

# **Proposed Senate Version of IDEA Reauthorization Has Positive and Possibly Negative Implications for Education Software and Supplemental Publishers**

*A Technology Monitoring and Information Service (TechMIS)*

## **SPECIAL REPORT**

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During the last week in November, Senate leaders agreed to limit debate when its current IDEA reauthorization proposal goes to the Senate for final vote. It is unlikely that any of the agreed up-to-eight allowable amendments will affect key Senate provisions which have implications for education software supplemental publishers, depending on the nature of the firm's products and services.

Two provisions should have across-the-board, positive implications. One would allow a district, this next year, to use up to eight percent of approximately two-thirds of its IDEA allocation as a "local block grant." If and when IDEA appropriations increase to at least 40% (now at 18%) of the total cost of special education (now estimated to be \$80 billion), then the eight percent would increase to 25 percent. While local special education directors are not enamored with such provisions, local district superintendents and school boards probably are pleased because it will allow them to use some of IDEA funds for nonspecial education purposes.

Another provision relates to a continuation of the "incidental use provision" in the 1997 IDEA legislation and subsequent regulations. Under Section 613 of the proposed Senate version related to "permissive use of funds," IDEA funds may be used for the following activities: "(A) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED STUDENTS - for the cost of special education and related services, and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services." As former Assistant Secretary Robert Pasternack noted before the CCSSO legislative conference last March, the Administration supported strongly the "incidental use" provision and will ensure that it is included in the IDEA reauthorization. In a nutshell, this provision would allow a district or a school to purchase or license a network software program and use it with nonspecial education students if: (a) the price would be same regardless of the number of students in the school using it, such as under a schoolwide software license; (b) no special education student is denied access to the program; and (c) little "wear and tear" costs are incurred.

The areas in which there are some significant differences between the House and Senate versions relate to “intervention services.” As we noted in a June 2003 TechMIS Special Report (attached for quick reference), the House version -- HR 1350 -- would require schools to use “interventions” which have the five Reading First components with “borderline case” students in grades K-3 to remediate reading problems before deciding on placing such students in costly special education programs. As noted in the June Special Report, HR 1350 has a number of very prescriptive conditions for selecting these pre-referral interventions. The current early intervention services in S 1248 differ from those summarized in the June report in several respects. While both the House and Senate versions would allow an LEA to use up to 15 percent of its IDEA funds on “intervention services,” the Senate version would lessen that amount to about seven percent if the LEAs used all of their eight percent “local flexibility block grant” funds partially to fund such intervention services. Also, the Senate version calls for the use of early intervention education services that include: (a) “Professional development which may be provided by entities other than local education agencies for teachers and other school staff to enable such personnel to deliver scientifically-based academic and behavioral interventions, including scientifically-based literacy instruction and, where appropriate, instruction on the use of adaptive and instructional software; and (b) providing educational and behavioral evaluation services support, including scientifically-based literacy instruction.” No specific reference to Reading First “components” is made. As the accompanying Senate subcommittee report on S 1248 notes, the intent of intervention services “have the promise of benefiting both the regular education environment and the special education program by reducing academic and behavior problems in regular education environment and the number of referrals for special education and the intensity of special education services required for some students. More so than the House version, it also emphasizes “scientifically-based behavioral interventions.” It also clarifies that IDEA funds used for providing intervention services for students who have yet to be placed in special education, would not violate excess costs, commingling, or supplement not supplant requirements. Related provisions elsewhere in the proposed legislation suggest that the priority target under the Senate version for early interventions would be students which some staff may feel have “special learning disabilities.”

The implications of the different versions related to intervention services should be clear: (a) education publishers with products and services which include all of the five components of Reading First or have other comprehensive solutions which have been identified as being scientifically-based would benefit from the House version; and (b) those supplemental software and print publishers which have products that are very focused and do not include all of the Reading First components, would benefit more from the Senate version. Crystal ball gazing in an election year, when special education students are at the “heart” of some of the problems and concerns associated with implementation of NCLB (see Public Agenda Survey results in November Washington Update), some observers believe that the House/Senate Conference compromise will be closer to the Senate version than the House version for a number of reasons. Some of the controversial issues related to early implementation of Reading First (i.e., the unofficial use of “lists of products” meeting Reading First requirements, unofficial state lists, and

the Federal State negotiating process for final approval) will likely be addressed by USED's Office of the Inspector General as it implements its audits over the next twelve months (see November 2003 Washington Update). The expanded types of intervention services, to include the behavioral and functional support services which students who are emotionally disturbed or mentally impaired need, appear to be in closer concert with parents of special education students (i.e., the Public Agenda Survey of parents of special education students, July 2002, found these parents, by a factor of over 3:1, felt development of social, functional, and related skills was more important than the development of narrowly-defined basic skills). Parents would still have the right to approve what interventions are most appropriate during IEP meetings.

In addition to some of the other provisions of S 1248 noted in its initial version (see June 23 TechMIS Special Report) which have not been altered, the Senate version includes a number of new provisions which could have implications for certain software and supplemental materials publishers:

- The Senate Subcommittee urges the Secretary of Education to support educational media appropriate for use in a classroom, particularly the Internet as it “can be an important educational tool for students with cognitive disabilities and that developing internet literacy can assist students with cognitive disabilities in developing effective communication skills and increasing academic and functional skills.”
- The proposed Bill also would undertake an up-to-\$50 million initiative to address the “pressing needs of teachers, administrators, and support staff to help behaviorally-challenged students by establishing or expanding behavioral support and whole school behavioral intervention activities, particularly for students with emotional disabilities, who represent 11 percent of America’s youth.”
- For the preschool IDEA grant program, the Bill encourages preschool special education programs to place more emphasis on preacademic skills for young children with disabilities especially preliteracy, prenumeracy, and language skills.
- Representing a significant departure from past Federal monitoring/enforcement practices regarding IDEA, the Bill redirects the focus of Federal monitoring and enforcement activities from administrative process issues to a system primarily focusing on the performance of students with disabilities.
- The Bill requires USED to develop “a model IEP suitable for adoption by state or LEA which will accommodate the Committee’s desire for streamlined straightforward expression of only the requirements mandated by this Act.”
- While IEP goals should conform with district and state academic content standards and progress indicators included under NCLB, the IEP shall also include other goals deemed appropriate by the IEP team such as “those related to life skills, self advocacy, social skills, and desired post-school activities.”

- Several areas in the Senate version addresses the need for providing appropriate accommodations for students in special education programs to ensure that regular and alternative assessments are accurate and valid while suggesting that technology-delivered assessments can more easily provide such accommodations without invalidating achievement results.
- The Senate provision would extend the deadline for special education teachers to meet the current definition of highly-qualified teacher by one year to 2006-07 based on recognition of the shortage of special education teachers and “challenges of applying” a new definition of highly-qualified teacher.
- And last, in recognition of this Administration’s policy of “selective implementation” of its priority provisions under No Child Left Behind, S 1248 places greater restrictions on the Secretary’s ability to issue nonregulatory guidance and rules that “reflect policy interpretations” without going through an official rule-making process while at the same time providing new flexibility to states to establish their own rules and regulations to ensure compliance with IDEA.

The Senate version provisions related to special education student participation in state assessments and the types of alternative assessments which can be used appear to be fairly close to the USED final regulations for NCLB released on December 9. Several key points in the Senate version include:

- The determining factors regarding whether a child should take a regular assessment with or without accommodations or to take alternative assessments will be guided by two factors: state or district guidelines regarding accommodations and assessments and by the IEP team. The Final USED Regulations related to provisions in NCLB basically provide flexibility to states to establish policy (see [Washington Update](#) item).
- Under the Senate version, alternative assessments would be a part of, not separate from, state and district-wide assessments programs and accountability.
- Unlike NCLB, where the primary goal for special education is academic achievement, under the Senate version, the functional performance of children has also become a goal in that “that functional performance is critical for many children with disabilities in order to improve educational outcomes.”
- The Senate version would also have states develop policies which distinguish between assessment “accommodations” and “modifications” to prevent the use of the latter to the extent it would invalidate test scores of students with disabilities. Moreover, S 1248 “requires to the extent feasible that states and local agencies develop and use universally-designed assessments.”

The initial Senate version, when released last June, called for all instructional materials used by special education students to be designed and/or modified to meet the principles of “universal design” to ensure all students have equal access to instructional materials. This requirement in the current version applies for the most part to curriculum and instruction related research and development projects funded by USED. Rather than having to retrofit existing instructional products, firms now have an opportunity to partner with R&D groups which receive such IDEA funding to develop products or versions which follow the “principles of universal design.”

One of the areas in which amendments will likely be allowed and debated when S 1248 is sent to the Senate floor will be a number of initiatives to reduce paperwork for special education teachers by over 50 percent. This is likely to increase the demand for products and tool applications that are designed to expedite IEP development and the monitoring and updating process, as well as the conduct of IEP meetings through the use of videoconferences and other means, which both the House and Senate versions already support. Other amendments may be needed to address USED’s proposed Final Regulations regarding assessment of special education students which was released on December 9.

Developments relating to intervention service provisions in the IDEA reauthorization will continue to be monitored and reported to TechMIS subscribers.