

160-4-5-.03 SUPPLEMENTAL EDUCATIONAL SERVICES (SES) IN TITLE I SCHOOLS.

(1) DEFINITIONS.

(a) **Adequate Yearly Progress (AYP)** – a component of the Accountability Profile based on a series of performance goals that every school, LEA, and State must achieve within specified timeframes in order to meet the 100 percent proficiency goal established by the federal No Child Left Behind Act of 2001(NCLB).

(b) **Eligibility** – refers to all students from low-income families who attend Title I schools in their second year of school improvement, corrective action, or in restructuring. Services must be provided in accordance with guidelines established in *Guidelines for the Implementation of State Board of Education Rule 160-4-5.03 Supplemental Educational Services in Title I Schools*.

(c) **Instructor(s)** – the person or persons employed by a supplemental educational services Provider to deliver instruction in reading, language arts, and/or mathematics to eligible student(s) enrolled in the Provider’s program. Instructors may also be referred to as “tutors.”

(d) **Local Educational Agency (LEA)** – local boards of education.

(e) **No Child Left Behind Act of 2001 (NCLB)** – a reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) - the principal federal law affecting education from kindergarten through high school. NCLB is designed to improve student achievement and close achievement gaps. States are required to develop challenging academic standards, to educate all students to 100 percent proficiency by 2014, and to create and implement a single, statewide accountability system.

(f) **Parent(s)/Legal Guardian(s)** – the person or persons legally responsible for the guardianship of the student.

(g) **State Educational Agency (SEA or State)** – refers to the Georgia State Board of Education (SBOE) The state superintendent of schools implements the administrative functions on behalf of the Georgia State Board of Education (SBOE).

(h) **Supplemental Educational Services (SES)** – additional academic instruction provided outside the regular school day that is designed to increase the academic achievement of low-income students, as defined by eligibility for free or reduced price meals (FRM), who attend qualifying schools.

(i) **Supplemental Educational Services Compact** – The compact outlines the roles and responsibilities of each stakeholder including the LEA, Provider, Parent/Legal Guardian, and student. In addition, the compact outlines the cost/fee structure for providing services.

(j) **Supplemental Educational Services Providers (Providers)** – faith-based organizations, profit and non-profit businesses, or LEAs, schools, Institutes of Higher Education (IHEs), community groups, and Regional Educational Service Agencies (RESAs), approved by the SBOE to provide additional academic instruction designed to increase the academic achievement of eligible Title I students.

(k) **Title I** – the federal ESEA program that focuses on improving the academic achievement of the disadvantaged by ensuring that all students have a fair, equal, and significant opportunity to obtain a high quality education and reach, at a minimum, proficiency on challenging state academic standards and state academic assessments.

(2) REQUIREMENTS.

(a) **State Responsibilities.** The Georgia Department of Education (Department) shall:

1. Develop a database of potential Providers as recommended by parent(s)/legal guardian(s), LEAs, and interested members of the public to identify a large number of approved Providers so that parent(s)/legal guardian(s) have a wide variety of choices.
2. Provide and disseminate broadly an annual notice to potential Providers outlining the process for obtaining approval to be a Provider of SES.
3. Develop and apply objective criteria for approving potential Providers.
4. Maintain an updated list of approved Providers.
5. Make available to school districts a list of available approved Providers in their general geographic locations.
6. Develop and apply criteria for a minimum number of instructional hours received in total by a student enrolled with a Provider. These criteria must include a maximum number of instructional hours students may receive per week. The SEA will communicate this to all applicable parties every year.
7. Develop, implement and publicly report on Standards for Monitoring SES Providers (SES Standards) to ensure appropriate implementation of services offered by approved Providers.
8. Develop, implement and publicly report annually on the evaluation used to measure the impact SES has on student achievement.
9. Develop and implement guidelines for SES implementation for both LEAs and approved SES Providers.
10. Develop and implement a code of ethics for approved SES Providers.
11. Develop and implement assurances which all SES Providers must agree with annually prior to serving students.
12. Exercise authority to investigate and remove Providers from the State-Approved Providers List based on non-compliance with the State Board Rule 160-4-5-.03, assurances, Providers Code of Ethics, signed compacts, approved SES application, SES Standards, and for violations determined by the Department that would constitute “cause” for removal.
13. Develop and implement protocol for removing Providers from the State-Approved Providers List.
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14. Ensure any Provider removed from the State-Approved Providers List, whether through (SBOE) action or the Provider's request for removal, is not eligible to re-apply to serve students as an approved Provider in Georgia for the next two consecutive school years.

15. Provide the opportunity for previously removed Provider may re-apply to become an approved Provider after a period of two consecutive school years. Upon approval of the application, the Provider may again serve students in the state of Georgia. In the event the Provider is recommended and removed from the State-Approved Providers List a second time, the Provider will be barred permanently from applying to become a Provider in the state of Georgia.

(b) LEA Responsibilities. Local boards of education shall:

1. Notify parent(s)/legal guardian(s) of eligible students about the availability of SES. Notification shall meet the following criteria:

(i) Be sent twice annually;

(ii) Be provided in an understandable and uniform format, and to the extent practicable, in a language the parent(s)/legal guardian(s) can understand;

(iii) Include how parent(s)/legal guardian(s) may obtain services; and

(iv) Include a minimum of 20 school days for parent(s)/legal guardian(s) to select and notify the LEA regarding preferred Providers.

2. Help parent(s)/legal guardian(s) choose a Provider based on the student's academic need and obtain permission from parent(s)/legal guardian(s) to release assessment data to the selected Provider.

3. Determine and prioritize students who shall receive services if not all students can be served. Determination shall be made in accordance with eligibility criteria established in federal law.

4. Determine the per pupil spending limit according to federal law.

5. Ensure the opportunity to participate in SES is offered to eligible students on a continuous basis or at a minimum, twice per school year.

6. Enter into a contract with the Provider selected by parent(s)/legal guardian(s) of an eligible student no later than 45 days from the beginning of the school year, or within 45 days of receiving notification of school improvement status and services shall begin no later than 15 business days thereafter. The same procedure shall be followed for subsequent enrollments during the school year.

The contract shall include at minimum:

(i) A requirement that Providers must develop specific achievement goals for each eligible student whose parent(s)/legal guardian(s) elect to receive SES from an approved Provider;

(ii) A description of how student progress will be measured;

(iii) A requirement that progress reports are developed and distributed for each student receiving services from a Provider under the agreement;

(iv) Procedures for termination of agreement with Provider;

(v) A requirement that SES compacts are completed for each student receiving SES. Each Provider must obtain signatures from parent(s)/legal guardian(s) and, where applicable, students. LEAs may not withhold funding for unsigned compacts. Providers must produce documentation to show multiple attempts were made to acquire appropriate signatures on compacts that remain unsigned.

(vi) Payment process for students receiving service, up to the maximum allotment per student;

(vii) A requirement that records of attendance for each student receiving SES is submitted to the LEA;

(viii) Security of personal information for students receiving SES in accordance with the Family Educational Rights and Privacy Acts (FERPA);

(ix) Procedures for facility access for Providers (if applicable);

(x) Process for records maintenance of Provider's services to students;

(xi) Guidelines specifying secular, neutral and non-ideological instruction and content; and

(xii) Outline of applicable federal, state, and local statutes, laws, rules and regulations required by law in connection with providing tutorial service.

7. Establish monitoring procedures to ensure that Providers fulfill their contractual obligations. Monitoring should include tracking student progress toward meeting the state's academic standards.

8. Ensure the Provider, parent(s)/legal guardian(s) and student(s) enter into a compact identifying LEA, Provider, parent(s)/legal guardian(s), and student responsibilities. The compact shall include at minimum:

(i) Procedures regarding how the LEA will notify parent(s)/legal guardian(s) of students who are eligible to receive SES from an approved Provider;

(ii) Procedures regarding how the SES Provider may contact schools and parent(s)/legal guardian(s) regarding available services;

(iii) Procedures set forth by the LEA in order to provide SES to eligible students;

(iv) A pledge to develop a collaborative relationship with the LEA to ensure that issues and concerns are handled in a timely and efficient manner;

(v) Specific achievement goals for the student, which shall be developed in consultation with the student's parent(s)/legal guardian(s);

(vi) An established timeline for improving each student's achievement;

(vii) Scheduled tutoring sessions; and

(viii) A requirement to maintain the compact(s) for monitoring purposes.

9. Assist the Department as needed in identifying potential Providers within the LEA.
10. Provide information required by the Department to monitor the quality and effectiveness of the services offered by Providers as specified in federal law.
11. Protect the privacy of students who receive SES.
12. Make available achievement data to Providers selected by parent(s)/legal guardian(s) to serve their child. These data must include but are not limited to, applicable state assessments such as the Criterion-Referenced Competency Tests (CRCT), Georgia High School Graduation Tests (GHSGT), and End of Course Tests (EOCT). The applicable assessment data must indicate specific academic areas or strands of need in relevant subject areas. Assessment data should be provided at the time contracts are signed with Providers. Data must be submitted to selected Providers prior to students beginning services.
13. Notify parent(s)/legal guardian(s) immediately if a Provider becomes ineligible to offer services. Notification shall outline the procedures parent(s)/legal guardian(s) must follow in order to secure another Provider.
14. Any school located within the jurisdiction of an LEA shall be eligible to serve as a SES Provider as long as the school is not in needs improvement and is approved as a Provider by the SBOE.
15. LEAs identified as required to provide SES for failing to make AYP may appeal the AYP decision, but shall continue to implement SES while the appeal is being resolved and a final AYP determination is made. If the appeal is granted, the LEA shall continue to serve students currently receiving SES until the end of the contract period but is not obligated to provide SES to additional students.
16. Offer SES in accordance with Federal Legislation.
17. Include in the School Improvement Plan steps to ensure that eligible students will receive SES as required in law and this rule whenever any schools in the LEA are in year two or more of needs improvement status. This process must be in accordance with criteria outlined in the *Guidelines for the Implementation of State Board Rule 160-4-5-.03*.
18. Be required to set aside up to 20 percent of their Title I, Part A allocation for SES. LEAs may amend unobligated SES funds into the general Title I budget by the May 15 Consolidated Application budget amendment deadline by ensuring that a minimum of 50 percent of the students eligible to receive SES are served by an approved Provider. LEAs not meeting the 50 percent criteria must submit a list of eligible students and students receiving SES. LEAs serving less than the minimum percentage of students may amend unobligated SES funds into their Title I budget upon approval by the Department. Procedures for seeking approval are detailed in *Guidelines for the Implementation of State Board Rule 160-4-5-.03*.
19. Monitor the eligibility of students receiving SES and notify the SES Provider and parent(s)/legal guardian(s) in writing when a student is no longer eligible for SES.

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(c) **Provider Responsibilities.** The Provider shall:

1. Agree to negotiate directly with LEAs to determine the cost of services on a per pupil basis including the number of scheduled sessions per pupil. Cost of SES shall not exceed per pupil spending limits calculated by each LEA and must be in accordance with the Department's required minimum total number of instructional hours received per student.

2. Ensure that pre- and post- assessments administered to SES students are valid and reliable.
3. Explain the roles and responsibilities of each stakeholder participating in SES using the Supplemental Educational Services Compact. Providers shall make every attempt to acquire parent(s)/legal guardian(s) and whenever applicable, student signatures on the document.
4. Develop Individual Student Plans (ISP) to set specific achievement goals for each student according to academic needs and subject area, which shall be developed in consultation with each student's parent(s)/legal guardian(s) and aligned with the Georgia Performance Standards (GPS).
5. Establish a timeline for improving each student's achievement as identified by the ISPs.
6. Ensure that instruction is consistent with student achievement goals identified in the ISP and that the LEA is not billed for homework assistance.
7. Provide a description of how each student's progress will be measured and regularly reported to each student's parent(s)/legal guardian(s) and designated LEA contact.
8. Ensure that parent(s)/legal guardian(s) have access to SES Provider and/or designated individual to discuss their child's academic progress.
9. Agree to terminate SES if student progress goals are not met.
10. Agree not to exceed a tutor/student ratio of 1:1-8 for non-computer-based instruction and 1:1-10 for computer-based instruction.
11. Not disclose to the public the identity of any student eligible for or receiving SES without the written permission of each student's parent(s)/legal guardian(s).
12. Meet all applicable federal, state, and local health, safety, and civil rights laws.
13. Conduct criminal background checks on all individuals, paid or unpaid, who have contact with students either in person, by telephone, or internet. Failure to conduct a background check on any individual who is in contact with students either in person, by telephone, or internet will result in the recommendation to the SBOE for removal of the Provider from the State-Approved Providers List. Providers shall maintain a copy of a government-issued photo identification (driver's license, passport, government identification card, etc.) for every individual with a completed criminal background check for verification and monitoring purposes. All background checks must be:

- (i) Completed for all individuals prior to having initial contact with students;
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- (ii) Completed no later than 365 days from the previous background check thereafter;
 - (iii) Included with each individual's legal name, valid social security number, date of birth;
 - (iv) Checked against national and state criminal databases, and;
 - (v) Checked against the national sex offender database.

14. Have protocol in place and take proper administrative action in the event a criminal background check or other inspection reveals that reveals criminal history.

15. Ensure that all instruction and content are secular, neutral, and non-ideological.

16. Ensure that requests for information and access to service site(s) for monitoring and evaluation purposes by the Department are provided in a timely manner.

17. Abide by State Board Rule 160-4-5-.03, implementation guidelines, assurances, Provider Code of Ethics, signed compacts, signed contracts, and the SES Standards.

(d) Parent(s)/Legal Guardian(s)' Responsibilities. The Parent(s)/Legal Guardian(s) shall:

1. Request SES for their student.
2. Select a Provider from the State-Approved Providers List.
3. Transport students to and from the place of service when transportation is not provided by the Provider.

4. Notify LEA if Provider does not begin service within 15 business days of notification.

5. Work with the Provider to set achievement goals for the student.

6. Communicate with Providers regarding student progress.

7. Contact LEA and/or Provider if contact information changes.

(e) Provider Criteria.

1. Providers shall meet the following criteria:

(i) Document that instructional strategies used are high quality, based on research, and designed to increase student academic achievement.

(ii) Document quantitative data demonstrating a record of effectiveness in improving student academic achievement.

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(iii) Document that services are consistent with the instructional program of the LEA and aligned with the GPS.

(iv) Document compliance with all applicable federal, state, and local health, safety, and civil rights laws.

(v) Maintain documentation indicating legal status to conduct business in the State of Georgia.

(vi) Maintain documentation of current commercial general liability insurance with coverage for the State of Georgia.

(vii) Provide evidence of financial soundness as required in the implementation guidelines.

(viii) Provide instruction that is secular, neutral and non-ideological.

(ix) Meet all requirements set forth in the guidelines issued by the Department, including, but not limited to, reporting requirements, application requirements, deadlines, timelines and SES Standards.

2. Providers applying for statewide Provider status shall, upon request, serve students in any LEA regardless of the geographical location. Providers approved for statewide status may be removed from the State-Approved Providers List if this requirement is not met.

3. Provider agrees to serve all students whose parent(s)/legal guardian(s) request services within any LEA listed in the SES Provider's service area which is determined by the information submitted in the SES Provider application. SES Provider who fail or refuse to serve students will be recommended for removal from the State-Approved Providers List.

4. Any Provider that accepts students and begins services for those students must complete the services and fulfill the signed contract for each student. Any Provider that terminates services to contracted participating students without written prior permission from the Department will be recommended for removal from the State-Approved Providers List.

5. Submit signed assurances (SES Provider application) annually prior to beginning SES. Assurances must be signed and initialed by the Department's specified date. Any Provider, whether newly approved or current, who does not submit signed and initialed assurances by the assigned deadline will be recommended for removal from the State-Approved Providers List.

6. Provider agrees to only offer incentives to a student AFTER the student has enrolled in the SES program for that Provider. Incentives may only be for student attendance, program completion, or student achievement. Enrollment incentives and incentives to parent(s)/legal guardian(s) and LEAs are NOT allowable at any time. Student incentives must follow guidelines set forth in the SES Providers Code of Ethics. Providers not in compliance will be recommended for removal from the State-Approved Providers List.

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(f) Monitoring and Evaluation.

1. The Department reserves the authority to monitor any approved Provider at will. All Providers currently serving students will be monitored for compliance with SES Standards at least annually.

(i) The Department shall schedule with the Provider a mutually agreeable date and time for the monitoring visit. Prior to the monitoring visit, the Department shall send to the Provider, in writing, confirmation of the scheduled date and time. However, the Department reserves the right to conduct on-site monitoring visits without prior notice.

(ii) The Provider must maintain all documentation demonstrating compliance with State Board Rule 160-4-5.03, implementation guidelines, assurances, Providers Code of Ethics, signed compacts, signed contracts, SES Standards and all applicable state and federal laws related to SES. The Provider may request technical assistance from the Department prior to the scheduled monitoring visit. The Department shall rate Providers in accordance with criteria listed in the Guidelines for Implementation of State Board Rule 160-4-5-.03 SES in Title I Schools. Failure to provide documentation of compliance with all SES Standards, State Board Rule 160-4-5-.03, and regulations during the time of the monitoring visit will result in a noncompliance rating.

(iii) The Provider's score on each SES Standard and the Provider's overall performance rating shall be indicated on the Supplemental Educational Services Providers' Monitoring Form (SES Monitoring Form). The Department shall send to the Provider, within 30 business days, a copy of the scored SES Monitoring Form that includes, if applicable, any findings.

(iv) If the Provider receives a "Does Not Meet" score on any SES Standard, the Department shall indicate on the completed SES Monitoring Form the corrective action the Provider must take to meet the SES Standard. The Provider must implement, document, and submit evidence of, the corrective action within 15 business days after receipt of the completed SES Monitoring Form. If the Provider fails to take corrective action within the specified timeframe, the Department shall recommend to the SBOE removal of the Provider from the State-Approved Providers List.

(v) If the Provider receives a "Does Not Meet" rating for its overall performance on SES Standards, the Department will recommend to the SBOE removal of the Provider from the State-Approved Providers List. If the Provider believes the overall rating is in error, the Provider must submit supporting documentation to the Department within 15 business days after receipt of the completed SES Monitoring Form. The Department shall consider such evidence and shall notify the Provider in writing of its final determination within 30 business days from receipt of such evidence.

(vi) In addition to monitoring all Providers currently serving students, the Department will evaluate the effectiveness of Providers who have served students in reading, language arts, mathematics, and/or "other subjects". (The "other subject" must be related to increasing student achievement on state academic assessments and will contribute to a particular schools ability to make Adequate Yearly Progress). If the Department determines the Provider has failed to contribute to increasing the academic proficiency of students for two or more consecutive years in reading, language arts, mathematics, and/or "other subjects", the Department will recommend to the SBOE that the Provider be removed from the State-Approved Providers List.

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(vii) The Department will publicly report, at least annually, the overall performance rating of every Provider site monitored for compliance with SES Standards. In addition, the Department will publicly report, at least annually, the effectiveness of each Provider's contribution to increasing the academic proficiency of students in reading, language arts, mathematics, and/or other subjects.

(g) Complaint Process.

1. The Department shall monitor complaints from parent(s)/legal guardian(s), students, Providers LEAs, and other individuals to determine whether LEAs and Providers are in compliance with the applicable state and federal laws, rules and guidance governing the provision of SES. The Department will provide a summary report to the SBOE, upon request.

2. An organization or individual may file with the Department a signed, written complaint setting forth allegations of non-compliance.

3. The written complaint shall include, at minimum:

(i) A clear statement of the allegation(s);

(ii) A summary of the facts upon which the allegation(s) is based;

(iii) Any documentation supporting the allegation(s); and

(iv) The complainant's contact information, including individual name of the complainant or the authorized representative of the organization, and the address and telephone number of the complainant or the authorized representative of the organization.

4. Complaints received from any organization or individual shall be signed and addressed in writing to:

Associate Superintendent of Education Support
Georgia Department of Education
1858 Twin Towers East
Atlanta, Georgia 30334

5. The Department shall acknowledge, in writing, its receipt of the complaint within 15 business days.

6. The Department shall, in a timely manner, commence an investigation of the allegations set forth in the complaint and make an independent determination as to whether the allegations warrant further review or action.

7. If necessary, the Department may conduct unannounced on-site visits to clarify any issues raised by the complaint. The on-site investigation team may examine relevant records and conduct interviews of relevant persons to determine whether there has been a violation of State Board Rule 160-4-5-.03, implementation guidelines, assurances, Providers' Code of Ethics, signed compacts, signed contracts, SES Standards and any applicable state or federal law, guidelines, or rule. It is the responsibility of the Provider to make available any relevant persons or documentation requested by the Department or investigation team.

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8. The Department shall send to all appropriate parties the steps necessary to resolve the complaint, including technical assistance activities, negotiations, and corrective actions to achieve compliance. This letter of notification may include specific requirements and time lines that must be met in order to ensure that Providers other than LEAs continue to receive SES funds from the LEA. LEAs that are Providers shall meet the requirements in order to ensure that funds equal to the amount of SES set-aside are available in the Department's Grants Accounting Online Reporting System (GAORS). Providers will have the opportunity to respond by providing appropriate documentation to support compliance with federal, state and local requirements and must respond within 15 business days. The Department will determine if the Provider must cease and desist until completion of the investigation.

(i) Upon conclusion of the Department's investigation, the Department may recommend the (SBOE) take appropriate action to remedy violations of applicable laws, including removal of a Provider from the State-Approved Providers List. If the SBOE makes the decision to remove a Provider from the State-

Approved Providers List, the Provider shall be sent a letter informing them of their removal no later than 15 business days after the SBOE action.

(ii) If the SBOE makes the decision to remove a Provider from the State-Approved Providers List, the LEA will be notified no later than 15 business days after the SBOE action.

(iii) If an LEA does not comply with implementing SES for eligible students within the established timeframe, the Department shall withhold funds equal to the amount of the LEA's SES set-aside funds until the LEA complies.

(iv) If funds are withheld from LEAs for not complying with SES implementation guidelines for eligible students within the specified timeframe, the Department of Education may enter into agreements with Providers in lieu of the LEA.

Authority O.C.G.A. § 20-2-240.

Adopted: October 9, 2008

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