

**6A-1.039 Supplemental Educational Services in Title I Schools.**

(1) Purpose. This rule implements supplemental educational services in Title I schools as authorized by Section 1008.331, F. S.

(2) Definitions. For the purpose of this rule, the following definitions shall be used:

(a) “District/provider contract” means the agreement for the provision of supplemental educational services between each school district and each ~~is required to enter into with~~ state-approved supplemental educational services providers in the district ~~for the provision of supplemental educational services.~~

(b) “Eligible school” is a Title I school that is in year ~~one two~~ one or beyond of school improvement, corrective action, or restructuring.

(c) “Eligible student” means students from low-income families, as determined by the school district consistent with 20 U.S.C, Section 6316, who are attending a Title I funded school that is in year ~~one two~~ one or beyond of school improvement, corrective action, or restructuring.

(d) “Hearing Officer” means an individual employed by the Department and appointed by the Commissioner of Education to hear disputes about the denial and removal of providers as well as the award of a service designation.

~~(e)(d)~~ “School district” for the purposes of this rule, refers to all local education agencies in the state of Florida.

~~(f)(e)~~ “State-approved supplemental educational services provider” means a provider that has been approved by the Florida Department of Education to provide supplemental educational services in one or more school districts.

~~(g)(f)~~ “Student learning plan” means the document plan ~~plan~~ developed in consultation with the parent, school district, and state-approved provider, which is designed to improve academic achievement of a child receiving supplemental educational services.

~~(h)(g)~~ “Supplemental educational services” means additional academic instruction, such as tutoring, remediation, and other supplemental academic enrichment services ~~or other educational interventions~~, that is provided by state-approved supplemental educational services providers outside of the regular school day, on weekends, or in the summer, and that are designed to increase the academic achievement of students from low-income families who are attending Title I schools in their first ~~second~~ year of school improvement, corrective action, or restructuring.

(i) “Service designation” means a designation of excellent, satisfactory, or unsatisfactory assigned by the Department to each state-approved supplemental educational services provider. ~~“Increasing academic proficiency”~~

~~means the provider has demonstrated increased academic proficiency as measured by sixty percent of students earning a minimum of one normal curve equivalency point learning gain in reading/language arts and seventy percent of students earning a minimum of one normal curve equivalency point learning gain in mathematics on assessments identified by the Department.~~

(3) Roles and Responsibilities.

(a) The Department shall:

1. Provide annual notice of the process for obtaining approval to provide supplemental educational services.

2. Approve supplemental educational services providers based upon the application requirements set forth in Form SES 100, Supplemental Educational Services Provider Application ~~2010~~ 2009, which is hereby incorporated by reference to become effective upon the effective date of this rule. Form SES 100 may be obtained from the Florida Department of Education, Bureau of Student Assistance, 325 West Gaines Street, Tallahassee, Florida 32399-0400 or on the Department's website at [www.fl DOE.org/flbpso](http://www.fl DOE.org/flbpso).

3. Maintain a list of state-approved providers.

(b) School districts providing supplemental educational services shall:

1. Identify eligible students and develop equitable procedures for prioritizing services if demand exceeds available funding.

2. Notify eligible families prior to and after the start of the school year regarding the availability of services and the process for obtaining supplemental educational services in an understandable and uniform format. This notice shall include:

a. Contact information for state-approved providers serving the school district, including providers that are able to serve students with disabilities or English Language Learners and accessible through technology, such as distance learning;

b. A description of services, tutor qualifications, and evidence of effectiveness as determined by the Department's evaluation of academic proficiency of each provider;

c. A description of the procedures and timelines for selecting a provider and the commencement of services;

d. The enrollment form with clear instructions; ~~and~~

e. An offer to assist parents in choosing a provider; and

f. An explanation of the benefits of receiving SES.

3. Unless a waiver is granted by the State Board of Education, pursuant to Section 1008.331(3)(a), F.S., hold open student enrollment for supplemental educational services until the school district has obtained a written election to receive or reject services from the parents of at least a majority of eligible students or until the school district has expended all available funds.

4. Make available the supplemental educational services enrollment forms to the parents of eligible students and providers prior to and after the start of the school year.

5. Provide enrollment lists, parent contact information, and available student diagnostic data to supplemental educational services providers sufficiently in advance of October 15 so that eligible students may begin receiving supplemental educational services no later than October 15.

6. Enter into a district/provider contract with each approved supplemental educational services provider approved to serve the school district; the school district is responsible for ensuring services are consistent with the district/provider contract.

7. Notify the Department when a district/provider contract is terminated with cause due to a breach by the provider where the termination is based upon a failure to comply with or meet provider assurances set forth in SES Form 100. Notification shall occur within fifteen (15) days of the date of the termination of the contract. Notification shall include the name of the company or organization, the date the contract was terminated, the assurance the provider failed to comply with, and the factual basis which resulted in a breach of contract.

8. Develop in consultation with the parent and the provider a student learning plan. ~~Enter into a student learning plan.~~ The plan shall be consistent with the student's individual education plan, English language learner plan, or the plan developed under Section 504 of the Rehabilitation Act. The plan shall include the following:

a. A statement of specific achievement goals for the student; these goals shall be aligned with the Sunshine State Standards as approved by the State Board of Education;

b. An explanation of how the student's progress will be measured;

c. A timetable for improving achievement; and

d. An explanation describing how the student's parents and teacher(s) will be regularly informed of the student's progress.

9. ~~8.~~ Reassign students to another provider for the remainder of the students funding allocation if the providers services do not begin by the timelines established in this rule, or if the providers district/provider contract is

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terminated, or if the provider is removed from the state-approved list.

10. Display on its Web site the following information:

a. Beginning with the data from the 2007-2008 school year, and for each subsequent school year, the number of students who were eligible for and the number of students who participated in SES; and

b. For the current year, a list of state-approved providers serving the school district and the locations where services are provided.

(c) State-approved supplemental educational services providers shall:

1. Be capable of delivering supplemental educational services in the school districts where approved by the Department.

2. Provide services that are secular, neutral, and non-ideological.

3. Provide services outside of the regular school day, such as before or after school, on weekends, or in the summer.

4. ~~Unless provided by the school district, Ceonduct diagnostic a pre-assessment assessments~~ to determine student's gaps in knowledge and skills prior to beginning services.

5. Consult with the school district and Use the results of the diagnostic assessments, student academic performance information provided by the district, and input from the parents to develop the student learning plan.

6. Provide educational services designed to enable the student to attain achievement goals specified on the student learning plan.

7. Measure the student's progress and regularly report progress to the student's parents and teachers.

8. Adhere to the timetable in the student learning plan for improving the student's achievement.

9. Provide services consistent with health, safety, and civil rights laws.

10. Abide by school district policies and procedures on criminal background checks and the provisions of Section 1012.465, F.S.

11. Refrain from altering, completing, or submitting enrollment forms on behalf of a parent.

12. Provide services to eligible students no later than October 15 of each school year contingent upon receipt of the district-approved student enrollment lists at least twenty (20) days prior to the start date. In the event that a contract with a state-approved provider is signed fewer than twenty (20) days prior to October 15, the provider shall have no fewer than twenty (20) days from the date the contract is executed to begin delivering services.

(4) Supplemental Educational Provider Approval.

(a) Application for approval by the Department for the provision of supplemental educational services shall be made on Form SES 100, Supplemental Educational Services Provider Application.

(b) Except for that portion of the application submitted in hard-copy as set forth in Form SES 100 ~~documenting financial soundness and assurances~~, applications shall be submitted on-line at [www.fldoe.org/flbpso](http://www.fldoe.org/flbpso). The hard-copy financial soundness documentation and assurances of the application shall be delivered to the following address: Florida Department of Education, Bureau of Student Assistance Public School Options, 325 West Gaines Street, Suite ~~348~~ 346, Tallahassee, Florida 32399-0400.

(c) Applications submitted by means other than those set forth above and applications received after the deadline for submission, set forth in Form SES 100, regardless of the cause or nature of the delay, will not be accepted or considered for approval by the Department.

(d) Approval requires the timely submission of all documents and meeting the requirements set forth in Form SES 100.

(e) Approval shall be for one year. Approval is non-transferable and valid only for the person or entity named by the Department in its notice of approval.

(f) An applicant is ineligible to apply for approval to provide supplemental educational services for the next school year subsequent to any of the following:

1. Termination of a supplemental educational services contract with a school district with cause in fifty (50) percent or more of the districts served in the previous school year, where the termination is based upon the provider's failure to comply with, or meet, provider assurances set forth in SES Form 100; or

2. The award of an unsatisfactory service designation for two (2) consecutive years, beginning with the service designation awarded in the 2010-2011 school year.

(5) Monitoring of Supplemental Educational Services. The Department is authorized to conduct announced and unannounced site visits of school districts and of approved providers to monitor compliance with the approved application, district/provider contract, student learning plan, and requirements of this rule.

(a) Monitoring shall be in compliance with Education Department General Administrative Regulation 34CFR 80.40(a) and consistent with the authority for oversight in Section 1008.32, F.S.

(b) Each district and provider shall maintain documentation to verify compliance with the requirements of law 6A-1.039

and rules applicable to supplemental educational services and comply with the Department's monitoring procedures, including on-site and desktop monitoring and self-evaluations.

(c) The Department shall annually develop a report of the results of the monitoring reviews.

(6) Evaluation of Supplemental Educational Services: The Department shall evaluate and report the quality and effectiveness of supplemental educational services provided by each state-approved provider. The evaluation shall be implemented pursuant to Section 1008.331(5), Florida Statutes ~~will measure academic proficiency in reading/language arts and mathematics for all students participating in supplemental educational services.~~

(7) Complaint Process: The following process is established to allow for notification to the Department of a violation of the laws or rules related to supplemental educational services by providers or school districts.

(a) To initiate a complaint, a person must submit a written complaint to the Florida Department of Education using Form SES 200, Complaint Regarding Supplemental Educational Services, which is hereby incorporated by reference to become effective upon the effective date of this rule. This complaint form may be obtained by contacting the Florida Department of Education, Bureau of Student Assistance ~~Public School Options~~ at (850) 245-0479, or 325 West Gaines Street, Suite ~~348~~ 346, Tallahassee, Florida 32399-0400 or by downloading the form on the Department's web site at [www.fldoe.org/flbpso](http://www.fldoe.org/flbpso).

(b) Upon receipt of a complaint, the Department shall review for sufficiency and shall close the complaint where it does not allege a violation of the laws regarding supplemental educational providers. Where the complaint alleges a violation of the laws regarding supplemental education providers, the Department shall cause the complaint to be investigated. The provider and school district shall cooperate fully in the investigation.

(c) The Department shall review the investigation and provide notice of its intended action to the provider, specifying the nature of the action, such as dismissal of the complaint, request for corrective action, referral to the district, or removal from the approved provider list or enforcement under Section 1008.331, F.S. The notice shall state the grounds for the intended action. Nothing in this rule shall restrict the Department's authority to summarily suspend or remove a provider from the approved provider list where the Department finds that an immediate serious danger to the public health, safety, or welfare exists. Upon determination that there is a need for immediate action, the Commissioner or designee shall provide written notice of the immediate action.

(d) Unless the complaint is closed under the provisions of paragraph (7)(b) of this rule, or summary action is taken under the provisions of paragraph (7)(c) of this rule, the entity against whom a complaint has been made shall

be provided notice of the complaint and the opportunity to respond prior to the Department's intended action.

(8) Removal from the State-Approved Supplemental Educational Services Provider List. A provider shall be removed from the approved list, and the provider and any related organizations shall be ineligible to re-apply during the following two-year period, following the process established in subsection (7) of this rule, for the following reasons:

(a) The failure to deliver services as provided in Section 1008.331(3)(b), F.S.;

(b) The award of an unsatisfactory service designation ~~The failure to contribute to increasing the academic proficiency of students~~ for two consecutive years, beginning with the service designation awarded in the 2010-2011 school year; ~~or~~

(c) When the investigation reveals that a school district has been fraudulently invoiced; or

~~(d)(e)~~ When the Department determines that the matter is of such magnitude that it cannot be addressed by the school district through its enforcement mechanisms, the failure to comply with provider responsibilities and assurances, the failure to meet and maintain the eligibility application requirements found in Form SES 100, the Supplemental Educational Services Providers Request for Applications, and the failure to comply with the requirements established for providers in this rule.

(9) Reporting Requirements.

(a) School districts are required to report, through the Department's automated student information data base system, students who are served by supplemental educational services.

(b) Supplemental educational services providers must provide auditable documentation of services and contact hours provided to each student to the school district.

(c) School districts and state-approved providers shall cooperate with Department requests for information pertaining to supplemental educational services.

(10) Grievance Procedures for Providers. This subsection establishes the basis and procedures for the resolution of disputes about the denial to serve as a state-approved supplemental educational services provider and the removal from the State-Approved Educational Services Provider List, as well as disputes about the award of a service designation.

(a) Hearing Officer. The Commissioner shall appoint one or more hearing officers to hear disputes and make a recommendation to the Commissioner for resolution of the grievance.

(b) Process for Filing a Grievance.

1. Grievances shall be in written form.

2. The grievance shall be mailed or delivered to the following address: Florida Department of Education, Bureau of Student Assistance, 325 West Gaines Street, Suite 348, Tallahassee, Florida 32399-0400.

3. In order to be timely, grievances shall be received no later than ten (10) days after the Department mails notice of the intended action.

4. Grievances that are not provided in written form will not be considered. Grievances received after the deadline will not be considered, absent demonstration of extraordinary circumstances beyond the control of the grievant.

(c) Contents of Grievance.

1. All grievances shall contain the following items: the name and mailing address of the organization, the name, mailing address, e-mail address, and telephone number of the grievant or representative, the provider identification number, the grounds or basis for the grievance, and any documentation the grievant intends to rely on. A grievance that requests reconsideration without identifying alleged errors or deviation from the application is insufficient.

2. Unless the Department receives an alternative address, all Departmental notices to the grievant will be provided by e-mail to the e-mail address provided by the grievant.

(d) Basis of Grievance.

1. Grievances must contain a statement of specific facts the grievant contends warrants reversal or modification of the Department's action and a statement of the specific rules or statutes that the grievant contends requires reversal or modification of the Department's action. A grievance that requests reconsideration without identifying the specific facts that warrant reversal or modification or that fails to include the specific rules or statutes that require reversal or modification will not be considered.

(e) Pre-review procedures.

1. Within thirty (30) days of receipt, the Department shall review the grievance and any supporting documentation identifying the specific alleged errors and deviations submitted with the grievance.

2. Where the Department determines that the grievance should be granted, the grievant shall be notified within three (3) working days of the decision and the grievance shall be dismissed with no further action by the Department.

3. Where the Department determines that the grievance should not be granted, the grievance and response shall be forwarded to the Hearing Officer.

(g) Conduct Review. Proceedings shall be as informal as fairness and principles of due process will allow. The Hearing Officer may disregard or discount evidence that is not credible, material, competent, or relevant.

1. The determination shall be based upon written submissions unless a request for a formal review is received with the grievance and the Hearing Officer determines that a formal hearing is necessary in order to resolve the grievance. Either the agency or grievant may request a formal review.

2. Reviews may be conducted telephonically.

(h) Recommendation. The Hearing Officer shall recommend findings of fact and conclusions of law to the Commissioner.

(11)(10) Confidentiality. The identity of any student who is eligible for or receiving supplemental educational services shall not be disclosed to the public without prior written consent of the parents of the student, however, unless a student is a dependent student as defined in 26 U.S.C. s. 152 (s. 152 of the Internal Revenue Code of 1954), when a student has attained 18 years of age, prior written consent of the student is required before disclosure under this subsection occurs. Providers shall abide by the procedures of the school district and the Department for the security, privacy and retention of student records in accordance with the requirements of Section 1002.22, F.S. and 20 U.S.C. § 1232g.

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