

ELEMENTARY & SECONDARY EDUCATION

Letter to State Chiefs regarding individual student agreements and computers used in SES programs

August 20, 2008

Dear Chief State School Officer:

The Department of Education issues this guidance to provide States with information regarding two areas of implementation of the supplemental educational services (SES) provisions of Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB). This guidance concerns (1) the development of individual student agreements, including (a) who bears responsibility for developing the agreements, and (b) how the requirement of "consultation with parents" can be met; and (2) whether computers used as part of an SES program and kept by students at the conclusion of such program may be considered an incentive.

This guidance represents the Department of Education's current thinking on these topics. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. If you are interested in commenting on this guidance, please email us your comment at OIGuidanceDocument@ed.gov or write to us at the following address:

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Washington, D.C. 20202

Individual Student Agreements

Responsibility for Developing Student Agreements. The ESEA requires that a local educational agency (LEA) enter into an agreement with each SES provider chosen by a parent. Among other requirements for the agreement, the statute: "require[s] the local educational agency to develop, in consultation with parents (and the provider chosen by the parents), a statement of specific achievement goals for the student, how the student's progress will be measured, and a timetable for improving achievement." ESEA section 1116(e)(3)(A).

As this statutory language makes clear, it is the LEA's responsibility, and not the responsibility of a provider, to ensure that an agreement is completed for each student participating in SES and that each agreement contains the information required under the statute. 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. An LEA cannot require a provider to develop the agreements for the students it serves, absent the provider's consent. Ultimately, the LEA maintains final responsibility for reviewing and approving all agreements developed by providers, and for making sure that all agreements, whether developed by the LEA itself or by a provider on behalf of the LEA, are completed for all students participating in SES and contain all required information.

Fulfilling the "Consultation with Parents" Requirement. Section 1116(e)(3)(A) of the ESEA requires consultation with a student's parents as part of the development of the student's individual agreement, but it does not define what consultation must entail or how it must occur. Some LEAs are interpreting this provision to require a parent's signature on the agreement before SES be provided. The statute, however, does not specifically require a parent signature as evidence that consultation has occurred. Rather, we believe that an LEA must offer parents a genuine opportunity to consult on the terms of their child's individual student agreement, but that an LEA cannot use the consultation requirement to deny SES to a child whose parents have not participated in the development of their child's SES plan but who have otherwise requested that their child receive SES.

An LEA must be able to demonstrate that it (or a provider acting on its behalf) has made reasonable efforts to consult with a parent of each student who has requested SES. This may include attempts to reach parents through telephone, email, home visits, at school events, or other means.

An SEA should determine what it considers reasonable efforts by its LEAs to consult with parents, and should provide guidance to its LEAs in terms of when, how often, and through what means an LEA (or a provider on behalf of the LEA) must attempt to consult with parents before it can deem the consultation requirement to have been met. An SEA could also develop a broad definition of "consultation" that would include conversations with parents by phone or email. We encourage SEAs to establish reasonable requirements for their LEAs in this area.

To facilitate parents' participation in the consultation process, an LEA could indicate on its SES enrollment forms that the LEA is required to consult with parents during the development of individual student agreements and that parents' participation in this process is expected and appreciated. Additionally, an LEA could include, on the SES enrollment form or through other means, an opportunity for parents to express their preferred method of consultation.

We encourage SEAs to monitor their LEAs carefully with respect to the development of student agreements and to ensure that the agreements are of sufficient quality to drive improvements in student achievement.

Computers Used in SES Programs and Incentives

In the Department's Non-Regulatory Guidance on SES, we state that 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 (Question C-10.). It has come to our attention that some SEAs may be prohibiting providers from allowing students served by the providers to keep a computer at the completion of tutoring because the SEAs view the computers as an unallowable incentive. We believe, however, that it is appropriate for SEAs to allow students to keep the computers upon completion of the SES program if the computers' primary purpose is instructional. If the computers' primary purpose is not instructional, the computers may be an unallowable incentive under State policy. SEAs should continue to monitor SES providers and determine whether providers are using incentives in a way that violates State policy.

SES is an important component of NCLB, and we thank you for your efforts to ensure that students are obtaining quality services and succeeding in the classroom.

Sincerely,

Douglas B. Mesecar
Assistant Deputy Secretary