



**Briefing by**  
**Mr. Steven Pines, Executive Director**  
**Education Industry Association**  
**For the Senate Subcommittee on Education and Early Childhood Development**  
**Tuesday, July 25, 2006**

Good morning Senator Alexander, Senator Dodd and Members of the Subcommittee on Education and Early Childhood Development. I am Steve Pines, the executive director of the Education Industry Association (EIA), the nation's leading professional association for private providers of education services and suppliers/developers of educational content for students spanning Pre-K through college. Our 500+ members serve individual families, communities and partner with schools, and it is the latter group that we are discussing this morning: specifically, providers of Supplemental Education Services (SES).

Thanks to the bi-partisan No Child Left Behind Act (NCLB), children attending schools that fail to make adequate yearly progress toward academic proficiency for all students in reading and math have access to tutoring services paid for with federal dollars. With this provision, low income students can now access the same high-quality tutoring that middle-class parents have sought for their children for years. But in far too many places across our country, this simply isn't happening. Why would only 17 percent of eligible children be enrolled in this program and only a fraction of the federal resources expended?

Before I briefly discuss three broad challenges and opportunities for corrective action, I want to describe the results of EIA's recent survey of providers that was independently prepared by the American Institutes of Research (AIR). AIR found:

- Most SES service providers are experienced tutoring organizations long before NCLB;
- Most providers offer instruction in low student: teacher ratios, often less than 10:1;

- Tutors with current teaching certificates were more often employed by for-profits and of course, school districts;
- Student attendance in tutoring averaged about 65% of scheduled sessions and the use of incentives did not have a systematic impact on attendance, and
- Limited access to school facilities and lack of parent notification were often cited as examples of barriers to implementation.

From this survey and in our on-going work with providers, school districts, States and the Department of Education, we can group the main issues into three broad categories of participation, accountability and funding:

1. **Low student participation rates**: As noted above, the national participation averages about 17%. This dismal record can be corrected if more districts simply follow the lead of the Chicago Public Schools or New York City—two of the largest and most complex organizations in the country whose leaders have committed themselves to making SES succeed for their students. There, the maximum SES funds are routinely used for helping to raise student achievement. Contrast this with the Broward School District in Florida, a district that only served 89 children this past school year despite having over 30,000 eligible. The opportunity to serve children starts with timely and clear notification to parents and an easy, one-step registration/provider selection process. But not in Broward, where the Superintendent wrote to SES-eligible parents last April stating, “We feel strongly that these funds (Title One SES/Choice) can be much better spent helping students in the classroom.” To reverse this apparent abuse of the parents’ civil rights that was rampant in other districts as well, EIA went to the Florida Legislature, with the support of the FL Department of Education, and helped create new State law that proscribes clear expectations and timetables for school districts to notify and enroll students. In addition, new sanctions are in place for inaction.

Another cause of low participation occurs when school districts, including the LA Unified School District, erect barriers to providers who wish to use school facilities. On the one hand, LAUSD simply refuses to grant provider access to schools or they say that a school must accommodate all providers—creating an impossible situation. And how does the Toledo, OH school district justify allowing its own district-organized SES program onto school grounds while shutting out all others? Providers are willing to pay fair rent to use school space. And

parents often say that they consider schools as the most convenient site for their children.

Again, kudos to Chicago and NYC for getting this right.

2. **Accountability:** All stakeholders, especially the Congress, want to know what are we getting for our money? Is SES working? For whom and how much? These are the proper questions to ask and several States, including TN, IL, OH, and FL are just now implementing complex data collection and evaluation designs that will provide these answers. Should this have occurred sooner? Probably yes, but it seems that States, with limited capacity, were initially focused on implementation policies and procedures. It does not mean that there was no accountability in the interim. Survey data from the Center for Education Policy (CEP) and from other reports, we know that parents enthusiastically embrace tutoring and have been very satisfied with the services thus far. If they are unsatisfied with the provider of their choice, parents can and will make changes. Providers only got paid for actual hours of service, so funds were only spent on direct tutoring services. Going forward, providers that do not raise student achievement should be held accountable and accept the consequences of a system that must be fair, objective and that weigh the variety of program models, hours of service, and enrollment levels. Another aspect of accountability starts with proper business conduct and ethical standards and EIA is proud of its members' early adoption of high ethical standards for SES services. In fact, this Code of Conduct is currently used by several States including CT, NY, NJ, MD, IL, OH, FL, GA and NM as part of their provider application/renewal process.
3. **Funding:** We are not here to say that SES needs more money at this time for the simple reason that districts continue to under-enroll; therefore under-expend with the expectation that surplus funds for both SES/Choice, when carried-over to the next year, becomes available for their unrestricted Title One use. Money changes behavior and right now, many districts appear to have a perverse incentive to minimize the use of SES/Choice funds. It appears that what they really want is more Title One funds to use at their complete discretion. The easy remedy is to view these reserved funds as a "lock-box" that cannot be re-apportioned from their Congressional intent without clear documentation that all of the eligible students have been served or have opted out. In the new FL law, the standard became 51% of the eligible students before the State could consider granting a district's request. With this provision aggressively enforced by States and the Federal Government, I am hopeful that more districts will make more use of SES/Choice.

Thank you for inviting the industry to share the experiences of its members. While it may appear that the “glass is half empty” with regards to our comments, I know that hundreds of thousands of low-income and low achieving students are thankful for the opportunity that Congress created for them. Our detailed recommendations to strengthen SES are attached to my comments.

Thank You!



## **Proposed Modifications to Federal SES Provisions in NCLB July 24, 2006**

The following represent opportunities, through legislative and administrative changes, to fully implement tutoring under NCLB. EIA looks forward to working with Members and their staff to develop complete solutions.

### **1. State Role and Responsibilities**

- At last two opportunities for provider application to State as provider
- Maintain an updated list of approved providers.
- No later than June 1<sup>st</sup> each year, the SEA shall notify LEAs of the specific schools that are in the second year of school improvement, corrective action or restructuring, and has not made AYP since such identification
- Shall place on the State Department web site, a standard, downloadable enrollment application to be used by parents of eligible SES students which all LEAs shall use for SES enrollment purposes.
- Monitoring of LEAs and consider creation of state-level ombudsman office to independently field and investigate complaints
- The SEA shall ensure that an LEA has fully met parental demand for supplemental educational services. In determining whether an LEA has fully met parental demands for supplemental educational services, an SEA shall consider whether an LEA has:
  - (i) Appropriately notified all eligible parents of the availability of supplemental educational services;
  - (ii) Opened enrollment to parents of all eligible students without restriction until the 20% combined school choice/SES funding cap is met.
  - (iii) Determined the academic criteria by which eligible students will be prioritized should demand for SES services and school choice exceed the 20% funding cap.

### **2. Local School District Roles and Responsibilities**

- Ensure that the opportunity to acquire SES is offered to eligible students on a continuous basis, starting within 30 days of the LEA obtaining AYP data from the SEA; and 30 days after the start of the school year, and continuing until the maximum of Title I funds that are reserved for SES are utilized
- Shall create a streamlined, one-step SES parent registration/provider selection process that is user friendly and does not place any unnecessary or additional burdens on parents that may result in decreased participation levels. Registration notice shall also include permission from parent(s)/legal guardian(s) to release assessment data to selected provider.

- Shall include a minimum of 30 calendar days from the start of the school year for parent(s)/legal guardian(s) to select and notify the LEA regarding selected provider.
- Determine and prioritize students that shall receive services if not all students can be served with the maximum Title I funds that have been reserved for tutoring, ensuring that prioritization does not take place in advance of actual demand being documented.
- Provide access to school facilities to providers who wish to use these sites for supplemental educational services on the same basis and terms as other organizations that seek access to the school building.
- Enter into a contractual agreement with a provider selected by parent(s)/legal guardian(s) of an eligible student no later than 45 days from the beginning of the school year. When a contract is signed, the school district shall provide the provider with the names and contact information for students who have elected to receive their services. Providers shall be afforded at least 20 business days from the date the contract is executed to begin delivering services.

#### 4. **Provider Roles and Responsibilities:**

- Agree to negotiate directly with LEAs to determine scheduled sessions per pupil. Cost of services shall not exceed the per pupil spending limit calculated by each LEA. The Provider's billing rate, as described in their State application, may vary by LEA, not to exceed the maximum per student spending limit.
- Providers may not provide incentives to entice student or a student's parent or guardian to choose them as a provider. After a provider has been chosen, the student may be awarded for performance or attendance with incentives, the total value of which may not exceed 5 percent of the per pupil allocation.
- Each provider shall create a specific learning plan for each student that shall be approved by the student's parents. The development of this learning plan shall occur after the tutoring program has begun and after the provider's assessment of the student's academic needs.

#### 5. **Evaluation**

- The SEA shall develop specific procedures to annually evaluate all providers who have served students for two or more consecutive years in reading, language arts, and/or mathematics. These procedures shall:
  - (i) account for, and be fair to, providers serving both large and smaller populations of students, and who use varying methods of instruction;
  - (ii) be fair and sensitive enough to record gains of individual students, especially students whose achievement level is several grades behind their grade level;
  - (iii) isolate the effects of SES from other variables that might affect a student's achievement using regression analysis, comparison groups or other valid and reliable statistical means;
  - (iv) is valid and reliable and consistent with relevant, nationally recognized professional and technical standards.

(v) takes into consideration the amount of time each student is provided supplemental educational services in relation to the total amount of time each student is provided instruction during the regular school day for a full academic year.

(vi) excludes students who do not attend at least 80 percent of the supplemental educational services provided.

(vii) collect qualitative data on parental satisfaction with provider services, and

(viii) include safeguards against potential conflicts of interests when the local school district is also an approved provider and is involved in Provider monitoring and evaluation.

## **6. Secretary's Role and Responsibility**

- Offer SES in addition to Choice in the first year that schools are identified as in need of improvement
- Set-aside one percent of Title I funding to States for the cost of SEA-administered evaluations of SES programs
- If the LEA does not spend the maximum 20% of Title One funds for SES in the school year, including summer, the Department shall direct the LEA to carry over the unspent funds into the next school year and these funds shall remain restricted for SES services if schools are identified as in need of improvement.
- Annual reporting to Congress of expenditure rates, participation rates and achievement gains
- Penalties for non-compliance at SEA/LEA levels

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