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Supplemental Educational Services for Children from Low-Income Families Under ESEA Title I-A

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Summary

Supplemental educational services are educational activities provided outside of normal school hours that are designed to augment or enhance the educational services provided during regular periods of instruction. Examples include tutoring in specific subject areas and preparation for academic achievement tests. The No Child Left Behind Act (P.L. 107-110) amended the Elementary and Secondary Education Act (ESEA) to authorize supplemental educational services as a means of school improvement. Local educational agencies (LEAs) are required to provide students from low-income families, who attend Title I-A schools that have been identified for a second year of school improvement, corrective action, or restructuring, the opportunity to receive supplemental educational services from a state-approved provider.

Public and private non-profit or for-profit providers are eligible to deliver supplemental educational services upon being approved by state educational agencies (SEAs). Parents of eligible students may select from approved providers offering services in the jurisdiction of the LEA where their child attends school, or that of a neighboring LEA. In instances where only a limited number of eligible children can be provided with supplemental educational services — for example, because of funding constraints or the limited availability of approved providers — priority must go to the lowest achieving eligible children. Providers are required to demonstrate that the services they provide contribute to the increased academic proficiency of the eligible children they serve, as measured according to state standards, in order to retain their status as approved providers.

If there is sufficient demand for supplemental educational services, LEAs must dedicate an amount equal to between 5% and 20% of their Title I-A allocations to fund them. Costs per pupil are limited to the lesser of an LEA's Title I-A allocation per poor student, or the actual cost of services. Nationwide, there is considerable variation across LEAs in the maximum amount of funding available per pupil.

As more schools are identified for a second year of school improvement, corrective action, or restructuring, LEAs are being required to offer increasing numbers of students from low-income families the opportunity to receive supplemental services. It appears that greater proportions of eligible students are choosing to receive supplemental educational services than to change schools under the ESEA Title I-A public school choice provisions. However, there have been challenges to implementation, such as the availability of services in rural areas, timely notification of parents regarding their children's eligibility for services, negotiation of contracts with providers for service delivery, and measurement of the effectiveness of supplemental educational services in improving student academic achievement.

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Background

Supplemental educational services in the general sense are educational activities provided outside of normal school hours that are designed to augment or enhance the educational services provided during regular periods of instruction. Examples include tutoring in specific subject areas and preparation for academic achievement tests. Supplemental educational services are provided by a variety of public and private non-profit and for-profit entities. In many instances, parents pay for their children to receive these services; however, increasingly, privately-financed scholarship programs and the government are subsidizing the provision of supplemental educational services to children from low-income families. In this report, we limit our discussion of supplemental educational services to those provided as part of federally funded programs. Under current federal law, LEAs are required to offer supplemental educational services to children from low-income families who attend schools that have been identified for a second year or school improvement, corrective action, or restructuring under Title I, Part A of the Elementary and Secondary Education Act (ESEA).¹

In the past, federally funded programs that provide educational services to disadvantaged students outside of the regular school day have been successful in reaching a portion of children attending Title I schools. Based on information from the National Longitudinal Survey of Schools (NLSS), the U.S. Department of Education (ED) reports that during the 1999-2000 school year, 69% of Title I schools operated before or after school programs and in 30% of Title I schools, these extended day programs were funded by Title I. In the highest poverty elementary schools (those with poverty rates between 75% and 100%), before and after school programs provided students with an average of 227 additional hours of instruction per year. Students in the highest poverty secondary schools were provided an average of 279 additional hours of instruction per year through extended day programs. However, the NLSS reveals that only a limited proportion of students attending Title I schools received additional instruction — 26% in the highest poverty schools, and 20% overall.²

¹ ESEA, Title I (Improving the Academic Achievement of the Disadvantaged), Part A (Improving Basic Programs Operated by Local Educational Agencies) §1116(e). (Hereafter referred to as Title I-A).

² U.S. Department of Education, Office of the Under Secretary, Planning and Evaluation (continued...)

The first significant opportunity under a federally funded program for parents to select between public and *private* providers of tutorial or supplementary educational services came under the Reading Excellence Act, through programs funded by tutorial assistance subgrants.³ In administering tutorial assistance subgrants, LEAs were required, among other things, to provide parents the opportunity to select a tutorial provider for their child from among a variety of choices that included both a school-based program and programs delivered by private providers operating under contract with the LEA. While previously in other federal education programs, private non-profit and for-profit providers delivered services under contract, tutorial assistance subgrants marked the first direct opportunity for parents to select a private entity to provide educational services to their children. Some believed that this might be a first step toward publicly funded school vouchers.

The Reading Excellence Act required SEAs receiving reading and literacy grants to award at least one tutorial assistance subgrant to LEAs that were eligible according to certain criteria. Those criteria were that the LEA had at least one school located in an empowerment zone or enterprise community; at least one school identified for school improvement; the highest or second-highest number of Title I-A eligible pupils in the state; or the highest or second-highest school age poverty rate in the state. Little information is available as of yet about the effectiveness of the tutorial assistance subgrants; however, national and state evaluations of the program were required under the authorizing legislation.

During the 107th Congress's deliberations over reauthorization of the ESEA, the House and Senate considered numerous proposals to expand federal support of parental choice and access to privately provided educational services. Proposals were made to do so through school vouchers and tax subsidies. While legislation was enacted into law allowing tax-free distributions from Coverdell Education Savings Accounts to be used for elementary and secondary education expenses, including tuition and fees for private school attendance, neither chamber passed a school voucher provision. However, the Congress did pass legislation offering children from low-income families who attend Title I-A schools that do not improve after being identified for school improvement, the opportunity to receive supplemental educational services from selected public or private providers. This provision was enacted into law as Section 1116(e) of the No Child Left Behind Act (P.L. 107-110), which reauthorized the ESEA.

² (...continued)

Service, *Provision of Title I Services: Recent Evidence from the National Longitudinal Survey of Schools*, Aug. 2002. Available at [http://www.ed.gov/offices/OUS/PES/title1_service03.pdf].

³ The Reading Excellence Act was incorporated into the ESEA in 1998 under P.L. 105-277. Funds for reading and literacy grants, and tutorial assistance subgrants, were authorized from FY1999 through FY2001. Tutorial assistance subgrants no longer are authorized under the ESEA as amended by P.L. 107-110. For further information on the Reading Excellence Act, see CRS Report RL30663, *The Reading Excellence Act: Implementation Status and Issues*, by Gail McCallion.

Supplemental Educational Services Under ESEA

Supplemental educational services, as provided for in the ESEA, are tutoring and other academic activities that are in addition to any instruction provided during the regular school day, and that are designed to increase students' achievement on state academic assessments and their proficiency in meeting state academic achievement standards. The ESEA requires LEAs to offer supplemental educational services to low-income students who attend Title I-A schools that have not made adequate yearly progress (AYP) for three or more consecutive years, as part of a series of requirements in support of school improvement.⁴ Students receiving supplemental education services remain eligible to receive Title I-A services otherwise provided through school-wide or targeted school programs.

Under the ESEA, students who attend Title I-A funded schools identified for school improvement after failing to make AYP for two consecutive years must be offered public school choice. This consists of the opportunity to select from among two or more schools from within the same LEA that have not been identified for school improvement, corrective action or restructuring;⁵ and that have not been designated as unsafe, (unless prohibited by state or local law or policy).⁶ The lowest achieving students from low-income families must receive priority in choosing an alternate school. Schools identified for improvement also are required to implement school improvement plans and be provided with technical assistance. LEAs must offer students attending schools identified for a second year of school improvement the opportunity to receive supplemental educational services, in addition to the continued opportunity of intradistrict public school choice.⁷ In instances where a school was in school improvement for two or more consecutive school years prior to the enactment of P.L. 107-110, students attending such a school became eligible to receive supplemental educational services beginning the first day of school year 2002-2003. In its regulations implementing the requirements of Title I-A, ED provides that in instances where LEAs are unable to offer public school choice to

⁴ For a more thorough description of ESEA accountability and school improvement requirements, see CRS Report 31487, *Education for the Disadvantaged: Overview of ESEA Title I-A Amendments Under the No Child Left Behind Act*, by Wayne Riddle.

⁵ A school would be identified for corrective action after failure to make AYP for four consecutive years; it would be identified for restructuring after failure to make AYP for five consecutive years.

⁶ 34 CFR 200.44; and U.S. Department of Education, *Public School Choice: Nonregulatory Guidance*, Draft, Feb. 6, 2004. Available at [<http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.pdf>].

⁷ It should be noted that in many large poor LEAs, there are often schools that are eligible for assistance under Title I-A, but that do not receive funding because other schools in the LEA have greater proportions of Title I-A eligible students. If such schools fail to make adequate yearly progress, poor students attending these schools would not be required to be offered supplemental educational services (or public school choice) because these schools are not subject to school improvement requirements under ESEA Section 1116.

students attending schools that are in the first year of school improvement, LEAs *may* offer these students the opportunity to receive supplementary educational services.⁸

Parents whose children are eligible to receive supplemental educational services must be afforded the opportunity to choose a provider from a list of those approved by the SEA and that offer services in the local area. To facilitate parental choice in the selection of supplemental educational services providers, the ESEA delineates certain responsibilities for LEAs, SEAs, and providers.

Local Educational Agency Responsibilities

LEAs whose jurisdiction includes a school receiving funding under ESEA Title I-A that has been identified for a second year of school improvement, or that has been identified for corrective action or restructuring under ESEA Title I-A, are required to make arrangements for the provision of supplemental educational services to children from low-income families who attend that school or schools. In doing so, at least once per year, such LEAs must notify parents of children who attend such schools of the availability of supplemental educational services for their children. In this notification to parents, LEAs must identify providers (including providers that offer services through distance learning) that offer supplemental educational services either within the LEA's jurisdiction or that of a neighboring and reasonably accessible LEA, and must provide a description of each provider, to include the services it provides, its qualifications, and its demonstrated effectiveness.⁹ If requested, LEAs must provide parents with assistance in selecting a provider. If sufficient funds are not available to serve all eligible children, LEAs must give priority to the lowest achieving of eligible children. Finally, LEAs are prohibited from disclosing the identity of a student who is eligible or receiving supplemental educational services without the written permission of the student's parents.

Once the parents of an eligible student select an approved supplemental educational services provider, the LEA then must enter into an agreement with the provider covering the provision of services. Among the requirements of such agreements are that an LEA must consult with both a student's parents and the provider in the development of academic achievement goals for the student and how achievement of those goals will progress and be measured. If a student with a disability is to be served, the plan must be consistent with the student's individualized education program (IEP). The LEA is responsible for making payment to the provider for the costs of providing supplemental educational services.

⁸ 34 CFR 200.44(h)(2). However, when LEAs voluntarily offer supplemental educational services, they are not bound by the requirements of ESEA §1116(e) otherwise applicable to supplemental educational services.

⁹ An LEA may request from the SEA a full or partial waiver of the requirement to make supplemental educational services available if no providers approved by the SEA offer services either in the LEA's jurisdiction or within a reasonable distance, and if the LEA also shows that it is unable, itself, to provide supplemental educational services.

State Educational Agency Responsibilities

SEAs are responsible for working to ensure that parents have the opportunity to choose from among the greatest number of qualified supplemental educational services providers. Each year, SEAs are required to notify potential providers of the opportunity to become, and procedures for becoming, an approved provider of supplemental educational services. They also must evaluate potential providers' effectiveness in improving students' proficiency as measured according to state academic standards for required subjects (reading or language arts and mathematics, and, no later than school year 2005-2006, science). In addition, SEAs are required to develop standards and techniques for monitoring the actual effectiveness of providers in increasing the academic proficiency of students who receive supplemental educational services provided under ESEA Title I-A. Finally, SEAs must establish and maintain lists of approved providers, delineated by LEA. They must remove from the list of approved providers any that fails for two consecutive years to contribute to the improved proficiency of the eligible students it serves.

Requirements of Providers

Providers of supplemental educational services may be public entities, such as LEAs or schools that have not been identified for school improvement, institutions of higher education, and private non-profit or for-profit entities (including groups of individuals, such as teachers, organized as such). Religiously affiliated organizations are not prohibited from being supplemental educational services providers; however, the ESEA requires all instruction and content to be secular, neutral, and nonideological, and also prohibits the use of ESEA funds to pay for religious worship or instruction. Providers must abide by all applicable federal, state, and local health, safety, and civil rights laws.

Federal civil rights laws generally apply to recipients of federal financial assistance; however, according to ED supplemental services providers are not considered recipients of federal financial assistance unless they otherwise receive federal financial assistance through other means. Despite this, in non-regulatory guidance ED states that because federal civil rights laws apply to SEAs and LEAs, they "have the responsibility for ensuring that there is no discrimination in their supplemental educational services programs."¹⁰

In order to maintain their listing by the SEA as approved providers, providers must agree to supply parents and LEAs with information about the academic progress of the children they serve in an easily understandable format. In addition, the academic content of their programs and method of instruction must be consistent with that of the LEA and the state, and also aligned with state academic achievement

¹⁰ U.S. Department of Education, Supplemental Educational Services, Non-Regulatory Guidance, Final Guidance, Aug. 22, 2003, C-3. Available at [<http://www.ed.gov/policy/elsec/guid/suppsvcsguid.pdf>]. (Hereafter cited as ED, *Supplemental Educational Services Guidance*.)

standards. Providers may not be required to hire only staff who meet the qualifications for teachers and paraprofessionals under ESEA Section 1119.¹¹

Funding for Supplemental Educational Services

ESEA requirements for the funding of supplemental educational services are jointly applicable with the requirements for funding public school choice-related transportation. If there is sufficient demand, LEAs must spend an *amount equal to 20%* of their Title I-A funding for public school choice-related transportation expenses and supplemental educational services.¹² LEAs must spend a minimum of an amount equal to 5% of their Title I-A funding on each if there is sufficient demand. LEAs may divide the other 10% between the two purposes; however, if there is no demand for choice-related transportation, then the LEA must spend an amount equal to the full 20% on supplemental educational services.¹³ The ESEA does not require LEAs to provide students with transportation to the sites where supplemental educational services providers offer services. However, if LEAs do provide transportation, they may not count transportation costs toward the 5% minimum expenditure requirement.

The ESEA does not stipulate whether the funds used to pay the cost of supplementary education services for students attending a particular school must come from the Title I-A allocation that would normally go to that school, or if the allocation to other schools in an LEA, or to central administration and services, may be reduced to cover these costs. However, the ESEA does prohibit LEAs from reducing the total amount of Title I-A funds provided to any school identified for corrective action or restructuring by more than 15% to cover the costs of providing supplemental educational services (or for the cost of transporting students participating in public school choice, or any combination of the two).

The ESEA limits LEAs' cost per-pupil of providing supplemental educational services to the lesser of (a) the amount of the LEA's Title I-A allocation per poor student (based on the number of children aged 5 to 17 from families below the poverty level), or (b) the actual cost of the supplemental educational services provided to a particular student. The amount of per-pupil funding available for

¹¹ 34 CFR 200.47(b)(3); and ED, *Supplemental Educational Services Guidance*, C-19.

¹² LEAs are not required to spend Title I-A funds for choice-related transportation or supplemental educational services. Rather LEAs may meet or exceed the applicable expenditure requirement with funds from other federal, state, local, or private sources. With regard to federal funds, LEAs may use Title V-A-3 (Local Innovative Education Programs) funds to pay for supplemental educational services. SEAs also may transfer funds to LEAs for supplemental education services under Title VI-A-2 (Funding Transferability for State and Local Educational Agencies). Funds may be transferred to LEAs from grants to states under the following programs: Title II-A (Teacher and Principal Training and Recruiting Fund); Title II-D (Enhancing Education Through Technology); Title IV-A (Safe and Drug-Free Schools and Communities); and Title V-A (Innovative Programs). SEAs also are authorized (but not required) to use administrative funds reserved under Title I-A or Title V-A to assist LEAs in meeting the costs of supplemental educational services.

¹³ ED, *Supplemental Educational Services Guidance*. K-3.

supplemental educational services will vary considerably across LEAs due to the variation across LEAs and states in the amount of Title I-A funding allocated per pupil under the four formulas (basic grants, concentration grants, targeted grants, and education finance incentive grants). It also will be affected by the ESEA provision that the amount of funding per pupil for supplemental educational services is limited by the amount of Title I-A funding per student whose family is living below the poverty level.¹⁴

To show the variation in the amount that LEAs may be required to spend per pupil for supplemental educational services, we calculated the nationwide distribution of FY2003 (school year 2003-2004) Title I-A allocations per pupil by LEA, weighted according to each LEA's population of students from families below the poverty level, for those LEAs eligible to receive basic grants. We found considerable variation across LEAs in the amount of funding per pupil available for supplemental educational services. This potentially may result in differing levels of service being available to students depending on the LEA in which they attend school. For instance, as shown in **Table 1**, the average LEA in the top decile of LEAs (ranked according to Title I-A allocations per pupil), may be required to spend \$2,038 for supplemental educational services, whereas the average LEA in the bottom decile of LEAs may be required to spend only \$881.

ED has released tables of FY2003 Title I-A allocations to LEAs, which include estimates of the maximum per-child expenditure for supplemental educational services and the total amount of Title I-A funds LEAs must reserve for supplemental educational services and transportation for public school choice, should they be required to fund these school improvement options.¹⁵

¹⁴ Title I-A grants are calculated for each LEA based on the number of children aged 5 to 17 in families living below the poverty level; in families receiving temporary assistance for needy families (TANF) payments in excess of the poverty income threshold for a family of four; or living in institutions for neglected and delinquent children, or who are being supported in foster homes with public funds, whether or not they are from a family below the poverty line. Using the number of pupils from poor families, rather than the total number of Title I-A eligible pupils, to calculate the per-pupil cost limit for supplemental educational services results in a comparatively higher cost limit for select LEAs. One reason for this is that although the non-poverty children constitute only about 4% of the Title I-A formula eligible children nationally, this percentage is much higher in certain LEAs. More broadly, Title I-A grants per poor child vary due to differences in the state expenditure factor, degree of poverty concentration, hold-harmless effects, and other factors.

¹⁵ U.S. Department of Education, Budget Office, *ESEA Title I LEA Allocations — FY2003*, Available at [<http://www.ed.gov/about/overview/budget/titlei/fy03/index.html>]. ED's Budget Office provides these data for informational purposes only.

Table 1. Distribution of Maximum Allowable Expenditures Per Pupil for Supplemental Educational Services, Mean within Deciles of LEAs: School Year 2003-2004

Decile of LEAs (weighted by pupils below the poverty level)	Mean maximum expenditure (\$'s per-pupil)
10 th	2,038
9 th	1,706
8 th	1,476
7 th	1,379
6 th	1,288
5 th	1,221
4 th	1,174
3 rd	1,116
2 nd	1,030
1 st	881

Source: CRS calculations.

Implementation of Supplemental Educational Services

School year 2003-2004 is the second year in which LEAs with schools identified for a second year of school improvement, corrective action, or restructuring have been required to offer students attending those schools the opportunity to receive supplemental educational services. Information is increasingly becoming available on how supplemental educational services are being implemented across the nation. This section identifies and describes various aspects of the implementation of supplemental educational services.

Identification and Availability of Providers. The ESEA requires SEAs to compile lists of eligible supplemental educational services providers and to make these lists available to parents of eligible students. According to the Education Commission of the States, it appears that nearly all states have established criteria for reviewing and approving providers and have compiled lists of those eligible to deliver services. Most states have implemented supplemental educational services as required and are monitoring for results, although in a few states, implementation appears to be lagging.¹⁶ While providers are identified and approved by SEAs and placed on state lists of approved providers, in many instances providers may offer their services only in selected regions or areas of a particular state. For example,

¹⁶ Education Commission of the States, No Child Left Behind (NCLB) Database. Available at [<http://nclb.ecs.org/nclb/>].

small non-profit providers or consortia of teachers might offer services only in a particular LEA, county, or urban area. Some remote rural schools may be served only by providers offering services through distance learning. State lists typically identify the approved providers for each LEA with a school in which children are required to be offered services.

Contracts for Supplemental Educational Services Delivery. To make supplemental educational services available to eligible students, LEAs and providers need to negotiate agreements or contracts for the provision of services for each student. Evidence has shown that contract negotiation can be a difficult and time consuming process, as separate contracts often must be negotiated with each provider in LEAs in which services are required to be offered. Items that often must be negotiated include the specific services to be provided for a given cost (as within each state, different LEAs often have different maximum per-pupil expenditure amounts), whether providers receive up-front payment for services to be provided, access to school facilities, how student transportation will be provided if services are delivered off school grounds, whether LEA instructional staff will be hired and trained by the provider to deliver services or if the provider will bring in its own staff, and whether a provider will require a minimum threshold of students before providing services (e.g., will the provider deliver services if selected by only one student in a particular school or LEA?).¹⁷

While the negotiation of contracts may appear to be a barrier in the implementation of supplemental educational services, the issues being negotiated often are not insignificant. For instance, providers and multiple LEAs may have to determine how appropriate services can be delivered when each LEA is authorized to pay different amounts for services and providers often are seeking to work in multiple LEAs. This may lead to providers having to develop different service models for different LEAs. Some LEAs may have rules that prohibit the use of school space by for-profit entities, or may wish to charge providers rent for the use of school facilities. Others may have a reluctance to have multiple outside entities operating within a school after normal school hours. In instances where providers do not have access to school facilities, they may want transportation costs to be included in their fee (LEAs are permitted, but not required, to provide transportation to service providers). It may also be difficult for providers enrolling students from multiple LEAs to ensure that their services are appropriately aligned with each LEA's curriculum. In addition, special agreements often must be drafted regarding the provision of services to students with special needs or who have limited English proficiency.

Requests for Supplemental Educational Services. While supplemental educational services have only been required to be offered to students attending schools identified for school improvement, corrective action, or restructuring for two years, it appears that the percentage of eligible students served to date is limited. For

¹⁷ For a discussion of some issues raised in the negotiation of contracts, see Michael Casserly, *No Child Left Behind: A Status Report on Choice and Supplemental Services in America's Great City Schools*, Council of Great City Schools, Jan. 2004. (Hereafter cited as, Casserly, *No Child Left Behind*.)

example, in a sample of LEAs required to offer supplemental educational services, percentages of eligible students receiving services ranges from a high of 16% to less than 1%.¹⁸ There are a number of reasons why eligible students might not be receiving services. As previously discussed, the initial process of identifying providers and negotiating contracts has been slow in some instances. Also, there have been delays in the identification of schools where children are required to be offered services, and in notifying parents of the availability of services. In many instances, parents were not notified of the availability of services until after the 2003-2004 school year began.¹⁹ In some instances, notices announcing the availability of services may not have been easy to understand, or may not have been received by parents.

Accountability of Providers. It appears that in practice, LEAs and providers are still in the beginning stages of implementing the accountability requirements applicable to supplemental educational services.²⁰ Providers are required to provide information on the academic progress of the students they serve to individual student's parents and to LEAs. SEAs also are required to assess the performance of providers as they maintain lists of eligible providers. At present, little information is available on the performance of providers and on the effectiveness of supplemental educational services in improving student academic achievement.

¹⁸ Gail L. Sunderman and Jimmy Kim, *Increasing Bureaucracy or Increasing Opportunities? School District Experience with Supplemental Educational Services*, The Civil Rights Project, Harvard University, Feb. 2004, p. 22. Available at [http://www.civilrightsproject.harvard.edu/research/esea/increasing_bureaucracy.pdf] (Hereafter cited as Sunderman and Kim, *Increasing Bureaucracy or Increasing Opportunities?*)

¹⁹ Casserly, *No Child Left Behind*, p. 28. Late notification may have had less of an impact on student receipt of supplemental educational services than on public school choice (in which there is an even lower take-up rate), as it is considerably more disruptive to change schools after the start of the school year than to start a tutoring program outside of regular school hours.

²⁰ Sunderman and Kim, *Increasing Bureaucracy or Increasing Opportunities?* p. 31.