

**Colorado**  
**Title I Supplemental Educational Services**  
**and**  
**Title I Public School Choice**  
**Guidance**



**COLORADO** DEPARTMENT *of* EDUCATION

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# **PART 1**

## **SUPPLEMENTAL EDUCATIONAL SERVICES**

### **INTRODUCTION**

This guidance replaces the SES Non Regulatory 2009 Guidance the United States Department of Education released on January 13, 2009. It includes new and modified questions as well as other major policy guidance. This guidance represents CDE's current thinking on SES requirements. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required to comply with applicable law or regulations.

This guidance document replaces the following guidance issued by the USDE and Colorado:

Supplemental Educational Services Non-Regulatory Guidance, issued on January 13, 2009  
Colorado SES Guidance August 2012  
Colorado SES Guidance January 2013

## **A. GENERAL INFORMATION**

### **A-1. What are supplemental educational services?**

Supplemental Educational Services (SES) are additional academic instruction designed to increase the academic achievement of students in Title I schools with a status of Priority Improvement or Turnaround outside the regular school day. These services, which are in addition to instruction provided during the school day, may include academic assistance such as tutoring, remediation and other supplemental academic enrichment services that are consistent with the content and instruction used by the local educational agency (LEA) and are aligned with the state's academic content and achievement standards. SES must be high quality, research-based and specifically designed to accelerate student academic achievement.

### **A-2. What is the purpose of SES/Choice?**

The Colorado NCLB Flexibility Waiver requires that parents of eligible students attending Title I schools with a status of Priority Improvement or Turnaround be provided with opportunities and choices to help ensure that their children achieve at high levels. SES provides extra academic assistance for eligible children. Students (see A-6) attending Title I schools that have a status of Priority Improvement or Turnaround may be eligible to receive these services.

Parents may choose, if available within the district, the "choice" option. This option is for parents who want their child to attend a school with an Improvement or Performance plan type within the school district. If parents do not choose to "choice out," their child may be eligible for SES. Parents of eligible students are notified by the LEA that SES will be available, and parents may select an approved provider serving in the LEA. The LEA will sign an agreement with the provider selected by the parent. The provider will then provide services to the child and report on the child's progress to the parents and to the LEA.

The goal of SES is to increase eligible students' academic achievement in reading, writing and mathematics, as well as English language proficiency for students with limited or no English proficiency (LEP/NEP).

### **A-3. As it relates to SES/Choice, what does "a good faith effort to meet the needs of all parents" mean?**

A "good faith effort" is described as standards of honesty, trust, sincerity, etc. LEAs must ensure that all requirements regarding parent notification of schools offering SES/Choice to the extent possible are in a language understandable to the parent. LEAs must make a good faith effort to identify the needs of both students and parents.

**A-4. What is the district Per Pupil Allocation (PPA) for SES?**

The SES PPA will be determined as in previous years. That is, this amount is set by the USDE when it calculates Title IA allocations to districts.

**A-5. When must an LEA make SES/Choice available?**

A school district must offer SES and Public School Choice following the year in which a Title I school is assigned a Priority Improvement or Turnaround Plan Type. A Title I school identified with a Priority Improvement or Turnaround Plan Type assignment should use of the identification year as a planning year for SES/Choice. The year after identification with a plan type of Priority Improvement or Turnaround the Title I school must offer SES/Choice to eligible students. The Title I school will continue to offer SES/Choice as long as the school continues to have a Priority Improvement or Turnaround plan type assignment. Because Plan Type assignments are provided after the LEA completes the Consolidated Application, the year in which the Title I school plan type changes to Improvement or Performance, the school will continue to offer SES/Choice until the end of the school year. Offering SES/Choice until the end of the year will allow eligible students the opportunity to complete their work with tutors or finish out the school year in their school of choice. The Title I school is not required to offer SES/Choice the following year.

For example:

Title I School XYZ			
School year	Plan Type	Planning year	SES/Choice
2011-2012	First Year as a Title I Priority Improvement or Turnaround	x	
2012-2013	Priority Improvement or Turnaround		x
2013-2014	Improvement		x

2013-2014	Priority Improvement or Turnaround	x	
2015-2016	Improvement		x
2016-2017	Performance		

- New Title I Schools
  - A newly designated Title I school with a continuing Priority Improvement or Turnaround Plan Type will be given an opportunity to provide Title I services to students for two years before SES and Public School Choice are required. A school will be required to provide Choice and SES the year after the second consecutive school year in which it is a Title I school and is assigned a Priority Improvement or Turnaround Plan Type. (See chart below)

School Year	Title I School	Priority Improvement or Turnaround Plan Type	District offers SES/Choice
2012-2013	No	Yes	Not required to offer SES/Choice in 2012-2013
2013-2014	Yes	Yes	Not required to offer SES/Choice in 2013-2014
2014-2015	Yes	Yes	Not required to offer SES/Choice in 2014-2015
2015-2016	Yes	Yes	Required to offer SES/Choice in 2015-2016
2016-2017	Yes	No	Required to offer SES/Choice in 2016-2017
2017-2018	Yes	No	Not required to offer SES/Choice in 2017-2018

**A-6. Who is eligible to receive SES?**

Eligible students are all students who are unsatisfactory or partially proficient in reading, writing, or math on the most recent state assessment as measured by the Transitional Colorado Assessment Program(TCAP), or who are below grade level as measured by an early literacy assessment that meets the requirements of the READ Act (or a body of evidence for K-2), and

who also attend a Title I school with a status of Priority Improvement or Turnaround. Additionally, Non English Proficient (NEP) and Limited English Proficient (LEP) students as measured by Colorado's English Language Assessment (WIDA ACCESS), who also attend a Title I school with a status of Priority Improvement or Turnaround are eligible for English Language Development SES.

If sufficient funds are not available to serve all eligible children, an LEA must give priority to the lowest-achieving eligible students. If an LEA has the potential to encumber all SES funds in elementary schools due to high demand, there may not be funds left for middle or high school students. In this case, an LEA may proportion SES/Choice funds by grade span in order to have all students in all grades take advantage of SES/Choice. For example, an LEA may choose to divide funds as follows; 33 percent to each grade span, or 50percent to elementary, 25 percent to middle and 25 percent to high school in order to serve all students in each grade span. An LEA must use fair and equitable procedures in determining which students are the lowest achieving, and should use professional judgment in applying those criteria. One possible approach to prioritizing students would be for an LEA to establish a cut-off score (on the state's assessments TCAP, or WIDA ACCESS, or, who are below grade level as measured by an early literacy assessment that meets the requirements of the READ Act). This can be done on a school-by-school basis or for all schools across the LEA to make SES available to students whose scores fall below the cut-off level. An LEA might decide to focus services on students who are the lowest-achieving in the subject or subjects identified as a priority performance challenge in the school's Unified Improvement Plan (UIP). Or it might decide that the best use of limited SES funds is to focus on the lowest performing students in particular grades.

An LEA should not assume, before it contacts parents, that it will have limited resources for SES. Rather, the LEA should notify all eligible families of their children's eligibility. Only if more families request SES than there are funds available to provide services should the LEA set priorities to determine which eligible students can be served. The LEA should review the information available about the performance of eligible students and apply its priorities in a manner that is fair and objective.

## **B. LEA RESPONSIBILITIES**

### **B-1. What are the responsibilities of an LEA in implementing the SES requirements?**

An LEA must:

- Notify parents at least two weeks before the beginning of the school year of the school's requirement to offer SES and of the process for selecting a vendor.
- Help parents choose a provider if a parent requests assistance.
- Apply fair and equitable procedures for serving students if not all students can be served including proportioning funds by grade span.

- Ensure that eligible students with disabilities and LEP students receive appropriate services.
- Enter into an agreement with a provider selected by parents of an eligible student.
- Protect the privacy of students who are eligible for or receive SES. (See B-2 and B-3)
- Prominently display on the home page of its website a tab or direct link with SES/Choice information that includes the list of schools eligible for choice and SES, the list of providers approved by CDE to serve in the LEA, the locations where services are provided, an explanation of SES and contact information for parents wanting to enroll their child in SES.
- Meet its 15 percent obligation.

LEAs that meet demand for SES and choice by the end of the first semester will be required to use any remaining set-aside funds to provide struggling students extended learning opportunities, that could include before or after school programs, and summer school for Title I Priority Improvement or Turnaround schools. **The LEA must use the Repurposing Application and the Post Award revision process to repurpose remaining SES set-aside funds for other allowable activities and extended learning opportunities.**

For example, if a district has spent 10 percent of the 15 percent set-aside, it could target the remaining 5 percent on a single school or all Title I Priority Improvement or Turnaround schools. Including Extended Learning Opportunities (ELOs) as a core intervention strategy will enable each school to improve student achievement through an expanded schedule that provides more instructional time in math, literacy, ELD, and other core subjects to enable students to meet state standards. The ELOs also integrate enrichment and applied learning opportunities into the school day that complement and align with state standards. At the end of the school year, the LEA may repurpose unspent SES/Choice set-aside funds to be carried over into the next year as an extended learning opportunity set-aside or as regular Title I funds.

**B-2. May an LEA provide a list of eligible students to an approved SES provider so that the provider can contact parents regarding its services?**

No. An LEA must comply with the prior written consent requirements of the Family Educational Rights and Privacy Act (FERPA) when disclosing information on students eligible for SES. Those provisions require the written consent of a parent before an LEA may disclose the identity of an eligible student. (For more information, see 34 C.F.R § 99.30, available at <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=11975031b82001bed902b3e73f33e604&rgn=div5&view=text&node=34:1.1.1.1.33&idno=34#34:1.1.1.1.33.4.132.1>.) An LEA may not disclose to the public or to an approved provider the identity of any student who is eligible for or receiving SES without the written permission of the student's parents. In addition, an SES provider is prohibited from disclosing to the public, the identity of any student who is eligible for or receiving SES without the written permission of the student's parents.

**B-3. May an LEA disclose the identity of a student, as well as educational records regarding the student, to an SES provider selected by the student's parents?**

An LEA may disclose pertinent information to an SES provider about a student whose parents have selected the provider but only after the student's parent has provided written consent. With the consent of a parent, the LEA may disclose information about the student's academic record in order to assist the provider in determining the student's strengths and weaknesses. An LEA might want to consider including a parental consent signature line on its SES application form. Then the parents can provide consent to share information with providers at the same time that they express their interest in receiving services from a specific provider. Acknowledgment of the consent must be signed, dated and specify the records that may be disclosed by the LEA or the provider. It must also state the purpose of the disclosure; and identify the party or class of parties to whom the disclosure may be made. (For more information, see 34 C.F.R. §99.30, available at <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=11975031b82001bed902b3e73f33e604&rqn=div5&view=text&node=34:1.1.1.1.33&idno=34#34:1.1.1.1.33.4.132.1>.)

**B-4. How does an LEA determine eligibility for SES in school-wide programs and targeted assistance programs?**

When a school implements a Title I school-wide program or a targeted assistance program, and has a status of Priority Improvement or Turnaround, all eligible students attending the school are eligible for SES (see A-6). In a targeted assistance school, eligibility does not depend on whether the student is currently receiving Title I services.

**B-5. How does an LEA determine the eligibility of homeless students for SES?**

Homeless students, like other students, may receive SES if they are eligible and enrolled in a Title I school with a status of Priority Improvement or Turnaround. The place of residence of a student (or the lack of a permanent residence) is not an issue in determining eligibility for any child.

**B-6. Are children who attend Non-Public Schools eligible to receive SES?**

No. Only eligible students (see A-6) attending Title I public schools with a status of Priority Improvement or Turnaround are eligible for these services.

**B-7. How does an LEA provide timely, accurate notice to parents regarding SES?**

To meet the criterion that an LEA provide timely, accurate notice to parents, an LEA must provide notice regarding SES directly, through such means as regular mail or email, and through broader means of dissemination such as the Internet, the media, and public agencies serving the student

population and their families, two weeks prior to the beginning of school. In addition, the notice must be in an understandable and uniform format and, to the extent practicable, in a language that parents can understand. The notice must include all required information, as described in C-8. Additionally, an LEA should notify parents of their SES options at the beginning of the school year and begin offering SES in a timely manner thereafter.

### **C. ENROLLMENT**

#### **C-1. Does an LEA need to provide more than one enrollment for SES?**

No. If an LEA provides eligible families an opportunity to enroll in SES through an open enrollment window, that lasts a minimum of two weeks and occurs before October 15, the LEA is considered to have met the requirement that it hold an SES enrollment window of sufficient length to enable parents of eligible students to make informed decisions about requesting SES and selecting an SES provider.

#### **C-2. What information must the LEA provide to parents during the enrollment window?**

An LEA's notice to parents regarding their option to obtain SES for their child must be:

- Easily understandable, in a uniform format, including alternate formats upon request, and to the extent practicable, in a language the parents can understand.
- Clear, concise and clearly distinguishable from other information on school status that an LEA sends to parents.
- For example to meet the "clearly distinguishable" requirement, an LEA might print its SES notice on brightly colored paper and in large, bold font, so that parents are more likely to read it.

An LEA is required to notify parents of eligible students, at least annually, of their opportunity to enroll their child in SES. This notification must meet all requirements for the SES notice as discussed below. An LEA that provides more than one enrollment window should meet the requirements for the content and format of the SES notice each time it notifies parents of their opportunity to enroll their child in an SES program. Additionally, in an LEA's notice to parents regarding the enrollment window, the LEA should inform parents about if and when it will be providing an additional enrollment window in the future. Doing so will enable parents to enroll their child in SES at the beginning of the school year, if there are no other windows available to enroll at a later date.

An LEA should work to ensure that parents have comprehensive, easy-to-understand information about SES. An LEA's notice to parents must:

- Include an explanation of SES.
- Explain how parents can obtain SES for their child.
- Identify each approved SES provider within the LEA including providers that are accessible through technology, such as on-line.

- Include enrollment dates and approximate start dates.
- Provide information about where and when to return a completed application.
- Provide information about whom to contact in the LEA for more information.
- Explain procedures and timelines that parents must follow to select a provider to serve their child.
- Include information on how the LEA will set priorities in order to determine which eligible students receive services.
- Include information about the services, qualifications, and evidence of effectiveness for each SES provider able to serve students in the LEA directly, or a link to the CDE website providing that information.

Any additional information should be balanced and should not attempt to dissuade parents from exercising their option to obtain SES for their child.

### **C-3. How should an LEA distribute sign-up forms to parents?**

An LEA should make its SES sign-up form accessible to parents by mailing the form and having it available at the school and district site. CDE discourages LEAs from posting sign-up forms for download on the school website. LEAs should ensure that they have an open, reasonable, and convenient process for parents to return completed sign-up forms.

## **D. SERVING STUDENTS WITH DISABILITIES AND LEP STUDENTS**

### **D-1. What are the obligations of LEAs in providing SES to students with disabilities who are eligible for services under the Individuals with Disabilities Education Act (IDEA) or students covered under Section 504 of the Rehabilitation Act of 1973 (Section 504)?**

LEAs that arrange for SES must ensure that eligible students with disabilities who are eligible for services under IDEA and eligible students covered under Section 504 have an equal opportunity to participate in SES, and that they receive appropriate accommodations in the provision of SES.

Furthermore, the SES program within each LEA and within the state may not discriminate against these students. Consistent with this requirement, an LEA may not, through contractual or other arrangements with a private provider, discriminate against an eligible student with a disability or an eligible student covered under Section 504 by failing to provide for appropriate SES with necessary accommodations. Such services and necessary accommodations must be available, but not necessarily from each provider. Rather, LEAs are responsible for ensuring that the available SES providers include some providers that can serve students with disabilities and students covered under Section 504 with any necessary accommodations, with or without the assistance of the LEA. Note that if no provider is able to provide SES with necessary accommodations to an

eligible student with a disability or a student covered under Section 504, the LEA would need to provide those services with the necessary accommodations, either directly or through a contract. However, the LEA's obligation to provide services to an eligible student with a disability or a student covered under Section 504 does not apply if there are no approved providers able to serve **any** students in the LEA. Students with disabilities and students covered under Section 504 have no greater right to receive SES than any other students in an LEA.

SES must be consistent with a student's individualized education program (IEP) under Section 614 of IDEA or a student's individualized services plan under Section 504 [34 C.F.R. §200.46(b)(3)]. However, these services must be in addition to, and not a substitute for, the instruction and services required under IDEA and Section 504 and should not be written into IEPs under IDEA or into Section 504 plans. In addition, parents of students with disabilities (like other parents) should have the opportunity to select a provider that best meets the needs of their child. An LEA can help facilitate the participation in SES of a student with disabilities by providing a copy of the student's IEP, or relevant portion of the IEP, to the provider selected by the student's parents, with the parents' written consent.

## **D-2. What are the obligations of LEAs in providing SES to LEP and NEP students?**

LEAs that arrange for SES must ensure that LEP and NEP students receive appropriate SES and language assistance in the provision of those services. CDE indicates on the list of approved providers, and LEAs must indicate in their notice to parents on SES, those providers that are able to serve LEP and NEP students.

## **E. LEA RESPONSIBILITY REGARDING PROVIDERS**

### **E-1. Who is responsible for developing the individual agreements for students receiving SES?**

The LEA or its designee in consultation with parents (and the provider) is required to develop a statement of specific achievement goals for the student, how the student's progress will be measured, and a timetable for improving achievement. It is the responsibility of the LEA, not the responsibility of a provider, to ensure that an agreement is completed for each student participating in SES and that each agreement includes the information required under the guidance (see C-8). 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. Ultimately, the LEA is responsible for reviewing and approving all agreements, and for making sure that all agreements, whether developed by the LEA or by a provider on behalf of the LEA, are completed for all students participating in SES and include the required information.

**E-2. May an LEA impose requirements on a provider that affect the design of the provider's program?**

No. An LEA may not impose requirements that relate to the design of a provider's educational program; doing so would undermine the CDE's authority to approve providers. ~~The involvement of LEAs in program designs is not provided for in the statute or regulations.~~

For example, an LEA may not require that providers offer a certain number of hours of services to receive the statutory per-pupil amount for services, or employ only state-certified teachers as tutors. Likewise, an LEA may not require that providers' programs have certain student-teacher ratios. These types of requirements may create a "one-size-fits-all" model of services that does not effectively take into consideration the varied needs of students, which would undermine parents' opportunity to select the most appropriate provider and services for their child.

If an LEA has specific concerns regarding a provider's program design, the LEA should convey those concerns to the CDE.

**E-3. May an LEA limit the number of providers on the state-approved list or go through an additional approval process before providing services within the LEA?**

Yes. The LEA may restrict the number of SES providers by going through a provider selection process. School districts are not required to limit SES providers but may select a maximum number of SES providers to offer tutoring for students. LEAs must offer parents a minimum of three outside SES providers from which to choose. Districts may allow schools to select the providers, or providers may be selected for schools at the district level. Selection of providers must be conducted with a majority of parent representation on the selection committee in the selection process. See Appendix C.

Approval during the RFP approval process entitles a provider to be placed on the list of approved SES providers in the state of Colorado. There is no guarantee that a provider will be selected by an LEA during the provider selection process at the district/school level. All decisions regarding the selection of providers by the LEA are final. Additionally, there is no guarantee that an LEA approved provider will be selected by parents or districts to serve students. LEAs will send parents of eligible students, at schools with a Priority Improvement or a Turnaround plan type assignment, information regarding approved providers in the district. Parents then choose the SES provider that best suits their child's needs.

**E-4. May an LEA impose reasonable administrative and operational requirements through its agreements with providers?**

Yes. For example, an LEA may require that all employees of a provider undergo background checks, if the LEA requires this for all entities with whom it enters into contracts for direct services to students. Or, an LEA might require that each provider carry a reasonable amount of liability

insurance, if the LEA requires this of other contractors that serve its students. These types of conditions are allowable, so long as they are reasonable, do not subject SES providers to more stringent requirements than those that apply to other contractors of the LEA, and do not have the effect of inappropriately limiting educational options for parents. Similarly, an LEA may include in its contracts with providers, administrative provisions dealing with such issues as the fees charged to providers for the use of school facilities, the frequency of payments to providers, and whether payments will be based, in whole or in part, on student attendance.

**E-5. How can an LEA meet the criterion to give providers access to school facilities using a fair, open, and objective process?**

An LEA must give SES providers access to school facilities in the same manner and on the same basis as it gives access to other outside organizations. CDE encourages an LEA to develop a facilities policy that is public and easily understood by providers and parents. An LEA with many eligible students and schools may need to implement a different policy than one with fewer affected students and schools. An LEA may wish to consult with CDE on any available guidance regarding fair provider access policies.

**E-6. May an LEA prohibit or limit approved providers from promoting their programs and the general availability of SES?**

Yes. Providers are allowed to market their services directly to members of the community or to provide general information to the public about the availability of SES; however an LEA may restrict them from doing so, if they have selected a limited number of providers to offer SES. The providers that were selected through the provider selection process are permitted to market their services in the LEA. An LEA should provide logistical and program information to providers in order to ensure that advertising includes correct information on such issues as the procedures parents must follow in obtaining SES for their children. Such coordination should help ensure that providers have ample time to market their services, and that parents are able to make informed choices of SES providers.

**E-7. What must an LEA include in its agreement with a provider?**

Once parents select a provider for their child, an LEA must enter into an agreement with the provider that includes:

- Specific achievement goals for the student, developed in consultation with the student's parents and the provider.
- A description of how the student's progress will be measured and how the student's parents and teachers will be regularly informed of that progress.
- A timetable for improving the student's achievement.

- A provision for terminating the agreement if the provider fails to meet the student’s specific achievement goals and timetables.
- Provisions governing payment for the services, which may include provisions addressing missed sessions.
- A provision prohibiting the provider from disclosing to the public the identity of any student eligible for or receiving SES without the written permission of the student’s parents.
- An assurance that SES will be provided consistent with applicable health, safety, and civil rights laws.

## **F. WEBSITE**

### **F-1. What information must an LEA include on its website about SES/Choice?**

- **Choice information on the website**
  - Schools eligible for choice option
  - Schools available for choice option
- **SES information on the website**
  - An explanation of free SES tutoring
  - The website must include what schools are eligible for SES tutoring
  - Priority of students eligible to receive SES
    - Lowest achieving students first
  - A list of or a link to approved SES providers
  - Information regarding how parents are able to access SES

### **F-2. Where should the LEA place SES/Choice information on the website?**

The LEA must place SES/Choice information or a direct link to Title I SES/Choice information on the home webpage. The link should clearly state “Title I SES/Choice Information for Parents”.

### **F-3. When must an LEA post this information on its website?**

SES/Choice information should be posted on the website two weeks prior to the beginning of school.

## **G. FUNDS AND COSTS**

**G-1. How much must an LEA spend on SES/Choice?**

The Colorado NCLB Flexibility Waiver establishes joint funding for choice-related transportation and SES. Unless a lesser amount is needed to meet demand for choice-related transportation and to satisfy all requests for SES, an LEA must spend up to an amount equal to 15 percent of its Title I, Part A allocation (the “15 percent obligation”), before any reservations, on:

- Choice-related transportation.
- SES.

Choice must be offered unless a school does not have an alternative school for parents to choose. For example, there is only one school in the district at a grade span and therefore the district is not able to offer choice.

In addition to paying for choice-related transportation and SES, an LEA may spend up to 1 percent of its 15 percent obligation on parent outreach and assistance.

Districts that meet demand for SES and choice by the end of the first semester will be required to use the remaining set-aside funds to provide extended learning opportunities for struggling students that may include before or after school programs and summer school in Title I Priority Improvement or Turnaround schools. **The LEA must use the Repurposing Application and Post Award Revision process to repurpose remaining SES set-aside funds** for other allowable activities and extended learning opportunities.

For example, a district spends 10 percent of the 15 percent set-aside. It could target eligible students with the remaining 5 percent on a single Title I Priority Improvement or Turnaround school or all Title I Priority Improvement or Turnaround schools. The district could include extended learning opportunities as a core intervention strategy which will enable each school to improve student achievement. It could provide an expanded schedule that provides more instructional time in math, literacy, ELD, and other core subjects to enable students to meet state standards. It could integrate enrichment and applied learning opportunities into the school day that complement and align with state standards.

**G-2. Must an LEA spend all of the 15 percent set aside on Supplemental Educational Services and Title I Public School Choice in Priority Improvement or Turnaround schools?**

No. During the development of the consolidated application, an LEA may reduce the 15 percent SES set aside by demonstrating that a lesser amount will satisfy all requests for SES and Title I Public School Choice and provide for Extended Learning Opportunities (ELOs) (additional SES-like activities) at the Title I Priority Improvement or Turnaround schools.

The following are examples to determine the amount needed for SES/Choice.

**Scenario 1- Districts that have provided SES for two or more years.\***

An LEA that has previously provided SES and Choice for two or more years would demonstrate the amount needed in the following way:

1. Calculate the average number of students that have applied for SES during the past two years.
2. Add 10 percent to the current average number of eligible students.
3. Using the district’s Title I Per Pupil Allocation (PPA), calculate the total needed by multiplying the PPA by the total number of students (from step 1 and 2).
4. Calculate the average amount of funds used for Choice transportation over the past two years and add 10 percent.
5. Calculate the amount needed for Extended Learning Opportunities (ELOs).. Additional set aside amounts for ELOs are at the discretion of the district, but the amount must provide instruction for non-proficient students at the Title I Priority Improvement or Turnaround schools.
6. Add the following:
  - Total PPA (step 3)
  - Total transportation (step 4)
  - Amount for ELOs (step 5)

This total becomes the amount needed to satisfy all requests for SES, Choice, and ELOs.

For example:

- Average number of students who applied for SES during the past two years is 40.
- Current number of students eligible for SES is 100. Ten percent of 100 is 10.
- Total number of students (40 + 10) is 50.
- District’s PPA of \$1000 multiplied by 50 students is \$50,000.
- Average amount funds used for Choice transportation over two years (\$10,000) plus 10 percent (\$1,000).is \$11,000.
- Amount needed for ELOs is \$50,000.

Total PPA needed	50,000
Transportation	11,000
<u>Total ELO</u>	<u>50,000</u>
Total Set Aside for SES/Choice and ELOs	\$111,000

The amount of set aside needed to satisfy all requests for SES/Choice and provide ELOs at the Title I Priority Improvement and Turnaround schools is \$111,000.

The LEA would justify the reduction of the 15% set aside in the comments page in the consolidated application.

**Scenario 2 - Districts that have provided SES or Choice for one year or less\***

An LEA that has provided SES or Choice for one year or less would demonstrate the amount needed in the following way:

1. Calculate the minimum number at 50 percent of those students who are eligible. (A district that provided SES for the previous year would take the percentage of eligible students requesting SES the previous year plus an additional 10 percent).
2. Using the district's Title I Per Pupil Allocation (PPA), calculate the total needed by multiplying the PPA by the total number of students (from step 1).
3. Estimate the amount needed for Choice transportation.
4. Determine the amount needed for ELOs. Additional set aside amounts for ELOs are at the discretion of the district, but the amount must provide instruction for non-proficient students at the Title I Priority Improvement or Turnaround schools.
5. Add the following:  
 Total PPA (step 2)  
 Total transportation (step 3)  
 Amount for ELOs (step 4)

For example:

- An LEA that did not provide SES during the previous year would estimate the number of students who might use SES at 50 percent of the current number eligible. If 100 students are eligible, then the LEA would estimate that 50 students would use SES. District's PPA of \$1000 multiplied by 50 students is \$50,000.
- The LEA estimates that Choice transportation will be \$5,000
- ELOs will cost an additional \$25,000

Total PPA needed	50,000
Transportation	5,000
<u>ELO</u>	<u>25,000</u>
Total Set Aside for SES/Choice and ELOs	\$80,000

The amount of set aside needed to satisfy all requests for SES/Choice and provide ELOs at the Title I Priority Improvement and Turnaround schools is \$80,000.

The LEA would justify the reduction of the 15 percent set aside in the comments page in the consolidated application.

*\*Note- CDE will take into consideration individual and special requests to reduce the 15 percent SES/Choice set aside as requested.*

**G-3. Must an LEA reserve a portion of its Title I, Part A allocation to pay for SES?**

No. The funds an LEA uses to pay the costs of choice-related transportation, SES, or parent outreach and assistance need not come from its Title I, Part A allocation, but may be provided from other allowable federal, state, local, and private sources. LEAs may use general funds for SES/Choice: however, the required 15 percent SES/Choice set-aside must be repurposed through the SES repurpose application process.

**G-4. Does funding available for Title I, Part A through the transferability provisions authorized under Section 6123 of the ESEA change the base that must be used to calculate the 15 percent obligation for choice-related transportation and SES?**

Yes. An LEA must include any funds transferred to Title I under Section 6123(b) of the ESEA in the base used in calculating its 15 percent obligation.

For Example: An LEA has a Title I allocation of \$500,000 for the school year. The SES set aside is 15 percent or \$75,000. The LEA transfers \$50,000 into Title I from Title II to use as Title I general funds. The LEA Title I funds available are now \$550,000 and the set aside for SES is now calculated. The new set aside is again 15 percent however; it is 15 percent of \$550,000 or \$82,500.

**G-5. How may an LEA reserve Title I funds to help pay the costs of choice-related transportation, SES, or parent outreach and assistance?**

An LEA that elects to use Title I, Part A funds to pay for choice-related transportation, SES, or parent outreach and assistance must reserve any Title I, Part A funds needed for this purpose prior to making allocations to schools.

**G-6. How do carryover rules described in Section 1127 of the ESEA affect any Title I funds reserved for choice-related transportation, SES, or parent outreach and assistance?**

Section 1127 of the ESEA allows LEAs to carryover no more than 15 percent of unused Title I, Part A funds from one fiscal year to the next. This 15 percent cap applies to an LEA's entire Title I, Part A allocation, and therefore covers any Title I, Part A funds reserved, but not spent due to lack of demand, for choice-related transportation, SES, additional school sponsored learning opportunities, or parent outreach and assistance. If the combination of unused funds reserved under Title I, Part A for choice-related transportation, SES, additional school sponsored learning opportunities, or parent outreach and assistance, and other unspent Part A funds exceeds 15 percent of an LEA's total allocation, the excess funds must be returned to the state for reallocation to other LEAs. CDE may grant an LEA a one- year exemption from the carryover limitation once every three years.

LEAs will likely want to use "first in-first out" accounting rules under which funds from the prior year are used before funds for the current year, in order to avoid lapsing any prior-year funds due to the end of the period of availability.

Provided that an LEA has met all demand from parents and students for choice-related transportation and SES, the LEA may use any unused portion of Title I, Part A funds reserved for this purpose for other allowable activities either during the year in which the reservation was made or in the following year, subject to the 15-percent carryover limit. Funds carried over to the following fiscal year are also subject to the equitable services requirements in Section 1120 of the ESEA and 34 C.F.R. §200.64. LEAs may reallocate unused funds for other allowable activities by filling out the reallocation application on the CDE SES web page (<http://www.cde.state.co.us/FedPrograms/imp/ses.asp>). Funds carried over from one fiscal year to the next do not affect the base used for calculating an LEA's 15 percent obligation in the following year.

**G-7. If an LEA does not incur any choice-related transportation costs, must it spend its full 15 percent obligation on SES or extended learning opportunities?**

Yes. Some LEAs, in a given year, may not be able to provide Title I Public School Choice because they have no eligible public schools to which students may transfer. An LEA in this situation must spend the amount needed to meet its 15 percent obligation fully on SES, assuming sufficient demand, or it must spend its 15 percent on other extended learning opportunities, except that the LEA may spend up to 1 percent of its 15 percent obligation on parent outreach and assistance.

**G-8. If the cost of meeting the demand for SES and choice-related transportation in an LEA equals or exceeds the LEA's 15 percent obligation, must an LEA spend its 15 percent obligation on those activities?**

Yes. If there is sufficient demand in an LEA for SES and Title I Public School Choice transportation, the LEA must spend its 15 percent obligation on those activities, subject to the exceptions that it may spend up to 1 percent of the 15 percent obligation on parent outreach and assistance.

**G-9. How much must an LEA spend for each student receiving SES?**

An LEA must either spend up to the per-pupil Allocation (PPA) under Title I Part A or negotiate costs for tutoring purposes up to the PPA for each student receiving SES.

The LEA may not spend more than the PPA for tutoring services for each student to meet its 15 percent obligation; however, if funds are available, the LEA may allow a student to attend a second round of tutoring.

The average PPA of Title I funds to LEAs varies widely across the state, ranging in most LEAs from roughly \$640 to \$1500.

**G-10. May an LEA establish a lower per-pupil cap for SES?**

No. An LEA may not establish a per-pupil cap for SES that is lower than its Title I, Part A per-pupil allocation. However, if the actual costs of services are less than an LEA's per-pupil cap, or the LEA has negotiated a lower cost for services, it may spend a lesser amount per student.

**G-11. What is meant by "the actual cost" of services in determining the per-pupil cost of SES?**

The actual cost of services is simply the amount that a provider charges for services up to a district PPA.

**G-12. Must an LEA pay for or provide transportation for students to receive SES?**

No. However, an LEA may choose to use a portion of its SES set-aside funds to provide transportation for students to receive SES, but is not required to do so under the guidance.

**G-13. May an LEA count costs incurred in providing outreach and assistance to parents on Title I Public School Choice or SES toward the 15 percent obligation?**

Yes. An LEA may, but is not required to, count costs for parent outreach and assistance regarding Title I Public School Choice and SES toward its 15 percent obligation, subject to a cap of 1 percent.

An LEA may spend more than the 1 percent on parent outreach activities, but may not count more than the 1 percent toward meeting its 15 percent obligation.

**G-14. What costs for parent outreach and assistance may an LEA count toward meeting its 15 percent obligation?**

An LEA is in the best position to determine the most effective means of providing outreach and assistance to parents of eligible students. An LEA might count toward meeting its 15 percent obligation the costs of parent notification letters, easily understandable, in a uniform format, including alternate formats upon request, and to the extent practicable, in a language the parents can understand; communication to parents through the media, Internet, phone, and community partners; displaying information on the LEA's website; stipends used to assist parents with SES enrollment; and SES parent fairs held by the LEA.

**G-15. May an LEA include items other than parent outreach and assistance towards meeting its 15 percent obligation on administrative costs incurred in providing SES to eligible students?**

No. For example an LEA may not include the costs of contracting with or arranging for payment to SES providers or costs associated with matching students to respective providers. Such administrative costs may be allowable Title I expenditures but may not be counted toward meeting an LEA's 15 percent obligation.

**G-16. If an existing after-school program has been approved by the state as an SES provider, may an LEA count any funds that it is already paying that provider toward meeting the 15 percent obligation?**

Yes. However, selection of an SES provider is always up to the parent. An LEA may not merely have an existing after-school program provide SES without giving parents the opportunity to select another provider and the services most appropriate for their students.

An LEA in this situation may include any funds that it is using to pay a provider for SES received by students who are eligible to receive those services. However, it may not count the cost of providing services to other students or the costs of providing other types of services. Moreover, the provider will need to keep appropriate records and use appropriate safeguards to ensure that SES funds are used only for eligible students and activities.

An existing after-school program that qualifies to be an SES provider should also be aware of a potential supplanting issue. It does not violate the Title I supplement-not-supplant requirement for an LEA to include state or local funds used to provide SES to eligible students. However, it could be supplanting if the LEA were to use Title I, Part A funds to replace state or local funds it had spent previously to provide services to eligible students. In addition, an LEA may not exclude eligible students from the services it is providing with state or local funds merely because those students are eligible for SES

**G-17. What are expanded learning opportunities (ELOs)?**

An ELO is an innovative teaching and learning platform designed to ignite the unique potential of every student through the creation and delivery of a dramatically personalized learning experience. The Colorado Legacy Foundation (CLF) and the Colorado Department of Education (CDE) have teamed to expand how we view learning, teaching, and classrooms today. Please see <http://colegacy.org/> for additional information.

**G-18. Can an LEA contract for multiple subject areas for an individual student in one agreement or contract with an SES provider?**

No. Students are permitted to receive services in one subject area per agreement or contract. However, an LEA may offer a second round of services to a student in the same subject area or in a different subject area with a new agreement or contract for services if funds are available.

## H. PARENTS

### H-1. What is the role of parents in SES?

Parents are to be active participants in the SES program.

Parents must be able to choose from among SES providers approved by the state and/or LEA. In addition, if they so choose, parents may obtain assistance from the LEA in selecting a provider. Parents should also have an option to change or terminate services, if they are not satisfied with the services they are receiving. PPA determines the amount of tutoring their child will receive.

At the *provider level*, parents, the LEA, and the provider chosen by the parents must develop and identify specific academic achievement goals for the student, measures of student progress, and a timetable for improving achievement. All parents whose children receive SES must be regularly informed of their child's progress.

Parents should ensure that their student attends the SES sessions in which he or she is enrolled. The LEA should ensure that parents are notified by the provider if their student is not attending regularly.

### H-2. If parents are not satisfied with the SES their child is receiving, or with their child's academic progress, may they request and receive a new provider?

An LEA may allow for such changes if, for example, a parent believes the provider is unlikely to be able to meet his/her child's progress goals. If a number of parents request a change of a particular provider because of the provider's likely inability to meet students' goals, the CDE may need to monitor more carefully the provider's provision of SES. Additionally, an LEA may want to consider reimbursing providers for services provided, rather than paying providers up-front for an entire semester or year, in order to make it easier to arrange for students to change providers during the year. However, if a student has used up his or her PPA then the student may not be eligible for additional free tutoring. An LEA can make a second round of SES available to students if it chooses when there are remaining SES funds available.

## I. PROVIDERS – BECOMING A PROVIDER

### I-1. Who may apply to be an approved provider?

A provider of SES may be any United States based public or private (non-profit or for-profit) entity that meets the state's criteria for approval through the Request for Proposal (RFP).

Additionally, all staff members of SES providers, including but not limited to owners, tutors and other staff, must reside in the United States and submit and pass a Colorado Bureau of Investigation fingerprint background check.\* Public schools (including charter schools), Board of Cooperative Educational Services (BOCES), private schools, LEAs, educational service agencies, institutions of higher education, faith-based organizations, community-based organizations, business groups, and individuals are among the types of entities that may apply to CDE for approval to provide SES.

All potential providers will be held to the same criteria. LEAs, charter schools, and other public schools may not automatically be considered to be approved providers; they must meet CDE's established criteria and go through the same approval process as all other potential providers.

*\*Prior to contracting with an LEA each member with access to student information, including owners, tutors, and other staff, shall submit to the Colorado Bureau of Investigation (CBI) a complete set of fingerprints . . . taken by a qualified law enforcement agency . . . for the purpose of obtaining a fingerprint based criminal history check.*

The process for submission of a set of fingerprints requires that the applicant:

- Use a fingerprint card provided by a local Law Enforcement Agency (CDE does not provide cards)
- Complete the fingerprint card with the assistance of a qualified Law Enforcement Agency
- Submit the completed fingerprint card, with processing fee, to the Colorado Bureau of Investigation

## **I-2. What is required of SES providers?**

An SES provider is responsible for meeting the terms of its agreement with the LEA, including:

- Enabling the student to attain his or her specific achievement goals (as established by the LEA, in consultation with the student's parents and the provider).
- Measuring the student's progress, and regularly informing the student's parents and teachers of that progress after every five sessions.
- Adhering to the timetable for improving the student's achievement that is developed by the LEA in consultation with the student's parents and the provider.
- Ensuring that it does not disclose to the public the identity of any student eligible for or receiving SES without the written permission of the student's parents.
- Providing SES consistent with applicable health, safety, and civil rights laws.
- Providing SES that is secular, neutral, and nonideological.
- Passing a Colorado Bureau of Investigations fingerprint background check. (See G-1)

In the case of a student with a disability served under the IDEA, the achievement goals, measurement and reporting of progress, and timetable described in items 1 through 3 above must be consistent with (although not included in) the student's IEP under Section 614(d) of the

IDEA. In the case of a student covered by Section 504, the goals, measurement and reporting of progress, and timetable must be consistent with (although not included in) the student's individualized services under Section 504.

**I-3. May an individual or group of individuals be an SES provider?**

Yes. An individual or group of individuals may be an SES provider if the individual or group meets CDE's criteria for approval.

**I-4. Are faith-based organizations, including entities such as religious non public schools, eligible to be SES providers?**

Yes. A faith-based organization (FBO) is eligible to become a provider of SES on the same basis as any other private entity, if it meets the applicable statutory and regulatory requirements. CDE will not discriminate against potential SES providers on the basis of the entity's religious character or affiliation. Additionally, a provider, including an FBO, may not discriminate against students receiving SES on the basis of religion. An FBO is not required to give up its religious character or identity to be a provider; it may retain its independence, autonomy, right of expression, religious character, and authority over its governance. An FBO, for example, may retain religious terms in its name, continue to carry out its mission, and use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from areas where SES are provided. (See 34C.F.R. §80.36(j) (<http://www.ed.gov/policy/fund/reg/fbci-reg.html>) for more information.)

Neither Title I nor other federal funds may be used to support religious practices, such as religious instruction, worship, or prayer. (FBOs may implement such practices, but not as part of SES.) FBOs, like other providers, must ensure that the instruction and content they provide are secular, neutral, and non-ideological.

**I-5. Can a school district or BOCES become an SES provider?**

Yes, however they must be approved using the same process and application all other providers use.

**I-6. May an LEA with the status of Priority Improvement or Turnaround be an SES provider?**

Yes. If a LEA has a status of Priority Improvement or Turnaround, the LEA may be an approved SES provider.

**I-7. May a public school identified as Priority Improvement or Turnaround be an SES provider?**

No.

**I-8. May an entity that is affiliated with an LEA that has a status of Priority Improvement or Turnaround apply to become an SES provider?**

If an entity is affiliated with an LEA that has a status of Priority Improvement or Turnaround but is separate and distinct from the LEA, it is eligible to apply to become an SES provider. Such an entity might be a 21st Century Community Learning Center, a community education program, a parent information and resource center, or another entity that is loosely affiliated with an LEA.

In making that determination, CDE will consider whether the entity satisfies criteria such as the following:

- State law establishes the entity as separate and legally distinct from the LEA.
- The entity has decision-making authority independent from the superintendent. (It may, however, be accountable to the school board.)
- The entity has a separate stream of funding and does not rely on the LEA for its financial stability.
- The entity has its own hiring capabilities and does not need to abide by the LEA's hiring obligations and requirements.
- The entity has its own operating structure (e.g., a means of communicating with the public separate from the LEA).
- The entity has a separate and independent advisory committee.
- The entity has status as a 501(c)(3) non-profit organization.

An entity does not have to meet all of these criteria in order to be considered separate and distinct from its LEA. A stronger case may be made for an entity that meets multiple criteria.

Additionally, entities that are affiliated with an LEA must meet CDE's criteria for all SES providers in the state, including providing high-quality instruction and demonstrating a record of effectiveness. Moreover, as a condition of approval, such an entity would need to function as any other SES provider in the LEA. For example, the entity, despite its LEA affiliation, could not have access to information unavailable to other providers, such as student addresses for outreach purposes.

**I-9. May an after-school program housed in a school building be an SES provider, if the Title I school in which the program is housed has a status of Priority Improvement or Turnaround?**

Programs that operate *independently* from a Title I school with a status of Priority Improvement or Turnaround and are not a part of the school's regular education program may become SES providers if they meet the criteria. The status of the school does not affect the eligibility of an independent entity housed in the school.

**I-10. Can entities that use technology to deliver educational services be SES providers?**

Yes. The guidance permits providers, including those that are not physically located within an LEA, to use alternate methods for delivery of services, which may include online, Internet-based approaches, as well as other distance-learning technologies. Rural LEAs or LEAs with limited availability of SES providers are especially encouraged to work with providers using these technologies. In addition, 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.

**I-11. How may a prospective SES provider meet the requirement to provide information to the CDE on whether the provider has been removed from any state's approved provider list?**

In approving a prospective provider, CDE will consider information from the provider on whether it has been removed from any state's list of approved providers. A prospective provider should honestly and completely provide this information to CDE through the application process or through any other means that CDE requests. If the provider has been removed from any state's list of approved providers, the provider should explain why it was removed.

**I-12. What resources are available to help prospective providers become state-approved and to help approved providers strengthen the quality of their programs?**

CDE offers workshops and other forms of technical assistance to prospective and approved SES providers. This assistance may be useful in helping prospective providers understand the process they will have to go through to become approved. Information regarding the Request for Proposal (RFP) can be found on the CDE web pages at

<http://www.cde.state.co.us/FedPrograms/imp/ses.asp> and  
[http://www.cde.state.co.us/cdefisgrant/index\\_GFM.htm](http://www.cde.state.co.us/cdefisgrant/index_GFM.htm).

**I-13. What does it mean for an SES provider to have a "demonstrated record of effectiveness" in increasing student academic achievement?**

An approved SES provider must have a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the state's academic content and student achievement standards. In the application to become an approved provider in Colorado, CDE requires applicants to submit empirical evidence, as well as information about the methodology used to collect such evidence, that the provider's instructional program has increased student academic achievement.

Applicants that are seeking to become first-time providers may not have a history of providing services from which they can develop a demonstrated record of effectiveness. In these cases, CDE has discretion to determine how it will evaluate whether the applicant can meet this requirement. It could, for example, require the applicant to submit what it anticipates to be the effects of its instructional program on student achievement and an explanation for why it anticipates such effects; such information might be based on the demonstrated effectiveness of the applicant's instructional program as it was implemented by *another* entity or the soundness of the research on which the program is based. Additionally, CDE may require an applicant to submit information on how the applicant will measure the effectiveness of its instructional program in increasing student achievement.

CDE evaluates the effectiveness of all approved providers in increasing the academic achievement of students served in reading and/or math. CDE defines effectiveness as increasing the academic performance of students on the state assessments (CSAP/TCAP reading and/or math depending on services provided) or district reading assessments (PALS, DIBELS, or DRA2 under CBLA for grades K-3 students). As part of the evaluation, the median growth percentile and change in proficiency level of students served by each provider are compared to the median growth percentile and the percentage of students whose proficiency level went up for a group of randomly selected SES eligible students who did not receive services. The students served by each provider must have an increased academic achievement (higher median growth percentile and higher percentage of students whose proficiency level went up) than the comparison group. Failure to do so for two consecutive years will result in being removed from the state's list of approved providers, unless the provider can demonstrate effectiveness in the appeals process.

**I-14. Often, large providers have multiple franchise operations that provide services. Does CDE require separate applications from each franchise?**

No. Although the same curriculum and instructional methods may be used by all franchises of a particular provider, CDE requires each franchise to apply separately only if the provider prefers that the effectiveness data reflect each individual franchise, otherwise all data from all franchises will be combined to determine the effectiveness of the provider.

**J. TUTORING SERVICES**

**J-1. In what subject areas may an SES provider offer services to eligible students?**

Providers may offer tutoring, if approved to do so, for math, reading, or ELD services. Students are only permitted to receive services in one subject area per contract. For example: If a student is enrolled in SES for math he/she may only be tutored in math for that contracted time period.

**J-2. When do SES tutoring services begin?**

SES providers must begin tutoring within two to four weeks of receiving approval from the LEA of a student's application for services. If services have not begun within the four weeks, the LEA may contact the parent and assign the student to an alternate provider.

**J-3. When and for how long must a provider offer services?**

SES is designed to be in addition to the regular school day. SES providers may not provide services during regular school hours or lunch but may provide tutoring upon the request of the LEA during the extended learning time at the end of the school day. Providers must provide a minimum of 20 hours or for the length of their approved Colorado program, whichever is greater. If a student has transferred from one provider to another the receiving provider may adjust the number of hours it must serve determined by the remaining PPA of the student.

**J-4. May an SES provider offer services in the summer?**

Yes, at the request of the LEA, although in most cases it will be preferable to provide services that take place over the course of the school year and that augment the instruction a child receives through the regular school program, because the purpose of SES is to increase the academic achievement of students on the state assessments required under Section 1111 of the ESEA. Summer programs, however, can also augment school-year instruction and can help reduce "summer learning loss," which is frequently an issue for educationally disadvantaged children.

**J-5. What does it mean to provide instruction that is consistent with an LEA's instructional program and aligned with state academic content and student academic achievement standards?**

The CDE is responsible for determining whether a provider can deliver SES that is consistent with an LEA's instructional program and aligned with state academic content and student academic achievement standards. This does not mean that the instructional content and methods of a potential provider must be identical to those of the LEA, but they must share a focus on the same state academic content and student academic achievement standards and be designed to help students meet those standards. One of the virtues of SES is that public and private providers offer a diversity of programs from which parents may choose that are consistent with, but not necessarily identical to, the LEA's instructional program and are aligned with state academic standards.

**J-6. How often should parents and teachers receive information about student progress?**

Providers should update teachers and parents with reports on student progress after every five sessions.

**J-7. If an LEA is an approved provider, what is its responsibility with respect to a student agreement?**

The LEA must adhere to all applicable rules and regulations, and the Colorado SES Code of Ethics that are required of an outside provider.

**J-8. May a provider terminate services to an individual student?**

A provider may terminate services to an individual student if a student misses more than 30 percent of tutoring sessions, so long as the provider has made a good faith effort to contact the parent/guardian and inform them that their child is not attending after the third absence. The provider also must contact the LEA's SES coordinator or its designee in order to allow the LEA an opportunity to encourage the child to attend tutoring before terminating services.

**J-9. May there be only one approved SES provider in an LEA?**

No. However, the LEA may restrict the number of providers by going through an SES selection process. School districts are not required to limit SES providers but may select a maximum number of SES providers to provide tutoring for students. Districts must have a minimum of three outside SES providers from which parents may choose. LEAs may allow schools to select the providers or providers may be selected for schools at the district level. Selection of providers must be conducted with a majority of parent representation on the selection committee in the selection process. (See Appendix C.)

**K. TUTORING STAFF**

**K-1. Does staff employed by SES providers have to meet the highly qualified teacher requirements in Sections 1119 and 9101(23) of the ESEA?**

No. However all staff must reside in the United States and pass a Colorado Bureau of Investigations fingerprint background check. (See G-1)

**K-2. May teachers who work in a school or in an LEA identified with a status of Priority Improvement or Turnaround serve as SES providers?**

Yes. An individual or group of teachers who works in a school or an LEA identified as Priority Improvement or Turnaround may apply to CDE for approval as an SES provider or may be hired by any state-approved provider (including an approved LEA provider) to serve as a tutor in the provider's SES program.

## L. STUDENT DATA ENTRY

### L-1. What are the reporting requirements for submitting student data into the state tracking system?

Providers are required to submit all data through the OMNI Tracking system. CDE does not upload or enter student data on behalf of a provider.

Providers are required to refer to the OMNI User Manual prior to contacting CDE for assistance

Providers must enter the previous month's services by the 15th of each month. Failure to timely enter student data could result in the loss of revenue for that student.

**SASID numbers should only be sent in a password protected document.** Providers that send SASID numbers otherwise will not receive assistance until the information is received in the correct format and may be placed on warning.

## M. MISCELLANEOUS

### M-1. What federal civil rights requirements apply to SES providers?

An SES provider must meet all applicable federal, state, and local civil rights laws (as well as health and safety laws). With respect to federal civil rights laws, most apply generally to "recipients of federal financial assistance." These laws include Title VI of the Civil Rights Act of 1964 (discrimination on the basis of race and national origin), Title IX of the Education Amendments of 1972 (discrimination on the basis of sex), Section 504 of the Rehabilitation Act of 1973 (Section 504) (discrimination on the basis of disability), and the Age Discrimination Act of 1975 (discrimination on the basis of age). An SES provider, merely by being a provider, is not a recipient of federal financial assistance. As a result, the above-referenced federal civil rights laws are not directly applicable to a provider unless the provider otherwise receives federal financial assistance for other purposes.

The provisions of two federal civil rights laws, however, may apply to SES providers despite the fact that a provider is not a “recipient of federal financial assistance.” Title II of the Americans with Disabilities Act of 1990 (ADA) would apply to public entities, but not private entities, that provide SES. Under Title III of the ADA, which is enforced by the U.S. Department of Justice, private providers that operate places of public accommodation (except for religious entities) must make reasonable modifications to their policies, practices, and procedures to ensure nondiscrimination on the basis of disability, unless to do so would fundamentally alter the nature of the program. Likewise, these providers must take those steps necessary to ensure that students with disabilities are not denied services or excluded because of the absence of auxiliary aids and services, unless taking those steps would fundamentally alter the nature of services or would result in an undue burden (i.e., significant difficulty or expense). In addition, an entity that employs 15 or more employees is subject to Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin, except that Title VII does not apply to the employment of individuals of a particular religion by a religious organization.

All the federal civil rights laws, however, apply to CDE and LEAs, as recipients of federal financial assistance or as public entities. As such, CDE and LEAs have the responsibility for ensuring that there is no discrimination in their SES programs.

### **M-2. Why is an entity that provides SES not considered to be a recipient of federal financial assistance?**

Under the regulations that define “federal financial assistance,” an SES provider, merely by being a provider, is not a recipient of federal financial assistance. That is because an entity that serves as an SES provider receives a contract from an LEA procuring its services to provide SES. But the regulations that define “federal financial assistance,” for example, those implementing Section 504 and the Age Discrimination Act, specifically exclude procurement contracts from the definition of “federal financial assistance” [34 C.F.R. §104.3(h); 34 C.F.R. §110.3]. (See also 34 C.F.R. §100.13(f); 34C.F.R. §106.2(g).) This is because a procurement contract is not intended to provide assistance to the contractor but, rather, to obtain a service for the issuer of the contract, which, in this case, is the LEA.

### **M-3. How may a provider use the funds it receives from an LEA for providing SES?**

The funds that an SES provider receives for providing SES are essentially income for the provider in exchange for its providing services to public school students. The funds may be used at the discretion of the provider for any allowable costs.

## **N. CDE - APPROVING PROVIDERS**

### **N-1. How does CDE approve SES providers?**

In conducting the approval process, CDE ensures that each provider it approves:

- Is a United States based organization.
- Has a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the state's academic content and student academic achievement standards.
- Is capable of providing instructional services that are:
  - High quality, research-based, and designed to increase student academic achievement.
  - Consistent with the instructional program of the LEA.
  - Aligned with state academic content and student academic achievement standards.
  - Secular, neutral, and nonideological.
- Is financially sound.
- Will provide SES consistent with applicable federal, state, and local health, safety, and civil rights laws.

Additionally, in approving a provider, CDE may consider:

- Information from the provider on whether the provider has been removed from any state's approved provider list.
- Parent recommendations or results from parent surveys, if any, regarding the success of the provider's instructional program in increasing student achievement.
- Evaluation results, if any, demonstrating that the provider's instructional program has improved student achievement.

The criteria that CDE uses to approve SES providers was developed in consultation with LEAs, parents, teachers, and other interested members of the public, to promote participation of providers to ensure, to the extent practicable, that parents have as many choices as possible.

**N-2. Does CDE use the same criteria to approve all entities that wish to become providers?**

Yes. The CDE uses the same RFP for all entities wishing to become SES providers for determining whether an entity can be included on the state's approved provider list.

**N-3. Will the CDE deny approval to a provider who applies to offer SES in only certain subject areas included in the state's ESEA assessment system?**

No. CDE does not prohibit an SES provider wishing to provide services only in one subject area. A provider may provide services in one or more of the following subject areas: reading, math or English Language Proficiency (for NEP/LEP students). A provider may tutor in one subject area per individual agreement.

For example, a provider is approved to provide services in both math and reading. The district will determine which subject the student will receive tutoring in due to the need of the student. The district may contract with a provider to provide services in only one subject area at a time. Students cannot be tutored in both math and reading on the same contract.

**N-4. Does the CDE approve an SES provider that is dependent upon the LEA for certain equipment or instructional resources?**

Yes. However, if an LEA does provide resources to enable an SES provider to serve the LEA's students, the LEA may charge the costs of such resources against the per-pupil allocation that the provider receives.

**N-5. How can CDE determine whether a provider is “financially viable”?**

Financial viability is the ability of an entity to continue to achieve its operating objectives to meet operating payments, debt commitments and, where applicable, to allow growth while maintaining service levels. CDE may for the purposes of providing SES determine whether a provider is “financially viable” by requiring potential SES providers to submit audited financial statements or other evidence. CDE might also employ site audits to verify the accuracy of the information submitted. See Appendix D

**O. INCENTIVES**

**O-1. Does CDE have a policy on an SES providers’ use of incentives?**

Yes. CDE has a policy on providers’ use of financial incentives or other gifts directed to families or to school or LEA personnel to encourage enrollment in an SES program. CDE prohibits providers from giving any financial incentive or gift to a student or parent for enrolling in a specific program or changing enrollment to another program. Additionally, CDE prohibits providers from offering cash or other incentives to schools for signing up students for their programs.

**O-2. Will CDE approve an entity that allows students enrolled in its program to keep a computer upon completion of the SES program?**

Yes. If the primary purpose of a computer in the SES program is instructional. However, if the computer's primary purpose is not instructional, the computer is not an allowable incentive.

## **P. PROGRAM**

**P-1. By definition, SES must be of “high quality, research-based, and specifically designed to increase the academic achievement of eligible students.” How does the CDE determine whether the instruction provided by a particular SES provider meets these requirements?**

One of the most important considerations in assessing the educational practices of a potential provider is whether those practices result in improved academic achievement for students in the subject areas of the state's academic assessments required under Section 1111 of the ESEA. A provider applicant should submit, as part of the state approval process, any academic research supporting the particular instructional program it will use. An applicant should submit, for example, research that demonstrates how its curriculum, instructional strategies, materials, and size and structure are designed to increase the academic achievement of students. CDE has the authority and the responsibility to approve only entities that will contribute to increased student achievement.

In approving an SES provider, CDE will consider the following questions regarding a provider's proposed instructional practices and program:

1. Will the progress of students receiving these services be regularly monitored?
2. Will the instruction be focused, intensive, and targeted to student needs?
3. Will students receive constant and systematic feedback on what they are learning?
4. Will instructors be adequately trained to deliver SES?
5. How will the provider measure whether students and parents participating in the program are satisfied with the instructional program?

**P-2. May CDE require that SES providers adhere to specific program design parameters?**

Yes. As part of its responsibility to approve providers, CDE has established certain program design criteria for providers to meet aimed at ensuring that all approved providers offer high-quality services.

CDE may establish a range of (or a cap on) acceptable rates that providers may charge in the state to prohibit exorbitant or unrealistically low rates.

**P-3. Under what circumstances will the CDE withdraw approval of a provider that is not meeting the statutory requirement to increase students' academic proficiency?**

CDE will remove from the approved list any provider that fails, for two consecutive years, to contribute to increased student proficiency relative to state academic content and student academic achievement standards. In addition, a provider may be removed from the list if it fails to respond to the CDE's request for information, updates, or failure to provide SES consistent with Colorado SES guidance, the Colorado SES Code of Ethics, with applicable state and federal health, safety, and civil rights requirements, or fails to meet any other applicable regulatory or statutory requirements.

**P-4. Does CDE require that an LEA give SES providers access to school facilities?**

No. CDE only requires an LEA to implement the same policies for SES and non-SES entities; it does not require an LEA that does not permit outside groups to use its school facilities to allow SES providers to do so. An LEA must give SES providers access to school facilities in the same manner and on the same basis as it gives access to other outside organizations. An LEA that permits non-SES groups use its school facilities must permit SES providers do so, as well. However, if an LEA does not allow any groups (SES or non-SES) to use its school facilities, the LEA is not required to give SES providers access to school facilities.

**Q. CDE WEBSITE**

**Q-1. Does the CDE maintain and update its list of approved providers?**

Yes, CDE will maintain an updated list of all approved providers in the state on the CDE SES website (<http://www.cde.state.co.us/FedPrograms/imp/ses.asp>). This information will identify which providers have been approved to deliver SES in Colorado.

**Q-2. What information will the CDE display on its website regarding the amount of funds available for SES in each LEA in the state?**

The CDE will post on its website, for each LEA in the state: (1) the 15 percent obligation that the LEA must spend for choice-related transportation and SES; and (2) the maximum per-pupil allocation for SES in the LEA (the LEA's Title I, Part A allocation divided by the number of children in low-income families as determined by the Census Bureau).

**R. MONITORING**

**R-1. What is the responsibility of the CDE regarding monitoring an LEA's implementation of SES?**

Monitoring LEAs to ensure that they meet all requirements for implementing SES will be part of the regular Title I monitoring that the CDE conducts of their LEAs. The CDE will ensure that its LEAs meet the requirements of the guidance by conducting onsite monitoring, desk reviews, and random checks to ensure that the district is implementing regulations.

As part of its regular Title I monitoring of LEAs, the CDE will ensure that an LEA meets the criteria of its 15 percent obligation for choice-related transportation and SES and uses the unexpended amount for other allowable activities to provide struggling students extended learning opportunities, such as before or after school programs, and summer school for Priority Improvement or Turnaround schools.

## **R-2. What is the responsibility of CDE in ensuring that SES is made available to all eligible students?**

The CDE has a number of responsibilities in ensuring that SES is available to all eligible students. The CDE approves SES providers, maintains a list of approved providers, displays certain information on its website, monitors LEAs implementation of SES, and monitors the quality and effectiveness of providers. Specifically, the CDE will:

- Consult with parents, teachers, LEAs, and interested members of the public to promote participation by providers to ensure, to the extent practicable, that parents have as many choices as possible.
- Provide and disseminate, through an annual notice to potential providers, information on the opportunity to provide SES and the process for obtaining approval to be an SES provider.
- Develop and apply objective criteria for approving potential providers.
- Maintain an updated list of approved providers across the state, for LEAs, from which parents may select, and indicate which providers are able to serve students with disabilities or LEP students.
- Post on its website, for each LEA, the amount equal to 15 percent of the LEA's Title I, Part A allocation available for SES and choice-related transportation (also known as the "15 percent obligation") and the per-pupil amount available for SES.
- Develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of services offered by approved SES providers, and for withdrawing approval from providers that fail, for two consecutive years, to contribute to increasing the academic proficiency of students served by the providers.
- Develop, implement, and publicly report on standards and techniques for monitoring an LEA's implementation of SES.
- Monitor each LEA's implementation of SES, including any LEA that spends less than the amount needed to meet its 15 percent obligation and chooses to spend the remainder of that obligation on other allowable activities.
- In addition to its regular monitoring, review by the beginning of the next school year any LEA that spends significantly less than the amount needed to meet its 15 percent obligation and has been the subject of multiple complaints, supported by credible

evidence, regarding implementation of the Title I Public School Choice and SES requirements.

**R-3. How does the CDE help ensure that parents have a genuine opportunity to obtain SES for their child?**

The CDE can do this directly, through its own actions and outreach, as well as indirectly, by providing technical assistance to its LEAs and by encouraging LEAs to provide outreach and assistance to help parents make informed decisions about SES.

The CDE can work directly to help parents understand SES and how they can enroll their child in an SES program by:

- Developing a public service announcement on SES, or developing brochures or other media that can be shared with parents.
- Posting on the CDE website clear and useful information about providers approved to serve in the state, questions a parent might consider in selecting a provider, a list of schools whose students are eligible for SES, and contact information for LEA and state SES coordinators.
- Posting on its website data on each provider's effectiveness and services offered.

Additionally, CDE can provide technical assistance to its LEAs in the areas of parent outreach and improving access to SES by:

- Providing LEAs with model practices on how LEAs can display information for parents on their websites, in a manner that is easy for parents to access and understand, about SES participation and eligibility rates and about approved providers in the LEA.
- Developing a model parent notification letter for its LEAs that meets the requirements of the statute and regulations, and a uniform contract that all LEAs in the state could use with SES providers to ensure that LEAs use fair and equitable contracts.
- Developing model procedures for allowing providers to operate their programs in school buildings.
- The CDE will encourage its LEAs to implement policies that likely will improve parents' understanding of and access to SES, such as:
  - Holding "provider fairs" to give parents an opportunity to meet and learn about providers and their programs and to assist parents in gathering information on SES and signing up for services.
  - Providing teachers and principals with information about SES and local providers, so that these educators can be a resource for parents and encourage parents to enroll their child in SES.
  - Making the registration process as accessible as possible by making registration materials available to parents.

**R-4. What is the CDE's responsibility with respect to monitoring SES providers?**

The CDE is responsible for monitoring the quality and effectiveness of services of an approved provider and removing any provider that fails, for two consecutive years, to contribute to increasing academic achievement among the students it serves. Such monitoring includes examination of evidence that the provider's instructional program:

- Is consistent with the instruction provided and the content used by the LEA.
- Addresses students' individual needs as described in students' SES plans.
- Has contributed to increasing students' academic proficiency.
- Is aligned with the state's academic content and student academic achievement standards.

**R-5. What steps will the CDE take if it determines that an LEA is failing to implement SES in a manner that is consistent with the statute and regulations?**

If the CDE determines that an LEA is failing to implement SES in a manner consistent with the statute and regulations, the CDE might provide technical assistance to the LEA, or institute peer-to-peer oversight and technical assistance by another LEA that the CDE determines to be in compliance with the law and implementing effective SES practices. Additionally, the CDE may take such corrective actions as it determines to be appropriate and in compliance with state law. The enforcement mechanisms available to the CDE under federal law and regulations in carrying out this responsibility include: (1) withholding approval, in whole or in part, of the application of an LEA until the CDE is satisfied that program requirements will be met; (2) suspending payments to an LEA, in whole or in part, if the CDE has reason to believe that the LEA has failed substantially to comply with program requirements; (3) withholding payments, in whole or in part, if the CDE finds, after reasonable notice and opportunity for a hearing, that an LEA has failed substantially to comply with program requirements; and (4) ordering, in accordance with a state audit resolution, repayment of misspent funds. Sections 432 and 440 of the General Education Provisions Act (20 U.S.C. 1231b-2,1232c) provide more detailed information on these enforcement mechanisms, including due process requirements.

## Part II

# TITLE I PUBLIC SCHOOL CHOICE

### INTRODUCTION

When schools do not meet state targets for improving the achievement of all students, parents need to have options, including the option to send their student to another school. Title I Public School Choice responds to that need by giving parents of students enrolled in Title I schools that have a status of Priority Improvement or Turnaround, the option to transfer to a school that is accredited with an Improvement or Performance Plan.

This Colorado guidance focuses on the provisions that require local educational agencies (LEAs) to provide Title I Public School Choice. Students enrolled in Title I schools that have a status of Priority Improvement or Turnaround must have the opportunity to transfer to a school that is accredited with an Improvement or Performance Plan in the LEA. LEAs need to provide, or pay for the provision of, transportation for transferring students, subject to certain limitations.

Parents of non-proficient students enrolled in Title I schools that have a status of Priority Improvement or Turnaround also have the opportunity to obtain Supplemental Educational Services (SES) for their students. SES is free tutoring and other academic enrichment services that are in addition to instruction provided during the school day and are of high quality, research-based, and specifically designed to increase the academic achievement of eligible students. When the Title I Public School Choice and SES options are both available, parents of eligible students have the choice of which option they would prefer for their student. For more information on SES, go to:

[http://www.cde.state.co.us/FedPrograms/dl/ti\\_a\\_regsandguidance\\_sesguid.pdf](http://www.cde.state.co.us/FedPrograms/dl/ti_a_regsandguidance_sesguid.pdf).

**A. GENERAL INFORMATION****A-1. What is the purpose of the Title I Public School Choice provisions for Colorado?**

Public School Choice offers a student enrolled in a Title I school that has a status of Priority Improvement or Turnaround, an opportunity to attend a public school that has been identified with an Improvement or Performance Plan. The process of turning around a low-performing school is difficult and typically takes time, and during that time the school's students are at risk of falling further behind if they do not have additional options. Title I Public School Choice can provide all students in low-performing Title I schools – including students with disabilities and limited English proficient students – the opportunity to obtain a high-quality education. In addition, expanded parental choice gives schools a greater incentive to undertake reforms and make the changes that are needed to improve student learning and reach academic achievement goals.

**A-2. For which students must an LEA offer Title I Public School Choice?**

An LEA must offer all students enrolled in Title I schools (that is, schools that operate programs funded under Title I, Part A of the ESEA) that have a status of Priority Improvement or Turnaround, the opportunity to transfer to another public school in the LEA that is accredited with an Improvement or Performance Plan.

The LEA is responsible for providing, or paying for the provision of, transportation necessary for students to attend their new schools, subject to the limitations discussed in Section J.

**A-3. What are the key principles that form the foundation of a quality Title I Public School Choice plan?**

A quality Title I Public School Choice plan should embody the following principles:

1. Choice is an important opportunity for parents and students.
2. Choice is an important component of an overall LEA educational improvement plan.

3. An overriding goal is to provide students with access to quality instruction.
4. Communication with parents is timely and thorough.
5. Information on choice is provided to parents and students in a format that is easy to understand.
6. Real choice means giving parents more than one option, when they exist, from which to choose and adequate time to consider their options.

**A-4. May an existing choice program, such as an open enrollment program, be modified to accommodate the Title I Public School Choice provisions?**

Yes. The Title I Public School Choice provisions can be accommodated within, and become a meaningful part of, an open enrollment program, provided that the requirements for Title I Public School Choice are met, including the requirements for LEAs to: notify parents of their choice options sufficiently in advance of, but no later than 30 calendar days before the start of the school year (see B-1); provide students who change schools with transportation to their new school (subject to the limitations discussed in Section J); and, when necessary, give priority for Title I Public School Choice to the lowest-achieving low-income students (see C-4).

**B. TIMING AND DURATION OF CHOICE**

**B-1. When must a LEA offer Title I Public School Choice to eligible students?**

A school district must offer SES and Public School Choice following the year in which a Title I school is assigned a Priority Improvement or Turnaround Plan Type. A Title I school identified with a Priority Improvement or Turnaround Plan Type assignment should use of the identification year as a planning year for SES/Choice. The year after identification with a plan type of Priority Improvement or Turnaround the Title I school must offer SES/Choice to eligible students. The Title I school will continue to offer SES/Choice as long as the school continues to have a Priority Improvement or Turnaround plan type assignment. Because Plan Type assignments are provided after the LEA completes the Consolidated Application, the year in which the Title I school plan type changes to Improvement or Performance, the school will continue to offer SES/Choice until the end of the school year. Offering SES/Choice until the end of the year will allow eligible students the opportunity to complete their work with tutors or finish out the school year in their school of choice. The Title I school is not required to offer SES/Choice the following year.

For example:

Title I School XYZ			
School year	Plan Type	Planning year	SES/Choice
2011-2012	First year as a Title I Priority Improvement or Turnaround	x	
2012-2013	Priority Improvement or Turnaround		x
2013-2014	Improvement		x
2013-2014	Priority Improvement or Turnaround	x	
2015-2016	Improvement		x
2016-2017	Performance		

- New Title I Schools
  - A newly designated Title I school with a continuing Priority Improvement or Turnaround Plan Type will be given an opportunity to provide Title I services to students for two years before SES and Public School Choice are required. A school will be required to provide Choice and SES the year after the second consecutive school year in which it is a Title I school and is assigned a Priority Improvement or Turnaround Plan Type. (See chart below)

School Year	Title I School	Priority Improvement or Turnaround Plan Type	District offers SES/Choice
2012-2013	No	Yes	Not required to offer SES/Choice in 2012-2013
2013-2014	Yes	Yes	Not required to offer SES/Choice in 2013-2014
2014-2015	Yes	Yes	Not required to offer SES/Choice in 2014-2015

2015-2016	Yes	Yes	Required to offer SES/Choice in 2015-2016
2016-2017	Yes	No	Required to offer SES/Choice in 2016-2017
2017-2018	Yes	No	Not required to offer SES/Choice in 2017-2018

**B-2. How should year-round schools meet the requirement to offer Title I Public School Choice sufficiently in advance of, but no later than 30 calendar days before, the start of the school year?**

In the case of year-round schools, Title I Public School Choice must be offered sufficiently in advance of, but no later than 30 calendar days before the beginning of the “school year” as that term is defined by Colorado or the LEA.

**B-3. How much time should parents have to consider their Title I Public School Choice options and make a choice of school?**

Parents of eligible students must receive information on their Title I Public School Choice options with sufficient time to make a choice of school by the start of the school year. Because an LEA must notify parents of their Title I Public School Choice options at least 30 calendar days prior to the start of the school year, this means that LEAs should give parents a minimum of 14 calendar days to choose a school after receiving notice of their options. If an LEA offers Title I Public School Choice to parents of eligible students well before the start of the school year, it may set a deadline prior to the start of the school year by which parents must make a choice of school, provided the deadline is at least 14 calendar days after parents are notified. LEAs should give parents as much time as possible prior to the start of the school year to consider their options.

**B-4. When should an LEA implement requests to transfer to a school of choice?**

An LEA should implement transfer requests as soon as possible after parents of eligible students notify the LEA of the school they have chosen for their student. It is not appropriate, for instance, for an LEA to wait until the second quarter or semester to act on transfer requests received from parents prior to the start of the school year.

An LEA should develop transportation and other logistical policies and plans ahead of time so that it may promptly grant transfer requests from parents of eligible students.

**B-5. How long must an LEA offer eligible students the option to attend another public school?**

An LEA must offer Public School Choice to all students in Title I schools that have a status of Priority Improvement or Turnaround for one year after the school has been identified with an Improvement or Performance Plan.

**B-6. How long must students who change schools be allowed to attend their school of choice?**

If an eligible student exercises the option to transfer to another public school, an LEA must permit the student to remain in that school until he or she has completed the highest grade in the school, although the student is not required to remain in the school of choice through the highest grade. However, an LEA is no longer obligated to provide transportation for a student the year after the student's school of origin has been identified with an Improvement or Performance Plan.

**B-7. If a student changes schools but, in a subsequent year, moves out of the original school's attendance area while remaining in the same LEA, must the LEA continue to allow that student to attend the school of choice and continue to provide transportation?**

As with students whose school of origin is no longer identified as having a status of Priority Improvement or Turnaround, students who exercise the option to transfer to another public school and then move out of the attendance zone served by the Title I school with a status of Priority Improvement or Turnaround must be permitted to continue attending their school of choice until they have completed the highest grade in that school. However, once a student moves outside the attendance area, the LEA is no longer obligated to provide transportation.

## C. ELIGIBLE STUDENTS

### C-1. Which students are eligible to change schools under the Title I Public School Choice provisions?

All students enrolled in a Title I school with a status of Priority Improvement or Turnaround are eligible to transfer to another public school in the LEA that has been identified with an Improvement or Performance Plan. This requirement applies whether the school in which a student is enrolled administers Title I as a schoolwide program [Section 1114] or as a targeted assistance program [Section 1115].

In the case of a school that operates a targeted assistance program, all students in the school, not just those receiving Title I services, must have the opportunity to change schools.

### C-2. Are students who plan to attend but are not yet enrolled in a Title I school identified for Priority Improvement or Turnaround, eligible to take advantage of the Public School Choice provisions?

The guidance requires that Title I Public School Choice be made available to all students enrolled in a Title I school with a status of Priority Improvement or Turnaround. Students planning to enter a school for the first time, such as entering kindergartners, or students moving from elementary to middle school, or those who have just moved into the attendance area served by a Title I school, should have the same opportunity to exercise choice as students already enrolled in the school so long as the parent selects Public School Choice 14 days prior to the beginning of school.

### C-3. What opportunities for Title I Public School Choice must an LEA provide to a student who has changed schools under the Title I Public School Choice provisions and whose school of choice is subsequently identified as Priority Improvement or Turnaround?

Like other students enrolled in Title I schools with a status of Priority Improvement or Turnaround, a student who has changed schools under the Public School Choice provisions and whose school of choice is subsequently identified as a Title I school with a status of Priority Improvement or Turnaround must be offered the choice of attending a school that has been identified with an Improvement or Performance Plan and, subject to the limitations described in Section J, offered the opportunity to receive transportation to such

a school. The transfer options available to such students should be the same as those available to other students in the school.

**C-4. What does it mean when the guidance says that an LEA shall “give priority to the lowest achieving students from low-income families”?**

An LEA must provide *all* students in Title I schools with a status of Priority Improvement or Turnaround the opportunity to transfer to another public school within the LEA. In implementing the option to transfer, however, certain circumstances may require an LEA to give priority to the lowest-achieving students from low-income families. For example, if not all students can attend their first choice of schools, an LEA would give first priority in assigning spaces to the lowest-achieving low-income students. Similarly, if an LEA does not have sufficient funds to provide transportation to all students who wish to transfer, it would apply this priority in determining which students receive transportation.

**C-5. In applying the priority for the lowest-achieving students from low-income families, how does an LEA determine which students are from low-income families?**

The guidance requires that LEAs determine which students are from low-income families using the same data that they use in allocating Title I funds to schools.

**C-6. May LEAs use information from the National School Lunch Program to determine which students are from low-income families and, thus, may receive priority for Title I Public School Choice?**

Because the guidance requires LEAs, in determining which students receive priority for Title I Public School Choice, to use the same data they use in making Title I allocations, and because most LEAs use school lunch data to make those allocations, most LEAs will, in fact, use school lunch data to identify students as eligible for the priority. An LEA must do so, however, in a manner that protects the confidentiality of school lunch data, as provided for in the Richard B. Russell National School Lunch Act (NSLA) [42 U.S.C. 1758].

Section 9 of the NSLA establishes requirements and limitations regarding the release of information about students certified for free and reduced price meals provided under the National School Lunch Program. The NSLA allows school officials responsible for determining free and reduced price meal eligibility to disclose aggregate information about students certified for the program. Additionally, the statute permits determining officials to disclose the names of individual students certified for free and reduced price school meals and the student's eligibility status (whether certified for free meals or reduced price meals) to persons directly connected with the administration or enforcement of a federal or state education program.

Because Title I is a federal education program, determining officials may disclose a student's eligibility status to persons directly connected with, and who have a need to know, a student's free and reduced price meal eligibility status in order to administer the Title I Public School Choice requirements. The statute, however, does not allow the disclosure of any other information obtained from the free and reduced price school meal application or obtained through direct certification. School officials should keep in mind that the intent of the confidentiality provisions in the NSLA is to limit the disclosure of a student's eligibility status to those who have a "need to know" for proper administration and enforcement of a federal education program. As such, schools should establish procedures that limit access to a student's eligibility status to as few individuals as possible.

School officials, prior to disclosing information on the National School Lunch Program eligibility of individual students, should enter into a memorandum of understanding or other agreement to which all involved parties (including both school lunch administrators and education officials) will adhere. This agreement should specify the individuals who will have access to the information, how the information will be used in implementing Title I requirements, and how the information will be protected from unauthorized uses and third-party disclosures, and include a statement of the penalties for misuse or improper disclosure of the information.

Additional information on this issue is provided in a December 17, 2002 letter from the Departments of Education and Agriculture (available at: <http://www.ed.gov/programs/titleiparta/letter121702.html>).

**C-7. How may LEAs that operate school lunch programs under Provisions 2 and 3 of the NSLA determine which students are from low-income families and, thus, may receive priority for Title I Public School Choice?**

“Provision 2” and “Provision 3” of the NSLA allow schools that offer students lunches at no charge, regardless of the students’ economic status, to certify students as eligible for free or reduced price lunches once every four years and longer, under certain conditions. National School Lunch Program regulations prohibit schools operating school lunch programs under Provisions 2 and 3 from collecting eligibility data and certifying students on an annual basis for other purposes.

For the purpose of determining which students may receive priority for Title I Public School Choice, school officials may deem all students enrolled in Provision 2 and Provision 3 schools as “low-income.” Additional information on this issue is provided in a February 20, 2003 letter from the Departments of Education and Agriculture (available at: <http://www.ed.gov/programs/titleiparta/22003.html>).

**C-8. How does an LEA determine which students are lowest-achieving?**

LEAs have flexibility in determining which students from low-income families are lowest-achieving and, thus, may receive priority for Title I Public School Choice. An LEA, for example, might rank order students from low-income families based on objective educational measures, such as results from state assessments administered under Section 1111 of the ESEA. Note, however, that students may not be rank ordered by family income level, because this would not give priority to the lowest-achieving eligible students.

Alternatively, an LEA might give priority for Title I Public School Choice to all students from low-income families who receive less than a certain score on the annual state assessment (for instance, all those who score “below proficiency”). Another option might be to base the determination on student grades or on the scores students receive on other tests.

**C-9. What if a student attends a Title I school with a status of Priority Improvement or Turnaround, but has been assigned to that school by a court order or for disciplinary reasons?**

This question is difficult to answer in general terms because the answer depends upon the particular circumstances surrounding a student’s placement (and can and should be resolved on a case-by-case basis). However, some general guidelines may be helpful. If a student is assigned to a particular school by a family court for child custody reasons and that Title I school has a status of Priority Improvement or Turnaround, the student could be eligible to transfer under the Public School Choice provisions. However, the student’s parent

may not be able to exercise that option without first obtaining permission from the court to move his or her student.

Similarly, a student might be assigned to a particular school – for example, an alternative school – by a juvenile court due to the student’s violent or criminal behavior or for disciplinary reasons sufficiently serious to justify placement in a particular learning environment. In this circumstance, the LEA would likely need to limit or deny the option to transfer.

For issues related to court-ordered desegregation plans, please see Section G.

#### **C-10. Can an LEA deny or revoke Title I Public School Choice to a student?**

Yes. If an LEA has policies for School Choice enrollment such as attendance rate or behavior policies that students must abide by then the district may deny Title I Public School Choice when a student does not meet the criteria.

### **D. NOTIFICATION OF PARENTS**

#### **D-1. When must an LEA notify parents that their student is eligible for Title I Public School Choice?**

Parents must be notified by the LEA that their student is eligible for Title I Public School Choice sufficiently in advance of, but no later than 30 calendar days before, the start of the school year for which Public School Choice is being offered. (See B-1.)

#### **D-2. What information must an LEA include in the notice to parents about their Title I Public School Choice options?**

An LEA must provide an explanation of the Title I Public School Choice option to all parents of students enrolled in Title I schools with a status of Priority Improvement or Turnaround. This notification must be in an understandable and uniform format and, to the extent practicable, in a language that parents can understand. The notification should use simple, plain language and avoid legal or professional educational terms that may be confusing or intimidating to parents. At a minimum, the notification must:

- Be received by parents at least 30 days prior to the start of school.
- Identify the school’s status category – Priority Improvement or Turnaround.
- Explain why the school is on Priority Improvement or Turnaround and specify content area(s), reading, writing, math or science, academic growth, grad rate, etc.

- Explain that if the parent keeps their student at the Priority Improvement or Turnaround school and if the student is not yet academically proficient (e.g., TCAP, CBLA assessment), the student may be eligible for free tutoring.
- Explain the parents' option to transfer their student to another public school in the district that has an Improvement or Performance Plan.
- Explain that the district will pay for/provide transportation based on at least one of the following options:
  - From the home to the choice school or;
  - From the home school to the choice school.
- A link to SchoolView (<http://www.schoolview.org/>) so that they can compare the Priority Improvement or Turnaround school to choice schools (if available) on achievement and growth data as reported on 1- and 3-year School Performance Frameworks (SPFs).
- An offer to provide hard copies of SPFs if parents do not have access to the CDE website or prefer not to access it that way.
- Explain what the school is doing to increase student achievement.
- Explain what the district and state are doing to help the school increase student achievement.
- Recommend ways parents can help address the academic issues that led to the school going on Priority Improvement or Turnaround.
- Provide a Spanish translation of the letter and attachments (unless there are no Spanish households).

An LEA may provide additional information on the schools to which an eligible student may transfer, such as a description of any special academic programs or facilities, the availability of before- or after-school programs, the professional qualifications of teachers, and parent involvement opportunities. Such additional information should be presented in an unbiased manner that does not seek to dissuade parents from exercising their opportunity to choose a new school.

Additionally, an LEA must describe the procedures and timelines that parents must follow in selecting a school for their student. An LEA should also discuss how transportation to the new school will be provided or paid for. If an LEA anticipates that it will not have sufficient funds to provide transportation to all eligible students requesting a transfer, it should include in the notice information about how it will set priorities in order to determine which eligible students receive transportation. (See C-4.)

### **D-3. By what means must an LEA notify parents of their Title I Public School Choice options?**

The LEA must provide information to parents (1) directly, through such means as regular mail; and (2) through broader means of dissemination such as email and the Internet. LEAs must distribute information to parents regarding Title I Public School Choice through both

of these means. An LEA must also prominently display on its website, in a timely manner, to ensure that parents have current information, a list of available schools for the current school year to which eligible students may transfer. (See D-7.)

**D-4. How may an LEA meet the requirement to notify parents directly of their Title I Public School Choice options?**

An LEA must meet its responsibility to directly inform parents through regular mail at least 30 days prior to the start of school. In addition to this mailing, the LEA may optionally send email or may send a notice home to parents in their student's backpack.

**D-5. If there are no schools to which students can transfer, must parents still be notified?**

Yes. If there are no schools for a student to transfer to under Title I Public School Choice, parents must still be notified that their student's Title I school has a status of Priority Improvement or Turnaround and that their students may be eligible for Supplemental Educational Services. (See E-3.)

**D-6. What information regarding Title I Public School Choice must an LEA display on its website?**

An LEA is required to display the following publish school choice information on its website:

1. A list of available schools for the current school year to which students eligible to participate in Title I Public School Choice may transfer.
2. Procedures and timelines that parents must follow in selecting a school for their student.
3. How transportation will be paid for or provided.

An LEA should also consider including other information on its website that will help parents make informed choices. An LEA might also include information on the academic achievement of the schools from which parents may choose, as well as other information on these schools, such as any special programs or facilities, the availability of before- or after-school programs, the professional qualifications of teachers, and parent involvement opportunities. LEAs may also include other information, such as the amount equal to 15 percent of the LEA's Title I, Part A allocation (the 15 percent obligation that LEAs must

spend for choice-related transportation and SES). An LEA might also include LEA and school contact information for parents to use if they have additional questions or seek more information. Finally, an LEA might also include a link to a downloadable form for parents to use to request a transfer for their student to another school.

An LEA must also display on its website certain information on SES. For more information, see the Colorado SES Guidance at [http://www.cde.state.co.us/FedPrograms/dl/ti\\_a\\_regsandguidance\\_sesguid.pdf](http://www.cde.state.co.us/FedPrograms/dl/ti_a_regsandguidance_sesguid.pdf).

**D-7. When must the LEA post Title I Public School Choice information on its website?**

An LEA must display Title I Public School Choice information in a timely manner to ensure that parents have current information on their school choice options. The LEA must display the list of schools to which eligible students may transfer, sufficiently in advance of, but no later than 30 calendar days before, the start of the school year (i.e., concurrent with its required notification to parents).

**D-8 If an LEA opens a window of enrollment for a select group of students in a Title I Priority Improvement or Turnaround school attendance area, must it open the enrollment window for all students in the attendance area?**

Yes. If the LEA opens a window to accommodate a select group of students for the provision of Title I Public School Choice, in order to be equitable, the LEA must allow all students in the attendance area of the Title I Priority Improvement or Turnaround school the opportunity to enroll in Public School Choice during that open window.

**E. SCHOOLS OF CHOICE**

**E-1. Which schools may be offered to students as transfer options?**

Except in the situations described in E-6 and E-7, students must be given the option to transfer to other public schools, which includes charter schools, within the LEA. The choices available to students include schools with an Improvement or Performance Plan.

**E-2. How many choices of schools is an LEA required to offer to students?**

If more than one school meets the requirements is available, an LEA must offer more than one choice to eligible students. LEAs should strive to provide a minimum of two choices to students and parents.

**E-3. When an LEA offers multiple choices of schools to which students may transfer, who makes the final decision on which school a student attends, and how is that decision made?**

While the final decision on the school each student will attend is up to the LEA, and while not all parents will necessarily receive their first choice of school, LEAs must take parents' preferences into account in making these decisions. In making decisions on school assignments, LEAs must give priority to the lowest-achieving students from low-income families. LEAs could ask parents to rank order their preferences among the schools that are available to receive transfer students. LEAs should respect those preferences, to the extent practicable, when assigning students to schools or when making decisions about transportation.

Once an LEA has made its decision, parents must have the option to decline the opportunity to move their student to the new school assigned by the LEA. Because the student's current Title I school is subject to both the Public School Choice and SES requirements, some parents, once they understand the transfer options, might elect to have their student remain in his or her original school and receive SES, if the student is eligible.

**E-4. May a "virtual school" (i.e., a school that offers instruction through distance learning technology) be among the schools to which eligible students are offered the opportunity to transfer?**

Yes. A virtual school may be among the schools to which an eligible student may transfer, so long as that school is a public elementary or secondary school (as defined by the SEA) within the LEA and has been identified with an Improvement or Performance Plan.

**E-5. May specialty schools, such as schools for the performing arts, be offered to students as transfer options?**

Yes. However, LEAs do not need to disregard entrance requirements when identifying transfer options for students. For example, an LEA may require that students wishing to transfer to a fine arts magnet school or to a school for gifted students meet the normal eligibility requirements for those schools, even if there are no other choices available to eligible students in the LEA.

**E-6. Must an LEA that believes it does not have the physical capacity within its schools to accept transferring students implement the Title I Public School Choice provisions?**

An LEA may take capacity into consideration in deciding which schools to make available to eligible students based on the district's policy.

- Capacity is defined as the total number of pupils a building can reasonably and effectively educate based on the district's educational program and class size policy as per formal Board of Education policy. In the absence of a formal policy by the Board of Education, a district may not use capacity as a reason to deny a parent request for Title I Public School Choice transfer of their student.

**E-7. What if providing the option to transfer to another school within the LEA is not possible?**

Some LEAs may have no schools available to which students can transfer. This situation might occur when all schools at a grade level have a status of Priority Improvement or Turnaround or when an LEA has only a single school at that grade level. It may also occur in LEAs whose schools are so remote from one another that changing schools is impracticable. In these cases the LEA is not required to prove Choice.

**F. SPECIAL EDUCATION****F-1. What are the responsibilities of a school that receives a transfer request from a student with disabilities?**

The LEA will convene a meeting of the Individualized Education Program (IEP) team in consultation with the student's parents. The IEP team must ensure that a student with disabilities is provided a free appropriate public education (FAPE) consistent with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act (ADA Title II). In determining the choices available to students with disabilities, the LEA should match the abilities and needs of a student with disabilities with those schools that have the ability to provide the student FAPE. The IEP team in consultation with the student's parents determines which school would best meet the student's needs. It is not sufficient, however, for an LEA to conclude that no choices are available to students with disabilities because, for example, FAPE is currently provided in only two schools and both schools are identified as Title I Priority Improvement or Turnaround.

A school to which a student transfers may elect to implement the Individualized Education Program (IEP) or Section 504 plan (for students eligible only under Section 504 and ADA Title II) developed by the prior school. Or the school may convene an IEP team meeting and develop a new IEP in consultation with the student's parents that meets the student's needs (or, for the Section 504/ADA Title II-only eligible student, determine the regular and special education and related aids and services necessary to meet the student's needs).

For information on funding for special education, see I-4.

**F-2. Does the transfer of a student with disabilities to a school of choice constitute a "change of placement" under IDEA?**

A change in the location of delivery of services, by itself, does not constitute a "change of placement" as defined under IDEA. IDEA and implementing regulations contain specific requirements on when a "change of placement" occurs; LEAs must comply with these requirements when they are triggered.

**G. CIVIL RIGHTS ISSUES****G-1. How do federal civil rights laws apply to LEAs implementing Title I Public School Choice?**

In providing Title I Public School Choice, an LEA may not discriminate on the basis of race, color, national origin, sex, disability, or age, consistent with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504, ADA Title II, and the Age Discrimination Act of 1975.

See Section F concerning the implementation of the Title I Public School Choice requirements for students with disabilities.

**H. Responsibilities of Schools Receiving Transfer Students****H-1. What are the responsibilities of a school that receives transfer students under the Title I Public School Choice provisions?**

A school that receives transfer students under the Title I Public School Choice provisions must ensure that these students are enrolled in classes and other activities in the school in the same manner as all other students in the school. For instance, transfer students entering a school must have the same opportunities as all other students enrolled in the school to select courses, take part in special programs (such as activities for gifted and talented students) and participate in extracurricular activities.

**H-2. May an LEA deny students transferring under the Title I Public School Choice provisions, the opportunity to participate in interscholastic sports in their school of choice?**

If an LEA has a general policy that requires all students who transfer under any choice option within the LEA to “sit out” from interscholastic sports for a specified period of time after the transfer, then the LEA may apply that policy to students who transfer under the Title I Public School Choice provisions. If it does not have such a general policy, it may not impose one on students who enter the school under the Title I Public School Choice provisions. Policies promulgated by an SEA or state athletic association should likewise be

applied to students transferring under the Title I Public School Choice provisions in the same way they are applied to other transfer students.

**H-3. Does the LEA need to add additional staff to create capacity at the receiving school?**

It is permissible from a Title I perspective for a school district to hire new staff; however, schools are not required to take that step. Districts can meet the Choice obligation by offering up to two schools and initiating a wait list if one school is at capacity.

**H-4. What are the responsibilities of the LEA in regards to Title I Public School Choice to a student that is a non-district student?**

All students including non-district students who attend a Title I school that has a status of Priority Improvement or Turnaround are eligible for Public School Choice.

**H-5. What are the obligations of the LEA with respect to Title I Public School Choice if a student is considered to be homeless?**

Districts must offer Public School Choice to homeless students who are enrolled in a Title I School identified with a status of Priority Improvement or Turnaround.

**H-6. Are ELL students, who attend a Title I school with a center designed for ELL students that has a status of Priority Improvement or Turnaround, eligible for Public School Choice?**

ELL students are eligible for Title I Public School Choice. Parents of ELLs need to be informed of the services available at the choice school. If the LEA is unable to provide comparable services, the parent needs to be informed that the student would be best served in the home school. However if a number of ELL students are opting for Public School Choice, the LEA may need to offer choice schools with comparable services or may need to consider adding ELL services to a choice school.

## I. GENERAL FUNDING ISSUES

### **I-1. Does the law require that funds for a student's general educational services "follow" a student who takes advantage of Title I Public School Choice to his or her new school?**

No. The statute and regulations do not require that local, state, or federal funds "follow the student" to his or her new school. However, LEAs should take care to ensure that receiving schools have available staff, materials, equipment, and other resources needed to accommodate students who enter the school under the Title I Public School Choice provisions.

### **I-2. In determining Title I allocations, should a student who transfers out of her or his school of residence be counted in the school of residence or in the school to which the student transferred and is now enrolled?**

Title I school eligibility and Title I allocations are based on the prior year October 1<sup>st</sup> count of students from low-income families who reside in the school attendance zone of a given school.

### **I-3. May Title I funds be used to benefit non-Title I schools that receive students transferring from Title I schools?**

Title I dollars and services do not follow a student who transfers from a Title I school with a status of Priority Improvement or Turnaround to a non-Title I school. However, in subsequent school years, the receiving school may become eligible for Title I funds if a sufficient number of low-income students transfer into it (if the LEA bases its eligibility determinations on enrollment). If the number of students transferring into a receiving school causes that school to be designated as a Title I school, then it would be eligible to receive Title I funds.

### **I-4. Does special education funding follow a student with disabilities to the school of his or her choice?**

Federal special education funding is distributed to LEAs, not to individual schools. It is up to an LEA to determine how that money is spent and how those funds are distributed among individual schools within the LEA.

## **J. TRANSPORTATION FUNDING AND OTHER TRANSPORTATION ISSUES**

### **J-1. Is an LEA required to provide transportation to schools of choice?**

Yes. An LEA must provide, or pay for the provision of transportation to and from the school of choice from the home school, subject to the limitations described in J-2 through J-5.

### **J-2. If an LEA does not customarily provide transportation to and from school, must it provide transportation for students choosing to transfer under the Title I Public School Choice provisions?**

No. LEAs that have a policy of not providing transportation to and from any school are not required to provide Public School Choice transportation.

### **J-3. If an LEA customarily provides transportation but has a policy of not providing it to students who live within a certain distance of their schools, must it provide transportation to students who elect, under the Title I Public School Choice provisions, to transfer to schools that are within that distance of their homes?**

No. For instance, an LEA might have a policy of providing transportation only to students who live more than a mile from the school they attend. In that situation, the LEA would not be required to provide transportation for students who elect, under the Title I Public School Choice provisions, to transfer to schools within one mile of their homes.

However when transportation is required, the district is required to transport students from the home school to the school of choice and back. The districts is also permitted to set up additional pickup/drop-off sites as needed.

**J-4. If the LEA provides a half day kindergarten at a receiving school, what are the obligations of the LEA in regards to Title I Public School transportation?**

The LEA must provide transportation as per the Board of Education policy. For example, if the LEA provides transportation to school for Kindergartners, and has a policy that requires parents to pick up students at the end of the school day then the LEA would need to provide Public School transportation for eligible students to school but would not be required to offer transportation home. (See J-2, J-3.)

**J-5. Must an LEA provide transportation from the student's home to the choice school?**

No. The LEA may elect to provide transportation from the student's home; however, it is not required to do so. The LEA must use a student's home school as one designated pick-up and drop-off zone for Public School Choice. However, the LEA can designate additional bus pick-up/drop-off sites for students in accordance with the LEA's policy for transportation in order to provide transportation to the choice school.

**J-6. Must an LEA provide transportation for a student who has changed schools under the Title I Public School Choice provisions and whose school of choice is subsequently identified with a status of Priority Improvement or Turnaround?**

If a school of choice is subsequently identified with a status of Priority Improvement or Turnaround and the family chooses not to enroll their student in another school, preferring instead that the student continue attending the school of choice, an LEA may continue to provide, or pay for the provision of, transportation for the student to attend the school of choice that is now identified. However, providing, or paying for the provision of, transportation is no longer required as the school that the student is attending no longer meets the statutory and regulatory requirements for a school of choice.

**J-7. How much must an LEA spend on choice-related transportation?**

The requirement for joint funding for choice-related transportation and SES is 15 percent of the Title I Part A allocation to the LEA unless a lesser amount is needed to meet demand for choice-related transportation and to satisfy all requests for SES.

This flexible funding approach means that the amount of funding that an LEA must devote to choice-related transportation depends in part on how much it spends on SES.

**J-8. What funds may an LEA use to pay for choice-related transportation?**

An LEA may use Title I, Part A funds, as well as other allowable federal, state, local, and private resources, to pay for the transportation required to implement the Title I Public School Choice requirements.

**J-9. May an LEA meet its responsibility to pay for or provide transportation by reimbursing parents for transportation expenses?**

A policy of reimbursement, by itself, does not meet the statutory requirement to provide, or pay for the provision of, transportation. This is because some parents may wish to exercise Title I Public School Choice, but may not possess the means to transport their student to their chosen school. For these parents, it is an LEA's obligation to provide, or pay for the provision of, transportation (subject to the 15 percent obligation) that allows them to take advantage of the choice option. If such parents are presented only with the option of being reimbursed for transportation that they themselves provide, the LEA is failing to fulfill its statutory responsibility to provide or pay for the provision of transportation, and has effectively denied those parents the opportunity to take advantage of choice. Further, a policy of "reimbursement only" is particularly problematic if an LEA has not fully satisfied its 15 percent obligation for choice-related transportation and SES. In this instance, the LEA is placing an undue burden on parents while not meeting its expenditure requirements. A policy of "reimbursement only" may also have the effect of reducing demand for Title I Public School Choice.

An LEA is not, in general, prohibited from employing a reimbursement policy, but must supplement such a policy with additional transportation options for parents as needed, such as busing, public transportation vouchers, or other transportation arrangements. An LEA may maintain a preference for reimbursing parents who are able to provide or pay for transportation up front on their own, but must give parents who are not able to transport their student the opportunity to have transportation provided or paid for directly by the LEA. The LEA must also ensure that all parents are aware that additional transportation options are available.

**J-10. How may an LEA with an existing open enrollment or other choice program that provides transportation calculate costs for transporting students who change schools under the Title I Public School Choice provisions?**

Some LEAs implement an open enrollment or other choice program for which they provide transportation independent of the Title I Public School Choice provisions. If such an LEA is able to provide transportation to all students exercising Title I Public School Choice under its existing transportation program without having to create new bus routes or incur other new transportation-related expenses, then the LEA may not use Title I, Part A funds to pay for the transportation of students changing schools under the Public School Choice provisions. Doing this would violate the “supplement, not supplant” provision of the statute. However, such an LEA may count, toward meeting its 15 percent obligation, the portion of its transportation budget that is attributable to providing transportation to students exercising the Title I Public School Choice option.

In determining the portion of its transportation budget that is attributable to students exercising Title I Public School Choice, an LEA may include costs that it incurs in transporting a student who:

1. Has a “home” or “neighborhood” school that receives Title I funds and has been identified with a status of Priority Improvement or Turnaround;
2. Has elected to enroll, after the home or neighborhood school has been identified with a status of Priority Improvement or Turnaround, in a school that has been identified with an Improvement or Performance Plan; and
3. Is using LEA transportation services to attend such a school.

The amount of an LEA’s transportation budget that the LEA can attribute to the transportation of students exercising Title I Public School Choice would be calculated by determining the portion of students transported who meet the above criteria (or through a similar calculation that reflects those criteria). For instance, if 10 percent of an LEA’s students who receive transportation meet the criteria, the LEA could count, toward meeting its 15 percent obligation, 10 percent of its transportation budget. LEAs should maintain clear records on how they make this calculation.

## APPENDIX A: GLOSSARY

**Eligible Student:** For purposes of the Title I Public School Choice provisions, eligible students are all students enrolled in Title I schools with a status of Priority Improvement or Turnaround. Note that this differs from eligibility for SES, which is limited to non-proficient students in Title I schools with a status of Priority Improvement or Turnaround.

**Title I Public School Choice:** Students who attend a Title I school identified with a status of Priority Improvement or Turnaround are eligible to transfer to another public school that has been identified with an Improvement or Performance Plan in the LEA. LEAs are required to make at least two transfer options available to students if at least two options exist. LEAs are also responsible for paying for or providing transportation necessary for students to attend their new school (see section J). If available funds are insufficient to satisfy all requests for transportation, LEAs must give priority to the lowest-achieving low-income students who request transportation.

**Schoolwide Program:** A schoolwide program is a Title I program operated in a school that serves an eligible school attendance area in which not less than 40 percent of the students are from low-income families, or that has a school enrollment of which not less than 40 percent of the students are from such families, and that uses its Title I funds to upgrade the educational program of the entire school, rather than to provide services only to students identified as most at risk of failing to meet state standards. *[Section 1114.]*

**Supplemental Educational Services:** Supplemental Educational Services (SES) are additional academic services designed to increase the academic achievement of non-proficient students attending Title I schools with a status of Priority Improvement or Turnaround. These services may include tutoring, remediation, or other educational interventions that are consistent with the content and instruction used by the LEA, and are aligned with the state's academic content standards. SES is used in addition to instruction provided during the regular school day. SES must be high quality, research-based, and specifically designed to increase the academic achievement of eligible students.

**Targeted Assistance Program:** A targeted assistance program is a Title I program in which a school uses its Title I funds to provide services only to the students who have been identified as being most at risk of failing to meet state academic content and achievement standards. *[Section 1115.]*

## APPENDIX A: Definitions

**15 Percent Obligation:** The amount equal to 15 percent of an LEA's Title I, Part A allocation that an LEA must spend, subject to demand, on choice-related transportation, SES, or a combination of the two.

**Eligible Student:** Students eligible for SES are those students who attend Title I schools with a status of Priority Improvement or Turnaround who are not proficient as measured by CSAP/TCAP, CBLA, or CELA for Non- or Limited English Proficient (NEP/LEP) students.

**Provider:** A provider of SES may be any public or private (non-profit or for-profit) entity that meets the state's criteria for approval. Potential providers include individuals or groups of individuals, public schools (including charter schools), private schools, LEAs, educational service agencies, institutions of higher education, faith-based organizations and other community-based organizations, and business groups. A public school or an LEA that is in need of improvement may not be a provider. An approved provider (1) has a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the state's academic content and student academic achievement standards; (2) is capable of providing instructional services that are (a) of high quality, research-based, and designed to increase student academic achievement, (b) consistent with the instructional program of the LEA, (c) aligned with state academic content and student academic achievement standards, and (d) secular, neutral, and nonideological; (3) is financially sound; and (4) provides SES consistent with all applicable federal, state, and local health, safety, and civil rights laws.

**Public School Choice:** Students who attend Title I schools with a status of Priority Improvement or Turnaround are eligible to transfer to another public school in the LEA, including a public charter school that has a status of improvement or performance on the School Performance Framework (SPF). LEAs are required to make at least two transfer options available to students, if at least two options exist, and are responsible for paying all or a portion of transportation necessary for students to attend their new school; if enough funds are not available to satisfy all requests for transportation, LEAs must give priority to the lowest-achieving students who request transportation.

**Schoolwide Program:** A schoolwide program is a Title I program operated in a school that serves an eligible school attendance area in which not less than 40 percent of the children are from low-income families, or that has a school enrollment of which not less than 40 percent of the children are from such families, and that uses its Title I funds to upgrade the educational program of the entire school, rather than to provide services only to students identified as most at risk of failing to meet state standards [Section 1114].

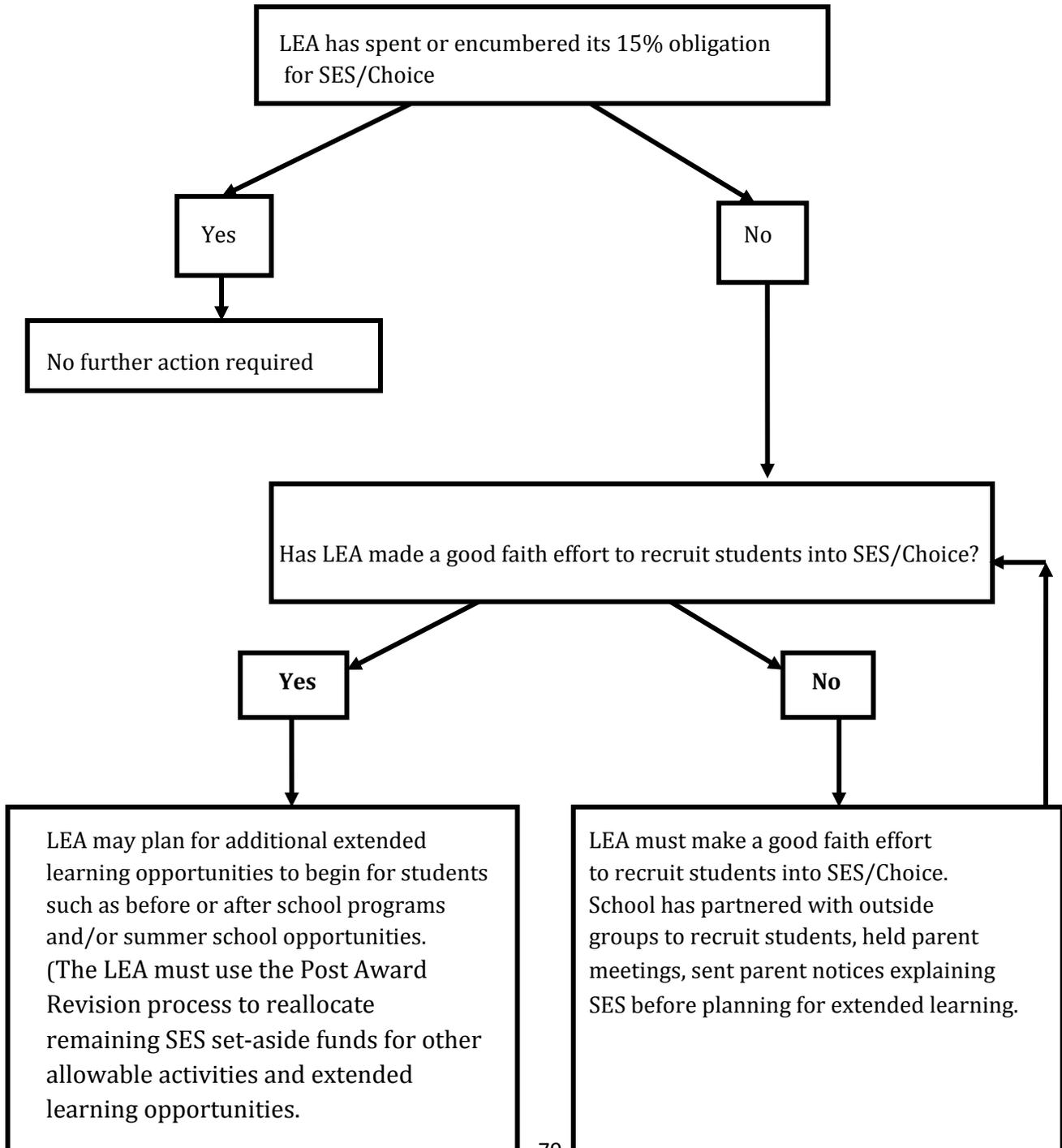
**Supplemental Educational Services:** SES are additional academic instruction designed to increase the academic achievement of students from low-income families attending Title I schools in their second year of school improvement, in corrective action, or in restructuring. These services may include academic assistance such as tutoring, remediation and other educational interventions, provided that such approaches are consistent with the content and instruction used

by the LEA and are aligned with the state's academic content and student academic achievement standards. SES is offered in addition to instruction provided during the regular school day. SES must be high quality, research-based, and specifically designed to increase the academic achievement of eligible students.

**Targeted Assistance Program:** A targeted assistance program is a Title I program in which a school uses its Title I funds to provide services only to the children who have been identified as failing or most at risk of failing to meet the state's challenging academic content and student academic achievement standards.

## APPENDIX B: 15% Obligation

### 15% Obligation



## APPENDIX C: LEA Provider Selection Process

Colorado Supplemental Educational Services (SES) allows a Local Education Agency (LEA) to limit the number of providers that deliver SES to students in the district. An LEA may, but is not required to, limit the number of SES providers. If an LEA chooses to limit SES providers, it must consult with parents and interested members of the public to ensure, to the extent possible, that parents have choices for their student(s) regarding SES providers.

LEAs that select the option to limit the number of SES providers in their district must:

- Form a selection committee.
  - The majority of the selection committee members must be parents. The committee must have a minimum of three parents who have or have had a student involved in SES (e.g., A committee of five persons would have at least three parent representatives, a committee of six would have at least four parent representatives, etc.). Additional members of the committee can be district/school staff, community members, and other parents.
- Notify SES providers ten business days prior to beginning a selection process that the district intends to limit providers delivering tutoring services in the district.
  - The LEA must include in its notice the procedures that the selection committee will follow for limiting providers and the final date for providers to submit informational portfolios and brochures about their company.
- Provide the selection committee with the full list of state approved providers that have requested to be considered to deliver SES in the district. The LEA may not pare down the provider list prior to convening the selection committee.

Prior to the screening process, Supplemental Educational Services companies have the opportunity to provide the selection committee with information regarding their program. SES companies can submit information to the selection committee in a brief portfolio or in brochures. Information regarding programming, effectiveness data, capacity to serve students, types of students served, letters of recommendation and services offered to students may be included. It is the responsibility of the SES companies to provide information about their company to the district selection committee before the selection process begins.

Prior to the review of providers, the selection committee along with district representatives should review achievement data and other relevant data from the schools required to provide SES to determine the tutoring needs of non-proficient students. The academic and linguistic needs of non-proficient students will help determine the qualifications of the SES providers needed to help improve the achievement of eligible students. Many successful providers serve only a few students or specialize in one area such as math or reading. LEAs should consider the needs of students and the ability of SES providers to increase achievement based on effectiveness data. Past achievement is more important than a provider's willingness to serve a large number of students or the provider's willingness to tutor in more than one subject area. Although a selection committee may find that it is convenient to select a provider that serves all subject areas to reduce the number of contracts needed, all effective providers should be considered. The selection committee should also consider the ability of a provider to work with special populations including special needs students and English Language Learners. Upon determining the needs of students and the types of providers required, the selection committee can then begin to screen all state-approved providers that have requested to deliver SES in the district.

The selection committee may reduce the number of providers approved to deliver SES in the district through a paper screening process, an interview process by phone, or in-person interviews.

Recommended procedures:

- Review:
  - Student Achievement Data
  - Student Linguistic needs based on testing data
  - Special populations' needs
- Screening providers:
  - List all state-approved providers interested in working in the district
  - Review informational brochures, portfolios, and other relevant SES provider information
  - Review SES evaluation reports provided by the state
  - Review SES providers self evaluation data

- Consider SES providers' capacity to work with individual students and groups based on providers' information and history with the district including the providers' ability to work with diverse groups and special populations
- Consider both face to face and online services for students
- Consider how providers propose to collaborate with the district to improve student achievement
- Consider and review other relevant data including:
  - Providers' history with the district
  - Recommendation Letters
  - Complaints

The selection committee will limit SES providers to a number sufficient to meet the needs of all eligible students but must be **no fewer than three (3) outside providers**. If an LEA has determined after the selection process that it has not selected a sufficient number of providers to serve all eligible students enrolled in SES, additional providers may need to be selected.

Upon completion of the selection process, the LEA will notify all providers of the committee's decision. Notifications can be made through electronic or postal mail and should include the procedures the district followed.

*Note. Applications approved during the state SES RFP process entitles a provider to be placed on the list of approved SES providers in the state of Colorado. There is no guarantee that an LEA will select a provider during the provider selection process at the district/school level. All decisions regarding the selection of providers by the LEA are final. Additionally, there is no guarantee that an LEA approved provider will be selected by parents to serve students. LEAs that have Title I schools with a Priority Improvement or a Turnaround plan type assignment will send information regarding approved providers in the district to the parents of eligible students. Parents then select the SES provider, from the LEA's approved list, that best suit their student's needs. Parents may request the assistance of the school/district*

**Appendix D: EVIDENCE OF FINANCIAL SOUNDNESS**

*Determine which of the following Provider Applicants describes your organization (Column I). Attach the required documents from a US Bank or other US Financial Institution on official letterhead listing a CPA-audited positive fund balance in US Dollars, demonstrating that current assets exceed current liabilities (Column II), and demonstrating resources are sufficient to operate SES for a period of 6 months (Column III.)*

<b>Column I Provider Applicant</b>	<b>Column II Materials Required for Submission</b>	<b>Column III Criteria for Demonstrating Financial</b>
<i>The applicant is an LEA/Public School/Institution of Higher Education</i>	The CDE has the applicable financial information on file.	The CDE determines financial soundness. <ul style="list-style-type: none"> <li>• Positive fund balance,</li> <li>• Current assets exceed current liabilities, and</li> </ul>
<i>The applicant is a for-profit entity that has been in business for one year or longer.</i>	An accrual balance sheet for the <b>previous six months</b> of business.	<ul style="list-style-type: none"> <li>• Positive net assets,</li> <li>• Current assets exceed current liabilities, and</li> <li>• Resources sufficient to operate SES for a period of 6 months.</li> </ul> <p><i>If unable to determine based on criteria</i></p>
<i>The applicant is a sole proprietorship that has been in business one year or longer.</i>	A personal financial statement for the <b>previous six months</b> . NOTE: Personal Financial Statements may be obtained through most financial institutions.	<ul style="list-style-type: none"> <li>• Positive net worth,</li> <li>• Current assets exceed current liabilities, and</li> <li>• Resources sufficient to operate SES for a period of 6 months.</li> </ul> <p><i>If unable to determine based on criteria</i></p>
<i>The applicant is a non-profit entity that has been in business for one year or longer.</i>	All of the following are requested: <ol style="list-style-type: none"> <li>1. An accrual balance sheet for the <b>previous six months</b> of business.</li> <li>2. A copy of the entity's current IRS 501(c)(3) letter OR Colorado Non-Profit Corporation filed articles of incorporation to demonstrate non-profit status if applicable.</li> </ol>	<ul style="list-style-type: none"> <li>• Positive net assets,</li> <li>• Current assets exceed current liabilities;</li> <li>• Confirms that the applicant entity is a non-profit entity, and</li> <li>• Resources sufficient to operate SES for a period of 6 months.</li> </ul> <p><i>If unable to determine based on criteria above, CDE will accept a line of credit from a</i></p>

<p><i>The applicant has been in business between 6 and 12 months.</i></p>	<p>All of the following are requested for the <b>previous six months</b> of business:</p> <ol style="list-style-type: none"> <li>1. Budget</li> <li>2. Cash-flow projection</li> <li>3. Income statement</li> <li>4. Accrual balance sheet</li> </ol>	<ul style="list-style-type: none"> <li>• Budget, cash flow projection, income statement, and accrual balance sheet for the <b>previous six months</b> must reflect that there is not a loss in monthly income and that the monthly income is growing each month, and</li> <li>• Resources sufficient to operate SES for a <b>period of 6 months.</b></li> </ul>
<p><i>The applicant has been in business less than six months.</i></p>	<p>The applicant has been in business less than six months. Statement of the owner's financial reserves for a sole proprietorship.</p>	<ul style="list-style-type: none"> <li>• Guarantee must be able to pay all ongoing expenses for the first six months of business.</li> </ul>