

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

Senate Bill 1090 (Senator Pugh)
 Education, Health, and Environmental Affairs

Public Schools - Provision of Supplemental Educational Services

This bill requires local boards of education to make supplemental educational services (SES) available to specified eligible students outside of the regular school day. An SES provider may be a local school board, or a nonprofit or for-profit entity. The bill requires the Maryland State Department of Education (MSDE) to supervise provision of SES in the State. MSDE must approve SES providers under specified conditions and repeal approval under specified conditions. MSDE must also monitor and evaluate approved SES providers. Each local board of education must create a streamlined SES enrollment and provider selection process, provide specified information to parents of eligible students and to SES providers, hold open enrollment for SES, and reserve 15% of specified federal funds to pay for SES.

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: Assuming the State’s application for flexibility from federal No Child Left Behind (NCLB) requirements is approved, general fund expenditures increase by approximately \$523,300 in FY 2013 for MSDE to hire additional staff and to cover consulting fees. Ongoing expenditures for added staff increase to \$390,100 in FY 2017. If the State’s application for flexibility is denied or is withdrawn, the bill will align more closely with current practices, and the additional costs from the bill will be less than shown here. Revenues are not affected.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	523,300	333,200	356,100	372,700	390,100
Net Effect	(\$523,300)	(\$333,200)	(\$356,100)	(\$372,700)	(\$390,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local board of education expenditures may increase to the extent that other priorities compete with SES and that the federal government waives current SES requirements. Also, to the extent that compliance with SES requirements in the bill cannot be met with federal funds, local board of education expenditures increase. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Small businesses providing SES will benefit from expanded opportunities to serve students in each local school system.

Analysis

Bill Summary: “Supplemental Education Services” means academic services that are provided to eligible students outside of the regular school day, and may include tutoring, remediation, or other academic instruction or support. An “eligible student” is a student who is enrolled in a public school that is receiving funds under Title 1, Part A of the federal Elementary and Secondary Education Act (ESEA); receives free or reduced-price lunch; and is found to be underperforming based on State assessments.

MSDE must assist local boards in developing applications for subgrants of federal funding for SES for low-income students to ensure participation by eligible students and develop an approval process for SES providers that:

- includes input from local boards, parents, teachers, and other interested parties;
- promotes participation by the highest quality providers;
- is based on demonstrated effectiveness in increasing student proficiency in subjects relevant to the State’s academic performance standards; and
- includes in-person presentations.

The approval process must also require an SES provider to demonstrate that:

- curricula used by the provider align with the State’s academic performance standards;
- the provider has at least five years of continuous experience providing SES to youth;
- the provider uses research-based instructional methods and materials;
- the provider is financially stable;
- the provider employs tutors that meet State requirements; and
- the provider is able to deliver in a timely manner SES to eligible students in a county in which the provider is approved.

MSDE must approve a provider that meets approval criteria for a five-year period, notify potential providers annually of the opportunity and process for becoming a State-approved SES provider, maintain a list of State-approved SES providers, ensure that a local board that is a State-approved SES provider maintains a fair and transparent process in administering SES, develop a statewide student application form, monitor State-approved SES providers for compliance with the bill and related regulations, and establish a process for accepting and resolving a complaint within 45 days of the complaint.

MSDE must develop and implement a system to evaluate State-approved SES providers that is based primarily on the extent to which the provider improves student academic achievement, that determines the value added by each provider in improving academic achievement, and that is operational on or before the end of the 2012-2103 school year.

Each local board must create a streamlined SES enrollment and provider selection process enabling eligible students to begin receiving SES by December 15 of each school year. Each local school board must also, before and after the start of each school year, make enrollment forms available to SES providers and provide to the parent of each eligible student:

- notice that the student is eligible to receive SES;
- contact information for State-approved providers;
- an enrollment form with clear instructions; and
- a timeline for the selection of providers and commencement of services.

Open enrollment for SES must be held until (1) the local board receives written election to receive or reject services from the parents of at least the majority of eligible students; or (2) the State Board of Education grants a waiver to the local board based on specified evidence. State-approved SES providers must be allowed to use public school facilities; however, in a county with a student population above 300,000, the local board may charge the SES provider a rental fee for use of the public school facility.

A local board must reserve 15% of the funds received under Title 1, Part A of ESEA to provide SES services. A local board may use no more than 1% of these reserved funds for administration and evaluation of, and technical assistance for, SES.

A State-approved SES provider may not provide an incentive for an eligible student or parent to choose the provider, but may award incentives of no more than \$50 in value per year for performance or attendance to a student in the provider's program. To become and remain a State-approved SES provider, the provider must be able to deliver SES to eligible students in a county in which the provider is approved.

If any minimum enrollment requirement set by a State-approved SES provider is met, the provider may not withdraw from offering services during a school year or other contract period after signing a specified agreement to provide the services. If a provider does withdraw services under these conditions, the local board must report the provider to MSDE, and MSDE must remove the provider from the State-approved list for the county for the current school year. If the provider withdraws services a second time in any county, the provider is ineligible to provide services in the State the following year.

After March 1 of any year, a local board may apply to MSDE for authorization to reallocate unspent funds that were reserved for SES under Title 1, Part A of ESEA. The local board must provide specified documentation and, if MSDE does not approve reallocation, may appeal the decision to the State Board of Education, which must issue a final decision within 60 days of receipt of the appeal.

MSDE may adopt regulations to implement provisions of the bill. The bill also states the General Assembly's intent that MSDE arrange for provision of SES in accordance with provisions of the bill and in a manner that in no way interferes with, contradicts, or counters the rights of eligible students to receive SES.

Current Law: NCLB requires states to test students annually in grades three through eight and again in high school to ensure that all students are on pace to meet standards set by the states by 2014. To accomplish this, schools and local school systems must make adequate yearly progress (AYP) toward this goal each year.

In general, local school systems must make SES available for eligible students attending schools that operate programs funded by Title 1 of ESEA that do not make AYP after one year of school improvement (three years of not making AYP). Students from low-income families who attend Title 1 schools that are in their second year of school improvement, in corrective action, or in restructuring, are eligible for SES. Eligibility is not dependent on whether a student is a member of a subgroup that did not make AYP or whether a student is in a grade that takes required statewide assessments.

If the funds available are insufficient to provide SES to each eligible student whose parent requests those services, a local school system must give priority to the lowest-achieving eligible students.

The option to transfer to another public school is available to students enrolled in a Title 1 school that is identified for improvement, corrective action, or restructuring because it has not made the required progress. This option remains open until the school has made AYP for two consecutive years. A student who exercises the transfer option may remain in the school until completion of the highest grade in the school. The local

board of education is generally responsible for providing, or paying for, the transportation necessary for a student's attendance at the new school until the assigned school is no longer identified for improvement, corrective action, or restructuring.

Federal law also requires states to allow a student attending a persistently dangerous public school or who becomes the victim of a violent crime while at school to attend a safe public school within the district. All local school systems are required to provide transportation to and from school for public school students, and the State supports a share of transportation costs in each system.

A local board of education that must provide SES and transportation options must use up to 20% of its Title 1, Part A allocation to cover choice-related transportation costs for students who exercise a choice option and to pay for SES for students whose parents request such services. The 20% reservation may be paid from Title 1, Part A funds or funding from other federal, State, local, and private sources.

Each local board must encourage the use of public school facilities for public purposes. Generally, nonprofit day care programs are to be given priority in the use of public school facilities for purposes other than school purposes. A reasonable charge for heating, lighting, and janitorial services may be made for the use of school facilities. In addition to these charges, charges for commercial use of surplus school space may include rent and recovery of capital costs.

Background: The U.S. Department of Education is inviting each State educational agency to request flexibility regarding specific requirements of NCLB on behalf of itself, its local educational agencies, and its schools in exchange for rigorous and comprehensive State-developed plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. MSDE has applied for such flexibility and its request for flexibility includes a provision that would allow (but not require) a low-performing local school system to use funds that the school system had been required to reserve for SES on other purposes, including targeted interventions at schools designated as low achieving and/or priority schools.

State Fiscal Effect: MSDE current practices are similar to many provisions of the bill. As examples, MSDE monitors each SES provider and carries out a process for approval and evaluation of SES providers. However, consistent with its flexibility waiver request to the federal government, MSDE intends to discontinue these functions and redirect much of the federal funds now used for SES, while allowing local school systems the option to engage with SES providers. As such, MSDE advises that State funds would be needed to cover its SES requirements under the bill assuming it receives the flexibility it has requested.

Specifically, MSDE will require consulting assistance at a cost of approximately \$180,000 in fiscal 2013 for development and initial implementation of the required system for evaluation of SES providers. Also, MDSE will need to hire three education program specialists and one administrative assistant at a cost of \$343,270 in fiscal 2013 to meet MSDE’s ongoing responsibilities regarding provision of SES in the State. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2013</u>
Positions	4
Salaries and Fringe Benefits	\$327,615
One-time Equipment Purchases	13,455
Operating Expenses	2,200
Consultant	<u>180,000</u>
Total State Expenditures	\$523,270

Future year expenditures could total \$390,100 by fiscal 2017, which reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

If the State withdraws its application for flexibility from NCLB requirements or is denied flexibility by the federal government, costs to comply with the bill will be less than estimated here. However, some provisions in the bill add requirements beyond current practice. It is anticipated, therefore, that MSDE will experience some level of cost increases under the bill even if the State’s flexibility application is not approved.

Local Fiscal Effect: The bill does not affect federal funding for local school systems, but restricts the use of 15% of funds used under Title 1, Part A of ESEA for use on SES (though unused funds may be reallocated with MSDE approval) and requires that no more than 1% of the reserved 15% of funds be used for administration and evaluation of, and technical assistance for, SES. To the extent that federal funds are not sufficient to meet requirements of the bill, the expenditure of additional local funds will be necessary. MSDE is unaware of federal subgrants for SES, thus it is unclear whether additional federal funding will be available through such subgrants.

Under current projections through fiscal 2017, no local school system enrollment will exceed 150,000 students. The provision of the bill regarding use of public school facilities will have no significant effect on local school board finances.

Additional Information

Prior Introductions: None.

Cross File: HB 1450 (Delegates Mitchell and Ivey) - Ways and Means.

Information Source(s): Maryland State Department of Education, Department of Legislative Services

Fiscal Note History: First Reader - March 20, 2012

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