



Comments by
Mr. Steven Pines, Executive Director
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For the United States Commission on Civil Rights
January 26, 2007

Good morning, 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 you are discussing through your hearings today: 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. LAUSD and CPS have their own studies that show SES is helping to make learning gains in reading and math, as measured by the State's own standardized testing 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 public comments and we look forward to working with the Commission in the future as reauthorization of NCLB occurs. 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!

**EIA's Guiding Legislative Principles for NCLB Reauthorization on
Supplemental Educational Services, Charter School Management and Special
Education Services
1-20-07**

A. SES Principles in Current Law That Are Best Practices

The following principles already in current law are examples of best practices that should be retained under NCLB reauthorization.

1. **State approval of service providers:** State education agencies are uniquely positioned to determine the qualifications of SES providers for their state. As part of the provider approval process, States are the appropriate entities to review and approve a provider's tutoring program. The current NCLB quality standards guiding the State's review are effective, including standards for instructional methods, qualifications of tutors, instructional materials, student: tutor ratios, schedules and costs.
2. **State oversight, evaluation and removal of providers:** State education agencies should continue their data collection, monitoring and evaluation of SES programs, including assessing the impact of specific providers on student's academic skills. After establishing appropriate performance and accountability benchmarks, States should sanction poor performers, including removing chronic under-performers from the approved list of SES providers.
3. **LEA role in parent notification, registration and provider selection:** School districts are uniquely qualified to provide early notice to parents of their child's eligibility for SES and to facilitate the selection by parents of an approved provider. In addition, schools should continue to monitor programs in accordance with local contracting requirements and collect provider data as requested by the State.
4. **Parent choice:** Parents of SES eligible students know what's best for their children and should continue to have primary responsibility for selecting their child's service provider from among a variety of approved providers.

B. SES Principles That May Require Legislative Changes

1. Increase Student Access and Participation in Supplemental Educational Services by:

- Offering SES in addition to Choice in the first year that schools are identified as in need of improvement.

- Making enrollment forms widely available to parents through the schools, the Internet, SES providers and community-based organizations.
- Creating strategies like continuous student enrollment, streamlined student registration and provider selection to ensure that the maximum number of eligible students are served each year.
- Targeting SES/Choice funds for full expenditure during the school year and summer, with provisions for roll-over of unexpended funds that may be re-allocated to other Title I purposes subject to certain conditions.

2. *Ensure Accountability and Expand Resources for State and Local Implementation of SES by:*

- Expanding resources from Title I, Part A for States and Districts to better market, administer and evaluate SES programs.

3. *Ensure Students Have Fair Options in Selecting an SES Provider of Their Choice by:*

- Requiring LEAs to open school facilities on the same terms and conditions as are available to other groups that seek access to the school building.
- Restricting the LEA's authority to modify the provider's program instructional model when administering contracts with providers.
- Creating a complaint/resolution process at the State level specifically to ensure fair play when the district itself is a provider.

4. *Improving the Quality of Data Related to SES by:*

- Expanding the current reporting requirements related to SES to ensure that accurate, meaningful and timely data is being collected by the Secretary, including data on how many students are eligible, how many are enrolled, how many completed programs and how much is being spent.

5. *Expand Research and Evaluation of SES Effectiveness at the National Level by:*

- Developing specific procedures, consistent with scientifically based research, to annually evaluate all providers who have served students for two or more consecutive years in reading, language arts, and/or mathematics.
- Conducting, at the national level, a similar national evaluation of the impact of tutoring on student achievement using rigorous research methodologies.

6. *Enhance Supplemental Educational Services for Students with Disabilities, Students Who Are Limited English Proficient or Students in Rural Areas by:*

- Directing the Secretary to conduct a review of issues surrounding the provision of SES to LEP, students with disabilities and students living in rural areas. Consideration should also be given to strengthening the current law to include provisions from the Non-Regulatory Guidance related to providers of services and providing for costs related to providing appropriate accommodations, especially while implementing a student's IEP.

B. *Charter School Management Principles that may require Legislative Changes*

- Provide positive incentives to embrace reopening schools as public charters or contracting with a private entity to run schools. Incentives should include extra money, regulatory relief, or dropping the “needs improvement” label as soon as the school is restructured.
- Redesign charter school grants to focus on expanding the supply of high quality schools of choice in districts and cities that lack them and that embrace charters and contracting as part of their reform strategy.
- Eliminate the “any other major restructuring option”, the school governance arrangements that lead to incremental reform and turnaround tactics that are not comprehensive.

C. *Special Education Services Principles that may require Legislative Changes*

1. *Relax the highly qualified requirements on special education teachers who use technology-mediated methods to deliver curriculum.*

- Teachers who facilitate the use of technology-based programs, such as computer-assisted programs that provide self-pacing and pre/post testing or courses delivered through distance learning technologies, should not be required to meet “highly qualified” teacher requirements if they are not responsible for delivering content instruction.
- Relax the subject matter proficiency requirements for teachers of students with disabilities.
- Teachers of students with disabilities, who are teaching in a self-contained (rather than departmentalized) setting, regardless of level (elementary or secondary), need to demonstrate special education qualifications (including disability-type credentials) rather than subject matter proficiency.

- Exclude from a district’s “adequate yearly progress” scores those students with disabilities who are educated outside of the district.
- Students with disabilities who are in specialized settings (nonpublic schools, third-party provides of special education, and/or public separate facilities) should be excluded from the home district’s scores for their subgroup.

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