

February 6, 2009

Joseph Conaty  
Acting Assistant Secretary  
Office of Elementary and Secondary Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Acting Assistant Secretary Conaty:

I am writing to obtain clarification as to whether a State Educational Agency (SEA) may approve a stand alone summer program as a supplemental education service (SES) under section 1116(e)(1) of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act (Act).

Pursuant to the Act, after a school is identified for improvement and fails to make AYP by the end of the first full school year after identification the "local educational agency (LEA) serving such school shall...arrange for the provision of supplemental educational services to eligible children in the school from a provider with a demonstrated record of effectiveness, that is selected by the parents and approved for that purpose by the SEA." Act section 1116(e)(1).

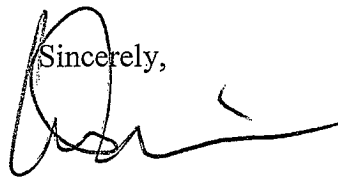
Our question concerns J-2 of the new Supplemental Educational Services Non-Regulatory Guidance (January 14, 2009), which states "May an SES provider offer services in the summer? Yes, although in most cases it will be preferable to provide services that take place over the course of the school year and 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 [*Section 1116(e)(12)(C)(ii); 34 C.F.R. §200.45(a)(2)(i)*]. 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. *SEAs may thus approve programs that provide services during the school year as well as during the summer.* An LEA may not effectively reject an approved provider whose program is approved to provide services in the summer by setting dates of service that exclude services from being provided in the summer timeframe." (emphasis added).

The SES guidance issued in 2005, appears to provide a different response to J-2 stating "Yes, in most cases it will be preferable to provide services that take place over the course of the school year and that augment and enhance the instruction a child receives through the regular school program. 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. *SEAs may thus approve both programs that provide services during the school year and those that provide them in the summer.* An LEA may not “reject” an approved provider whose program is approved to provide services in the summer by setting dates of service that exclude services from being provided in the summer timeframe.” (emphasis added).

We have 2 questions under the new guidance. First, may an SEA approve stand alone SES summer programs? Second, may an SEA, as a matter of policy, require all SES to take place during the school year and not approve any summer SES programs?

Thank you for the opportunity to raise these questions. This issue is of compelling and immediate interest to many of our state clients and your response will be greatly appreciated. Thank you in advance for your prompt assistance.

Sincerely,  


Leigh M. Manasevit