

By Senator Wise

5-1237-06

See HB

1 A bill to be entitled

2 An act relating to supplemental educational

3 services; providing for student access to and

4 provider accountability for supplemental

5 educational services in Title I schools;

6 providing definitions; providing

7 responsibilities of the Department of

8 Education, local educational agencies,

9 providers of supplemental educational services,

10 and parents to provide additional academic

11 instruction designed to increase the academic

12 achievement of eligible students; providing

13 criteria that must be met by a provider

14 approved by the department; providing for

15 department monitoring and evaluation of

16 provider performance; providing a complaint

17 process for determination of provider and local

18 educational agency compliance with law;

19 providing an effective date.

21 Be It Enacted by the Legislature of the State of Florida:

23 Section 1. Supplemental educational services in Title
24 I schools; student access and provider accountability.--

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

26 (a) "Adequate yearly progress" or "AYP" means
27 performance based on a series of performance goals that each
28 school, each local educational agency, and the state must
29 achieve within specified timeframes in order to meet the
30 100-percent proficiency goal established by the federal No
31 Child Left Behind Act of 2001.

1 **(b) "Eligible student" means a student from a**
2 **low-income family who attends a Title I school in the school's**
3 **second year of school improvement, corrective action, or**
4 **restructuring, as defined by the No Child Left Behind Act of**
5 **2001.**

6 **(c) "Instructor" or "tutor" means a person employed by**
7 **a supplemental educational service provider to deliver**
8 **instruction in reading, language arts, or mathematics to**
9 **eligible students enrolled in the provider's program.**

10 **(d) "Local educational agency" or "LEA" means a local**
11 **board of education.**

12 **(e) "No Child Left Behind Act of 2001" or "NCLB" is a**
13 **reauthorization of the Elementary and Secondary Education Act**
14 **of 1965, which is the principal federal law affecting**
15 **education from kindergarten through high school. The NCLB is**
16 **designed to improve student achievement and close achievement**
17 **gaps. States are required to develop challenging academic**
18 **standards, educate all students to 100-percent proficiency by**
19 **2014, and create and implement a single, statewide**
20 **accountability system.**

21 **(f) "Parent" means the person or persons legally**
22 **responsible for the guardianship of the student, including a**
23 **legal guardian.**

24 **(g) "Supplemental educational service providers" or**
25 **"SES providers" are faith-based organizations, for-profit and**
26 **nonprofit businesses, local educational agencies, schools,**
27 **institutes of higher education, community groups, and regional**
28 **educational service agencies approved by the Department of**
29 **Education to provide additional academic instruction designed**
30 **to increase the academic achievement of eligible Title I**
31 **students.**

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

7 (i) "Title I" is the Elementary and Secondary
8 Education Act of 1965 program that focuses on improving the
9 academic achievement of disadvantaged students by ensuring
10 that all students have a fair, equal, and significant
11 opportunity to obtain a high-quality education and reach, at a
12 minimum, proficiency on challenging state academic standards
13 and assessments.

14 (2) REQUIREMENTS.--

15 (a) State responsibilities.--The Department of
16 Education shall:

17 1. Consult with parents, teachers, school districts,
18 and interested members of the public to identify a large
19 number of SES providers so that parents have a wide variety of
20 high-quality choices.

21 2. Provide and disseminate broadly an annual notice to
22 potential providers outlining the process for obtaining
23 approval to be an SES provider. There shall be at least two
24 opportunities each year for potential providers to submit
25 their applications to the department.

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

28 a. Include an appropriate, diagnostic assessment for
29 use in identifying a student's weaknesses and achievement gaps
30 upon which to build an individual student learning plan and
31 learning goals.

1 **b.** Use targeted remediation or instruction that is
2 aimed at addressing a student's skill gaps revealed during the
3 assessment and that is based upon an individual student
4 learning plan.

5 **c.** Include a postassessment linked to the diagnostic
6 assessment to determine whether student learning gains
7 occurred and to further develop a plan for either reteaching
8 skills or identifying new skills for instruction.

9 **d.** Align with the Sunshine State Standards in the area
10 of reading or mathematics, or both.

11 **e.** Supplement the academic program a student
12 experiences in the regular school day.

13 **f.** Use high-quality, research-based instructional
14 practices that are specifically designed to increase students'
15 academic achievement.

16 **4.** Maintain an updated list of approved providers.

17 **5.** Exercise authority to investigate and remove
18 providers from the approved list based on evaluation results.

19 **6.** Make available to school districts a list of
20 available approved providers in their general geographic
21 locations.

22 **7.** Develop, implement, and publicly report on
23 monitoring standards for providers to ensure the quality and
24 effectiveness of services offered by approved providers.

25 **8.** Ensure that an LEA has fully met parental demands
26 for SES. In determining whether an LEA has fully met parental
27 demands for SES, the department shall consider whether an LEA
28 has:

29 **a.** Appropriately notified all eligible parents of the
30 availability of SES.

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1 b. Adequately publicized options to parents through
2 multiple forums in understandable formats and languages.

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

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

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

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

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

18 a. Be sent at least twice annually.

19 b. Be provided in an understandable and uniform format
20 and, to the extent practicable, in a language the parents can
21 understand.

22 c. Describe how parents may obtain services.

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

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

28 2. Help parents choose a provider, if such assistance
29 is requested, making sure that such assistance is unbiased and
30 does not provide advantage for one provider over another,
31 including the LEA if such LEA is an approved provider, and

1 obtain permission from parents to release assessment data to a
2 selected provider.

3 3. Determine and prioritize students who shall receive
4 services if not all students can be served. Determination
5 shall be made in accordance with eligibility criteria
6 established in federal law and with guidance from the United
7 States Department of Education, ensuring that prioritization
8 does not take place in advance of actual demand being
9 documented and shall be based on the 20-percent set-aside
10 minus any actual costs associated with providing
11 transportation for public school choice pursuant to
12 subparagraph 18.

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

16 5. Ensure that the opportunity to acquire SES is
17 offered to eligible students on a continuous basis or, at a
18 minimum, twice every school year, such as once at or near the
19 start of the school year and once at or near the start of each
20 new calendar year. An LEA that does not offer at least two
21 opportunities for SES enrollment shall not amend unobligated
22 SES into the general Title I budget.

23 6. Enter into an agreement with a provider selected by
24 the parent of an eligible student no later than 45 days after
25 the beginning of the school year or within 45 days after
26 receiving notification of school improvement status. The same
27 procedure shall be followed for subsequent enrollments during
28 the school year. An LEA that does not begin to offer SES
29 within such time periods shall not amend unobligated SES funds
30 into the general Title I budget. The agreement shall include,
31 at a minimum:

- 1 a. A statement of specific achievement goals for each
2 eligible student whose parent elects to receive SES from the
3 approved provider.
- 4 b. A description of how student progress will be
5 measured.
- 6 c. Progress reports for each student to whom a
7 provider gives services under the agreement.
- 8 d. Procedures for obtaining parental consent to
9 release assessment data to a selected provider.
- 10 e. Procedures for termination of the agreement with
11 the provider based on specific and material cause and shall
12 include an opportunity for the provider to cure any such
13 breach. Termination for convenience clauses shall not be
14 allowed.
- 15 f. The payment process for students receiving SES,
16 with reimbursement for services to occur within 60 days
17 following submission of a complete invoice.
- 18 g. Records of attendance for each student receiving
19 SES.
- 20 h. Security of information relating to students
21 receiving SES.
- 22 i. The procedure for facility access for providers,
23 using a fair, transparent, and objective process, to operate
24 on site in a school or schools identified for school
25 improvement, corrective action, or restructuring, free of
26 charge or for a reasonable fee, on the same basis and terms as
27 are available to other groups that seek access to the school
28 building.
- 29 j. The process for records maintenance of a provider's
30 SES to students.
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1 k. Guidelines specifying secular, neutral, and
2 nonideological instruction and content.

3 1. An outline of applicable federal, state, and local
4 laws, and rules and regulations required by law, in connection
5 with providing tutorial service.

6 7. Establish monitoring procedures to ensure that
7 providers fulfill their contractual obligations. Monitoring
8 should include tracking student progress toward meeting the
9 state's academic standards.

10 8. Select an approved provider or providers, using a
11 fair, transparent, and objective process, to operate on site
12 in a school or schools identified for school improvement,
13 corrective action, or restructuring, free of charge or for a
14 reasonable fee, on the same basis and terms as are available
15 to other groups that seek access to the school building. The
16 LEA shall not select a provider or providers based on a
17 reduced per-student amount as calculated under federal law or
18 other criteria that would otherwise be a department
19 responsibility or programmatic design criteria, such as the
20 requirement of specific student-tutor ratios.

21 9. Enter into a compact with the provider, parent, and
22 student. The compact, which shall be maintained for monitoring
23 purposes, shall include, at a minimum:

24 a. A notification letter to the parent of a student
25 who is eligible to receive SES from an approved provider.

26 b. Procedures regarding how the SES provider may
27 contact schools and parents regarding available services.

28 c. Development of a collaborative relationship with
29 the LEA to ensure that issues and concerns are handled in a
30 timely and efficient manner.

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1 d. Specific achievement goals for the student, which
2 shall be developed in consultation with the student's parent.

3 e. An established timetable for improving the
4 student's achievement.

5 f. Selection of a provider from the department's
6 approved provider list.

7 g. Scheduled tutoring sessions.

8 10. Assist the department as needed in identifying
9 potential providers within the school district.

10 11. Provide the information the department needs to
11 monitor the quality and effectiveness of the SES offered by
12 providers as specified in federal law.

13 12. Protect the privacy of students who receive SES.
14 The LEA shall provide achievement data of students to
15 providers serving those students.

16 13. Notify parents immediately if a provider becomes
17 ineligible to serve as an SES provider. Notification shall
18 include the steps parents must follow in order to secure
19 another provider.

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

23 15. While appealing an AYP decision, continue to
24 provide services while the appeal is being resolved and a
25 final AYP determination is being made. If an appeal is
26 granted, the LEA shall continue to serve students currently
27 receiving SES until the end of the contract period but is not
28 obligated to provide SES to additional students.

29 16. Include in a school improvement plan steps to
30 ensure that eligible students will receive SES as required by
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1 law whenever a school is classified as needing improvement for
2 a second or subsequent year.

3 17. Ensure that eligible students from any school that
4 is in the second year of school improvement, corrective
5 action, or restructuring and has not achieved AYP at least
6 once since such identification shall be offered SES before the
7 start of the school year.

8 18. Set aside up to 20 percent of its Title I, Part A
9 allocation for SES. Before determining that an amount less
10 than 20 percent of its allocation is needed for choice-related
11 transportation and SES, an LEA shall document to the
12 department that it has fully met demands for these services.
13 An LEA must document, and make publicly available, that it
14 has:

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

17 b. Adequately publicized the options to parents in
18 understandable formats and multiple forums.

19 c. Offered parents a reasonable period of time to
20 investigate their options and submit their requests for either
21 public school choice or SES.

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23 LEAs may amend unobligated SES funds into the general Title I
24 budget by the May 15 consolidated application budget amendment
25 deadline by ensuring that a minimum of 50 percent of the
26 students eligible to receive SES are served by an approved
27 provider. LEAs not meeting the 50-percent criterion shall
28 submit to the department a list of eligible students, students
29 receiving services, and otherwise eligible students on a wait
30 list. LEAs must develop additional plans to notify, enroll,
31 and serve sufficient numbers of SES students until the maximum

1 Title I funds are utilized or at least 50 percent of the
2 eligible students are served, whichever comes first. LEAs must
3 obtain an affirmative election from the parents of unserved,
4 but otherwise eligible, students that they decline to
5 participate in SES for that school year.

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

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

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

13 3. Provide a description of how each student's
14 progress will be measured and how each student's parent and
15 instructors will be regularly informed of that progress.

16 4. Establish a timetable for improving each student's
17 achievement.

18 5. Agree not to disclose to the public the identity of
19 any student eligible for or receiving SES without the written
20 permission of the student's parent.

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

23 7. Ensure that all instruction and content are
24 secular, neutral, and nonideological.

25 8. Ensure that instruction is consistent with student
26 achievement goals.

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

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

30 1. Request SES for the student.

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- 1 2. Select a provider from the department's approved
2 provider list.
- 3 3. Transport students to and from the place of service
4 when not provided by the provider.
- 5 4. Work with the provider to set achievement goals for
6 the student.
- 7 5. Maintain open communication with a provider about a
8 student's progress.
- 9 (e) Provider criteria.--
- 10 1. Providers shall meet the following criteria:
- 11 a. Have a demonstrated record of effectiveness in
12 improving student academic achievement.
- 13 b. Document that the instructional strategies used by
14 the provider are of high quality, based upon research, and
15 designed to increase student academic achievement.
- 16 c. Document that services are aligned with the
17 Sunshine State Standards in the area of reading or
18 mathematics, or both.
- 19 d. Provide evidence that the provider is financially
20 sound.
- 21 e. Document that the provider will provide SES
22 consistent with all applicable federal, state, and local
23 health, safety, and civil rights laws.
- 24 f. Meet all requirements set forth in guidelines
25 issued by the department, including, but not limited to,
26 reporting requirements, application requirements, deadlines,
27 timelines, and standards.
- 28 g. Provide instruction that is secular, neutral, and
29 nonideological.
- 30 2. Providers applying for statewide provider status
31 upon request shall serve students in any LEA regardless of the

1 geographical location. Providers approved for statewide
2 provider status may be removed from the provider list if this
3 requirement is not met. Providers removed from the statewide
4 list may reapply and specify a geographical area for their
5 service.

6 (f) Monitoring and evaluation.--

7 1. The department shall monitor, at least annually,
8 all providers currently serving students. Monitoring shall be
9 conducted at a representative sample of the locations at which
10 the provider serves participating students.

11 a. The department shall schedule with the provider a
12 mutually agreeable date and time for a monitoring visit. Prior
13 to a monitoring visit, the department shall send to the
14 provider, in writing, confirmation of the scheduled date and
15 time.

16 b. Prior to a monitoring visit, the department shall
17 notify the provider of all documentation necessary to
18 demonstrate compliance with all applicable state and federal
19 laws related to SES. The provider may request technical
20 assistance from the department in identifying the relevant
21 documents.

22 c. A provider's performance on each monitoring
23 standard and a provider's overall performance rating shall be
24 indicated on the SES provider monitoring form. The department
25 shall send to the provider, in a timely manner, a copy of the
26 completed monitoring form that includes notes regarding items
27 of documentation that are missing or incomplete.

28 2. The department shall develop specific procedures to
29 annually evaluate all providers that have served students for
30 2 or more consecutive years in reading, language arts, or
31 mathematics. These procedures shall:

1 a. Account for, and be fair to, providers that serve
2 both large and small populations of students and that use
3 varying methods of instruction.

4 b. Be fair and sensitive enough to record gains of
5 individual students, especially students whose achievement
6 level is several grades behind grade level.

7 c. Isolate the effects of SES from other variables
8 that might affect a student's achievement using regression
9 analysis, comparison groups, or other valid and reliable
10 statistical means.

11 d. Collect qualitative data on parental satisfaction
12 with provider services.

13 e. Include safeguards against potential conflicts of
14 interest when the LEA is also an approved provider and is
15 involved in provider monitoring and evaluation.

16 3. If the department determines that a provider has
17 failed to contribute to increasing the academic proficiency of
18 students for 2 or more consecutive years in reading, language
19 arts, or mathematics in a specific LEA, the department shall
20 remove the provider from the approved provider list for that
21 LEA.

22 4. The provider shall have the opportunity to appeal
23 the department's decision to the State Board of Education. The
24 provider may reapply to the department for approval after a
25 1-year waiting period.

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

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

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

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

3 (g) Complaint process.--

4 1. The department shall monitor complaints from
5 parents, students, SES providers, school districts, and other
6 individuals to determine whether LEAs and SES providers are in
7 compliance with the applicable state and federal laws, rules,
8 regulations, and guidance governing the provision of SES. The
9 department shall annually provide a summary report to the
10 State Board of Education.

11 2. An organization or individual may file with the
12 department a signed, written complaint setting forth
13 allegations of noncompliance. The written complaint shall
14 include, at a minimum:

15 a. A clear statement of the allegation.

16 b. A summary of the facts upon which the allegation is
17 based.

18 c. Any documentation supporting the allegation.

19 d. The complainant's contact information, including
20 the name of an individual complainant or an authorized
21 representative of the complainant organization and the address
22 and telephone number of the individual or representative.

23 3. Complaints received from an organization or
24 individual shall be signed and addressed in writing to the
25 department.

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

28 5. The department shall, in a timely manner, commence
29 an investigation of the allegations set forth in the complaint
30 and make an independent determination as to whether the
31 allegations warrant further review or action.

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

7 7. The department shall send written notification to
8 all appropriate parties of the steps necessary to resolve the
9 complaint, including technical assistance activities,
10 negotiations, and corrective actions to achieve compliance.
11 This notification may include specific requirements and
12 timelines that must be met in order to ensure that providers
13 other than LEAs continue to receive SES funds from the LEA.
14 LEAs that are providers shall meet the requirements in order
15 to ensure that funds equal to the amount of their SES
16 set-aside are available in the department's grants accounting
17 system.

18 8. Upon conclusion of the department's investigation,
19 the department shall take appropriate action to remedy
20 violations of applicable laws, rules, regulations, or
21 guidelines, including removal of a provider from the approved
22 provider list.

23 9. If the department makes the decision to remove a
24 provider from the approved provider list, the LEA shall be
25 notified no later than 10 business days after the department's
26 action. Each provider notified of the decision shall have the
27 right to appeal such decision prior to its becoming final.

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

1 11. If funds are withheld from an LEA for not
2 providing SES to eligible students within the specified
3 timeframe, the department may enter into agreements with
4 providers in lieu of the LEA.

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