



CALIFORNIA STATE BOARD OF EDUCATION

SEPTEMBER 2004 AGENDA

SUBJECT	
<i>No Child Left Behind (NCLB) Act of 2001: Approve Commencement of the Rulemaking Process for the Proposed Regulations for Supplemental Educational Services Title I Section 1116(e) (20 United States Code Section 6316(e))</i>	<input checked="" type="checkbox"/> Action <input checked="" type="checkbox"/> Information <input type="checkbox"/> Public Hearing

RECOMMENDATION

Staff recommends approval of the commencement of the rulemaking process for the proposed regulations for Supplemental Educational Services.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

In May 2003, the State Board of Education approved regulations for Supplemental Educational Services Providers that define "Demonstrated Record of Effectiveness." At each regularly scheduled meeting, the SBE approves recommended applicants to become Supplemental Educational Services providers.

SUMMARY OF KEY ISSUES

Supplemental educational services are mandated to be provided to eligible students attending Title I schools that are in year two or beyond of program improvement status. The program to provide supplemental educational services has grown significantly over the last year. While the current regulations that define "demonstrated record of effectiveness" have been useful in providing criteria for applicants who are applying to become approved providers, the regulations have been limited in scope. Due to the increase in the number of provider applicants and the number of districts required to provide the supplemental educational services, there needs to be further clarification and guidance about the responsibilities of each in ensuring that eligible students receive appropriate services. Once approved, these regulations will provide that needed guidance.

FISCAL ANALYSIS (AS APPROPRIATE)

Fiscal Analysis impact will be provided in the Last Minute Memorandum.

ATTACHMENT(S)

- Attachment 1: [Initial Statement of Reasons \(2 pages\)](#)
- Attachment 2: [Title 5 Proposed regulations for Supplemental Educational Services \(6 pages\)](#)
- Attachment 3: [Title 5 Notice of Proposed Rulemaking \(4 pages\)](#)

INITIAL STATEMENT OF REASONS
No Child Left Behind Supplemental Educational Services

SECTION 1116(e)

SPECIFIC PURPOSE OF THE REGULATIONS

The proposed regulations describe the responsibilities prospective providers, approved providers, and the State Educational Agency (SEA) shall have in ensuring that eligible students who are attending Title I funded schools that are in year 2 and above of program improvement status will receive appropriate supplemental educational services.

NECESSITY/RATIONALE

Federal law under the *No Child Left Behind (NCLB) Act of 2001* requires that Title I funded schools that are in year two or beyond of program improvement status must offer eligible students with supplemental educational services. The SEA is mandated under NCLB to develop and implement a process to approve applicants to become approved providers. In approving applicants to become approved providers, the SEA must consider factors such as the prospective providers' demonstrated record of effectiveness, fiscal soundness, and ability to work collaboratively with parents and LEAs in providing supplemental educational services. In addition, the SEA must describe procedures for monitoring and evaluating provider effectiveness and for terminating an approved provider.

The proposed regulations are:

Section 13075.1. General

Section 13075.1 Provides specific definitions of key words and phrases in the federal law.

Section 13075.2. Application, Quality Requirements and Approval

Section 13075.3 Sets forth the criteria that applicants must meet in order to become State approved supplemental educational services providers in California.

Section 13075.3. Submission of an Annual Report by Approved Providers

Section 13075.3 Describes the elements that approved providers must include in an end-of-the fiscal year report.

Section 13075.4. Termination as an Approved Provider

Section 13075.4 Describes the reasons and the means for removing a provider from the approved list of providers.

TECHNICAL, THEORETICAL, AND/OR EMIRICAL STUDY, REPORTS, OR DOCUMENTS

The proposed regulations were developed with guidance from NCLB and from the corresponding non-regulatory guidance developed by the U.S. Department of Education.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIIVES

No other alternatives were presented to or considered by the State Board of Education.

REASONABLE ALTERNATIVE TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The State Board has not identified any alternatives that would lessen any adverse impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The State Board has not identified any alternatives that would lessen any adverse impact on small business.

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Title 5. EDUCATION
Division 1. State Department of Education
Chapter 12. Compensatory Education
Subchapter 13. Supplemental Services

~~§13075. Definition of a “Demonstrated Record of Effectiveness” for Providers of Supplemental Services Who Are Approved by the SBE Application of this subchapter.~~

~~This subchapter shall apply to supplemental services providers as defined in Section 1116(e) of the No Child Left Behind (NCLB) Act of 2001.~~

~~(a) For purposes of demonstrating a record of effectiveness for placement on the list of approved supplemental services providers, STAR data are required. Until such time as STAR data are available, a provider shall be deemed provisional.~~

~~(b) An application, completed per the Supplemental Educational Services Provider Request for Application (Rev. 5/2003), which is incorporated by reference, is required of each new provider in each of the first two years of service.~~

~~(c) A provisionally approved provider of supplemental educational services has met the definition of a demonstrated record of effectiveness when:~~

~~(1) the provider demonstrates the ability to provide effective services by meeting all the federal requirements including the following criteria:~~

~~(A) Ensure that programs offered are of high quality, research-based, and specifically designed to increase the academic achievement of eligible children on the assessment instruments required under ESEA Section 1111 (20 U.S.C. section 6316(e)(1)) and attain proficiency in meeting the State's academic achievement standards.~~

~~(B) Ensure that supplemental educational services are coordinated with the student's school program.~~

~~(C) Ensure that the instruction and content provided are aligned with state-adopted curriculum content standards and instructional materials and aligned with state and local assessments.~~

~~(D) Ensure that all instruction and content are secular, neutral, and non-ideological.~~

~~(E) Provide evidence of recent (within the past 2 years) successful experience in improving student achievement. (If the student population served by the provider is composed in part of English learners, the provider must demonstrate experience in improving the student achievement of English learners.)~~

~~(F) Meet all applicable federal, state, and local health, safety, and civil rights laws.~~

1 ~~(G) Have knowledge of the state-adopted content standards, frameworks, and instructional~~
2 ~~materials.~~

3 ~~(H) Be capable of providing appropriate services to eligible students based on individual~~
4 ~~needs consistent with the instructional program of the LEA and the state-adopted standards,~~
5 ~~frameworks, and instructional materials.~~

6 ~~(I) Be financially sound.~~

7 ~~(J) Guarantee that all staff working with students and their parents undergo and pass~~
8 ~~background checks as required by the local contracting school district.~~

9 ~~(K) Abide by the conditions of the contract with the LEA.~~

10 ~~(2) And, by the end of the second year of provisional approval, ninety-five percent of eligible~~
11 ~~students receiving services have made increases in academic proficiency at a level articulated~~
12 ~~in the supplemental educational services contract and as measured by the STAR.~~

13 NOTE: Authority cited: Sections 12001 and 33031, Education Code. Reference: 20 USC United
14 States Code sSection 6316(e)(4) and Section 12000, Education Code.

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16 **§ 13075.1. Definitions.**

17 For purposes of this subchapter, the following definitions apply:

18 (a) "Eligible applicant" means any public or private (nonprofit or for-profit) entity that meets
19 the State's criteria for approval, and includes public schools (including charter schools), private
20 schools, school districts, or county offices of education that are not currently identified for
21 program improvement or for corrective action pursuant to Section 1116(b)(1) of NCLB
22 institutions of higher education, faith-based and community-based organizations and private
23 businesses;

24 (b) "Approved supplemental educational services provider" ("provider") means an eligible
25 applicant that has been approved by the State Board of Education (SBE) pursuant to the
26 provisions of this subchapter;

27 (c) "Eligible student" means a child from a low-income family as determined by the local
28 educational agency for purposes of allocating funds under Section 1113(c)(1) of NCLB who is
29 attending a Title I funded school that is in year two or beyond of program improvement;

30 (d) "Demonstrated record of effectiveness" means an eligible applicant has documentation
31 of at least two of the following:

32 (1) Improved student academic performance in individual student scores on national, state,
33 district or other valid and reliable assessments in English language arts or mathematics;

1 (2) Improved student academic performance in individual scores in English language arts or
2 mathematics as measured by a valid and reliable assessment developed by the provider;

3 (3) Improved student academic performance as measured by written teacher assessments
4 of student growth in English language arts or mathematics.

5 NOTE: Authority cited: Sections 12001 and 33031, Education Code. Reference: 20 USC
6 Section 6316(e).

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8 **§13075.2. Application, Quality Requirements and Approval.**

9 (a) Applications from eligible applicants will be accepted by the California Department of
10 Education (CDE) on a biennial basis;

11 (b) Eligible applicants must submit a completed application to CDE during the period of
12 March 1 to March 20 the calendar year in which they wish to become a provider;

13 (c) An eligible applicant shall be considered for approval upon receipt of a completed
14 application that satisfies each of the following qualifications:

15 (1) Has a demonstrated record of effectiveness as defined in Section 13075.1;

16 (2) Has at least five letters of reference from previous clients (e.g., families, schools,
17 districts, teachers, etc.) offering testimonial information about the positive impact of the
18 program.

19 (3) Has not been removed for cause from the list of approved supplemental educational
20 services providers, pursuant to Section 13075.4 of this subchapter, at any time within the two
21 years preceding the fiscal year (July 1-June 30) for which it is submitting an application;

22 (4) Has written proof of current liability insurance coverage and other necessary insurance
23 of the type and in the amount required by the local education agencies with which the provider
24 contracts;

25 (5) Demonstrates that it is legally constituted and qualified to do business in California;

26 (6) Describes the staffing, fiscal, equipment, and facility resources of the organization that
27 enable it to work with students in compliance with these regulations and applicable federal, state
28 and local statutes and regulations;

29 (7) Demonstrates it is fiscally sound as shown by the following:

30 (A) Proof of financial resources to operate as a provider for a minimum of 6 months after
31 initial approval, including a description of how the organization receives funding (e.g., grants,
32 fees-for-services, etc.) separate from reimbursement for provider services;

33 (B) Proof of financial viability (e.g., through audits, financial statements, or credit rating);

1 (C) Organizational budgets that identify all sources of revenues available to the applicant
2 and cash flow activity related to the expenditures of that revenue;

3 (8) If instruction will occur at a site other than the student's school or residence ("offsite
4 location"), the facility for instruction shall be insured and meet all applicable federal, state, and
5 local health and safety laws;

6 (9) Demonstrates instruction meets the following criteria:

7 (A) Instruction will be aligned with state adopted academic content standards and
8 instructional materials;

9 (B) Instruction will be organized and presented in a manner designed to meet the specific
10 achievement goals of individual students;

11 (C) Instruction will be coordinated with the student's school program, including an Individual
12 Education Plan (IEP) and/or a 504 Plan, if applicable;

13 (D) Instruction will be of high quality and will increase student academic achievement in
14 English language arts or mathematics;

15 (E) Instruction shall be provided outside of the regular school day;

16 (F) Instruction will be provided that is secular, neutral, and non-ideological;

17 (10) Describes the procedure for developing specific achievement goals in consultation with
18 parents/guardians and school staff.

19 (11) Describes the manner in which students with disabilities and English learners will have
20 access to services;

21 (12) Defines procedures for providing students, parents/guardians, teachers, schools and/or
22 districts with regular reports of student progress;

23 (13) Describes how the applicant shall secure parental/guardian permission to have access
24 to student data (e.g., STAR data, IEP data and/or 504 data) maintained by the local education
25 agency (LEA) for each student served for purposes of demonstrating academic improvement;

26 (14) Provides assurances that all student information shall be kept confidential except as
27 necessary to inform parents/guardians and appropriate school staff;

28 (15) Describes the process of collaborating with contracting school districts in the use of
29 individual student STAR test results in determining the increase in student academic
30 performance;

31 (16) Describes procedures to maintain, monitor, and notify LEAs about personnel updates
32 related to provider's staff changes;

33 (17) Describes procedures for completion of, and compliance with, staff background checks,
34 fingerprinting, and TB tests for those employees providing services to students;

1 (18) Complies with all applicable federal, state, and local health, safety, and civil rights laws;

2 (19) Agrees to abide by the conditions set forth in the contract with the LEA, including the
3 payment schedule, rates, and any facility user fee arranged with the LEA that will be in
4 compliance with Section 1116 (e)(6) of the NCLB;

5 (20) Agrees to participate in the monitoring and evaluation process developed and directed
6 by CDE.

7 (d) The term of approval is for a maximum of two fiscal years (July 1- June 30) and shall
8 begin on the date of SBE approval.

9 NOTE: Authority cited: Sections 12001 and 33031, Education Code. Reference: 20 USC
10 Section 6316(e).

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12 **§13075.3. Submission of An Annual Report by Approved Providers.**

13 (a) Approved providers must maintain records for each year that services are provided to
14 support an annual end-of-fiscal year report to CDE to be submitted within 30 calendar days after
15 the conclusion of the fiscal year, about the following:

16 (1) Names and numbers of schools served.

17 (2) Total number of students served by grade levels.

18 (3) Composite summary, with student identifying information deleted, that includes these
19 elements:

20 (A) Beginning and ending dates of service;

21 (B) Instructional delivery methods;

22 (C) Subject area (i.e. English language arts and mathematics);

23 (D) Beginning and ending performance levels.

24 (4) Fiscal and expenditure information.

25 (b) These records must be retained for three years after submission of the annual end-of-
26 fiscal year report.

27 NOTE: Authority cited: Sections 12001 and 33031, Education Code. Reference: 20 USC
28 Section 6316(e).

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30 **§13075.4. Termination As An Approved Provider.**

31 (a) A provider identified for program improvement or corrective action under Section
32 1116(B)(1) of NCLB during its term of approval is automatically terminated as an approved
33 provider by operation of law.

34 (b) A provider may be terminated for any of the following reasons:

1 (1) The provider has failed to provide information requested by CDE to allow CDE to monitor
2 and evaluate the program;

3 (2) The provider has failed to monitor and evaluate the progress of students receiving
4 services;

5 (3) The provider has failed to contribute to increasing the academic proficiency in English
6 language arts or mathematics for two consecutive years of all students served as demonstrated
7 by the state assessment results for grades 2-11 and by teacher recommendations for grades K-
8 1 and grade 12;

9 (4) The provider has failed to meet applicable federal, state and local health, safety, or civil
10 rights laws; or

11 (5) The provider requests voluntary removal from the approved list.

12 NOTE: Authority cited: Sections 12001 and 33031, Education Code. Reference: 20 USC
13 Section 6316(e).

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CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street; Room 5111
Sacramento, CA 95814



TITLE 5. EDUCATION

CALIFORNIA STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Supplemental Educational Services Providers

[Notice published September 17, 2004]

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

Program staff will hold a public hearing beginning at **10:30 a.m. on Tuesday, November 2, 2004**, at 1430 N Street, Room 2102, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Coordinator of such intent. The State Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Coordinator. The written comment period ends at **5:00 p.m. on Tuesday, November 2, 2004**. The State Board will consider only written comments received by the Regulations Coordinator or at the State Board Office by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, CA 95814
Email: dstrain@cde.ca.gov
Telephone: (916) 319-0860
FAX: (916) 319-0155

AUTHORITY AND REFERENCE

Authority: Sections 12001 and 33031, Education Code.

Reference: 20 USC Section 6316(e)

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This subchapter shall apply to these services as defined in Section 1116(e) of the *No Child Left Behind Act of 2001* (NCLB) (20 United States Code Section 6316(e)). The proposed regulations describe the implementation of NCLB provisions for supplemental educational services.

The proposed regulations will replace regulations that were approved by the State Board in May 2003. The proposed regulations expand the limited scope of the existing regulations that largely focus on a definition of “demonstrated record of effectiveness” for applicants to become supplemental educational services providers. Additionally, with the growth of the program, applicants, approved providers, and local educational agencies (LEAs) have indicated a need for guidance for themselves and for parents.

The proposed regulations identify responsibilities of the LEAs, parents, prospective providers, approved providers, and the State Education Agency (SEA) in ensuring that eligible students receive appropriate supplemental educational services. The proposed regulations also define necessary terms, set forth eligibility criteria, clarify the application process, and specify the criteria for termination of approved providers.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: TBD

Cost or savings to any state agency: TBD

Costs to any local agency or school district that must be reimbursed in accordance with Government Code Section 17561: TBD

Other non-discretionary cost or savings imposed on local educational agencies: TBD

Cost or savings in federal funding to the state: TBD

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: TBD

Cost impacts on a representative private person or businesses: TBD

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: TBD

Effect on small businesses: TBD

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Linda Wyatt, Ed.D., Education Program Consultant
Title I Policy and Partnership Unit
School and District Accountability Division
California Department of Education
1430 N Street, 6th Floor
Sacramento, CA 95814
E-mail: lw Wyatt@cde.ca.gov
Telephone: (916) 319-0276

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0860.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Coordinator at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Coordinator at the address indicated above.

The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's Web site at <http://www.cde.ca.gov/re/lr/rr/>

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Linda Wyatt, School and District Accountability Division, 1430 N Street, Sacramento, CA, 95814; telephone, (916) 319-0276; fax, (916) 319-0151. It is recommended that assistance be requested at least two weeks prior to the hearing.