



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, BOSTON 02133

A. JOSEPH DeNUCCI
AUDITOR

TEL (617) 727-2075
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September 15, 2006

Dr. Gus A. Sayer, Superintendent
South Hadley Public Schools
Town Hall
116 Main Street
South Hadley, Massachusetts 01075-2898

Re: Supplemental Education Services

Dear Dr. Sayer:

This is in response to your letter regarding Massachusetts General Laws Chapter 29, section 27C, the Local Mandate Law, and provisions of Title 1 of the federal No Child Left Behind Act that require Supplemental Education Services (SES). Relevant to your concerns, these provisions require certain underperforming schools that receive federal Title 1 financial assistance to offer SES, including tutoring and other student enrichment services. This obligation applies to Title 1 schools that fall below state performance standards for three consecutive years. The services must be offered outside of the regular school day, and provided by vendors approved by the state Department of Education (DOE), per the federal standards. Effected districts must earmark portions of their Title 1 budgets to pay SES vendors, which may include public school districts that meet state standards, but most often are private sector entities.

Specifically, you ask whether the SES requirement is being imposed on school districts in violation of the Local Mandate Law. Although I share a number of the concerns you have expressed about compliance with this program, my Division of Local Mandates has concluded that the Local Mandate Law does not apply in this case, primarily due to the federal origin of these requirements. The following discussion further explains this conclusion.

As a general rule, the Local Mandate Law applies to post-1980 state laws and regulations that impose additional direct service or cost obligations upon cities, towns, and school districts. It provides that such laws and regulations must either be fully funded by the Commonwealth, or subject to local acceptance. Any municipality aggrieved by a law or

regulation adopted contrary to these standards may petition superior court to be exempted from compliance until the Commonwealth assumes the cost. Prior to taking this step, a community may request an opinion from DLM as to whether the Local Mandate Law applies in a given case, and if so, to determine the amount of the cost imposed by the law or regulation at issue. DLM's determination of the amount of the compliance cost shall be prima facie evidence of the amount of state funding necessary to sustain the mandate. However, as is the case with most general rules, there are exclusions.

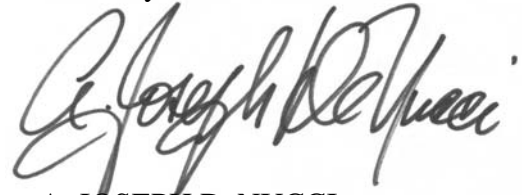
The state Supreme Judicial Court has recognized that the Local Mandate Law does not apply to "mandated costs or services which were not initiated by the Legislature and over which it has no control." *Town of Lexington v. Commissioner of Education*, 393 Mass. 693, 697 (1985). In that case, the Court was referring to the G. L. c. 29, § 27C(g) exception for costs resulting from court decisions, or from laws enacted as a direct result of court decisions. In the case at hand, it was the Congress of the United States that enacted the No Child Left Behind Act, and the U. S. Department of Education that oversees its implementation. From this viewpoint, the SES program is a matter over which the state Legislature has no control. Accordingly, the Commonwealth is not obligated under the Local Mandate Law to assume the cost of complying with this federal mandate.

In any event, it is clear that you are not alone in your concerns about this program. At the request of Senator Kennedy and other Congressmen, the U. S. Government Accountability Office (GAO) recently issued a report detailing recommendations to improve implementation and evaluation of SES. See GAO-06-758 at www.gao.gov. Of particular relevance to some of your observations, recommendations include expanding the current pilot program to allow districts in need of improvement to apply for provider status, and requiring that states collect data and provide more effective technical assistance and guidance. The GAO also recommends clarification of the role of the states in setting guidelines for program content and costs. Additionally, John Desses, the Massachusetts state Program Coordinator for SES, reports that the state DOE is in the process of hiring an external evaluator to assess the effectiveness of the providers approved to deliver these services in our state. Mr. Desses states that he is available to address more specific questions or concerns you may wish to raise; he may be reached at 781-338-6328.

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By many accounts, it appears that the SES program is “a work in progress,” that should be subject to continuing evaluation and refinement. I have directed my staff to monitor ongoing developments, and ask that you contact Emily Cousens at 617-727-0980 as further concerns may arise. I thank you for bringing this matter to my attention.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Joseph DeNucci". The signature is fluid and cursive, with a large initial "A" and "J".

A. JOSEPH DeNUCCI
Auditor of the Commonwealth

cc: The Honorable Edward M. Kennedy
Mr. John Dresses