

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: CS/SB 1414

INTRODUCER: Education Pre-K-12 Committee and Senator Diaz de la Portilla

SUBJECT: Supplemental Educational Services Providers

DATE: March 20, 2008 REVISED: _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill tasks the Department of Education (DOE) with annually designating a performance grade of "A," "B," "C," "D," or "F," for each state-approved Supplemental Educational Services (SES) provider, based on a combination of student learning gains and student proficiency levels, as measured by the statewide assessment pursuant to s. 1008.22, F.S., and norm-referenced tests approved by the Department of Education (DOE) for students in kindergarten through grade 3.

Under the bill, a grade is assigned beginning with the 2007-2008 school year and must be reported to parents, SES providers, school districts, and the public.

This bill substantially amends section 1008.331 of the Florida Statutes.

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 DOE sets the standards for adequate yearly progress of all public elementary and 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 that is not “in need of improvement.” 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 choice to transfer to another public school that is not in need of improvement with transportation option in Year 3
Year 3 not making AYP	Must offer choice with transportation and state-approved supplemental educational services to eligible students in Year 4
Year 4 not making AYP	Must offer choice with transportation, state-approved supplemental educational services to eligible students, and implement corrective action in Year 5
Year 5 not making AYP	Must offer choice with transportation, state-approved supplemental educational services to eligible students, and plan for restructuring 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.⁵ The DOE approved 154 providers

¹ See 20 U.S.C. s. 6311(b)(2).

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

⁴ *School Choice Options in Florida Under No Child Left Behind Legislation*, DOE, January 12, 2006.

Supplemental Educational Services in Florida Under NCLB, 2005-2006, See <http://www.fldoe.org/flbpos/pdf/cwt.pdf>

⁵ Florida DOE, March 17, 2006.

during the 2005-2006 school year and 219 providers for the 2007-2008 school year. According to the DOE, approximately 70,000 students participated in the program during the 2006-2007 school year.⁶

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).⁷ School districts are not required to provide transportation for eligible students to and from service providers.

The Government Accountability Office recently reviewed the supplemental education services program and reported the following:⁸

- Nationally, the SES participation increased substantially from 12 percent of eligible students receiving services in school year 2003-2004 to 19 percent in 2004-2005;
- District actions to increase participation have included greater efforts to notify parents. However, timely and effective notification of parents remains a challenge, as does attracting providers to serve certain areas and students, such as rural districts and students with disabilities;
- While states' monitoring of district and provider efforts to implement the program had been limited in past years, more states reported conducting on-site reviews and other monitoring activities during 2005-2006;
- Districts also increased their oversight role;
- Many states continue to struggle with how to evaluate whether providers are improving student achievement; and
- While a few states have completed evaluations, none provides a conclusive assessment of SES providers' effect on student academic achievement.

The report recommended that the U.S. Department of Education clarify guidance and provide information on promising practices, consider expanding flexibility and clarifying state authority, collect information on district SES expenditures, and provide evaluation assistance.

Florida Department of Education (DOE) Responsibilities

The DOE's responsibilities include the following:⁹

- Promoting maximum participation by service providers;
- Developing and applying objective criteria for approving potential providers;

⁶ Florida DOE, March 7, 2008.

⁷ 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>

⁸ *Government Accountability Office, No Child Left Behind Act: Education Actions May Help Improve Implementation and Evaluation of Supplemental Educational Services*, Report GAO-07-738T, 2007. <http://www.gao.gov/new.items/d07738t.pdf>, Testimony of Cornelia M. Ashby, Director Education, Workforce, and Income Security Issues, Government Accountability Office, before the Subcommittee on Early Childhood, Elementary and Secondary Education, Committee on Education and Labor, House of Representatives, April 18, 2007. See also Report GAO-06-758, August 2006, <http://www.gao.gov/new.items/d06758.pdf>

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

- 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.

According to the DOE, the department designed an accountability model for state-approved providers and developed a rigorous provider approval process consistent with NCLB requirements.¹⁰ The DOE notes that compliance is determined through ongoing monitoring plans and data analysis. School districts and state-approved providers are monitored using work papers.

Currently, all providers are required to conduct a self-evaluation study using the DOE's monitoring work papers.¹¹ The DOE monitors approximately 15 school districts on an annual basis using an onsite review or a desktop review. In addition, the DOE conducts an onsite or desktop review for five providers for each of those 15 districts.

School District Responsibilities

A school district is responsible for the following:¹²

- 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.¹³

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.¹⁴ Parents choose a provider from the state-approved list. Providers must meet the following criteria:

¹⁰ DOE, March 7, 2008.

¹¹ *Id.*

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

¹³ The allowable reimbursement rate for services ranges from \$5 to \$80. *Workshop for Potential Applicants for Supplemental Educational Services Providers*, DOE, February 28, 2007.

¹⁴ 34 C.F.R. § 200.47 and *Power Point: Workshop for Potential Applicants for Supplemental Educational Services Providers*, DOE, February 28, 2007. See <http://www.fldoe.org/flbpsi/pdf/rfa-ta-pt1.pdf>

- 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.

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 location of services.¹⁵ The DOE also maintains an on-line list of schools with students who are eligible for these services.¹⁶

Providers are responsible for instruction that is secular, neutral, nonideological and consistent with the state's academic achievement standards.¹⁷ 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:¹⁸

- 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 tasks the DOE with annually designating a performance grade of "A," "B," "C," "D," or "F,"¹⁹ for each state-approved SES provider, based on a combination of student learning gains and proficiency levels, as measured by the statewide assessment pursuant to s. 1008.22, F.S., and norm-referenced tests approved by the DOE for students in kindergarten through grade 3.

Under the bill, a grade is assigned beginning with the 2007-2008 school year and must be reported to parents, SES providers, school districts, and the public.

The state is responsible for monitoring and evaluating providers.²⁰ The DOE notes that it is currently developing a plan to grade state-approved providers.²¹ To identify components and indicators for use in the grading system, the DOE will access student data for 2006-2007. To determine whether the services that providers offer to students are contributing to an increase in

¹⁵ See <http://data.fldoe.org/ses/search/>

¹⁶ See http://www.fldoe.org/flbpso/nclbchoice/ses/ses_title1.asp

¹⁷ 34 C.F.R. § 200.47

¹⁸ *Id.*

¹⁹ "A," providing superior service, "B," providing above satisfactory service, "C," providing satisfactory service, "D," providing below satisfactory service, or "F," providing unsatisfactory service.

²⁰ Government Accountability Office, *No Child Left Behind Act: Education Actions May Help Improve Implementation and Evaluation of Supplemental Educational Services*, 2007.

²¹ DOE, March 7, 2008.

their academic achievement, the DOE notes that it will use data submitted by school districts via the department's automated student data base and stored in the Education Data Warehouse. Additionally, the DOE intends to determine increased student academic achievement through the following:

- Increased Normal Curve Equivalent (NCE) points on the norm-referenced portion (NRT) of the FCAT reading and mathematics for students in grades 4-12;
- Increased achievement for students in grades 2 through 3, using increases in NCE points on other norm referenced assessments approved by the department;²² and
- Calculated return on investment using student learning gains and the provider's reimbursement rate as stated on the provider's state-approved application.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Since the DOE is currently planning to grade state-approved SES providers using the data components as outlined in the bill, the cost is expected to be insignificant.

VI. Technical Deficiencies:

None.

²² According to the DOE, FCAT scores cannot be used to calculate an increase in academic achievement for students in kindergarten through grade 3. FCAT scores are available only for students in grades 3-10. In 2004-05 and 2005-06, approximately 70 percent of all students served in supplemental educational services were in kindergarten through grade 3.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Education Pre-K – 12 Committee:

CS for SB 1414:

- Eliminates additional criteria, such as pre- and post-tests and surveys, for grading an SES provider.

- B. **Amendments:**

None.