



**U.S. DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL**

**An OIG Perspective on the
Supplemental Educational Services Provisions of
the Elementary and Secondary Education Act**

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effectiveness, and integrity of the
Department's programs and operations.



U.S. Department of Education
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EXECUTIVE SUMMARY

The Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001, is due for reauthorization in 2008. The upcoming reauthorization provides the Congress an opportunity to further amend the ESEA, if it determines that changes to the law are warranted. The OIG has completed 11 reviews that evaluated state educational agency (SEA) and local educational agency (LEA) implementation of the supplemental educational services (SES) provisions of the ESEA. This paper was developed based on the knowledge obtained while conducting these reviews. The paper provides an OIG perspective on selected SES provisions in the ESEA and U.S. Department of Education (Department) regulations.

This paper discusses one issue relevant to the SES eligibility provisions of the ESEA and provides three alternatives to the current eligibility rules in the ESEA.

One of the primary goals of the ESEA is to close the achievement gap and ensure that all students, including those who are disadvantaged, achieve academic proficiency. The ESEA currently limits eligibility for SES to children of low-income families and only considers academic achievement if the demand for SES exceeds the available resources. Thus, students performing at proficient or higher levels academically are eligible for free tutoring if they are low-income, while students that are not low-income are excluded from SES eligibility even if their academic performance is below proficient (low-achieving).¹ In contrast, all students attending Title I schools in need of improvement have the School Choice option, which allows parents to enroll their children in a school not in need of improvement. Consideration should be given to whether the focus of SES eligibility should be on academic proficiency rather than family income.

We have identified three alternative approaches to eligibility that merit consideration during ESEA reauthorization:

- Further limit SES eligibility to only low-achieving students in low-income families, thereby focusing services on those students with the greatest overall needs.
- Modify SES eligibility to include all low-achieving students in Title I schools in need of improvement in order to better achieve the ESEA goal of closing the achievement gap and ensuring all students achieve academic proficiency.
- Expand SES eligibility to include not only the low-income students, but also the low-achieving, higher income students not currently eligible, thereby increasing the number of students allowed to receive SES.

¹ LEAs must prepare and disseminate annual report cards that provide information on individual student performance on state assessments in terms of three levels: basic, proficient, and advanced. We use the term “low-achieving” to describe those students scoring at the basic level.

The benefits of the various approaches, which are presented in the body of the paper, include focusing SES on students who are below proficient in academic achievement, providing LEAs with more flexibility in the use of Title I funds to meet the goals of the ESEA, and reducing the administrative burden on LEAs.

This paper also discusses one issue relevant to the Department's implementing regulations that currently prohibit schools or LEAs identified as in need of improvement from operating as SES providers.

Even though the ESEA contains no specific prohibition, the Department's regulations currently prohibit any school or LEA identified as in need of improvement from operating as an SES provider. The Department has determined that these schools and LEAs should be focusing on efforts to help students meet state academic achievement standards and that students are not well served receiving SES from providers that are consistently failing to meet adequate yearly progress targets. In contrast, the Department's SES guidance allows SES providers, including schools or LEAs not in improvement status operating as SES providers, to hire teachers from schools in improvement status for their SES operations.

The Department's policy of not allowing schools or LEAs in improvement to operate as SES providers may override SEA authority to evaluate and approve SES providers operating in their states and may also unnecessarily increase the costs of delivering SES by eliminating school or LEA providers that could deliver SES at a lower cost than private providers. This policy may also reduce the provider options available to parents of eligible students. Therefore, we suggest that the Department reconsider its policy on this matter and explore strategies for evaluating the quality of each SES program operated by a school or LEA that is identified as in need of improvement.

BACKGROUND

The ESEA requires LEAs to offer SES to students from low-income families when the students attend a Title I school that is in the second year of school improvement, or that has been identified for corrective action or restructuring.² SES consists of tutoring, remediation, and other educational interventions that are designed to increase the academic achievement of students, and are in addition to instruction provided during the school day.

State-approved SES providers, selected by the individual student's parents, provide SES to eligible students under agreements with LEAs. These agreements, which should be developed in consultation with the parents and the provider, are required to include a statement of specific achievement goals, identify how the student's progress will be measured, and set a timetable for improving the student's achievement. If the funding available for SES is not sufficient to provide SES to all students whose parents have requested services, the LEA must give priority to the lowest achieving students.

The SEA is responsible for evaluating potential providers, maintaining a current list of approved providers, and monitoring all providers delivering services in the state. The SEA must develop and apply objective criteria when evaluating potential providers. SES providers include for-profits, non-profits, LEAs, public and private schools, and faith-based organizations. To meet its monitoring requirements under the ESEA, the SEA must develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by each approved provider and for withdrawing approval from a provider that fails, for two consecutive years, to contribute to increasing the academic proficiency of students receiving SES.

The Department published an interim report on its National Assessment of Title I that provided data showing that the SES option is not being fully utilized.³ Only 233,000 out of 1.4 million eligible students (17 percent) participated in SES programs in school year 2003-2004.

The OIG has completed a body of work related to SES. This work includes audits of five SES providers operating in California and their relationships with LEAs, as well as reviews of SEA and LEA implementation of the School Choice and SES provisions of the ESEA in six other states and multiple LEAs. Please refer to the Appendix of this report for a list of these reviews. This OIG Perspective Paper is being issued in conjunction with the OIG Management Information Report entitled, Implementation of Supplemental Education Services in California (control number ED-OIG/X09G0007), which provides suggestions to the Department for enhancing its SES guidance.

² Title I schools that fail to make adequate yearly progress (AYP) for two consecutive years are identified for school improvement. Title I schools are identified for corrective action if they do not make AYP for four years, while Title I schools not making AYP for five years are identified for restructuring. The "low-income family" determination is based on the same poverty data that an LEA uses to allocate Title I, Part A funds to its schools under section 1113 of the ESEA, Title I. Those data are usually a student's eligibility for free or reduced price lunch under the National School Lunch Program.

³ National Assessment of Title I Interim Report, Institute of Education Sciences – National Center for Education Evaluation and Regional Assistance, NCEE 2006-4001, February 2006.

Issue 1: Modification of SES Eligibility Rules

Our work on SES implementation has raised questions about the current SES eligibility criteria in the ESEA. One of the primary goals of the ESEA is to close the achievement gap and make sure all students, including those who are disadvantaged, achieve academic proficiency. The ESEA provides two options for parents once a Title I school has been identified for school improvement for at least two years—parents can either choose to enroll their child in a school that is not in improvement status (the School Choice option) or they can enroll their child in SES.⁴ Whereas all parents of students attending Title I schools in improvement are afforded the School Choice option, the ESEA places an income restriction on SES eligibility. As a result, only low-income families are afforded the SES option.⁵ The Department advised us that SES eligibility is currently limited to students from low-income families to ensure that such students are not precluded from access to additional tutoring because of the limited resources of their families.

ESEA Section 1116(e)(12)(A) identifies students eligible for SES as “a child from a low-income family...” ESEA Section 1116(b)(10)(C) requires LEAs to give priority for SES to the lowest-achieving children if the required funding is not sufficient to provide SES to each child whose parents request the services. Thus, under the current law, all low-income students attending schools in need of improvement, whether they are struggling academically or excelling in school, are entitled to free tutoring if adequate funding is available. Eligibility for SES is only limited to lower achieving low-income students when an LEA determines that the demand for SES exceeds the resources available to provide SES. The Department’s regulations related to SES can be found at 34 C.F.R. §§ 200.45 through 200.48.

The remainder of this report section discusses three approaches to defining SES eligibility that are worthy of consideration during ESEA reauthorization. The table below shows which students are currently eligible for SES under the ESEA and identifies which students would be eligible for SES under each of the three alternative approaches. Higher-income, high achieving students are not currently eligible for SES and would not become eligible for SES under any of the alternative approaches discussed below.

	Low-Income and Low-Achieving	Low-Income and High-Achieving	Higher-Income and Low-Achieving
Current Law	X	X	
Approach 1	X		
Approach 2	X		X
Approach 3	X	X	X

⁴ ESEA Section 1116(b)(9) requires LEAs to pay for transportation costs if a parent elects School Choice.

⁵ Schools classified as Provision 2 or 3 schools under the National School Lunch Act can offer SES to all students regardless of family income.

Approach 1: Limit SES Eligibility to Low-Income, Low-Achieving Students

One approach would be to limit eligibility to students that are both low-income and low-achieving. This approach would focus SES resources on students that are both disadvantaged economically and underachieving academically. Low-achieving students would continue to be defined in relation to each state's student academic achievement classifications. Under this approach, students classified as proficient or above would no longer be eligible for SES. For example, in California, which has five student achievement classifications, students deemed proficient or advanced would not be eligible for free tutoring under the SES provisions of the ESEA.⁶ Limiting eligibility for SES to students that are both low-income and low-achieving would likely result in the following:

- Focus SES on students with the greatest overall needs (disadvantaged and low-achieving).
- Eliminate confusion regarding when/how LEAs should prioritize and eliminate the need to prioritize in many LEAs.⁷
- Reduce the administrative burden on many LEAs (e.g. fewer parent notifications, fewer individual student learning plans, reduced likelihood of needing to institute a prioritization process).
- Reduce set asides for SES, which could provide LEAs added flexibility to target more Title I funds for other program activities aimed at low-achieving disadvantaged students.

Approach 2: Modify SES Eligibility to Include All Low-Achieving Students

In contrast to further limiting eligibility for SES under Approach 1, this approach would modify SES eligibility to include all low-achieving students attending Title I schools identified as in need of improvement. This change to SES eligibility would eliminate the income restriction in the current law and give more parents of students at schools in improvement the option of School Choice or SES. It would also enable LEAs to help additional underachieving students increase their academic achievement. However, students classified as proficient or above would not be eligible for SES under this approach. Despite this restriction, demand for SES would likely increase under this approach and prioritization might be necessary in more schools.⁸ Offering SES to all low-achieving students in schools where SES must be provided could have a greater positive impact on overall school achievement than the current system or one in which eligibility is limited to low-income and low-achieving students (Approach 1), and is better aligned with the ESEA goal of ensuring academic proficiency for all students. Making SES available to all low-achieving students attending Title I schools required to offer SES would likely result in the following:

⁶ The five classifications for student achievement are advanced, proficient, basic, below basic, and far below basic. Students scoring at basic or below on California standardized tests are not meeting the state's academic standards.

⁷ Some LEAs perceived that SES was for low-achieving students that were also low-income. For example, one LEA limited eligibility to low-achievers first, then made a final eligibility determination based on whether the student was low-income. Another LEA's notification letter and other materials provided to parents interpreted ESEA provision on SES to apply only to low-achieving, low-income students.

⁸ The ESEA and the Department's SES regulations already contain provisions for SES prioritization and the Department has published SES guidance on prioritization.

- Better achievement of the ESEA goal of closing the achievement gap and ensuring all students achieve academic proficiency.
- Increase the number of students that can receive additional academic instruction.
- Increase the academic achievement of more students and help schools meet AYP targets sooner.
- Utilize more of the funding that LEAs are required to set aside for SES, and thus reduce carryover.

Approach 3: Expand SES Eligibility to Include Low-Achieving Higher Income Students

Under this approach, current SES eligibility provisions would be expanded to include low-achieving students that are currently ineligible because family income exceeds the low-income criteria. All low-income students, including those classified as proficient or above, attending Title I schools identified as in need of improvement would continue to be eligible for SES. If prioritization of SES were warranted using this approach, low-income students would have priority over other students. This approach would have similar benefits to those associated with Approach 2, while not eliminating eligibility for low-income students that are classified as proficient or above. Just as with Approach 2, this approach could also have a greater positive impact on school achievement than the current system or one in which eligibility is limited to low-income and low-achieving students (Approach 1).

We recognize that any of these approaches would require a change in legislation. However, the benefits described above warrant consideration of a change in the SES eligibility provisions of the ESEA. Therefore, we suggest that the Department and the Congress consider whether the ESEA should be amended to either (1) limit eligibility for SES to only those students that are both economically disadvantaged and academically underachieving, (2) make SES available to all low-achieving students attending Title I schools in need of improvement, or (3) offer SES to all low-income students as well as low-achieving students that do not meet the income criteria.

Issue 2: LEAs and Schools in Improvement Status Operating as SES Providers

There are many types of organizations functioning as SES providers, including LEAs and public schools. The ESEA does not specifically address whether a school or LEA that is identified for school improvement can operate as an SES provider. The ESEA requires an SES provider to have a demonstrated record of effectiveness in increasing student academic achievement. The Department has taken the position that a school or LEA in improvement cannot operate as an SES provider.⁹

ESEA § 1116(e)(4)(D) places the responsibility for evaluating and approving SES providers on the SEAs. In question A-2 of its SES guidance, the Department reaffirms the state's role by stating that an SEA "is required to identify organizations, both public and private, that qualify to provide these services." In question D-4 of its SES guidance, the Department states "[a]n 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." However, the Department's regulations at 34 C.F.R. § 200.47(b)(1)(iv)(A) and (B) prohibit schools that are in improvement or that have been identified for corrective action or restructuring, as well as LEAs that are identified for improvement or corrective action, from operating as SES providers. The Department has determined that these schools and LEAs should be focused on helping students meet state academic achievement standards and not divert staff and resources to the creation and operation of SES programs. The Department has also taken the position that students should not receive SES from entities that consistently fail to meet adequate yearly progress targets. However, the Department's regulations could be viewed as overriding the authority the ESEA grants to SEAs.

Citing the need to increase the number of eligible students receiving SES, the Department has granted a limited number of waivers to LEAs in improvement status that operate as SES providers. In November 2005, the Secretary approved "flexibility agreements" for the Boston Public Schools, the New York City Department of Education, and the Chicago Public Schools to operate as SES providers during the 2005-2006 school year.¹⁰ For the 2006-2007 school year, the Secretary again approved flexibility agreements for Boston Public Schools and Chicago Public Schools, and also approved flexibility agreements for the Anchorage School District and Hillsborough County Public Schools. The Secretary is requiring that these providers still be approved through the appropriate SEA's normal provider approval process and that each fulfill several conditions specified by the Secretary.

⁹ The Department recently issued a policy letter to all chief state school officers clarifying instances in which an SEA can approve an SES provider that is affiliated with an LEA that is in need of improvement. The letter states that "an SEA may approve as an SES provider an entity that is affiliated with an LEA in improvement or corrective action, provided that the SEA determines that the entity is separate and distinct from the LEA in which it is operating" and provides criteria for SEAs to consider when making this determination.

¹⁰ According to a Department official, the New York City Department of Education chose not to operate as an SES provider in school year 2005-2006.

Even though the Department normally prohibits schools or LEAs in school improvement from serving as SES providers, it does not prohibit teachers from these same schools or LEAs from working as SES tutors. Question C-15 of the Department's SES guidance states "[I]ndividual 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." In effect, this policy creates a situation in which the same teachers that may have served as tutors for the school or LEA provider instead may work for other SES providers, at a potentially significantly higher cost to the LEA.

The one LEA provider we reviewed could deliver SES to their students at a significantly lower cost than the other SES providers we reviewed. Our comparison of provider charges for SES at San Diego City Schools (SDCS), which also operates as an SES provider, showed that the LEA provided SES at less than half the cost of other providers serving SDCS students. In school year 2004-2005 the LEA provided SES to its students at a cost of \$256 per student served while other SES providers charged the LEA \$564, on average, for each student served.¹¹ Our audits of five SES providers also showed that the rate SDCS charged for SES was significantly lower than the rate the other providers we reviewed charged. Rather than charging for SES tutoring per hour and per student as the other providers did, SDCS only charged for those hours its teachers served as SES tutors at the teachers' normal hourly rate of pay and other costs such as fringe benefits and training. Assuming that other LEA providers charge for SES based on the teachers' hourly rates, as SDCS does, the LEA provider would provide SES to students at a significantly lower cost than non-LEA providers.

During our school choice and SES audit of Nevada, an LEA official expressed concern that for-profit providers' higher cost will reduce the benefit to the students.¹² She indicated that the for-profit providers hire district teachers at a higher rate than the district would as an SES provider. Three of the five providers we reviewed hired teachers from schools in need of improvement to tutor students in these same schools.

Prohibiting LEA providers from delivering SES when the LEA is identified as in need of improvement may cause SES costs to increase and the amount of tutoring provided to decrease. The current Department policy prohibiting schools or LEAs identified as in need of improvement from being providers could have the following impacts:

- The number of providers from which parents can choose is reduced.
- Fewer tutoring hours are available to individual students because they must enroll with higher cost providers that deplete per pupil allocations sooner.
- The number of students that can be served decreases because the average cost per student increases.
- The overall costs of the LEAs' SES programs increase because the lower cost provider is eliminated.
- Teachers that would have otherwise worked for the LEA provider are instead hired by outside providers that charge more and therefore increase the costs to the LEA.

¹¹ For school year 2004-2005, total costs for district-provided SES was \$744,227 for 2,905 students and total costs for SES provided by other SES providers was \$1,107,259 for 1,964 students.

¹² The OIG issued Final report, entitled *Nevada Department of Education's Compliance with the Public School Choice and Supplemental Educational Services Provisions* (Control Number A09F0002).

Rather than making a blanket determination that any LEA or school-affiliated SES provider is substandard because the LEA or school itself is identified as in need of improvement, the Department should reconsider its position on this matter and develop a strategy for evaluating the quality of the LEA/school provider's program. Specifically, the Department should consider the role of the SEAs, as specified in the ESEA, in evaluating and monitoring providers, as well as the cost benefits inherent in retaining LEA/school providers and the negative impacts on students if LEA/school providers are eliminated. Therefore, we suggest that the Department consider changing the regulations at 34 C.F.R. § 200.47(b)(1)(iv)(A) and (B) and explore strategies, such as those provided below, for assessing the quality of LEA/school providers that are in improvement status:

- The Department could rely on the SEAs to evaluate the performance of LEA/school providers during the normal provider approval and assessment cycles.
- The Department could require SEAs to perform more comprehensive assessments of LEA/school providers identified as in need of improvement.
- The Department could perform its own evaluation of LEA/school providers to determine the quality of the providers' programs.
- The Department could place special conditions in the regulations that the LEA/school provider in improvement status is required to meet in order to continue to provide SES.

PURPOSE AND SCOPE

This paper provides a discussion of issues relevant to the SES provisions of the ESEA and the Department's implementing regulations. It is intended to assist the Department and the Congress in determining whether revisions to the Act and/or the Department's regulations are necessary and beneficial.

We have completed 11 reviews related to SES that involved seven SEAs and 34 LEAs. These reviews included evaluations of SEA and LEA implementation of the SES provisions of the ESEA. Using the experience gained while conducting the audits, we developed this paper to provide an OIG perspective on selected SES provisions in the law and regulations and to suggest issues to be considered during reauthorization of the ESEA.

APPENDIX

The table below lists the audit reports issued by the OIG that are relevant to SES. The reports are available on the ED OIG Webpage at <http://www.ed.gov/about/offices/list/oig/areports.html> under the heading Office of Elementary and Secondary Education.

Audit Control Number	Report Title	Date Issued
A09F0019	San Diego City Schools' Compliance With Supplemental Educational Services Provisions	3/27/2006
A09F0022	Progressive Learning and Salinas Union High School District Compliance With ESEA's Supplemental Educational Services Provisions	2/27/2006
A03F0002	The State of Delaware's Compliance with NCLB School Choice and SES Provisions	11/22/2005
A09F0012	Learning Excitement Incorporated and Stockton Unified School District's Compliance With Supplemental Educational Services Provisions	11/12/2005
A09F0013	Professional Tutors of America and Los Angeles Unified School District's Compliance With Supplemental Educational Services Provisions	10/27/2005
A09F0009	ARC Associates' and Oakland Unified School District's Compliance With Supplemental Educational Services Provisions	10/13/2005
A02F0006	New Jersey Department of Education's Compliance with Title I, Part A, of the Elementary and Secondary Education Act of 1965	9/14/2005
A07F0003	Illinois State Board of Education's Compliance with the Public School Choice and Supplemental Educational Services Provisions of the No Child Left Behind Act	8/23/2005
A05F0007	The Michigan Department of Education's Compliance with the Public School Choice and SES Provisions of NCLB	8/2/2005
A09F0002	Nevada Department of Education's Compliance with the Public School Choice and Supplemental Educational Services Provisions	7/14/2005
A05E0014	Indiana Department of Education's Compliance with NCLB School Choice and SES Provisions	2/18/2005