

Colorado

Supplemental Educational Services Guidance



Effective August 2012

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INTRODUCTION

This guidance, effective August 2012, replaces the SES Non Regulatory 2009 Guidance the United States Department of Education released on January 13, 2009. It includes new and modified questions as well as other major policy guidance. This guidance represents CDE's current thinking on SES requirements. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required to comply with applicable law or regulations.

This guidance document replaces the following guidance issued by the USDE:

Supplemental Educational Services Non-Regulatory Guidance, issued on January 13, 2009.

GENERAL INFORMATION

A-1. What are supplemental educational services?

Supplemental Educational Services (SES) are additional academic instruction designed to increase the academic achievement of students in Title I schools with a status of Priority Improvement or Turnaround outside the regular school day. These services, which are in addition to instruction provided during the school day, may include academic assistance such as tutoring, remediation and other supplemental academic enrichment services that are consistent with the content and instruction used by the local educational agency (LEA) and are aligned with the state's academic content and achievement standards. SES must be high quality, research-based, and specifically designed to accelerate student academic achievement.

A-2. What is the purpose of SES/Choice?

The Colorado NCLB Flexibility Waiver requires that parents of eligible students attending Title I schools with a status of Priority Improvement or Turnaround be provided with opportunities and choices to help ensure that their children achieve at high levels. SES provides extra academic assistance for eligible children. Struggling students (see A-6) attending Title I schools that have a status of Priority Improvement or Turnaround are eligible to receive these services.

Parents may choose, if available within the district, the "choice" option. This option is for parents who want their child to attend a school within the school district not on priority improvement or turnaround. If parents do not choose to "choice out," their child may be eligible for SES. Parents of eligible students are notified by the LEA that SES will be available, and parents may select an approved provider serving in the LEA. The LEA will sign an agreement with the provider selected by the 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 of SES is to increase eligible students' academic achievement in reading and mathematics, as well as English language proficiency for students with limited or no English proficiency (LEP/NEP).

A-3. As it relates to SES/Choice, what does "a good faith effort to meet the needs of all parents" mean?

A "good faith effort" is described as standards of honesty, trust, sincerity, etc. LEAs must ensure that all requirements regarding parent notification of schools offering SES/Choice to the extent possible are in a language understandable to the parent. LEAs must make a good faith effort to identify the needs of both students and parents.

A-4. What is the district PPA for SES?

The SES Per Pupil Allocation (PPA) will be determined as in previous years. That is, this amount is set by the USDE when it calculates Title IA allocations to districts.

A-5. When must an LEA make SES/Choice available?

In general, an LEA must make SES available for eligible students attending a Title IA school that has a status of Priority Improvement or Turnaround. Newly identified schools would not have to offer SES/Choice in the first year of identification but must in subsequent school years make SES/Choice available to eligible students.

Choice is provided as an option for families. Parents can choose to send their student to a higher performing school that has not been identified as Priority Improvement or Turnaround (in districts where choice is available) or their student can remain in the Priority Improvement or Turnaround school where he or she may be eligible for SES.

Letters informing parents of the requirement to provide SES and offer choice, including a description of the process for parents to make a request, must be received by parents at least 14 days before the first day of school. A good faith effort must be made to meet the requests of all parents in each grade span. A school must continue offering SES/Choice to its eligible students for one year after the school no longer has a status of Priority Improvement or Turnaround.

A-6. Who is eligible to receive SES?

Eligible students are all students who are unsatisfactory or partially proficient in reading or math on the most recent state assessment as measured by the Colorado Assessment Program (CSAP), the Transitional Colorado Assessment Program (TCAP), or who are below grade level as measured by an early literacy assessment that meets the requirements of the Colorado Basic Literacy Act (CBLA) (or a body of evidence for K-2), and who also attend a Title I school with a status of Priority Improvement or Turnaround. Additionally, Non English Proficient (NEP) and Limited English Proficient (LEP) students as measured by the Colorado English Language Assessment (CELA), who also attend a Title I school with a status of Priority Improvement or Turnaround are eligible for English Language Development SES.

If sufficient funds are not available to serve all eligible children, an LEA must give priority to the lowest-achieving eligible students. If an LEA has the potential to encumber all SES funds in elementary schools due to high demand, there may not be funds left for middle or high school students. In this case, an LEA may proportion SES/Choice funds by grade span in order to have all students in all grades take advantage of SES/Choice. For example, an LEA may choose to divide funds as follows; 33 percent to each grade span, or 50 percent to elementary, 25 percent to middle and 25 percent to high school in order to serve all students in each grade span. An LEA must use fair and equitable procedures in determining which students are the lowest achieving, and should use professional judgment in applying those criteria. One possible approach to prioritizing students would be for an LEA to establish a cut-off score (on the state's assessments CSAP, TCAP, or CELA, or who are below grade level as measured by an early literacy assessment that meets the requirements of the Colorado Basic Literacy Act). This can be done on a school-by-school basis or for all schools across the LEA to make SES available to students whose scores fall below the cut-off level. An LEA might decide to focus services on students who are the lowest-achieving in the subject or subjects identified as a priority performance challenge in the school's Unified Improvement Plan (UIP). Or it might decide that the best use of limited SES funds is to focus on the lowest performing students in particular grades.

An LEA should not assume, before it contacts parents, that it will have limited resources for SES. Rather, the LEA should notify all eligible families of their children's eligibility. Only if more families request SES than there are funds available to provide services should the LEA set priorities to determine which eligible students can be served. The LEA should review the information available about the performance of eligible students and apply its priorities in a manner that is fair and objective.

(Beginning in the 2013-14 school year, SES services will be expanded to include writing.)

LEA RESPONSIBILITIES

B-1. What are the responsibilities of an LEA in implementing the SES requirements?

An LEA must:

- Notify parents at least two weeks before the beginning of the school year of the school's requirement to offer SES and of the process for selecting a vendor.
- Help parents choose a provider.
- Apply fair and equitable procedures for serving students if not all students can be served including proportioning funds by grade span.
- Ensure that eligible students with disabilities and LEP students receive appropriate services.
- Enter into an agreement with a provider selected by parents of an eligible student.
- Protect the privacy of students who are eligible for or receive SES. (See B-2 and B-3)
- Prominently display on the home page of its website a tab or direct link with SES/Choice information that include the list of schools eligible for choice and SES, the list of providers approved by CDE to serve in the LEA, the locations where services are provided, an explanation of SES, and contact information for parents wanting to enroll their child in SES.
- Meet its 15 percent obligation.

LEAs that meet demand for SES and choice by the end of the first semester will be required to use any remaining set-aside funds to provide struggling students extended learning opportunities, such as before or after school programs, and summer school for Title I Priority Improvement or Turnaround schools. **The LEA must use the Post Award revision process to reallocate remaining SES set-aside funds** for other allowable activities and extended learning opportunities.

For example, if a district has spent 10 percent of the 15 percent set-aside, it could target the remaining 5 percent on a single school or all Title I Priority Improvement or Turnaround schools. Including Extended Learning Opportunities as a core intervention strategy will enable each school to improve student achievement through an expanded schedule that provides more instructional time in math, literacy, ELD, and other core subjects to enable students to meet state standards. The ELOs also integrate enrichment and applied learning opportunities into the school day that complement and align with state standards. At the end of the school year, the LEA may apply for reallocation of unspent SES/Choice set-aside funds to be carried over into the next year as an extended learning opportunity set-aside or as regular Title I funds.

B-2. May an LEA provide a list of eligible students to an approved SES provider so that the provider can contact parents regarding its services?

No. An LEA must comply with the prior written consent requirements of the Family Educational Rights and Privacy Act (FERPA) when disclosing information on students eligible for SES. Those provisions require the written consent of a parent before an LEA may disclose the identity of an eligible student. (For more information, see 34 C.F.R § 99.30, available at http://www.ed.gov/policy/gen/reg/ferpa/rights_pg4.html.) An LEA may not disclose to the public

or to an approved provider the identity of any student who is eligible for or receiving SES without the written permission of the student's parents. In addition, an SES provider is prohibited from disclosing to the public, the identity of any student who is eligible for or receiving SES without the written permission of the student's parents.

B-3. May an LEA disclose the identity of a student, as well as educational records regarding the student, to an SES provider selected by the student's parents?

An LEA may disclose pertinent information to an SES provider about a student whose parents have selected the provider but only after the student's parent has provided written consent. With the consent of a parent, the LEA may disclose information about the student's academic record in order to assist the provider in determining the student's strengths and weaknesses. An LEA might want to consider including a parental consent signature line on its SES application form. Then the parents can provide consent to share information with providers at the same time that they express their interest in receiving services from a specific provider. Acknowledgment of the consent must be signed, dated and specify the records that may be disclosed by the LEA or the provider. It must also state the purpose of the disclosure; and identify the party or class of parties to whom the disclosure may be made. (For more information, see 34 C.F.R. §99.30, available at http://www.ed.gov/policy/gen/reg/ferpa/rights_pg4.html.)

B-4. How does an LEA determine eligibility for SES in school-wide programs and targeted assistance programs?

When a school implements a Title I school-wide program or a targeted assistance program, and has a status of Priority Improvement or Turnaround, all eligible students attending the school are eligible for SES (see A-6). In other words, in a targeted assistance school, eligibility does not depend on whether the student is currently receiving Title I services.

B-5. How does an LEA determine the eligibility of homeless students for SES?

Homeless students, like other students, may receive SES if they are eligible and enrolled in a Title I school with a status of Priority Improvement or Turnaround. The place of residence of a student (or the lack of a permanent residence) is not an issue in determining eligibility for any child.

B-6. Are children who attend Non Public schools eligible to receive SES?

No. Only struggling children attending Title I public schools with a status of Priority Improvement or Turnaround are eligible for these services.

B-7. How does an LEA provide timely, accurate notice to parents regarding SES?

To meet the criterion that an LEA provide timely, accurate notice to parents, an LEA must provide notice regarding SES directly, through such means as regular mail or e-mail, and through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families, two weeks prior to the beginning of school. In addition, the notice must be in an understandable and uniform format and, to the extent practicable, in a language that parents can understand. The notice must include all required information, as described in C-8.

Additionally, an LEA should notify parents of their SES options at the beginning of the school year and begin offering SES in a timely manner thereafter.

ENROLLMENT

C-1. Does an LEA need to provide more than one enrollment for SES?

No. If an LEA provides eligible families an opportunity to enroll in SES through an open enrollment window, that lasts a minimum of two weeks and occurs before October 15, the LEA is considered to have met the requirement that it hold an SES enrollment window of sufficient length to enable parents of eligible students to make informed decisions about requesting SES and selecting an SES provider.

C-2. What information must the LEA provide to parents during the enrollment window?

An LEA's notice to parents regarding their option to obtain SES for their child must be:

- Easily understandable, in a uniform format, including alternate formats upon request, and to the extent practicable, in a language the parents can understand.
- Clear, concise and clearly distinguishable from other information on school status that an LEA sends to parents.
- "Clearly distinguishable" from other school information. For example, an LEA might print its SES notice on brightly colored paper and in large, bold font, so that parents are more likely to read it.

An LEA is required to notify parents of eligible students, at least annually, of their opportunity to enroll their child in SES. This notification must meet all requirements for the SES notice as discussed below. An LEA that provides more than one enrollment window should meet the requirements for the content and format of the SES notice each time it notifies parents of their opportunity to enroll their child in an SES program. Additionally, in an LEA's notice to parents regarding the enrollment window, the LEA should inform parents about if and when it will be providing an additional enrollment window in the future. Doing so will enable parents to enroll their child in SES at the beginning of the school year, if there are no other windows available to enroll at a later date.

An LEA should work to ensure that parents have comprehensive, easy-to-understand information about SES. An LEA's notice to parents must:

- Include an explanation of SES.
- Explain how parents can obtain SES for their child.
- Identify each approved SES provider within the LEA including providers that are accessible through technology, such as on-line.
- Include enrollment dates and approximate start dates.
- Provide information about where and when to return a completed application.
- Provide information about whom to contact in the LEA for more information.

- Explain procedures and timelines that parents must follow to select a provider to serve their child.
- Include information on how the LEA will set priorities in order to determine which eligible students receive services.
- Include information about the services, qualifications, and evidence of effectiveness for each SES provider able to serve students in the LEA directly, or a link to the CDE website providing that information.

Any additional information should be balanced and should not attempt to dissuade parents from exercising their option to obtain SES for their child.

C-3. How should an LEA distribute sign-up forms to parents?

An LEA should make its SES sign-up form accessible to parents by mailing the form and having it available at the school and district site. CDE discourages LEAs from posting sign-up forms for download on the school website. LEAs should ensure that they have an open, reasonable, and convenient process for parents to return completed sign-up forms.

C-4. How can an LEA meet the criterion that it offers an SES enrollment window of sufficient length in the school year?

The purpose of the “sufficient length” criterion as it relates to SES enrollment windows is to help ensure that parents of eligible students have a genuine opportunity to enroll their children in SES. This means that parents should have a reasonable amount of time to obtain information about providers serving their area, consider their options, and sign up for SES. In general, CDE believes that this requires enrollment windows to be at least two weeks in length. The “sufficient length” criterion also means that enrollment windows must be sufficiently convenient for parents, particularly for working parents and single parents. For example, enrollment periods limited to two hours after school for two or three days would not be deemed to be of sufficient length to give parents a genuine opportunity to sign up for SES.

SERVING STUDENTS WITH DISABILITIES AND LEP STUDENTS

D-1. What are the obligations of LEAs in providing SES to students with disabilities who are eligible for services under the Individuals with Disabilities Education Act (IDEA) or students covered under Section 504 of the Rehabilitation Act of 1973 (Section 504)?

LEAs that arrange for SES must ensure that eligible students with disabilities who are eligible for services under IDEA and eligible students covered under Section 504 have an equal opportunity to participate in SES, and that they receive appropriate accommodations in the provision of SES.

Furthermore, the SES program within each LEA and within the state may not discriminate against these students. Consistent with this requirement, 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 SES with

necessary accommodations. Such services and necessary accommodations must be available, but not necessarily from each provider. Rather, LEAs are responsible for ensuring that the available SES providers 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 LEA. Note that if no provider is able to provide SES with necessary accommodations to an eligible student with a disability or a student covered under Section 504, the LEA would need to provide those services with the necessary accommodations, either directly or through a contract. However, the LEA's obligation to provide services to an eligible student with a disability or a student covered under Section 504 does not apply if there are no approved providers able to serve **any** students in the LEA; students with disabilities and students covered under Section 504 have no greater right to receive SES than any other students in an LEA.

SES must be consistent with a student's individualized education program (IEP) under Section 614 of IDEA or a student's individualized services plan under Section 504 [34 C.F.R. §200.46(b)(3)]. However, these services must be in addition to, and not a substitute for, the instruction and services required under IDEA and Section 504 and should not be written into IEPs under IDEA or into 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. An LEA can help facilitate the participation in SES of a student with disabilities by providing a copy of the student's IEP, or relevant portion of the IEP, to the provider selected by the student's parents, with the parents' written consent.

D-2. What are the obligations of LEAs in providing SES to LEP students?

LEAs that arrange for SES must ensure that LEP students receive appropriate SES and language assistance in the provision of those services [34 C.F.R. §200.46(a)(5)]. CDE indicates on the list of approved providers, and LEAs must indicate in their notice to parents on SES, those providers that are able to serve LEP students.

LEA RESPONSIBILITY REGARDING PROVIDERS

E-1. Who is responsible for developing the individual agreements for students receiving SES?

The LEA or its designee in consultation with parents (and the provider) is required to develop a statement of specific achievement goals for the student, how the student's progress will be measured, and a timetable for improving achievement. It is the responsibility of the LEA, not the responsibility of a provider, to ensure that an agreement is completed for each student participating in SES and that each agreement includes the information required under the guidance (see C-8). However, an LEA and a provider may agree that the provider will complete, on behalf of the LEA, the agreement for each student the provider serves. Ultimately, the LEA is responsible for reviewing and approving all agreements, and for making sure that all agreements, whether developed by the LEA or by a provider on behalf of the LEA, are completed for all students participating in SES and include the required information.

E-2. May an LEA impose requirements on a provider that affect the design of the provider's program?

No. An LEA may not impose requirements that relate to the design of a provider's educational program; doing so would undermine the CDE's authority to approve providers. The involvement of LEAs in program designs is not provided for in the statute or regulations.

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, or employ only state-certified teachers as tutors. Likewise, an LEA may not require 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, which would undermine parents' opportunity to select the most appropriate provider and services for their child.

If an LEA has specific concerns regarding a provider's program design, the LEA should convey those concerns to CDE.

E-3. May an LEA limit the number of providers on the state-approved list or go through an additional approval process before providing services within the LEA?

Yes. The LEA may restrict the number of SES providers by going through a provider selection process. School districts are not required to limit SES providers but may select a maximum number of SES providers to offer tutoring for students. LEAs must offer parents a minimum of three outside SES providers from which to choose. Districts may allow schools to select the providers, or providers may be selected for schools at the district level. Selection of providers must be conducted with a majority of parent representation on the selection committee in the selection process. See Appendix C.

Approval during the RFP approval process entitles a provider to be placed on the SEA list of approved SES providers in the state of Colorado. There is no guarantee that a provider will be selected by an LEA during the provider selection process at the district/school level. All decisions regarding the selection of providers by the LEA are final. Additionally, there is no guarantee that an LEA approved provider will be selected by parents or districts to serve students. LEAs will send parents of eligible students, at schools with a Priority Improvement or a Turnaround plan type assignment, information regarding approved providers in the district. Parents then choose the SES provider that best suits their child's needs.

E-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, so long as they are reasonable, do not subject SES providers to more stringent requirements than those that 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 such issues as the fees charged to providers for the use of school facilities, the frequency of payments to providers, and whether payments will be based, in whole or in part, on student attendance.

E-5. How can an LEA meet the criterion to give providers access to school facilities using a fair, open, and objective process?

An LEA must give SES providers access to school facilities in the same manner and on the same basis as it gives access to other outside organizations. CDE encourages an LEA to develop a facilities policy that is public and easily understood by providers and parents. An LEA with many eligible students and schools may need to implement a different policy than one with fewer affected students and schools. An LEA may wish to consult with CDE on any available guidance regarding fair provider access policies.

E-6. May an LEA prohibit or limit approved providers from promoting their programs and the general availability of SES?

Yes. 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 SES; however an LEA may restrict them from doing so, if they have selected a limited number of providers to offer SES. The providers that were selected through the provider selection process are permitted to market their services in the LEA. 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 SES for their children. Such coordination should help ensure that providers have ample time to market their services, and that parents are able to make informed choices of SES providers.

E-7. What must an LEA include in its agreement with a provider?

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

- Specific achievement goals for the student, developed in consultation with the student's parents and the provider.
- 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.
- A timetable for improving the student's achievement.
- A provision for terminating the agreement if the provider fails to meet the student's specific achievement goals and timetables.
- Provisions governing payment for the services, which may include provisions addressing missed sessions.
- A provision prohibiting the provider from disclosing to the public the identity of any student eligible for or receiving SES without the written permission of the student's parents.
- An assurance that SES will be provided consistent with applicable health, safety, and civil rights laws.

WEBSITE

F-1. What information must an LEA include on its website about SES/Choice?

- **Choice information on the website**
 - Schools eligible for choice option
 - Schools available for choice option

- **SES information on the website**
 - An explanation of free SES tutoring
 - The website must include what schools are eligible for SES tutoring
 - Priority of students eligible to receive SES
 - Lowest achieving students first
 - A list of or a link to approved SES providers
 - Information regarding how parents are able to access SES

F-2. Where should the LEA place SES/Choice information on the website?

The LEA must place SES/Choice information or a direct link to Title I SES/Choice information on the home webpage. The link should clearly state “Title I SES/Choice Information for Parents”.

F-3. When must an LEA post this information on its website?

SES/Choice information should be posted on the website two weeks prior to the beginning of school.

FUNDS AND COSTS

G-1. How much must an LEA spend on SES/Choice?

The Colorado NCLB Flexibility Waiver establishes joint funding for choice-related transportation and SES. Unless a lesser amount is needed to meet demand for choice-related transportation and to satisfy all requests for SES, an LEA must spend up to an amount equal to 15 percent of its Title I, Part A allocation (the “15 percent obligation”), before any reservations, on:

- Choice-related transportation.
- SES.

Choice and SES must be offered unless a school does not have an alternative school for parents to choose. For example, there is only one school in the district at a grade span and therefore the district is not able to offer choice.

In addition to paying for choice-related transportation and SES, an LEA may spend up to 1 percent of its 15 percent obligation on parent outreach and assistance.

Districts that meet demand for SES and choice by the end of the first semester will be required to use the remaining set-aside funds to provide extended learning opportunities for struggling students, such as before or after school programs, and summer school in Title I Priority Improvement or Turnaround schools. **The LEA must use the Post Award Revision process to reallocate remaining SES set-aside funds** for other allowable activities and extended learning opportunities.

For example, a district spends 10 percent of the 15 percent set-aside. It could target eligible students with the remaining 5 percent on a single Title I Priority Improvement or Turnaround school or all Title I Priority Improvement or Turnaround schools. The district could include extended learning opportunities as a core intervention strategy which will enable each school to improve student achievement. It could provide an expanded schedule that provides more instructional time in math, literacy, ELD, and other core subjects to enable students to meet state standards. It could integrate enrichment and applied learning opportunities into the school day that complement and align with state standards.

G-2. May an LEA spend less than 15 percent on SES/Choice?

There may be circumstances in which an LEA does not spend its full 15 percent set-aside. Such circumstances may include, but are not limited to, the following:

- The LEA is not able to provide public school choice because it has only one school at each grade level **and** cannot provide SES because it is not served by any providers, including providers that employ technology, such as distance learning, to deliver their services.
- The LEA enrolls sufficient numbers of eligible students to spend all funds reserved for choice-related transportation and SES, but has funds left over at the end of the year because one or more providers did not fulfill their contractual obligations or because enrolled students did not begin or complete services.
- The LEA is meeting demand by providing choice-related transportation or SES to all eligible students.

G-3. Must an LEA reserve a portion of its Title I, Part A allocation to pay for SES?

No. The funds an LEA uses to pay the costs of choice-related transportation, SES, or parent outreach and assistance need not come from its Title I, Part A allocation, but may be provided from other allowable federal, state, local, and private sources. LEAs may use general funds for SES/Choice: however, the required 15 percent SES/Choice set-aside must be reallocated through the SES reallocation application process.

G-4. Does funding available for Title I, Part A through the transferability provisions authorized under Section 6123 of the ESEA change the base that must be used to calculate the 15 percent obligation for choice-related transportation and SES?

Yes. An LEA must include any funds transferred to Title I under Section 6123(b) of the ESEA in the base used in calculating its 15 percent obligation.

For Example: An LEA has a Title I allocation of \$500,000 for the school year. The SES set aside is 15 percent or \$75,000. The LEA transfers \$50,000 into Title I from Title II to use as Title I general funds. The LEA Title I funds available are now \$550,000 and the set aside for SES is now calculated. The new set aside is again 15 percent however; it is 15 percent of \$550,000 or \$82,500.

G-5. How may an LEA reserve Title I funds to help pay the costs of choice-related transportation, SES, or parent outreach and assistance?

An LEA that elects to use Title I, Part A funds to pay for choice-related transportation, SES, or parent outreach and assistance must reserve any Title I, Part A funds needed for this purpose prior to making allocations to schools.

G-6. How do carryover rules described in Section 1127 of the ESEA affect any Title I funds reserved for choice-related transportation, SES, or parent outreach and assistance?

Section 1127 of the ESEA allows LEAs to carryover no more than 15 percent of unused Title I, Part A funds from one fiscal year to the next. This 15 percent cap applies to an LEA's entire Title I, Part A allocation, and therefore covers any Title I, Part A funds reserved, but not spent due to lack of demand, for choice-related transportation, SES, additional school sponsored learning opportunities, or parent outreach and assistance. If the combination of unused funds reserved under Title I, Part A for choice-related transportation, SES, additional school sponsored learning opportunities, or parent outreach and assistance, 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 reallocation to other LEAs. CDE may grant an LEA a one- year exemption from the carryover limitation once every three years.

LEAs will likely want to use "first in-first out" accounting rules under which funds from the prior year are used before funds for the current year, in order to avoid lapsing any prior-year funds due to the end of the period of availability.

Provided that an LEA has met all demand from parents and students for choice-related transportation and SES, the LEA may use any unused portion of Title I, Part A funds reserved for this purpose for other allowable activities either during the year in which the reservation was made or in the following year, subject to the 15-percent carryover limit. Funds carried over to the following fiscal year are also subject to the equitable services requirements in Section 1120 of the ESEA and 34 C.F.R. §200.64. LEAs may reallocate unused funds for other allowable activities by filling out the reallocation application on the CDE SES web page (<http://www.cde.state.co.us/FedPrograms/imp/ses.asp>). Funds carried over from one fiscal year to the next do not affect the base used for calculating an LEA's 15 percent obligation in the following year.

G-7. If an LEA does not incur any choice-related transportation costs, must it spend its full 15 percent obligation on SES or extended learning opportunities?

Yes. Some LEAs, in a given year, may not be able to provide public school choice because they have no eligible public schools to which students may transfer. An LEA in this situation must spend the amount needed to meet its 15 percent obligation fully on SES, assuming sufficient demand, or it must spend its 15 percent on other extended learning opportunities, except that the LEA may spend up to 1 percent of its 15 percent obligation on parent outreach and assistance.

G-8. May an LEA use than 15 percent of its Title I, Part A allocation for the amount it will make available for SES and choice-related transportation?

In general, an LEA may not reduce the percentage of its Title I, Part A allocation it will make available for SES and choice-related transportation. Rather, an LEA must spend the equivalent of 15 percent of its Title I, Part A allocation on SES and on choice-related transportation (or as much as 15 percent on SES, if it is not able to provide public school choice), with the precise amount dependent on the relative demand for choice-related transportation and for SES, and on whether the LEA chooses to spend up to 1 percent of its 15 percent obligation on parent outreach and assistance.

In determining whether an LEA can provide all eligible students with choice-related transportation or SES without spending its full 15 percent obligation, the LEA must consider student eligibility for the following two provisions. (1) All students enrolled in a Title I school with a status of Priority Improvement or Turnaround have public school choice eligibility. And (2) all eligible students enrolled in a Title I school with a status of Priority Improvement or Turnaround have SES. An LEA may not define student eligibility to be a prioritized group of eligible students (i.e., smaller, only boys or only girls).

G-9. If the cost of meeting the demand for SES and choice-related transportation in an LEA equals or exceeds the LEA's 15 percent obligation, must an LEA spend its 15 percent obligation on those activities?

Yes. If there is sufficient demand in an LEA for SES and public school choice transportation, the LEA must spend its 15 percent obligation on those activities, subject to the exceptions that it may spend up to 1 percent of the 15 percent obligation on parent outreach and assistance.

G-10. If only one school in an LEA has a school with a status of Priority Improvement or Turnaround must the LEA make available its full 15 percent obligation for choice-related transportation and SES?

In general, an LEA must make available for choice-related transportation and SES its full 15 percent obligation, even if the LEA has only one school with a status of Priority Improvement or Turnaround. However, if an LEA can make a case for why it will be able to meet the SES needs and other extended learning opportunities of eligible students with less than the 15 percent obligation it may ask for a waiver for the excess funds to be used for other allowable activities.

G-11. How much must an LEA spend for each student receiving SES?

An LEA must either spend up to the per-pupil Allocation (PPA) under Title I Part A or negotiate costs for tutoring purposes up to the PPA for each student receiving SES.

The LEA may not spend more than the PPA for tutoring services for each student to meet its 15 percent obligation; however, if funds are available, the LEA may allow a student to attend a second round of tutoring.

The average PPA of Title I funds to LEAs varies widely across the state, ranging in most LEAs from roughly \$640 to \$1500.

G-12. May an LEA establish a lower per-pupil cap for SES?

No. An LEA may not establish a per-pupil cap for SES that is lower than its Title I, Part A per-pupil allocation. However, if the actual costs of services are less than an LEA's per-pupil cap, or the LEA has negotiated a lower cost for services, it may spend a lesser amount per student.

G-13. What is meant by "the actual cost" of services in determining the per-pupil cost of SES?

The actual cost of services is simply the amount that a provider charges for services up to a district PPA.

G-14. Must an LEA pay for or provide transportation for students to receive SES?

No. However, an LEA may choose to use a portion of its SES set-aside funds to provide transportation for students to receive SES, but is not required to do so under the guidance.

G-15. May an LEA count costs incurred in providing outreach and assistance to parents on public school choice or SES toward the 15 percent obligation?

Yes. An LEA may, but is not required to, count costs for parent outreach and assistance regarding public school choice and SES toward its 15 percent obligation, subject to a cap of 1 percent.

An LEA may spend more than the 1 percent on parent outreach activities, but may not count more than the 1 percent toward meeting its 15 percent obligation.

G-16. What costs for parent outreach and assistance may an LEA count toward meeting its 15 percent obligation?

An LEA is in the best position to determine the most effective means of providing outreach and assistance to parents of eligible students. An LEA might count toward meeting its 15 percent obligation the costs of parent notification letters, easily understandable, in a uniform format, including alternate formats upon request, and to the extent practicable, in a language the parents can understand; communication to parents through the media,

Internet, phone, and community partners; displaying information on the LEA's website; stipends used to assist parents with SES enrollment; and SES parent fairs held by the LEA.

G-17. May an LEA include items other than parent outreach and assistance towards meeting its 15 percent obligation on administrative costs incurred in providing SES to eligible students?

No. For example an LEA may not include the costs of contracting with or arranging for payment to SES providers or costs associated with matching students to respective providers. Such administrative costs may be allowable Title I expenditures but may not be counted toward meeting an LEA's 15 percent obligation.

G-18. If an existing after-school program has been approved by the state as an SES provider, may an LEA count any funds that it is already paying that provider toward meeting the 15 percent obligation?

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

An LEA in this situation may include any funds that it is using to pay a provider for SES received by children who are eligible to receive those services. 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 SES funds are used only for eligible students and activities.

An existing after-school program that qualifies to be an SES 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 include state or local funds used to provide SES to eligible students. However, it could be supplanting if the LEA were to use Title I, Part A 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 SES.

G-19. What are the responsibilities of an LEA if it spends less than its 15 percent obligation on choice-related transportation, SES, and parent outreach and assistance?

Districts that meet demand for SES and choice by the end of the enrollment window will be required to use the remaining set-aside funds to provide extended learning opportunities for struggling students, such as before or after school programs and summer school in Priority Improvement or Turnaround schools. **The LEA must use the Post Award revision process to reallocate remaining SES set-aside funds** for other allowable activities and extended learning opportunities.

For example, if a district has spent 10 percent of the 15 percent set-aside, it could target the remaining 5 percent on a single school or all Priority Improvement or Turnaround schools. Including extended learning opportunities as a core intervention strategy will enable each school to

improve student achievement through an expanded schedule that provides more instructional time in math, literacy, ELD, and other core subjects to enable students to meet state standards, and integrates enrichment and applied learning opportunities into the school day that complement and align with state standards.

A flowchart, located in Appendix B provides further information on the requirements and responsibilities for meeting an LEA's 15 percent obligation.

G-20. What are expanded learning opportunities (ELOs)?

An ELO is an innovative teaching and learning platform designed to ignite the unique potential of every student through the creation and delivery of a dramatically personalized learning experience. The Colorado Legacy Foundation (CLF) and the Colorado Department of Education (CDE) have teamed to expand how we view learning, teaching, and classrooms today. Please see <http://colegacy.org/> for additional information.

G-21. Can an LEA contract for multiple subject areas for an individual student in one agreement or contract with an SES provider?

No. Students are permitted to receive services in one subject area per agreement or contract. However, an LEA may offer a second round of services to a student in the same subject area or in a different subject area with a new agreement or contract for services if funds are available.

PARENTS

H-1. What is the role of parents in SES?

Parents are to be active participants in the SES program.

Parents must be able to choose from among SES providers approved by the state and/or LEA. In addition, if they so choose, parents may obtain assistance from the LEA in selecting a provider. Parents should also have an option to change or terminate services, if they are not satisfied with the services they are receiving. PPA determines the amount of tutoring their child will receive.

At the *provider level*, parents, the LEA, 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. All parents whose children receive SES must be regularly informed of their child's progress.

Parents should ensure that their student attends the SES sessions in which he or she is enrolled. The LEA should ensure that parents are notified by the provider if their student is not attending regularly.

H-2. If parents are not satisfied with the SES their child is receiving, or with their child's academic progress, may they request and receive a new provider?

An LEA may allow for such changes if, for example, a parent believes the provider is unlikely to be able to meet his/her child's progress goals. If a number of parents request a change of a particular provider because of the provider's likely inability to meet students' goals, CDE may need to monitor more carefully the provider's provision of SES. Additionally, an LEA may want to consider reimbursing providers for services provided, rather than paying providers up-front for an entire semester or year, in order to make it easier to arrange for students to change providers during the year. However, if a student has used up his or her PPA then the student may not be eligible for additional free tutoring. An LEA can make a second round of SES available to students if it chooses when there are remaining SES funds available.

PROVIDERS – BECOMING A PROVIDER

I-1. Who may apply to be an approved provider?

A provider of SES may be any United States based public or private (non-profit or for-profit) entity that meets the state's criteria for approval through the Request for Proposal (RFP). Additionally, all staff members of SES providers, including but not limited to owners, tutors and other staff, must reside in the United States and submit and pass a Colorado Bureau of Investigation fingerprint background check.* Public schools (including charter schools), Board of Cooperative Educational Services (BOCES), private schools, LEAs, educational service agencies, institutions of higher education, faith-based organizations, community-based organizations, business groups, and individuals are among the types of entities that may apply to CDE for approval to provide SES.

All potential providers will be held to the same criteria. LEAs, charter schools, and other public schools may not automatically be considered to be approved providers; they must meet CDE's established criteria and go through the same approval process as all other potential providers.

**Prior to contracting with an LEA each member with access to student information, including owners, tutors, and other staff, shall submit to the Colorado Bureau of Investigation (CBI) a complete set of fingerprints . . . taken by a qualified law enforcement agency . . . for the purpose of obtaining a fingerprint based criminal history check.*

The process for submission of a set of fingerprints requires that the applicant:

- Use a fingerprint card provided by a local Law Enforcement Agency (CDE does not provide cards)
- Complete the fingerprint card with the assistance of a qualified Law Enforcement Agency
- Submit the completed fingerprint card, with processing fee, to the Colorado Bureau of Investigation

I-2. What is required of SES providers?

An SES provider is responsible for meeting the terms of its agreement with the LEA, including:

- 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).
- Measuring the student's progress, and regularly informing the student's parents and teachers of that progress after every five sessions.
- 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.
- Ensuring that it does not disclose to the public the identity of any student eligible for or receiving SES without the written permission of the student's parents.
- Providing SES consistent with applicable health, safety, and civil rights laws.
- Providing SES that is secular, neutral, and nonideological.
- Passing a Colorado Bureau of Investigations fingerprint background check. (See G-1)

In the case of a student with a disability served under the IDEA, 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 IEP under Section 614(d) of the IDEA. In the case of a student covered by Section 504, the goals, measurement and reporting of progress, and timetable must be consistent with (although not included in) the student's individualized services under Section 504.

I-3. May an individual or group of individuals be an SES provider?

Yes. An individual or group of individuals may be an SES provider if the individual or group meets CDE's criteria for approval.

I-4. Are faith-based organizations, including entities such as religious non public schools, eligible to be SES providers?

Yes. A faith-based organization (FBO) is eligible to become a provider of SES on the same basis as any other private entity, if it meets the applicable statutory and regulatory requirements. CDE will not discriminate against potential SES providers on the basis of the entity's religious character or affiliation. Additionally, a provider, including an FBO, may not discriminate against students receiving SES 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 SES are provided. (See 34C.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 implement such practices, but not as part of SES.) FBOs, like other providers, must ensure that the instruction and content they provide are secular, neutral, and non-ideological.

I-5. Can a school district or BOCES become an SES provider?

Yes, however they must be approved using the same process and application all other providers use.

I-6. May an LEA with the status of Priority Improvement or Turnaround be an SES provider?

Yes. If a LEA has a status of Priority Improvement or Turnaround, the LEA may be an approved SES provider.

I-7. May a public school identified as Priority Improvement or Turnaround be an SES provider?

No.

I-8. May an entity that is affiliated with an LEA that has a status of Priority Improvement or Turnaround apply to become an SES provider?

If an entity is affiliated with an LEA that has a status of Priority Improvement or Turnaround but is separate and distinct from the LEA, it is eligible to apply to become an SES provider. Such an entity might be a 21st Century Community Learning Center, a community education program, a parent information and resource center, or another entity that is loosely affiliated with an LEA.

In making that determination, CDE will consider whether the entity satisfies criteria such as the following:

- State law establishes the entity as separate and legally distinct from the LEA.
- The entity has decision-making authority independent from the superintendent. (It may, however, be accountable to the school board.)
- The entity has a separate stream of funding and does not rely on the LEA for its financial stability.
- The entity has its own hiring capabilities and does not need to abide by the LEA's hiring obligations and requirements.
- The entity has its own operating structure (e.g., a means of communicating with the public separate from the LEA).
- The entity has a separate and independent advisory committee.
- The entity has status as a 501(c)(3) non-profit organization.

An entity does not have to meet all of these criteria in order to be considered separate and distinct from its LEA. A stronger case may be made for an entity that meets multiple criteria.

Additionally, entities that are affiliated with an LEA must meet CDE's criteria for all SES providers in the state, including providing high-quality instruction and demonstrating a record of effectiveness. Moreover, as a condition of approval, such an entity would need to function as any other SES provider in the LEA. For example, the entity, despite its LEA affiliation, could not have access to information unavailable to other providers, such as student addresses for outreach purposes.

I-9. May an after-school program housed in a school building be an SES provider, if the school in which the program is housed has a status of Priority Improvement or Turnaround?

Programs that operate *independently* from a school with a status of Priority Improvement or Turnaround and are not a part of the school's regular education program may become SES 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.

I-10. Can entities that use technology to deliver educational services be SES providers?

Yes. The guidance permits providers, including those that are not physically located within an LEA, to use alternate methods for delivery of services, which may include online, Internet-based approaches, as well as other distance-learning technologies. Rural LEAs or LEAs with limited availability of SES providers are especially encouraged to work with providers using these technologies. In addition, 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.

I-11. How may a prospective SES provider meet the requirement to provide information to CDE on whether the provider has been removed from any state's approved provider list?

In approving a prospective provider, CDE will consider information from the provider on whether it has been removed from any state's list of approved providers. A prospective provider should honestly and completely provide this information to CDE through the application process or through any other means that CDE requests. If the provider has been removed from any state's list of approved providers, the provider should explain why it was removed.

I-12. What resources are available to help prospective providers become state-approved and to help approved providers strengthen the quality of their programs?

CDE offers workshops and other forms of technical assistance to prospective and approved SES providers. This assistance may be useful in helping prospective providers understand the process they will have to go through to become approved. Information regarding the Request for Proposal (RFP) can be found on the CDE web pages at

<http://www.cde.state.co.us/FedPrograms/imp/ses.asp> and
http://www.cde.state.co.us/cdefisgrant/index_GFM.htm.

I-13. What does it mean for an SES provider to have a “demonstrated record of effectiveness” in increasing student academic achievement?

An approved SES provider must have a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the state’s academic content and student achievement standards. In the application to become an approved provider in Colorado, CDE requires applicants to submit empirical evidence, as well as information about the methodology used to collect such evidence, that the provider’s instructional program has increased student academic achievement.

Applicants that are seeking to become first-time providers may not have a history of providing services from which they can develop a demonstrated record of effectiveness. In these cases, CDE has discretion to determine how it will evaluate whether the applicant can meet this requirement. It could, for example, require the applicant to submit what it anticipates to be the effects of its instructional program on student achievement and an explanation for why it anticipates such effects; such information might be based on the demonstrated effectiveness of the applicant’s instructional program as it was implemented by *another* entity or the soundness of the research on which the program is based. Additionally, CDE may require an applicant to submit information on how the applicant will measure the effectiveness of its instructional program in increasing student achievement.

CDE evaluates the effectiveness of all approved providers in increasing the academic achievement of students served in reading and/or math. CDE defines effectiveness as increasing the academic performance of students on the state assessments (CSAP/TCAP reading and/or math depending on services provided) or district reading assessments (PALS, DIBELS, or DRA2 under CBLA for grades K-3 students). As part of the evaluation, the median growth percentile and change in proficiency level of students served by each provider are compared to the median growth percentile and the percentage of students whose proficiency level went up for a group of randomly selected SES eligible students who did not receive services. The students served by each provider must have an increased academic achievement (higher median growth percentile and higher percentage of students whose proficiency level went up) than the comparison group. Failure to do so for two consecutive years will result in being removed from the state’s list of approved providers, unless the provider can demonstrate effectiveness in the appeals process.

I-14. Often, large providers have multiple franchise operations that provide services. Does CDE require separate applications from each franchise?

No. Although the same curriculum and instructional methods may be used by all franchises of a particular provider, CDE requires each franchise to apply separately only if the provider prefers that the effectiveness data reflect each individual franchise, otherwise all data from all franchises will be combined to determine the effectiveness of the provider.

TUTORING SERVICES

J-1. In what subject areas may an SES provider offer services to eligible students?

Providers may offer tutoring, if approved to do so, for math, reading, or ELD services. Students are only permitted to receive services in one subject area per contract. For example: If a student is enrolled in SES for math he/she may only be tutored in math for that contracted time period.

J-2. When do SES tutoring services begin?

SES providers must begin tutoring within two to four weeks of receiving approval from the LEA of a student's application for services. If services have not begun within the four weeks, the LEA may contact the parent and assign the student to an alternate provider.

J-3. When and for how long must a provider offer services?

SES is designed to be in addition to the regular school day. SES providers may not provide services during regular school hours or lunch but may provide tutoring upon the request of the LEA during the extended learning time at the end of the school day. Providers must provide a minimum of 15 hours or for the length of their approved Colorado program, whichever is greater. If a student has transferred from one provider to another the receiving provider may adjust the number of hours it must serve determined by the remaining PPA of the student.

J-4. May an SES provider offer services in the summer?

Yes, at the request of the LEA, although in most cases it will be preferable to provide services that take place over the course of the school year and that augment the instruction a child receives through the regular school program, because the purpose of SES is to increase the academic achievement of students on the state assessments required under Section 1111 of the ESEA. 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.

J-5. What does it mean to provide instruction that is consistent with an LEA's instructional program and aligned with state academic content and student academic achievement standards?

CDE is responsible for determining whether a provider can deliver SES that is consistent with an LEA's instructional program and aligned with state academic content and 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 student academic achievement standards and be designed to help students meet those standards. One of the virtues of SES is that public and private providers offer a diversity of programs from which parents may choose that are consistent with, but not

necessarily identical to, the LEA's instructional program and are aligned with state academic standards.

J-6. How often should parents and teachers receive information about student progress?

Providers should update teachers and parents with reports on student progress after every five sessions.

J-7. If an LEA is an approved provider, what is its responsibility with respect to a student agreement?

The LEA must adhere to all applicable rules and regulations, and the Colorado SES Code of Ethics that are required of an outside provider.

J-8. May a provider terminate services to an individual student?

A provider may terminate services to an individual student if a student misses more than 30 percent of tutoring sessions, so long as the provider has made a good faith effort to contact the parent/guardian and inform them that their child is not attending after the third absence. The provider also must contact the LEA's SES coordinator or its designee in order to allow the LEA an opportunity to encourage the child to attend tutoring before terminating services.

J-9. May there be only one approved SES provider in an LEA?

No. However, the LEA may restrict the number of providers by going through an SES selection process. School districts are not required to limit SES providers but may select a maximum number of SES providers to provide tutoring for students. Districts must have a minimum of three outside SES providers from which parents may choose. LEAs may allow schools to select the providers or providers may be selected for schools at the district level. Selection of providers must be conducted with a majority of parent representation on the selection committee in the selection process. (See Appendix C.)

Approval during the RFP approval process entitles a provider to be placed on the SEA list of approved SES providers in the state of Colorado. There is no guarantee that a provider will be selected by an LEA during the provider selection process at the district/school level. All decisions regarding the selection of providers by the LEA are final. Additionally, there is no guarantee that a LEA approved provider will be selected by parents or districts to serve students. LEAs will send parents of eligible students, at schools with a Priority Improvement or a Turnaround plan type assignment, information regarding approved providers in the district. Parents then choose the SES provider that best suits their child's needs.

TUTORING STAFF

K-1. Does staff employed by SES providers have to meet the highly qualified teacher requirements in Sections 1119 and 9101(23) of the ESEA?

No. However all staff must reside in the United States and pass a Colorado Bureau of Investigations fingerprint background check. (See G-1)

K-2. May teachers who work in a school or in an LEA identified with a status of Priority Improvement or Turnaround serve as SES providers?

Yes. An individual or group of teachers who works in a school or an LEA identified as Priority Improvement or Turnaround may apply to CDE for approval as an SES provider or may be hired by any state-approved provider (including an approved LEA provider) to serve as a tutor in the provider's SES program.

STUDENT DATA ENTRY

L-1. What are the reporting requirements for submitting student data into the state tracking system?

Providers are required to submit all data through the OMNI Tracking system. CDE does not upload or enter student data on behalf of a provider.

Providers are required to refer to the OMNI User Manual prior to contacting CDE for assistance

Providers must enter the previous month's services by the 15th of each month. Failure to timely enter student data could result in the loss of revenue for that student.

SASID numbers should only be sent in a password protected document. Providers that send SASID numbers otherwise will not receive assistance until the information is received in the correct format and may be placed on warning.

MISCELLANEOUS

M-1. What federal civil rights requirements apply to SES providers?

An SES 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). An SES 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 SES 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 SES. 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 CDE and LEAs, as recipients of federal financial assistance or as public entities. As such, CDE and LEAs have the responsibility for ensuring that there is no discrimination in their SES programs.

M-2. Why is an entity that provides SES not considered to be a recipient of federal financial assistance?

Under the regulations that define “federal financial assistance,” an SES provider, merely by being a provider, is not a recipient of federal financial assistance. That is because an entity that serves as an SES provider receives a contract from an LEA procuring its services to provide SES. But the regulations that define “federal financial assistance,” for example, those implementing Section 504 and the Age Discrimination Act, specifically exclude procurement contracts from the definition of “federal financial assistance” [34 C.F.R. §104.3(h); 34 C.F.R. §110.3]. (See also 34 C.F.R. §100.13(f); 34C.F.R. §106.2(g).) This is because a procurement contract is not intended to provide assistance to the contractor but, rather, to obtain a service for the issuer of the contract, which, in this case, is the LEA.

M-3. How may a provider use the funds it receives from an LEA for providing SES?

The funds that an SES provider receives for providing SES are essentially income for the provider in exchange for its providing services to public school students. The funds may be used at the discretion of the provider for any allowable costs.

CDE - APPROVING PROVIDERS

N-1. How does CDE approve SES providers?

In conducting the approval process, CDE ensures that each provider it approves:

- Is a United States based organization.
- Has a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the state's academic content and student academic achievement standards.
- Is capable of providing instructional services that are:
 - High quality, research-based, and designed to increase student academic achievement.
 - Consistent with the instructional program of the LEA.
 - Aligned with state academic content and student academic achievement standards.
 - Secular, neutral, and nonideological.
- Is financially sound.
- Will provide SES consistent with applicable federal, state, and local health, safety, and civil rights laws.

Additionally, in approving a provider, CDE may consider:

- Information from the provider on whether the provider has been removed from any state's approved provider list.
- Parent recommendations or results from parent surveys, if any, regarding the success of the provider's instructional program in increasing student achievement.
- Evaluation results, if any, demonstrating that the provider's instructional program has improved student achievement.

The criteria that CDE uses to approve SES providers was developed in consultation with LEAs, parents, teachers, and other interested members of the public, to promote participation of providers to ensure, to the extent practicable, that parents have as many choices as possible.

N-2. Does CDE use the same criteria to approve all entities that wish to become providers?

Yes. CDE uses the same RFP for all entities wishing to become SES providers for determining whether an entity can be included on the state's approved provider list.

N-3. Will CDE deny approval to a provider who applies to offer SES in only certain subject areas included in the state's ESEA assessment system?

No. CDE does not prohibit an SES provider wishing to provide services only in one subject area. A provider may provide services in one or more of the following subject areas: reading, math or English Language Proficiency (for NEP/LEP students). A provider may tutor in one subject area per individual agreement.

For example, a provider is approved to provide services in both math and reading. The district will determine which subject the student will receive tutoring in due to the need of the student. The district may contract with a provider to provide services in only one subject area at a time. Students cannot be tutored in both math and reading in the same contract.

N-4. Does CDE approve an SES provider that is dependent upon the LEA for certain equipment or instructional resources?

Yes. However, if an LEA does provide resources to enable an SES provider to serve the LEA's students, the LEA may charge the costs of such resources against the per-pupil allocation that the provider receives.

N-5. How can CDE determine whether a provider is “financially viable”?

Financial viability is the ability of an entity to continue to achieve its operating objectives to meet operating payments, debt commitments and, where applicable, to allow growth while maintaining service levels. CDE may for the purposes of providing SES determine whether a provider is “financially viable” by requiring potential SES providers to submit audited financial statements or other evidence. CDE might also employ site audits to verify the accuracy of the information submitted.

INCENTIVES

O-1. Does CDE have a policy on an SES providers’ use of incentives?

Yes. CDE has a policy on providers’ use of financial incentives or other gifts directed to families or to school or LEA personnel to encourage enrollment in an SES program. CDE prohibits providers from giving any financial incentive or gift to a student or parent for enrolling in a specific program or changing enrollment to another program. Additionally, CDE prohibits providers from offering cash or other incentives to schools for signing up students for their programs.

O-2. Will CDE approve an entity that allows students enrolled in its program to keep a computer upon completion of the SES program?

Yes. If the primary purpose of a computer in the SES program is instructional. However, if the computer’s primary purpose is not instructional, the computer is not an allowable incentive.

PROGRAM

P-1. By definition, SES must be of “high quality, research-based, and specifically designed to increase the academic achievement of eligible students.” How does CDE determine whether the instruction provided by a particular SES provider meets these requirements?

One of the most important considerations in assessing the educational practices of a potential provider is whether those practices result in improved academic achievement for students in the subject areas of the state’s academic assessments required under Section 1111 of the ESEA. A provider applicant should submit, as part of the state approval process, any academic research supporting the particular instructional program it will use. An applicant should submit, for example, research that demonstrates how its curriculum, instructional strategies, materials, and size and structure are designed to increase the academic achievement of students. CDE has the authority and the responsibility to approve only entities that will contribute to increased student achievement.

In approving an SES provider, CDE will consider the following questions regarding a provider’s proposed instructional practices and program:

1. Will the progress of students receiving these services be regularly monitored?
2. Will the instruction be focused, intensive, and targeted to student needs?
3. Will students receive constant and systematic feedback on what they are learning?
4. Will instructors be adequately trained to deliver SES?
5. How will the provider measure whether students and parents participating in the program are satisfied with the instructional program?

P-2. May CDE require that SES providers adhere to specific program design parameters?

Yes. As part of its responsibility to approve providers, CDE has established certain program design criteria for providers to meet aimed at ensuring that all approved providers offer high-quality services.

CDE may establish a range of (or a cap on) acceptable rates that providers may charge in the state to prohibit exorbitant or unrealistically low rates.

P-3. Under what circumstances will CDE withdraw approval of a provider that is not meeting the statutory requirement to increase students’ academic proficiency?

CDE will 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 student academic achievement standards. In addition, a provider may be removed from the list if it fails to provide SES consistent with Colorado SES guidance, the Colorado SES Code of Ethics, with applicable state and federal health, safety, and civil rights requirements, or fails to meet any other applicable regulatory or statutory requirements, particularly after more than one violation.

P-4. Does CDE require that an LEA give SES providers access to school facilities?

No. CDE only requires an LEA to implement the same policies for SES and non-SES entities; it does not require an LEA that does not permit outside groups to use its school facilities to allow SES

providers to do so. An LEA must give SES providers access to school facilities in the same manner and on the same basis as it gives access to other outside organizations. An LEA that permits non-SES groups use its school facilities must permit SES providers do so, as well. However, if an LEA does not allow any groups (SES or non-SES) to use its school facilities, the LEA is not required to give SES providers access to school facilities.

CDE WEBSITE

Q-1. Does CDE maintain and update its list of approved providers?

Yes, CDE will maintain an updated list of all approved providers in the state on the CDE SES website (<http://www.cde.state.co.us/FedPrograms/imp/ses.asp>). This information will identify which providers have been approved to deliver SES in Colorado.

Q-2. What information will CDE display on its website regarding the amount of funds available for SES in each LEA in the state?

CDE will post on its website, for each LEA in the state: (1) the 15 percent obligation that the LEA must spend for choice-related transportation and SES; and (2) the maximum per-pupil allocation for SES in the LEA (the LEA's Title I, Part A allocation divided by the number of children in low-income families as determined by the Census Bureau).

MONITORING

R-1. What is the responsibility of CDE regarding monitoring an LEA's implementation of SES?

Monitoring LEAs to ensure that they meet all requirements for implementing SES will be part of the regular Title I monitoring that CDE conducts of their LEAs. CDE will ensure that its LEAs meet the requirements of the guidance by conducting onsite monitoring, desk reviews, and random checks to ensure that the district is implementing regulations.

As part of its regular Title I monitoring of LEAs, CDE will ensure that an LEA meets the criteria of its 15 percent obligation for choice-related transportation and SES and uses the unexpended amount for other allowable activities to provide struggling students extended learning opportunities, such as before or after school programs, and summer school for Priority Improvement or Turnaround schools.

R-2. What is the responsibility of CDE in ensuring that SES is made available to all eligible students?

CDE has a number of responsibilities in ensuring that SES is available to all eligible students. CDE approves SES providers, maintains a list of approved providers, displays certain information on its website, monitors LEAs implementation of SES, and monitors the quality and effectiveness of providers. Specifically, CDE will:

- Consult with parents, teachers, LEAs, and interested members of the public to promote participation by providers to ensure, to the extent practicable, that parents have as many choices as possible.
- Provide and disseminate, through an annual notice to potential providers, information on the opportunity to provide SES and the process for obtaining approval to be an SES provider.
- Develop and apply objective criteria for approving potential providers.
- Maintain an updated list of approved providers across the state, for LEAs, from which parents may select, and indicate which providers are able to serve students with disabilities or LEP students.
- Post on its website, for each LEA, the amount equal to 15 percent of the LEA’s Title I, Part A allocation available for SES and choice-related transportation (also known as the “15 percent obligation”) and the per-pupil amount available for SES.
- Develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of services offered by approved SES 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.
- Develop, implement, and publicly report on standards and techniques for monitoring an LEA’s implementation of SES.
- Monitor each LEA’s implementation of SES, including any LEA that spends less than the amount needed to meet its 15 percent obligation and chooses to spend the remainder of that obligation on other allowable activities.
- In addition to its regular monitoring, review by the beginning of the next school year any LEA that spends significantly less than the amount needed to meet its 15 percent obligation and has been the subject of multiple complaints, supported by credible evidence, regarding implementation of the public school choice and SES requirements.

R-3. How does CDE help ensure that parents have a genuine opportunity to obtain SES for their child?

CDE can do this directly, through its own actions and outreach, as well as indirectly, by providing technical assistance to its LEAs and by encouraging LEAs to provide outreach and assistance to help parents make informed decisions about SES.

CDE can work directly to help parents understand SES and how they can enroll their child in an SES program by:

- Developing a public service announcement on SES, or developing brochures or other media that can be shared with parents.
- Posting on the CDE website clear and useful information about providers approved to serve in the state, questions a parent might consider in selecting a provider, a list of

schools whose students are eligible for SES, and contact information for LEA and state SES coordinators.

- Posting on its website data on each provider’s effectiveness and services offered.

Additionally, CDE can provide technical assistance to its LEAs in the areas of parent outreach and improving access to SES by:

- Providing LEAs with model practices on how LEAs can display information for parents on their websites, in a manner that is easy for parents to access and understand, about SES participation and eligibility rates and about approved providers in the LEA.
- Developing a model parent notification letter for its LEAs that meets the requirements of the statute and regulations, and a uniform contract that all LEAs in the state could use with SES providers to ensure that LEAs use fair and equitable contracts.
- Developing model procedures for allowing providers to operate their programs in school buildings.
- CDE will encourage its LEAs to implement policies that likely will improve parents’ understanding of and access to SES, such as:
 - Holding “provider fairs” to give parents an opportunity to meet and learn about providers and their programs and to assist parents in gathering information on SES and signing up for services.
 - Providing teachers and principals with information about SES and local providers, so that these educators can be a resource for parents and encourage parents to enroll their child in SES.
 - Making the registration process as accessible as possible by making registration materials available to parents.

R-4. What is CDE’s responsibility with respect to monitoring SES providers?

CDE is responsible for monitoring the quality and effectiveness of services of an approved provider and removing any provider that fails, for two consecutive years, to contribute to increasing academic achievement among the students it serves. Such monitoring includes examination of evidence that the provider’s instructional program:

- Is consistent with the instruction provided and the content used by the LEA.
- Addresses students’ individual needs as described in students’ SES plans.
- Has contributed to increasing students’ academic proficiency.
- Is aligned with the state’s academic content and student academic achievement standards.

R-5. What steps will CDE take if it determines that an LEA is failing to implement SES in a manner that is consistent with the statute and regulations?

If CDE determines that an LEA is failing to implement SES in a manner consistent with the statute and regulations, CDE might provide technical assistance to the LEA, or institute peer-to-peer oversight and technical assistance by another LEA that CDE determines to be in compliance with the law and implementing effective SES practices. Additionally, CDE may take such corrective actions as it determines to be appropriate and in compliance with state law. The enforcement mechanisms available to CDE 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 CDE is satisfied that program requirements will be met; (2) suspending payments to an LEA, in whole or in part, if CDE has reason to believe that the LEA has failed substantially to comply with program requirements; (3) withholding payments, in whole or in part, if CDE finds, after reasonable notice and opportunity for a hearing, that an LEA has failed substantially to comply with program requirements; 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.

APPENDIX A: Definitions

15 Percent Obligation: The amount equal to 15 percent of an LEA's Title I, Part A allocation that an LEA must spend, subject to demand, on choice-related transportation, SES, or a combination of the two.

Eligible Student: Students eligible for SES are those students who attend Title I schools with a status of Priority Improvement or Turnaround who are not proficient as measured by CSAP/TCAP, CBLA, or CELA for Non- or Limited English Proficient (NEP/LEP) students.

Provider: A provider of SES may be any public or private (non-profit or for-profit) entity that meets the state's criteria for approval. Potential providers include individuals or groups of individuals, public schools (including charter schools), private schools, LEAs, educational service agencies, institutions of higher education, faith-based organizations and other community-based organizations, and business groups. A public school or an LEA that is in need of improvement may not be a provider. An approved provider (1) has a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the state's academic content and student academic achievement standards; (2) is capable of providing instructional services that are (a) of high quality, research-based, and designed to increase student academic achievement, (b) consistent with the instructional program of the LEA, (c) aligned with state academic content and student academic achievement standards, and (d) secular, neutral, and nonideological; (3) is financially sound; and (4) provides SES consistent with all applicable federal, state, and local health, safety, and civil rights laws.

Public School Choice: Students who attend Title I schools with a status of Priority Improvement or Turnaround are eligible to transfer to another public school in the LEA, including a public charter school that has a status of improvement or performance on the School Performance Framework (SPF). 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 enough funds are not available to satisfy all requests for transportation, LEAs must give priority to the lowest-achieving students who request transportation.

Schoolwide Program: A schoolwide program is a Title I 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].

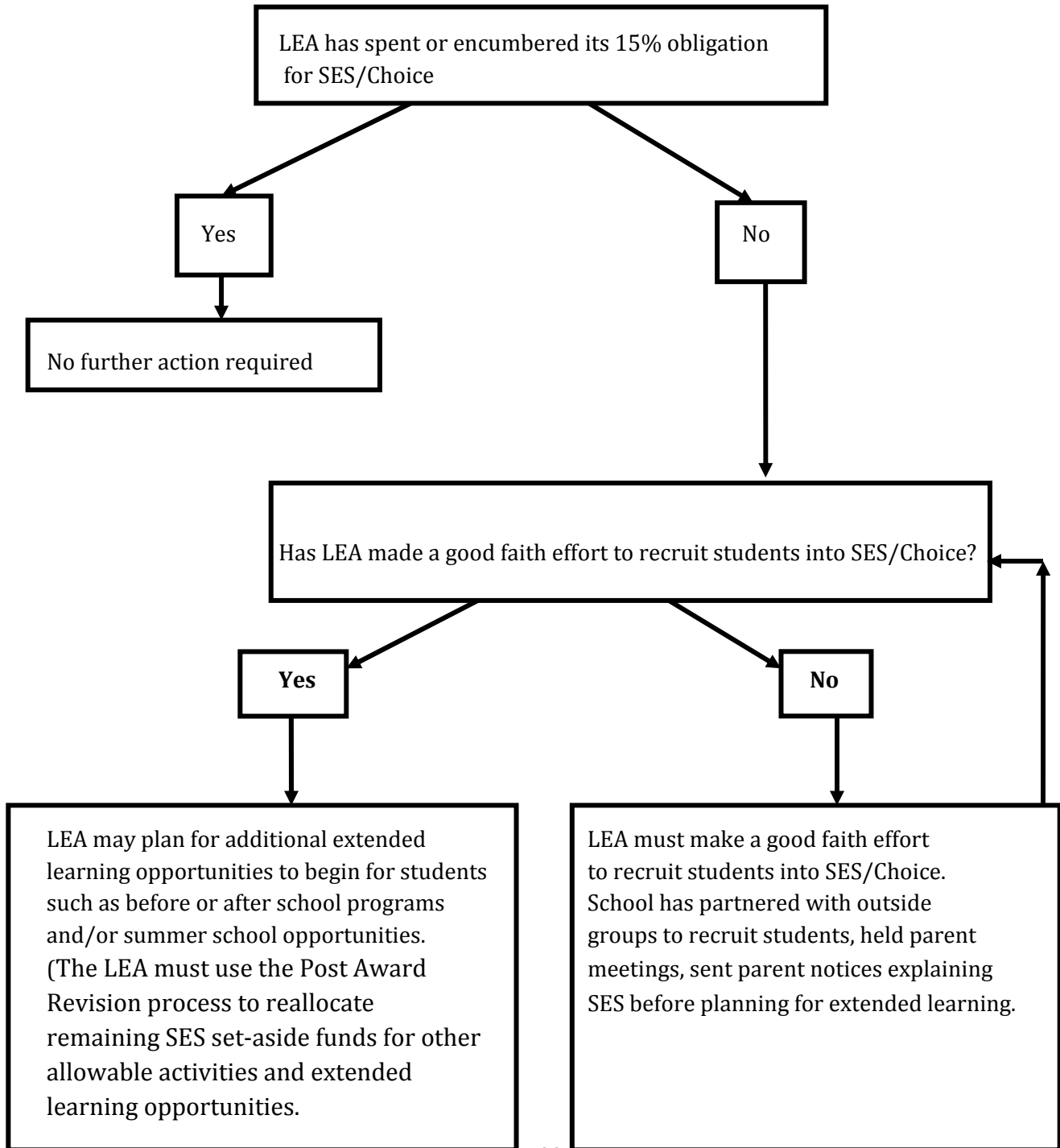
Supplemental Educational Services: SES are additional academic instruction designed to increase the academic achievement of students from low-income families attending Title I schools in their second year of school improvement, in corrective action, or in restructuring. These services may include academic 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 and student academic achievement standards. SES is offered in addition to instruction provided during the regular school day. SES must be high quality, research-based, and specifically designed to increase the academic achievement of eligible students.

Targeted Assistance Program: A targeted assistance program is a Title I program in which a school uses its Title I funds to provide services only to the children who have been identified as failing or most at risk of failing to meet the state's challenging academic content and student academic achievement standards.

APPENDIX B: 15% Obligation

15% Obligation



APPENDIX C: LEA Provider Selection Process

Colorado allows for the LEA to limit the number of providers that serve SES in their district. LEAs are not required but may choose to limit the number of providers within their district. If an LEA chooses to limit SES providers, it must consult with parents and interested members of the public to promote participation by SES providers to ensure, to the extent practicable, that parents have choices regarding Supplemental Educational Services. LEAs that select the option to limit the number of providers serving SES in their district must, at a minimum, do the following:

- The LEA must inform all providers that have selected the district as a potential SES provider that the district intends to limit the number of providers and begin a selection process.
- Selection committee:
 - The majority of the committee must be comprised of parent representatives with at least three parents to represent the school/district (e.g., A committee of five persons would have three parent representatives, a committee of six would have four parent representatives, etc.).

The selection committee along with the district should review data from school/district to determine the tutoring needs of students, including the ability of a provider to work with special populations. Upon determining needs, the selection committee can then begin to screen providers that would be the best fit for the students in the district. The selection committee may use a paper screening process and an interview process to begin the selection of a limited number of SES providers.

The LEA must have must select a minimum of three outside SES providers. Additionally, the LEA must have a sufficient number of SES providers to meet the needs of all eligible students. If an LEA has determined after the selection process that it has not contracted with a sufficient number of providers to serve all eligible enrolled students, the dates for beginning tutoring may need to be extended and additional providers may need to be selected.

Approval during the RFP approval process entitles a provider to be placed on the SEA list of approved SES providers in the state of Colorado. There is no guarantee that a provider will be selected by an LEA during the provider selection process at the district/school level. All decisions regarding the selection of providers by the LEA are final.

Additionally, there is no guarantee that a LEA approved provider will be selected by parents or districts to serve students. LEAs will send parents of eligible students, at schools with a Priority Improvement or a Turnaround plan type assignment, information regarding approved providers in the district. Parents then choose the SES provider that best suits their child's needs.