could also employ site audits to verify the accuracy of the information submitted.

C-20. Are supplemental educational service providers governed by the teacher quality requirements of Sections 1119 and 9101(23)?

No. The “highly qualified teacher” requirements of Sections 1119 and 9101(23) of the ESEA do not apply to supplemental educational service providers.

C-21. May an SEA require that supplemental educational service providers meet the teacher quality provisions of Section 1119?

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

C-22. May there be only one approved supplemental educational service provider in an LEA?

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

C-23. 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-24. Some after-school programs are housed in public school buildings. May such programs be supplemental educational service providers if the school in which they are housed has been identified as needing improvement, or is in corrective action or restructuring?

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

D. MONITORING REQUIREMENTS

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

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

Specifically, an SEA must develop and implement standards and techniques for monitoring the quality, performance, and effectiveness of the services offered by approved supplemental educational service providers. Such standards and techniques, as well as any findings resulting from such monitoring, must be publicly reported. These quality control standards and techniques should be consistent with the initial criteria developed for identifying potential providers [Section 1116(e)(4)(D)]. SEAs may also want to collect and report information about parent or student satisfaction with services.

D-2. What tools or research can SEAs use to monitor providers and determine providers' effectiveness?

SEAs must determine whether the services that providers offer to students are contributing to increasing the academic achievement of students. In making this judgment, each SEA should develop a system for gathering information about the effectiveness of providers on an annual or periodic basis. Below are some examples of information that an SEA might want to collect; however, each SEA should tailor its system to its own needs:

- Academic gains made by students who participated in and completed a provider's program;
- The fidelity with which a provider's program, as enacted, reflects its program design, as proposed in its application to the SEA;
- Student enrollment (including enrollment of students with disabilities and English language learners) and daily attendance in a provider's program;
- Parents' and students' satisfaction with a provider; and
- How often a provider reports students' progress to teachers and parents.

An SEA might request assistance from its LEAs in gathering information to help the SEA monitor the quality and effectiveness of the

services offered by providers. However, an SEA is ultimately responsible for monitoring providers, and should request assistance from its LEAs only in collecting data from providers, not in evaluating the effectiveness of providers. Additionally, if some LEAs in a State are approved providers, an SEA should recognize that an LEA's status as a provider may create a conflict of interest in providing information to the SEA on the quality of competing providers' services. In such situations, the SEA should consider not involving such LEAs in the monitoring process at all.

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

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

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

An SEA must use a consistent policy for withdrawing supplemental educational service providers from the State-approved list. 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 achievement standards [*Section 1116(e)(4)(D)*]. In addition, a provider must be removed from the list if, at any time, it fails to provide supplemental educational services consistent with applicable health, safety, and civil rights requirements.

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

Monitoring LEAs to ensure that they meet these requirements of the law should be part of the regular Title I monitoring that SEAs conduct of their LEAs. An SEA also should consider other tools 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, and an SEA might request that an LEA provide it with

updates throughout the year on how many students in the LEA are eligible for supplemental educational services, how many students sign up for and attend services, and how much money (in total and per-pupil) is being spent by the LEA on supplemental educational services. SEAs should ensure that, to the extent practicable, LEAs notify parents of the supplemental educational services provisions in a language the parents can understand.

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

D-6. How should an SEA determine whether an LEA has adequately met demand for choice-related transportation and supplemental educational services?

An SEA is responsible for ensuring that an LEA has fully met parental demand for choice-related transportation and supplemental educational services. While an LEA may reallocate funds from its 20 percent reservation after it has fully met the parental demands for these services, the LEA should be able to document that it has fully met all demand before a reallocation occurs.

In determining whether an LEA has fully met parental demands for choice-related transportation and supplemental educational services, an SEA should consider whether an LEA has:

- Appropriately notified all eligible parents of the availability of public school choice and supplemental educational services;
- Adequately publicized options to parents in understandable formats and multiple forums; and
- Offered parents a reasonable period of time to investigate their options and submit their requests for either public school choice or supplemental educational services.

D-7. What steps should an SEA take if it determines that an LEA is failing to implement supplemental educational services in a manner that is consistent with the statute, regulations, and guidance?

An SEA is responsible for ensuring that supplemental educational services are properly implemented by LEAs in the State. If an SEA determines that an LEA is failing to fully implement its supplemental educational services responsibilities, an SEA might 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 practices in supplemental educational services. Additionally,

an SEA should, pursuant to Section 1116(b)(14)(B), take such corrective actions as the SEA determines to be appropriate and in compliance with State law.

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; 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 (LEA) RESPONSIBILITIES

E. OVERVIEW OF LEA RESPONSIBILITIES

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

An LEA must:

1. Notify parents about the availability of services, at least annually (see E-2 for additional information) [*Section 1116(e)(2)(A)*].
2. Help parents choose a provider, if requested [*Section 1116(e)(2)(B)*].
3. Determine which students should receive services if not all students can be served (see F-3 for additional information) [*Section 1116(e)(2)(C)*].
4. Enter into an agreement with a provider selected by parents of an eligible student (see G-2 for additional information) [*Section 1116(e)(3)*].
5. Assist the SEA in identifying potential providers within the LEA (see C-1 for additional information) [*Section 1116(e)(4)(A)*].
6. Protect the privacy of students who receive supplemental educational services (see F-9 and F-10 for additional information) [*Section 1116(e)(2)(D)*].

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

In general, an LEA should work to ensure that parents have comprehensive, easy-to-understand information about supplemental educational services [Section 1116(e)(2)]. At least annually, an LEA must provide notice to the parents of each eligible student regarding the availability of supplemental educational services. Specific information about 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 providers.

This notice must:

- Identify each approved service provider within the LEA or in its general geographic location [Section 1116(e)(2)(A)(ii)]. The notice should also identify providers that are accessible through technology, such as distance learning;
- Describe the services, qualifications and evidence of effectiveness for each provider [Section 1116(e)(2)(A)(iii)];
- Describe the procedures and timelines that parents must follow in selecting a provider to serve their child (see E-4) [Section 1116(e)(2)(A)(i)]; and
- Be 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)].

If the LEA anticipates that it will not have sufficient funds to serve all students eligible to receive services, it should also include in the notice information on how it will set priorities in order to determine which eligible students do receive services (see F-3).

LEAs may provide additional information, as appropriate. However, any additional information in a notice should be balanced and should not attempt to dissuade parents from exercising their option to obtain supplemental educational services for their child. LEAs might also want to consider multiple avenues for providing *general* information about supplemental educational services, including newspapers, Internet, or notices mailed or sent to homes. LEAs that are most effective in reaching eligible families are those that provide information to parents through various means, including less traditional forms of communication, such as radio and TV ads, and notices at venues that parents may frequent, such as movie theaters, shopping malls, beauty parlors, and places of worship. In providing this information, the LEA

must take care that it does not disclose to the public the identity of any student eligible for supplemental educational services without the written permission of the student's parents.

An LEA should make its supplemental educational services enrollment form easily available for parents to access and should widely distribute the form. For example, an LEA could post the form on its website and mail the form home to parents, as well as leave copies of the form at the schools that have students eligible for supplemental educational services and at other district offices and sites where parents may go.

Additionally, an LEA should not restrict the distribution of enrollment forms (including the photocopying of forms) by non-LEA individuals. Finally, LEAs should ensure that they have an open, adequate, and reasonable process for parents to submit application forms (see Appendix B for a sample parent notification letter).

E-3. What resources have been developed to help an LEA implement supplemental educational services well?

The Department has developed a series of *Innovations in Education* guides, including one on districts creating strong supplemental educational services. Copies of the guide can be downloaded for free at <http://www.ed.gov/admins/comm/suppsvcs/sesprograms/index.html>. Additionally, the Department has developed a brochure and poster on supplemental educational services. See <http://www.ed.gov/parents/academic/involve/suppservices/index.html>, and <http://www.ed.gov/parents/academic/involve/suppservices/sesposter.html>. Finally, the <http://www.tutorsforkids.org/> website provides resources and information for LEAs and SEAs, parents, providers, and other educators.

E-4. May an LEA set a deadline by which parents must request supplemental educational services?

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

An LEA may allow a rolling enrollment for services, taking care that eligible students are served and priorities are respected. A rolling enrollment process would accommodate students who are newly enrolled at the beginning of or during the school year. Whatever

procedures an LEA uses, it must ensure it meets all demand for supplemental educational services 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 and supplemental educational services (see K-2 to K-4 for additional information).

F. IDENTIFYING ELIGIBLE STUDENTS

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

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

F-2. How is eligibility determined in schoolwide programs and targeted assistance programs?

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

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

If sufficient funds are not available to serve all eligible children, an LEA must give priority to the lowest-achieving eligible students [*Section 1116(b)(10)(C)*]. As noted in A-5, the LEA should use fair and equitable criteria in determining which students are the lowest achieving, and should use professional judgment in applying those criteria. For example, as noted in A-5, an LEA might decide to focus services on students who are lowest-achieving in the subject or subjects that caused the school to be identified for improvement. Or it might decide that supplemental educational services will be most effective if they are concentrated on the lowest-performing students in particular grades.

An LEA should not assume, before it contacts parents, that it will have limited resources for supplemental educational services. Rather, the LEA should notify all eligible families of their children's eligibility. Only if more families request supplemental educational services than there are funds available to serve should the LEA set priorities or criteria to determine which eligible students can get services. The LEA should review the information available about the performance of eligible

students and apply those priorities or criteria in a manner that is careful, fair, and objective.

One possible approach to prioritizing students would be for the LEA to establish a cut-off score (on the State assessment under section 1111, or another assessment), either on a school-by-school basis or for all schools across the LEA, and make supplemental educational services available to students whose scores fall below the cut-off level.

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

For the purposes of determining eligibility for supplemental educational services, an LEA must determine family income on the same basis that the LEA uses to make allocations to schools under Title I [*Section 1116(e)(12)(A)*].

F-5. May educators use information from the National School Lunch Program in determining student eligibility for supplemental educational services?

The law specifically requires LEAs to use the same data to determine eligibility for supplemental educational services that they use for making within-district Title I allocations; historically, most LEAs use school lunch data for that purpose. However, determining student eligibility for supplemental educational services (unlike determining Title I allocations) requires identifying individual students as coming from low-income families. This has led to questions about whether LEAs may use school lunch data to determine student eligibility for supplemental educational services while abiding by the student privacy provisions of the School Lunch Program.

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

Because Title I is a *Federal education program*, determining officials may disclose a child's eligibility status to persons directly connected with, and who have a need to know, a child's free and reduced price

meal eligibility status in order to administer the Title I supplemental educational services requirements. The statute, however, does not allow the disclosure of any other information obtained from the free and reduced price school meal application or obtained through direct certification. School officials 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" for proper administration and enforcement of a Federal education program. As such, schools should establish procedures that limit access to a child's eligibility status to as few individuals as possible.

School officials, prior to disclosing individual information on the School Lunch Program eligibility of individual students, should enter into a memorandum of understanding or other agreement to which all involved parties (including both school lunch administrators and educational officials) would adhere. This agreement 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.

F-6. How may LEAs that operate school lunch programs under Provisions 2 and 3 of the National School Lunch Act determine which students are eligible for supplemental educational services?

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

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

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

Homeless students, like other students, are eligible to receive supplemental educational services if they are from low-income families

(which will most likely be the case for every homeless child) and are enrolled in a school in its second year of improvement or undergoing corrective action or restructuring. The place of residence of a student (or the lack of a permanent residence) is not an issue in determining eligibility for any child.

F-8. May an LEA turn over a list of eligible students to a potential supplemental educational service provider so that the potential provider can contact parents regarding its services?

An LEA may disclose a list of students eligible to receive supplemental educational services to possible providers only with the prior written consent of the students' parents. LEAs must comply with the prior written consent requirements of the Family Educational Rights and Privacy Act (FERPA) when disclosing information on students under the supplemental educational services program. (For more information, please see 34 CFR § 99.30, available at http://www.ed.gov/policy/gen/reg/ferpa/rights_pg4.html.)

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

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

1. Include a parental consent line on the supplemental educational services 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 (see F-9 for more information on consent).
2. Ask providers to give the LEA stamped envelopes containing information about the program to be mailed by the LEA to parents of eligible students. Before doing so, the LEA could let the provider know *how many* students are eligible, but not the names.
3. Give providers "directory information" on all students in the school district (whose parents have not opted out of "directory

information”) and allow providers to send a mailing to all parents of students in the district.

4. Hold an “open house” or “provider fair” and invite parents to come meet with providers about their supplemental educational service programs.
5. Provide information about providers to parents in school newsletters.
6. 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.

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

Yes, as long as the parent has provided the LEA with prior written consent to make the disclosure. Acknowledgment of that consent – which may be built into the agreement or contract with the provider – must be signed and dated and must specify the records that may be disclosed by either the LEA or the provider; state the purpose of the disclosure; and identify the party or class of parties to whom the disclosure may be made. (For more information please see 34 CFR § 99.30, available at http://www.ed.gov/policy/gen/reg/ferpa/rights_pg4.html#3.)

The provider may not disclose personally identifiable information about the student without the written consent of the parent. Further, the provider is prohibited from disclosing to the public, without the written consent of the student’s parent, the identity of any student who is eligible for or receiving supplemental educational services (see F-10 for more information).

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

No. Although (as set forth in F-9) an LEA can only give providers the names of eligible students who have provided written parental consent, 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 supplemental educational services. 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 supplemental educational services for their children. Such coordination should ensure that providers have ample

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

G. ARRANGING FOR SUPPLEMENTAL EDUCATIONAL SERVICES

G-1. May parents select any provider that appears on the State-approved list?

Yes, parents may select any provider from the State-approved list, as long as that provider is able to provide services in or near the area served by the LEA, which may include approved providers that use e-learning, online, or distance learning technology to provide supplemental educational services.

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

G-2. What must be included in the agreement with a provider?

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

1. Specific achievement goals for the student, which must be developed in consultation with the student's parents [*Section 1116(e)(3)(A)*];
2. A description of how the student's progress will be measured and how the student's parents and teachers will be regularly informed of that progress [*Section 1116(e)(3)(A) and (B)*];
3. A timetable for improving the student's achievement [*Section 1116(e)(3)(A)*];
4. A provision for termination of the agreement if the provider fails to meet student progress goals and timetables [*Section 1116(e)(3)(C)*];
5. Provisions governing payment for the services, which may include provisions addressing missed sessions [*Section 1116(e)(3)(D)*];
6. A provision prohibiting the provider from disclosing to the public the identity of any student eligible for or receiving supplemental educational services without the written permission of the student's parents [*Section 1116(e)(3)(E)*]; and
7. An assurance that supplemental educational services will be provided consistent with applicable health, safety, and civil rights laws (see C-3 through C-5) [*Section 1116(e)(5)(C)*].

In the case of a student with a disability, the achievement goals, measurement and reporting of progress, and timetable described in items 1 through 3 above must be consistent with the student's individualized education program under Section 614(d) of the IDEA. In the case of a student covered by Section 504, they must be consistent with the student's individualized services under Section 504. However, these services are in addition to, and not a substitute for, the instruction and services required under the IDEA and Section 504, and should not be written into individualized education programs under IDEA or into any Section 504 plans.

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

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

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

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

Under no circumstances should an LEA refuse to offer as an option to parents any provider on the State-approved list because of program design concerns.

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

G-4. 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, as long as they are reasonable, do not subject supplemental educational service providers to more stringent requirements than apply to other contractors of the LEA, and do not have the effect of inappropriately limiting educational options for parents.

Similarly, an LEA may include, in its contracts with providers, administrative provisions dealing with issues such as the fees charged to providers for the use of school facilities, the frequency of payments to providers, and the issue of whether payments will be based in part on student attendance.

G-5. May an LEA require providers on the State-approved list to meet additional program design criteria or go through an additional approval process before providing services within the LEA?

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

G-6. How long must services be provided?

A provider must continue to provide supplemental educational services to eligible students who are receiving such services until the end of the school year in which such services were first received [Section 1116(e)(8)]. However, the sufficiency of funds and the intensity of services selected (i.e. the number of sessions per week) may limit the availability of services to a shorter period of time. In such case, the parent should be made aware of the anticipated duration of services and agree to it.

G-7. When should an LEA notify parents about their child's eligibility for supplemental educational services, and when should services begin?

The Department strongly encourages an LEA to notify parents at the beginning of the school year about supplemental educational services, and begin offering services in a timely manner thereafter. The ESEA requires supplemental educational services to be of high quality, research-based, and specifically designed to increase the academic achievement of eligible children on the State's academic assessments and attain proficiency in meeting the State's academic achievement standards.

Additionally, parents of students eligible for supplemental educational services are also eligible for public school choice, and should have an opportunity to make the most informed decision possible about which opportunity to select. If an LEA does not notify parents about the availability of supplemental educational services until late in the year (and after notifying parents about public school choice, which must occur before the beginning of the school year), this could affect a parent's decision about whether or not to transfer his/her child. Parents ought to be provided with as much information as possible about the two programs and their option to select one early in the school year.

G-8. What actions must an LEA take if the demand for supplemental educational services from a particular provider is greater than the provider can meet?

An approved provider might not have enough spaces to serve all the students who select that provider. In anticipation of such a situation, the LEA must apply fair and equitable procedures for selecting students to receive services [Section 1116(e)(2)(C)]. Furthermore, the LEA is encouraged to allocate those spaces consistent with the requirement to give priority to the lowest-achieving eligible children.

G-9. What happens if there are no approved providers that offer services in an LEA?

In this case, an LEA may request an exemption from the SEA of all or part of the supplemental educational services requirement. An SEA may only grant an exemption if it determines that: (1) none of the approved providers can make their services available in the LEA or within a reasonable distance of that area; and (2) the LEA provides evidence that it cannot provide these services [Section 1116(e)(10)(A)].

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

G-10. How long is an LEA's exemption from supplemental educational services in effect?

States are required to update at least annually the list of approved supplemental educational service providers. Because of this provision,

an exemption may not extend beyond the next timeframe for updating the list. With each updated list of providers, the LEA must request an exemption from the supplemental educational services requirements [34 CFR 200.45(c)(4)(iii)].

G-11. If an LEA is an approved provider, what is its responsibility with respect to an agreement?

An LEA that is a provider must prepare an agreement that contains the information listed in G-2. Although the LEA is not formally entering into an agreement with itself as the provider, the information is necessary so that parents of a student receiving services from the LEA know, for example, the achievement goals for the student, how progress will be measured, and the timetable for improving the student's achievement.

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

G-12. If an LEA cannot provide school choice to students in a school in its first year of school improvement (because there are no eligible schools to which students could transfer) and the LEA voluntarily decides to offer supplemental educational services a year early, do the supplemental educational services requirements in section 1116 apply?

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

However, because the LEA will be required to offer supplemental educational services (that meet all the statutory requirements) to students in that school the next year if the school remains in improvement status,

it would help avoid confusion and administrative complexity if the LEA, in that first year, abides by the requirements of section 1116(e) as much as possible. In addition, if the LEA uses Title I funds to provide supplemental educational services, it must meet all the requirements governing the use of those funds in schoolwide and targeted assistance programs.

G-13. May an LEA offer supplemental educational services to students who are at risk of failing to meet the State’s academic achievement standards, but who are not low-income?

Yes. However, an LEA may not “count” funds spent for non-low-income students toward meeting its 20-percent requirement for supplemental educational services and transportation for public school choice. Moreover, if the LEA uses Title I funds to provide supplemental educational services to students not covered under the requirements in Section 1116(e), those services must meet all other Title I requirements. In addition to Title I funds, the LEA could use other appropriate Federal, State, or local funds to provide supplemental educational services to students who are not from low-income families.

G-14. Should an LEA make available to the public, including parents and to State-approved providers, information on such issues as the LEA’s per-pupil allocation for supplemental educational services; how the LEA is determining student eligibility for services; when parents will be notified that their children are eligible for services; and the process that parents will be required to follow in order to obtain services for their children?

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

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

Experience has demonstrated that many parents want to enroll their child in supplemental educational services programs that are held in their child’s school building, because this eliminates the need to transport their child to another site after school has ended. The Department, therefore, encourages LEAs to allow providers in the school building, either free of charge or for a reasonable fee. LEAs should ensure that the use of the school building by providers is on the same basis and terms as are available to other groups that seek access to the school

building. However, if many providers are approved to serve an LEA, or if other after-school programs are housed in the LEA's schools, it may not be possible to have all providers use school buildings.

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

H. THE ROLE OF PARENTS

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

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

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

For more information on questions families can ask providers, see: <http://www.tutors4kids.org/families/infoforfamilies.asp>. Additionally, families can contact their local Parent Information and Resource Center. For a list of such centers, see <http://www.pirc-info.net/>.

H-2. What is the role of parents in supplemental educational services?

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

At the State level, parents must be consulted in order to promote participation by a greater variety of providers and to develop criteria for identifying high-quality providers [Section 1116(e)(4)(A)].

At the local level, parents must be able to choose from among all supplemental educational service providers identified by the State for the

area served by the LEA or within a reasonable distance of that area. In addition, the LEA must assist parents in selecting a provider, if such help is requested [Section 1116(e)(2)(B)]. Parents should also have an option to change or terminate services, if they are not satisfied.

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

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

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

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

I. PROVIDING INFORMATION TO PARENTS

I-1. What are some effective ways LEAs can inform parents of their opportunity to enroll their children in supplemental educational services?

There are many steps an LEA can take to inform parents about their options. As a first step, an LEA must provide annual notification to parents in an understandable and uniform format and in as many languages as appropriate and practicable. Such notice must let parents know about: (1) the availability of supplemental educational services; (2) the providers able to serve the geographical area; and (3) a description of the services, qualifications, and demonstrated effectiveness of each provider.

An LEA should also include in the notification an explanation of how students become eligible for services; a notice that services are free to parents; where and when to return a completed application; when and how the district will notify parents about enrollment dates and start dates; and whom to contact in the LEA with questions.

An LEA should use terms in the notification that parents understand, such as “free tutoring,” instead of, or in addition to, “supplemental educational services,” and include other key phrases that will entice parents to sign up their children, such as “help your child succeed in school.” Additionally, an LEA should review its notification to make sure it is at an educational level appropriate for all parents.

Either in the letter itself, or in an accompanying publication, an LEA should include information on the grade levels and subject areas each provider will serve; where and when each provider will offer its program; how many sessions each provider will offer, and how long each session will last; the tutor-pupil ratio for each provider; and if providers operating off-site will offer transportation for students. Many LEAs develop a provider brochure that is colorful and easy for parents to understand and use to make their provider selection.

An LEA should also enlist schools in their campaign to reach parents. For example, an LEA could use back-to-school nights as forums to explain supplemental educational services to parents and offer them advice about enrolling their children. As part of this effort, an LEA should educate teachers and principals about the provisions to be sure that they can effectively and objectively assist parents in making their selections (if parents request such assistance).

As mentioned in E-2, an LEA should consider multiple, traditional, and non-traditional, ways to provide outreach to parents.

I-2. How can LEAs make their outreach to parents more successful?

Whenever possible, an LEA should try to personalize the supplemental educational services process for parents. For example, an LEA should consider having staff or volunteers on hand to help parents understand and complete the enrollment application. Parent outreach centers and community- and faith-based organizations may be particularly well-suited to help parents with the process. An LEA should have a specific and designated contact person, with a phone line and email address, that parents can contact with questions. Additionally, an LEA could post information about supplemental educational services on its website and let parents register for the services online.

If few eligible parents sign up for services, it may be useful

for an LEA to evaluate its outreach efforts and consider the extent to which its efforts reflect these six communication goals for designing and implementing an effective outreach strategy to parents: (1) get parents' attention; (2) inform them about their supplemental educational services options; (3) help them understand how to obtain services; (4) motivate parents to take action to exercise their options; (5) encourage parents to follow and communicate about their children's progress; and (6) influence parents to provide feedback regarding the impact and quality of the services their children receive.

I-3. How often should parents and teachers receive information about student progress?

As part of the agreement described in G-2, the LEA and provider, after consultation with the parents, must agree to a schedule for informing parents and the child's teacher(s) about the child's progress. The intent of this requirement is to ensure that students are improving their academic achievement and that instructional goals are being met.

I-4. If parents are not satisfied with the supplemental educational services their children are receiving, or with their children'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 move from one service provider to another one during the course of a school year, an LEA may want to allow for such moves. Paying providers on a regular basis, as reimbursement for services provided, may make it easier to arrange for students to change providers than would be the case if providers are paid up-front for an entire semester or year.

I-5. May an LEA terminate the services a provider is providing to an individual student?

Yes. An LEA may terminate the supplemental educational services a provider is providing 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. The agreement between the LEA and the 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. As explained in G-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.

IV. PROVIDER RESPONSIBILITIES

J. PROVIDING SUPPLEMENTAL EDUCATIONAL SERVICES

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

A provider is responsible for meeting the terms of its agreement with the LEA (see item G-2), including:

1. Enabling the student to attain his or her specific achievement goals (as established by the LEA, in consultation with the student's parents and the provider) *[Section 1116(e)(3)(A)]*;
2. Measuring the student's progress, and regularly informing the student's parents and teachers of that progress *[Section 1116(e)(3)(A) and (B)]*;
3. Adhering to the timetable for improving the student's achievement that is developed by the LEA in consultation with the student's parents and the provider *[Section 1116(e)(3)(A)]*;
4. Ensuring that it does not disclose to the public the identity of any student eligible for or receiving supplemental educational services without the written permission of the student's parents *[Section 1116(e)(3)(E)]*;
5. Providing supplemental educational services consistent with applicable health, safety, and civil rights laws (see items C-3 through C-5) *[Section 1116(e)(5)(C)]*; and
6. Providing supplemental educational services that are secular, neutral, and nonideological *[Section 1116(e)(5)(D)]*.

In the case of a student with a disability, the achievement goals, measurement and reporting of progress, and timetable described in items 1 through 3 above must be consistent with (although not included in) the student's individualized education program under Section 614(d) of the IDEA. In the case of a student covered by Section 504, they must be consistent with (although not included in) the student's individualized services under Section 504.

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

Yes. In most cases it will be preferable to provide services that take place over the course of the school year and that augment and enhance the instruction a child receives through the regular school program. Summer programs, however, can also augment school-year instruction and can help reduce "summer learning loss," which is frequently an issue for educationally disadvantaged children. SEAs may thus approve

both programs that provide services during the school year and those that provide them in the summer. An LEA may not “reject” an approved provider whose program is approved to provide services in the summer by setting dates of service that exclude services from being provided in the summer timeframe.

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

An SEA may determine the definition of “entity.” For example, for the purposes of supplemental educational services, an SEA might define entities as including all non-profit and for-profit bodies that are incorporated, organized as a 501(c)(3) organization, or hold a business license. An SEA might also decide that a group of individuals that is not formally incorporated may be considered an entity. Each SEA may make this decision.

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

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

Many SEAs offer workshops and other forms of technical assistance to entities interested in becoming providers. This assistance may be useful in helping potential providers understand the procedures they will have to go through to become approved in a particular State.

Additionally, the Department’s Center for Faith-Based and Community Initiatives hosts free regional workshops around the country to assist faith-based and community organizations in becoming providers. More information is available about these workshops at:

<http://www.ed.gov/about/inits/list/fbci/suppserv-workshops.html>. The Supplemental Educational Services Quality Center has also produced a comprehensive guide for entities interested in becoming providers. The guide can be downloaded from:

http://www.tutors4kids.org/documents/SESProvidersToolkit_002.pdf

V. FUNDING

K. FUNDING ISSUES

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

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

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

K-2. How much must an LEA pay for supplemental educational services?

The law establishes a joint funding mechanism for choice-related transportation and supplemental educational services. Unless a lesser amount is needed to meet demand for choice-related transportation and to satisfy all requests for supplemental educational services, an LEA must spend an amount equal to 20 percent of its Title I, Part A allocation, before any reservations, on:

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

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

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

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

K-3. If an LEA does not incur any choice-related transportation costs, must it use the full 20-percent amount to pay for supplemental educational services?

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

K-4. May an LEA limit to less than 20 percent the amount that it will spend for supplemental educational services and choice-related transportation before it determines demand for services?

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

An LEA may find that the amount it can spend for supplemental educational services is limited because of the demand for choice-related transportation in the district. For instance, an LEA might have to spend 10 percent of its Title I allocation to transport students who exercise the option to transfer in the previous year and are still enrolled in their new schools; this would leave a total of 10 percent for supplemental educational services and the provision of transportation to any additional students who wish to change schools in the current year. Whatever the situation, an LEA should provide full opportunity for eligible students to change schools (and receive transportation) and to receive supplemental educational services before determining that a lesser amount of funding (that is, an amount less than 20 percent of its allocation) for these two activities is needed.

Before determining that an amount less than 20 percent of its allocation is needed for choice-related transportation and supplemental educational services, an LEA should be able to document that it has fully met demands for these services. An LEA should consider whether it has:

- Appropriately notified all eligible parents of the availability of public school choice and supplemental educational services;
- Adequately publicized the options to parents in understandable formats and multiple forums; and
- Offered parents a reasonable period of time to investigate their options and submit their requests for either public school choice or supplemental educational services.

K-5. May an LEA use school improvement funds made available under Section 1003 (School Improvement) to pay for supplemental educational services?

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

K-6. What other Federal program dollars may be used to pay for supplemental educational services?

LEAs may use their Title V, Part A Local Innovative Education Program funds to pay for supplemental educational services. LEAs also may use funds transferred to Title I from other Federal education programs under Section 6123(b) to pay such costs. Programs eligible to make such transfers include Title II, Part A Improving Teacher Quality State Grants; Title II, Part D Educational Technology State Grants; Title IV, Part A Safe and Drug-Free Schools and Communities State Grants; and Title V, Part A State Grants for Innovative Programs.

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

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

The IDEA provision allows for an SEA, if it so chooses, 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 supplemental educational services for students with disabilities. An LEA that has received these funds may count them toward its obligation to spend an amount equal to 20 percent of its Title I, Part A allocation on supplemental educational services and choice-related transportation.

K-7. Does funding made available for Part A of Title I through the transferability provisions authorized under Section 6123 change the base that must be used to calculate required spending on choice-related transportation and supplemental educational services?

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

In addition, an LEA may transfer funds to Title V, Part A or Section 1003, if the LEA receives Section 1003 funds, to increase the amount of flexible funds available for supplemental educational services or other school improvement activities. Funds transferred to Title V, Part A or Section 1003 would not be included in the base used to calculate “an amount equal to 20 percent” of the LEA’s Title I allocation.

K-8. How should an LEA reserve Title I funds to help pay the costs of choice-related transportation and supplemental educational services?

An LEA that is required to provide or pay for choice-related transportation and supplemental educational services (and that elects to use Title I funds to do so) may (1) reserve any Title I funds needed for this purpose “off the top” prior to making allocations to schools, or (2) adjust allocations to schools to make available the required funds.

If an LEA chooses the second method – adjusting allocations to schools – it may reserve funds from all Title I schools or only from schools identified for improvement, corrective action, or restructuring (subject to the limitation described under K-7).

K-9. In reserving Title I funds for choice-related transportation and supplemental educational services, LEAs are not permitted to reduce Title I allocations to schools identified for corrective action or restructuring by more than 15 percent. How should LEAs calculate this 15-percent limit?

LEAs may satisfy this requirement through one of two methods. First, an LEA may simply set a floor of 85 percent of its prior-year allocation for any school identified for corrective action or restructuring. Under this approach, an LEA reserving Title I funds for choice-related

transportation and supplemental educational services would not be permitted to reduce its allocation to an affected school below this 85-percent floor.

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

K-10. Are private school children receiving Title I services entitled to receive an equitable proportion of any Title I funds reserved by an LEA for supplemental educational services?

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

K-11. Must an LEA pay for or provide transportation to service providers?

No. An LEA may provide transportation to service providers, but is not required to do so under the law. In addition, the costs of such transportation may not be used to satisfy the 5 percent minimum expenditure requirement for supplemental educational services. Also, the costs of transportation may not be counted toward satisfying an LEA’s obligation to spend up to an amount equal to 20 percent of its Title I, Part A allocation on choice-related transportation and supplemental educational services, as described in K-2.

K-12. May an LEA count administrative costs incurred in providing choice-related transportation or supplemental educational services toward the 20-percent requirement?

No. Such costs, to the extent they are reasonable and necessary, are an allowable use of Title I funds, but only direct expenditures for choice-

related transportation and supplemental educational services may be used to satisfy the 20-percent requirement.

K-13. If an LEA provides supplemental educational services to students enrolled in schools in their first year of improvement (as discussed in G-12), does the cost of those services count toward the 20-percent requirement?

Yes. The LEA may count the cost of those services toward the 20-percent requirement, so long as the services meet all the requirements of section 1116(e) and so long as the LEA is meeting the full demand for supplemental educational services from students enrolled in schools in their second year of improvement or subject to corrective action or restructuring.

K-14. How much must an LEA spend for each student receiving supplemental educational services?

The statute sets the per-pupil cost for supplemental educational services at the lesser of an LEA's per-pupil allocation under Part A of Title I (determined as described in K-17) or the actual cost of the services. The per-child allocation of Title I funds to LEAs varies widely across the Nation, ranging from roughly \$900 to \$2,400. Estimates of the maximum per-pupil amount for supplemental educational services in each LEA in the Nation are available at:

<http://www.ed.gov/about/overview/budget/titlei/fy04/index.html#allocation>.

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

K-15. What is meant by “the actual cost” of services in determining the per-pupil cost of supplemental educational services?

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

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

No. The amount set forth in the statute – that is, the LEA's Title I, Part A per-pupil allocation or the actual cost of services, whichever is less -- is the amount that must be spent, per student, for supplemental educational services, not a maximum amount. LEAs must adjust this amount annually to reflect changes in their Title I per-pupil allocations.

In addition, they may not provide a lower amount to students participating in truncated programs (for instance, in summer programs) except as needed to reflect the actual cost of those programs.

K-17. How must an LEA calculate the per-pupil funding cap on the cost of supplemental educational services?

An LEA must calculate the per-pupil cap on supplemental educational services costs by dividing its Title I, Part A allocation by the number of children residing within the LEA aged 5-17 who are from families below the poverty level, as determined by the most recent census estimates from the Department of Commerce. The Department of Education uses these poverty estimates to make allocations to LEAs, and provides the estimates to States as part of the allocation notification process. (For census data, go to <http://www.census.gov/hhes/www/saipe/school/sd02ftpdoc.html>.)

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

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

Yes. In some LEAs the per-pupil “tuition” charged by some State-approved providers that are available to serve students in the LEA may exceed the per-pupil amount the LEA can spend (pursuant to the calculation made in K-17). In this situation the LEA may, using funds from Title I, Part A or other sources, supplement the amount available to a child in order to allow that child to receive supplemental educational services from the provider selected by his or her parents. However, the LEA may not count any amount provided to a child in excess of the per-pupil cap against the 20 percent of its Title I, Part A funding that it must spend for supplemental educational services and choice-related transportation. In other words, if the cost of enrolling a child with a provider is \$1,500 and the LEA’s per-pupil cap (calculated as described in K-17) is only \$1,000, the LEA may make available to the child the full \$1,500 but it may count only the first \$1,000 toward meeting the 20-percent requirement.

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

Yes. If the demand for choice-related transportation and supplemental educational services, or the costs of those activities, is lower than estimated at the time of the reservation, an LEA may reallocate any unused funds to other allowable activities. If such funds were made available by reducing allocations to specific schools, as described under K-9, then the LEA must reallocate the unused funds to those schools.

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

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

Yes. If there is sufficient demand in an LEA for supplemental educational services and public school choice transportation, the LEA must spend the full 20-percent amount on those activities.

K-21. If an LEA projects to spend the full 20-percent amount on supplemental educational services and choice-related transportation, but spends less than that amount despite excess demand for services, what options does the LEA have to remain in compliance?

If an LEA has documented demand (e.g., parent applications) to absorb the full 20 percent, but for whatever reason spends less than the full 20-percent amount, an LEA will be out of compliance with the statute and subject to enforcement sanctions unless it re-opens enrollment for supplemental educational services and/or public school choice. If re-opening enrollment for supplemental educational services and/or public school choice is impossible, an LEA must carry over to the following school year the unexpended balance of the set-aside and use that balance for choice-related transportation and supplemental educational services in that second year. An LEA may find itself in this position if there is a lower than expected enrollment rate among eligible students for supplemental educational services, or if the student attendance levels in supplemental educational services tutoring sessions are lower than anticipated.

K-22. How do the carryover rules described in Section 1127 affect any Title I funds reserved for choice-related transportation and supplemental educational services?

The law allows LEAs to carry over no more than 15 percent of unused funds from one fiscal year to the next. This 15 percent cap applies to the LEA's entire Part A allocation, and therefore covers any funds reserved, but not spent due to lack of demand, for supplemental educational services. If the combination of unused funds reserved in Title I for supplemental educational services and other unspent Part A funds exceeds 15 percent of an LEA's total allocation, the excess funds must be returned to the State for redistribution to other LEAs, unless the SEA grants the LEA an exemption. Funds carried over from one fiscal year to the next do not affect the base used for calculating the required expenditure of funds for choice-related transportation and supplemental educational services in the following year.

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

K-23. If only one school in an LEA has been identified as needing improvement, must the LEA spend the full 20-percent amount on choice-related transportation and/or supplemental educational services?

Yes, unless a lesser amount is needed.

K-24. May an SEA approve a provider whose provision of supplemental educational services will require LEAs to pay for equipment or instruction, or to meet other costs?

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. Some potential providers may offer programs through which, for instance, the provider offers distance-learning programs but an LEA will have to buy the computers that students will use to obtain the instruction. Although this type of arrangement may result in the provision of high-quality services, the LEA might not have the equipment, personnel, or other resources required by providers. In addition, LEAs may charge

providers for equipment, facilities, personnel, or other resources that they make available to those providers.

K-25. For which fiscal year may the costs of supplemental educational services be counted?

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

K-26. Must an LEA reserve a portion of its Title I allocation to pay for supplemental educational services?

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

K-27. An existing after-school program has been approved by the State as a supplemental educational service provider. May an LEA count any funds that it is already paying that provider toward meeting the 20-percent requirement?

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

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

An existing provider that qualifies to be a supplemental educational service provider should also be aware of a potential supplanting issue. It

does not violate the Title I supplement-not-supplant requirement for an LEA to count, towards the 20-percent requirement, State or local funds used to provide supplemental educational services to eligible students. However, it could cause supplanting if the LEA were to use Title I funds to replace State or local funds it had spent previously to provide services to eligible 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 supplemental educational services under Section 1116.

Appendix A: **Definitions**

Adequate Yearly Progress: Adequate yearly progress (AYP) is the measure of the extent to which students in a school, taken as a whole and certain groups within the school, demonstrate proficiency in at least reading/language arts and mathematics. It also measures the progress of schools under other academic indicators, such as the graduation or school attendance rate. The same provisions also apply to LEAs. Each State has developed its own definition of AYP, and these definitions have been approved by the U.S. Department of Education and are available in the State's accountability plan on the Department's website (<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 [Section 1116(b)(7)].

Eligible Student: Students eligible for supplemental educational services 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.

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

Provider: A provider of supplemental educational services may be any public or private (non-profit or for-profit) entity that meets the State's criteria for approval. Potential providers include public schools (including charter schools), private schools, LEAs, educational service agencies, institutions of higher education, faith- and community-based organizations, and private businesses. A public school or an LEA that is in need of improvement may not be a provider. A provider (1) has a demonstrated record of effectiveness in increasing student academic achievement; (2) can document that its instructional strategies are of high quality, based upon research, and designed to increase student academic achievement; (3) is capable of providing supplemental educational services that are consistent with the instructional program of the LEA and State academic content standards, (4) is financially sound, and (5) abides by all applicable Federal, State, and local health, safety, and civil rights laws [Section 1116(e)(12)(B) and Section 1116(e)(5)(C)].

Public School Choice: Students who attend a Title I school in need of improvement, corrective action, or restructuring are eligible to transfer to another public school in the district, including a public charter school, that is not in need of improvement, corrective

action, or restructuring status. 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.

Restructuring: A school identified for restructuring is a Title I school that has not made AYP for five 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.

School Improvement: A school is in its first year of school improvement when it has not made AYP for two consecutive years. Once in school improvement status, a school must make AYP for two consecutive years to exit. 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 [Section 1116(b)(1)(A)].

Schoolwide Program: A schoolwide program is a 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: Supplemental educational services are additional academic instruction designed to increase the academic achievement of students from low-income families attend Title I schools in their second year of school improvement, in corrective action, or 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 standards. Supplemental educational services must be provided outside of the regular school day. Supplemental educational services must be high quality, research-based, and specifically designed to increase the academic achievement of eligible students. [Section 1116(e)(12)(C)].

Targeted Assistance Program: A targeted assistance program is a program in which a school uses its Title I funds to provide services only to the children who have been identified as most at risk of failing to achieve to challenging academic content and 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 ideas and an example of a parent notification letter that includes all required elements and is understandable to parents. Parents, and those who work closely with parents in schools and the community, have told us that a letter to parents should be short. In the interest of keeping the letter to about one page, we have included as attachments several related pieces of information that parents can use to make a decision about supplemental educational services. These include an approved provider list (see E-2 for more information), a provider selection form, a school choice notification letter (see the public school choice guidance at <http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc> for more information), and a district report card (see the school report card guidance at <http://www.ed.gov/programs/titleparta/reportcardsguidance.doc> for more information).

Free Tutoring for Your Child!

Dear Parent/Guardian,

Help your child succeed in school – sign up for free tutoring! As a result of the federal *No Child Left Behind Act*, your child can receive extra help in the areas of math, reading, and language arts. You can receive this free tutoring because your child’s school is in its second year or later of “school improvement,” and your family meets the income limits under the law.

Your child’s school has been identified for improvement because it has not made adequate yearly progress on state measures of academic achievement for at least three years. Our district’s report card (enclosed with this letter) shows how your child’s school compares to other schools in our district and state. Your child’s school has been identified because [list reasons for identification]. We will be sending you more information in a few weeks about how you can help us improve the school in these areas.

For now, you can now choose a free tutoring program that is best for your child. A list of approved tutoring programs in your area is enclosed. These programs have been approved by the state department of education and will provide your child with tutoring that is coordinated with what is being taught in school.

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 disabilities or is learning English?
- Is transportation available to and from where the tutoring will take place?

Please call [name and number] if you have any questions about these services. You also may join us to 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]. 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 School Choice letter gives more information about school choice in our district.

Thank you.

[District official]

Enclosures: Approved Provider List
Provider Selection Form
School Choice Notification Letter
District Report Card