

1 A bill to be entitled
 2 An act relating to supplemental educational services;
 3 providing for student access to and provider
 4 accountability for supplemental educational services in
 5 Title I schools; providing definitions; providing
 6 responsibilities of the Department of Education, local
 7 educational agencies, providers of supplemental
 8 educational services, and parents to provide additional
 9 academic instruction designed to increase the academic
 10 achievement of eligible students; providing criteria that
 11 must be met by a provider approved by the department;
 12 providing for department monitoring and evaluation of
 13 provider performance; providing a complaint process for
 14 determination of provider and local educational agency
 15 compliance with law; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Supplemental educational services in Title I
 20 schools; student access and provider accountability.--

21 (1) DEFINITIONS.--As used in this section:

22 (a) "Adequate yearly progress" or "AYP" means performance
 23 based on a series of performance goals that each school, each
 24 local educational agency, and the state must achieve within
 25 specified timeframes in order to meet the 100-percent
 26 proficiency goal established by the federal No Child Left Behind
 27 Act of 2001.

28 (b) "Eligible student" means a student from a low-income
29 family who attends a Title I school in the school's second year
30 of school improvement, corrective action, or restructuring, as
31 defined by the No Child Left Behind Act of 2001.

32 (c) "Instructor" or "tutor" means a person employed by a
33 supplemental educational service provider to deliver instruction
34 in reading, language arts, or mathematics to eligible students
35 enrolled in the provider's program.

36 (d) "Local educational agency" or "LEA" means a local
37 board of education.

38 (e) "No Child Left Behind Act of 2001" or "NCLB" is a
39 reauthorization of the Elementary and Secondary Education Act of
40 1965, which is the principal federal law affecting education
41 from kindergarten through high school. The NCLB is designed to
42 improve student achievement and close achievement gaps. States
43 are required to develop challenging academic standards, educate
44 all students to 100-percent proficiency by 2014, and create and
45 implement a single, statewide accountability system.

46 (f) "Parent" means the person or persons legally
47 responsible for the guardianship of the student, including a
48 legal guardian.

49 (g) "Supplemental educational service providers" or "SES
50 providers" are faith-based organizations, for-profit and
51 nonprofit businesses, local educational agencies, schools,
52 institutes of higher education, community groups, and regional
53 educational service agencies approved by the Department of
54 Education to provide additional academic instruction designed to
55 increase the academic achievement of eligible Title I students.

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56 (h) "Supplemental educational services" or "SES" means
57 additional academic instruction provided outside the regular
58 school day that is designed to increase the academic achievement
59 of low-income students, as defined by eligibility for free or
60 reduced-price meals, who attend qualifying schools as defined by
61 the No Child Left Behind Act of 2001.

62 (i) "Title I" is the Elementary and Secondary Education
63 Act of 1965 program that focuses on improving the academic
64 achievement of disadvantaged students by ensuring that all
65 students have a fair, equal, and significant opportunity to
66 obtain a high-quality education and reach, at a minimum,
67 proficiency on challenging state academic standards and
68 assessments.

69 (2) REQUIREMENTS.--

70 (a) State responsibilities.--The Department of Education
71 shall:

72 1. Consult with parents, teachers, school districts, and
73 interested members of the public to identify a large number of
74 SES providers so that parents have a wide variety of high-
75 quality choices.

76 2. Provide and disseminate broadly an annual notice to
77 potential providers outlining the process for obtaining approval
78 to be an SES provider. There shall be at least two opportunities
79 each year for potential providers to submit their applications
80 to the department.

81 3. Develop and apply objective criteria for approving
82 potential providers. Each provider's SES program shall:

83 a. Include an appropriate, diagnostic assessment for use
84 in identifying a student's weaknesses and achievement gaps upon
85 which to build an individual student learning plan and learning
86 goals.

87 b. Use targeted remediation or instruction that is aimed
88 at addressing a student's skill gaps revealed during the
89 assessment and that is based upon an individual student learning
90 plan.

91 c. Include a post assessment linked to the diagnostic
92 assessment to determine whether student learning gains occurred
93 and to further develop a plan for either reteaching skills or
94 identifying new skills for instruction.

95 d. Align with the Sunshine State Standards in the area of
96 reading or mathematics, or both.

97 e. Supplement the academic program a student experiences
98 in the regular school day.

99 f. Use high-quality, research-based instructional
100 practices that are specifically designed to increase students'
101 academic achievement.

102 4. Maintain an updated list of approved providers.

103 5. Exercise authority to investigate and remove providers
104 from the approved list based on evaluation results.

105 6. Make available to school districts a list of available
106 approved providers in their general geographic locations.

107 7. Develop, implement, and publicly report on monitoring
108 standards for providers to ensure the quality and effectiveness
109 of services offered by approved providers.

110 8. Ensure that an LEA has fully met parental demands for
 111 SES. In determining whether an LEA has fully met parental
 112 demands for SES, the department shall consider whether an LEA
 113 has:

114 a. Appropriately notified all eligible parents of the
 115 availability of SES.

116 b. Adequately publicized options to parents through
 117 multiple forums in understandable formats and languages.

118 c. Offered parents a reasonable period of time to
 119 investigate their options and submit their requests for SES.

120 9. No later than May 1 each year, notify LEAs of the
 121 specific schools that are in the second year of school
 122 improvement, corrective action, or restructuring and have not
 123 achieved AYP since such identification.

124 10. Place on its Internet website a standard, downloadable
 125 enrollment application to be used by parents of eligible
 126 students, which must be used by all LEAs for SES enrollment
 127 purposes.

128 (b) LEA responsibilities.--An LEA shall:

129 1. No later than 90 days prior to the start of the school
 130 year, notify parents of eligible students about the availability
 131 of SES. Notification shall meet the following criteria:

132 a. Be sent at least twice annually.

133 b. Be provided in an understandable and uniform format
 134 and, to the extent practicable, in a language the parents can
 135 understand.

136 c. Describe how parents may obtain services.

137 d. Provide a minimum of 20 school days for parents to
138 select and notify the LEA regarding a selected provider.

139 e. Create a streamlined, one-step SES parent registration
140 and provider selection process that is user friendly.

141 2. Help parents choose a provider, if such assistance is
142 requested, making sure that such assistance is unbiased and does
143 not provide advantage for one provider over another, including
144 the LEA if such LEA is an approved provider, and obtain
145 permission from parents to release assessment data to a selected
146 provider.

147 3. Determine and prioritize students who shall receive
148 services if not all students can be served. Determination shall
149 be made in accordance with eligibility criteria established in
150 federal law and with guidance from the United States Department
151 of Education, ensuring that prioritization does not take place
152 in advance of actual demand being documented and shall be based
153 on the 20-percent set-aside minus any actual costs associated
154 with providing transportation for public school choice pursuant
155 to subparagraph 18.

156 4. Determine the per-student spending limit according to
157 federal law only, which amount shall not be reduced or otherwise
158 altered.

159 5. Ensure that the opportunity to acquire SES is offered
160 to eligible students on a continuous basis or, at a minimum,
161 twice every school year, such as once at or near the start of
162 the school year and once at or near the start of each new
163 calendar year. An LEA that does not offer at least two

164 opportunities for SES enrollment shall not amend unobligated SES
 165 into the general Title I budget.

166 6. Enter into an agreement with a provider selected by the
 167 parent of an eligible student no later than 45 days after the
 168 beginning of the school year or within 45 days after receiving
 169 notification of school improvement status. The same procedure
 170 shall be followed for subsequent enrollments during the school
 171 year. An LEA that does not begin to offer SES within such time
 172 periods shall not amend unobligated SES funds into the general
 173 Title I budget. The agreement shall include, at a minimum:

174 a. A statement of specific achievement goals for each
 175 eligible student whose parent elects to receive SES from the
 176 approved provider.

177 b. A description of how student progress will be measured.

178 c. Progress reports for each student to whom a provider
 179 gives services under the agreement.

180 d. Procedures for obtaining parental consent to release
 181 assessment data to a selected provider.

182 e. Procedures for termination of the agreement with the
 183 provider based on specific and material cause and include an
 184 opportunity for the provider to cure any such breach.

185 Termination for convenience clauses shall not be allowed.

186 f. The payment process for students receiving SES, with
 187 reimbursement for services to occur within 60 days following
 188 submission of a complete invoice.

189 g. Records of attendance for each student receiving SES.

190 h. Security of information relating to students receiving
 191 SES.

192 i. The procedure for facility access for providers, using
193 a fair, transparent, and objective process, to operate on site
194 in a school or schools identified for school improvement,
195 corrective action, or restructuring, free of charge or for a
196 reasonable fee, on the same basis and terms as are available to
197 other groups that seek access to the school building.

198 j. The process for records maintenance of a provider's SES
199 to students.

200 k. Guidelines specifying secular, neutral, and
201 nonideological instruction and content.

202 1. An outline of applicable federal, state, and local
203 laws, and rules and regulations required by law, in connection
204 with providing tutorial service.

205 7. Establish monitoring procedures to ensure that
206 providers fulfill their contractual obligations. Monitoring
207 should include tracking student progress toward meeting the
208 state's academic standards.

209 8. Select an approved provider or providers, using a fair,
210 transparent, and objective process, to operate on site in a
211 school or schools identified for school improvement, corrective
212 action, or restructuring, free of charge or for a reasonable
213 fee, on the same basis and terms as are available to other
214 groups that seek access to the school building. The LEA shall
215 not select a provider or providers based on a reduced per-
216 student amount as calculated under federal law or other criteria
217 that would otherwise be a department responsibility or
218 programmatic design criteria, such as the requirement of
219 specific student-tutor ratios.

- 220 9. Enter into a compact with the provider, parent, and
221 student. The compact, which shall be maintained for monitoring
222 purposes, shall include, at a minimum:
- 223 a. A notification letter to the parent of a student who is
224 eligible to receive SES from an approved provider.
- 225 b. Procedures regarding how the SES provider may contact
226 schools and parents regarding available services.
- 227 c. Development of a collaborative relationship with the
228 LEA to ensure that issues and concerns are handled in a timely
229 and efficient manner.
- 230 d. Specific achievement goals for the student, which shall
231 be developed in consultation with the student's parent.
- 232 e. An established timetable for improving the student's
233 achievement.
- 234 f. Selection of a provider from the department's approved
235 provider list.
- 236 g. Scheduled tutoring sessions.
- 237 10. Assist the department as needed in identifying
238 potential providers within the school district.
- 239 11. Provide the information the department needs to
240 monitor the quality and effectiveness of the SES offered by
241 providers as specified in federal law.
- 242 12. Protect the privacy of students who receive SES. The
243 LEA shall provide achievement data of students to providers
244 serving those students.
- 245 13. Notify parents immediately if a provider becomes
246 ineligible to serve as an SES provider. Notification shall

247 include the steps parents must follow in order to secure another
248 provider.

249 14. Provide approved providers with registration forms and
250 logistical information, including the procedures parents must
251 follow in obtaining SES for their children.

252 15. While appealing an AYP decision, continue to provide
253 services while the appeal is being resolved and a final AYP
254 determination is being made. If an appeal is granted, the LEA
255 shall continue to serve students currently receiving SES until
256 the end of the contract period but is not obligated to provide
257 SES to additional students.

258 16. Include in a school improvement plan steps to ensure
259 that eligible students will receive SES as required by law
260 whenever a school is classified as needing improvement for a
261 second or subsequent year.

262 17. Ensure that eligible students from any school that is
263 in the second year of school improvement, corrective action, or
264 restructuring and has not achieved AYP at least once since such
265 identification shall be offered SES before the start of the
266 school year.

267 18. Set aside up to 20 percent of its Title I, Part A
268 allocation for SES. Before determining that an amount less than
269 20 percent of its allocation is needed for choice-related
270 transportation and SES, an LEA shall document to the department
271 that it has fully met demands for these services. An LEA must
272 document, and make publicly available, that it has:

273 a. Appropriately notified all parents of eligible students
274 of the availability of public school choice and SES.

275 b. Adequately publicized the options to parents in
 276 understandable formats and multiple forums.

277 c. Offered parents a reasonable period of time to
 278 investigate their options and submit their requests for either
 279 public school choice or SES.

280

281 LEAs may amend unobligated SES funds into the general Title I
 282 budget by the May 15 consolidated application budget amendment
 283 deadline by ensuring that a minimum of 50 percent of the
 284 students eligible to receive SES are served by an approved
 285 provider. LEAs not meeting the 50-percent criteria shall submit
 286 to the department a list of eligible students, students
 287 receiving services, and otherwise eligible students on a wait
 288 list. LEAs must develop additional plans to notify, enroll, and
 289 serve sufficient numbers of SES students until the maximum Title
 290 I funds are utilized or at least 50 percent of the eligible
 291 students are served, whichever comes first. LEAs must obtain an
 292 affirmative election from the parents of unserved, but otherwise
 293 eligible, students that they decline to participate in SES for
 294 that school year.

295 (c) Provider responsibilities.--The provider shall:

296 1. Agree to negotiate directly with LEAs to determine
 297 scheduled sessions per student. Cost of services shall not
 298 exceed the per-student spending limit calculated by each LEA.

299 2. Set specific achievement goals for each student, which
 300 shall be developed in consultation with each student's parent.

301 3. Provide a description of how each student's progress
 302 will be measured and how each student's parent and instructors
 303 will be regularly informed of that progress.

304 4. Establish a timetable for improving each student's
 305 achievement.

306 5. Agree not to disclose to the public the identity of any
 307 student eligible for or receiving SES without the written
 308 permission of the student's parent.

309 6. Agree to meet all applicable federal, state, and local
 310 health, safety, and civil rights laws.

311 7. Ensure that all instruction and content are secular,
 312 neutral, and nonideological.

313 8. Ensure that instruction is consistent with student
 314 achievement goals.

315 9. Agree to abide by the education industry association's
 316 current version of the SES code of ethics.

317 (d) Parent responsibilities.--The parent shall:

318 1. Request SES for the student.

319 2. Select a provider from the department's approved
 320 provider list.

321 3. Transport students to and from the place of service
 322 when not provided by the provider.

323 4. Work with the provider to set achievement goals for the
 324 student.

325 5. Maintain open communication with a provider about a
 326 student's progress.

327 (e) Provider criteria.--

328 1. Providers shall meet the following criteria:

- 329 a. Have a demonstrated record of effectiveness in
 330 improving student academic achievement.
- 331 b. Document that the instructional strategies used by the
 332 provider are of high quality, based upon research, and designed
 333 to increase student academic achievement.
- 334 c. Document that services are aligned with the Sunshine
 335 State Standards in the area of reading or mathematics, or both.
- 336 d. Provide evidence that the provider is financially
 337 sound.
- 338 e. Document that the provider will provide SES consistent
 339 with all applicable federal, state, and local health, safety,
 340 and civil rights laws.
- 341 f. Meet all requirements set forth in guidelines issued by
 342 the department, including, but not limited to, reporting
 343 requirements, application requirements, deadlines, timelines,
 344 and standards.
- 345 g. Provide instruction that is secular, neutral, and
 346 nonideological.
- 347 2. Providers applying for statewide provider status upon
 348 request shall serve students in any LEA regardless of the
 349 geographical location. Providers approved for statewide provider
 350 status may be removed from the provider list if this requirement
 351 is not met. Providers removed from the statewide list may
 352 reapply and specify a geographical area for their service.
- 353 (f) Monitoring and evaluation.--
- 354 1. The department shall monitor, at least annually, all
 355 providers currently serving students. Monitoring shall be

356 conducted at a representative sample of the locations at which
357 the provider serves participating students.

358 a. The department shall schedule with the provider a
359 mutually agreeable date and time for a monitoring visit. Prior
360 to a monitoring visit, the department shall send to the
361 provider, in writing, confirmation of the scheduled date and
362 time.

363 b. Prior to a monitoring visit, the department shall
364 notify the provider of all documentation necessary to
365 demonstrate compliance with all applicable state and federal
366 laws related to SES. The provider may request technical
367 assistance from the department in identifying the relevant
368 documents.

369 c. A provider's performance on each monitoring standard
370 and a provider's overall performance rating shall be indicated
371 on the SES provider monitoring form. The department shall send
372 to the provider, in a timely manner, a copy of the completed
373 monitoring form that includes notes regarding items of
374 documentation that are missing or incomplete.

375 2. The department shall develop specific procedures to
376 annually evaluate all providers that have served students for 2
377 or more consecutive years in reading, language arts, or
378 mathematics. These procedures shall:

379 a. Account for, and be fair to, providers that serve both
380 large and small populations of students and that use varying
381 methods of instruction.

382 b. Be fair and sensitive enough to record gains of
383 individual students, especially students whose achievement level
384 is several grades behind grade level.

385 c. Isolate the effects of SES from other variables that
386 might affect a student's achievement using regression analysis,
387 comparison groups, or other valid and reliable statistical
388 means.

389 d. Collect qualitative data on parental satisfaction with
390 provider services.

391 e. Include safeguards against potential conflicts of
392 interests when the LEA is also an approved provider and is
393 involved in provider monitoring and evaluation.

394 3. If the department determines that a provider has failed
395 to contribute to increasing the academic proficiency of students
396 for 2 or more consecutive years in reading, language arts, or
397 mathematics in a specific LEA, the department shall remove the
398 provider from the approved provider list for that LEA.

399 4. The provider shall have the opportunity to appeal the
400 department's decision to the State Board of Education. The
401 provider may reapply to the department for approval after a 1-
402 year waiting period.

403 5. The department shall require an LEA to submit:

404 a. The parental notification letters the LEA has developed
405 and utilized to inform parents of eligible students.

406 b. At least twice during the school year, updated
407 information on how many students in the LEA are eligible for SES
408 and how many students make use of SES.

409 c. How much money, in total dollars and per student, is
410 being spent by the LEA on SES.

411 (g) Complaint process.--

412 1. The department shall monitor complaints from parents,
413 students, SES providers, school districts, and other individuals
414 to determine whether LEAs and SES providers are in compliance
415 with the applicable state and federal laws, rules, regulations,
416 and guidance governing the provision of SES. The department
417 shall annually provide a summary report to the State Board of
418 Education.

419 2. An organization or individual may file with the
420 department a signed, written complaint setting forth allegations
421 of noncompliance. The written complaint shall include, at a
422 minimum:

423 a. A clear statement of the allegation.

424 b. A summary of the facts upon which the allegation is
425 based.

426 c. Any documentation supporting the allegation.

427 d. The complainant's contact information, including the
428 name of an individual complainant or an authorized
429 representative of the complainant organization and the address
430 and telephone number of the individual or representative.

431 3. Complaints received from an organization or individual
432 shall be signed and addressed in writing to the department.

433 4. The department shall acknowledge, in writing, its
434 receipt of a complaint within 15 business days.

435 5. The department shall, in a timely manner, commence an
436 investigation of the allegations set forth in the complaint and

437 make an independent determination as to whether the allegations
438 warrant further review or action.

439 6. If necessary, the department may conduct an onsite
440 visit to clarify any issues raised by the complaint. An onsite
441 investigation team may examine relevant records and conduct
442 interviews of relevant persons to determine whether there has
443 been a violation of any applicable state or federal law, rule,
444 regulation, or guideline.

445 7. The department shall send written notification to all
446 appropriate parties of the steps necessary to resolve the
447 complaint, including technical assistance activities,
448 negotiations, and corrective actions to achieve compliance. This
449 notification may include specific requirements and timelines
450 that must be met in order to ensure that providers other than
451 LEAs continue to receive SES funds from the LEA. LEAs that are
452 providers shall meet the requirements in order to ensure that
453 funds equal to the amount of their SES set-aside are available
454 in the department's grants accounting system.

455 8. Upon conclusion of the department's investigation, the
456 department shall take appropriate action to remedy violations of
457 applicable laws, rules, regulations, or guidelines, including
458 removal of a provider from the approved provider list.

459 9. If the department makes the decision to remove a
460 provider from the approved provider list, the LEA shall be
461 notified no later than 10 business days after the department's
462 action. Each provider notified of the decision shall have the
463 right to appeal such decision prior to its becoming final.

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464 10. If an LEA does not comply with providing SES to
465 eligible students within the established timeframe, the
466 department shall withhold funds equal to the amount of the LEA's
467 SES set-aside funds until the LEA complies.

468 11. If funds are withheld from an LEA for not providing
469 SES to eligible students within the specified timeframe, the
470 department may enter into agreements with providers in lieu of
471 the LEA.

472 Section 2. This act shall take effect July 1, 2006.