Ohio | Department of Education

CCIP Note #249

Keywords: Allocations, Consolidated, Title III LEP, and Supplemental Educational Services
Attention: Superintendents, Treasurers, and Consolidated Application Contacts
Summary: FY12 Consolidated Application is available starting June 1, 2011; Preliminary Title III LEP Allocations available for view.

The process for review and approval of the CCIP Consolidated Application for federal funds will be changing to better serve you.

ODE will begin implementing the process that was established last year for eligible districts and schools to apply to become SES providers under this waiver.

FY12 CCIP Regular Consolidated Application Available June 1, 2011

Superintendents, Treasurers, and Consolidated Application Contacts

FYI

The FY 12 CCIP regular consolidated application is accessible online June 1, 2011. The following allocations are now available:

- Title I-A
- Title I-C, Migrant
- Title I-N, Neglected
- Title I School Improvement Sub A (List of funded buildings is available at https://ccip.ode.state.oh.us/DocumentLibrary/ViewDocument.aspx?DocumentKey=77594
- Title II-A, Improving Teacher Quality
- Title III – LEP, English Language Acquisition
- Title VI-B Rural and Low Income Education
- Special Education, Part B-IDEA
- Early Childhood Special Education, IDEA

CCIP Consolidated Application Approval Process

Superintendents, Treasurers, and Consolidated Application Contacts

FYI

The process for review and approval of the CCIP Consolidated Application for federal funds will be changing to better serve you. You should make a phone conference appointment with your federal program consultant PRIOR to sending in the first draft. We would like to cut the number of revisions needed to your original application back to one or two. Consultants will go over your CCIP Consolidated Application BEFORE you submit it. This will assure your district will have the CCIP Consolidated Application approved on the first or second submission.

"As the 2011 CCIP applications (Consolidated and Competitive) come to a close June 30, so will the budget revision window for Non-ARRA grants. After

June 30, CCIP will not allow revisions to be started so please review your program budget and make sure it is in line with your needs. “

Preliminary Title III LEP Allocations for FY12

Superintendents, Treasurers, and Consolidated Application Contacts

FYI

The preliminary Title III LEP allocation amounts for FY2012 are posted in the CCIP Document Library, under Consolidated Funding Application, Title III, Allocations: https://ccip.ode.state.oh.us/DocumentLibrary/ViewDocument.aspx?DocumentKey=77593 .

These preliminary allocations are based on a conservative estimate of our Title III state award from the U.S. Department of Education. Once we receive the actual award in July, we will publish the final allocations for all districts and community schools. In the mean time, Title III LEP funds for F2012 have been loaded into the CCIP allocation pages of those districts and community schools that reached the minimum $10,000 amount based on the preliminary allocations.

Title III LEP consortia (both fiscal agents and district/community school members) should know that because final Title III allocations will not be made until July, Title III LEP consortia (both fiscal agents and district/community school members) should make a commitment to continue to plan for a consortium in case the final allocation is less than $10,000 for any of the member districts. Immigrant program allocations for FY2012 will not be made until August 2011 when the confirmed immigrant student enrollment data is available from the 2011 EMIS Year End (N) reporting period.

Notice of Intent to Apply as a Supplemental Educational Service (SES) Provider

Superintendents, Treasurers, and Consolidated Application Contacts

FYI

Last year, Secretary Arne Duncan invited states to request waivers of certain statutory and regulatory requirements under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA). Dr. Thelma Melendez de Santa Ana, Ph.D., Assistant Secretary for the Office of Elementary and Secondary Education, pursuant to the authority that has been delegated to her under section 9401 of the ESEA, is now inviting states to request two of those waivers for the 2011-2012 school year (see http://www.ed.gov/policy/elsec/guid/secletter/090401.html for a copy of the letter).

As a result, the Ohio Department of Education (ODE) is currently awaiting approval from the United States Department of Education (USDOE) for its request for a waiver of the provision that prohibits a State Educational Agency (SEA) from approving as a provider of supplemental educational services (SES) a school identified for improvement, corrective action, or restructuring, or a Local

Educational Agency (LEA) identified for improvement or corrective action (34 C.F.R. § 200.47(b)(1)(iv)(A), (B)).

In the interim, ODE will begin implementing the process that was established the past two years for eligible districts and schools to apply to become SES providers under this waiver. The first step in this process is for eligible schools and districts to submit a Notice of Intent to Apply to Become an SES Provider. Eligible LEAs or schools are those in District Improvement or School Improvement status who are not already SES Providers selected through last year's waiver process. **Only those districts and schools that have a Notice of Intent to Apply to Become an SES Provider on file at ODE by June 10, 2011 will be eligible to apply.**

Eligibility will be based on the most current data available and can be found by accessing the following link:

2010-2011 District Schools in Need of Improvement

To indicate intent to apply to become an approved SES provider, please fill out and send the appropriate attached Notice of Intent to Apply, signed by the Treasurer and Superintendent, to Kathy Harper in ODE's Office of Federal Programs, no later than June 10, 2011.

This intent to apply may be mailed, faxed, or e-mailed, but must be received by 5 p.m., June 10, 2011. Please submit the Intent to Apply to:

The Ohio Department of Education
Kathy Harper, Federal Programs
25 S. Front St., Mail Stop 404
Columbus, OH 43215
614-752-1473
Fax: 614-752-1622
kathy.harper@ode.state.oh.us

It is recommended that districts and schools that intend to apply carefully review SES Non-Regulatory Guidance from USDOE. This information can be found on the USDOE website at http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc.

Summary

Upon ODE receipt of the USDOE waiver permitting districts and schools in need of improvement to become SES providers, ODE will allow such districts and schools to apply to become SES providers effective the 2011-2012 school year. Eligible districts and schools must submit a Notice of Intent to Apply to Become an SES Provider by June 10, 2011 to be eligible to apply when the application opens. **Only those districts and schools in improvement that have a Notice of Intent to Apply to Become an SES Provider on file at ODE by June 10,**

2011 will be eligible to apply. Approval of SES Providers under this waiver is contingent upon USDOE's approval of ODE's waiver request. In the event that a waiver is not granted, any and all applications will be null and void.

Attachment #1 – District in Improvement Notice of Intent to Apply to Become an SES Provider
Attachment #2 – School in Improvement Notice of Intent to Apply to Become an SES Provider
Attachment #3 – Ohio Ethics Commission Advisory Opinion No. 2008-04

Ohio | Department of Education

Attachment #1: District in Improvement Notice of Intent to Apply to Become an SES Provider for School Year 2011-2012

District in Improvement Notice of Intent to Apply to Become an SES Provider

District Name: _____

District IRN: _____

District Improvement Status: _____

(NOTE: If your district is not in improvement, you are not eligible to apply for this waiver.)

District Contact: _____

(District Name)_____ intends to apply as a Supplemental Educational Services (SES) Provider. It is acknowledged that the Request for Proposal (RFP) must be completed electronically by **June 24, 2011**. Applications will be rated by a series of independent raters. The RFP must meet a minimum score as outlined in the RFP Scoring Rubric. A district failing to meet the minimum score on the RFP will not be approved to provide SES.

Approval as an SES provider is contingent upon receipt of a waiver from USDOE. Districts will be notified by July 1, 2011.

The district has reviewed the Ohio Ethics Advisory Opinion No. 2008-04, issued November 12, 2008. The district understands that parents have the choice to determine the provider appropriate to their child's needs for SES and district approval as a provider does not preclude other state approved providers from carrying out SES within the district. Approval as a provider does not exclude the district from following other SES requirements including, but not limited to, website posting requirements, set-aside rules, parent notification letters, district contracts with other providers, and/or use of incentives. Deadline for receipt of this notice is 5:00 P.M. on July 10, 2011.

_____ _____

Superintendent Signature Treasurer Signature

Mail or e-mail the signed Notice of Intent to Apply as an SES Provider to:

Ohio Department of Education
Office of Federal Programs
25 South Front Street
Mail Stop 404
Columbus, Ohio 43215
Attn: Kathy Harper
Or
kathy.harper@ode.state.oh.us

Ohio | Department of Education

Attachment #2: School in Improvement Notice of Intent to Apply to Become an SES Provider for School Year 2010-2011

School in Improvement Notice of Intent to Apply to Become an SES Provider

School Name: _____

School IRN: _____

District Name & IRN: _____

School Improvement Status: _____

(NOTE: If your school is not in improvement, you are not eligible to apply for this waiver.)
School Contact: _____

(School Name)_____ intends to apply as a Supplemental Educational Services (SES) Provider. It is acknowledged that the Request for Proposal (RFP) must be completed electronically by **June 24, 2011.** Applications will be rated by a series of independent raters. The RFP must meet a minimum score as outlined in the RFP Scoring Rubric. A district failing to meet the minimum score on the RFP will not be approved to provide SES. Approval as an SES provider is contingent upon receipt of a waiver from USDOE. Districts will be notified by July 1, 2011.

The district has reviewed the Ohio Ethics Advisory Opinion No. 2008-04, issued November 12, 2008. The district understands that parents have the choice to determine the provider appropriate to their child's needs for SES and district approval as a provider does not preclude other state approved providers from carrying out SES within the district. Approval as a provider does not exclude the district from following other SES requirements including, but not limited to, website posting requirements, set-aside rules, parent notification letters, district contracts with other providers, and/or use of incentives. Deadline for receipt of this notice is 5:00 P.M. on June 10, 2011.

_____ _____

Superintendent Signature Treasurer Signature

Mail or e-mail the signed Notice of Intent to Apply as an SES Provider to:

Ohio Department of Education
Office of Federal Programs
25 South Front Street
Mail Stop 404
Columbus, Ohio 43215
Attn: Kathy Harper
Or
kathy.harper@ode.state.oh.us

Attachment #3: Ohio Ethics Commission Advisory Opinion No. 2008-04

Ann Marie Tracey, *Chair*
Ben Rose, *Vice Chair*
Merom Brachman
Betty Davis
Steven Dettelbach
Shirley Mays

David E. Freel,
Executive Director



OHIO ETHICS COMMISSION
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INFORMATION SHEET: ADVISORY OPINION NO. 2008-04
TEACHER SELLING SUPPLEMENTAL EDUCATION SERVICES TO DISTRICT

What is the question addressed in the opinion?

Can a teacher or other school district employee sell Supplemental Education Services (SES) to the school district by which he or she is employed? SES are tutoring and other academic services for eligible students in schools that have not met state targets for school achievement.

What is the answer in the opinion?

The Ohio Ethics Law and related statutes prohibit a teacher or school district employee from selling SES to the district by which he or she is employed, unless the teacher or employee can: (1) demonstrate that he or she is providing the services to the district at a lower cost than any other provider; and (2) meet other requirements in an exception to the Ethics Law.

Even if the teacher or other school district employee meets the exception, the Ethics Law does not require or obligate the district to purchase SES from a teacher or employee.

To whom does this opinion apply?

The conclusions in the opinion apply to teachers and school district employees who do not exercise, or have the authority to exercise, administrative or supervisory authority regarding contracts or programs of the district. School board members, superintendents, treasurers, and other administrators who are exercising or are empowered to exercise such authority are subject to the conclusions in this opinion *and* to other restrictions.

How and when did the opinion become effective?

The opinion became effective upon acceptance by the Commission.

For More Information, Please Contact:

David E. Freel, Executive Director, **or**
Jennifer A. Hardin, Chief Advisory Attorney
(614) 466-7090

**THIS COVER SHEET IS PROVIDED FOR INFORMATION PURPOSES.
IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2008-04 IS ATTACHED.**

Serving Ohio Since 1974

Ann Marie Tracey, *Chair*
Ben Rose, *Vice Chair*
Merom Brachman
Betty Davis
Steven M. Dettelbach
Shirley Mays

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Advisory Opinion
Number 2008-04
November 12, 2008

Syllabus by the Commission:

(1) Division (A)(4) of Section 2921.42 of the Revised Code prohibits a teacher or other school district employee from selling supplemental education services (SES) to the district unless he or she can meet the four-part exception in R.C. 2921.42(C);

(2) One requirement of the exception is that the district employee is providing SES to the district at a lower cost than any other SES provider;

(3) The Ethics Law and related statutes do not require the district to purchase SES from a teacher or other school district employee even if the teacher or employee can show that he or she meets all of the requirements in the exception;

(4) The conclusions in this opinion apply to teachers and school district employees who do not exercise, or have the authority to exercise, administrative or supervisory authority regarding contracts or programs of the district. School board members, superintendents, treasurers, and other administrators who are exercising or are empowered to exercise such authority are subject to these restrictions and also to *additional* restrictions.

* * * *

R.C. 2921.42(A)(4) prohibits a public official from having an interest in the profits or benefits of a public contract entered into by or for the use of any public agency with which the official is "connected." The question before the Commission is whether R.C. 2921.42(A)(4) prohibits a teacher or other school district employee from selling supplemental education services (SES) to the district he or she serves.

Supplemental Educational Services

The federal No Child Left Behind Act (NCLB) provides funds for free tutoring and other supplemental academic enrichment services for eligible students in schools that have not met the state targets for increasing school achievement. Pub. L. No. 107-110, 115 Stat. 1425 (2001) (codified as amended in scattered sections of 20 U.S.C.). School districts receive Federal Title I funds to operate their SES programs, which includes paying the provider of services. Districts receive a per-pupil allocation, based on the district's need for SES, which is determined by the United States Department of Education using a formula established in 20 U.S.C. § 6316(e)(6)(A) (2002). If a district is required to provide SES, it must pay, for each child receiving services, the lesser of the actual cost of services or the maximum per-child expenditure. 20 U.S.C. § 6316(e)(6).

The state approves which public or private providers are eligible to deliver the tutoring and other services. 20 U.S.C. § 6316(e)(4). The school district enters into a contract with providers who are approved by the state. 20 U.S.C. § 6316(e)(3). However, a provider is not paid by the district unless and until parents of eligible students choose the provider, from a list supplied by the state, to provide services to their child. 20 U.S.C. § 6316(e)(4)(c). School districts are required upon request to help parents determine the provider that will best fit their child's needs. 20 U.S.C. § 6316(e)(2)(B). When a parent selects a provider, the district pays the provider as services are rendered and billed by the provider.

Public Contract—R.C. 2921.42(A)(4) and Definitions

R.C. 2921.42(A)(4) provides that no public official shall knowingly:

> Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which the public official is connected.

R.C. 2921.01(A) defines "**public official**" as "any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity." This restriction applies to all individuals who are elected or appointed to, or employed by, any school district, including administrators, staff, and teachers.[1] See R.C. 3313.17 (a school district board of education is a body politic and corporate); Ohio Ethics Commission Advisory Opinion No. 93-017. The restriction applies whether the person's public position is: (1) compensated or uncompensated; (2) full time or part time; or (3) temporary or permanent.

[1] Teachers are subject to R.C. 2921.42 regardless of whether they perform, or have the authority to perform, supervisory or administrative functions.

A "**public contract**" includes the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of any state or local public agency, including bid and unbid, written and oral contracts. R.C. 2921.42(I)(1)(a); Adv. Op. No. 87-002. In most cases, a public contract exists when a public agency buys goods or services directly from a provider. Adv. Ops. No. 93-007 and 93-009. However, a public agency can acquire goods or services in other ways. In Advisory Opinion No. 93-007 the Commission explained:

> The key factor in determining whether a contract is a "public contract" is whether the governmental entity is acquiring, either through purchase, grant, tax abatement, donation, loan, or other method, property or services.

Under NCLB, when a school district contracts with SES providers, it purchases or acquires supplemental education services for its students.[2] The district uses federal funds provided for the purpose of meeting the NCLB mandates. The acquisition of SES by a school district is a "public contract."

A prohibited "**interest**" in a public contract is a definite and direct interest that can be of either a financial or fiduciary nature. Adv. Ops. No. 81-008 and 88-001. SES providers, or the owners of a company or LLC providing SES, would have a definite and direct interest in the contract under which they are paid to provide SES.

R.C. 2921.42(A)(4) prohibits a teacher or other school district employee from entering into a contract with the district he or she serves to be an SES provider, unless he or she can meet the exception discussed below.

Exception to the Prohibition—R.C. 2921.42(C)

R.C. 2921.42(C) provides that R.C. 2921.42(A)(4) does not apply to a public official who can meet all four requirements in the exception. The criteria are strictly construed against the public official who must show compliance with them. Adv. Ops. No. 83-004 and 84-011. R.C. 2921.42(C) provides:

> (1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;
>
> (2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public official's becoming associated with the political subdivision or governmental agency or instrumentality involved;

[2] Pursuant to R.C. 3319.08(A), a school district must enter into an employment contract with each teacher. If the district authorizes additional compensation for the teacher for duties in addition to the core duties of the teacher, the parties shall enter into a "supplemental written contract." Id. These contracts are permissible as part of the established employment relationship. SES contracts would not fall under this statutory authority.

(3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;

(4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public official, member of the public official's family, or business associate, and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

Because SES are mandated services under NCLB, the services are "necessary" for the district, and a school district employee who is an SES provider can meet the requirement in Division (C)(1).

R.C. 2921.42(C)(2) requires that the services the school district employee provides to the district are either: (a) unobtainable elsewhere for the same or lower cost; or (b) provided to the district as part of a continuing course of dealing established before the employee became associated with the district.

In order to meet the "continuing course of dealing" requirement, the school district employee must be able to show that he or she had an existing SES contract with the district before beginning his or her employment with the district. A person who had been an SES provider with the district *before* he or she accepts employment with the district can meet this exception. However, the exception will only apply to the existing contract, and only while the terms and conditions of the contract are unaltered. Adv. Op. No. 88-008. If the contract is renewed after the person becomes a district employee, or its terms or conditions are altered in any way, the employee will not longer be able to meet the continuing course of dealing aspect of the exception. Id.

In order to meet the "unobtainable elsewhere for the same or lower cost" aspect of the exception, the school district employee must be able to show, through appropriate documentation, that there is no other SES provider that can offer the same services for the same or lower cost. If the school district employee sells SES to the district for less than *any other* provider, after the District has made every reasonable effort to open the process of identifying providers to all interested and qualified parties, the employee can meet the requirement. Adv. Ops. No. 83-004 and 89-004.

The third requirement in R.C. 2921.42(C) is that the treatment the school district employee provides to the district is the same as, or better than, the treatment he or she would provide to any other client or customer. The school district employee must be able to show that the SES business he or she operates provides services to the district students that are at least as good as the services the business would provide to any other students.

Finally, R.C. 2921.42(C)(4) requires that the entire transaction is conducted at arm's length, that the district has full knowledge that the district employee has an interest in the SES contracts, and that the employee takes no part in the decision of the district regarding the contracts. In an arm's length transaction: (1) both the employee and the district act voluntarily, without compulsion or duress; (2) the transaction occurs in an open market; and (3) all parties to the transaction act in their own self-interest. *Walters v. Knox Cty. Bd. of Rev.* (1989), 47 Ohio St.3d 23, 25. An "open market" is a market in which any buyer or seller can trade, and the prices and product availability are determined by free competition. *Mildred Hine Trust v. Buster*, Franklin App. No. 07AP-277, 2007-Ohio-6999, ¶ 21.

In an arm's length transaction, the district has made every reasonable effort to demonstrate that all interested and qualified providers of SES can provide services to the district's students, and that parents are informed of all options for providers. Further, the school district employee cannot recommend his or her business as a service provider to students or parents while in the exercise of his or her public role.

For example, if students or parents ask about tutoring, R.C. 2921.42(A)(4) would not prohibit a teacher or other school district employee from merely informing students or parents that he or she is a provider. However, the employee would be unable to demonstrate that the transaction was arm's length if he or she were to use his or her position of authority over students or parents to suggest that they were obligated to use his or her private tutoring services. The school district employee would be required to direct parents to the district for additional information on selecting available providers. See also R.C. 102.03(D) and (E) (A public official or employee is prohibited from soliciting or using his or her position to secure anything of value that could have a substantial and improper influence on the official in the performance of public duties. Teachers are not subject to this restriction unless the exercise, or have the authority to exercise, supervisory or administrative functions.); Adv. Op. No. 96-004.

If the school district employee cannot meet the exception in R.C. 2921.42(C), R.C. 2921.42(A)(4) prohibits him or her from selling SES to school district students under a contract with the district. Provided that a school district employee is able to meet all of the requirements in the exception in R.C. 2921.42(C), R.C. 2921.42(A)(4) does not prohibit him or her from entering into an SES contract with the district.

R.C. 2921.42(A)(4) prohibits a public official from having an interest in a public contract entered into by a public agency with which he or she is "connected." Therefore, R.C. 2921.42(A)(4) does not prohibit a school district teacher or other district employee from operating an SES business that is under contract to provide services to students in districts other than the one he or she serves.

Other Matters

Regardless of whether a school district teacher or other employee can meet the exception in R.C. 2921.42(C), the Ethics Law and related statutes do not require or obligate the district to enter into a contract for SES with the employee or a business he or she operates. The district can choose whether to contract with a teacher or other employee.

Further, all school districts, district officials, and district employees should be aware of R.C. 2921.42(H), which provides "[a]ny public contract in which a public official . . . has an interest in violation of this section is void and unenforceable." Therefore, if a district employee enters into an SES contract with the district, without establishing that the employee meets the exception in R.C. 2921.42(C), the contract is void and unenforceable.

Finally, the Commission notes that this advisory opinion does not consider or reach any conclusions about individual tutoring arrangements under which a teacher provides one-on-one assistance to one student or a small number of the students in his or her classes, with or without compensation from the family. Such tutoring arrangements are not public contracts unless the district pays for the services or reimburses the student's family.

School Board Members, Superintendent, Treasurer, and Other Administrators

This advisory opinion considers the application of R.C. 2921.42(A)(4) to teachers and other school district employees who are not exercising or empowered to exercise administrative or supervisory authority regarding contracts or programs of the district. School board members, superintendents, treasurers, and other administrators who participate in the district's purchasing activities, authorize contracts, administer SES and other education programs, set curriculum, assist parents and students in identifying and accessing resources for supplemental services, or perform activities of these kinds are subject to the same restriction and to *additional* restrictions.

For example, R.C. 2921.42(A)(1) prohibits a public official from authorizing, or using his or her position to secure authorization of, a public contract in which the official, a member of his or her family, or any of his or her business associates has an interest. This section would prohibit a school board member, superintendent, or other administrator from taking any action with respect to an SES contract between the district and the official. R.C. 2921.42(A)(1), which is a fourth-degree felony, prohibits any district official from voting on, discussing, deliberating about, lobbying for, recommending, or otherwise using his or her public position, formally or informally, to secure an SES contract for the official. See also R.C. 102.03(D) and (E) (prohibiting a public employee from soliciting, or using his or her position to secure, anything of value that could have a substantial and improper influence upon him in the performance of his public duties).

Also, R.C. 2921.42(A)(3) prohibits a public official from occupying a "position of profit" in the prosecution of a public contract authorized by the official or a board of which he or she is a member unless the contract is competitively bid. SES contracts are not competitively bid.

Therefore, a school board member, and any other school district official who is responsible for authorizing SES contracts, is effectively prohibited from selling SES to the district. In addition, there are other laws, outside the jurisdiction of the Ethics Commission, that may limit or prohibit a school district board member or administrator from providing SES services to the district. See, e.g., R.C. 3313.33.

A school board member, superintendent, or other administrator in a position of authority regarding contracts and related matters who is considering establishing or acquiring an interest in an SES provider business that would sell goods or services to the district he or she serves should contact the Commission for further guidance about the application of R.C. 2921.42(A)(1), (A)(3), and other restrictions.

Conclusion

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised as follows: First, Division (A)(4) of Section 2921.42 of the Revised Code prohibits a teacher or other school district employee from selling supplemental education services (SES) to the district unless he or she can meet the four-part exception in R.C. 2921.42(C). Second, one requirement of the exception is that the district employee is providing SES to the district at a lower cost than any other SES provider. Third, the Ethics Law and related statutes do not require the district to purchase SES from a teacher or other school district employee even if the teacher or employee can show that he or she meets all of the requirements in the exception. Finally, the conclusions in this opinion apply to teachers and school district employees who do not exercise, or have the authority to exercise, administrative or supervisory authority regarding contracts or programs of the district. School board members, superintendents, treasurers, and other administrators who are exercising or are empowered to exercise such authority are subject to these restrictions and also to *additional* restrictions.

Ann Marie Tracey

Ann Marie Tracey, Chair
Ohio Ethics Commission