



The rise and fall of supplemental educational services: Policy implications for government markets

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Key Points

- The rise and fall of supplemental educational services (SES), a federal education policy designed to provide free after-school tutoring to low-income students in struggling schools, provides important lessons in governing, policymaking, and the functioning of government markets.
- The central challenges the SES program faced—namely, the fact that the federal government created and defined the operation of the SES market but was not a direct consumer of its services—are instructive for the future success of the relatively mature charter school market and the developing online-learning market.
- Alignment must not only exist between accountability and consequences for the educational system and providers, but it must also extend to the inputs and outcomes of the organizations and entities in the relationship. Performance-based funding or contracting could be used to help align incentives with outcomes.

Free after-school tutoring, known as supplemental educational services (SES), was brought to life by the No Child Left Behind Act (NCLB) in 2002. SES was designed to provide extra academic assistance to low-income students in schools failing to make accountability targets. Seldom has the vision of an educational policy deviated so far from its actual results.

SES is a cautionary tale, for there has never been an experiment like it in federal law, and its rise and fall provides important lessons in governing, policymaking, government markets, and the

structure of the educational system. SES also offers lessons for ongoing efforts to improve charter school quality and authorizing, and developing online-learning marketplaces.

SES operated within a hybrid government market, where the government defined the operation of the market but was not a direct consumer of its services. The charter school and online-learning markets are similar in key respects. The central challenges associated with the SES market are instructive for the future success of the relatively mature charter market and the developing online-learning market.

What Is SES?

NCLB required public-school districts with schools that had not made adequate yearly progress (AYP) for at least two consecutive years to provide SES to children from low-income families. SES was implemented at the local level and relied almost exclusively on the private sector to offer eligible students a range of tutoring choices at no cost to their families.

No new federal funding was allocated to states or districts to implement SES. Rather, school districts with underperforming schools were obligated to set aside 20 percent of their Title I funding for SES. NCLB determined the per-pupil funding amounts by dividing the district's Title I funding by the number of students in poverty. It also laid out criteria for states and districts to approve SES providers, arrange for services, and manage contracts.

The goal was to provide immediate, personalized assistance to students in persistently failing schools, and policymakers believed that this assistance needed to be offered by entities outside of the "system." While providing extra academic assistance to students who could not afford it seems noncontroversial, the political and policy machinations involved in creating SES embedded fundamental flaws that led to its failure.

The Political Foundations of SES

SES was a unique policy—born of compromise between Republicans and Democrats—that salvaged some element of choice and private-sector involvement in NCLB when full school choice proved untenable. It was never fully embraced by choice enthusiasts or conservatives but was relentlessly vilified and attacked by the educational system and status quo defenders who saw it as a serious threat.

There was broad consensus among both parties that the Improving America's Schools Act of 1994 failed to significantly improve educational outcomes, particularly for the most underserved students. However, policymakers struggled to address the failures of the 1994 law, as Democrats were proposing increased spending and regulations and Republicans were pushing for block grants and vouchers. Then—presidential candidate George W. Bush proposed taking elements from both positions and adding heavy doses of measurement and consequential accountability to change the trajectory of US educational performance.

Conservative Republicans wanted school choice for all. Nearly all Democrats were firmly opposed to vouchers in any form. It became clear that not including universal vouchers wasn't a deal breaker for many House and Senate Republicans. Consequently, the outlines of a compromise emerged: public-school choice and SES became consequences imposed on failing schools and an escape route for the students trapped in them.

SES provided parents with meaningful purchasing power to obtain extra academic assistance. And although politics played an important role in the formation of SES, the case for including SES was not completely politically driven. Policymakers on both sides of the aisle acknowledged that something had to be done for low-income students in schools that were not getting the job done under NCLB.

For Republicans, providing immediate, personalized assistance through SES was a satisfactory solution. Democrats tentatively accepted SES because it made federal money available for economically disadvantaged students to level the playing field for the most underserved students. SES presented enough choice (and private-sector involvement) for most Republicans and was

largely ignored by enough Democrats (or embraced on social-justice grounds) to help ensure NCLB's passage.

SES in Practice

SES was ultimately compromised by unrealistic aspirations and unclear mandates. After its passage, the law was handed off to the US Department of Education (USDE) to write regulations and aid affected parties in interpreting its provisions. The USDE emphasized creating and expanding the new tutoring market but largely overlooked the importance of ensuring high-quality providers.

NCLB implementation began slowly, but the education system's objections to the law grew quickly because the system largely rejected both the means and ends of NCLB, and significant pushback emerged over SES.

Dissent grew over the fact that the consequence of providing SES was divorced from the accountability system that generated the consequence. Schools ran into trouble as a result of low test scores on their state assessments, but it was not clear that providing SES would result in improved test scores in the areas needed to help the school escape the law's increasing consequences. Schools were typically tripped up by the test scores of one or more subgroup(s), yet SES was to be offered to all low-income students in a school, regardless of whether they were part of an underperforming subgroup. Thus, there was no obvious alignment between the cause of the consequence and the intended remedy.

Implementation Challenges. Cajoling districts into implementing SES also proved challenging. It is difficult to get states and districts to effectively implement policies that they like or agree with in principle. It is nearly impossible to get them to implement a policy they aggressively dislike: SES claimed 20 percent of districts' Title I budgets, a giant bitter pill for them to swallow.

Similar to the most ineffective charter laws under which districts are in charge of authorizing charter schools, SES gave districts the responsibility of implementing SES, which created

significant role confusion, as districts played regulator and competitor within the constraints of an accountability system that was viewed as fatally flawed. Districts were tasked with implementing SES to ensure its success, including enrolling students, contracting with providers, and dealing with myriad other operational details. Districts had no extra funding to undertake such tasks and knew that the better they implemented SES, the less of their own funding would be left—not the precondition for aligned incentives and successful policy.

The Shortfalls of SES as a Government Market. For various actors, the law’s incentive structure was misaligned. Providers wanted students and the funding they represented, while districts wanted to keep the funding and avoid consequences. Providers wanted a free-market approach, but SES was a government-created and regulated market that placed constraints on the regulators in ensuring quality and effective implementation. SES may have resolved the thorny and lengthy district-procurement process, but it also created a host of problems that were arguably more challenging.

School districts thus became unwilling victims tasked with implementing their own punishment. It quickly became clear, though, that the policy infrastructure allowed districts to in many ways effectively minimize their pain, with very little consequence from the other actors in the marketplace. State agencies had no real or perceived enforcement authority, providers had little direct recourse, and parents of low socioeconomic status were frequently unaware of their options.

Some providers also behaved in problematic ways. There was no incentive for states to embrace a rigorous provider approval process, and once a provider was approved, it had a hunting license to bag as many enrollments as possible. This resulted in an ever-increasing number of questionable providers that became overly competitive to secure enrollments in the face of growing district resistance.

Such a dynamic led to conflict between the districts and providers, which grew virulent as the amount of district funding required to provide SES grew with the number of students eligible for

services. With most states abdicating their responsibility to remove poor-performing or bad-acting providers, providers had little to fear, and too many took advantage of this situation.

Not only did states have no incentive to rigorously approve or remove providers, but districts also had no influence over provider quality or alignment to district instructional approaches. And while states were empowered under the law to step in and ensure effective implementation of SES, they had little capacity and less incentive to do so. With no funding allocated to implement SES, and an emphasis from the federal government to expand the pool of providers, states were stuck between a rock and a hard place: if they enforced the law strictly, they would face rebellious districts.

At the same time, the funding mechanism that generated the per-pupil amounts for SES provided a healthy return for providers. The cost of the services relative to the vaguely defined expected outcomes left many questioning the intent of the law. When subsequent studies showed mixed or generally small academic gains from SES, serious questions about the law's funding mechanism and viability surfaced.

In the end, the USDE attempted to enforce SES policies, which was devastating to the long-term viability of the program. The federal government was forcing reluctant parties to do business together, and without a third-party mediator in the states, the arrangement created friction and resistance. The federal government created, regulated and tried to run the SES market, an extremely unlikely path to success. This and regime change ultimately led to SES's demise.

The Aftermath

Policymakers assumed there were enough high-quality providers to meet demand. While there were reputable tutoring and supplemental-education providers, there were not enough to serve all students eligible for SES, and the policy scheme made it difficult for providers to run national operations.

Thus, a dysfunctional dynamic was cemented: federal pressure to ensure access for students and providers created a low bar for quality, and a light touch from states and districts in monitoring

and enforcing provider quality ensured the proliferation of providers of mixed effectiveness. A flood of new entrants of questionable quality and ethics entered the SES marketplace.

The quirks in the funding mechanism also resulted in a disproportionate allocation of providers and services across the country. Urban districts had higher per-pupil amounts relative to suburban or rural districts. While providers seeking the highest rate of return was logical from a business standpoint, it was not a desirable policy outcome because it created a high volume of providers clustering in certain areas and almost none in others, ensuring the near-universal enmity of big city school districts.

The legal construct for SES failed to address the issue of informed parental choice. The idea embedded in SES was that parents would seek the highest-quality providers that delivered the best results. However, parents were selecting providers without directly paying for the service, and their perception of provider quality was often obscured by slick marketing pitches. The complexity of dealing with many providers and the difficulty families faced when choosing among those providers weakened parental support for SES and has implications for policy reform today.

The broader goals and structures of NCLB also came under increasing attack because of the many perceived faults in the law, especially the ratcheting pressure to produce academic results for students. The USDE believed that providing some relief on SES would help lessen the strain on the law's overall goals. Certain large districts, most notably Chicago Public Schools (CPS)—headed by Arne Duncan, then superintendent of CPS and now US secretary of education—received waivers to provide their own SES, retaining more Title I funding and allowing control over SES.

While providing some relief, the waivers did not go far enough for districts, schools, the organizations that supported them, or the new Obama administration. In fact, SES was a key reason the Obama Administration provided broad-based waivers for many of NCLB's requirements. With a few administrative rulings, the administration effectively killed SES in all but a few states and districts.

Almost all major providers have since gone out of business or retooled their strategies for today's market. A once-thriving market of billions of dollars is now a faint shadow of what it once was. The great SES experiment has all but run its course, although its rise and fall is enlightening for once and future government-created marketplaces such as charter schools and online learning.

SES Market Parallels: Charter Schools and Online Learning

Some could argue that policymakers should have noted the lessons from the charter school movement, which was nearing 10 years old when SES came onto the scene. (In 2000, there were approximately 1,500 charter schools serving more than 250,000 students, while today there are 6,400 charter schools serving more than 2.5 million students.¹) At the time of NCLB's enactment, the quality of charter school authorization was still developing, with many states placing charter school authorization in the hands of local school districts (a situation akin to SES).

The charter sector has more successfully dealt with the conflicted situation districts find themselves in by adding nondistrict charter authorizers to approve and monitor charter quality. Like the early days of charters, SES was focused on creating the maximum number of choices, which all too frequently came at the expense of quality. Whereas states developed more sophisticated authorization regimes for charter schools, they generally approved any SES provider that applied, and rarely removed them.

Another parallel between SES and charters lies in their funding mechanisms. SES funding was taken from districts' budgets, similar to the perception that charter schools take money from the district in which they operate. SES funding also yielded widely varying levels of reimbursement for the same service across states, similar to charters. This made it difficult for providers to consistently operate across different states and districts and created incentives for providers to serve high reimbursement areas and ignore low ones (a perverse policy outcome that left rural districts without options and urban ones glutted).

Whereas the charter sector has grown, increased quality, and improved authorization while decreasing conflicts of interest, SES was never able to make these transitions. There are a number of possible reasons for this, including the fact that compared to SES, charters enjoy broader political support and charter schools are both harder to open and close. The charter sector has pushed for experimentation in governance, driven by local demand and overseen by local and state administration (versus the federal market creation and regulation of SES). While the charter school market is better constructed, it still suffers some of the same flaws as SES and therefore some of the same vulnerabilities.

In a similar vein, the adherents of online learning, seeking to create robust marketplaces of digital-content providers, should take heed of the lessons of SES. For example, an early view of SES was that the private market had developed meaningful solutions to support the academic improvement of struggling students. While there were certainly quality providers in the market and some interesting innovations, this hope proved to be overly optimistic in the face of the complicated and dispersed marketplace. Similarly, while the number of high-quality online providers is growing, there are many new entrants of uneven quality seeking to meet the demand of the rapidly expanding market.

The consequences of a government-created online-learning marketplace are less existential to a district's funding or autonomy than SES was, but the proliferation of providers of uneven quality is similar to SES and potentially destructive to the market. Moreover, like SES, government is creating the market and attempting to regulate it, but largely facilitating a transaction between private entities and consumers.

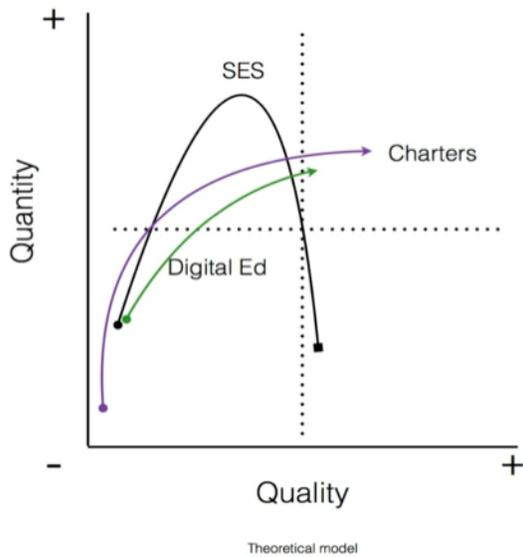
Without clear accountability for provider entry and exit, careful delineation of whether government can be a competitor and regulator, and clear academic results in exchange for available funding, online learning may run into trouble. Yet like charters, the online-learning marketplace is not a federally mandated market created in response to perceived failure, which should provide some insulation from catastrophic failure.

A federal structure of funding and operational authority resting at the district level combined with policymaking and market creation at the state and federal level ensures that incentive misalignments, misunderstandings, and mistrust will plague government-created education marketplaces and constantly undermine their growth and effectiveness. Any government-created market must deal with these realities to avoid problematic implementation and potential collapse.

SES's Lessons for Market Viability

The charter sector has steadily grown and increased in quality but still harbors structural flaws. The number of online-learning providers is quickly growing, but it remains to be seen if the transition from rapid growth to sustained quality can be made. There are key differences between SES and these other two education markets, but the lessons learned from SES can help each grow more effectively. Figure 1 provides a theoretical view of the quality and growth of the SES, charter, and online-learning marketplaces.

Figure 1. Market View: Provider Quality and Quantity over Time



Source: The author

There are many lessons to be learned from SES, including:

1. **Balancing quantity and quality.** Defining the balance between quantity and quality requires determining how market forces can be additive as opposed to competitive. A new market needs to grow quickly to attract new entrants. However, growth and innovation often come at the expense of quality. Achieving quality growth implies a slower trajectory as the mechanisms to ensure quality weed out entrants or poorly performing existing actors. SES never made the transition from initial explosive growth to sustained quality growth. The political and policy flaws embedded in SES caused much of this imbalance, but so did the market players who were not properly incentivized to find this balance.
2. **Determining the proper government roles.** Varying levels of government have different roles and incentives, so policymakers must pay attention to what they can and cannot do and what they should and should not do. If changes to various educational structures and statutes are necessary, thought must be given to how and which levels of government ought to participate in moving the system from its current state to a proposed better, future state.

The successful functioning of a government-created market is likely inversely related to the distance between the regulator and the marketplace; for SES, the state was far removed from the day-to-day operation of the market, and therefore ineffective. The task of regulating the market also fell to districts, which had an inherent conflict of interest in being both regulator and participant. Today, some of the same mistakes are being made in online learning where too much authority is given to states as regulators and market creators, while districts are frequently both referee and player. And although online learning is usually not the result of consequential accountability, in many cases the success of online learning means more dollars allocated to private providers and fewer dollars allocated to districts and schools, which is not a recipe for stability.

3. **Understanding government-created versus private markets.** Government-created markets are inherently different than consumer markets that the government seeks to regulate. As demonstrated by SES, government markets possess their own peculiar logic that is different than private markets. The operation of a government market is not necessarily predicated on achieving definable results, but rather on whether the market is perceived to be addressing an identified problem in a politically acceptable way.
4. **Balancing business and government, incentives and outcomes.** There must be a balance between business and government and between incentives and outcomes. The rewards to SES providers were disproportionate to the academic results and practical operational realities faced by districts. In short, the political price to create the market was high, and the benefits primarily accrued to SES providers as opposed to being equally distributed among the various players. Consequently, the regulators and creators of the government market were forced to implement a market perceived as unfair and misaligned. This is not an equation for sustainability.
5. **Provider self-policing.** Providers need to police themselves. In SES's "every provider for itself" mentality, competition was fierce and cooperation was nonexistent. Providers consistently failed to police their own ranks and recognize that the ill-formed, government-created marketplace was not fair to either side. Government will regulate and provide the legal framework for a market, but if it has to define and enforce quality, the battle to ensure a vibrant market is likely lost.
6. **Managing barriers to entry.** Barriers to entry are not necessarily bad but must be balanced by opportunity for market entry and innovation. If anyone can enter a market, there may be innovation, but poor quality and potentially suspect ethics are also likely. A barrier to entry that is too high locks in current players, stifles innovation, and is no bulwark against human nature. A balance is needed but difficult to define.
7. **Avoiding conflicts of interest.** Preventing real, perceived, and structural conflicts of interest means that the regulators in a government market cannot also be the providers.

Policymakers should not expect entities that stand to lose funding to be in charge of implementing a policy that may result in fiscal losses. Entities that regulate cannot participate; the entity that creates the market needs a third party to mediate conflicts.

8. **Aligning accountability and consequences.** For the system and providers, alignment must exist between accountability and consequences. Misalignment creates significant mistrust and long-term challenges, and attempting to create a new market in the context of a directed consequence rather than as prevention or a menu of options is not likely to thrive. Alignment must also extend to the inputs and outcomes of the organizations and entities in the relationship. For example, performance-based funding or contracting could be used to help align incentives and outcomes.

Conclusion

SES produced some positive results for the individual students who received great services from quality providers. In fact, some studies showed that overall, SES produced some small positive academic outcomes. But the political price to achieve these modest results was too high, complex, and confrontational. The marketplace incentives exacerbated the fundamental flaws baked into America's uniquely federal education system.

The future viability and potential of the charter school and online-learning sectors rest on the predictable and balanced operation of government-created markets. With charter schools, various government entities are responsible for creating, regulating, and funding a system of schools parallel to the traditional system. While this market has proven durable and grown steadily, it continues to operate in competition with a much larger system and in the context of political whims. As such, the charter sector must remain vigilant and expansionist, flexible but cautious. Unlike changing market conditions in a private market, when trends or incentives change in a government marketplace, a single stroke of a pen can wipe out a whole industry.

Online learning is more similar to SES in that it is a government-created market that supplements rather than directly competes with the usual delivery method of traditional districts and schools. Like SES, there is a dramatic growth curve of online-learning providers, with weak quality

controls for market entry and haphazard regulatory processes to monitor quality or force bad actors out.

Unlike SES, online learning is not a consequence for failure, nor is it inextricably linked to a controversial law, which undoubtedly takes some heat off the market. But online learning will not fulfill its potential if the policy flaws in the current marketplace are not seriously discussed and resolved. What is politically acceptable can quickly change, and the consequence for political unacceptability is market collapse, as opposed to the creative disruption that characterizes changes in private markets.

Like an unbalanced gyroscope, distortions or misaligned incentives within a government-created market can quickly spin out of control and destroy a seemingly inevitable marketplace. SES is perhaps the most notable example of this, but it could befall other markets unless policymakers exercise a greater grasp of what is, and a more humble assessment of what can be.

About the Author

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Notes

1. National Alliance for Public Charter Schools, Estimated Number of Public Charter Schools & Students, 2013–2014 (February 2014), www.publiccharters.org/wp-content/uploads/2014/02/New-and-Closed-Report-February-20141.pdf; National Alliance for Public Charter Schools, “Total Number of Schools,” www.publiccharters.org/dashboard/schools/page/overview/year/2014; and National Alliance for Public Charter Schools, “Total Number of Students,” www.publiccharters.org/dashboard/students/page/overview/year/2014.