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Third-Party Governance under No Child Left Behind: Accountability and Performance Management Challenges

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ABSTRACT

This study examines public management challenges faced by educational agencies that are required to set up a market for providing choice in supplemental educational services (SES) for students in underperforming schools and to hold nongovernmental providers accountable for their performance in increasing student achievement. The operations and performance of SES providers in a large urban school district, as well as how their performance in increasing student achievement relates to their market shares, are examined empirically and through qualitative information gathered through focus groups, interviews, and student surveys. The study finds that SES provider market shares were not highly correlated with estimates of provider performance or other relevant vendor characteristics, and local educational agencies were not satisfied with their level of control over service quality and educational outcomes. Control over the flow of funds, which improved over time, was their primary lever for managing these third-party relationships.

INTRODUCTION

For more than three decades, scholars of governance have been calling attention to a significant transformation in traditional structures of public administration, in which third-party nongovernmental entities are playing increasingly central roles in the management of government responsibilities and direct provision of goods and services to the public (Guttman and Willner 1976; Kettl 2002; Salamon 1989; Stoker 1998). The new public management (NPM) reforms of the 1990s advanced this devolution[1] or "divesting" of government functions and managerial responsibilities to the private sector, with the goal

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1 The term "devolution" is used here in accord with Christopher Hood's definition in *The Oxford Handbook of Public Management* (2005, 375), in which it refers to external decentralization, that is, the transfer of authority to an organization that is legally separate from the state.

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of promoting a more efficient, competitive, results-oriented, and responsive public sector (Frederickson and Smith 2003; Meier and Hill 2005). Decentralization, or the delegation of authority to entities that are legally connected to the state but accorded autonomy in conducting the public's business, has simultaneously progressed with the aims of encouraging flexibility, innovation, and better accommodation of diverse public preferences, values, and needs (Rivlin 1992).

The US No Child Left Behind (NCLB) Act, signed into public law in 2002 "to close the achievement gap [in public education] with accountability, flexibility, and choice," distinctly reflects these broad public management trends (Public Law 107–110—8 January 2002). In a White House report,[2] President George W. Bush articulated the priorities of the act, stating that they "are based on the fundamental notion that an enterprise works best when responsibility is placed closest to the most important activity of the enterprise, when those responsible are given greatest latitude and support, and when those responsible are held accountable for producing results." The corresponding legislative elements include holding states, districts, and schools accountable for student achievement, that is, "parents will know how well their child is learning"; reducing bureaucracy and increasing administrative and funding flexibility for states and school districts; "empowering" parents with more information about the quality of their children's schools and offering school choice to those in persistently low-performing schools; and targeting federal funds on effective (evidence-based) practices for improving teacher and school quality.

The NCLB provision that is the subject of this study embodies most of these elements as it aims to use market-like mechanisms to improve educational opportunities for children in public schools who are performing below minimum standards.[3] Public schools that have not made adequate yearly progress in increasing student academic achievement for 3 years are required under NCLB to offer parents of children in low-income families the opportunity to receive extra academic assistance or to transfer to another public school. Consistent with the design and intent of the law, these interventions are implemented at the local level and draw on the private sector to offer eligible students a range of choices for supplemental educational services (SES; i.e., free tutoring outside of regular school hours). Although no new federal monies are allocated along with this mandate, the law lays out criteria and guidelines for state educational agencies (SEAs) and local educational agencies (LEAs) in choosing SES providers and arranging for their services. It also obligates school districts to set aside 20% of their Title I funding for SES and to measure provider effectiveness in increasing student achievement.[4] As only about 1% of students eligible for school choice elect to transfer to another public school, this study looks exclusively at the implementation of SES, which involves approximately $2.5 to $3 billion

2 See http://www.whitehouse.gov/news/reports/no-child-left-behind.html.

3 See Title I, Section 1116(e) of the Elementary and Secondary Education Act (ESEA), reauthorized by the No Child Left Behind Act of 2001.

4 Title I federal funding, which began in the 1965 ESEA, was created to allow all students an equal opportunity to receive the highest quality education possible. Through Title I, school districts can hire teachers to lower student-teacher ratios, provide tutoring for struggling students, create school computer labs, fund parent involvement activities, purchase instructional and professional development materials for teachers, hire teacher assistants, and more. The 20% Title I set-aside for SES and school transfers cannot be spent on administrative costs for these activities, although the district may reallocate any unused set-aside funds to other Title I activities after all eligible students have had adequate time to opt to transfer to another school or apply for SES.

in expenditures annually (Government Accountability Office [GAO] 2006). In fact, the top vendors of SES reported annual sales of $80 to $100 million in 2006 (Burch 2009).

This research focuses on public management challenges faced by LEAs with underperforming schools that are required, in effect, to set up a market for providing choice in SES and to be accountable for the performance of nongovernmental providers in increasing student achievement. A central question addressed is as follows: Do these contemporary governance arrangements that strongly reflect the tenets of NPM reforms—that is, the delegation of federal government authority to SEAs and LEAs to implement SES, and the devolution of the major responsibility for delivering SES primarily to private nonprofit and for-profit organizations—bring about more effective public services that better respond to the preferences and needs of the public? I draw on the experience of Milwaukee Public Schools (MPS) to investigate how LEAs are managing the challenges of implementing SES and the implications of the resulting governance structures and relationships for service delivery and student educational outcomes.

According to Gerring (2004, 342), this research constitutes a case study, in that it is "an intensive study of a single unit for the purpose of understanding a larger class of (similar) units." At the same time, within the larger unit of study—the school district—there are multiple years of data on students eligible for SES and on the SES providers who offer services to them, generating both (within-unit) spatial and temporal variations that allow for a rigorous empirical analysis of SES effects on student achievement. Very rich data were collected through interviews with school district personnel, focus groups with parents, surveys of students eligible for SES, and administrative data from MPS. These data are used to describe the evolving market for SES in Milwaukee, district administration of SES and its relationships with SES providers over time, and SES provider performance in increasing student achievement.

In the next section, a review of relevant literature on third-party governance is used to provide a theoretical frame for understanding both the opportunities and the challenges presented by decentralized and devolved governance arrangements. Integrated with this review is a discussion of the NCLB legislation and its implications for local implementation of SES. Next, the context and data for the MPS case study and the qualitative and quantitative methods applied in the analysis are described. I then present the findings of analyses (integrating qualitative and quantitative) that assess the operations and performance of SES providers, as well as how their performance relates to their market shares (of SES students) and financial accountability. This article concludes with a discussion of the implications of the study findings for ongoing provision of SES in the United States and, more generally, for the potential for third-party governance to deliver on its promises of more efficient, effective, and responsive public services.

THIRD-PARTY GOVERNANCE AND SES

Third-party government, as described by Salamon (1989, 9), involves the "sharing of the exercise of discretion over the use of public authority and the spending of public funds" with "one or another nonfederal, often nonpublic, third-party implementer[s]." The implementation of SES under NCLB, according to this definition, is almost entirely the responsibility of third parties, both nonfederal and nongovernmental. Although school districts, according to Frederickson and Frederickson (2006), fit the definition of "second parties"—that is, direct governmental agencies or bureaucracies—because SEAs and

LEAs are implementing SES under a federal mandate, they qualify as third parties in this context. "First parties," or elected and appointed officials and high-ranking civil service employees, have little role in implementing SES, other than specifying basic parameters for eligibility, service delivery, funding, and accountability in the originating legislation.[5]

As indicated in the NCLB legislation, this delegation and devolution to third parties was intentional, with the goal of giving local entities (public and private) the leeway and flexibility necessary to better meet the educational needs of students in underperforming schools. The law urges states to establish specifications for SES provider registration that allow for choice that is as expansive as possible among nonprofit, for-profit, faith-based, and community organizations and LEAs. The rationale underlying this shift from the traditional role of government as a monopoly provider to a new structural arrangement in which the government manages a field of competitive providers has its basis in the classic market paradigm; that is, fostering a competitive market for services is expected to generate a wider range of choices, encourage innovative approaches to service delivery as providers compete for market share, and squeeze out inefficient and ineffective providers through choice and management tools that hold them accountable for performance. As Peters and Pierre (1998, 230) elaborate (in discussing NPM reforms), private actors, compelled by competitive forces, are believed to employ more advanced management practices and more efficient allocations of resources, whereas the public sector, insulated from economic pressures, is plagued by organizational slack and inefficiencies, "complacency," and "indifference to clients' needs," among other ills. In the words of President George W. Bush, "government must be open to the discipline of competition" (Gansler 2006, 40). Indeed, the apparent failure of public schools to bring about improvements in student achievement has been the key impetus for pressing states and localities to approve a range of nongovernmental SES providers and to make choice "free" to students who would not otherwise be financially capable of exercising private market options.

Scholars such as Hefetz and Warner (2004), however, have criticized the discussion and debates over third-party government and contracting out as ideological in nature, arguing that there is little empirical evidence to support the claims of sweeping benefits associated with competitive markets for public services. They contend that proponents have based their assertions on case studies touting increased efficiency and cost savings, whereas opponents have looked for evidence of corruption, cost overruns, and neglect of citizen interests. In three decades of research on "competitive sourcing," the majority of case examples proclaiming success—in areas such as refuse collection, toll road management, communications, and other public works—have heralded the savings to taxpayers in the shift to third-party responsibility for public services. For example, Savas's early (1977) research showing that public garbage collection was about 30% more expensive than that by private contractors is attributed with advancing outsourcing to the point where today, approximately one-third of the average city's services are contracted out (Savas 2006). And based on his analysis of data from approximately 40 case studies of government changes from sole provider to competition in service delivery as well as to other "sourcing options," Gansler (2006) reports that regardless of the public service motives of government employees, monopoly conditions dampen incentives for innovation that lead to improved

5 At the same time, research by Burch (2009) shows that of 27 high-ranking US Department of Education officials who were involved in the design of NCLB and later resigned, 16 took positions in for-profit firms selling services linked to the mandates of NCLB.

performance, whereas competition brings about better results at lower costs. Even Savas acknowledges, however, that outsourcing has likely reached its limits in terms of public services for which it is relatively straightforward to realize significant improvements in efficiency and effectiveness, and a growing number of researchers are identifying serious accountability and management "deficits" and important unresolved issues in the shift toward increased reliance on third-party agents for public services delivery (Frederickson and Frederickson 2006; Milward and Provan 2000; O'Toole 1997; Pollitt and Bouckaert 2004; Romzek 1998; Salamon 1989).

In general, this expanding body of research suggests that third-party governance confronts its most onerous challenges in areas where service technologies are more complex and highly specialized (or "asset-specific"), and thus, measuring and monitoring performance in terms of both quality and efficiency are more difficult; there are too few suppliers (or providers) to assure a competitive market for services; government capacity for effectively managing relationships that are decentralized and/or devolved is limited and/or implementation is hampered by resource (time and funding) constraints; and policy goals and directives are vague or not agreed upon by all parties (Ballard and Warner 2000; Brown and Potoski 2003; Hefetz and Warner 2004; Sclar 2000; Van Slyke 2006). In the case of SES, each of these factors impinges on the implementation of SES to some extent.

Key Features of SES and Challenges in Its Implementation

In setting up or arranging a competitive market for SES, SEAs have the advantage of drawing vendors from an established market of other after-school study and tutoring (or "out-of-school-time") programs that have long been in operation. In addition, a large number of diverse organizations have newly entered the market to compete for available SES funds, with widely varying hourly rates, service costs, tutor qualifications, tutoring session length, instructional strategies, and curriculums. NCLB directs SEAs to identify organizations that provide services consistent with state and local instructional programs (and applicable federal, state, and local health, safety, and civil rights laws; Section 1116(e)(12)(B)(i)) and that have an established record of effectiveness in increasing student academic achievement. Furthermore, the law requires states to withdraw approval from providers that fail to increase student academic achievement for 2 years. Research to date shows, however, that beyond self-reported data and some internal performance evaluations conducted by large national providers, there is very little reliable information on the effectiveness of different organizations that are entering the market to provide SES, or the relationship of service strategies and rates charged by providers to program outcomes (Burch, Steinberg, and Donovan 2007; Farkas and Durham 2006; Heinrich, Meyer, and Whitten 2009). The GAO (2006) reported that three-fourths of states are experiencing challenges in developing data systems for tracking and analyzing SES information and assessing students' academic progress, and as of the time of its survey, no state had produced a conclusive assessment of SES providers' effects on student academic outcomes, which has important implications for their ability to comply with the accountability requirements of NCLB.

LEAs are required to disseminate information about approved SES providers to students (and their parents) who are eligible for SES, and most SES providers do their own marketing as well, sometimes offering incentives to students to register with them. In theory, accountability is supposed to be realized primarily through the exercise of choice

by parents and students, who, in using this information, are expected to identify the best provider to meet their child's needs and sign up for services. The SES providers subsequently invoice the LEA to request payment for the number of hours of SES attended by each student, up to a fixed dollar amount that the LEA allocates (per SES recipient) from its Title I funds. The service agreement between the LEA and SES provider, in effect, is a cost-reimbursement contract, with no performance-contingent pay. It is also important to note that only SEAs have program design authority (e.g., to establish SES program criteria such as an acceptable student-tutor ratio for providers to meet), and LEAs are required to include on the list of available providers any that are approved by the SEA. Thus, the flexibility and capability of LEAs in managing the market for SES is highly constrained by limited authority, no new resources (as the Title I funds may not be used for program administration), and little programmatic guidance or experience.

In sum, NCLB established a mandate for a federal program that is designed largely by the states and implemented with little oversight at the local level primarily by third-party agents. These third-party agents, in effect, have multiple principals—the federal government, which mandates their role in SES; the SEA that certifies their access to the local markets and defines program parameters; and the LEA that contracts with SES providers and pays them for their services (but has little else in the way of tools for accountability at its discretion). In addition, the Title I funds that LEAs are required to use to pay SES providers are diverted from their typical educational support uses at the district level (e.g., summer school, teaching assistance, instructional and professional development materials, computer labs). As Peterson (2005, 44) asserts, school districts thus have a "clear financial disincentive" to enroll students in SES—although restricting participation or choice would be in direct conflict with the law (Section 1116(e)(4))—as they can preserve more Title I dollars for their own uses. The president of the Center on Education Policy alleges, "All it's doing is taking money out of classrooms and putting it into the hands of private companies."[6] Thus, not only are there multiple principals (at different levels of government) but also their interests and goals for SES are not fully aligned.

I conclude this section with a few larger questions concerning third-party governance and related themes of this symposium that arise in this study of SES. In settings where the chains of delegation are long and government authority is fragmented—as a result of decentralization and devolution and divergent interests across the parties involved—does government retain the capability to shape policy and manage for results? Or, is this an example where the public sector is evolving into a "state of agents" (of SES providers) due to widely dispersed and diluted government authority and loose accountability to the public? Unlike refuse collection, is this an example of government services for which heavy reliance on third parties is more likely to lead to undesirable outcomes, or is the learning curve just steeper and the needs for management capacity greater where service technologies are more complex, results are difficult to measure, and markets are evolving? Are administrative and financial accountability lacking—where they are expected to be achieved primarily through competitive market choice by those directly affected by the policy (SES)—and if so, how will transparency and democratic responsiveness to broader public interests and to those indirectly affected by the policy be maintained?

6 Quote of Jack Jennings, president and chief executive of the Center on Education Policy, reported by Maria Glod in "Mandated Tutoring Not Helping MD, VA Scores," *Washington Post*, June 13, 2008, B01.

Case Study of SES

Study Data, Samples, and Measures

Public schools in Milwaukee account for the vast majority (approximately 80%) of schools in need of improvement in Wisconsin. The period of this study, initiated in 2006 spring, covers four school years, 2003–04, 2004–05, 2005–06, and 2006–07. MPS provided access to middle and high school students' school records for these years, including transcript and demographic data from the MPS Electronic Student Information System database and administrative data used by MPS to manage the SES program. The SES administrative database includes student enrollment and attendance information and other rich student-level data, such as Individual Student Achievement Plans or IAP/ISAP that describe academic goals to be met in tutoring, billing information that allows for the calculation of vendor expenditures on individual students, and student participation in other academic support programs. Measures of student achievement, that is, gains in students' reading and mathematics scores from one year to the next, were constructed using data from standardized tests administered to MPS students. Because different tests were used during the study period—the Wisconsin Knowledge and Concepts Examination and the Terra-Nova assessment—the measurement issues were highly complex, and thus, readers should refer to Heinrich, Meyer, and Whitten (2009) for details on their units, scaling, and variance.

Primary data were also collected in focus groups with parents and students enrolled in or eligible for SES during 2005–06 and through surveys of students who registered for SES in the 2006–07 school year. The focus groups were conducted at the beginning of the study to explore basic issues about how parents learned about SES, how they chose a provider for their child, their opinion of the effects of tutoring on their child's academic performance, and any difficulties they had in arranging services.[7] The student surveys, administered in March and April of 2007 to those who had registered for SES in the 2006–07 school year, were developed to collect additional information from students about how they chose their SES provider, how they were spending time in their tutoring sessions, how these sessions were affecting their performance in school, and what would encourage them to attend more tutoring sessions.[8]

Approximately one half of eligible middle and high school students registered for SES during the 2003–04, 2004–05, 2005–06, and 2006–07 school years in MPS (nearly 4,000 students), although among those, the number attending any sessions was declining (from 90% in 2003–04 to only one-third in the 2006–07 academic year). The GAO (2006) reported that low parent and student demand for SES was a challenge in approximately two-thirds of the districts they studied, and school districts suggest that it is difficult

7 A random sample of 320 parents/students was first drawn from the MPS administrative data. The sample was stratified to ensure that we included both parents whose children had registered for SES in the 2005–06 school year and those who chose not to participate in SES, with approximately 60% of the sample in each geographic area drawn randomly from parents whose children participated in SES. The focus groups took place in August 2006 in public libraries easily accessible by public transportation and in ZIP codes with high concentrations of SES schools. Although the total number of focus group participants ($N = 17$) was low as a percentage of the invited sample (5.3%), the participants in the three groups that met were diverse and the size of the groups was advantageous for meaningful discussion (see Heinrich and Whitten 2006 for further details).

8 Eight schools with the largest SES enrollments were selected for the survey administration. Students in seven of these eight schools completed the survey a second time in late March or early April if they were still participating in SES. A total of 1,441 students responded to the first survey and 874 participated in the second survey.

for SES to compete with other after-school programs and extracurricular activities. Clearly, it is important to understand how the competitive market for SES is functioning and why fewer eligible students are exercising choice and attending SES over time, given the implications for compliance with NCLB.

Choice and the Competitive Market for SES in MPS

Since the initiation of NCLB in 2002, the availability of federal funds for SES and the number of approved SES providers have increased dramatically. Burch, Steinberg, and Donovan (2007, 121) described the SES market as "a very new market where hundreds of firms are flocking to take advantage of the promise of sizeable revenues." This was, of course, the intent of the law: to encourage the entry of many nongovernmental organizations that would stimulate innovation and result in improvements in students' educational achievement. As Farkas and Durham (2006) point out, though, to realize the benefits from a competitive market, parents of eligible students need to have sufficient information to make meaningful choices.

In disseminating information to eligible students and their parents about available services, school districts are required to send a letter explaining SES and the enrollment procedures. MPS also prepares a booklet each year describing the SES providers servicing the district; the state department of public instruction (DPI) maintains a searchable database of approved providers, and most SES providers actively market their services to parents and students as well. During the study period, many providers offered students incentives to sign up, such as computers, "iPods," school supplies, movie passes, and gift certificates. In focus groups with parents, however, some indicated that they did not receive or comprehend this information, and others had a hard time distinguishing SES (which is available free of cost to their children) from other school-based tutoring or after-school programs that charge for their services. Parents were also skeptical of the advertising, describing it as a lot of "smoke and mirrors" and "a little slick," particularly in cases where "free stuff" was offered for registration with a provider.

Student responses to the spring 2007 surveys confirmed that many were signing up for SES *primarily* to receive these rewards. Nonetheless, most parents in the focus groups also had a clear idea of what they *should* be looking for in choosing a provider, such as how much one-on-one tutoring their child would receive, the student-teacher ratio in group SES sessions, and specific information on the tutor qualifications and academic content of SES sessions. Although some of this information was available in the district SES booklet, what was missing was more specific guidance for parents, such as what parents should view as an acceptable student-teacher ratio. Some parents also reported making SES choices based on convenience and familiarity (e.g., a school-based provider that might involve a student's regular school day teacher).

Parent or student choice of SES providers directly affects SES providers' "market share," or each provider's share in terms of MPS students who registered for SES in the four academic years, 2003–04 to 2006–07.[9] In 2003–04, there were a total of 40 approved SES providers servicing Milwaukee, but only 18 of these served any students in that year. The vendor with the largest market share (35% of all registered students)

9 A table complete with a list of the SES vendors and their market shares across these 4 years is available at http://mpsportal.milwaukee.k12.wi.us/portal/server.pt/gateway/PTARGS_0_2_45111_0_0_18/SES_Oct%2008.pdf or from the author by request.

was a private, for-profit national provider operating in 36 US states. A for-profit online service provider and another for-profit national SES vendor each had approximately 10% of the market share, and together, the top 5 (of 40) providers garnered more than 70% of the market (registered students). In 2004–05, the number of approved providers expanded to 55, with a relatively large number of faith-based providers entering the market. Of the dozen or so new faith-based providers, however, only a few registered any students and stayed in the market.

With only approximately half of the approved SES providers signing up students in 2003–04 and 2004–05, and with the top five providers taking most of the market share, it is not surprising that the market began to narrow in the subsequent 2 years. The total number of approved providers dropped from 55 to 35 in 2005–06, and approximately three-fourths (26) of them registered students in that year. Even more striking, nearly all 32 approved providers in 2006–07 had students sign up for SES, with the exception of two nonprofit organizations serving relatively small numbers of students over the course of multiple school years. The data clearly showed that SES providers with no or tiny market shares were the most likely to exit, and this applied to large national private providers as well as to the smaller nonprofit community-based centers. In 2006–07, it was still the case that the top five providers had close to 70% of the total market share, with four of those five consistently at the top over the study period (although there was some "jockeying" for relative shares). This finding is consistent with Burch's (2009) study that showed a relatively small number of national providers increasingly dominating and capturing market shares as the market for private educational services matures.[10]

If one assumes that parents and students are making well-informed choices, however, one might also see this as evidence that with relatively little governmental guidance or intervention, the market for SES adjusts rapidly to citizen preferences and needs. This assertion begs an important question, though: Are the providers with the greatest market shares also the providers who are most effective in increasing student achievement? In other words, do these third-party governance arrangements that invite the wider competition of nongovernmental providers and allow local agencies flexibility in managing the market improve service provision in ways that advance the educational outcomes of students in underperforming schools?

SES Provider Performance

As discussed previously, NCLB specifically requires states to measure the effects of SES on student academic achievement and to withdraw approval from providers that fail to increase student achievement after 2 years of service. Research and evaluation efforts to date, however, show that establishing a causal relationship between SES and student achievement is particularly difficult, as is estimating the effectiveness of specific providers. First, a comparison group of students not receiving SES is essential for separating the effects of SES from other classroom and after-school activities and interventions (NCLB related or other) that influence students' learning. Even then, the possibility of unobserved differences between those receiving SES and those not participating poses challenges for LEAs and their evaluators in identifying the effects of SES, particularly because SES

10 Burch documents a substantial amount of aggressive advertising and mergers and acquisitions among private educational services firms that contribute to these changes in market shares.

registration and attendance rates are very low (i.e., implying that take-up of the services may be highly selective).

Recent studies have attempted to rigorously estimate SES effects and have reported mixed findings. Researchers based within Los Angeles (LA) and Chicago Public Schools (CPS) estimated linear regression models to predict student test scores, controlling for students' prior year scores and demographic characteristics. The CPS study looked only at fourth- to eighth-grade students who were not English language learners and who received at least 30 h of SES and found increases in reading and math achievement among elementary school students and math gains among sixth and seventh graders (CPS 2007). The LA study found that even among students with the highest levels of SES attendance, program effects were "fairly small" and attributed to improved performance by elementary students (Rickles and Barnhart 2007). A RAND study (Zimmer et al. 2007) that explored SES effects across multiple school districts in seven states used a fixed-effects specification to compare changes in students' test scores before and after SES participation with the trajectories of nonparticipating students. Although they reported positive statistically significant effects of SES on students' reading and math test scores in five of seven districts, these results did not distinguish effects by grade level and did not account for intensity of participation.

Heinrich, Meyer, and Whitten (2009) also estimated fixed effects ("double difference") models and used difference-in-differences propensity score matching methods to assess the effects of different levels of SES participation on MPS middle and high school students' math and reading test score changes over the 2004–05, 2005–06, and 2006–07 school years. Rows 1 and 2 of table 1 report the estimated effects of attending any SES on changes in reading and math test scores in the 2004–05 and 2005–06 school years for MPS middle and high school students (from a propensity score radius matching analysis, specifying a conservative 0.01 caliper and common support). These results show that after matching participants and nonparticipants on their baseline characteristics, there are no statistically significant differences in the changes in test scores for students who attended SES compared with those who did not attend SES.[11] This analysis includes any registered student who attended any number of hours, however, and there was a very wide range of total hours of SES attended in these samples (from 1 to 110 h).

Row 3 of table 1 presents the estimated effects of a continuous measure of total hours of SES attended from an ordinary least squares (OLS) regression model with the same set of control variables as used in the propensity score matching analysis.[12] These results show only one statistically significant positive effect of total hours attended on the change in MPS high school student reading scores (in 2005–06); for each additional hour attended, students' reading test scores increase by 0.087 of a test unit. This lack of statistically significant findings is consistent with MPS students' own reports in the spring 2007

11 The results for 2006–07 are substantively the same, and thus, for brevity, they are not discussed in this article.

12 The control variables in these models included gender, race/ethnicity, free lunch eligibility, English proficiency, special education status, grade point average (GPA) and GPA squared, number of absences in the prior school year, a retention indicator, foreign language course indicator, prior SES attendance, grade year, school attended, and the estimated propensity of registering for SES. In their propensity score estimation, Heinrich, Meyer, and Whitten (2009) found that among SES-eligible students, females, African Americans, free lunch–eligible students, and those who had attended SES in a prior year were significantly more likely to register for SES, whereas older students and those with more regular school absences were significantly less likely to sign up for SES.

Table 1
Estimated Effects of Attending SES, 2004–05 and 2005–06 School Years

Treatment Measure and Method	Middle School		High School	
	Change in Math Test Scores	Change in Reading Test Scores	Change in Math Test Scores	Change in Reading Test Scores
2004–05 school year	n = 1,562	n = 1,571	n = 1,224	n = 1,262
Attended any SES				
1. Unmatched	−2.486 (4.562)	−3.368 (5.232)	−10.486 (6.243)	**−14.420 (7.139)**
2. Matched	2.024 (5.557)	3.038 (5.916)	−5.427 (8.107)	−4.565 (8.860)
3. Number of SES hours attended (OLS)	0.046 (0.068)	−0.017 (0.068)	−0.127 (0.158)	−0.148 (0.178)
4. Number of SES hours with specific vendors (OLS)	Vendor A: **1.481 (0.623)** Vendor B: **1.128 (0.444)** Vendor C: **0.968 (0.362)**	Vendor A: **1.406 (0.621)** Vendor B: **1.082 (0.442)**	None	Vendor D: **3.180 (1.380)** Vendor B: **3.666 (1.731)**
2005–06 school year	n = 1,075	n = 1,016	n = 2,215	n = 2,200
Attended any SES				
1. Unmatched	−0.529 (0.413)	0.708 (1.202)	0.235 (0.297)	**2.846 (1.132)**
2. Matched	−0.232 (0.427)	0.323 (1.099)	−0.372 (0.357)	1.397 (1.099)
3. Number of SES hours attended (OLS)	−0.005 (0.013)	−0.010 (0.040)	0.007 (0.011)	**0.087 (0.042)**
4. Number of SES hours with specific vendors (OLS)	Vendor D: **0.136 (0.064)**	None	None	Vendor E: **0.245 (0.074)** Vendor F: **0.193 (0.078)**

Note: SEs are given in parentheses; results statistically significant at $\alpha \leq .05$ are shown in bold.

surveys; less than 30% indicated that SES sessions had been helpful to them in improving their academic performance.

This study extends the aforementioned analysis to examine provider-specific effects in MPS for the 2004–05 and 2005–06 school years. OLS models (with the same control variables) are estimated, in which the treatment is defined as the total number of SES hours attended with a specific provider. For each student who attended SES, the total number of hours with the provider with which he or she attended SES for the *most* total time is measured with these variables. Any vendor with at least 10 students is included in the model, and one additional "other provider" variable was created to combine the smaller vendors. In other words, the analysis investigates the effects of students' total number of hours *with particular providers* to determine if some providers are, on average, more (or less) effective than others in increasing students' reading and math achievement (compared with the state of no SES participation). That is, despite the lack of average or marginal SES effects, some SES providers may be more effective than others, and more hours attended with these providers may produce larger gains in student achievement.

The results from these regressions are summarized in row 4 of table 1 (full model results are available from the author). The results show that only 6 (of the approximately 30 providers that registered students in these school years) produced statistically significant gains in students' math and/or reading achievement.[13] Because of differences in the tests used in the two academic years, parameter estimates are larger for 2004–05 than for 2005–06 by approximately a factor of 10, and parameter estimates for high school students are about double the size for those of middle school students, as expected. Accounting for these differences, the size and substantive significance of the estimated effects are generally comparable; there is no one provider that stands out as being appreciably more effective than the others (among these six) in increasing student achievement. For example, considering the effect of vendor D on high school students' reading gains in 2004–05, for each additional hour of SES attended with this vendor, student reading scores increased by 3.2 test units, or approximately 4% of a standard deviation reading gain for that test. The SES provider effects are, therefore, quite small relative to the variability of gains in student test scores.

As only six SES providers were identified as more effective than others in increasing student test scores, it was also of interest to know if they were distinguished by particular characteristics that would help school districts in guiding the SES choices of students and parents. Table 2 presents summary information about the providers for the 2004–05 school year, the only year in which all these providers were active in MPS. Three of the SES providers are larger for-profit national vendors, and the others are nonprofit locally based providers. The information in this table suggests little in the way of consistent attributes or logical relationships among them (i.e., hourly rates charged for tutoring, reported student-teacher ratios, number of sessions offered, or student attendance rates). For example, vendor A charged the highest rate per hour but has the same student-teacher ratio and offers approximately the same number of sessions as one of the lowest-cost providers (vendor C), and the less costly of these two providers is also more effective at getting registered students to attend SES. In addition, the rankings for the percentage of students attending 20 or more hours of SES show that only one of these providers (vendor C) is among the top 10 in this

13 Although the SES vendors are not identified in this article, this information may be obtained from the link to MPS research publications (shown in footnote 9).

Table 2
Characteristics of SES Providers Identified as Effective in Increasing Student Test Scores

Provider Characteristics 2004–05 School Year	Vendor A	Vendor B	Vendor C	Vendor D	Vendor E	Vendor F
Legal status	Nonprofit	Nonprofit	Nonprofit	For profit	For profit	For profit
Hourly rate charged ($)[a]	80	40	40	40	65	63
Reported student-teacher ratio	5:1	n.a.	5:1	7:1	10:1	3:1
No. of sessions offered	19–23	64	21	46	23	n.a. (at home, online)
% of registered students attending any hours (and rank among providers)	44.6 (20)	75.2 (4)	70.0 (8)	43.7 (21)	72.6 (7)	64.8 (11)
% of students attending 20 or more hours (and rank among providers)	33.9 (16)	40.3 (12)	44.4 (9)	17.2 (21)	30.1 (18)	29.3 (19)
Share of registered students	1.5	3.4	2.4	2.3	12.7	7.2

[a]Hourly rates charged by approved providers in Milwaukee in 2005 ranged from $20 per hour to $100 per hour. n.a. = not applicable.

category. Also, contrary to what one might expect, the second highest-cost provider has the highest reported student-teacher ratio (and the second largest market share in 2004–05). The CPS (2007) study (one of the few to also estimate provider-specific SES effects) likewise reported incongruous findings; of seven providers identified as effective in generating achievement gains for SES participants, the least expensive one (with service costs one-third of the average SES costs) produced reading achievement gains comparable with students tutored by more expensive providers and significantly greater math achievement gains than students tutored by the other SES vendors (collectively).

Relationship between SES Provider Performance and Market Share

The analysis now comes to a key research question concerning the relationship between provider effectiveness and market share: Are the market shares (of registered students) of these six more effective MPS providers relatively larger and/or increasing over time? In 2006–07, the two national for-profit providers (E and F) that were identified as relatively more effective in increasing high school students' reading test scores in 2005–06 had the first and third largest market shares; both had also substantially increased market share since the 2003–04 school year. At the same time, the three nonprofit locally based providers that were more effective in producing student reading and math gains had exited the market or had no registered students. And in the most recent school year (2007–08), only two of these six providers (national ones) were still offering SES in Milwaukee. In Burch's (2009) study of SES providers, smaller "homegrown" vendors argued that they were at a competitive disadvantage relative to national firms, particularly in their ability to offer incentives in marketing to students.

Thus, the findings from this investigation of third-party service provision and the market for SES are mixed. The list of approved providers for MPS decreased again in 2007–08 from 32 to 23 vendors, primarily reflecting additional losses of small community-based providers. Undoubtedly, these patterns in changing provider market shares and market exits

reflect cost structure and efficiency factors as well. Declining and/or fluctuating student attendance makes it difficult for providers to cover both fixed costs, such as facility rental, insurance, and so on, and anticipated marginal costs (e.g., instruction materials). In addition, the state introduced a new policy in the 2006–07 school year that limits the use of incentives to those deemed educational and prohibits vendors from offering more popular incentives (such as iPods, mall gift cards, and movie passes), effectively diluting SES vendors' most successful tool in recruiting students. This same policy may also give large online providers, which typically provide a free computer to students to use at home in accessing the tutoring services, an unfair advantage in recruiting. The SES provider with the largest market share at the end of this study period was an online provider that increased its share from less than 10% to more than one-quarter of all participating students. In general, these findings are consistent with that of other research (Burch 2009; Burch, Steinberg, and Donovan 2007) showing the growing market dominance of larger national firms that have more capital to use in increasing or sustaining market share, as well as revenue streams from other markets to help them endure market volatility.

Accountability, Democratic Representation, and Responsiveness

A goal of MPS is to use district-level information to produce rankings of SES providers based on their effectiveness in increasing students' test scores. This would not only help them to comply with the NCLB requirement to withdraw approval from poorly performing providers but would also produce information to aid parents and students in choosing SES providers. As indicated previously, not all providers registered a sufficient number of students to separately estimate their effectiveness (controlling for the characteristics of the students they served). And as SES providers may impose their own criteria in accepting student registrations, accounting for *who* they serve may be critical. For example, in studying the large national firms providing SES in 2004–05, Burch, Steinberg, and Donovan (2007) showed that among the top eight providers, none offered services appropriate to students with special needs, and among the smaller SES providers, only 1 in 10 offered services and products for native Spanish speakers. Thus, for parents of students with special needs or limited English proficiency (who are frequently overrepresented in underperforming schools), the information made available to them on SES providers' performance may be of little direct relevance to the choices they are trying to make for their children. Furthermore, with relatively large numbers of market entries and exits by SES providers, school districts inevitably have to rely on self-reports for new providers (as well as for those providers with relatively small market shares). Finally, lags in compiling data for analysis of provider performance also make it difficult for LEAs to produce accurate information on SES provider performance in advance of the next academic year in which SES choices are made. Thus, in general, accountability through market choice appears to operate very imperfectly—with incomplete and uneven information on performance and limited choices for some (i.e., inequities), as well as little or no representation for those who are affected by Title I allocations to SES but are not participating in SES.

At the same time, SEAs and LEAs are gradually gaining experience and developing tools for monitoring SES providers and increasing administrative and financial accountability. Although federal officials primarily communicate with state officials (i.e., the DPI in Wisconsin), MPS staff reported in interviews that federal government representatives had visited Milwaukee to inquire about their different Title I programs and to look for evidence that requirements of the law are being followed. The state passes on federal

regulations and packets of information on SES providers to the district, and it is also required to develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by the providers (see http://dpi.wi.gov/esea/ses_index.html.). In spring 2006, the DPI initiated efforts to review up to four SES providers each year, conducting monitoring visits with DPI and school district representatives to verify compliance with federal and state requirements for SES providers and district agreements (e.g., ensuring curriculum consistent with school and district curriculum guidelines and state standards and compliance with health, safety, and civil rights laws and regulations). Providers are given at least 4 weeks of advance notification of the monitoring visit, and a summary report of findings from the visit is posted online.[14] The report presents "checklists" indicating whether providers have met requirements for reporting student progress to parents and the school district; curriculum alignment; and the basic health, safety, and civil rights laws and regulations. These reports provide no information, however, indicating the quality of SES and the instructional strategies employed (e.g., the amount of one-on-one tutoring offered) or other information that parents indicated they would like to have in choosing a provider, such as specific information on tutor qualifications and the academic content of SES sessions. And although there is a link to an online parent satisfaction survey on the DPI's parent SES Web page, no public report of the results of these satisfaction surveys is made available.

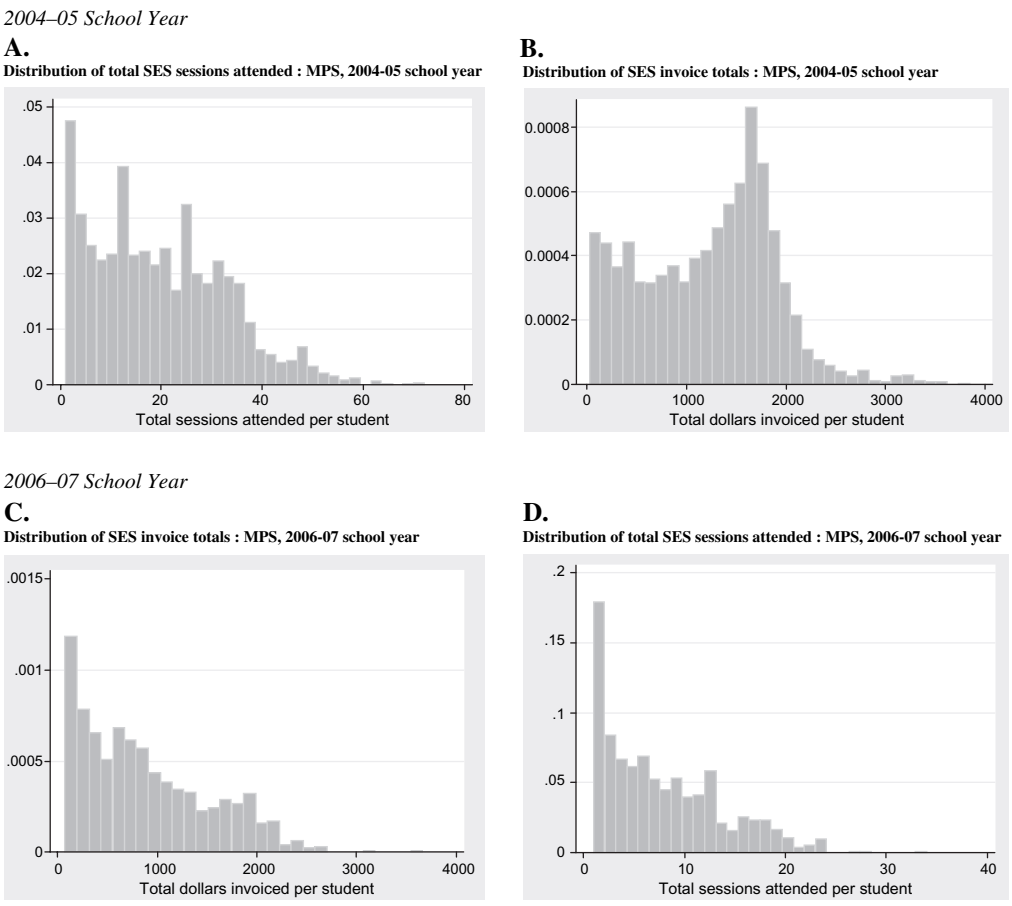
LEAs, as described earlier, also establish contractual agreements with the SES providers that function like a cost-reimbursement contract and require monitoring for financial accountability. In arranging for services, school districts are required to pay for SES for each participating student up to an amount that is the lesser of (1) the school district's Title I, Part A allocation divided by the number of students (ages 5–17) from families below the poverty line (based on census poverty data) or (2) the actual cost of services received by each child (Section 1116(e)(6)). In MPS, the maximum amount that SES providers can invoice for each participating student is approximately $2,000 (the exact amount changes slightly from year to year), and they are required to track student attendance with signatures and invoice MPS for students' hours attended. Although MPS staff conveyed in interviews that they had very limited tools for enforcing the SES vendor agreements and holding them accountable for performance, they were beginning to take steps to improve compliance with basic contract requirements and to address financial performance concerns. For example, one of the puzzling findings of the analysis of service provider performance was the lack of relationship between hourly rates charged by SES providers, the number of SES sessions typically offered to students, total SES hours attended by students, and provider performance in increasing student achievement. Recognizing that accountability for service provision and corresponding financial claims was relatively lax at the onset, MPS staff responsible for SES instituted (over time) new procedures for verifying student hours attended at SES sessions, such as spot checking of SES sessions to see if students were present, cross-checking student signatures on SES attendance forms, and withholding approval of payments for services until all paperwork was submitted.

In the analysis of SES provider performance, the relationship between student SES hours and sessions attended and the total payments requested (invoiced) by the SES providers over the years 2004–05, 2005–06, and 2006–07 was explored independently

14 See http://dpi.wi.gov/esea/ses_provider_monitoring.html for links to individual SES provider monitoring reports.

of any knowledge of MPS actions in this regard. Figure 1 shows how the distributions of the amount per student billed to MPS for SES sessions and the number of SES sessions attended per student changed over this study period. Because the total invoiced by providers is a simple linear function of the total number of sessions attended, the two distributions (A and B in figure 1) should be very similar in shape for each year.[15] Looking first at these distributions for the 2004–05 school year, it is apparent that the distributions of invoice totals and total sessions attended are very different; the distribution of invoiced amounts peaks near the maximum invoice amount (i.e., close to $2,000), whereas total sessions attended peaks close to zero. If the bulk of the students are attending relatively few SES sessions, the majority of the SES providers should not be billing for close to the

Figure 1
Distributions of SES Sessions Attended per Student and SES Invoice Totals per Student in MPS



15 We performed the same analysis using total hours attended per student (rather than total number of sessions attended), and the distributions and their patterns over time were the same (leading to the same conclusion).

maximum payment allowed. Looking at the same distributions for the 2006–07 school year, the expected relationship is depicted, with the distributions of invoiced amounts and sessions attended looking almost exactly the same. Although this study cannot definitively link the actions progressively taken by MPS to tighten accountability for student attendance and SES invoices to what appears to be more accurate billing, these patterns are strongly suggestive of improved management of the SES service agreements and greater accountability for how taxpayer dollars are being spent on SES.

It is evident in the earlier discussion, however, that the tools for accountability available to states by program design and developed by LEAs have focused primarily on process and financial accountability, despite the clear intent of NCLB to generate and demonstrate improvements in students' educational achievement (i.e., reading and math test scores). MPS staff indicated that the absence of explicit measures of service quality and the lack of resources for accurately and timely measuring the outcomes of SES have seriously hampered their efforts to follow through in holding SES providers accountable for their performance in increasing student achievement. For example, an SES program coordinator explained in an interview that if an SES provider tutors a student sporadically or for only a small number of hours, the student may gain little from the SES sessions, and yet, the district is still obligated to pay the vendor for those billable hours. The coordinator suggested that performance-based contracts with both service quality standards (e.g., minimum number of hours of tutoring provided within a specific timeframe, maximum student-teacher ratio) and outcomes-based standards (e.g., improvements in student grades and/or test scores) would give LEAs and SEAs more leverage for inducing greater effort from providers and managing for results.

CONCLUDING DISCUSSION

Since NCLB, private sector specialty service providers have come to play increasingly vital roles in K–12 education, with local governments spending an estimated $48 billion annually on privately provided educational products and services (Burch 2009). A central objective of this study was to bring empirical and case study evidence to bear in exploring whether the use of market-like mechanisms and devolution of primary responsibility for public services delivery to third parties could achieve results where the public sector was identified as failing—that is, in improving educational achievement among children in poorly performing public schools.

This research specifically focused on the provision of SES to students in schools needing improvement, identifying and examining the governance structures and relationships that were established to deliver these services through primarily nongovernmental providers. A major concern of this research was how core public values such as equity in access, quality, efficiency, responsiveness, and accountability would be supported or promoted in the face of widely dispersed authority and control over program operations and management among the various government and nongovernmental entities involved. As described earlier, the implementation of SES is characterized by multiple principals—the federal government establishing the program mandate and set aside of funds, the state government defining program parameters and certifying SES providers, and the LEA organizing and managing contracts for services—with somewhat blurred lines of responsibility, uneven "buy-in," and limited resources for implementation. At the same time, the business of after-school tutoring programs was situated within a well-developed

private sector market that SEAs and LEAs could draw from in arranging for competitive local services.

Consistent with the NPM reforms, NCLB also advanced stronger accountability for student performance as the primary management tool for SEAs and LEAs, requiring them to expunge SES providers that failed to increase students' academic achievement over a 2-year period. A hallmark of NCLB—criticized by some and extolled by others—has been new requirements for annual statewide testing designed to measure *all* students' mastery of academic content that meets state standards and the reporting of test results annually to the public. Thus, one might argue that SEAs and LEAs had very clear-cut and widely accepted measures of SES provider performance (in the form of students' test scores) by which to evaluate program effectiveness and "discipline" the market.

As this and related studies have shown, however, accurately measuring the performance of individual providers in increasing student achievement is very difficult to accomplish in practice (routinely or annually). Because participation in SES is voluntary and highly selective—with some SES providers declining to serve students with special needs and language barriers—it is important to adjust for the characteristics of students served to fairly assess the contributions of SES (and different providers) to student achievement. For vendors serving small numbers of students, the sample sizes are frequently insufficient for this type of multivariate estimation, and for others, data may be unavailable or incomplete (e.g., for those serving students with special needs who may not participate in statewide test taking). If estimates of provider effectiveness cannot be produced for all vendors, how can SEAs and LEAs use this information to decide which providers should be allowed to continue to offer services and which should be withdrawn? The federal government has offered no new resources to comply with this mandate for holding SES providers accountable for their performance.

The findings from this case study also suggest that the government should not rely on parents and students to check the market through their choice of providers. In focus groups, parents reported that they had insufficient information for judging the quality of SES vendor services, and some instead made choices based on convenience (location or the availability of transportation). Students indicated in surveys that they chose providers based on the attractiveness of the incentives, and early in the program, MPS became aware that students were switching providers after the start of their tutoring to get additional prizes or rewards. In fact, the SES provider with the largest proportion of students (55%) reporting in the surveys that they had received an incentive or reward was also the vendor with the largest market share in the final 2 years of this study. It was this unintended market response that prompted MPS to establish the policy restricting SES providers' use of incentives to educational items only. In general, given the limited information available to the consumers for making choices and how rapidly the market was evolving, with significant numbers of entries and exits each school year, it is not surprising that provider market shares were not highly correlated with the estimates of provider performance or other vendor characteristics.

As Kettl (2002) recognized and this case study appears to substantiate, despite ambitious efforts to measure performance outcomes and manage for results as advanced by NPM reforms, in practice, government control over the flow of funds endures as the primary tool of accountability in many third-party relationships. Thus, it may be by default that efficiency still dominates as a primary criterion by which the functioning of third-party

government arrangements is judged. Because MPS had authority for arranging and monitoring the SES provider agreements and paying the vendors, it was able to develop procedures for better tracking and verifying service provision, and provider financial accountability (i.e., the accuracy of invoices) improved over time. At the same time, school district staff persons were not satisfied with their level of control over service quality and educational outcomes, and they identified the cost-reimbursement form of the contracts as a significant barrier to increasing their leverage over provider performance. Indeed, one of Gansler's (2006) key findings based on his case studies of "market-based government" was that performance-based contracts that emphasize outcomes as well as costs, with agreement on the metrics for both among the parties, were critical to the success of third-party provision of public services. Moreover, he argued that government will actually have greater control in awarding a competitive contract for services delivery to either a public or a private provider than in directly providing the service (as long as it can measure and monitor performance and costs) because it is easier to terminate poor performers and "activities-based costing" makes costs more visible. Of course, as this study showed, in the case of more complex service technologies such as SES (relative to refuse collection, for instance), it is one thing to agree on an outcome measure such as student test scores and another to be able to attribute a change in outcomes to the work of the third-party provider.

In the face of these performance accountability challenges that are exacerbated by "imperfect" lines of control (Salamon 1989) and added links in the chain of funding and authority (Milward and Provan 2000), scholars of governance have questioned whether basic democratic values (e.g., representation) are discounted in third-party governance configurations or, alternatively, whether democratic institutions may be strengthened through the opening of new channels for citizen participation (Skelcher 2007). The findings of this case study of SES do not suggest that the longer chains of delegation—from federal educational agencies to SEAs to LEAs and nongovernmental providers—have significantly eroded the government's capability to manage the delivery of these services or to achieve financial accountability. In fact, as the market for SES matures and continues to be dominated by a relatively small set of core providers, the school district may be able to better monitor and work with these providers in developing more effective services.

To date, however, the evidence also does not show that these third-party arrangements have led to the anticipated improvements in educational outcomes of students in failing public schools or that they have better responded to the preferences and needs of the public. Indeed, there has been little attention to or concern for equity in access to SES among eligible students, or for representation of the interests of those who are not participating in SES but are still affected by the failures of public education (e.g., other students in underperforming schools who may be harmed by the diversion of resources to SES and away from other activities designed to improve educational quality). In discussing the impact of these arrangements on students with special needs, Burch (2009, 60–61) comments, "the flexibility given to SES vendors regarding students with disabilities stands in stark contrast to the explicit civil rights laws that govern how public education agencies serve students with disabilities during the school day." Burch's work also suggests that the lessons of this case study apply to a number of areas in K–12 education where private educational services are rapidly expanding, such as virtual charter schools, educational management organizations, alternative and special education services, and more.

The currently proposed changes to Title I regulations that apply to SES suggest that the federal government is aware of and trying to address the problems with low SES enrollments and accessibility of the services. The proposed regulations require districts to give parents earlier notification of their child's eligibility for SES and to make public reports of eligibility and participation levels, as well as to publicly report results from parent surveys and any other evaluation results "demonstrating that the instructional program has improved student achievement" (see http://www.ed.gov/policy/elsec/reg/proposal/summary-detail.pdf, 4–6). Interestingly, the regulations do not specify that states and districts should report results showing that SES or particular providers are *not* effective. In terms of resources for program management or evaluation, there is only a small concession allowing LEAs to count up to 0.2% of their required (20%) allocation of Title I funds to SES toward outreach to parents of eligible children. Clearly, the federal government—as one of the biggest "drivers" of the growing market for private educational services (Burch 2009)—is still expecting the competitive market to "work its magic" in improving the effectiveness of SES. A critical lesson of this study and other contributions of this symposium, however, is that simultaneously expanding investment in government management capacity is essential, particularly in the context of complex multilayered contracting and service delivery systems such as those described in the symposium, if accountability for performance is to become anything more than a worn-out mantra for shallow governance reforms.

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