



Guiding Legislative Principles for NCLB Reauthorization on Supplemental Educational Services, Charter School Management and Special Education Services

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A. SES Principles That Require Legislative Changes

1. Increase Student Access and Participation in Supplemental Educational Services

Background:

The Government Accountability Office (GAO) reported in August 2006, that approximately 430,000 students participated in supplemental educational services (SES) in 2004-05. This success was due in large part to a core group of states and school districts who embraced this initiative as a means to provide additional educational opportunities to students in underperforming schools. While this overall number of participating students represents a year-over-year increase since passage of NCLB, the fact remains that nearly 1.8 million students who were eligible for SES, still did not receive such services in 2004-05.

Unfortunately, far too many students eligible for free tutoring are never made aware of this opportunity. At times, this has been the result of a lack of resources at the district level to help fully implement SES (an issue addressed separately in these recommendations.) However, other districts create barriers for students and make signing up for free tutoring difficult. These barriers range from short sign-up periods; lack of proper notification; confusing applications; and multi-step registration processes which make it difficult, if not impossible, for students to participate.

Solution:

Addressing each of the barriers identified above would be impractical and create significant burdens upon the many other districts that want and need the flexibility to implement successful SES programs. In lieu of complicated new requirements, an easier solution for encouraging districts to fully implement SES is to remove the current incentive NOT to spend the funding on SES. Under current law, any 'set-aside' funds not used for SES or transportation related to

public school choice revert back to the district to use for any other purpose. By taking away this incentive, many of the barriers to participation will go away.

The question becomes, when is it clear that a district is “truly” unable to expend these resources on tutoring? Based upon a policy adopted in the State of Florida, the proposal below would require districts to document parental awareness or alternatively, have certain policies in place which have been found to lead to greater participation. Specifically –

- With certain exceptions, prohibit rollover of unexpended SES/choice funds from one year to the next unless the funds are carried over only for additional SES funding for summer sessions or the following year;
- Prior to a district being allowed to rollover funding, require the State to review the district’s implementation of SES and at a minimum, require the district to have 75 percent of parents affirmatively “opt-out/opt-in” of SES services, in order to demonstrate the opportunity was in fact provided. Alternatively, a district would have to demonstrate they had certain policies in place related to facilities use, enrollment periods and access to forms.

Legislative Recommendation:

Sec. 1116(b)(10)(A) is amended by striking, “spend an amount equal to” and inserting, “shall set aside and spend”

Sec. 1116(b)(10) is amended by inserting after subparagraph (D), the following new subparagraph:

“(E) FUNDING. – The funds set-aside by the local educational agency as described under subparagraph (A), shall be made available for the year in which the funding was set-aside and shall remain available until such funds are expended on the provision of supplemental educational services or transportation under paragraph (9), unless –

(i) the local educational agency has provided the state educational agency written evidence of reception or rejection of services from the parents of at least 75 percent of the students eligible for supplemental educational services; or

(ii) the State otherwise approves a request by the local educational agency based upon a State review of the local educational agency’s demonstrated success in -

- (I) making significant progress toward meeting the requirements of clause (i);
- (II) ensuring eligible providers were given access to school facilities in order to provide supplemental educational services;

- (III) partnering with community based organizations and other groups to help reach out to eligible students and their families;
- (IV) ensuring sign-up forms were made widely available and accessible to all eligible students and their parents, schools attended by eligible students and eligible providers; and
- (V) ensuring all eligible students were able to sign up throughout the course of the school year and summer.

2. Ensure Accountability and Provider Effectiveness and Expand Resources for State and Local Implementation of SES

Background:

Under current law, states are required to develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by providers. States are also required to withdraw approval from providers that fail, for 2 consecutive years, to contribute to increasing the academic proficiency of students served.

While a recent GAO report suggests that almost all states are taking stronger steps to fulfill their responsibility to properly oversee the quality of providers, many states point to the lack of adequate resources as a significant barrier.

The lack of resources has also been an issue for many local educational agencies in their attempts to effectively implement supplemental educational services.

Solution:

Expand the current State administrative cap under NCLB to allow additional funds to be used for the sole purpose of improving implementation and oversight of SES. In addition, allow school districts to reserve up to 1% of the SES/public school choice transportation funding, for activities directly related to the implementation of SES.

Legislative Recommendations:

Sec. 1004(a)(2) is amended by:

- (1) striking the “.” after subparagraph (2) and inserting “and;” and
- (2) inserting a new subparagraph (3) to read as follows:

“(3) in addition, may reserve up to \$100,000 to carry out the responsibilities under section 1116(e)(4).”

Sec. 1116 (b) (4) is amended by:

(1) After subparagraph (E), insert new subparagraphs (F and G) as follows:

“(F) notify each local educational agency within the State that is required to provide supplemental education services under this subsection for a school year no later than June 1st preceding the commencement of the school year; or if the June 1st deadline is not possible, with as much advance notice before the first day of the school year as possible, and

(G) include on the State educational agency’s Internet website a standard, downloadable application form for local educational agencies and parents to utilize in applying for and providing supplemental educational services under this subsection.

Sec. 1116(b)(10) is amended by:

(1) After subparagraph (D) insert a new subparagraph as follows:

“(E) Notwithstanding any other provision of this paragraph, a local educational agency may reserve up to 1 percent of the funds described in subparagraph (A) to carry out the responsibilities under section 1116(e)(2).

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

Background:

The cornerstone of SES is the ability of parents to choose from a wide variety of providers which offer distinctive instructional approaches; various locations, modes of instruction and other qualities to best meet the individual needs of their child.

While SES is widely viewed as a program delivered by private, for-profit providers, the reality is that a majority of services are provided by school districts running their own programs which are typically expanded versions of pre-existing after school programs. As a result, districts have the advantage of providing services directly at the school. By not allowing, or limiting other providers to serve students directly at the school, student options for providers are effectively limited.

While districts not identified as in need of improvement clearly have the right to administer their own quality programs or enter into exclusive contracts with other providers to deliver services, they should not be allowed to take unfair advantage of the fact they oversee the process in which they themselves are “competing.” If districts are to be providers, there must be additional safeguards in place to ensure a level playing field – not only in terms of facilities access but also to ensure fair oversight of all program requirements.

Solution:

There are several ways to address these issues:

- While districts should ALWAYS have a policy in place to permit providers to serve students at the school site, this is particularly essential when the district itself is a provider.
- Ideally, the only way to have a true level playing field for all providers of supplemental services is to require that states identify a third party entity to oversee the program in any instance where the district itself is a provider.
- Create procedures and timelines that provide parents early notice, informed choice and a streamlined registration process.

Legislative Recommendation:

Sec. 1116(e)(2) is amended –

(1) at the end of subparagraph (C) by striking “and”;

(2) at the end of subparagraph (D), by inserting “and”

(3) after subparagraph (D) inserting a new paragraph as follows:

“(E) select an approved provider or providers, using a fair, transparent and objective process, to operate on-site in the school or schools identified under paragraphs (5), (7) or (8) of subsection (b) free of charge, or for a reasonable fee, on the same basis and terms as are available to other groups that seek access to the school building;

(F) not select a provider or providers under subparagraph (E) based on a reduced per pupil amount as calculated in paragraph (6) or other criteria that would otherwise be an SEA responsibility or programmatic design criteria, such as the requirement of specific pupil tutor ratios;

(G) shall not restrict the distribution of enrollment forms (including the photocopying of forms) to providers;

(H) shall provide approved providers with enrollment forms and logistical information, including the procedures parents must follow in obtaining supplemental services for their children;

(I) shall utilize a statewide application that is posted on the SEA website;

(J) Shall notify parents of SES availability in a streamlined manner:

(1) not later than 30 days after the local educational agency obtains data from the State educational agency indicating that the school serving the child is identified for school improvement under section 1116(b)(1);

(2) not later than 30 days after the first day of classes at the school for a school year, and

(3) not later than 30 days before requesting the reallocation of unused funds reserved for supplemental educational services.

Sec. 1116(e)(4) is amended –

(1) at the end of subparagraph (D), by striking “and”

(2) at the end of subparagraph (E), by inserting “and”; and

(3) after subparagraph (E) by inserting a new paragraph as follows:

(F) monitor each local educational agency which serves as an approved provider to ensure the local educational agency meets the requirements of subparagraphs (E), (F), (G) and (H) of paragraph (2); and upon determination (which may be based upon complaints filed by eligible providers, parents or other entities) that the local educational agency is not in compliance, shall –

(i) withdraw approval from such local educational agency for the following year; or

(ii) designate a third-party entity to carry out the responsibilities under paragraph (2).

4. Require Greater Transparency of Data Related to SES

Background:

In many districts, a significant amount of the funding required to be used for supplemental educational services and transportation related to public school choice is not used – in turn, many eligible students are denied the ability to receive these opportunities. However, the extent to which such funds are not used, as well as other key information related to these programs is rarely provided to parents, the public, and policymakers.

In addition, the data collected as part of the Consolidated State Performance Reports (required under Sec. 1111(h)(4)) provides limited information related to many aspects of SES. Specifically, these reports only require states to provide the number of schools whose students received SES; the number of students who received SES; and the number of students who were eligible to receive SES. States are also provided the “option” to report on the number of students who “applied” to receive SES.

Solution:

At the local level, require greater transparency of information related to supplemental educational services and transportation, by requiring that key data be included in the report cards currently required to be prepared and disseminated by each local educational agency.

At the state and federal levels, expand the current reporting requirements related to SES to ensure that accurate, meaningful and timely data is being collected by the Secretary.

Legislative Recommendation:

Sec. 1111(h)(1)(C) (State Report Cards) is amended –

- (1) at the end of clause (vi), by striking “and”
- (2) at the end of clause (vii) by inserting “and”
- (3) inserting a new clause as follows:

“(viii) for the prior school year, the number of schools in the state required to provide supplemental educational services; including the number of students eligible to participate; the actual number of students who participated; the total amount of funds that were made available and the total amount of funds expended for supplemental educational services and the total amount of funds expended for transportation related to public school choice pursuant to section 1116(b)(10).”

Sec. 1111(h)(2)(B) (LEA Report Cards) is amended –

- (1) at the end of subclause (I), by striking “and”
- (2) at the end of subclause (II), by inserting “and”
- (3) inserting a new subclause as follows:

“(III) for the prior school year, the number of schools in the local educational agency required to provide supplemental educational services; including the number of students eligible to participate; the actual number of students who participated; the total amount of funds that were made available and the total amount of funds expended for supplemental educational services and the total amount of funds expended for transportation related to public school choice pursuant to section 1116(b)(10).”

Sec. 1111(h)(4)(F) is amended as follows:

“(F) the number of students and schools that participated in public school choice and with respect to supplemental services, for the prior school year, the number of schools in state required to provide supplemental educational services; including the number of students eligible to participate; the actual number of students who participated; the total amount of funds that were made available and the total amount of funds expended for supplemental educational services and the total amount of funds expended for transportation related to public school choice pursuant to section 1116(b)(10).”

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

Background:

As noted above, the cornerstone of SES is the ability for parents to choose from a wide variety of providers which they feel can best meet the needs of their child. By empowering parents to make this educational decision, students are better off. As part of NCLB, the Secretary was directed to further confirm this strategy and evaluate the impact of SES on student achievement. While the current law language was a good start, to date, the efforts around evaluating SES at the national level have not gone far enough. The current law does not focus on the use of scientifically based research in the assessment of the program, nor does it highlight the need for such research and evaluations to take into account impacts beyond student academic achievement. While academic achievement must be the main focus of any evaluation, it is important to also determine the impact SES has upon school attendance, promotion rates, grades, discipline, etc.

Solution:

Amend the current language under the Title I evaluation to strengthen the evaluation of SES.

Legislative Recommendation:

Sec. 1501(a)(2)(I)(iv) is amended as follows:

“(iv) The number of ~~parents~~ students who ~~choose to take advantage of the~~ received supplemental educational services ~~option~~, the criteria used by the States to determine the quality of providers, the kinds of services that are available and utilized, the costs associated with implementing this option, and the impact of receiving supplemental educational services on student achievement, using a varied set of criteria for success to evaluate such impact, including criteria consistent with scientifically-based research.”

Sec. 1116(e)(4)(D) is amended by inserting, after “subparagraph (B)” the following:

“by using valid and reliable methods that are consistent with relevant, nationally recognized professional and technical standards that –

- (I) are administered to all students enrolled in supplemental educational services under this subsection;
- (II) to the extent practicable, quantify individual student academic achievement in reading/language arts and mathematics, as measured by progress toward meeting challenging State student academic achievement standards under section 1111(b), as a result of the provision of supplemental educational services and independent of other variables that may impact such achievement;
- (III) use assessment instruments consistent with the purpose and design of such assessment instruments;
- (IV) take 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;
- (V) exclude students who do not attend at least 90 percent of the supplemental educational services provided; and
- (VI) other appropriate qualitative measures.

Inserting a new paragraph (13) in Section 1116(e):

“(13) An SEA that fails to implement any of the requirements of section 1116(e)(2)(4) shall be subject to a withholding of one percent of the funds made available under 1004(a);”

6. Supplemental Educational Services for Students with Disabilities and Student Who Are Limited English Proficient

Background:

Concern has been raised regarding the extent to which students with limited English proficiency and students with disabilities have been underserved with respect to supplemental educational services.

To date, there has been limited data to support or refute this concern, although a recent GAO report made the following observation:

“...we were unable to determine whether certain groups of students were underserved.”
(page 17)

By the GAO's own admission, the data is of limited use in determining if these groups of students were underserved because they were unable to obtain comparable data on the characteristics of Title I students enrolled in these same districts.

Solution:

- At a minimum, as part of the Title I evaluation, the Secretary should be directed to conduct a review of issues surrounding the provision of SES to LEP and students with disabilities.
- Provide incentives to increase access to services for these underserved subgroups.

Legislative Recommendation:

Sec. 1501(a)(2) is amended by redesignating subparagraph "(O)" as subparagraph "(P)" and inserting a new subparagraph "(O)" as follows:

"(O) The extent to which students with disabilities and students with limited English proficiency are represented as compared to all students receiving supplemental educational services."

Section 1116(e)(4) of such Act is further amended by adding at the end the following:

"(Q) ensure that, in each area served by a local educational agency in the State that in forms the State educational agency of the local educational agency's need to provide supplemental educational services under this subsection to children who are limited English proficient or children with disabilities, the list of approved providers includes a choice of 2 or more providers with sufficient capacity to provide effective services for children who are limited English proficient or children with disabilities, respectively; and

"(R) if the State educational agency determines appropriate, use a portion of the funds available under subsection (b)(10) to provide, on behalf of rural local educational agencies that serve schools required to offer supplemental educational services under this subsection, incentives for providers to provide supplemental educational services under this subsection to students in rural local educational agencies, including :

"(i) providing technical assistance to providers, including those offering supplemental educational services through distance learning; and

"(ii) providing assistance to community based organizations with the approval process to become supplemental educational services providers, as well as with the contracting process with local educational agencies."

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.
- Re-start the AYP timetable to Year 0, when a school is re-structured and converted to a charter school or managed by a private entity.

Legislative Recommendation:

Sec. ____ . CHARTER SCHOOL MANAGEMENT

(a) INCENTIVES TO REOPEN SCHOOLS AS PUBLIC CHARTER SCHOOLS. – Part B of Title V of the Elementary and Secondary Education Act of 1965 is amended by adding at the end of the following:

Subpart 4 - Additional Incentives for Charter Schools

Section 5251. ADDITIONAL INCENTIVES FOR RESTRUCTURED SCHOOLS

(a) IN GENERAL – The Secretary shall carry out a program under which the Secretary provides incentives to State and local agencies to –

- (1) reopen schools as public charter schools; and
- (2) enter into contracts with entities with a demonstrated record of effectiveness to operate schools.

(b) INCENTIVES – Incentives under subsection (a) may include providing the schools with –

(1) payments, from amounts made available to carry out this subpart;
(2) relief from burdensome regulatory requirements, to the extent such relief is available under other law; and
(3) relief from any burden associated with being identified for school improvement.

(c) PRIORITY CRITERIA FOR CHARTER SCHOOL GRANTS – Section 5202 (e) of that Act (20 USC 7221a (e)) is amended by amending paragraph (2) to read as follows:

(2) REVIEW AND EVALUATION PRIORITY CRITERIA – The criteria referred to in paragraph (1) are that the State –

(A) provides for periodic review and evaluation by the authorized public chartering agency of each charter school, at least once every 5 years unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school’s charter;

(B) is meeting or exceeding the student academic achievement requirements and goals for charter schools as set forth under State law or school’s charter;

(C) is committed to demonstrating progress, in increasing the number of high-quality charter schools, in areas that lack such schools; and

(D) is committed to increasing the number of high-quality charter schools and the number of schools operated under contract with entities with demonstrated records of effectiveness.

(c) ELIMINATION OF “OTHER MAJOR RESTRUCTURING” OPTION. – Section 1116 (b) (8) of that Act (20 USC 6316 (b) (8)) is amended in subparagraph (B) by striking clause (v).

(d) RESTARTING THE TIMELINE TO DEMONSTRATE ADEQUATE YEARLY PROGRESS – Section 1111(b)(2) of that Act (20 USC 6311 (b) (2)) is amended by adding at the end the following:

(L) RESTRUCTURED SCHOOLS – If a school is reopened as a charter school, or begins to be operated under contract with an entity with a demonstrated record of effectiveness, the adequate yearly progress of the school shall be determined based on the number of years after the school is so reopened or the number of years since the end of the 2001-2002 school year.

C. Special Education Services Principles that may require Legislative Changes

1. *Modify the highly qualified requirements on special education teachers and teachers of students “at risk” 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.
- Modify 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 providers of special education, and/or public separate facilities) should be excluded from the home district’s scores for their subgroup.

Legislative Recommendation:

SEC ___ SPECIAL EDUCATION SERVICES

(a) TEACHERS WHO FACILITATE TECHNOLOGY RATHER THAN PROVIDE INSTRUCTION NEED NOT BE “HIGHLY QUALIFIED” – Section 1119 of the Elementary and Secondary Education Act of 1965 (20 USC 6319) is amended in the following subsection (a) by adding at the end the following:

(4) EXCEPTION FOR TEACHERS WHO FACILITATE TECHNOLOGY-BASED PROGRAMS – Paragraph (1) does not apply to a teacher to the extent the responsibility of the teacher is to facilitate the use of technology-based programs (such as computer-assisted that provide self-pacing and pre- or post-testing or courses delivered through distance learning technologies) without delivering content instruction.

(b) TEACHERS OF STUDENTS WITH DISABILITIES REQUIRED TO HAVE SPECIAL EDUCATION EXPERTISE RATHER THAN SUBJECT MATTER EXPERTISE – Section 9101 of that Act (20 USC 7801) is amended in paragraph (23) –

- (1) in subparagraph (B) by striking “and” at the end;
- (2) in subparagraph (C) by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

(D) when applied to a teacher whose responsibility is to teach students with disabilities in a self-contained (rather than departmentalized) setting, does not require a demonstrated qualification with respect to special education.

(c) EXCLUSION FROM AYP SCORES OF STUDENTS WITH DISABILITIES WHO ARE EDUCATED OUTSIDE THE SCHOOL OR IN SPECIALIZED SETTING – Section 1111 (b)(2) of the Elementary and Secondary Education Act of 1965 (20 USC 6311 (b)(2)), as amended by this Act, is further amended by adding at the end the following:

(M) STUDENTS WITH DISABILITIES – Notwithstanding any other provision of this Act, the assessment of a student with disabilities –

(i) shall not be used in determining the adequate yearly progress of a school or local agency, if the student is educated outside that school or that agency; and

(ii) shall not be used in determining the adequate yearly progress of a subgroup of a school or local agency, if the student is educated in a specialized setting (such as a nonpublic school, third-party provider of special education, or separate public facility).