

# Memorandum

**To:** SES Providers  
**From:** Wayne D. Jones, JPS Solutions and the Brighter Choice Foundation  
**Date:** 8/24/2006  
**Re:** **UPDATED: Summary of New Non-regulatory Guidance re SES**

---

Please allow this memorandum to serve as an update to our previous distributed memo.

The U.S. Department of Education (USDOE) issued new non-regulatory guidance regarding supplemental educational services (SES) earlier this month. This non-regulatory guidance can be accessed on the internet at the U.S. Department of Education's website (<http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc>) or at the Brighter Choice Project website (<http://www.brighterchoiceproject.org>). While I strongly encourage you to review the entire document, I have summarized some of the critical clarifications to and changes in SES policies and practices set forth in the new non-regulatory guidance. (Note: You may want to print this memo, along with the guidance document, and keep them for future reference.)

1. The guidance states that districts can allow parents to switch SES providers during the school year if they are dissatisfied with the SES provider's services. To facilitate such SES provider replacements, districts are encouraged to arrange that payments to SES providers occur on a frequent basis, rather than on a once-a-semester or on an annual basis.
2. The guidance states that districts may not lower the per-pupil amount for SES, even for truncated (e.g. summer) programs. In other words, **SES providers offering only summer programs are eligible to receive the same per-pupil amount as SES providers offering school-year programs**, assuming the per-pupil amount is not higher than their actual costs.
3. The guidance makes clear that state education agencies (SEAs) must ensure that each district in the state has fully met parental demand for SES and for transportation related to the school choice provisions of No Child Left Behind. According to No Child Left Behind, districts

must set aside funds in an amount equal to 20 percent of their Title I, Part A funds to support SES and choice-related transportation. The guidance provides that districts are allowed to reallocate the funds required to be set aside for SES and to use them for other purposes (e.g. non-SES district-run programs) **only after fully meeting the parental demands for SES and choice-related transportation**. According to the guidance, districts should **be prepared to document that they have fully met all demand from parents** before they can reallocate any of these funds. The guidance provides some criteria for determining if a district has fully met all parental demand, including:

- i. Has the district appropriately notified all eligible parents of the availability of SES?
- ii. Has the district adequately publicized options to parents in understandable formats and multiple forums?
- iii. Has the district offered parents a reasonable period of time to investigate their options and submit their requests for SES?

**If a district has documented parental demand for SES (e.g., parent applications and requests for SES) to absorb the full set-aside amount but, for whatever reason, spends less than the full set-aside amount, the district will be out of compliance with the law and subject to enforcement sanctions unless it re-opens enrollment for SES.** If re-opening enrollment for SES is impossible, the district must carry over to the following school year the unexpended balance of the set-aside amount and use that balance for SES and choice-related transportation in that year.

4. The guidance states that SEAs are responsible for ensuring that SES is implemented by districts in their states in full compliance with No Child Left Behind and with state laws. The guidance states that SEAs must be proactive in monitoring districts, and suggests that SEAs should consider requiring each district to submit to them copies of SES parental notification letters and to provide them with updates throughout the year regarding how many students are eligible for supplemental educational services, how many students sign up for and attend SES sessions, and how much money (in total and per-pupil) is being spent on SES. **The U.S. Department of Education, as part of its auditing and monitoring of Title I, will seek to determine whether SEAs and districts are fulfilling this responsibility.**
5. When a SEA determines that a district is failing to fully implement its SES program, it should take “such corrective actions as the SEA determines to be appropriate and in

compliance with state law.” Under federal law, SEAs can then take any of a variety of measures, including withholding approval of part or all of a district’s Title I application; suspending Title I payments to the district; withholding Title I payments to the district following a hearing; and conducting a state audit which can result in ordering repayment of misspent Title I funds.

6. The guidance states that SEAs should be flexible in establishing the criteria for “demonstrated effectiveness” when approving SES providers. The guidance states that the No Child Left Behind law’s emphasis on promoting participation by the maximum number of providers to give parents as many choices as possible suggest that SEAs should be reasonable and flexible in establishing criteria for approving SES providers.
7. The guidance suggests that SEAs should consider ways that they can help parents understand and access supplemental educational services for their children. In other words, the USDOE advises SEAs to be proactive in making sure parents know about their right to receive SES for their children and that parents can access such SES easily. The guidance suggests that SEAs encourage school districts to hold provider fairs and engage in other initiatives to increase parent awareness of SES, and to provide parents with as much information as possible about providers and their programs.
8. The guidance suggests that SEAs consider developing uniform contracts for all districts so that they use fair and equitable contracts and do not unfairly marginalize SES providers or limit SES providers’ abilities to promote their programs and services. The guidance also suggests that SEAs consider providing technical assistance to districts to help remove barriers to parent participation in SES—e.g. posting registration forms on district websites.
9. The guidance states that **districts are encouraged to allow SES providers to operate in school buildings, either free of charge or for a reasonable fee.** Districts should ensure that the use of school buildings by SES providers is on the same basis and terms as are available to other groups that seek access to school buildings. The guidance further states that, if there is not enough space in school buildings to provide access to all SES providers, the process for selecting which providers can operate on school sites should be “fair, transparent, and objective,” and that **districts should provide parents with “as diverse and large a group of on-site providers as possible, including faith-based and community providers.”**
10. The guidance permits SEAs to establish minimum criteria that SES providers must meet in a variety of areas, including acceptable **ranges** (rather than absolute numbers) for student/tutor

ratios and rates. **The guidance is clear, however, that SEAs desiring to set program design parameters should ensure that such parameters do not result in the exclusion of faith-based and community-based organizations from participating as eligible providers.** Nor may SEAs require that all tutors meet the highly qualified teacher requirements of NCLB.

11. The guidance states that school districts may not impose requirements that affect the design of an approved SES provider's program. In other words, while SEAs may establish acceptable ranges for SES program components such as rates or student/tutor ratios, but they may not dictate absolute numerical requirements, school districts may not dictate mandate such requirements. For instance, districts may not mandate the number of instructional hours all SES providers must deliver in order to receive the statutory per-student amount. The guidance is clear that **“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.”**
12. The guidance permits SEAs to establish rules limiting SES providers' use of financial incentives or other gifts. These rules should apply equally to all providers and should not bar private SES providers from doing things that public SES providers (e.g. district-run schools) can do. The guidance also recommends that SEAs expressly prohibit SES providers from engaging in unfair business practices such as offering kickbacks to district officials, principals or teachers who “steer” parents to particular providers.
13. The guidance requires SEAs to watch for LEA practices that give preferential treatment to certain providers, including the LEA's own program, over other providers' programs. Examples of preferential treatment include a district providing access to school facilities free-of-charge to some providers while charging rent to others and a district advertising its own program to parents but not allowing other providers to advertise in the same way. Districts are permitted to provide guidance to parents, upon request, but such guidance must be “unbiased.”
14. The guidance states that districts should be aggressive and proactive in informing parents about their eligibility for SES and their options regarding SES providers. The guidance states that districts should notify parents of their eligibility for SES early in the school year. This notification must be in an understandable and uniform format and in as many languages as appropriate and practicable. The notification must let parents know about: (1) the availability

of SES and that SES tutoring is provided free of charge; (2) the providers able to serve the geographical area; and (3) the services, qualifications, and demonstrated effectiveness of each provider. **The language used in the notification should be clear and easily understandable**—e.g. “free tutoring,” instead of or in addition to “supplemental educational services”—and **it should be “at an educational level that is appropriate for all parents.”** Districts are encouraged to produce SES brochures and other materials to inform parents about SES.

15. **The guidance is clear that the annual notification to parents is simply a first step, and that additional efforts should be made to inform parents about SES.** Districts should enlist the support of individual schools in their campaigns to reach parents through inclusion of SES in “back to school” programs and similar events. The guidance encourages districts to use “multiple, traditional, and non-traditional, ways to provide outreach to parents.”
16. The guidance encourages districts to “personalize the SES process” for parents by having staff or volunteers assigned with responsibilities to help parents understand and complete the SES enrollment application and to use the resources and contacts of parent outreach centers and faith-based and community-based organizations. Districts should enable parents to register for SES online.
17. The guidance states that, if few eligible parents sign up for services, districts should evaluate their outreach efforts and consider the extent to which these efforts reflect **the six communication goals for designing and implementing an effective outreach strategy to parents:**
  - i. Get parents’ attention;
  - ii. Inform them about their SES options;
  - iii. Help them understand how to obtain services;
  - iv. Motivate parents to take action to exercise their options;
  - v. Encourage parents to follow and communicate about their children’s progress;  
and
  - vi. Influence parents to provide feedback regarding the impact and quality of the services their children receive.
18. The guidance provides that information about students eligible to receive SES must be treated as confidential by districts unless parents consent to the release of such information, in writing. In other words, districts may release information regarding which students are

eligible to receive SES if parents first provide consent to such disclosure. Districts may ensure that information on providers is available to parents by: a) including a parental consent line on the SES application form, so that parents can provide consent to share information with providers at the same time that they express their interest in receiving services; b) asking providers to give districts stamped envelopes containing information about their programs to be mailed by the districts to parents of eligible students; and c) holding providers fairs.

19. The guidance makes clear that districts declared “in need of improvement” may not be SES providers, and that if a district that is an approved SES provider becomes “in need of improvement” during the school year, it must cease providing SES tutoring immediately upon being notified of its “in need of improvement” status.
20. The guidance states that teachers in schools or districts “in need of improvement” may serve as tutors for approved SES providers.
21. The guidance states that districts can impose reasonable administrative requirements on SES providers—e.g. that providers conduct background checks on tutors and that providers have liability insurance. Such administrative requirements will be acceptable if they are reasonable, do not subject supplemental educational service providers to more stringent requirements than apply to other contractors of the district and do not have the effect of inappropriately limiting educational options for parents.
22. The guidance states that, where there are no SES providers that can serve special education students or students with limited English proficiency, the district can provide SES tutoring to such students without necessarily becoming an approved SES provider.
23. The guidance re-states the rules regarding faith-based involvement in SES in section C-9.
24. A sample parent notification letter is included in Appendix B.

Hope this helps. Please feel free to call me or to send an e-mail if you have any questions about this, or if you want to talk about what this new guidance may mean for your organization or district.

Take good care, and continued good luck with your SES programs,

Wayne