

NCLB Update

A Technology Monitoring and Information Service (TechMIS)
SPECIAL REPORT

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During June, there were a number of developments and activities which have moderate to significant implications for the vast majority of TechMIS subscribers as highlighted below.

USED Report to Congress Claims Almost \$3 Billion in Unspent Federal Funding Made Available for State and District Use Two or More Years Ago

As in the past, Secretary Paige and Congressman Boehner, Chairman of the Education and Workforce Committee, are once again rebuffing claims that Federal funds are inadequate to implement the assessment and other mandates of No Child Left Behind. They claim that a recently-released USED report “show states have billions in unspent Federal education funds available, including more than one-half billion dollars dating back to the final years of the Clinton Administration, and also show the percentage of Federal funds unspent by states is increasing, not decreasing, as more and more money is being pumped into the system.” At this writing, Secretary Paige is reported by the local radio stations as having stated that, if the \$2.7 billion in unspent Federal education funding that has been available for over two years is not spent by September 30, such funds will have to be returned to the Federal Treasury. A press release from Chairman Boehner’s office also cites the report as finding “states collectively have \$16.8 billion in unspent Federal education funds, all of which have been available to them for at least a year.”

The claims are over-stated because of time lags in reporting by districts to states and, in turn, to the Federal level. Even so, there is a large amount of funds, including over a billion dollars of unused Title I funds, that must be encumbered or “carried over” to next year (if allowed) by September 30, 2004, or returned to the Federal Treasury. As we have stated in the May TechMIS Special Report, most of these funds were 20 percent earmarks set aside last September for which SES and transportation costs were not incurred. The reported statement of Secretary Paige strongly suggests that USED will not again provide a waiver for SEAs similar to the one announced last August 26 to allow LEAs to carryover more than 15 percent as long as the funds would be earmarked for parent choice transportation and SES. Several districts in California with more than 15 percent of unspent Title I funds were hoping that the Secretary would grant a similar waiver for this coming year.

Senator Kennedy and Congressman Miller sponsor an NCLB amendment which would allow recently-made USED policies retroactive

The jointly-sponsored No Child Left Behind Fairness Act would allow “newly-found flexibility” provisions which have been promulgated as regulations to be applied retroactively to test results from 2002-03 school year. The specific regulations and Non-Regulatory Guidance on flexibility includes: (a) allowing the 95 percent participation rate to be averaged over two or three years which, if applied retroactively, could reduce the number of schools identified for failing AYP last year by 40-50 percent; (b) flexibility not to have to require first-year limited-English-proficient students to take the state’s reading assessment and to continue counting students exiting from ELL programs as part of the LEP subgroup for 2-3 years; and (c) the alternative assessment provisions including the one percent cap for students with disabilities. Kennedy and Miller argue that it is only fair to allow retroactivity to be applied in these areas because USED did not promulgate regulations until two years after the Law was passed. Although USED officials obviously approve the changes, they are adamant in opposing that changes be made retroactive. Earlier this year, North Carolina requested ten changes to its previously-approved Accountability and Assessment Plan, one of which was related to allowing recent USED regulations on the above issues to be applied retroactively. It was the only one USED disapproved.

As reported in the media, various survey results clearly show that as more people learn about NCLB provisions, there is greater resistance, with over 50 percent of voters opposing major provisions in the Law. As a recent AP article (June 27) noted, the NEA is still looking for a state which will jointly file a lawsuit questioning the constitutionality of NCLB. These two considerations could influence Congress to act upon the Kennedy/Miller bill. However, given the limited number of legislative days between now and September 30, one can legitimately question whether there is enough time to consider the bills seriously.

USED Moves Slowly in Approving or Disapproving Requested Changes by States to Their Accountability and Assessment Plans

Over forty states have requested changes in their state Accountability and Assessment Plans to take into account recent USED regulatory changes to provide more flexibility as well as changes in other areas that would minimize the number of schools that failed to meet AYP or which are otherwise identified for improvement. Many of the requested changes are directly-related to portions of other states’ previously-approved plans that states recently have requested be included in their state plan. One area is the use of “confidence intervals” which basically act as a “cushion” in determining whether subgroups meet the required proficiency levels and/or whether enough progress is being made in reducing the number of students who are no longer proficient (referred to as “safe harbor”). Thus far, Alabama, Arkansas, North Carolina, Pennsylvania, and Kansas had their confidence interval proposals approved. A recent New York Times article (see related Washington Update item) reports that more than thirty states have proposed or will propose to use “confidence intervals” for the first time. USED has approved requests from Kentucky, Tennessee, and Oregon to allow some special education students five years to complete high school. Otherwise, they would be classified as “dropouts” since the Law requires “graduates” to complete high school in four years.

As reported in Title I Report (June 2004), a large number of states are proposing to increase the minimum subgroup size which is likely to reduce the number of schools where student achievement determines whether or not the school fails to meet AYP. This change, along with the 95 percent participation rate averaged over 2-3 years, will likely have the greatest impact on the total number of schools identified for improvement across the country for this coming year.

Almost ten states have requested “waivers” related to the one percent cap on counting special education students who achieve proficiency on alternative tests. As noted in last month’s TechMIS issue, Texas has requested to increase the cap to seven percent; Virginia to three percent; and Michigan to 2.5 percent. Thus far, there has not been any pattern in approving such cap changes or waivers. If the Texas group request to increase the cap to seven percent is approved, then one might anticipate a large number of states (particularly sparsely populated states with many districts with enrollments less than 100 -- about ¾ of the districts in Montana) will submit additional requests to be exempt from or increase the one percent cap. For more information about claiming the unspent Federal funds go to www.johnboehner.house.gov/news.