Devil is in the Details: Examining Equity Mechanisms in Supplemental Educational Services

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Introduction

Market-based school improvement reforms that rely on principles of competition, choice and limited regulation as central levers for improving student outcomes have emerged as a potential mechanism for addressing the needs of diverse learners. The Supplemental Educational Services (SES) provision of No Child Left Behind (NCLB) is an example of a market-based school improvement reform. The policy offers parents “mini-vouchers”, or a choice of tutoring programs from a host of third-party organizations that use public money to provide additional academic help to eligible students in the form of after-school tutoring. In this chapter, we explore how the design of the SES policy impacts access to quality instruction for eligible low-income students and their families. Drawing on data from a mixed-method, multi-site study on the implementation and impact of SES, we consider how well the design elements that advance commercial interests mesh if at all, with the equity orientation and goals of NCLB. The chapter provides new perspectives for understanding the tensions within market-based accountability strategies in education reforms that target children in underperforming and under-resourced schools.

Policy Background

Under No Child Left Behind, schools identified as in need of improvement for two or more years are required to offer parents of children in low-income families the opportunity to receive extra academic assistance, or SES. Both pre-existing and new organizations offering after-school study and tutoring programs compete for SES funds and the opportunity to deliver tutoring services to eligible students, including both for-profit and nonprofit providers. The structure and characteristics of these organizations varied widely along multiple elements such as hourly rates, tutor qualifications, tutoring session length, instructional strategies, and curricula.

The law required that these organizations align the content and educational practices of SES to the state's academic content standards, as well as applicable federal, state, and local health, safety, and civil rights laws, [§1116(e)(12)(B)(i)] and should be based on high-quality research with evidence of their effectiveness in increasing student academic achievement [§1116(e)(12)(C)]. In addition, the law required states to withdraw approval from SES providers that failed to increase student academic achievement for two or more years. Consistent with a market-based orientation, the law also restricted schools, district and states from regulating provider programming – based on the idea that doing so would dampen competition, which is viewed as essential to improving the supply and quality of tutoring.

The SES provision of NCLB is rooted in the original conceptualization of the Elementary and Secondary Education Act of 1965 (ESEA). The initial push for equity in ESEA was defined as leveling the playing field so that students in communities struggling economically could have access to supplemental, high quality instruction intended to make up for what were perceived at that time as cultural and economic disadvantages, relative to their middle class counterparts (Goodlad & Keating, 1990). Under NCLB, SES was included as part of a compromise between Republican members of Congress, who supported vouchers and Democrats who resisted this effort. Unlike vouchers, which replaced public schooling provisions with private approaches to schooling, SES represented an expansion of more responsibility for local and state educational agencies (Henig, 2006). Supplemental instruction was intended as a means of improving the quality of instruction for low-income students, by allocating a portion of Title I funds out of district control and distributing it among competing third-party educational organizations. Public funds were earmarked for these organizations to design and deliver instructional programs before, during, and after the school day. As noted above, districts and states were afforded limited authority to regulate these providers under the principle that market forces provide accountability. Furthermore, districts and states were also responsible for creating the conditions where there was an adequate and responsive supply of services for parents, who are in other words, the “consumers” of SES.

Federally-funded compensatory policies that incorporate market-based accountability strategies present a particular paradox. From one perspective, market-based accountability strategies are intended to redistribute resources and ensure that government programs prioritize towards low-income students in order to level the playing field. From a different perspective, these compensatory policy designs are anchored in theories of market-based accountability where the market is the primary mechanism ensuring access to high quality tutoring. The greater the competition among different kinds of providers (government and non-government), the greater is the supply and the more likely that weak providers (with low attendance) will exit the field. Third party entities bear central responsibility for the design and delivery of services to students in public schools. Under this second perspective, incentives for SES service providers, particularly for-profit organizations, to serve high-needs students differ somewhat from those intended in the original ESEA law. For these companies, the bottom-line is staying alive in a competitive market, reducing costs, and increasing profit margins. The case of SES represents a problematic paradox in market-oriented reforms aimed at improving equity and access. Principles of free market competition prefer limited government regulation and prioritize competition. The ideals of equity and access epitomized, although somewhat unrealized in ESEA, identify government and government regulation as critical to improving the quality of education for low-income students. Leveling the playing field means reducing barriers to unequal access via government intervention and funding. In commercialist principles, leveling the playing field connotes limiting government intervention and lowing barriers to entry for vendors. These ideas can be reconceptualized and further understood as the principles of equity and commercialism.

The Equity Principles

Equity-oriented policies are based on the principle of fairness, that children, regardless of income, should have equal access to high quality schools. Under ESEA, the first categorical and compensatory programs operated from a deficit orientation. The programs were designed to equalize opportunities by using educational interventions to make up for what were considered to be student's social and personal "deficits". In ESEA's latest iteration, NCLB launched a Federal drive to draw attention to cultural and socio-economic barriers (e.g., language proficiency, living in poverty, and learning disabilities) that have frustrated student access to quality education and perpetuated persistent achievement gaps. In particular, NCLB requires that all children, including historically under-served populations such as English language learners (ELL) and students with disabilities, be considered fully in any measure of school "success", as determined by their proficiency on state standardized tests scores. Toward this end, SES aims to level the playing field by giving low-income parents the option of after-school tutoring – which middle and upper class parents long have employed through private funds – to increase student advantage.

The Commercial Principle

The SES provision illustrates the commercial principle in NCLB. Under this principle, the goal of achieving equal access to quality services in principle is achieved through mechanisms anchored in the commercial workings of the free market. Market-based policies address the problem of bureaucratic oversight because stakeholders operate outside the parameters of the perceived inefficiencies of public schools that, many have argued, failed to improve the academic achievement of students. SES functions under the market-based assumption that parents will select the best services for their child based on quality information about the nature of these services. Ineffective providers will be weeded out by supply and demand, leaving the most effective supplemental service providers. Student achievement will improve because of the tutoring they received. The intended outcome in the commercial realm is that these choices will provide parents, specifically those from low-income families, with more opportunities to remedy the structural inequities that historically have existed in their children's schooling. Table 1 below provides a summary comparing these two principles within the context of SES.

This chapter further examines the policy conditions under which reforms (such as SES) use market-based accountability as a central mechanism for improving the quality of instruction. We utilize the idiom, "the devil is in the details" to identify and explain the levers in the policy design that are in tension with equity principles. We argue that there is a tension between the overarching equity goals in federal compensatory policy and the nuts and bolts (or details) of using market-based reforms and/or strategies to achieve equity.

Advantages and Current Limitations of Qualitative Work on Education Privatization

Privatization of education is multifaceted and understanding privatization reforms requires multidimensional approaches (Hentschke & Wohlstetter, 2007). Quantitative inquiry provides valuable data regarding inputs and outputs of a policy at play; however, it can be overly linear and rational in relation to the nuanced and non-rational implementation process of educational policy. The in-depth nature of qualitative research not only compliments statistical data, but may help attend to the experiences of those who are supposed to benefit from market-based reforms, as compared to the intentions and actions of those who implement and deliver them. This is especially the case when examining issues of equity in policy design and how it plays out in the instructional setting, not only in terms of teaching practices and philosophies, but in the nomenclature of the curriculum utilized for learning and the physical surroundings of instruction.

Qualitative research further provides a deeper understanding of power differentials and dynamics as policies are implemented. Relevant to the overarching issue of equity— understanding how power is mediated among the stakeholders, the policy, and the places of implementation— research is able to understand the effectiveness of policy objectives beyond that of academic improvement (Honig, 2006; Koyama, 2011). One iteration of power is the parent's or consumer's ability to "buy" services that will improve upon the academic achievement of those students that need it most. However, private companies, such as those delivering SES, are not subject to the same regulatory oversight as public schools. Qualitative research aimed at investigating the processes and practices of private companies may offer a better understanding of how parents access, consume, and act on information about private tutoring services, and how public and private entities interact to implement public policy. It is in the nuances of this process that research can begin to unveil not only the power dynamics amongst schools, private companies, and parent-consumers, but why and how market-oriented implementation strategies obscure, and at times work against intended equity goals.

Specifically, qualitative research on market practices can describe and assess patterns in what and how students are taught, the capacity of tutors in these settings, and the nature of their interactions with students in diverse settings. These patterns are critical to understanding the links (or lack thereof) between the intent of SES policy (improved student achievement) and the early results from statistical analyses. Qualitative studies also lead to the development of best practices and provide researchers and policymakers with important insights into school, community, and classroom level characteristics associated with student achievement.

Unfortunately, qualitative research on SES has been very limited to date. Early research on SES was largely descriptive, exploratory, and focused on the challenges of SES implementation in a context of limited capacity and/or will on the part of district and state providers in informing parents about their options and in monitoring and reporting on the quality of tutoring provided (see Burch, 2007; Burch et al, 2007; CEP, 2007; Fusarelli, 2007; GAO, 2006; Gill et al., 2008; Potter et al, 2007; Sunderman & Kim, 2004; Sunderman, 2006; Zimmer et al., 2007). Common challenges identified in this research included low student enrollment, unclear curriculum and alignment problems, lack of knowledge and communication among parents, providers and schools, inadequate monitoring and oversight of providers, as well as other problems related to market incentives and competition.

Existing qualitative studies have a number of limitations, including the absence of in-depth, context-rich data on the nature and quality of tutoring in that the majority of studies were conducted far from the instructional setting. Previous qualitative studies (Burch et al., 2007; CEP, 2007; Fusarelli, 2007; GAO, 2006; Gill et al, 2008; Potter et al, 2007; Sunderman & Kim, 2004; Sunderman, 2006; Zimmer et al, 2007) relied on the reports (through interviews) of providers, school administrators, and district and state officials. We view the reliance on interviews with policymakers, school administrators, and district and state officials on what was happening in tutoring sessions as a shortcoming that limited understanding of the meaning and value of SES for its intended beneficiaries – students in chronically underperforming schools – and the ways in which the identities and conditions at play in these settings contribute to its relevance and quality. In addition to interviews with policymakers, administrators, and other officials, and to address previous design limitations, we incorporated parent focus groups, observations of SES tutoring sessions, and archival data to add further depth to understanding the details within SES policy.

Research Design

This chapter draws on a subset of data from a multisite, mixed-method case study design that integrates quantitative and qualitative methods to examine the implementation and efficacy of SES. This research was conducted in five urban school districts (in four states), representing different student demographics—Milwaukee, Wisconsin; Minneapolis, Minnesota; Chicago, Illinois; and Austin and Dallas, Texas—and involved three linked and overlapping phases of research. *Phase 1* began in year 1 and continued into year 2, consisting of an in-depth qualitative study designed to define key elements of SES program models and the policy and practice variables that mediate implementation of these models. The data collected in *Phase 1* informed the measures of SES treatment constructed for the quantitative analysis. *Phase 2* likewise began in year 1 and continued in year 2; it was a major quantitative investigation of selection into SES (i.e., who registers and participates), SES program impacts on student achievement (i.e., effects of standardized test scores in English and Math), and the characteristics of SES that correlate with SES impacts.

The research phases were tightly integrated to augment the knowledge generated in this study. For example, issues or patterns in tutoring practice that were identified in the fieldwork (e.g., through observations of tutoring sessions, interviews with district staff, etc.) were discussed with the quantitative research team members, who in turn designed analyses (with the available data, which included but were not limited to hours of service per provider, test results by site, and attendance rates) to explore whether these issues or patterns influenced the variables accounting for measurable effects across different districts and SES providers. Similarly, findings produced in the quantitative analysis were discussed with the qualitative research team, who in turn, fine-tuned qualitative instruments to further explore in data and observations factors that might explain the emerging results.

In what follows, we discuss a number of findings illuminated through this collaborative approach to mixed-method research. We begin by discussing the qualitative design of the study upon which findings for this chapter are largely based.

Questions guiding our study

A distinguishing feature of our multisite, multi-method case study of the implementation and effectiveness of SES is an in-depth qualitative component designed to define key elements of SES program models and to identify how policy and implementation potentially mediate or influence SES impacts. We examined the following implementation questions:

1. What does SES tutoring look like in practice? The in-depth qualitative component of this case study allowed us to investigate much of what is missing in existing evaluations of SES: how much actual instructional time students received and the nature of the instruction itself. We wanted to see what was happening in an invoiced hour of SES and how instruction varied across different SES providers (by setting, format, and approach). As we analyzed the quality of instruction, we also focused on the nature of programming for particular student populations, mainly ELLs and students with disabilities, and how variations in these elements relate to program effectiveness. This led us to ask the following sub-question: how, if at all, are ELL and students with disabilities being served? From an equity standpoint, we examined the level to which SES provides students *access* to sufficient amounts of quality learning opportunities.

2. If quality of information is a key tenant of parent choice, what can we learn about the levels of information that eligible SES parents are obtaining? By assuming that parents are consumers, as framed by the SES policy, what do parents want and need to know in order to make informed decisions? And is available information responsive to the needs of all parents, including parents of students with special needs?

3. Finally, what are the implications of this analysis for the future of market-based education reforms? What short and long-term levers can policy reformers incorporate that will make the private sector centrally responsive and directly accountable to the needs of historically underserved diverse learners?

Sample

We used an embedded sampling approach consistent with our interest in understanding SES tutoring practices in context. Within each district, we sampled 3-6 providers. To capture a diverse sample, we selected providers that had a high share of the provider market in each district, high attendance levels relative to other providers in the same district, and two or more years providing SES in the district. In addition, we sought to include an equal number of digital, in-home, in-school, and community-based tutoring, as well as for-profit, nonprofit, district-provided, and, when applicable, faith-based organizations (see Table 2 for site specifics). We also attempted to include providers that advertised services for ELL populations and students with disabilities in order to examine how SES plays out for these critical student populations. However, obtaining a sample perfectly representative of these provider characteristics proved challenging. Limitations obtaining this sample included reluctance on the part of providers; low numbers of providers with more than one year of service in smaller urban districts (i.e., districts that only recently had to start offering SES); and limited numbers of providers that target ELL students and students with disabilities.

Methodology

We applied a constant comparative method (both within and across method) to develop and refine our understanding of patterns and dissimilarities in tutoring practices across providers. Further, the same data were analyzed and discussed simultaneously by different researchers in an effort to consider and develop multiple interpretations of events observed. As with any qualitative study, data analysis occurred both concurrently to and after the data collection process. The following section provides a more nuanced description of the observations, interviews, and documents analyzed for the study.

Observations

Building on decades of instructional research, we sought a research design that captured: (i) the complex social and structural contexts in which after-school tutoring occurs, (ii) the importance of analysis based on consistent findings across multiple sources of information, and (iii) the importance of qualitative analytic strategies in the analysis of observation data rather than reliance solely on statistical generalizations and statistics (see also Noam, 2004). To this end, we created an instrument that allowed us to assess the quality of the program as a whole (Burch & Good, 2009; Good et al., 2011). This instrument was based on collecting multiple observations, across sites, and using these observations to develop descriptive vignettes of tutoring practices. The observation instrument included indicator ratings at two 10-15 minute observation points, as well as, materials collection, a rich description in the form of a vignette, and follow-up information provided by the tutor(s).[i] Our observation instrument draws on these best practices to systematically collect information on teaching methods and instructional materials in use and to identify the correlation of different formats, resources (curriculum materials, staffing, etc.), and instructional methods on students' observed levels of engagement. Field researchers conducted observations of 94 tutoring sessions in the five urban school districts across a range of provider characteristics described previously.

Interviews and focus groups

We conducted 73 semi-structured, in-depth interviews with tutoring staff from each of the providers sampled in each district. The interviews focused on: (a) the nature of the tutoring program (instructional formats, curriculum, etc.); (b) staff professional background and training; (c) the level of interaction with schools, teachers, students, and families; and (d) particular adaptations for the needs of special education students or ELLs. These interviews provided distinct perspectives on the actual, ground-level work of the SES program and offered data and insight on the benefits and limitations of the program models employed by the various providers. Wherever possible, we conducted interviews with tutoring staff for individuals whose tutoring sessions we had observed.

We conducted 52 semi-structured, in-depth interviews with the program administrator(s) for each SES provider in the sample for each district. Administrator interviews focused on the instructional format and setting, as well as providers' formal curriculum. Administrators were also asked about recruitment and retention strategies; staff training; communication strategies with the district, school, and families; the guiding principles of their program; and diagnostic strategies.

To understand the context within which SES policy was implemented, we conducted semi-structured interviews with 20 district officials and four state-level personnel, representing each district and state in the sample. Interviews focused on inter-organizational coordination, organizational capacity, interaction with policy requirements, and policy intentions.

Finally, to examine the factors influencing parents' decision to participate in the SES program, the criteria they used to select providers, and their assessment of program quality, we conducted focus groups with parents of students who were eligible to receive SES and/or who received SES services during the 2009-2010 school years. We scheduled two parent focus group sessions per district, with one focus group in each of two geographic regions of each district. 168 parents across five districts participated in the focus groups.

Documents

For each provider, we collected data on staffing levels, curricular focus, length of tutoring sessions, student grouping practices, and physical descriptions of where the tutoring took place (i.e., in-person, on-line, etc.). We also collected information on recruitment and retention strategies, communication formats (e.g., flyers about services or individual progress reports) with various stakeholders (e.g., parents), and assessment strategies (both diagnostic and summative). Other documents included materials developed by providers to market their programs, train tutors, and record student attendance.

Findings

Equity is providing equality of opportunity; access goes a step further – insisting on not just equal services but also equal opportunities to leverage opportunities or access them - with policy providing some of the infrastructure in order to help make this happen. Although test-based accountability and evidence on "what works" are at the core of the NCLB reauthorization, the intent of SES focuses more on the means, rather than, the end result of increased test performance: that is, to facilitate as extensive a choice as possible for students and parents in selecting providers and program types. As noted above, it is the presence of this parental choice, and therefore a market of services, that SES promises will insure quality after-school opportunities to historically underserved populations, such as students with disabilities and ELLs. Yet our findings, primarily from the qualitative portion of our study, suggest that access to adequate amounts *and* quality of after-school learning opportunities is limited, in many ways, as a result of these very policy design elements.

What Does SES Tutoring Look Like in Practice

Access to adequate amounts of learning opportunities

In assessing what SES tutoring looks like in practice, we examined three variables: the number of hours of tutoring each student received (or invoiced hours), the actual amount of instructional time students received in each of those invoiced hours (determined by our observations of SES sessions), and the difference between the advertised length of tutoring sessions and actual instructional time.

Research suggests that a minimum of 40 hours per academic school year is critical to producing a measurable effect on student achievement as measured by test scores (Heinrich & Burch, 2009). In this study, through observations and invoice documents, we found that out of the five districts in our study only in Chicago were substantial numbers of students receiving at least 40 hours of SES (56% of elementary students), compared to 11% in Milwaukee and 14% in Minneapolis, 8% in Austin, and 5% in Dallas.

Beyond measuring the amount of invoiced hours students receive, we also compared the advertised time to the actual instructional time according to two distinct measures: the discrepancy between advertised and actual instruction and the ability of students to maximize their instructional time (what we call "attendance flux"). Regarding the first measure, advertised sessions ranged from 60 to 150 minutes of instruction per session. The format of observed sessions varied by design (i.e. online or traditional ‘offline’ instruction) and instructional setting (i.e. schools, homes, or community centers). We found that irrespective of the format, students received less instructional time than what was advertised by providers. The magnitude of these differences varied by format and by district (specific figures by format are presented in Table 3). With regards to attendance flux, almost half of all observations with two or more students (primarily traditional off-line, school-based settings), students that started a session were observed arriving late, leaving for part of the session, or leaving the tutoring session altogether Of the 63 observations with two or more students, 26 students (41.3%) engaged in attendance flux. Through interviews with tutors and provider administrators, we confirmed that school-based SES programs often compete with other after-school programs (e.g., athletics, clubs) for students’ time, and classrooms with multiple students required coordination and set-up that cut into instructional time.

We consistently observed a difference between the advertised time of a tutoring session and the actual instructional time. Providers are required to advertise the average length of their sessions (US Department of Education [USDE], 2009).[1] Districts are invoiced at an hourly rate, based on the time students spend in tutoring. Yet, advertised time does not always equal instructional time, and sometimes even invoiced time differed from advertised time based on our preliminary analysis (Good et al., 2011). These differences tend to vary by format (which we sampled by design or setting. See Table 3). In on-line organizations, instruction started the minute the student came on-line and ended promptly at the end of the (typically) hour-long advertised time. The tight focus on instructional time also was observed in home-based settings.

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[1] The wording of the law states that “…the parent should be made aware of the anticipated duration of services and this information should be detailed in the child’s individual student agreement.” However, as mentioned throughout

Instruction started immediately after the tutor arrived and ended on average five or six minutes early, leaving time for the collection of materials, record-keeping, and departures. In school and community settings, instructional time was bookended by classroom management activities or logistics such as transportation, accounting for, on average, 19 minutes in the case of school-based tutoring and approximately 46 minutes in the case of community based tutoring. One example from our observations of tutoring sessions in community-based settings revealed that less time was devoted to organization and classroom management issues. However, the variety of grouping patterns, instructional approaches, and other details of community-based vendors was too broad to make conclusions regarding the cause of these discrepancies between instructional versus advertised time in this setting. Overall, based on instructional format (with some formats having greater discrepancies of time than others, either by design or setting), students participating in SES may not be fully receiving the instructional time as advertised by SES vendors.

Access to quality learning opportunities

Although there is little research on best practices specific to SES, prior research on out-of-school (OST) programs generally tells us that high-quality programs are characterized by: (1) consistent and sustained instructional time; (2) small grouping patterns (no larger than 10:1, but smaller is better); (3) curriculum that is content-rich, differentiated to student needs and connected to students' regular school-day learning; (4) instruction (or content delivery) that is varied (e.g., structured and unstructured, independent and collective, etc.), active (guided teacher led instruction as opposed to worksheets), focused on skills development, sequenced to achieve skill development objectives, and explicit in its targeting of specific skills; (5) positive

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the scope of this chapter, it is unclear whether districts (through equity principles) or providers (through commercialist principles) are directly accountable for this provision.

relationships between tutors, students and peers; and (6) teachers/tutors with both content and pedagogical knowledge and continuous support, as well as constructive evaluation, from their administrators (Beckett et al., 2009; Good et al., 2011; Lauer et al., 2006; Noam, 2004).

Across all districts, we observed tutoring practices that were conventional, focused on tutoring in the tested subjects (mathematics and reading), and delivered via whole group instruction. We did not find consistent evidence of innovative practices, active learning, or a curriculum that complemented the regular school day. Instead, SES tutors used traditional, teacher-directed instruction and content that was isolated from the students' day school instruction. In sum, our findings suggest that students did not receive adequate amounts of quality instructional time. Due to observed inconsistencies of instructional times, students were not receiving enough SES hours to make significant gains.

Lack of services for English learners and students with disabilities

In relation to the quality of instruction, we sought to explore how SES catered to the needs of ELLs and students with disabilities. As stated above, our observation instrument draws on previously established work on best instructional practices (Good et al., 2011), to capture teaching methods that cater to diverse learners. Figure 1 below draws and represents observation data providing a snap-shot analysis of best instructional practices that cater to the needs of ELLs and students with disabilities. The first four specifically pertain to practices catering to students with disabilities. The latter four pertain to instructional strategies for ELLs. Observers noted whether each of the eight indicators were either present or not during SES instruction. Observers also noted if the instructional indicators could not be observed since a major obstacle for providers, tutors, and researchers was identifying students with documented ELL or special education needs. The majority of tutors we observed and interviewed did not have access to IEPs or district data on ELL identification.

Regarding students with disabilities, out of those indicators that were observed, SES instructors were able to provide examples of inclusive practices. Some examples of these practices were smaller teacher ratios or the SES tutor was a regular school day teacher who knew about the student's special educational needs. With regards to ELL practices, SES instructors navigated language barriers with the help of other students or with a second bilingual tutor in the setting of instruction. However, in the majority of our observations, tutors were not prepared for the academic or behavioral challenges of diverse learners. From our interview data, we found that few providers offered adequate professional development to meet the needs of students in these populations. Based on observation data, out of 94 observations, only 13 tutors participating in our observations were trained in special education practices, which is roughly 14% as stated by the special education indicator in Figure 1. ELL practices were double that at 30%, with 29 tutors asserting that they were trained to provide services for language learners.[2] Further observation data indicated that for students with disabilities, approximately 19 (From Figure 1 this is 0.2 of 94) of the observations included accommodations, and about 14 (0.15 of 94) contained differentiation practices. For ELL students, 24 (0.25 of 94) of the observations included differentiation practices during lessons.

Some providers compensated for the fact that tutors were underprepared by reducing the group size for students with disabilities to one-on-one and/or encouraging tutors to "slow" instruction down, using a lower grade level curriculum, or in other ways modifying the curriculum. However, modifying the curriculum, which, depending on the situation, may hinder

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student progress because students may be no longer working on the objectives in which they will be assessed. As previously mentioned, providers struggled in obtaining the adequate information to appropriately service students with disabilities and ELLs. Changing the curriculum level for these students without the specific knowledge of a student's needs may fail to adequately provide instruction helping address students ability level[3] thus contradicting research based on sound instructional practices.

Even though providers advertise to ELL and students with disabilities, we found that most of the tutors in our observations offered general, not individualized, instruction that did not differentiate for struggling students. According to providers' advertised services, 14 out of 20 providers in our sample advertised that they could serve ELL students, at least in a limited way or for limited languages. Thirteen out of 20 (though not necessarily overlapping the 14 mentioned above) providers advertised that they could serve students with disabilities, at least in a limited way or for limited special needs. Yet, we encountered very few tutors with training or experience in instruction differentiated to ELL or students with disabilities, and with very few exceptions, neither curriculum nor instruction were tailored to the unique needs of these students.

Failing to properly identify and amend instruction for this sub-population of students is particularly disturbing given that through our quantitative data, across all five districts, ELL and students with disabilities were more likely to register and attend sessions than non-ELL students (Stewart et al. 2012). As seen in Tables 4a and 4b, during the 08-09 and 09-10 academic school years, a substantial number of ELLs and students with disabilities registered in SES. In the case

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[2] This difference in percentage may also reflect the definition of the indicator, which includes both bilingual tutors as well as tutors trained in ELL instruction.

[3] Although most tutors we observed did not have specific training or certification in working with students with disabilities, it should be noted that we observed many sessions with certified teachers as tutors. Most of these tutors would have had training related to special education as part of their certification process and in many cases considerable experience working with students with disabilities in their regular classrooms.

of Austin, during the 08-09 school year, 45 percent of the students registered were identified as ELL. In Chicago, during the 09-10 school year, 29 percent of the students registered were identified as having a disability. The same tables also show that beyond registering, ELLs and students with disabilities are attending SES in substantial numbers. For the 08-09 school year 14 percent of students attending SES were identified as ELLs and 15 percent as students with disabilities. These numbers increased in the 09-10 school year with 21 percent of students attending SES identified as ELLs and 19 percent as students with disabilities.

As part of our mixed-method study, and to compliment our qualitative analysis, we used odds-ratios to further emphasize the importance of differentiated instruction in an SES setting (as seen in Table 4c). First, for the 2008-09 school year we found that ELLs were 1.438 times more likely to register and 1.437 times more likely to attend SES than students not categorized as ELLs. However, during the same academic year, ELLs were .87 times less likely to receive 40 or more hours of SES than non-ELL students. During the same academic year, students with disabilities were 1.121 times more likely to register than students not identified as disabled. Students with disabilities were also 1.066 times more likely to attend SES than students not identified as disabled which translates to having 7 percent greater odds of attending SES. Students with disabilities were also .86 times *less* likely to reach higher thresholds (40+ hours) of SES than other students not identified as disabled.

In the 2009-10 school year, this latter relationship appears to change, with both ELL and students with disabilities increasing their odds of participating. Referring back to Table 4c, ELL students were 2.510 times more likely to register and 2.530 times more likely to attend SES than students not categorized as ELLs. In contrast from the previous year, ELLs were now 1.310 times more likely to receive 40 or more hours of SES than non-ELL students. For students with disabilities the odds of registering, attending, and receiving 40 or more hours of instruction doubled. Students with disabilities were 2.219 times more likely to register, 2.358 times more likely to attend, and 2.004 times more likely to receive 40 or more hours of SES than students not identified as disabled. However, it is important to note that this result is driven by Chicago Public Schools, which prioritized students with disabilities in the 2009-10 school year. Even if Chicago Public Schools prioritized specific subgroups, the demand of SES for ELLs and students with disabilities has increased based on registration and attendance numbers).

The data above again points to the unresolved tensions between equity and commercialism in the design of SES. Equity is not simply about creating options; it is about ensuring access to high quality instruction. In the case of SES, some parents were taking advantage of the option to participate. However, our findings regarding the lack of differentiated instruction testify to the continued problem of the opportunity to access high quality instruction. To summarize, tutors lacked access to a student's IEP, which provides information on a student's specific disability and appropriate accommodations for meeting their academic needs. They also did not have any information on whether a student was identified as ELL. Most tutors were either unsure how to access such information or were unaware such information existed. If they did have access, it typically was because they happened to be a teacher at the school site where tutoring took place. From the providers' perspective in our sample of districts, district administrators did not have a systematic process for providing this information. This could be the result of legal issues with sharing confidential IEP information. This data also points to the tensions between the equity and commercialist realms. The equity policy levers are aimed at insuring that diverse learners are thoroughly accommodated through IEPs and ELL identification measures. The commercialist levers are aimed at providing choices, however, not all of these options are receptive to the needs of diverse learners.

Under the policy guidelines of SES, providing services that accommodate instruction to ELLs and students with special needs is not the responsibility of the providers (USDE, 2009).[4] This is another example of how the devil is in the details. The details within the commercialist levers of the policy limit options for the families of students that require differentiated instruction. Even if SES vendors offered services for ELLs or students with disabilities, there is no guarantee that the student will receive instruction from a highly qualified teacher since the NCLB highly qualified teacher requirements do not apply to SES providers (USDE, 2009). Consistent with our case study approach, we sought to use qualitative data to provide further depth and understanding to SES teaching practices. Based on our analysis from data gathered from observations and interviews, SES tutoring sessions often lacked a highly qualified instructor. We now turn to the second part of our inquiry, which details the experiences of low-income parents of children eligible for SES programming.

Levels of SES Information for Parents

SES is based on the assumption that improving public schooling hinges in part on giving low-income parents the opportunity and choice of instructional services. Utilizing data from parental focus groups in each of our sites, we sought to further understand the levels of information parents are receiving about SES. Based on analysis of the data obtained from these focus groups we found the following: 1) Parents received incomplete information, including limited information on provider options and on the services different providers offered. Related

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[4] The state and each district are responsible for ensuring that eligible Limited English Proficiency (LEP) students receive supplemental educational services and language assistance in the provision of those services through either a provider or providers that can serve LEP students with or without the assistance of the district or state; or, if no

to this finding, we found that asymmetries in information affected the access of students identified as ELL or those with disabilities to SES. 2) Parents observed and acknowledged gaps in the communication among stakeholders. In other words, parents observed the lack of communication between school and provider administrators and personnel affecting SES instruction. 3) And there is a lack of access allowing parents voice in influencing and improving the quality of the structure of services (how the program is designed and eventually how it functions).

Confusion about SES manifested itself in a variety of ways. In some cases, parents reported that they lacked a clear understanding of their options under SES. In other instances, parents did not know that they had options when it came to a choice of providers. They were eager to obtain tutoring for their child and went with the first vendor that contacted them, unaware that there were other vendors that might be a better fit for their child in terms of scheduling, focus, and format. Examples of these informational gaps were especially evident in Austin, where parents voiced that they knew little about SES. In Milwaukee, one parent mentioned that she had liked the services offered to her child but found out half way into the program that math services were also available. She reported that if she had known about math services, she would have ensured that her child had participated in them as well. Similar issues arose in districts where information about SES services was disseminated to parents in large quantities, which made it hard for parents to process. Parents suggested that districts streamline information to know which vendor the information was referring to or provide a greater level of detail about SES vendors. For instance, a parent in Chicago stated, “They could have actually

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provider is able to provide such services, including necessary language assistance, to an eligible LEP student, the district would need to provide these services, either directly or through a contract.

broke it down and gave more detail about why they chose this one, that one, and that one for your child. You know, instead of just having to decide on your own."

Conflated with the issue of incomplete or asymmetric information, the lack of attention to access issues (how information about services is disseminated) in the design of the policy was especially poignant with parents of students identified as ELL or with special needs. For example, in focus groups, many parents of ELL students stated that they simply wanted their children to receive additional help in school in their native tongue. Parents received information from a variety of sources, which made it difficult to siphon out which providers could cater to their children's language needs. For parents of students with disabilities, parents were not thoroughly comfortable with the information they were receiving. Parents of this specific subgroup just wanted to know if SES tutors were going to differentiate instruction in order to meet their child's specific needs. During the focus groups, some parents of students with disabilities mentioned that they had taken the trouble to visit their child's SES instructor on the first day to make sure that their child received the necessary services catered to her or his specific needs. However, this did not always insure students were well served. For example, one parent who felt that her child was not receiving adequate services based on her specific need decided to remove her from the program.

Beyond incomplete and asymmetric dissemination of information, parents observed and acknowledged gaps in the communication among stakeholders. While parents appreciated the availability of SES, many felt that there were a number of problems that needed to be worked out before the program could benefit their child. For example, one suggestion noted across focus groups was for districts to improve communication between vendors and school personnel in the hopes of helping the district to prioritize and select students who would benefit from SES the most. Parents' experiences corroborate the trend noted by district, school, provider, and tutoring staff that lack of communication among stakeholders was a major barrier to successful implementation.

Finally, across districts, parents did not feel that they could influence the structure of the program (how the program is designed and how it functions) or the quality of the services their child received beyond removing their children from the program or confronting individual SES instructors. For example, in Minneapolis, some parents opted to remove their children from the tutoring program either because scheduling was inflexible or because providers were unprofessional. As a whole, parents felt that their voiced concerns could only be made on the part of their individual children and would not have an appreciable effect on the program overall. The law provides various guidelines and suggestions for states and districts to help ensure that parents get a genuine opportunity at maximizing their SES choice. However, the attempt falls short. For example, the law allows for providers to self-report whether they can offer differentiated instruction for ELLs and students with disabilities (USDE, 2009). Districts thus inform parents that there are providers offering differentiated instruction for their children's needs. However, from our observations (see Figure 1 in the observation indicators labeled Special Education Staff and ELL/Bilingual Staff), we constantly found that ELLs and students with disabilities receiving SES lacked having a qualified instructor directing instruction. The information is thus not reflective of the teaching practices advertised and therefore not responsive to the actual needs of the students. Parents wanted assurance that if they selected a provider that advertised offering services for diverse learners, that their child received those services.

Discussion:

The case of SES, as we argue in this paper, illuminates the risks of reforms that attempt to incorporate the principles of both equity and commercialism. Specifically, our research suggests that absent explicit policy mechanisms that ensure access to quality programming for historically underserved populations and address information power asymmetries between low-income parents and SES vendors, equity goals are trumped by commercial aims. As we have seen, our findings suggest that the SES policy design places a premium on limiting regulation of third party entities. Thus the limits of regulation and the demand for learning opportunities, provide a further incentive for third party entities that receive federal public dollars to provide supplemental after-school instruction to low-income students. However, based on our study, not all eligible students received adequate amounts of quality instruction under SES.

Although NCLB explicitly attempts to equalize the playing field for low-income students by providing the option to obtain supplemental academic help, in reality the policy does not address unequal power dynamics between the market levers of the policy and parent access to information. The rhetoric of NCLB is that all eligible students, particularly those who have been underserved in the past, should have equal access to programming. Knitted to the idea of equal opportunity, however, is the ideology that access is enabled in large part through parent choice and creating more competition in the education “marketplace” of tutoring services. Extending educational opportunity in the area of out-of-school time means giving poor urban families in eligible schools the opportunity to participate in *out of school* programming free of charge and the right to choose a vendor for their child, as opposed to having the district choose for them.

Regardless of the reasons, findings of our multisite study suggest that students are not receiving enough hours of SES instruction to produce significant gains in their learning, and given that invoiced hours may not equal instructional time, this is not a problem that will be resolved *only* by setting minimum standards for the number of instructional hours SES should provide. Under an equity-based framework, eligible students would receive an adequate number of hours necessary to make significant academic gains. The number of hours students attend SES (after registering) is influenced by a number of factors, including the dollars allocated per-student by the district for SES. As mandated by Federal policy, each district has a maximum allocation per student for SES and providers who charge higher hourly rates can provide fewer hours before hitting the maximum allocation. In this specific case, the commercialist reality of the policy trumps equity-based levers by allowing the price of services to establish the number of hours of instruction that students receive, from district to district, based on Title I per-pupil allocations.

As noted above, it is encouraging that ELL students are more likely than non-ELL students to sign up and register for SES. However, based on our qualitative analysis, the quality of tutoring that they receive during sessions is clearly inadequate. Districts cannot, except by waiver, set programming criteria based on principles of equity and opportunity. In other words, SES providers do not have to cater services to those students that may need them the most, further asserting the tensions between the equity and commercial principles of the policy. Providers are not required to offer services to students with disabilities or ELLs, but if providers do offer these services, the law requires them to be advertised, and districts are responsible for providing these services if no provider is able or willing to do so. The policy required districts to use public funds but does not require the recipients of those public funds to be equitable in offering services to all student populations.

Connected to district struggles between the equity and commercialist principles, our research illustrates how district staff persons responsible for SES contend that their hands are tied in monitoring providers. District staff point out that most SES tutors do not have to meet "highly qualified" standards or have specific or sufficient training to be academic tutors. In our study, district staff (corroborated by provider staff) felt some state educational agencies have been lax in evaluating providers and setting minimum standards for tutoring quality and have failed to request essential information on applications for assessing and monitoring quality or to follow through on district complaints about provider incompetence or misconduct. With very few resources for program administration, let alone monitoring and evaluation, district staff has been stretched to find time to observe SES providers and better understand what is taking place in an hour of SES for which districts are invoiced. Even among well-meaning and compassionate staff, and among providers stating under contract that they could and would serve students with special needs, huge barriers to learning for these subgroups existed.

As an issue of accountability, families also have inadequate access to information and a lack of effective levers for holding providers, districts *and* states accountable for their responsibilities. As in the case of other education policies, and we would argue particularly in the context of SES, "some parties have more power than others in determining the course of implementation" (Dumas & Anyon, 2006, p. 165). In the case of SES, parties such as providers have greater resources (time and organizational capacity, as well as legal and financial knowledge), and therefore power, than low-income parents. Ironically, the *choice* that is supposed to give parents more power actually leaves them feeling less powerful. Parents enroll but then are not assured that their children have equal opportunities to learn; advertised time does not equal instructional time. Advertised services such as serving ELL or students with disabilities intended to draw families, are not adequately resourced. Parents seeking to remedy problems in the policy and make it more equitable have little recourse for doing so, leaving them feeling powerless and disadvantaged in a program aimed at affording them more opportunity and more say in the character and quality of supplemental instruction.

Conclusion

The complexities and contradictions within the design of SES exemplify the traits of a new kind of education policy, one in which political power can no longer be assumed to be national, state or local governments but includes various private actors as well (Burch, 2009b). However, the role and authority of government does not disappear. More so with SES, local governments are expected (as in a marketplace) to negotiate and compete with private firms. School districts continue to ensure that the necessary resources are allocated to those schools that need them the most in order to abide by state accountability standards. Concurrently, districts need to abide by federal guidelines and establish the SES market, which allows third party organizations to compete in the allocation of resources to the schools and students that need them the most.

Leveraging the empirical findings and theoretical insights noted above, what most deserves our attention? Choice programs such as SES that leave much of the content of instruction unregulated may create fertile ground for perpetuating inequities and the achievement gap. The challenge facing policy makers in strengthening reforms is to ensure that wherever private firms are involved in the design of remedial services, they are held to high and consistent standards for the very students whom ESEA is supposed to help the most - the historically underserved in education.

We should also reconsider the rationale behind and the serious implications of allowing providers to fully determine their hourly rates and instructional strategies. The evaluation of effects in this study and others clearly point to a minimum threshold of tutoring hours after which tutoring appears to produce small, but measurable effects on student achievement. Federal lawmakers should reconsider allowing states and districts to cap the hourly rates providers can charge.

In addition, the interactions and relationships among instructional variables are fundamental to intervention quality, including student grouping patterns, location, time spent on instruction, attendance flux during sessions, and student engagement and patterns of *out of school time* best practices. The level of instructional differentiation for students with special needs (i.e., ELL and students with disabilities) warrants particular attention to the opportunities of differentiation within the curriculum and whether this specific student population is attaining measurable gains. This is a critical, and in our examination, neglected piece of tutoring program quality.

Finally, researchers need to focus significant energy on the processes of, and state capacity for, accountability, from the initial approval process to the monitoring and evaluation of providers. Many of the variables in our study—curriculum, instructional strategies, tutor qualifications, attendance—are included in specific sections of state applications; however, we have little evidence that these variables are part of the monitoring process. If we are to accurately evaluate the design and implementation of SES, we must have a better idea of where the weak (and strong) links lie in the accountability system (as currently designed). This includes rethinking assumptions that market-based forms of accountability automatically work for parents as consumers. Absent incentives to do so, third party providers appear to have little incentive to provide continuous high quality information to parents.

In summary, the juxtaposing frameworks of accountability (one based on equity, the other based on commercialist perspectives) are not obvious at first. Seeing the contradictions requires attending to the details – and it is again in the details – where promise and problem of policy lie. The intent behind the policy was to allow the quasi-voucher essence of SES tutoring to provide innovative methods of instruction, which, the policy assumed, schools lacked the capacity to implement, in order to abridge historic achievement gaps. Nearly a decade after its inception, the tensions have become more apparent in the ongoing implementation of the policy and further understood through fieldwork, such as the type presented through the scope of this study.

Education privatization policies are promoted as a means to increase access to varied and high quality education for disadvantaged children, increase the accountability of the organizations that work with children, and increase the liberty of parents to choose educational experiences matched to their children's needs (Burch, 2009a). Within this emergent category of policy design, for profit and not for profit firms are offered commercial benefits in exchange for serving historically disadvantaged students. If the goal of these reforms is to make public education better so that all children succeed, we need better evidence that education privatization policies do more than simply provide space for educational vendors to make a profit.

Major Federal policies, such as SES, that stretch between equity and commercialism are problematic staging areas for addressing historical disadvantages. There may be room for some commercialism in education reforms. However, any education policy that incorporates market-based mechanisms also needs to include accountability mechanisms to ensure that commercial interests do not subsume equity objectives. This means identifying and incorporating the necessary incentives, mandates and capacity building that will encourage and hold third party providers receiving Federal funds jointly accountable for providing equal opportunities for historically disadvantaged students.

Appendix

Table 1

Juxtaposition between Equity and Commercialist Goals

Study Variables	Equity goals	Commercial goals
SES Policy	Provide supplemental tutoring services to all eligible students in low-income and *underperforming* schools	Establish market oriented interventions where third party organizations provide instruction to eligible families that opt for services
SES in practice: Access to adequate amounts of learning opportunities	All eligible students receive an allotment of instructional time necessary to make adequate academic gains	Third party organizations determine the amount of instructional time based on Title I per-pupil allocations and their own hourly rates
SES in practice: Access to quality learning opportunities	All eligible students have access to tutoring opportunities regardless of learning needs (e.g., ELL and students with disabilities)	Third party organizations determine the curriculum based on supply and demand. Third party organizations not required to provide services to all students
SES in practice: Quality of Information	Information disseminated to eligible families through different formats, avenues and languages	Third party organizations *advertise* information about services

Note. Comparison between the equity and commercialist principles as they specifically pertain to SES policy and data from this specific integrated mixed-methods study.

Table 2

Sample of SES Providers across District Sites (2009-10 and 2010-11)

District Sites	Total Providers in Sample	For-Profit Vendors	Nonprofit Providers	District Operated Providers	Onsite Format*	Digital Format**	Serving Special Needs***
Austin	6	5		1	5	2	5
Chicago	6	4	1	1	4	2	6
Dallas	5	5			4	2	3
Milwaukee	7	4	3		7	1	4
Minneapolis	6	3	3		4	2	6

Note. Numbers do not necessarily match the totals because there are some providers that fit more than one criterion.

*Onsite format instruction took place at school, at home, or in another community setting.

**Refers to programs that include at least some element of digital instruction (i.e. online or software-based)

***Refers to providers serving either or both ELLs and/or Students with disabilities

Table 3

Difference between Advertised and Instructional Time

Format of instruction	Advertised time by SES providers (minutes)	Actual instructional time (minutes)	Difference (minutes)
Online	67.5	57.83	9.67
Offline	90.6	70.8	19.8
Home	64.29	60.64	3.65
School	95.56	76.33	19.23
Community	116.67	70	46.67

Note. Advertised sessions ranged from 60 to 150 minutes. “Online” refers to computerized instruction. “Offline” refers to the more traditional teacher-student instruction. The last three formats specifically refer to the setting of where instruction takes place. “Community” refers to settings outside homes or schools, such as a library or a community center. Data is from 2009-10 academic school years.

Table 4a

Participation and Attendance Rates Across Districts (Academic Year 2008-09)

	Registered for SES					Attended SES				
	Total Students	%ELL	#ELL	%SWD	#SWD	Total Students	%ELL	#ELL	%SWD	#SWD
Austin	2842	45.3	1287	14.1	401	2009	46.1	926	13	261
Chicago	25492	10.9	2779	15.2	3875	22515	11.3	2544	15.1	3400
Dallas	2809	18.3	514	13.9	390	1755	18.8	330	13.2	232
Milwaukee	4123	5.1	210	20.7	853	2620	6.2	162	19	498
Minneapolis	2352	31.5	741	16.7	393	1591	34.9	555	16.4	261
Total	37618	14.7	5531	15.7	5912	30490	14.8	4517	15.3	4652

Table 4b

Participation and Attendance Rates Across Districts (Academic Years 2009-10)

	Registered for SES					Attended SES				
	Total Students	%ELL	#ELL	%SWD	#SWD	Total Students	%ELL	#ELL	%SWD	#SWD
Austin	1463	34.5	505	11.2	164	1318	35.5	468	10.6	140
Chicago	11324	17.1	1936	29.4	3329	10357	17.7	1833	29.9	3097
Dallas	11143	20.5	2284	11.8	1315	10781	20.8	2242	11.7	1261
Milwaukee	6933	11.8	818	19.8	1373	4998	13.2	660	19	950
Minneapolis	4698	38.5	1809	19.4	911	3320	42.1	1398	18.6	618
Total:	35561	20.7	7352	19.9	7092	30774	21.5	6601	19.7	6066

Table 4c

Student Selection into SES (odds of registering for and attending SES)

	Registered for SES		**Attended SES**		**Attended 40 or more hours**	
Student characteristic	2009-10	2008-09	2009-10	2008-09	2009-10	2008-09
	N=85,906	N=100,988	N=85,906	N=100,988	N=33,273	N=43,671
	Coefficients reported as odds ratios					
Female	**1.016**	**1.109**	1.102	**1.092**	1.008	**1.072**
Asian	**0.582**	**0.315**	**0.673**	**0.335**	0.991	1.071
White	**0.451**	**0.455**	**0.509**	**0.520**	0.889	**1.164**
Black	reference	reference	reference	reference	reference	reference
Hispanic	**0.598**	**0.607**	**0.641**	**0.689**	**1.585**	**1.921**
Other race	**1.066**	**0.837**	0.963	0.804	**0.407**	0.853
English language learner	**2.510**	**1.438**	**2.530**	**1.437**	**1.310**	**0.870**
Free lunch	**0.727**	**1.247**	**0.661**	**1.310**	**2.562**	**2.912**
Students w/disability	**2.219**	**1.121**	**2.358**	**1.066**	**2.004**	**0.860**
Retained	1.049	1.014	**1.154**	0.959	1.163	**0.691**
Attended SES prior year	**1.469**	**2.397**	**1.569**	**2.464**	**2.389**	**1.928**
Percent absent prior year	**0.284**	**0.928**	**0.121**	**0.909**	**0.000**	**0.881**
Grade K-5	**1.497**	**1.284**	**1.541**	**1.378**	**1.254**	**1.694**
Grade 6-8	reference	reference	reference	reference	reference	reference
High school	**1.104**	**0.653**	**0.752**	**0.478**	**0.193**	**0.126**

Note: the reference category for grade level is middle school students (grades 6-8); odds ratios for K-5 and high school students are interpreted relative to middle school students. Similarly, the odds ratios for the race variables are interpreted relative to black students. Data from five district study sites are combined.

* Coefficients (odds ratios) reported in bold are statistically significant predictors of student selection.

Figure 1. Observed Best Practice Instructional Indicators

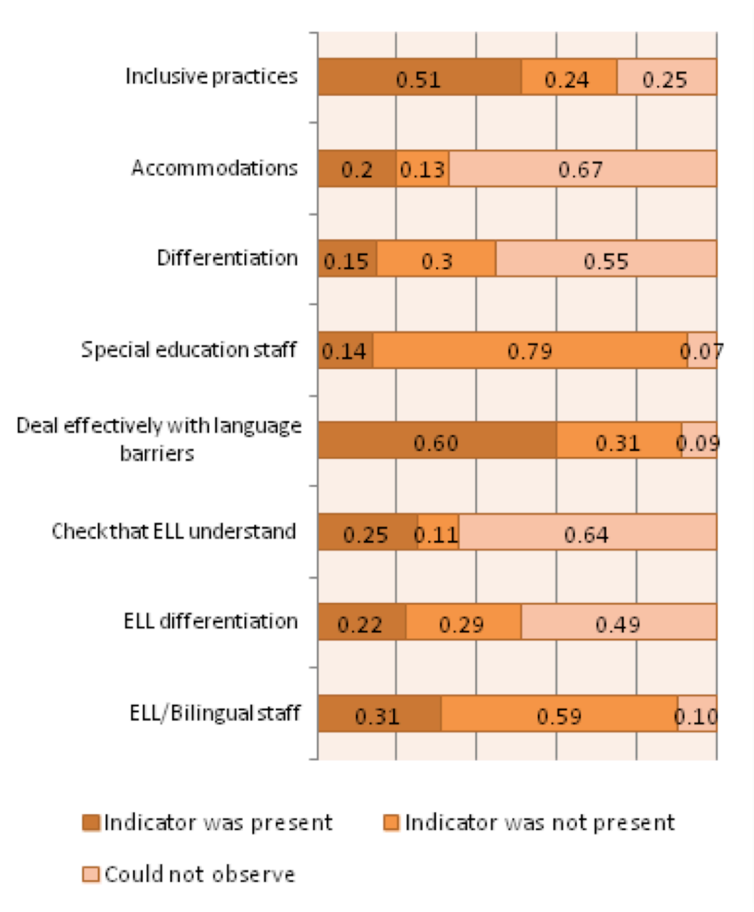

Figure 1: Observed best-practice indicators for students with special needs in SES sessions based on 94 observations between 2008-10

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[i] To date, we have conducted three reliability training sessions with the qualitative research team to ensure consistency in ratings. In each session the research team rated the same video segment of an instructional session and went through each indicator to compare ratings. Validity of the instrument is ensured by the development process, whereas its structure and content is based on well-tested, existing observation instruments for out of school time (OST), existing literature on the best practices for OST, and the theory of action in the SES policy. We continue to test and refine the data collection process as the study progresses.