

August 1, 2008

Dr. Patti Harrington
State Superintendent of Public Instruction
Utah State Department of Education
P.O. Box 144200
Salt Lake City, UT 84114-4200

Dear Superintendent Harrington:

I am writing in response to your agency's request for a flexibility agreement allowing districts to provide supplemental educational services (SES) under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), to students attending Title I schools in the first year of school improvement. I am granting your request to participate in this pilot in the 2008-2009 school year. Accordingly, I am entering into this flexibility agreement with Utah under section 9401 of the ESEA.

You have requested that all school districts within Utah be allowed to offer SES in lieu of public school choice to eligible students in Title I schools in the first year of school improvement under NCLB, thereby reversing the order of the interventions outlined in sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA. The districts would offer both SES and public school choice to eligible students enrolled in any school that is in the second year of school improvement, in corrective action, or in restructuring.

The Department has determined that Utah meets the three criteria for participation in the pilot: (1) timely notification of adequate yearly progress results; (2) a state SES evaluation in progress; and (3) a state assessment system for which the Department has granted Full Approval. However, it is not clear that the state has conducted, as part of its SES evaluation, a rigorous analysis of the impacts of SES on student achievement. Thus, as a condition on Utah's participation in this pilot, in addition to the conditions outlined below, I am requiring Utah to modify its SES evaluation to include such an analysis.

Approval of this flexibility agreement is conditioned on Utah's fulfilling the requirements detailed in the enclosure to this letter. Specifically, in addition to the requirement discussed above, Utah must ensure in the participating districts: an increase from prior years in the number of students participating in SES and public school choice; parent access to SES providers; timely parental notification; multiple or continuous enrollment periods; and a level playing field for all providers. Utah must also supply SES and public school choice data to the Department via the Education Data Exchange Network (EDEN) and must submit an interim report to the Department on the implementation of this pilot by January 1, 2009, and a final report by June 30, 2009.

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In addition, as required by section 9401(b)(3)(B) of the ESEA, within 30 days of the date of this letter, each participating district must provide notice and information to the public about its participation in the pilot in the manner in which it customarily provides similar notice to the public. Each district must also submit a report under section 9401(e)(1) of the ESEA to the Utah State Department of Education at the end of the 2008-2009 school year that: describes the district's provision of SES in Title I schools in the first year of school improvement; describes how those schools continued to provide Title I services to eligible students during that year; and evaluates the progress of the district and schools in increasing the quality of instruction and improving the academic achievement of students. Your agency should then submit this information to the Department as part of the report due June 30, 2009.

This flexibility agreement applies to the provision of SES in Title I schools during the 2008-2009 school year and is subject to a review at the end of that school year to determine if the flexibility will be continued.

SES is an important component of NCLB, and we look forward to working with you to ensure that students in your districts are obtaining quality services and succeeding in the classroom.

Sincerely,

Margaret Spellings

Enclosure

cc: Karl Wilson

Conditions of Flexibility Agreement for the 2008-2009 School Year

UTAH STATE DEPARTMENT OF EDUCATION

The state and its local educational agencies (LEAs) must meet the following conditions:

Goals

- Increased student participation in SES and public school choice. Participating LEAs must increase the number of students receiving SES and public school choice under NCLB from prior years.

Principles

- Availability of SES providers. The state must:
 - Maintain a comprehensive list of approved SES providers that may include nonprofit, for-profit, faith- and community-based, and online providers;
 - Ensure that there are at least two providers available in each participating LEA from which parents may choose.
- Effective parent notification and outreach. The state must ensure that participating LEAs:
 - Provide timely, clear, accurate notice to parents about the identification of their child's school as in need of improvement and their parental involvement opportunities, including the availability of the SES and public school choice options, in simple language that parents can understand;
 - Notify parents of eligible students about SES prior to the start of the 2008-2009 school year, or within the first few weeks of the school year, and provide SES shortly thereafter;
 - Offer continuous enrollment in SES or multiple SES enrollment periods throughout the 2008-2009 school year until each pilot LEA spends the 20 percent required by Title I or until all students who request SES and public school choice are served.
- Level playing field for all providers. The state must ensure that participating LEAs:
 - Provide fair and equitable treatment of non-LEA providers by giving providers access to school facilities at a reasonable price and dividing space among providers in a fair manner;
 - Allow providers to market their services to parents and work with community and business partners to reach out to parents and provide them with information on their options.
- Effective provider evaluation. The state must modify its evaluation of the quality and effectiveness of SES providers to include a rigorous analysis of the impacts of SES on student achievement. The state must provide evidence of this modification to the Department in its report due January 1, 2009. (See below.)

- Reporting. The state must:
 - Submit complete and accurate public school choice and SES data for all its LEAs to the Department via the Education Data Exchange Network (EDEN) for the 2007-2008 school year by the end of October 2008, and for the 2008-2009 school year, by the end of October 2009;
 - Submit reports to the Department on how the conditions of the flexibility agreement were met, including an explanation of trends in participation in SES and public school choice within the participating LEAs, by January 1, 2009, and again by June 30, 2009.