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Supplemental Educational Services Under NCLB: State Implementation for Students with Disabilities

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INTRODUCTION

Supplemental educational services (SES) is a component of the omnibus Elementary and Secondary Education Act usually referred to as the No Child Left Behind Act (NCLB) of 2001. The law authorizes many programs besides SES, most notably Title I grants targeted to meet the needs of children in high poverty schools. As defined in the non-regulatory guidance issued by the U.S. Department of Education (ED), “Supplemental educational services are additional academic instruction designed to increase the academic achievement of students in schools in need of improvement. 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 local educational agency (LEA) and are aligned with the state’s academic content standards. Supplemental educational services must be provided outside of the regular school day” (U. S. Department of Education, June 13, 2005, p.1).

State education agencies (SEAs) and LEAs that arrange for SES are required to ensure that students with disabilities eligible under the Individuals with Disabilities Act of 2004 (IDEA) or Section 504 of the Rehabilitation Act receive appropriate supplemental educational services and accommodations in the provision of those services [34 CFR §§200.46(a)(4) and (5)]. Project Forum surveyed state directors of special education about the inclusion of students with disabilities in SES in their state. This document, prepared by Project Forum at the National Association of State Directors of Special Education (NASDSE) as part of its cooperative agreement with OSEP, includes background on the SES program, a report of the results of the state survey and observations and conclusions.

BACKGROUND

SES Requirements for Students with Disabilities

NCLB requires states to develop a statewide accountability system that includes content standards, assessments and achievement standards as well as a plan for all children to achieve

adequate yearly progress (AYP). When a school does not make AYP, NCLB requires choice options to be made available to parents as follows:

- The choice to transfer to another public school must be made available to all students enrolled in Title I schools that have failed to make AYP for two consecutive years (i.e., in the first year of school improvement status); and
- Tutoring under the SES provision of NCLB must be made available for eligible students from low-income families the year after their school does not make AYP for the third consecutive year (the second year of school improvement status) (U. S. Department of Education, June 13, 2005, p.2).

These options continue until the school has made AYP for two consecutive years.

In 2005-06, ED began a pilot program by granting permission to four LEAs in Virginia to “flip” the consequences for failure to make AYP, i.e., to provide SES in the first year of school improvement status in place of allowing school transfers in that year. That pilot was extended in the 2006-07 school year by adding LEAs in Alaska, Delaware, Indiana and North Carolina and it will be extended again for the 2007-08 school year.¹

NCLB regulations include a description of SEA responsibilities related to SES. Some of those responsibilities include: identifying providers, maintaining a list of providers, and publicly reporting on standards and techniques the SEA will use in monitoring services [34 CFR §200.47]. An LEA that identifies a school as in need of improvement under NCLB must send a letter of notification to the parent of each child enrolled in the school including details about choice options available [34 CFR §200.37].

Students with disabilities may not be excluded from participation in the NCLB choice options. As explained in the guidance issued by ED (U. S. Department of Education, June 13, 2005, p. 10-11), supplemental educational services must be consistent with a student’s individualized education program (IEP) under Section 614 of IDEA or a student’s individualized services under Section 504. However, individual providers are not required to provide services for students with disabilities and NCLB sets no requirements related to the qualifications of instructors assigned by providers to deliver SES services. The law does state that, if no provider is able to make services with necessary accommodations available to an eligible student with a disability, the LEA would need to provide these services, with necessary accommodations, either directly or through a contract.

Evaluations of SES Participation by Students with Disabilities

There is a small but growing literature on SES, but findings related to participation by students with disabilities are sparse. A study of SES implementation in the 2004-05 school year by the Government Accountability Office (GAO) showed that students with disabilities made up less

¹ For details of this pilot and copies of approval letters setting conditions for participation, see <http://www.ed.gov/nclb/choice/help/ses/07agreements.html>.

than 20% of students receiving services in about two-thirds of districts in 2004-05 and not enough providers were available to meet the needs of students with disabilities in an estimated one-quarter of districts (GAO, 2006).

In a recent study, Burch, Steinberg & Donovan (2007) reported on a survey of states and a case study of one large urban district. Of the 30 states that responded to their survey, only seven said their states require specific services for students with disabilities under SES. They note that, despite the expectation in federal policy that tutoring providers will develop instructional programs based on individual student needs, “none of the national firms represented among the top eight providers in 2004-2005 reported offering services appropriate to students with special needs” (p. 127). The authors note that providers have few incentives to meet the needs of special education students because the costs of providing appropriate services are higher than the per pupil allocation under the program. Similarly, in a policy brief on SES, Burch (2007) discusses the civil rights implications of the evidence that current SES service delivery in some places does not have appropriate inclusion of students with disabilities.

Burch *et al* also characterize SES accountability as the weakest kind of policy design because it relies on self-reported data from providers and is based on complaints about infractions from parents and educators. However, this criticism seems overly broad since states are required to do an evaluation of their providers and, prior to approval, providers must show states that their program has evidence of effectiveness and is based on research. Further, states must monitor districts and providers in addition to having a formal complaint process in place. The authors do add that the majority of states across the country are developing accountability systems to hold providers more accountable for student outcomes and that states are currently limited in their ability to hold providers accountable because of a lack of staff to monitor performance, a lack of knowledge to collect or interpret data and weak relationships to local sites.

A recent study by the Center on Education Policy (2007) reached similar conclusions about states’ limited capacity to monitor the effectiveness of SES providers. The results of a survey they conducted revealed that only 10 of 48 states reported being able to do so. This study also found that 45 of 49 states are considering a provider’s ability to serve students with disabilities and English language learners (ELLs) in their approval process.

ED provided information about states’ monitoring of SES at the *National Summit on Supplemental Educational Services and Public School Choice* held on June 27-28, 2007 and made available a copy of the “Protocols and Procedures” for federal monitoring of SES and public school choice options under NCLB. That document provides information on ED’s targeted monitoring reviews of public school choice and SES implementation in states and LEAs from the first monitoring cycle that was completed in September 2006. The focus for that cycle was whether states had policies and procedures in place for these two choice options and the reviews concluded that, for the most part, they did. The report noted a problem in insufficient SEA monitoring of LEAs to address low participation rates and to ensure that statutory requirements are being properly implemented. Monitoring procedures for the next cycle will focus more closely on state oversight of LEA implementation of the two choice options and

monitoring teams will include extra members who will monitor these options in an expanded number of LEAs in each state.

ED's Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service (2007) funded a three-year longitudinal study that analyzed student-level data from nine large urban school districts to examine the characteristics of students participating in the two choice options and the related impact on student achievement. For supplemental services, the average participation reported was 12.1% of those eligible, but participation varied greatly by many factors such as grade level and race. Although the number of students who participated was low in comparison to the number eligible, the study found that students with disabilities participated at a relatively higher percentage of those eligible than some other subgroups. Above-average participation rates in terms of those who were eligible were found for students with disabilities (14.6 %) and ELL students (13.1 %). In addition, study data show that, in three of six districts with a substantial number of participating students with disabilities, those students showed significant increases in achievement in reading or math or both subjects.

More resources are becoming available to assist in the monitoring and evaluation of SES. For example, the Center on Innovation and Improvement funded by ED has devoted a section of its website to this topic (<http://www.centerii.org/ses/>). It includes a resource document designed to help SEAs create an effective system to evaluate SES providers and a searchable database of state policies (Center on Innovation & Improvement, 2006).

METHODOLOGY AND FINDINGS

Project Forum developed a survey protocol to obtain a snapshot of states' implementation of SES for students with disabilities. Input on the draft survey form was obtained from ED's Office of Innovation and Improvement (OII).² A copy of the final survey is attached to this document as an appendix.

The survey was sent by email to all state directors of special education on June 5, 2007 with a request for return within two weeks to provide information that could be shared with attendees at the *National Summit on Supplemental Educational Services and Public School Choice* held on June 27-28, 2007. A total of 33 states responded, all within the month of June. A summary of responses by item follows.

² Project Forum acknowledges with sincere appreciation the time and effort that Stacy Kreppel, Senior Policy Advisor to the Assistant Deputy Secretary of the Office of Innovation and Improvement at the U.S. Department of Education, spent reviewing a draft of the survey form and an earlier draft of this document.

State Requirements Related to SES Providers Serving Students with Disabilities

A total of 14 states responded that they have requirements related to SES providers' ability to serve students with disabilities and attached either a link to information on their state's website or added an explanation. Most of these requirements called for assurances by the providers of their ability to serve this population in accordance with each student's IEP or 504 plan. Only in *Alaska* among the responding states do providers have to provide evidence that their program is successful in increasing the academic achievement of students with disabilities if they intend to serve this population. *Utah* does not allow a provider to refuse services to a student based on identification as a student with a disability or an ELL student. In addition, although *Arizona* indicated that it does not have specific requirements related to the ability of providers to serve students with disabilities, it does require that schools have providers for these students, although they can be different providers from those for general education students.

Participation of Special Education Staff in the Approval Process for SES Providers

Results for this item revealed that only eight of the responding states include special education staff in the approval process for SES providers. Two states—*Maine* and *Tennessee*—mentioned that special education staff serve on the team that reads applications. *Virginia* noted that special education staff are included on an as-needed basis.

State Provision of Training/Assistance to LEAs on SES for Students with Disabilities

Ten states indicated that they provide training and/or assistance to LEAs on matters related to students with disabilities in SES. These respondents noted that special education is one topic in the general training activities related to SES that is provided to all districts in these states. The strategies mentioned are audio conferences (*Alaska, Florida* and *Virginia*), state workshops (*Connecticut, Indiana, North Dakota* and *Wyoming*), and one-on-one assistance through phone calls or onsite visits. *Pennsylvania* noted that SES will be included in state training addressing responsibilities as well as best practices in the 2007-08 school year.

State Collection of Information from LEAs about the Participation of Students with Disabilities in SES Programs

Of the 17 states responding that they collect data from their LEAs, most said the data about students with disabilities is part of the data collection for the SES program as a whole. *Alaska* and *Florida* replied that their states' data systems with unique student identifiers allow for the determination of the number of students with disabilities who received SES. *Kentucky* uses a monthly monitoring form for all students in SES programs and it includes whether or not the student has special needs. *Connecticut's* annual provider survey has separate tables on general education, special education and ELL students for reporting data by grade on the total number who received services and the number who met at least 80% of their goals. *Arkansas, Pennsylvania* and *Louisiana* referred to data collection that has just begun or will begin in the next school year.

State Monitoring of the Effectiveness of Provider Service for Students with Disabilities

A total of 13 states reported that they monitor the effectiveness of SES for students with disabilities. Most indicated that information about students with disabilities is part of the overall state department of education monitoring of the program. The *Tennessee* “Instrument for Monitoring Supplemental Education Services Providers” requires providers to submit evidence that the achievement goals, measurement, reporting of progress and timetable for students with disabilities are consistent the students’ IEPs. The required evidence includes information from the LEA related to the student’s IEP, a copy of the timetables for reaching academic goals and documentation that the provider’s instruction is aligned with the IEP. Three states—*Arkansas*, *Kentucky* and *Virginia*—described evaluations of their SES programs that are being performed by contract with university personnel or private contractors.

OBSERVATIONS AND CONCLUSIONS

Since the average special education incidence across the country is approximately 12%, the number of students with disabilities will represent a small component of an SES program. However, since students with disabilities are already receiving some type of extra assistance by nature of their identity as having special needs, their participation in an SES program requires personnel that are prepared to provide individualized planning and closer alignment with their ongoing instructional program. The SES program is relatively new and there is only limited information available about the details of state implementation. Thus, it is not yet possible to draw any conclusions about the success of services being provided to this subgroup of students.

It appears from the results of the survey conducted for this study that in some states special education is, or is in the process of being, incorporated into the overall monitoring process conducted by states to ensure their compliance with NCLB requirements. Clearly, there is a need for more research to assess the impact of the program for the special education population. It might also be valuable to states to have access to information about strategies being used that support the participation of students with disabilities, its impact on student achievement and ways to demonstrate compliance with the law.

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APPENDIX

SURVEY

PARTICIPATION OF STUDENTS WITH DISABILITIES IN SES

State: ____ Name:_____

1. Does your state have specific requirements related to SES providers' ability to serve students with disabilities?

____ No

____ Yes

If so, please provide a copy or a link to this information.

2. Does special education staff participate in your state's process to approve tutors for the SES program?

____ No

____ Yes

3. Do you provide any training or assistance to LEAs in carrying out their SES responsibilities as they specifically relate to students with disabilities?

____ No

____ Yes

If so, please describe:

4. Do you collect any information from LEAs about the participation of students with disabilities in their SES programs?

____ No

____ Yes

If so, please describe:

If so, can you supply a copy of any reports or a link to them?

5. Does your state monitor the effectiveness of tutoring services provided to students with disabilities?

____ No

____ Yes

If so, how?

6. Additional comments: