

eligible for, or receiving, supplemental educational services.

(3) In the case of a student with disabilities under IDEA or a student covered under Section 504, the provisions of the agreement referred to in paragraph (b)(2)(i) of this section must be consistent with the student's individualized education program under section 614(d) of the IDEA or the student's individualized services under Section 504.

(4) The LEA may not pay the provider for religious worship or instruction.

(c) If State law prohibits an SEA from carrying out one or more of its responsibilities under §200.47 with respect to those who provide, or seek approval to provide, supplemental educational services, each LEA must carry out those responsibilities with respect to its students who are eligible for those services.

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(Authority: 20 U.S.C. 6316(e))

[67 FR 71725, Dec. 2, 2002]

§ 200.47 SEA responsibilities for supplemental educational services.

(a) If one or more LEAs in a State are required to make available supplemental educational services under § 200.39(b)(3), § 200.42(b)(3), or § 200.43(b)(2), the SEA for that State must do the following:

(1)(i) In consultation with affected LEAs, parents, teachers, and other interested members of the public, promote participation by as many providers as possible.

(ii) This promotion must include annual notice to potential providers of—

(A) The opportunity to provide supplemental educational services; and

(B) Procedures for obtaining the SEA's approval to be a provider of those services.

(2) Consistent with paragraph (b) of this section, develop and apply to potential providers objective criteria.

(3) Maintain by LEA an updated list of approved providers, including any technology-based or distance-learning providers, from which parents may select.

(4) Develop, implement, and publicly report on standards and techniques for—

(i) Monitoring the quality and effectiveness of the services offered by each approved provider; and

(ii) Withdrawing approval from a provider that fails, for two consecutive years, to contribute to increasing the academic proficiency of students receiving supplemental educational services from that provider.

(5) Ensure that eligible students with disabilities under IDEA and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services.

(6) Ensure that eligible students who have limited English proficiency receive appropriate supplemental educational services and language assistance in the provision of those services.

(b) *Standards for approving providers.*

(1) As used in this section and in § 200.46, "provider" means a non-profit entity, a for-profit entity, an LEA, an educational service agency, a public school, including a public charter school, or a private school that—

(i) 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 achievement standards described under § 200.1;

(ii) Is capable of providing supplemental educational services that are consistent with the instructional program of the LEA and with the State academic content standards and State student achievement standards described under § 200.1;

(iii) Is financially sound; and

(iv) In the case of—

(A) A public school, has not been identified under §§ 200.32, 200.33, or 200.34; or

(B) An LEA, has not been identified under § 200.50(d) or (e).

(2) In order for the SEA to include a provider on the State list, the provider must agree to—

(i)(A) Provide parents of each student receiving supplemental educational services and the appropriate LEA with information on the progress of the student in increasing achievement; and

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(B) This information must be in an understandable and uniform format, including alternative formats upon request, and, to the extent practicable, in a language that the parents can understand;

(ii) Ensure that the instruction the provider gives and the content the provider uses—

(A) Are consistent with the instruction provided and the content used by the LEA and the SEA;

(B) Are aligned with State student academic achievement standards; and

(C) Are secular, neutral, and nonideological; and

(iii) Meet all applicable Federal, State, and local health, safety, and civil rights laws.

(3) As a condition of approval, a State may not require a provider to hire only staff who meet the requirements under §§ 200.55 and 200.56.

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(Authority: 20 U.S.C. 6316(e))

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§ 200.48 Funding for choice-related transportation and supplemental educational services.

(a) *Amounts required.* (1) To pay for choice-related transportation and supplemental educational services required under section 1116 of the ESEA, an LEA may use—

(i) Funds allocated under subpart A of this part;

(ii) Funds, where allowable, from other Federal education programs; and

(iii) State, local, or private resources.

(2) Unless a lesser amount is needed, the LEA must spend an amount equal to 20 percent of its allocation under subpart A of this part to—

(i) Provide, or pay for, transportation of students exercising a choice option under § 200.44;

(ii) Satisfy all requests for supplemental educational services under § 200.45; or

(iii) Pay for both paragraph (a)(2)(i) and (ii) of this section, except that—

(A) The LEA must spend a minimum of an amount equal to 5 percent of its allocation under subpart A of this part on transportation under paragraph

(a)(2)(i) of this section and an amount equal to 5 percent of its allocation under subpart A of this part for supplemental educational services under paragraph (a)(2)(ii) of this section, unless lesser amounts are needed to meet the requirements of §§ 200.44 and 200.45; and

(B) The LEA may not include costs for administration or transportation incurred in providing supplemental educational services, or administrative costs associated with the provision of public school choice options under § 200.44, in the amounts required under paragraph (a)(2) of this section.

(3) If the amount specified in paragraph (a)(2) of this section is insufficient to pay all choice-related transportation costs, or to meet the demand for supplemental educational services, the LEA may make available any additional needed funds from Federal, State, or local sources.

(4) To assist an LEA that does not have sufficient funds to make available supplemental educational services to all students requesting these services, an SEA may use funds that it reserves under part A of Title I and part A of Title V of the ESEA.

(b) *Cap on school-level reduction.* (1) An LEA may not, in applying paragraph (a) of this section, reduce by more than 15 percent the total amount it makes available under subpart A of this part to a school it has identified for corrective action or restructuring.

(2) [Reserved]

(c) *Per-child funding for supplemental educational services.* For each student receiving supplemental educational services under § 200.45, the LEA must make available the lesser of—

(1) The amount of its allocation under subpart A of this part, divided by the number of students from families below the poverty level, as counted under section 1124(c)(1)(A) of the ESEA; or

(2) The actual costs of the supplemental educational services received by the student.

(Authority: 20 U.S.C. 6316)

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