



Ira Schwartz, Assistant Commissioner
Office of Accountability
55 Hanson Place, Room 400
Brooklyn, New York 11217
Tel: (718) 722-2796 / Fax: (718) 722-4559

Field Guidance on Public School Choice and Supplemental Educational Services

To: District Superintendents, Superintendents of Public Schools, Principals of Charter Schools, and Coordinators of Title I Programs

From: Assistant Commissioner Ira Schwartz *Ira Schwartz*

Subject: Summary of the Effects of the ESEA Approved Waiver on the Provision of Public School Choice (PSC) and Supplemental Educational Services (SES)

The purpose of this Field Guidance is to provide a summary of the changes that will occur related to PSC and SES for districts designated for the 2012-13 school year by the State Education Department (SED) as Focus Districts and schools designated as either Priority or Focus Schools. More information on the provisions of NY's ESEA approved Flexibility Waiver may be found at: <http://www.p12.nysed.gov/accountability/ESEAMemos.html>

Emergency amendments to Commissioner's Regulations Pertaining to PSC (Section 120.3) and SES (Section 120.4) were adopted by the Board of Regents at their June 2012 meeting and can be found at: <http://www.regents.nysed.gov/meetings/2012Meetings/June2012/612bra6.pdf>

Public School Choice (PSC)

Set-aside Requirements:

- Beginning in the 2012-13 school year, identified districts with Priority and/or Focus Schools will no longer be required to set aside funds for PSC. Where PSC is required, Title I funds may be used to pay for transportation costs. As before, districts may use other federal, State or local sources to pay for the costs associated with PSC transportation.
- A district or a public charter school identified as a Focus district or Focus charter school may use up to a maximum of 20% of its Title I Focus set-aside for PSC transportation (For example, a district with a 5% set-aside, may use funds expended for PSC to meet up to 1% of the set-aside.) Districts may use additional Title I funds for PSC, but these will not be counted towards the required set-aside.

Implementation Requirements:

- All Title I schools that are designated as Priority or Focus Schools, except for public charter schools, will be required to offer PSC. Districts must provide all enrolled students in these schools with the option to transfer to another public school within the district that is not a Priority or Focus School. Public charter schools, as schools of choice, are not required to offer transfer options because there is no mechanism in Article 56 of the Education Law for transfer of charter school students to other independent charter schools or public schools. Districts that lack space may not use that as a reason for failing to offer PSC.

- PSC must be offered each year to all students enrolled in a Title I Priority or Focus School.
- Title I schools that were required to offer PSC in the 2011-12 school year because they were identified as in School Improvement (Year 2), Corrective Action or Restructuring and are not identified as Priority or Focus Schools in 2012-13 need no longer offer PSC to newly enrolled students. However, students who transferred into the school under the PSC option prior to the 2012-13 school year must be offered the option to complete their education at the school. In this case, the district is not responsible for providing transportation beyond what the district provides to students in accordance with its regular transportation policies.

Notification Requirements:

- The requirement that parents must be notified of the PSC option no later than 14 days before the start of the school year remains in effect for the 2012-13 school year. Districts are encouraged to inform parents as soon as possible about their choice options.
- In districts where all schools that serve a grade are Priority or Focus Schools and PSC is therefore not available for students in that grade, a parent notification letter must still be sent explaining the PSC requirement and why it is not available.

Supplemental Educational Services (SES)

SES Option:

- Beginning in the 2012-13 school year, districts and public charter schools will no longer be required to offer SES or set aside money to pay for SES in identified Title I schools. However, districts and public charter schools may choose to continue to provide SES to students in Title I schools that have been identified as Priority or Focus Schools.

District or Public Charter School Offering SES in 2012-13:

- Beginning in the 2012-13 school year, districts and public charter schools that opt to offer SES to students may select the providers that will be permitted to operate in the district or public charter school using the State's approved list from which parents may select to provide services to their child. Commissioner's Regulations require that districts offer parents the opportunity to select from among at least two providers who serve students in the grades enrolled in the district's Priority and Focus Schools.
- Equitable access to school facilities for approved SES providers remains a requirement. Districts and public charter schools must allow SES providers access to their facilities according to the same rules as for other organizations.
- Any district that is an approved SED provider, including Focus Districts or Focus Charter Schools, may offer SES.

Set-Aside Requirements:

- Beginning in the 2012-13 school year, identified districts with Priority and/or Focus Schools will no longer be required to set-aside funds for SES.
- Districts that continue to provide SES may use Title I funds to pay for those services.

- A district or public charter school identified as a Focus District or Focus Charter School may use up to a maximum of 30% of its Title I Focus set-aside for SES. (For example, a district with a 10% set-aside, may use funds expended for SES to meet up to 3% of the set-aside.) Districts and public charter schools may use additional Title I funds for SES, but these will not be counted towards the required set-aside.

Notification Requirements:

- Districts that continue to offer SES must notify parents at two distinct time periods during the school year and offer at least two enrollment windows.
- The notification must include the following information:
 1. An explanation regarding how parents can obtain SES for their child.
 2. The identification of each approved provider within the LEA with which they have contracted for services, including information on any providers that are accessible through technology, such as distance learning.
 3. A brief description of the services, qualifications and evidence of effectiveness for each contracted provider.
 4. Providers that are able to serve students with disabilities (SWD) or Limited English Proficient (LEP) students.
- Additionally, the district should describe the procedures and timelines that parents must follow to select a provider to serve their child.
- Since the 20% set-aside is no longer required and the amount of funds available for SES may be diminished, districts should notify parents that the district will prioritize requests based on providing services to the lowest-achieving, eligible students.

Carryover of 2011-12 School Year PSC and SES Set-Asides:

Districts that had Title I schools identified as In Improvement, Corrective Actions, and/or Restructuring during the 2011-12 school year, but are not identified as Focus Districts in the 2012-13 school year are no longer required to roll over the unexpended portion of their 20% set-aside for PSC and SES funds into the 2012-13 school year and may use those funds for other allowable Title I expenses. Districts must comply with applicable requirements for equitable participation of nonpublic students with respect to these funds where they are allocated to Title I schools under ESEA §1113(c) or are used for off-the-top reservations that provide district-wide services to Title I schools. Funds used to provide services to subgroups of students or that are targeted to a specific subset of low performing schools are not subject to the equitable participation requirements. See, *ESEA Flexibility Frequently Asked Questions-Addendum*, November 10, 2011, Q&A B-10a.

Districts that had Title I schools identified as in Improvement, Corrective Actions, and/or Restructuring during the 2011-12 school year and are identified as Focus Districts in the 2012-13 school year are no longer required to roll over their unexpended portion of the 20% set-aside for PSC and SES funds into the 2012-13 school year and may use those funds to support allowable programs and services in their Priority and Focus Schools. Funds targeted to Priority or Focus Schools in this manner are not subject to the equitable participation requirements. See, *ESEA Flexibility Frequently Asked Questions-Addendum*, November 10, 2011, Q&A B-10a.

All districts must adhere to the 15% Title I-A carryover limitation rule. They may request from the Department an exemption to this rule once every three years.

Requirements to Remain or Become an Approved SES Provider:

Each provider on the Department's list of approved supplemental educational services (SES) providers, as of July 1, 2012, must no later than a date determined by the Commissioner submit to the Department evidence that commencing with the 2013-14 school year the instruction provided and content used by such provider is aligned with the State Common Core learning standards in the areas of English language arts and mathematics. Providers who do not submit satisfactory evidence are subject to termination.

Expanded Learning Time Requirements for Priority Schools:

- Non-Charter Priority Schools must offer students an expanded learning time program that meets the standards set by the Board of Regents (see the following link: <http://www.regents.nysed.gov/meetings/2012Meetings/April2012/412bra5.pdf>) as part of their implementation of a whole school reform model based on the ESEA waiver turnaround principles or implementation of an intervention model funded by 1003(g) School Improvement Grants or Race to the Top School Innovation Fund Grants. For the 2012-13 school year, this provision applies only to those schools funded for a 1003(g) School Improvement Grant in 2012-13.
- Districts that intend to use Title I funds to implement Expanded Learning Time programs may contract with SED approved SES providers whose programs meet the standards set by the Board of Regents (see link to memo above).

Additional information on these topics can also be found in New York's full waiver request at: <http://www.p12.nysed.gov/accountability/ESEAFlexibilityWaiver.html>. Webinars that provide more details on the various provisions of the ESEA Waiver and a specific webinar on PSC requirements and the SES option can be found at: <http://www.p12.nysed.gov/accountability/Webinars.html>.

cc: John B. King, Jr.
Ken Slentz
Sally Bachofer
James P. De Lorenzo
Roberto Reyes
Lisa Long