

State of California

Department of Education

INFORMATION MEMORANDUM

DATE: June 9, 2004

TO: MEMBERS, STATE BOARD OF EDUCATION

FROM: Geno Flores, Deputy Superintendent
Assessment and Accountability Branch

SUBJECT: Regulations for Supplemental Services Provider as Defined in Section 1116(e) of the *No Child Left Behind Act of 2001* (NCLB)

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

These proposed regulations will replace the emergency regulations that were approved by the State Board in May 2003. The existing regulations are limited in scope, largely focusing on a definition of “demonstrated record of effectiveness” for supplemental services providers.

The overall goal of the proposed regulations is to provide more detailed guidance in all areas of supplemental educational services to LEAs, applicants, providers, and parents by identifying roles and responsibilities of each group. Additionally, the regulations will identify the responsibilities of the State Educational Agency.

The California Department of Education (CDE) was directed by State Board of Education staff to develop the proposed regulations. Members of the Title I Committee of Practitioners have reviewed and provided input into the draft regulations.

Attachment 1: Regulations for Supplemental Services Provider (6 pages)

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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.~~

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

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

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

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

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

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

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

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

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

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22 **§ 13075.1. Definitions.**

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

24 (a) "Eligible applicant" means a local educational agency, including public schools,
25 school districts, direct funded charter schools, and County Offices of Education that are
26 not currently identified for program improvement or for corrective action pursuant to
27 Section 1116(b)(1) of NCLB; or non-profit entities or for-profit entities including, non-
28 public schools, and public schools that made adequate yearly progress under NCLB
29 and a minimum score on the Academic Performance Index in the preceding academic

1 year, faith based organizations, private schools, child care centers, higher education
2 institutions, on-line providers, or individuals or groups of individuals;

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

6 (c) "Eligible student" means a child from a low-income family as determined by the
7 local educational agency for purposes of allocating funds under Section 1113(c)(1) who
8 is attending a Title I funded school that has been identified for program improvement for
9 purposes of allocating funds under Section 1113 (c)(1) in year two and beyond. (Section
10 1116(e)(12)(A) of the NCLB);

11 (d) "Demonstrated record of effectiveness" means an applicant has evidence of at
12 least two of the following:

13 (1) its program has a positive impact on student academic achievement in individual
14 student scores on state, district and/or another independent, valid and reliable
15 performance test that is linked to California's content standards assessments in
16 English/language arts and/or mathematics, particularly for low-income, underachieving
17 students;

18 (2) its program has a positive impact on student performance in English/language
19 arts and/or mathematics using a measure that is not national or statewide (e.g., a test
20 developed by the program);

21 (3) its program has a positive impact on school grades, homework completion, or
22 school/teacher-administered tests in English/language arts and/or mathematics;

23 NOTE: Authority cited: Sections 12001 and 33031, Education Code. Reference: 20
24 United States Code Section 6316(e).

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26 **§13075.2. Application Process.**

27 An eligible applicant that seeks to become an approved provider shall submit a
28 completed application form, available on the California Department of Education's
29 (CDE) Web site, to CDE. Applications will be accepted on a continuous basis.

1 NOTE: Authority cited: Sections 12001 and 33031, Education Code. Reference: 20
2 United States Code Section 6316(e).

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6 **§13075.3. Quality Requirements and Approval Process.**

7 (a) An eligible applicant shall be considered for approval if it satisfies each of the
8 following qualifications:

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

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

13 (3) Has not been removed for cause from the SBE list of approved supplemental
14 educational services providers, pursuant to section 13075.5 of this subchapter, at any
15 time within the two fiscal years preceding the fiscal year for which it is submitting an
16 application;

17 (4) Has written proof of current liability insurance coverage and other necessary
18 insurance of the type and in the amount required for an enterprise of similar purpose
19 and circumstance;

20 (5) Has written proof of a business license or other document, as appropriate, that
21 demonstrates that it is legally constituted and qualified to do business in California;

22 (6) Demonstrates through business plans or profiles that describes the staffing,
23 fiscal, equipment, and facility resources of the organization that enable it to work with
24 students per these regulations;

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

26 (A) Proof of financial resources to operate as a provider for a minimum of 6 months
27 after initial approval, including a description of how the organization receives funding
28 (e.g., grants, fees-for-services, etc.) separate from reimbursement for provider services
29 offered under these regulations;

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

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

5 (8) Demonstrates instruction will meet the following criteria:

6 (A) Instruction provided and content used are aligned to state adopted curriculum
7 content standards, instructional materials, and assessment;

8 (B) Instruction will be organized and presented to meet the specific achievement
9 goals for each eligible student that are based on academic assessment results, are
10 measurable via clear benchmarks, are time referenced and are evaluated on a regular
11 basis;

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

14 (D) Instruction will be of high quality and will be designed to increase student
15 academic achievement on tests administered pursuant to the STAR program (Ed. Code
16 60640,et.seq.) and/or CAHSEE (Ed. Code Sections 60850, et seq.);

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

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

19 (9) If instruction will occur at a site other than the student's school or residence
20 ("offsite location"), the facility for such instruction shall be insured and meet state health
21 and safety code regulations;

22 (10) If provider offers transportation to an offsite location, an appropriate student
23 transportation plan, including information about liability insurance and licensed and
24 insured drivers, will be described;

25 (11) Describes how students with disabilities and English learners will have access
26 to services;

27 (12) Defines procedures for providing students, parents/guardians, teachers, schools
28 and/or districts with regular progress reports;

29 (13) Describes how applicant shall secure parental/guardian permission to have
30 access to student data (e.g., STAR data, IEP data and/or 504 data) maintained by the

1 local education agency (LEA) for each student served for purposes of demonstrating
2 academic improvement;

3 (14) Provides assurances that all student information shall be kept confidential
4 except as necessary to inform parents/guardians, appropriate school staff, and CDE
5 evaluators of student progress;

6 (15) Describes the process of collaborating with contracting school districts in the
7 use of individual student STAR test results in determining the increase in student
8 academic proficiency;

9 (16) Describes procedures to maintain, monitor, and notify LEAs about personnel
10 updates related to staff changes;

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

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

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

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

20 (b) CDE will receive and review applications to determine completeness and
21 compliance with these regulations. If applications meet these requirements, the CDE
22 will prepare and submit a list of applications recommended for SBE approval;

23 (c) Applicants approved by SBE:

24 (1) When approved by the SBE, the term of approval is for a maximum of two fiscal
25 years (July 1- June 30) and shall begin on the date of SBE approval.

26 (2) CDE will post a list of all approved providers on its Web site, updated as
27 necessary.

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

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1 **§13075.4. Termination As An Approved Provider.**

2 (a) A provider that is a school district, direct funded charter school, County Office of
3 Education, or school, that is subsequently identified for program improvement or
4 corrective action during its term of approval, shall be terminated as an approved
5 provider;

6 (b) CDE will recommend to the SBE termination from the list of approved providers
7 when:

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

10 (2) The provider has failed to assist in monitoring and evaluating the progress of
11 students' receiving services from the provider;

12 (3) The provider has failed to demonstrate that it has contributed to increasing the
13 academic proficiency in mathematics and/or English language arts for two consecutive
14 years of at least 75 percent of all students served as demonstrated by the state
15 assessment results for grades 2-11 and by teacher recommendations for grades K-1;

16 (4) The provider has failed to meet appropriate health, safety, or civil rights
17 requirements; or

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

19 (c) Notification of removal from approved list of providers:

20 (1) Notification of removal from the approved list shall be sent to the affected
21 provider by CDE within ten days of the removal decision by the SBE;

22 (2) Notification of removal of the affected provider from the approved list shall be
23 sent to LEAs by CDE within ten days of the removal decision by the SBE; and

24 (3) CDE will post the name(s) of removed provider(s) on its Web site.

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