

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Education Committee

BILL: CS/SB 2616

INTRODUCER: Education Committee and Senator Wise

SUBJECT: Supplemental Education Services

DATE: April 20, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	EA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill delineates requirements for providing supplemental educational services in schools serving low-income students, including provisions related to provider eligibility and accountability and student access to services. The bill provides that supplemental educational services consist of additional academic instruction provided outside the regular school day that is designed to increase the academic achievement of low-income students. The bill establishes specific requirements for school districts and the DOE and enumerates specific requirements with respect to the uses of Title I funds, including the use of funds when demand has been met for school choice transportation and supplemental educational services.

This bill creates an undesignated section of law.

The effective date of the bill is July 1, 2006.

II. Present Situation:

No Child Left Behind Act (NCLB)

Federal law sets forth specific testing requirements for public school students.¹ Testing that is performed pursuant to federal law is used to measure whether states and schools are making “adequate yearly progress” (AYP) toward state student proficiency goals under the federal Title I requirements. The definition of “adequate yearly progress” is established by the state’s educational agency within the parameters of NCLB’s requirements. In Florida, the Department of Education sets the standards for adequate yearly progress of all public elementary and

¹ See 20 U.S.C. s. 6311(b)(2).

secondary schools, local educational agencies, and of the state itself. The determination of adequate yearly progress must be based on academic assessments.²

A school that fails to make AYP for two consecutive years is designated as “in need of improvement,” must develop a school improvement plan, and provide students with the option of transferring to another school district. Low-income students attending Title I schools that have not made AYP for three or more years are eligible for supplemental educational services.³ The following table outlines the consequences for Title I schools that fail to make AYP over a period of years:

Consequences for Title I Schools Not Making AYP⁴

Year	Consequences
Year 1 not making AYP	No consequences for Year 2
Year 2 not making AYP	Must offer all students meaningful choice options in Year 3
Year 3 not making AYP	Must offer meaningful choice and supplemental educational services to eligible students in Year 4
Year 4 not making AYP	Must offer meaningful choice, supplemental educational to eligible students, and corrective action ⁵ in Year 5
Year 5 not making AYP	Must offer meaningful choice, supplemental educational services to eligible students, and plan for restructuring ⁶ in Year 6

In 2004-2005, 33 Title I schools in 11 school districts were identified as not making AYP for three consecutive years. The schools were required to offer supplemental educational services to eligible students. In 2005-2006, 675 schools in 61 school districts did not make AYP for three consecutive years and were required to offer these services.⁷ The DOE approved 154 providers to offer supplemental educational services during the 2005-2006 school year. According to the DOE, there are no districts that are providers of these services. Three schools serve as providers.

Supplemental services consist of tutoring, remediation and academic intervention to increase student achievement, particularly in reading and mathematics. Instruction must take place outside the regular school day (e.g., before or after school or on weekends).⁸ School districts are not required to provide transportation for eligible students to and from service providers. Service providers are expected to work with students for a full school year, but funds may affect service

² Part A of Title I of the Elementary and Secondary Education Act (Title I) as reauthorized by the No Child Left Behind Act of 2001, P.L. 107-110. NCLB was subsequently amended by P.L. 108-446, the reauthorization of the Individuals with Disabilities Education Act (IDEA).

³ See *Supplemental Educational Services Non-Regulatory Guidance*, U.S. Department of Education, June 13, 2005. <http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc>

⁴ *Supplemental Educational Services in Florida Under NCLB, 2005-2006*, see <http://www.floridaschoolchoice.org/Information/ses/files/flses.ppt#438>

⁵ The terms “corrective action” and “restructuring” are defined in 34 C.F.R. § 200.42 and 34 C.F.R. § 200.43.

⁶ *Id.*

⁷ Florida DOE Bill Analysis, SB 2616, March 17, 2006.

⁸ 34 C.F.R. § 200.45 and *Supplemental Educational Services: Quick Reference for Parents*, U.S. Department of Education, see <http://www.ed.gov/parents/academic/help/supplemental-services.pdf>

duration or intensity.⁹ Services may be prioritized among those in greatest academic need, if funds are limited.

Florida Department of Education (DOE) Responsibilities

The DOE's responsibilities include the following:¹⁰

- Promoting maximum participation by service providers;
- Developing and applying objective criteria for approving potential providers;
- Identifying eligible providers with a description of their services;
- Maintaining an updated list of approved providers, by district, which includes any technology-based or distance-learning providers;
- Ensuring the participation of students with disabilities and students with limited English proficiency;
- Developing, implementing, and publicly reporting on standards to monitor the quality and effectiveness of services; and
- Withdrawing approval from unsuccessful providers.

School District Responsibilities

A school district is responsible for the following:¹¹

- Identifying and notifying parents of eligible students annually that supplemental educational services are available;
- Helping to choose a provider upon request of the parents;
- Determining which eligible students should receive services, if not all can be served; and
- Entering into an agreement with the provider selected by parents.

School districts pay state-approved providers.

Approved Service Providers

Supplemental educational services may be offered by providers who are approved by the DOE. Approved providers may be for-profit companies, non-profit groups, local community programs, colleges or universities, national organizations, faith-based groups, private schools, charter schools, traditional public schools, and districts that have not been identified as in need of improvement.¹² Parents choose a provider from the state-approved list. Providers must meet the following criteria:

- Have a demonstrated record of effectiveness in increasing the academic achievement of students;
- Have the capability to provide services that are consistent with the state academic content and student achievement standards; and
- Be financially sound.

⁹ *Supplemental Educational Services in Florida Under NCLB, 2005-2006.*

¹⁰ 34 C.F.R. § 200.47 and *Supplemental Educational Services Non-Regulatory Guidance*, U.S. Department of Education, June 13, 2005.

¹¹ 34 C.F.R. § 200.37 and 34 C.F.R. § 200.46

¹² *Supplemental Services: FastFacts*, DOE, See <http://www.floridaschoolchoice.org/Information/SES/FastFacts.asp>

A list of approved providers is available on-line and includes information on the type of instruction available, the cost of services, grade levels and districts served, and staff qualifications and experience. The DOE also maintains an on-line list of schools with students who are eligible for these services.¹³

Providers are responsible for instruction that is secular, neutral, nonideological and consistent with the state's academic achievement standards.¹⁴ They must also meet all applicable federal, state, and local health, safety, and civil rights laws. The DOE also requires providers to annually update their application to provide services.

Providers must also meet the terms of their agreements with the school district, including:¹⁵

- Specific achievement goals for each eligible student;
- Measurement of student progress and a timeline for improving achievement;
- Progress reports to the student's parents and teachers;
- Procedures for terminating the agreement;
- Reimbursement procedures for services provided to students; and
- Assurance of confidentiality of student information.

III. Effect of Proposed Changes:

The bill provides that supplemental educational services (SES) consist of additional academic instruction provided outside the regular school day that is designed to increase the academic achievement of low-income students. Under the bill, supplemental educational service providers may include faith-based organizations, for-profit and nonprofit businesses, local educational agencies, schools, institutes of higher education, community groups, and regional educational service agencies approved by the DOE.

Department of Education Responsibilities

Under the bill, the DOE is tasked with the following responsibilities:

- Providing an annual list (by June 1st) to the public of approved supplemental services providers;
- Notifying the school districts of the approved supplemental services providers;
- Offering assistance to districts that do not have state-approved providers to serve students; and
- Releasing that part of the 20 percent set-aside Title I funds that a district has not used for supplemental educational services or school choice with transportation.

¹³ See <http://data.fl DOE.org/supplementaled/districts/> and http://www.floridaschoolchoice.org/Information/SES/ses_schools.asp

¹⁴ 34 C.F.R. § 200.47

¹⁵ *Id.*

The DOE is responsible for notifying school districts of the state-approved providers; however, the bill does not specify when this notice will occur. It may be advisable to clarify the timelines for DOE to notify the school districts of approved providers.

Additionally, the DOE is required to offer assistance if there are no state-approved SES providers available for a district. The school district is not required to accept the assistance. The bill is silent on what occurs when there are insufficient providers as opposed to no providers of SES services in a school district.

School District Responsibilities

A school district's responsibilities include the following:

- Creating procedures for registering parents for school choice with transportation or supplemental educational services and selecting providers;
- Notifying parents of potentially eligible students about available services within 10 days after the official release of AYP designations;
- Allowing parents 30 days to notify the district of his or her selection of services;
- Requesting providers to submit a notice of intent to become a state-approved provider;
- Helping parents choose a provider, upon request of the parent, within 15 days before the start of school and providing a central point of assistance;
- Offering a second enrollment period if there is an insufficient number of students signed up to provide services;
- Requesting assistance from the DOE if there are no state-approved providers to serve students;
- Notifying parents who requested school choice with transportation (within 15 days prior to the start of school) as to whether the option is available and, if not, notifying the parents of supplemental services;
- Reminding parents of their options on or around the first day of school and 15 days after school starts;
- Obtaining parental permission to release assessment data to a selected provider;
- Notifying providers (within 25 days after the start of school) that the number of students selecting the provider does not fall within the minimum number of students indicated in the provider's letter of intent; and
- Reporting a provider to the DOE if the provider fails to provide the services specified in the letter of intent or contract.

Districts are required to contract with providers no later than 35 days after the start of school and provide a list of students who have elected to use their services. The same procedure must be followed for subsequent enrollments during the school year. Districts must also prepare to contract even if they are appealing their AYP designation.

According to the DOE, 25 of Florida's 67 school districts started school the first week of August during the 2005-2006 school year, while 36 districts started school the second week of August.

Six districts started school in the third week of August.¹⁶ The bill establishes deadlines that must be met either prior to or after the start of the school year. The deadlines will differ from district to district and will have an impact on students who move to another school district.

Districts must allow providers to access school facilities and operate on site and on the same basis and terms as are available to other groups seeking access to school buildings. The U.S. Department of Education encourages, but does not require, this type of arrangement to reduce the need for transportation. The procedures would likely need to include a provision for resolving access to a building if there are more providers than can be reasonably accommodated.

Supplemental Services Programs and Providers

These services supplement the academic program that occurs during the student's regular school day. Students must begin receiving services no later than 60 days after the start of school. The bill requires each provider to meet specific requirements, including the following:

- Signing a letter of intent with each district in which the provider will offer services within 20 days after release of the adequate yearly progress designations;
- Ensuring that the capacity stated in the letter of intent is consistent with what is used as a basis for state approval;
- Notifying the district within five business days if the provider intends to provide services in a district with insufficient demand;
- Providing services 60 days after the start of school;
- Creating a statement of achievement goals for each student, with the assistance of the parent;
- Prohibiting the use of incentives prior to the selection of a provider but authorizing an award for performance or attendance with incentives, which may not exceed \$50; and
- Delivering services to districts in which the provider was approved by the state.

Parental Obligations and Students

Parents must request services for the student (no later than 15 days after the start of school) and select an approved provider. The application for services must be similar to other school-based procedures. Students who are new to a district or school are not precluded from receiving services. If a student is receiving services and moves to another school within the district, the student may continue to receive services at the discretion of the parent. According to the DOE, Title I funds may follow the student to a non-Title I school at the discretion of the school district not the parent.

Grounds for Terminating Provider Participation

The bill specifies the grounds for removing a provider from the approved list. A provider would be removed from the approved list if the provider withdraws from offering services to students in a school district for which it has signed a letter of intent or contract. Upon subsequent failure to provide services, a provider is ineligible to provide services in the state for one year. However,

¹⁶ *Statistical Brief, Series 2006-02B (School District Calendars, 2005-2006)*, DOE, July 2005.

the bill is silent on the whether a provider would be terminated if the provider breaches the letter of intent or contract.

Prioritization and Reallocation of Unused Title I Funds

According to the DOE, the current year Title I, Part A allocation is approximately \$608 million. Districts must set aside an amount equal to 20 percent of their allocation to be used for the following options:¹⁷

- 5 percent for choice-related transportation;
- 5 percent for supplemental education services; and
- 10 percent for transportation, supplemental educational services, or both.

A school district may prioritize students according to federal guidelines if the funding demand exceeds the 20 percent of Title I funds. However, the school district may not prioritize students before demonstrating that the cost of providing SES services exceeds the 20 percent obligated for services based on actual demand. In addition, prioritization may not result in less than 20 percent of Title I funding to be spent on supplemental educational services.

Districts are permitted to reallocate unused Title I funds for other purposes if all demand has been met for choice with transportation and supplemental services. The reallocation may be made in the following year or in the year in which the reserve occurred, subject to the 15 percent limit. Currently, school districts that are undersubscribed with respect to eligible students who demand supplemental services, may use their Title I funds for other educational purposes.

The bill allows the DOE to release that portion of the 20 percent set aside of Title I funds to a school district, if there are no providers willing to serve students in that district. The DOE is currently responsible for ensuring that school districts are implementing the federal requirements for supplemental educational services. If a district fails to fulfill its responsibilities, the DOE can currently withhold federal funds.¹⁸

Rulemaking

The State Board of Education (SBE) may adopt rules and enforce the bill's provisions under s. 1008.22.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁷ *Supplemental Educational Services Non-Regulatory Guidance*, U.S. Department of Education, June 13, 2005.

¹⁸ *See Supplemental Educational Services Non-Regulatory Guidance*, U.S. Department of Education, June 13, 2005.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Students may receive up to \$50 in awards from providers for performance and attendance.

C. Government Sector Impact:

According to the DOE, five additional FTE positions are needed to meet the bill's requirements for academic, program, and fiscal accountability for a total of \$323,191 in recurring expenditures: two Program Specialist II positions, two Program Specialist IV positions, and one Administrative Assistant II position.¹⁹

There may be additional burdens on the school districts to comply with the various timelines provided in the bill. The cost of these requirements is indeterminate.

It is not known what fiscal impact the revised reallocation procedures would have on districts.

VI. Technical Deficiencies:

The term "department" is used in subsection (3)(j) and (4)(b), but it is not defined. For clarity, it may be advisable to specifically reference the Department of Education.

Subsection (4) is entitled "Penalties for Noncompliance," although this subsection relates to the reallocation of unused funds when demand for services has been met.

Subsection (3) vacillates between describing school district, parent, and provider responsibilities. It may be advisable to create separate subsections for each entity to describe their responsibilities.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁹ Florida Department of Education, Governmental Relations Office, 2006 Legislative Bill Analysis on SB 2616.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
