CENTER FOR EVALUATION & EDUCATION POLICY

Education Policy Brief

Outcomes of the School Choice and Supplemental Educational Services Provisions of NCLB

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UPCOMING POLICY BRIEFS AND REPORTS . . .

- ✓ *Models of State K-12 Education Governance: How Does Indiana's K-12 Model Compare?*
- ✓ *An Alternative Discipline Approach: Positive Behavior Supports*
- ✓ *Where Does the Money Go? An Analysis of K-12 Public Education Spending in Indiana*

INTRODUCTION

Title I of the Elementary and Secondary Education Act (ESEA) is the single largest federal investment in K-12 education, supplying over $12.7 billion annually in funding to the states (Government Accountability Office [GAO], 2004). In particular, Title I of the ESEA, which was first passed by the U.S. Congress in 1965, provides federal funds to schools with high percentages of low-income students. While not all schools are identified as Title I schools, all public schools are subject to certain accountability provisions of the No Child Left Behind Act (NCLB) of 2001, the latest iteration of the ESEA. As part of NCLB, schools are required to make adequate yearly progress (AYP) toward proficiency. If a Title I school fails to demonstrate AYP, sanctions or corrective actions are applied which are intended to improve the school and which become more intensive the longer the school remains in a "school improvement" status category. These sanctions have had varying effects and many operational concerns persist in relation to this evaluative process.

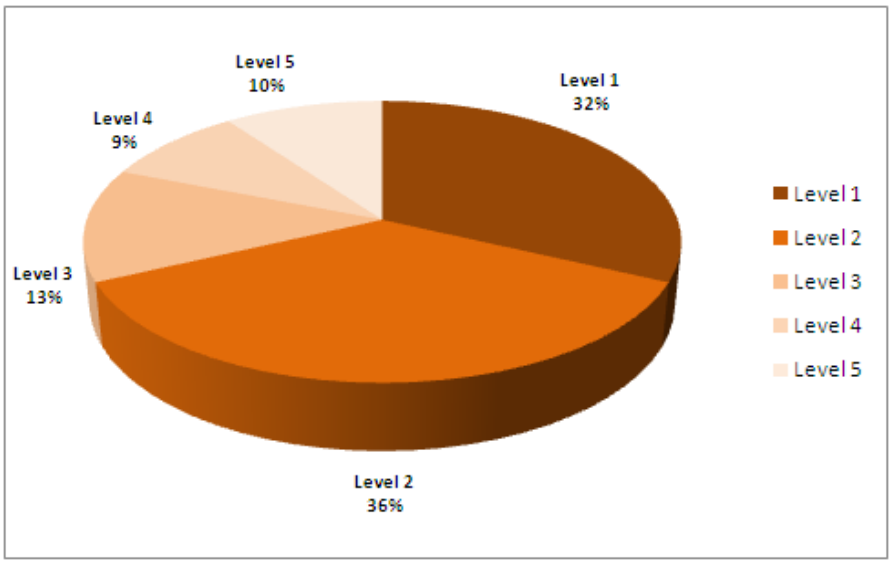
This Policy Brief is intended to provide an overview of NCLB Title I sanctions, examine the utilization and funding of the school choice and supplemental educational service (SES) provisions of NCLB across the states, and identify many of the remaining issues surrounding school choice and SES.

OVERVIEW OF NCLB SANCTIONS FOR FAILING TO MEETING AYP

The accountability provisions of NCLB are based on a foundation of demanding yearly progress from schools in order to reach 100 percent student proficiency on state reading and mathematics assessments. States must establish performance targets for schools at least every three years and may set annual targets, in an effort to reach the 100 percent student proficiency requirement by the 2013-14 school year. Meeting the state targets is the basis upon which a school is deemed to have made AYP. Specifically, NCLB requires that for each state, the AYP accountability measurements must not only target the aggregate performance of all students to meet the state targets, but should also target specific subgroups of students (economic disadvantages, race, disability, and language proficiency) to meet the state's performance goals.

Many important statutory consequences rest on this school-by-school determination of AYP. For instance, for Title I schools, if student proficiency targets are not reached after three years, each school must offer school choice to its students and accommodate the provision of supplemental services to low-income students. Title I schools that repeatedly fail to meet AYP are subjected to a range of corrective actions mandated by federal law. These corrective actions may include: replacing teachers, implementing a new curriculum, increasing the length of the school year or school day, appointing outside experts, or decreasing or restructuring management authority over the school. The full range of possible corrective actions is listed in Table 1 and the percentage of schools in each

Figure 1. Schools Identified as "In Need of Improvement" Nationally: Percentage of Schools in each Year of School Improvement Status 2005-06



Source: Archer, 2006.

level of school improvement status for the 2005-06 year is provided in Figure 1.

In addition to these corrective actions that are geared toward school improvement, each state is required by NCLB to adopt policies which require local schools to provide aid to students if the schools continually fail to meet AYP. These student achievement improvement options specifically include school choice and supplemental educational service (SES) options for low-income students. The purpose of these options is two-fold. First, as stated previously, the purpose is to provide educational options and improved opportunities for students. Second, however, school choice and supplemental educational services are aimed at providing incentives for low-performing schools in part to improve by introducing an element of competition both for state and federal dollars, and ulti-

TABLE 1. Description of Increasing Sanctions for Schools Identified as in Need of Improvement

Level	Consequence/Sanction
Year 1 (School does Not Make AYP)	Children take assessments, school does not make AYP, school identified for "school improvement"
Level I (School Does Not Make AYP a Second Consecutive Year)	School is in "School Improvement" Status—Year 1 Public school choice is provided for students in school, consistent with state law. Transportation costs are required, and local educational agencies (LEAs) must spend up to 20 percent of their Title I allocations on this cost (coupled with costs of supplemental services [SES]—see below) Only technical assistance is provided during this year; LEA is not authorized to take corrective actions
Level II (School Does Not Make AYP a Third Consecutive Year)	School is in "School Improvement" Status—Year 2 LEAs must provide supplemental educational services to low-income children in the school and also continue public school choice. Coupled with public school choice expenses, LEA must spend up to 20 percent of its Title I allocation on costs associated with supplemental services
Level III (School Does Not Make AYP a Fourth Consecutive Year)	School subject to "Corrective Action," which requires the LEA to do one of the following: • Use an outside expert to analyze school plan; • Implement a new curriculum; • Decrease the school's decision-making; • Replace staff relevant to failure; or • Modify the school schedule Public school choice continues, LEA must continue technical assistance, supplemental services continue
Level IV (School Does Not Make AYP a Fifth Consecutive Year)	School identified for "Restructuring" Continue above actions, plus the following: LEA must begin planning for restructuring actions (see below) for following year
Level V (School Does Not Make AYP a Sixth Consecutive Year)	Continue above actions, plus the following: LEA implements a Restructuring action, which includes one of the following: • School reopens as a charter; • Principal and all or most staff are replaced; • Management of the public school is assumed by another entity, e.g., a private company; or State assumes management of the school

Source: The Aspen Institute, 2006.

20 U.S.C. § 6316(b)(1)

(E) Public school choice

(i) In general: In the case of a school identified for school improvement under this paragraph, the local educational agency shall, no later than the first day of the school year following such identification, provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency, which may include a public charter school that has not been identified for school improvement under this paragraph, unless such an option is prohibited by State law.

(ii) Rule: In providing students the option to transfer to another public school, the local educational agency shall give priority to the lowest achieving children from low-income families as determined by the local educational agency for purposes of allocating funds to schools under section 6313 (c)(1) of this title.

mately for the students themselves (Stullich et al., 2006).

For the choice and SES programs, the federal government has required that districts set aside an amount equal to 20 percent of the federal Title I dollars they receive. For the school choice option, the dollars can be used to fund transportation of students to their new school. Alternatively, for SES the 20 percent set aside can be used to pay SES providers for tutoring services rendered to students from the identified schools. If a student is engaging in SES, a district must spend the lesser of either the Title I per pupil allocation or the actual cost to the provider.

These and other NCLB sanctions have been controversial and they have not been implemented uniformly from state to state. Thus, this Policy Brief examines and provides an overview of the descriptive statistics, literature, and commentary surrounding the implementation of school choice and supplemental educational services.

SCHOOL CHOICE

School choice is an option provided to students from Title I schools which fail to meet AYP for two consecutive years, or, stated differently, in the first year that the school is placed in the "school improvement - Level 1 Status." School choice must remain an option for students and parents until the school is no longer identified for improvement, meaning the school meets the AYP goals for two consecutive years.

All students in the identified school are eligible for the school choice option, and if the students choose the transfer option, the school must provide transportation for the participating students. Furthermore, districts in which schools are identified as needing improvement must provide parents with notification of their school choice options, including information about potential district schools where choice is available and, if possible, at least two schools from which to choose.

The schools that can be identified as transfer schools are non-Title I schools and Title I schools that are not identified as needing improvement. If there are no available schools within the district, then the school must, to the extent practicable, attempt to make arrangements with other districts to accept transfers from the school identified for improvement. However, interdistrict choice is not required. In the notice the schools provide to the parents concerning their choice options, the district must include information on the academic achievement of the schools identified as the potential transfer options. The lowest-achieving, low-income students are given the highest priority in choice options. While schools need not give parents their first transfer option and can consider capacity levels among different schools available to receive school choice students when making assignments, federal regulations do not allow schools to deny a transfer request based solely on a lack of physical capacity, such as classroom space (GAO, 2004).

Eligibility and Participation

A 2006 Institute for Education Sciences report found that 3.9 million students were eligible for school choice in the 2003-04 school year in the United States. However, only 38,000 students participated in school choice; this represented approximately one percent of the eligible participants. In addition, the number of students utilizing school choice options has increased from 18,000 in 2002-03 to 45,000 in 2004-05 (Stullich et al., 2006). These low participation rates are reflected in other studies as well, although the specific percentage of eligible students participating in school choice varies.

A 2004 survey by The Council of Great City Schools found that only two percent of children moved to another school (Casserly, 2006). Similarly, a study by the Citizens Commission on Civil Rights found that in the 2003-04 school year only 1.7 percent of eligible students transferred (Brown, 2004). Some of this disparity is misleading, as the available number of seats at higher performing schools can be a significant limitation on participation in choice programs, contravening the federal regulations. For instance, in the 2003-04 school year, Chicago had 270,757 students eligible for transfer and 19,246 (approximately seven percent) requested placement in a different school. However, Chicago actually placed only 1,097 students, or less than one percent (Hassel & Steiner, 2004).

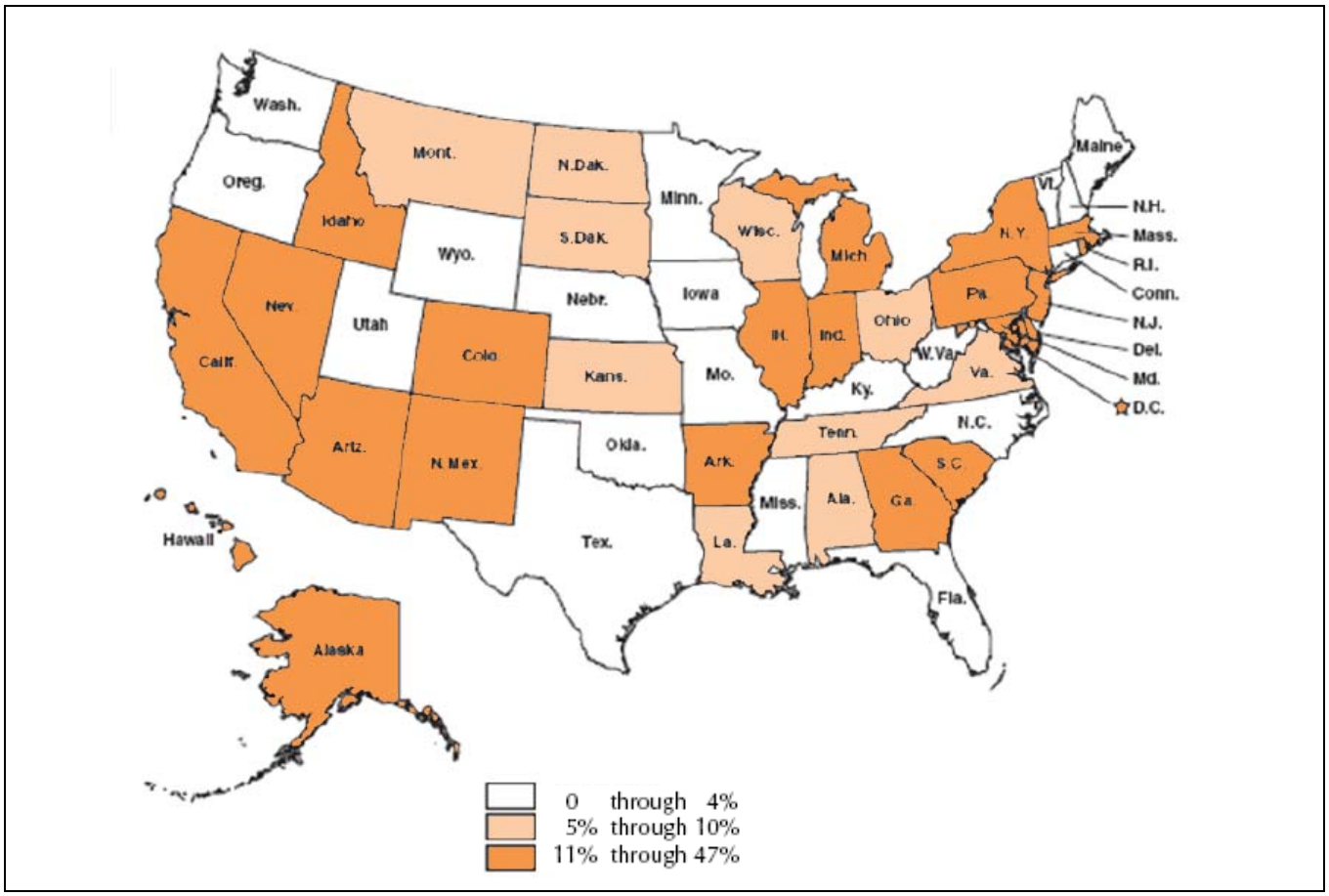
The number of schools where school choice is an option to students has not remained constant. In the 2002-03 school year, 5,100 schools were required by law to offer school choice. In the following year, 2003-04, that number decreased to 4,600 schools. However, in the 2004-05 school year, 6,200 schools had to offer school choice to their students (Stullich et al., 2006). In the 2005-

06 school year, about 14 percent of districts nationwide were required to offer school choice to at least some of their students (Center on Education Policy [CEP], 2006). Further, the distribution of these schools and districts across the United States is not equal. As shown in Figure 2 below, the statewide percentages of schools identified for school improvement are vastly different and do not seem to follow any population pattern. This could largely be the result of individual state determinations of the achievement scores necessary to meet AYP. States with ambitious timelines and benchmarks toward the 100 percent proficiency goal may have more schools and districts consistently failing to meet the AYP standards, thus offering school choice.

A total of 39 percent of the 6,200 schools that were required to offer school choice in the 2004-05 school year did not offer choice to their students. This striking number is largely accounted for by the fact that 20 percent of all schools required to offer school choice reported no intradistrict, non-identified (also offering school choice) schools to which students could be transferred. This number is perhaps most significant at the high school level where over 75 percent of high schools are in districts with no other high schools and the percentage of identified schools not offering choice is at 58 percent (Stullich et al., 2006).

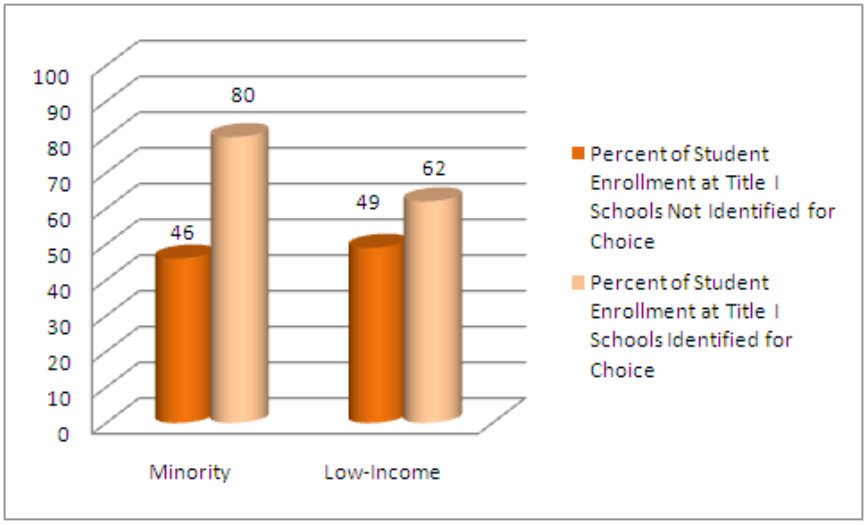
Further, in the first years after the school choice options took effect, a 2004 GAO report found that the schools identified as being in need of improvement and required to offer choice had much higher proportions of minority and low-income students than did the schools which were not identified as needing to offer their students potential transfer choices (GAO, 2004). This can be seen in Figure 3. It is worth noting, though, that some studies have found that school choice did influence a degree of desegregation in some schools around the country (Brown, 2004). For instance, in Fort Wayne, Indiana, during the 2003-04 school year students transferred from over 65 percent minority and over 80 percent low-income schools to schools with less than 50 percent minority and from 39 to 69 percent low-income (Brown, 2004). These desegregation effects of school choice, at least in the early years of implementation, were not uniform and potentially further segregated the school out of which the students transferred. But still, "[l]ittle is known about the demographic characteristics and academic performance of students who transferred under NCLB school choice... or reasons why parents accept or do not accept transfer opportunities" (GAO, 2004, p. 16).

Figure 2. Percentage of Title I Schools Identified for School Choice, By State, in School Year 2003-04



Source: Government Accountability Office, 2004.

Figure 3. Minority and Low-Income Disparities Among Title I Schools Identified and Not Identified for School Choice 2003-04



Source: GAO, 2004.

In Indiana, 1,301 students participated in the school choice option from a total of 120 identified schools during the 2002-03 school year (U.S. Department of Education, 2005a). In the following school year, Indiana reported a decrease in the number of students who participated in school choice, while, as stated above, the usage of school choice options increased by 85 percent nationally. This was related to the decrease in the number of schools identified for school improvement in that same year (GAO, 2004). In the 2005-06 school year, according to Indiana Department of Education (IDOE) internal data, of the 37,598 students eligible for school choice, 2,137 actually transferred, for a participation rate of 5.63 percent (IDOE, 2007).

SUPPLEMENTAL EDUCATIONAL SERVICES

Providing supplemental educational services (SES) is the sanction to school choice that is imposed on Title I schools after failing to meet AYP for three consecutive years. The provision of SES, however, is only required for students who are from low-income families—specifically, those students identified for free or reduced price meals. While it is the responsibility of the district to provide the funds to pay for SES, it is the responsibility of the state to oversee and monitor providers of SES.

Providers of SES must meet a specified list of criteria and be approved by the state. Specifically, SES providers must stay in communication with parents, provide instruction that is in line with school curriculum, align curriculum to correspond with state standards, and ensure that instruction is non-religious and non-ideological. The state must maintain a list of all approved SES providers. Further, the state must monitor the SES providers, and if the SES provider fails to meet the state standards for two consecutive years, the state must withdraw its approval of the provider. The entities that can serve as SES providers include: non-profits, for-profits, school districts or individual schools not in improvement status, charter schools, private schools, colleges and universities, educational service agencies, and faith-based organizations (GAO, 2006). The distribution of these different types of entities in providing SES can be seen in Figure 4.

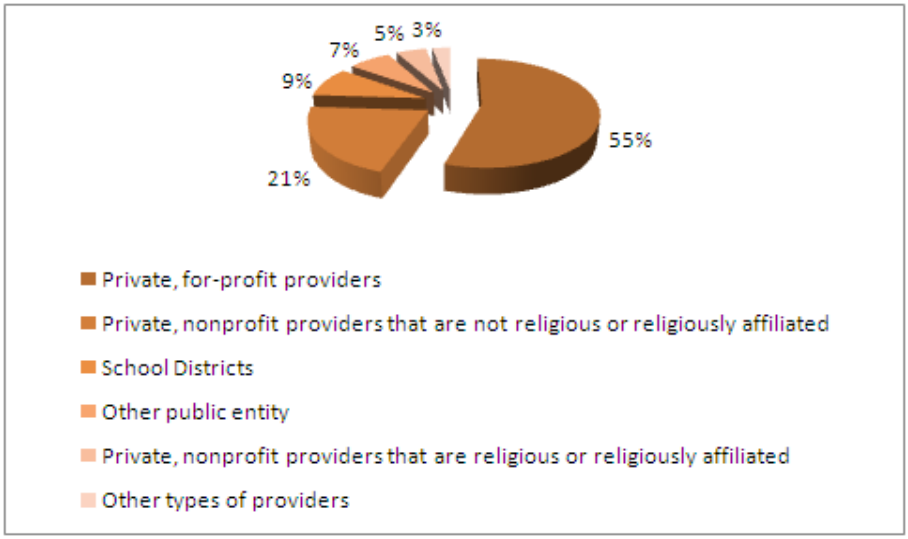
Nationally there are over 1,800 state-approved SES providers (Supplemental Educational Services Quality Center, 2005). These providers are evenly spread across the locations that must offer SES, as 80 percent of districts in SES status had 1-4 providers delivering services. In the larger districts with populations over 100,000, there was an average of 15 providers offering SES. However, there is still an identified limitation in some rural districts where no authorized providers are present. In these cases, while the school may technically be offering SES to eligible students, without providers in the area or transportation, eligibility for these after-school services is of no use.

While there are a large number of providers currently approved to provide SES, according to the Center on Education Policy, "less [than] half of the providers available to districts are used by families" (2006, p. 137). The trend seems to be toward fewer approved providers delivering services, as 45 percent of providers actually served students in 2003-04 and only 34 percent actually provided services in the following school year. Additionally, it seems that once a provider is approved, it is rarely removed from the provider list. Only 20 states have reported removing providers from the list, and only 4 reported removing a provider over concerns about quality or service (CEP, 2006).

Eligibility and Participation

Although the number of students eligible for participation in the SES program is far fewer than the number eligible for school choice, there is a much higher participation rate in the SES provisions. Nationwide, in the 2004-05 school year, 430,044 students utilized SES. This represents a significant increase over the previous years, as can be seen in Figure 5 (GAO, 2006). The numbers presented in this figure are a result of about 10 percent of districts being categorized in the SES improvement year. In the 2005-06 school year, the percentage of districts that had to provide SES to their low-income children rose to 12 percent (CEP, 2006). Nationally, in 2005 there were over 2,800 schools that were required to provide SES to their students (Supplemental Educational Services Quality Center, 2005). Within districts that were required to offer SES, a majority of their schools had to offer the services to their students. While in the early years of the law a

Figure 4. Range of Supplemental Service Providers Approved by the States, 2005



Source: CEP, 2006.

lower percentage of schools within identified districts had to offer SES, in 2005-06, a total of 65 percent of schools within districts identified for improvement were required to offer SES.

The rate of participation of the eligible students rose from 12 percent in the 2003-04 school year to 19 percent in the 2004-05 school year (GAO, 2006), and 20 percent in the 2005-06 school year (CEP, 2006). Other entities that have studied SES participation have found similar results. It is important to remember that not all students in a school will qualify for SES because of the low-economic status requirement. Thus, in 2005-06, only 15 percent of students in districts offering SES were eligible to participate (GAO, 2006). Further, as districts have become cognizant of and started complying with the low-income students provision, the actual number of students eligible for participation in SES has remained relatively constant, even as the percentage of schools being required to offer SES has steadily risen (CEP, 2006).

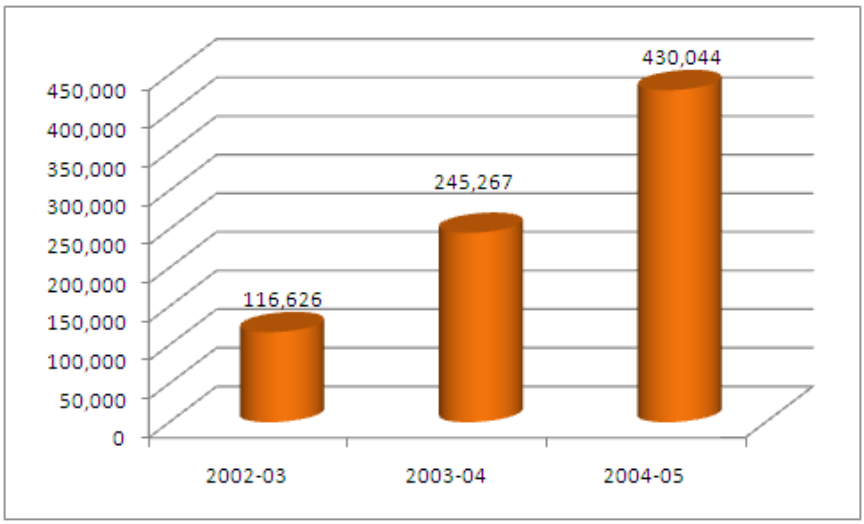
In a 2006 report, the Government Accountability Office estimated that 20 percent of the 1,000 districts offering SES had no students participating in the program. This figure is mostly accounted for by rural districts. Correspondingly, a few large urban districts account for over half of the total SES participation. Specifically, 21 districts with over 100,000 students account for 56 percent of the total SES participant population (GAO, 2006).

These statistics are supported by findings from the CEP's recent report on NCLB, which indicated that 40 percent of urban districts are required to participate in the SES program, while only 12 percent of suburban and 9 percent of rural districts are currently required to offer SES (CEP, 2006) (see Figure 6). This is even more striking if district size is considered. Specifically, within the urban context, 95 percent of very large districts were required to offer SES in the 2005-06 school year. This fact is important to note because very large districts are likely to have large proportions of low-income students qualifying for services.

Because schools are only responsible to provide SES to the extent it is financially feasible using the 20 percent set aside mentioned earlier (this 20 percent is also used for pupil transportation under the school choice provisions), it is likely that very large districts are not providing services to all students who request it. Thus, the percentage of children participating in the SES program naturally may greatly depend on the location of the school and the school's financial capacity (CEP, 2006).

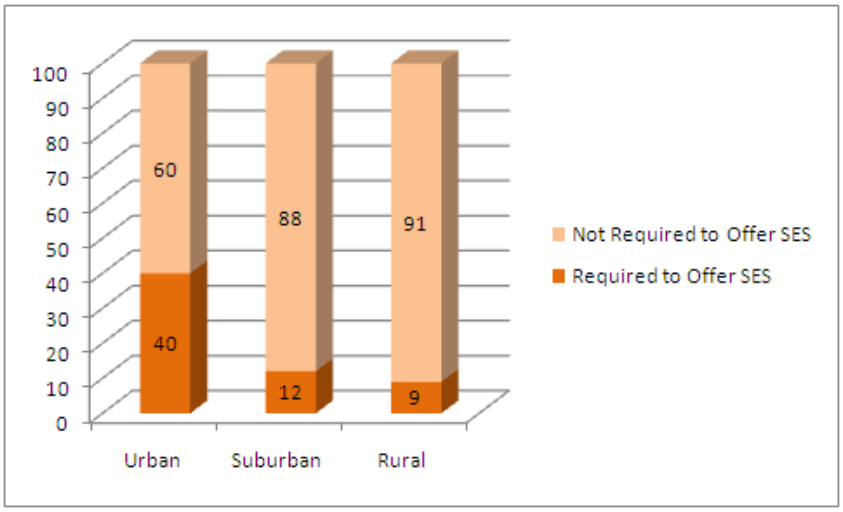
In Indiana, according to Indiana Department of Education data, in the 2005-06 school year, 13,994 students were eligible for SES and 3,912 students participated in the program, for a participation rate of 27.95 percent. In the same year, students participated in SES in 40 of the possible 50 schools required to offer SES, with Indianapolis Public Schools exhibiting the highest participation rate in the state at 62 percent (IDOE, 2007).

Figure 5. Approximate Number of U.S. Students Participating in SES by Year



Source: GAO, 2006.

Figure 6. Percentage of Districts Required to Offer SES in Geographic Location



Source: CEP, 2006.

IMPLEMENTATION CONCERNS AND POLICY IMPLICATIONS

Although the provisions of NCLB have only been in place five years, researchers and commentators are already identifying challenges to its implementation. The most obvious one, beyond funding concerns, is perhaps the aforementioned low participation rates, both for school choice and SES. While some sources have cited a lack of creativity on behalf of districts in their outreach efforts (Anderson & Laguarda, 2005), these low participation rates may be a by-product of other implementation issues. Much literature has been devoted to articulating and documenting these concerns, which range from technical assistance to transportation issues, as well as more fundamental concerns over privatization. Some of the most prominent challenges are presented below.

Communicating between Interested Parties

Inadequate or untimely communication between interested parties is largely blamed for the low participation rates seen in both school choice and SES. One concern that is consistently raised in regard to both provisions, but especially in school choice, is the frequent delay in providing state classification data to the schools. The state AYP determination for individual schools is crucial in determining the school's actions for the upcoming year. This affects the district's ability to provide the legally mandated notification to the parents in time for them to exercise their federally provided choices. Some districts reported that their AYP determination was not received from their state until after the school year began, making parental choices to send their children to a different school unlikely (CEP, 2006). This has resulted in districts and schools making educated guesses based on preliminary data as to their AYP status. This risky implementation action leads to incorrect AYP identifications and confusion among all parties (GAO, 2004).

The U.S. Department of Education acknowledged this delay and, in the spring of 2005, fined Texas four percent of the state administrative Title I allocation ($444,282) because of late notices to parents ("Texas fined," 2005). These delays then lead to further problems along the school choice continuum. If parents are not notified until late in the process, they cannot make a decision about school choice in time to allow schools to make appropriate decisions regarding staffing and scheduling. Thus, district schools that are accepting students under the school choice provisions are challenged when they are faced with last minute school choice students (GAO, 2004).

District communication with parents is also a concern when providing notice of SES. Although some studies suggest that district communication with parents has improved since the initial years of NCLB (Anderson & Laguarda, 2005), there is still much room for improvement on the part of districts in notifying parents of their options under the law. For instance, the GAO found that in the 2005-06 school year, an estimated 58 percent of districts did not notify parents of eligible children that they were entitled to SES before the start of the school year. This is often associated as one of the chief reasons that participation in the SES program has lagged far behind eligibility (GAO, 2006). Because parental choice is such a significant part of these policies, for the law to work properly it is absolutely necessary for districts to make positive attempts to improve parental notification of their available choices.

Indiana has not been immune to these communication challenges. After a U.S. Department of Education review, it was found that five out of the six districts they investigated provided inadequate parental notification. Some information was not provided, not mailed, or inaccurate (Gehring, 2005). Although the federal department did not impose any specific sanction on the state and the Indiana Department of Education has taken measures to remedy the issue, the incident clearly indicated the implementation issues surrounding the communication and notification requirements in the law.

In addition to communication concerns between districts and parents, concerns arise between districts and student service providers, especially in relation to the provisions of SES. While the oversight and monitoring issues will be addressed in the next section, there is some basic communication that must take place between the educational entities. As an example, some SES providers report that there are communication problems with local schools, specifically teachers, on the individual needs of particular students.

(Continued on page 9)

Policy Perspective

SUPPLEMENTAL EDUCATIONAL SERVICES IN INDIANA

Molly Chamberlin

According to the No Child Left Behind Act of 2001, schools that receive Title I, Part A funds and that have not made adequate yearly progress (AYP) (as measured by state standardized tests) for three consecutive years are required to offer Supplemental Educational Services (SES)-free tutoring for students qualifying for free or reduced price lunch. The Indiana Department of Education (IDOE) is responsible for reviewing and approving provider applications, monitoring provider services, monitoring school districts' implementation of SES (including ensuring that districts are encouraging participation and tracking SES student attendance), and yearly evaluation of the effectiveness of SES providers.

The 2005-06 data (data are currently being reviewed for the 2006-07 school year) show that family participation in SES across the state has increased from 18 percent of eligible students participating in 2003-04 to 28 percent in 2005-06. A number of school districts have launched efforts to further increase participation by offering open enrollment in SES throughout the school year; encouraging SES providers to use school space; and offering informational fairs for parents to come and learn more about SES and public school choice. Indiana is also entering its second year of participation in a United States Department of Education pilot project. In this project, selected school districts are permitted to offer SES in lieu of school choice for schools in their first year of school improvement. Participating districts must conduct a number of activities to encourage student participation, and the state must monitor implementation.

With many districts working hard to encourage participation in SES tutoring, it has become increasingly important for the IDOE to continue its monitoring and evaluation process of SES providers. In recognition of this, the IDOE created its monitoring and evaluation process in the 2003-04 school year. Each year since, the IDOE has made additional modifications to its process to further raise the bar for SES providers. Currently, each SES provider receives a yearly on-site monitoring visit. In addition, providers are required to submit lesson plans, tutor qualification data, progress reports, and other information to the state for document analysis and compliance review. Providers are evaluated in the areas of customer satisfaction (using district, principal, and parent surveys); service delivery (using district, principal, and parent surveys, as well as state onsite monitoring, document analysis, and compliance review); and academic effectiveness (using ISTEP+ data, provider pre- and post-assessment data; attendance data; and student goal attainment data). Hundreds of hours are spent reviewing documentation and data in order to create the overall evaluation report. Based on the data, providers are assigned letter grades using a grading scale developed by the state. Indiana's monitoring and evaluation process is described in detail on its SES Web site: http://mustang.doe.state.in.us/dg/ses/pdf/07Policies/D-MonEvalOverview0708.pdf.

The 2005-06 data show that, in general, parents were very satisfied with the tutoring services that their children received. Additionally, most districts reported that SES providers serving their students were in compliance with both the law and with district contractual obligations. A number of SES providers were successful at helping participants make academic gains.

In fact, the majority of students participating in SES in 2005-06 made gains on the ISTEP+ scale score for both Mathematics and English/Language Arts. Nearly half made gains that would be considered the equivalent of one year's worth of growth on the assessment. Indiana also uses demographic and ISTEP+ data for SES participating students to match these students with similar but non-participating students. The matched comparison data analysis demonstrated that while slightly higher percentages of the SES participating students made ISTEP+ scale score gains that were the equivalent of one year's growth, scale score growth differences between the participating and non-participating students were not statistically significant. Individual provider evaluations and a statewide evaluation of SES for 2005-06 can be viewed at: http://mustang.doe.state.in.us/dg/ses/Evaluations.cfm. Data are currently being analyzed and compiled for the 2006-07 school year.

Indiana's theme for SES in 2007-08 is "raising the bar." To ensure the highest quality services, the IDOE has expanded its onsite monitoring and has created a resource guide for SES providers. The resource guide (which can be found on the IDOE SES Web site: http://mustang.doe.state.in.us/dg/ses/docs/2007-07-18-Resource%20Guide.pdf), provides research-based tips for high quality supplemental tutoring. The IDOE has also created a number of training videos for districts, school employees, and SES providers, which can be found on its Web site as well. Finally, the IDOE will be conducting a study to analyze characteristics of the most effective SES providers and will be analyzing data for students who have participated in SES for multiple years to determine the overall, value-added effects of SES participation. We encourage the public to review our SES Web site and contact us with any questions.

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The GAO revealed that some SES providers attempted to aid in meeting state standards by aligning their tutoring curriculum with the school curriculum. However, this was not the norm, and in some cases the SES providers openly questioned the school's curriculum. One of the most difficult things districts are reporting is negotiating contracts with outside SES providers. These contracts must be written and agreed upon by both the school and the SES provider before any SES are provided to students. Both schools and SES providers report frustration with the other party when negotiating these contracts (GAO, 2006). To counter these communication issues, the state of Indiana has provided model parental notifications for districts as well as a sample SES contract with providers.

All of these communication concerns lead to several possible implications for policy. First, it is imperative that state AYP determinations be made as early as possible so schools can determine whether parental communication is necessary. Once the determination is made, schools and districts need to inform parents as soon as possible of their choice or SES options. Second, districts need to ensure legal compliance with notification procedures, even if such notification could potentially mean dollars are diverted to other entities. Further, both schools and SES providers need to make communication with the other party a priority. Because both entities are reliant upon the other to help improve student achievement, active lines of communication and established communication procedures are necessities. Without such of coordination, a child's educational curriculum could be redundant, conflicting, inapplicable, or confusing.

Oversight and Monitoring

A specific communication-oriented concern is the oversight and monitoring of SES providers. In a survey of state education officials, over 80 percent of states responded that monitoring the quality and effectiveness of providers is a moderate or serious problem (CEP, 2006). Other than in the area of new provider issues, the states consistently find moderate or serious problems with all issues related to SES provider monitoring (see Table 2). Similar concerns surrounding monitoring of SES providers were reflected at the district level.

In addressing the root cause of the lack of monitoring problem, roughly half the states reported both that there was insufficient staff to address the requirement and that inadequate federal funds were provided (Minnici & Bartley, 2007).

This concern has been reflected in many other studies and has caused a few states to assume oversight action of individual SES providers at the state level, as noted in a 2006 GAO report. Specifically, the GAO found that some of the most frequent SES state oversight activities include parent/student satisfaction, provider communication with other parties, program design, evidence of academic achievement, alignment with school curriculum, and student attendance (GAO, 2006). However, there have been very few evaluations of SES providers on student achievement initiated at the state level. Specifically, a recent Institute of Education Sciences report said that, "as of early 2005, 15 states had not established any monitoring process, 25 states had not yet established any standards for evaluating provider effectiveness, and no states had finalized their evaluation standards" (Stullich et al., 2006, p. 22).

In some states, including Indiana, there are efforts underway to evaluate the effectiveness of SES programs. Presently, New

TABLE 2. Number of States Reporting the Extent to Which Various Issues Were Challenges to Implementing Supplemental Educational Services, 2005

Task	Moderate/ Serious Challenge	Not a Challenge/ Minimal Challenge	Don't Know
Implementing a system for monitoring the quality and effectiveness of supplemental educational service providers	41	6	3
Determining whether providers' services are effective in raising student achievement	40	6	4
Determining whether providers' instructional methods are research based	34	16	0
Determining whether provider applicants' instructional strategies are of high quality	34	14	1
Determining whether providers' services are consistent with the instructional program of the school district and with state academic content standards	29	16	6
Ensuring that the locations and capacity of service providers are adequate to fill local needs	26	19	5
Determining whether the provider is financially sound	20	28	2
Providing guidance for prospective providers about pricing and location of services	20	27	3
Encouraging providers to apply for approval	16	33	1
Developing provider selection criteria	16	33	0

Source: Center on Education Policy, 2006.

Mexico and Tennessee measure student progress on grades and achievement tests, and provider assessments are provided as a pretest (before SES) and posttest (after SES). However, as noted in the 2007 report from the CEP, only ten states reported engaging in evaluation of SES providers "to a great extent," while three states reported no such evaluations were taking place (Minnici & Bartley, 2007). Further, there is concern over the absence of qualification criteria for the SES tutors employed by providers. Some tutors possess only a high school education, or, in the case of Kansas City, Kansas Public Schools, high school students themselves were being used as tutors. There are presently no federal requirements concerning the qualification level of SES tutors. When extraneous efforts are being made to measure success at schools in order to declare them in need of improvement, and thus subject to SES, the lack of state evaluations of SES providers and tutors seems a significant absence (Burch, Steinberg, & Donovan, 2007; GAO, 2006).

In Indiana, there is significant oversight of individual SES providers which includes a user satisfaction survey and an academic effectiveness evaluation based largely on ISTEP+ scores and other assessments of students receiving services. The scores on the customer satisfaction survey and academic effectiveness evaluation are compiled for an overall letter grade. If providers are assessed at the "C" level, the provider must submit a corrective action plan. If providers are assessed at the "D" or "F" level, they are added to the probation list. Providers that receive a "D" or an "F" for two consecutive years are removed from the state approved provider list. Additionally, an onsite visit is conducted in which such elements as tutor qualifications and curriculum are assessed. This level of provider evaluation in Indiana is significant in that it is conducted in an unannounced manner for all providers annually and it attempts to track student outcome data.

With such a large public investment in these outside SES providers, results need to be documented in a similar manner to that of public schools. However, oversight mechanisms are lacking to make these necessary judgments. Even such basic issues as the tracking of attendance seem to cause concern. This is an issue because attendance of SES affects the amount of money the district is responsible for paying to local SES providers (Anderson & Laguarda, 2005). Some districts have gone so far as to move toward employing private companies in order to track attendance. Flint, Michigan, for instance, has seen substantial savings after having adopted a tracking mechanism (CEP, 2006).

While these SES capacity issues are significant, the lack of capacity to accommodate school choice may be the most severe because there simply are not enough choice options to accommodate the demands of the law.

Both states and districts need to be more active in overseeing SES providers and assuring that public monies are well-allocated and are leading to increased student achievement. Such basic information as attendance is absolutely necessary, just for basic funding purposes. States could take the lead and develop statewide, automated data collection mechanisms that track attendance, curriculum, and demographics. These systems could also contain additional features such as allowing for communication between teachers and SES providers. In addition, states need to make further investments into research that attempts to correlate the provision of SES to increased student achievement, such as Indiana has done with tracking SES recipient ISTEP+ scores. Such information needs to be disaggregated not only by SES providers, but also by different student demographic characteristics. This is necessary to identify just how much improvement SES providers offer and whether that is worth the public investment. In this era of educational accountability, sanctions or discontinued funding to SES providers that do not make student achievement gains should certainly be a possibility.

Lack of Funding, Capacity, and Infrastructure

There are multiple issues concerning funding, capacity, and infrastructure of the states, districts, schools, and private providers. While the communication issues mentioned above certainly qualify as capacity and infrastructure issues, there are also concerns about funding, administrative burden, and the capacity of unidentified schools to handle the influx of students.

First, both school choice and SES put additional administrative burdens on districts and schools. While the paperwork and transportation issues with choice can lead to increased administrative work, the oversight required of SES providers proves an additional administrative burden. Sunderman and Kim (2004) at the Harvard Civil Rights Project identified the imposition of this administrative burden as a substantial new requirement for school administrations. Providing notification, monitoring providers, and negotiating contracts are just some of the many administrative costs SES have added to district budgets, yet NCLB provides no specific funding to cover these administrative costs (Sunderman & Kim, 2004).

In addition to the increased SES administrative burden, there is also a lack of funding capacity on the part of districts. On average, districts reported that they could serve approximately 20 percent of the eligible students with the federally mandated 20 percent set aside. However, in the districts with schools in their third year of failing to meet AYP, the percentage of the school population that is eligible for SES is much higher, resulting in many districts not having

the financial capacity to serve all of the eligible students (CEP, 2006).

While these SES capacity issues are significant, the lack of capacity to accommodate school choice may be the most severe because there simply are not enough choice options to accommodate the demands of the law. There seems to be two issues embedded in this problem. First, there is a lack of space and seat capacity; this is particularly true in some large urban areas such as Chicago and Memphis (GAO, 2004). Even in Indiana, this is a problem. During the 2002-03 school year in Indianapolis, 6,466 students were eligible for choice transfers, out of which 914 made such a request. However, Indianapolis was only able to grant 486 of the transfer requests. The following year, however, there were fewer requests and the district managed to grant them all (Brown, 2004). The number of students eligible for choice in Indiana is likely to rise quickly over the next few years, and it is unlikely that districts will be able to meet the demand for transfers.

Under NCLB only schools within the district that are not identified for improvement are viable choice options unless states have adopted alternative measures. Thus, if a student is in a school district with only one school at the appropriate grade level, there will never be a viable choice option. Therefore, in many rural areas there will never be the capacity to accommodate transfer requests. Second, in many urban areas, even though there are multiple schools within the district, many of those schools are in the same improvement status (CEP, 2006). Third, even where there are schools within the district where transfer is available these schools do not provide meaningful alternatives to parents because they are often very similar to a student's current placement (GAO, 2004). This lack of choice capacity remains one of the largest impediments to adequately implementing the choice provisions under NCLB.

In addition to these capacity concerns, inadequacies abound in technical assistance. Specifically for school choice, many district-level implementers are still unsure of all of the law's demands and how these demands could be implemented practically. Although the GAO points out that the Department of Education issued numerous guidance documents (U.S. Department of Education, 2004, 2005b), the sheer complexity and uncertainty surrounding the school choice options have caused many questions to be left unanswered. Specifically, the GAO report on school choice stated that, "In several districts we visited, we found that officials were struggling to find practical and realistic ways to offer choice when building capacity, budgets, and timeframes were limited" (GAO, 2004, p. 33).

Although capacity and infrastructure issues are not easily solved because they often involve the expenditure of large amounts of additional funding, these issues do present significant hurdles to the proper implementation of these policies. Therefore, states, districts, and schools need to be creative in solving these issues, while at the same time requesting additional funding on the part of the federal government. For instance, if technical assistance is an identified problem, states should invest the relatively small cost of additional technical assistance capacity to reach out and explain the intricacies of the law to more districts.

Further, districts should make attempts to standardize and streamline administrative procedures, causing the high administrative costs to subside. However, these creative attempts to address capacity may still fall short of the capacities and infrastructure needed to properly implement these provisions. The federal government should also take the lead in helping districts to address these issues, possibly through increased funding, better guidance, and the promotion of best practices. Hess and Finn suggest a means to build capacity at the national level to help schools with technical assistance and school restructuring:

> If revitalizing low-performing schools is to occur with any consistency at scale, the nation will need to develop a set of effective operators capable of contracting with multiple districts or states to provide the oversight, leadership, knowledge, and personnel to drive restructuring. Operating on that scale will permit specialization and cooperation, and allow providers to build deep expertise. (2007, p.7)

Serving All Student Populations

While neither of the provisions is specifically designed to affect only minority groups, the implications of school choice and SES are affecting some groups differently than others. First, large percentages of students in the schools that qualify for school choice and SES are minority and/or low income (Sunderman & Kim, 2004), and black students are more likely than white students to utilize public school choice. Further, black parents are more likely than white parents to report the knowledge that public school choice was available for their school (Tice, Princiotta, & Bielick, 2006). These findings certainly indicate that school choice is affecting minority populations. However, as identified by the GAO at one school they observed, where transfer is an option, minority populations chose not to transfer more often than they chose to take the choice option. Thus, the percentages of eligible and remaining populations were higher than the percentages of the transferring populations. Further, when examining only high minority population areas, such as large urban areas, the schools available under the school choice provisions are demographically similar to the schools out of which the students are transferring (GAO, 2004). Thus, these schools face many of the same issues as the schools from which the students came. Even when school choice does provide some desegregation effect on the receiving school, the schools out of which students transfer remain as segregated or are perhaps more segregated than before school choice (Brown, 2004).

There are some minority populations that are not benefiting as much from school choice and SES. Special education and Limited English Proficient student populations are largely unaffected in comparison to regular education students by these policies, particularly SES. At least in one school choice study, a single district showed that 10 percent of transfers were English Language Learners (ELL) and 14 percent were identified for special educa-

tion services. On the other hand, inclusion of these populations in the provision of SES is a mixed bag. In about two-thirds of districts, special education students comprise less than 20 percent of SES users. In about a third of districts, ELL students comprised a small percentage of SES users. However, in about a fifth of districts, ELL students comprised over half of the SES users. This leads to the conclusion that SES providers are hesitant to offer the specialized types of services required for these students if there is not a critical mass of students to make the specialized service profitable (GAO, 2006). Burch, Steinberg, and Donovan observed:

> [l]eft to its own devices, the market will not correct itself to protect and serve special needs students. In a new and rapidly growing market in which most SES providers are competing to keep costs down and have little experience serving ELL and special needs students, eligible students with special needs and with limited English skills face the possibility of indirect exclusion from supplemental education programs because the services provided assume a set of skills they currently lack (2007, p. 130).

Finally, the geographic location of the school, in an urban or rural area, also produces differences in the provision of these NCLB requirements. As identified earlier, choice is difficult to provide in rural areas with few schools within the district. Even some rural schools that attempted to offer choice options at neighboring districts were not effective in providing a meaningful choice option because parents were often uninterested in transferring their children out of the district (CEP, 2006). Further, the GAO identified some gaps in SES. Specifically, the GAO estimated that about half of the rural districts required to offer SES have few or no local providers and that transportation was a significant problem (GAO, 2006).

Thus, there are several potential areas for improvement. First, although it is not completely clear what effect these provisions are having on race and segregation issues, districts and states need to monitor school populations to ensure public school choice is not further segregating the schools. Also, states and other entities may attempt to provide more differentiated alternatives in urban locations, such as charter schools, to offer real alternatives to urban students in schools identified for improvement. However, the provision of SES to ELL and special education students needs to be investigated further. Just as educating these children costs more at public schools, the supplemental education of these students is likely to cost more. States and districts need to enact provisions that assure these special population students are not left out of the programs because of their unique needs.

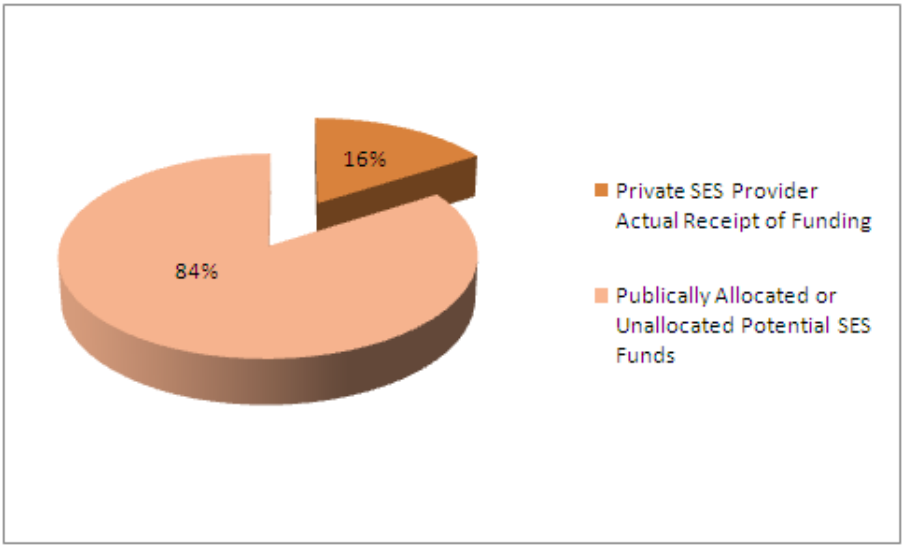
Concerns Surrounding the Privatization of Education

Frequently, mentioning privatization in the context of NCLB calls to mind issues of school choice. However, the provision that most implicates private educational services is the SES provision because many of the approved SES providers are private, for-profit entities.

First, it is important to remember that the school choice being considered in this Policy Brief is only the school choice mandated under the provisions of NCLB. There are other forms of school choice and vouchers that function in a similar manner, and these school choice options are becoming more prevalent. In a recent report, the National Center for Education Statistics found that, overall, the percentage of students attending the public school within their attendance area fell 6 percent (80 to 74) during the period between 1993 and 2003. This decrease was comprised mostly of students who attended a public school of their choice, as the percentage of students exercising public school choice increased during the same period from 11 percent to 15 percent. Further, from a survey of parental perceptions, 51 percent of parents reported the perception that they had public school choice available (Tice et al., 2006). While these figures regarding school choice illustrate the national trend toward more public school choice, they do not, however, specifically implicate the provisions which NCLB requires from the states.

There are few restrictions on who can be an SES provider, and NCLB specifically states that for-profit private companies can be providers of SES, paid for by public schools. Thus, SES have become an important new cog in the rapidly developing private education, for-profit industry, an industry that is already exceeding

Figure 7. 2005-06 SES Allocation to Private Providers



Source: Borja, 2006.

$80 billion in annual revenue (Education Industry Association, n.d.). Thus, "[t]hese tutoring services … arguably represent the federal government's largest free market experiment in education" (Gorman, 2004, p. 32). However, the actual investment in private tutoring under the SES provisions has fallen far short of expectations. It was projected that over $2 billion would be available annually for private providers (Gorman, 2004). This projection was accurate in terms of the money potentially made available by the federal funding provisions under Title I, at $2.5 billion. However, the actual receipts of private SES providers from public education funding have only amounted to $400 million during the 2005-06 school year, a mere 16 percent of the potentially available funds (Borja, 2006). Thus, many in the education industry who had high expectations for the large potential profits have been disappointed.

In recent years not only have some private SES providers sold out to competing firms, but one large provider was even investigated for providing illegal gifts to principals and students to boost enrollment. The company, Platform Learning, has since filed for bankruptcy (Borja, 2006). Further, some recent reports suggest that district-provided SES may be cheaper than privately provided SES, even though both show similar gains on state achievement tests (CEP, 2006). However, the after-school tutoring sector of the economy still has experienced vast growth in the past few years and still has great potential because "firms can expect the availability of public revenues to increase over time" (Burch et al., 2007). Because of the high levels of merger and acquisition activity, the economies of scale, and the potential to identify locations with the greatest available revenues, Burch, Steinberg, and Donovan conclude that a handful of large national firms are the firms best positioned to reap the financial benefits of the SES system (2007, p. 121-24).

Some of the challenges facing private educational providers identified in the American School Board Journal were (Belfield & d'Entremont, 2005):

- No easy administrative savings.
- For-profit providers do not offer instruction that is demonstrably superior to that available in public schools.
- Additional costs in marketing, establishing brand equity, politicking, and community networking and support.
- Few economies of scale exist, making it difficult to franchise the operations.
- Often a competitive response from public schools.

While this brief will not make specific recommendations or conclusions regarding the use of private entities in public schooling, several of the above recommendations and implications bear repeating. If private providers continue to offer educational services to the public, communication, evaluation, and monitoring of demographic characteristics and student achievement are all important components that need additional attention and improvement. Just as with charter schools, the laws that apply to public schools are likely to apply to private educational providers receiving public funding, unless there is an explicit exception (Eckes & Plucker, 2004). Many of the administrative burdens of public schools that are imposed for accountability and oversight purposes are likely to be imposed on these new private providers; thus, the push for more communication, evaluation, and monitoring of demographic characteristics and student achievement is likely to grow stronger.

UPCOMING ACTIVITY ON NCLB

The No Child Left Behind Act, and the provision of school choice and SES contained therein, is scheduled to be reauthorized in 2007. As the deadline approaches, there has been a flurry of activity concerning all of No Child Left Behind, including the choice and SES provisions. While some expect the reauthorization to occur after the presidential election cycle in 2008, Congress has held several committee meetings on reauthorization; and the Democratic leaders of the House Education, Labor Committee, and the Senate Health, Education, Labor and Pension Committee, as well as the President, have expressed a desire to keep the law's reauthorization on schedule (Hoff, 2007). As the reauthorization debate continues, several entities have offered their suggestions for amendments to the law, including the U.S. Department of Education and an influential commission established by the Aspen Institute.

In early 2007, President George W. Bush and the U.S. Department of Education issued their blueprint for the reauthorization. Perhaps most significantly, the blueprint contains a new design for school choice by offering public and private scholarships to students in schools that enter restructuring status. Not only would the scholarships allow for school choice to private schools, but the blueprint also calls for choice to out-of-district public schools. This choice would be funded by both the federal per pupil allocation that would follow the student and a federal scholarship of $2,500. Additionally, some schools would be allowed to compete for grants that would provide assistance in molding local structures to generate the scholarship dollars that would be provided to the student's school of choice. As to the provision of SES, the plan calls for moving the SES eligibility up one year to the initial year of school improvement status. Also, in order to address some of the concerns with SES, the President's blueprint would allow larger SES allocations for students in rural areas, students with limited English proficiency, and students with disabilities to encourage more SES for these students (U.S. Department of Education, 2007).

The Aspen Institute's Commission on No Child Left Behind recently released its influential report which contained several relevant recommendations that are likely to be debated in the upcoming round of reauthorizations. First, in order to alleviate some of the capacity issues identified above, the commission recommended that schools that do meet the

AYP benchmarks reserve 10 percent of their classroom seats to accept transfers from schools that are forced to offer school choice. Further, when a school cannot place all of its students requesting school choice, the school should be forced to offer SES for the non-transferring students. Additionally, in order to improve access to SES, the Commission recommended that schools that allow other community groups access to school property also offer the use of classroom space to SES providers. To address the administrative burden mentioned above, the Commission also recommended allowing districts to reserve 1 percent of the 20 percent set aside to cover administrative costs. Also, the Commission recommended specifying a district liaison for choice and SES to increase the accessibility of choice and SES information to parents. Finally, the Commission recommended that both states and the federal government take a more active role in tying SES to student achievement and learning gains (Commission on NCLB, 2007).

Other education stakeholder groups have weighed in as well. For instance, the Education Trust published their recommendations for reauthorization. In their report, the Education Trust recommends moving SES to year 2 and school choice to year 3. However, the recommendations also include beginning the SES and choice procedures sooner in the process. Specifically, in the first year the school is identified for improvement, the school should begin to develop a plan for offering SES and choice that could be immediately implemented if the school is again identified in the following year (Education Trust, 2007). Also, the National Governor's Association, the Council of Chief State School Officers, and the National Association of State Boards of Education recommend switching SES and school choice implementation years but recommend greater differentiation of sanctions and increased rewards (National Governors Association et al., 2007). While many other individual organizations have specific recommendations concerning NCLB reauthorization, over 100 educational organizations (including influential organizations such as the National Education Association, the American Association of School Administrators, the NAACP Legal Defense and Education Fund, and People for the American Way, to name a few) published a joint statement in 2006 which stated improvement plans should be given ample time before sanctions are imposed and that the reauthorized NCLB should "[r]eplace sanctions that do not have a consistent record of success with interventions that enable schools to make changes that result in improved student achievement" (Forum on Educational Accountability, 2007). Whether or not the records of school choice and SES would meet these organization's definitions of success is unknown; further research is needed to provide an adequate basis upon which to make such determinations.

Although it is unlikely all of the recommendations from these various entities will survive the multiple rounds of congressional consideration, it is significant to note that in the discourse surrounding the reauthorization there is little, if any, talk of repealing the choice and SES provisions. Some have expressed doubts about the law in general, such as Michael Petrilli, Vice President for Nation Programs and Policy at the Thomas B. Fordham Foundation, who recently stated, "I've gradually and reluctantly come to the conclusion that NCLB as enacted is fundamentally flawed and probably beyond repair … NCLB has 'changed the conversation' in education ... But let's face it: It doesn't help the dedicated principal who is pulling her hair out because of the law's nonsensical provisions" (Stricker, 2007), but these voices are few at the moment. While uncertainty prevails as to when the final vote on the reauthorization will occur, for now, choice and SES are central to the reauthorization agenda, and both provisions are likely to be strengthened.

CONCLUSION

The student-centered sanctions for failing to meet AYP under NCLB — school choice and supplemental educational services — are still in their infancy. Because these provisions only take effect after two and three years, respectively, of failing to meet AYP, and considering the entire No Child Left Behind Act is only at its fifth anniversary, conclusions about the effectiveness of these new and dynamic provisions may still be premature. While there have been some positive aspects associated with these provisions, as explained above, there remain significant concerns. Although the introduction of private providers into education under the SES provisions was a radical change, for the most part, there are positive relationships developing between schools and supplemental service providers, which are leading to positive working environments on the part of both parties that are ultimately seeking to help students (GAO, 2006).

Further, studies have reported mixed results on the perception of the overall value of supplemental educational services. While some districts are not able to perceive any benefit from the additional tutoring services, other districts, such as Chicago public schools, have shown that tutoring under the SES provisions has increased academic achievement on state tests. These mixed perceptions also exist at the state level: "... only a handful of state officials said that academic achievement had improved due to the supplemental educational services. Many more state officials were skeptical about the effectiveness of these services" (CEP, 2006, p. 148). The same mixed results are reported for the school choice provisions as well (Brown, 2004). Assuredly, however, the debate over how to offer students the opportunity to achieve at the highest levels will intensify in the near future as NCLB will again reach the media spotlight, the floor of Congress, and the public's consciousness.

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Web Resources

U.S. Department of Education No Child Left Behind Resources:

http://www.ed.gov/nclb/choice/schools/edpicks.jhtml?src=rt (School Choice)

http://www.ed.gov/nclb/choice/help/edpicks.jhtml?src=ln (SES)

Indiana Department of Education Supplemental Education Services Website:

http://mustang.doe.state.in.us/dg/ses/welcome.html (SES)

Education Commission of the States No Child Left Behind Issue Site Resources:

http://www.ecs.org/ecsmain.asp?page=/html/issuesK12.asp (Choice)

http://www.ecs.org/ecsmain.asp?page=/html/issuesK12.asp (SES)

Buildingchoice.org School Choice Resources:

http://www.buildingchoice.org/cs/bc/print/bc_docs/home.htm (Choice)

Council of Chief State School Officers Resources on SES:

http://www.ccsso.org/projects/Extended%5FLearning%5FOpportunities/Supplemental%5FEducational%5FServices/SES%5FResources/ (SES)

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