

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 115aa

50th Legislature, 1st Session, 2011

Tracking Number: .184179.1

Short Title: Title-1 Supplemental Education Services

Sponsor(s): Representative Eleanor Chávez and Others

Analyst: David Harrell

Date: March 8, 2011

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AS AMENDED

The House Floor amendment inserts three subsections of Section 22-2C-7 NMSA 1978 that had been inadvertently omitted from the hard copies of HB 115 when the bill was reviewed in committee. These three subsections are unchanged except for re-lettering as required by the new subsection inserted on page 5 of the bill to require documentation that the tutoring services are consistent with the instructional program offered by the school district or charter school (see “Original Bill Summary,” below).

The House Education Committee amendment strikes the provision to allow local school boards and charter school governing bodies to adopt a policy governing whether a school’s teachers may be hired as tutors for the teachers’ own students or for students from the teachers’ school.

Original Bill Summary:

HB 115 amends the *Assessment and Accountability Act* regarding supplemental educational services (SES):

- to allow local school boards and charter school governing bodies to adopt a policy governing whether a school’s teachers may be hired as tutors for the teachers’ own students or for students from the teachers’ school; and
- to require the Public Education Department (PED) to adopt rules:
 - establishing a range of rates that SES providers may charge; and
 - requiring each SES provider to include in its application to PED documentation that the tutoring services to be offered are consistent with the instructional program offered by the district or charter school whose students the SES provider intends to serve.

Fiscal Impact:

HB 115 does not contain an appropriation.

Substantive Issues:

As explained more fully under “Background,” below, supplemental educational services are additional academic services outside the regular school day, like after-school tutoring, that Title I schools must provide if they have failed to make adequate yearly progress (AYP) for three consecutive years.

HB 115 addresses issues with the SES program that were brought to the attention of the Legislative Education Study Committee (LESC) during the 2010 interim. Among other points, this testimony explained:

- the federal and state provisions that govern the program, with particular attention to the limitations that the US Department of Education (USDE) has placed on state and local modifications of the program;
- one of the original intents of the program to stimulate the marketplace for providers of educational services;
- the limited – in most cases, negligible – effect of the SES program on student academic achievement, both in New Mexico and nationwide; and
- certain particular issues that have arisen within Albuquerque Public Schools (APS) and perhaps other school districts as well.

Two of the amendments in HB 115 are in response to APS concerns.

- One is the practice of some SES providers’ hiring a school’s teachers as tutors to provide services to that school’s students. The district has found that this practice gives those providers an unfair advantage over others simply because the parents, who are free to choose from the list of state-approved providers, are already familiar with and comfortable with those teachers. A related concern, however, is that the tutoring might be more effective if presented by someone else with a different perspective. Because smaller districts, especially in rural parts of the state, may not wish to impose a policy to prohibit this practice, HB 115 makes it an option.
- The other APS concern was the frequent lack of consistency between the district’s instructional program and the tutoring services offered by SES providers. In this case, federal law requires this consistency; and correspondence from the USDE to LESC staff indicated that it should be ensured at the level of state approval rather than at each individual district or charter school.
 - The PED analysis notes that, under agency rule, SES applicants must already ensure that the academic services to be provided are consistent with the district’s curriculum.
 - In practice, however, as illustrated in the application forms, this assurance is seldom more than a statement to that effect, whereas HB 115 would require documentation.

As for the third amendment in HB 115, federal law and guidance allow the state educational agency to establish a range of allowable rates that SES providers may charge for their services

“to prohibit exorbitant or unrealistically low rates,” as long as the department maintains a variety of program configurations to allow parents as much choice as possible.

- According to PED’s analysis, the hourly rates charged by SES providers during school year 2010-2011 range from a low \$25 to a high of \$130, with approximately 80 percent of the providers charging between \$50 and \$80.
- The PED analysis also notes a possible unintended consequence of this amendment: encouraging all providers to charge the higher-end rate and to increase the pupil/tutor ratio “in order to maximize profit margins.”

Finally, other testimony that the LESC received during the 2010 interim suggested that, when the *Elementary and Secondary Education Act* (also known as the *No Child Left Behind Act of 2001*, or NCLB) is eventually authorized, it may not include the SES program as currently configured. The PED analysis anticipates reauthorization in spring 2011. Be that as it may, however, the program is still a requirement of federal and state law; and the LESC was concerned enough about the issues raised to endorse a bill to address them.

Background:

The federal NCLB requires each Title I school that has failed to make AYP for three consecutive years to use a portion of its Title I funds to provide SES to students from low-income families attending that school. Federal guidance defines these supplemental educational services as academic instruction provided in addition to instruction during the school day, “such as tutoring, remediation and other supplemental academic enrichment services that are consistent with the content and instruction used by the local educational agency (LEA) and are aligned with the State’s academic content and achievement standards.”

- These services “must be high quality, research-based, and specifically designed to increase student academic achievement.”
- They must be offered through public- or private-sector providers approved by the state and chosen by the parents.

According to information from PED, during school year 2010-2011 approximately 450 schools in 61 districts are required to provide SES to their students through providers chosen by the parents from a list of 66 providers approved by PED.

In addition to the federal requirements, state law as enacted in 2003 and as amended in 2006, through legislation endorsed by the LESC, further requires PED to adopt rules that:

- govern the priority for students who are provided with SES;
- adopt a sliding-fee schedule based on the educational level of the tutors; and
- require providers to use a pre- and post-assessment instrument approved by the department “to measure the gains that students achieve through supplemental services.”

Related Bills:

None as of March 7, 2011.