



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION ASSISTANT

SECRETARY

July 23, 2004

Leigh M. Manasevit
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Attorneys at Law
3105 South Street, N.W.
Washington, DC 20007

Dear Mr. Manasevit:

This is in response to your letter requesting clarification of the supplemental education services requirements of Title I of the Elementary and Secondary Education Act, as amended by the No Child Left Behind (NCLB) Act.

Local educational agencies (LEAs) must make supplemental educational services available for eligible students attending schools that are in the second year of school improvement. According to your letter, you have two questions:

1. If an LEA provides supplemental educational services to students enrolled in a targeted assistance school that is in its first year of improvement, should it offer supplemental services in that year to (a) students from low-income families only, (b) students who have been targeted for assistance under the school's Title I programs only, or (c) both populations of students?
2. If an LEA provides supplemental educational services to students enrolled in a "schoolwide program" school in its first year of school improvement in a schoolwide program school, should the LEA offer services to all students?

If an LEA voluntarily decides to offer supplemental educational services a year early, it is not required to adhere to the supplemental services requirements in section 1116. As you know from the guidance, this flexibility is available because an LEA is not required to offer supplemental educational services to eligible students enrolled in a school in its first year of school improvement. In other words, such an LEA would not need to provide supplemental educational services only to low-income students, to contract only with State-approved providers, or to fund supplemental educational services at the per-student amount set forth in that subsection.

According to the Supplemental Educational Services Non-Regulatory Guidance, issued on August 22, 2003, question G-8 states that because the LEA will be required to offer supplemental educational services that meet all the statutory requirements in section 1116 to students in that school the next year if the school does not make AYP again, it would help avoid confusion and administrative complexity if the LEA, in that first year, abides

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by the requirements of section 1116(e) as much as possible. In addition, if the LEA uses Title I funds in that year to provide supplemental educational services, it must meet all the requirements governing the use of those funds in schoolwide and targeted assistance programs.

A district that is voluntarily providing supplemental educational services for students attending a targeted assistance school in the first year of improvement has some options. It might decide, consistent with the requirements of section 1114(b), to offer those services to students who have been identified to receive Title I services. Alternatively, consistent with the requirements of section 1114(b) and 1116(e), the district might decide to offer services only to identified students who are also low-income.

A district voluntarily providing supplemental educational services in a school in the first year of improvement that is operating a schoolwide program would have similar options. Consistent with 1116(e), the district might decide to offer supplemental educational services to low-income students in order to avoid confusion in the future should the school not meet AYP again. Or it may decide to serve a broader range of students with the understanding that if the school does not meet AYP again, only low-income students would be eligible in the following year.

I hope this information is helpful to you, and thank you for writing.

Sincerely,

A handwritten signature in black ink that reads "Raymond Simon". The signature is written in a cursive style with a large, stylized 'R' and 'S'.

Raymond Simon