

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3864

To amend part A of title I of the Elementary and Secondary Education Act of 1965 to improve supplemental educational services, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 7 (legislative day, SEPTEMBER 6), 2006

Mr. MARTINEZ (for himself and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend part A of title I of the Elementary and Secondary Education Act of 1965 to improve supplemental educational services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Raising Achievement  
5 through Improving Supplemental Education Act of 2006”  
6 or the “RAISE Act”.

7 **SEC. 2. REFERENCES.**

8 Except as otherwise expressly provided, whenever in  
9 this Act an amendment or repeal is expressed in terms

1 of an amendment to, or a repeal of, a section or other  
 2 provision, the reference shall be considered to be made to  
 3 a section or other provision of the Elementary and Sec-  
 4 ondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

5 **SEC. 3. SUPPLEMENTAL EDUCATIONAL SERVICES AFTER**  
 6 **THE FIRST YEAR OF IDENTIFICATION FOR**  
 7 **SCHOOL IMPROVEMENT.**

8 Section 1116 (20 U.S.C. 6316) is amended—

9 (1) in subsection (b)—

10 (A) in paragraph (1), by adding at the end  
 11 the following:

12 “(G) SUPPLEMENTAL EDUCATIONAL SERV-  
 13 ICES.—In the case of a school identified for  
 14 school improvement under this paragraph, the  
 15 local educational agency shall make supple-  
 16 mental educational services available consistent  
 17 with subsection (e)(1).”; and

18 (B) in paragraph (5)(B), by inserting  
 19 “continue to” after “shall”; and

20 (2) in subsection (e)(1), by inserting “(1),”  
 21 after “in paragraph”.

22 **SEC. 4. PRIORITIZING FUNDS.**

23 Section 1116(b)(10)(C) (20 U.S.C. 6316(b)(10)(C))  
 24 is amended—

1 (1) by striking “FUNDS.—If” and inserting

2 “FUNDS.—

3 “(i) PRIORITY.—Subject to clause (ii),

4 if”;

5 (2) by striking “local educational agency shall

6 give priority” and all that follows through the period

7 at the end and inserting “local educational agency

8 shall give priority—

9 “(I) first, to eligible children who

10 are low-income and low-performing, as

11 described in clauses (i) and (ii) of

12 subsection (e)(13)(A);

13 “(II) second, to low-performing

14 eligible children; and

15 “(III) third, to low-income eligi-

16 ble children.”; and

17 (3) by adding at the end the following:

18 “(ii) DOCUMENTATION.—A local edu-

19 cational agency may only prioritize in ac-

20 cordance with clause (i) after the local edu-

21 cational agency makes available to the

22 State educational agency documentation

23 providing clear and convincing evidence

24 that the funds available to provide supple-

25 mental educational services under sub-

1 section (e) are insufficient to meet the ac-  
 2 tual demand by parents of eligible children  
 3 for the services, as demonstrated by satis-  
 4 fying the requirements of paragraph (2).”.

5 **SEC. 5. LOCAL EDUCATIONAL AGENCY RESPONSIBILITIES.**

6 Section 1116(e)(2) (20 U.S.C. 6316(e)(2)) is amend-  
 7 ed—

8 (1) in subparagraph (A), by striking “at a min-  
 9 imum, annual” and inserting “at a minimum, at the  
 10 times specified under subparagraph (B)(i),”;

11 (2) by redesignating subparagraphs (B), (C),  
 12 and (D) as subparagraphs (E), (F), and (H), re-  
 13 spectively;

14 (3) by inserting after subparagraph (A) the fol-  
 15 lowing:

16 “(B) establish a streamlined opportunity  
 17 for eligible children to acquire supplemental  
 18 educational services under this subsection,  
 19 which shall include—

20 “(i) notifying eligible children served  
 21 by the local educational agency and their  
 22 parents of the child’s eligibility for supple-  
 23 mental educational services—

24 “(I) not later than 30 days after  
 25 the local educational agency obtains

1 data from the State educational agen-  
2 cy indicating that the school serving  
3 the child is identified for school im-  
4 provement under section 1116(b)(1);

5 “(II) not later than 30 days after  
6 the first day of classes at the school  
7 for a school year; and

8 “(III) not later than 30 days be-  
9 fore requesting the reallocation of un-  
10 used funds reserved for supplemental  
11 educational services under subsection  
12 (b)(10)(A);

13 “(ii) holding not less than 2 opportu-  
14 nities for parents of eligible children to  
15 register and select a provider simulta-  
16 neously through the one-step process de-  
17 scribed in subparagraph (C); and

18 “(iii) using, as the application for  
19 supplemental educational services under  
20 this section, the State application devel-  
21 oped under paragraph (4)(F);

22 “(C) create a streamlined, one-step parent  
23 registration and provider selection process  
24 that—

1           “(i) does not place an undue burden  
2           on parents that may result in the de-  
3           creased participation of eligible children in  
4           supplemental educational services under  
5           this subsection;

6           “(ii) provides notice to the parents of  
7           the process for receiving supplemental edu-  
8           cational services under this subsection;

9           “(iii) obtains the parent’s permission  
10          to release assessment data regarding the  
11          eligible child to the provider selected by the  
12          parent;

13          “(iv) is as simple as possible and is in  
14          the parent’s native language, where pos-  
15          sible; and

16          “(v) provides each provider with the  
17          names and contact information of the eligi-  
18          ble children whose parents have selected  
19          the provider for such services in a timely  
20          manner;

21          “(D) make every effort, in carrying out the  
22          duties of the local educational agency under  
23          this paragraph—

1                   “(i) to increase the participation of el-  
2                   igible children in supplemental educational  
3                   services under this subsection; and

4                   “(ii) to fully utilize the funds available  
5                   under subsection (b)(10)(A)(ii) for pro-  
6                   viding such services to eligible children;”;

7                   (4) in subparagraph (F) (as redesignated by  
8                   paragraph (2)), by striking “; and” and inserting “,  
9                   based on the priorities described in subsection  
10                  (b)(10)(C)(i);”; and

11                  (5) by inserting after subparagraph (F) (as re-  
12                  designated by paragraph (2)) the following:

13                         “(G) provide approved providers with ac-  
14                         cess to school facilities on the same basis as  
15                         other after-school and extra-curricular pro-  
16                         grams (including programs operated or over-  
17                         seen by the local educational agency) seeking  
18                         access to the school facility; and”.

19 **SEC. 6. PROVIDER AND LEA AGREEMENT.**

20                  Section 1116(e)(3) (20 U.S.C. 6316(e)(3)) is amend-  
21 ed—

22                         (1) by redesignating subparagraphs (A) through  
23                         (E) as subparagraphs (B) through (F), respectively;

24                         (2) in the matter preceding subparagraph (B)  
25                         (as redesignated by paragraph (1)), by striking “In

1 the case” and all that follows through “Such agree-  
 2 ment shall—” and inserting “In the case of an ap-  
 3 proved provider selected by a parent, the local edu-  
 4 cational agency shall enter into a written agreement  
 5 with such provider, not later than 45 days after the  
 6 first day of the school year or 45 days after the se-  
 7 lection by the parent, whichever occurs later. Such  
 8 agreement shall—

9 “(A) require that the provider be available  
 10 to begin providing supplemental educational  
 11 services under this subsection not later than 20  
 12 days after both parties receive the names and  
 13 contact information described in paragraph  
 14 (2)(C)(v);” and  
 15 (3) in subparagraph (B) (as redesignated by  
 16 paragraph (1))—

17 (A) by striking “local educational agency”  
 18 and inserting “provider”; and

19 (B) by striking “the provider chosen by the  
 20 parents” and inserting “the local educational  
 21 agency”.

22 **SEC. 7. STATE EDUCATIONAL AGENCY RESPONSIBILITIES.**

23 Section 1116(e)(4) (20 U.S.C. 6316(e)(4)) is amend-  
 24 ed—

25 (1) in subparagraph (E)—



1 (A) by striking the period and inserting a  
2 semicolon; and

3 (B) by redesignating subparagraph (E) as  
4 subparagraph (F);

5 (2) in subparagraph (D)—

6 (A) by striking “and” after the semicolon;  
7 and

8 (B) by redesignating subparagraph (D) as  
9 subparagraph (G) and moving the subpara-  
10 graph so that the subparagraph follows sub-  
11 paragraph (F) (as redesignated by paragraph  
12 (1)(B));

13 (3) by inserting after subparagraph (C) the fol-  
14 lowing:

15 “(D) notify each local educational agency  
16 within the State that is required to provide sup-  
17 plemental educational services under this sub-  
18 section for a school year not later than the  
19 June 1st preceding the commencement of the  
20 school year, or if the June 1st deadline is not  
21 possible, with as much advance notice before  
22 the first day of the school year as possible;

23 “(E) include on the State educational  
24 agency’s Internet website a standard,  
25 downloadable application form for local edu-

1 educational agencies and parents to utilize in ap-  
2 plying for and providing supplemental edu-  
3 cational services under this subsection;” and  
4 (4) by adding at the end the following:

5 “(H) provide a valid and reliable evalua-  
6 tion of providers that—

7 “(i) is consistent with relevant, na-  
8 tionally-recognized professional and tech-  
9 nical standards;

10 “(ii) records the gains of individual  
11 students by showing improvement attrib-  
12 utable per hour of supplemental edu-  
13 cational services instruction under this  
14 subsection (especially for students whose  
15 academic achievement level is several  
16 grades below grade level);

17 “(iii) isolates the effects of supple-  
18 mental educational services under this sub-  
19 section from other possible variables that  
20 might affect a student’s academic achieve-  
21 ment;

22 “(iv) coordinates the collection of  
23 qualitative data on parental satisfaction  
24 with the supplemental educational services  
25 of the provider under this subsection, and

1 the reasons for such level of satisfaction;  
2 and

3 “(v) may exclude from the evaluation  
4 those students who attend less than 80  
5 percent of the total hours of supplemental  
6 educational services scheduled for the stu-  
7 dent;

8 “(I) establish safeguards against potential  
9 conflicts of interest when a local educational  
10 agency applies to be, or becomes, a provider of  
11 supplemental educational services under this  
12 subsection, and provide monitoring and evalua-  
13 tion of the local educational agency’s perform-  
14 ance as a provider; and

15 “(J) prohibit local educational agencies  
16 from reprogramming any portion of the supple-  
17 mental educational services funds described in  
18 subsection (b)(10)(A)(ii) for a fiscal year for  
19 other purposes, unless the local educational  
20 agency provides to the State educational agency  
21 clear and convincing evidence, as determined by  
22 the State educational agency, that—

23 “(i) the parents of all eligible children  
24 in schools served by the local educational  
25 agency have been notified in good faith of

1 the availability of supplemental educational  
2 services under this subsection;

3 “(ii) the local educational agency is  
4 meeting all actual demand from parents  
5 for supplemental educational services  
6 under this subsection, as determined by  
7 whether the local educational agency has  
8 opened enrollment for supplemental edu-  
9 cational services under this section, on a  
10 monthly basis, after the initial enrollment,  
11 to parents of all eligible children without  
12 restriction until all funds available to pro-  
13 vide supplemental educational services  
14 under subsection (b)(10)(A)(ii) are ex-  
15 pended; and

16 “(iii) the local educational agency is  
17 able to meet any likely future demand for  
18 supplemental educational services for the  
19 school year for which the determination is  
20 made.”.

21 **SEC. 8. CRITERIA FOR PROVIDERS.**

22 Section 1116(e)(5) (20 U.S.C. 6316(e)(5)) is amend-  
23 ed—

24 (1) by redesignating subparagraphs (C) and  
25 (D) as subparagraphs (E) and (F), respectively; and

1 (2) by inserting after subparagraph (B) the fol-  
 2 lowing:

3 “(C) Offer no incentives for the purpose of  
 4 enticing eligible children or their parents to se-  
 5 lect the provider for supplemental educational  
 6 services under this subsection.

7 “(D) Offer an incentive to an eligible child  
 8 only if—

9 “(i) the purpose of the incentive is to  
 10 encourage the eligible child’s performance  
 11 or attendance; and

12 “(ii) the value of the incentive is not  
 13 more than 5 percent of the per-pupil  
 14 amount for supplemental educational serv-  
 15 ices described in paragraph (6)(A), as cal-  
 16 culated for the local educational agency  
 17 serving the student.”.

18 **SEC. 9. SPECIAL RULE FOR INEFFECTIVE LEA’S.**

19 Section 1116(e)(11) (20 U.S.C. 6316(e)(11)) is  
 20 amended—

21 (1) by striking “RULE.—If” and inserting

22 “RULES.—

23 “(A) STATE EDUCATIONAL AGENCY  
 24 ROLE.—If”; and

25 (2) by adding at the end the following:

1                   “(B) LOCAL EDUCATIONAL AGENCY  
2                   ROLE.—

3                   “(i) IN GENERAL.—If a State edu-  
4                   cational agency determines that the local  
5                   educational agency is not able, or is too  
6                   unreliable, to carry out the local edu-  
7                   cational agency’s responsibilities under  
8                   paragraph (2), or if there is a conflict of  
9                   interest due to the local educational agency  
10                  becoming a provider, the State educational  
11                  agency may, from amounts described in  
12                  clause (ii), enter into a contract or cooper-  
13                  ative agreement with a nonprofit organiza-  
14                  tion to enable the nonprofit organization to  
15                  carry out such responsibilities with respect  
16                  to the eligible children served by the local  
17                  educational agency.

18                  “(ii) REALLOCATION OF FUNDS.—

19                  “(I) IN GENERAL.—In order to  
20                  carry out clause (i) with respect to a  
21                  local educational agency, the State  
22                  educational agency shall reserve and  
23                  utilize, from the funds allocated to the  
24                  local educational agency under sub-

1 part 2, an amount equal to fifteen  
2 percent of such funds.

3 “(II) ADMINISTRATIVE COSTS.—  
4 A total of not more than 5 percent of  
5 the reserved amount described in sub-  
6 clause (I) may be used for the admin-  
7 istrative costs of the State educational  
8 agency and the nonprofit organiza-  
9 tion.

10 “(III) INTERACTION WITH RE-  
11 SERVED FUNDS.—In calculating the  
12 amount spent by a local educational  
13 agency for the purposes of subsection  
14 (b)(10), the amounts spent on behalf  
15 of a local educational agency under  
16 this subparagraph shall be included.”.

17 **SEC. 10. DEFINITION OF ELIGIBLE CHILD.**

18 Section 1116(e)(12)(A) (20 U.S.C. 6316(e)(12)(A))  
19 is amended to read as follows:

20 “(A) the term ‘eligible child’ means a  
21 child—

22 “(i) from a low-income family, as de-  
23 termined by the local educational agency  
24 for purposes of allocating funds to schools  
25 under section 1113(e)(1); or

1                   “(ii) who is low-performing, as dem-  
 2                   onstrated by a score of below proficient in  
 3                   a required subject on the State student  
 4                   academic assessment, as described in sec-  
 5                   tion 1111(b)(3)(A), for the previous school  
 6                   year.”.

7 **SEC. 11. COORDINATION OF SUPPLEMENTAL EDU-**  
 8                   **CATIONAL SERVICES WITH AFTER-SCHOOL**  
 9                   **CARE.**

10           Section 1116(e) of the Elementary and Secondary  
 11 Education Act of 1965 (20 U.S.C. 6316(e)) is further  
 12 amended—

13                   (1) by redesignating paragraph (12) (as amend-  
 14                   ed by section 10) as paragraph (13); and

15                   (2) by inserting after paragraph (11) the fol-  
 16                   lowing:

17                   “(12) COORDINATION WITH AFTER-SCHOOL  
 18                   PROGRAMS.—The Secretary shall develop, and pro-  
 19                   vide guidance on the implementation of, a model  
 20                   program for coordinating the provision of supple-  
 21                   mental educational services under this subsection  
 22                   with the 21st century learning centers assisted  
 23                   under part B of title IV.”.

○