

August 4, 2008

Dr. Carol R. Johnson
Superintendent
Boston Public Schools
26 Court Street
Boston, MA 02108

Dear Superintendent Johnson:

I am writing to notify Boston Public Schools (BPS) that it may continue its participation in the supplemental educational services (SES) pilot for the 2008-09 school year. By extending BPS's flexibility agreement, I am using my authority under section 9401 of the Elementary and Secondary Education Act (ESEA), as amended, to grant BPS eligibility to be a provider of SES to eligible students in Title I schools even though BPS has been identified for improvement and thus is precluded from providing SES under 34 C.F.R. § 200.47(b)(1)(iv)(B).

My decision to extend this flexibility agreement for 2008-09 is conditioned on BPS's fulfilling the requirements detailed in the enclosure to this letter, which include submitting two interim reports to this Department by October 15, 2008, and January 1, 2009, respectively, and a final report by June 30, 2009. Please be sure to review the enclosure carefully, as the conditions for participation have been revised since last year to ensure effective implementation of SES. In particular, please note the requirement that, before using for other allowable activities any unused funds set aside to meet the 20 percent expenditure requirement for SES and choice-related transportation, BPS must provide evidence to the Massachusetts Department of Elementary and Secondary Education that it has demonstrated success in implementing the conditions of this agreement. As part of this offer of flexibility, BPS may continue to count, toward meeting the 20 percent expenditure requirement, up to 1 percent of that amount (0.2 percent of BPS's total Title I allocation) on parent outreach activities for SES.

Additionally, due to significant ongoing concerns about whether BPS is administering the SES and public school choice options in a manner that is equitable and compliant with all statutory and regulatory requirements, I am placing the following specific conditions on BPS's flexibility agreement. These conditions are also listed in the enclosure.

- BPS must administer SES in a way that provides a level playing field for all providers by:
 - Eliminating apparent bias in its parent outreach materials so that the materials do not favor the LEA's program over private providers' programs;
 - Ensuring that its administration of SES for all providers and its management of its own program do not constitute a conflict of interest; and

- Ensuring that providers are given access to school facilities using a fair, open, and objective process, on the same basis and terms as are available to other groups that seek access to school facilities. In particular, BPS must: (1) cease charging for-profit and nonprofit providers different amounts for access to facilities, and (2) ensure that its access and usage fees are reasonable.
- BPS must cease calculating its costs for choice-related transportation in a way that violates Department guidance. Department guidance allows BPS to count, toward meeting the 20 percent expenditure requirement, only the costs of transporting a student who:
 - Has a “home” or “neighborhood” school (to which the student would have been assigned, in the absence of a choice program) that receives Title I funds and has been identified, under the statute, as in need of improvement, corrective action, or restructuring;
 - Has elected to enroll, at some point since July 1, 2002 (the effective date of the Title I choice provisions), and after the home school has been identified as in need of improvement, in a school that has not been so identified and is attending that school; and
 - Is using district transportation services to attend the non-identified school.

As noted in the enclosure, BPS must also participate in a kick-off meeting on site at BPS with staff members from the Massachusetts Department of Elementary and Secondary Education and this Department, prior to the start of the school year, to ensure that all parties understand the conditions of the pilot. Also, I am requiring that the Massachusetts Department of Elementary and Secondary Education agree to carry out greater monitoring of BPS’s implementation of SES by conducting an on-site visit at least annually that will focus specifically on SES implementation. BPS may also be subject to additional monitoring from this Department.

In addition, as part of the terms of this flexibility agreement, BPS must submit a report under section 9401(e)(1) of the ESEA to the Massachusetts Department of Elementary and Secondary Education at the end of the 2008-09 school year that: describes the district’s provision of SES to eligible students in Title I schools; describes how those schools continued to provide Title I services to eligible students; and evaluates the progress of the district and schools in improving the quality of instruction and the academic achievement of students. The Massachusetts Department of Elementary and Secondary Education must then submit a report to this Department based on BPS’s report.

As part of BPS’s participation in the SES pilot, we also ask for your continued assistance with the third-party evaluation that we are conducting of BPS and the other districts participating in the pilot. We will need BPS to supply our evaluator with student achievement data files and other information necessary to conduct an evaluation of the effects of SES on student achievement.

This flexibility agreement continues to serve several important goals: increasing the number of students receiving SES; ensuring early notice about SES through multiple venues and extended enrollment windows; allowing external organizations reasonable access to school facilities; and providing information on the academic achievement of students receiving SES.

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This extension of BPS's flexibility agreement applies to the provision of SES in Title I schools in BPS during the 2008-09 school year and is subject to a review at the end of that school year to determine if the flexibility will be continued.

SES is an important component of NCLB, and we look forward to working with you to ensure that students are accessing services and succeeding in the classroom.

Sincerely,

Margaret Spellings

Enclosure

cc: Honorable Mitchell D. Chester

**Agreement for the Provision of Supplemental Educational Services
by Districts in Improvement Status for the 2008-09 School Year**

BOSTON PUBLIC SCHOOLS

Goals of Participation

- To increase the number of students receiving supplemental educational services (SES) under NCLB.
- To evaluate the effectiveness of SES provided by districts and external organizations to raise reading and math scores on state tests and to identify best practices.

Conditions of Participation

Parent Notification and Outreach

- The district must provide parents with an early notification of opportunities for SES under NCLB, contingent upon receiving timely state assessment results for making AYP and school improvement determinations.
- The district must notify parents of the availability of SES in correspondence that is written in language that parents can understand. This notice must highlight the benefits of SES and be clear and concise, as well as clearly distinguishable from the other information sent to parents notifying them that their child's school is in improvement status.
- The district must notify parents and the community of the availability of SES and offer an opportunity for parents to sign their child up for SES by letter to the student's home and by at least two other means, such as community flyers, newspaper postings, or other methods. The district must partner with community-based organizations to inform students and parents of SES options to the extent practicable.
- The district must include on its Web site the following information: the number of students who were eligible for and who participated in SES and public school choice during the 2007-08 school year; a list of SES providers approved to serve the district, as well as the locations where services will be provided for the 2008-09 school year; and a list of available schools to which students eligible for public school choice may transfer for the 2008-09 school year.

Enrollment Process

- The district must provide either a rolling or expanded enrollment process, or more than one opportunity during the school year for parents to enroll their children in SES, and must allow eligible students to receive SES throughout the academic year.
- o The district must make sign-up forms widely available and accessible and must distribute them directly to all eligible students and parents.

Equitable Treatment of Non-LEA Providers

- The district must administer SES in a way that provides a level playing field for all providers by:
 - Eliminating apparent bias in its parent outreach materials so that the materials do not favor the LEA's program over private providers' programs;
 - Ensuring that its administration of SES for all providers and its management of its own program do not constitute a conflict of interest; and
 - Ensuring that providers are given access to school facilities using a fair, open, and objective process, on the same basis and terms as are available to other groups that seek access to school facilities. In particular, the district must: (1) cease charging for-profit and nonprofit providers different amounts for access to facilities, and (2) ensure that its access and usage fees are reasonable.

Funding

- The district must obligate, contingent upon demand for SES and public school choice, an amount equal to 20 percent of its Title I, Part A allocation for SES and choice-related transportation. The district must, before using for other allowable activities any unused funds set aside to meet the 20 percent expenditure requirement for SES and choice-related transportation, provide evidence to the state that it has demonstrated success in implementing the conditions of this agreement.
- The district must cease calculating its costs for choice-related transportation in a way that violates Department guidance. Department guidance¹ allows the district to count, toward meeting the 20 percent expenditure requirement, only the costs of transporting a student who:
 - Has a "home" or "neighborhood" school (to which the student would have been assigned, in the absence of a choice program) that receives Title I funds and has been identified, under the statute, as in need of improvement, corrective action, or restructuring;
 - Has elected to enroll, at some point since July 1, 2002 (the effective date of the Title I choice provisions), and after the home school has been identified as in need of improvement, in a school that has not been so identified and is attending that school; and
 - Is using district transportation services to attend the non-identified school.
- The district may count, toward meeting the 20 percent expenditure requirement, costs for parent outreach for SES and public school choice. The amount that may be counted toward the 20 percent expenditure requirement is capped at 1 percent thereof (0.2 percent of the district's Title I, Part A allocation). The district may spend more than the 1 percent on parent outreach activities but cannot count more than that amount toward its expenditure requirement.

Monitoring and Reporting

- The district must participate in a kick-off meeting on site at the district with staff members from the SEA and the U.S. Department of Education, prior to the start of the school year, to ensure that all parties understand the conditions of the pilot. The Department may conduct additional monitoring of the district, on site or through other means, as warranted.

¹ See <http://www.ed.gov/policy/elsec/guid/stateletters/choice/choice081804.html> for this guidance.

- The SEA must carry out greater monitoring of the district's implementation of SES by conducting an on-site visit at least annually that will focus specifically on SES implementation.
- The district must submit to the Department two interim reports on how it met the goals and conditions of the pilot by October 15, 2008, and January 1, 2009, respectively, and a final report by June 30, 2009.

Program Evaluation

- The district must participate in an independent, third-party evaluation of the effects of its own services and those of external providers on state reading and math tests, including an analysis of the characteristics of children served by district and external providers, and gains in student achievement, controlling for student background characteristics and prior achievement.