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M E M O R A N D U M

DATE: September 21, 2004
TO: TechMIS Subscribers
FROM: Charles Blaschke
SUBJ: Alert: FY 2005 Federal Education Likely Appropriations Levels and NCLB Amendment

This TechMIS issue includes two Alerts: (a) a Special Report on likely FY 2005 Federal Education Appropriations and (b) a Special Report on likely NCLB amendments. The Special Report on FY 2005 education appropriations suggests that an overall increase of three or four percent is likely to occur during the compromised markup between the House and Senate. Once again, the big winners will be Title I and Special Education, with a new \$100 million earmark for school improvement. However, the Title V block grant, referred to as Innovative Strategies, could be cut dramatically from about \$300 million to \$0 in the Senate and \$20 million in the House. The funds allocation process, based upon the details about which we are familiar, will result in purchasing cycles changing once again. Large urban districts will likely be the major beneficiaries next year.

The Special Report on proposed NCLB amendments represents a starting point for making “fixes” to NCLB most likely during a lame duck session, depending upon election results. Several changes could impact SES providers, most likely reducing the number of third-party independent providers, while increasing the number of school districts which provide SES services. Another change would be making recent regulatory changes “retroactive”; this would likely have the impact of reducing the number of schools identified for improvement in 2002-2003, while increasing the number of districts, over time, which are identified for improvement.

If you have any questions, please contact me directly.

Senate is Likely to Increase FY 2005 Education Budget More Than the House and the President's Request

*A Technology Monitoring and Information Service (TechMIS)
SPECIAL REPORT*

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September 21, 2004

The Senate Appropriations Committee unanimously supported an FY 2005 Department of Education discretionary budget appropriations of \$58.8 billion, an increase of 5.6 percent over the current fiscal year, and higher than the level passed by the House a week earlier and the President's proposed budget. While Title I would receive a \$1.1 billion increase to \$13.4 billion, special education state grants would grow by \$1.2 billion to \$11.2 billion. The House level reflected a \$1 billion increase each for Title I and for IDEA special education. One surprising development, however, is that the Senate Committee would zero out Title V, the first major block grant (in existence since the early 1980s), while the House level would drop from \$297 million this year to only \$20 million. Because of its funding flexibility many districts were able to use portions of Title V to make up for state or local budget shortfalls, at least to some extent. This is one of the reasons why associations such as AASA and NSBA are hoping that the compromise level will restore some of the Senate and House cuts. In the past, Title V funds were also used to purchase instructional software and technology-related staff development, but little hardware.

While the House reduced Title II D, the Enhancing Education Through Technology (E²T²) state grant program, from \$691 million to \$600 million, the Senate Committee voted to fund Title II D at its current level. Even though a major lobbying effort began on September 9 by ISTE and COSN, the compromise level is likely to be less than \$690 million. Ironically, the E²T² House cut occurred at about the same time President Bush and Secretary Paige announced the creation of the proposed e-learning clearinghouse as part of the Administration's proposed high school reform initiative during the second Bush term.

Most of the impacts upon districts' spending patterns are going to be influenced by budget "details." For Title I, both the House and Senate propose to cut the Title I formula "basic grant" component currently funded at \$7.1 million; this will result in districts which are eligible to receive only basic grants losing some or all of their Title I funding next year. The "concentration grant" component would be level-funded by both the House and Senate; however, all of the concentration funding, which goes to districts with 15 percent or more poverty enrollment, would not be allocated until the next fiscal

year or about October 2005. The largest increases are in the new “targeted” grants and “finance incentive” grants which provide more funding increases for districts with large numbers of students from low-income families. If one assumes that current census trends will continue next year, the primary recipients of these funds will be large urban districts. On the other hand, none of these funds will become available until after October 1, 2005 due to “advance funding.” In the House version, the amount of “advanced funding” would be approximately \$9.5 billion of the total \$13 billion proposed, while, in the Senate version, \$7.2 billion of the \$13.4 billion would be “advance funded.” In the past, the amount of advanced funding for Title I was only slightly over 50 percent. This will certainly limit the amount of spending among Title I programs during August and September 2005, except in districts which have unspent Title I money from the previous year that could be spent before September 30 or carried over to next year. Well over 50 percent of IDEA funding is also “advance funded.”

For the first time, the Senate version proposes to allocate \$100 million for school improvement which is designed to provide funding and assistance to districts and schools which are identified for improvement. Currently, four percent of each district’s allocation is set aside by the state for this purpose. Then, after adjustments are made (taking into account the number of Title I-eligible students enrolled in charter schools and other areas of adjustments) the SEA is supposed to target portions of the remaining four percent set aside to districts, on either a formula or competitive grant basis. If a district did not receive a four percent increase in funding for this coming year, it de facto did not receive any real increase unless it received some of the school improvement earmarked allocations subsequently. During the 2002-03 school year, several million dollars was earmarked for school improvement; for unknown reasons at the last moment, these earmarks fell between the cracks during the passage of the omnibus appropriation bill.

While the House generally went along with the President’s proposed budget figures, especially for new programs, the Senate did not. But it did provide some funding for programs the President would have zero-funded. For example, while the House funded the President’s proposed “striving readers” initiative at \$100 million, the Senate would provide only \$25 million. Conversely, while the President’s proposed budget in the House would zero-fund Star Schools; the Senate would provide almost the current level. A similar situation would apply to Community Technology Centers for which the Senate would provide \$11 million, certainly a cut from the current \$32 million, but not as bad as if the President’s request and the House zero level would prevail.

In another area where the President’s requested zero funding and the House would provide \$80 million, the Senate voted to level-fund, at \$233 million, the Comprehensive School Reform portion of IDEA. While the House went along with the President’s proposed increase from \$100 million to \$270 million for the math/science partnership, the Senate would only increase funding for that fast-growing initiative to \$200 million.

The Senate version would provide \$40 billion in new funds to help states develop and implement data collection and reporting systems under NCLB, while the House would fund the new initiative at \$30 million. For more information on the Senate and House

appropriations level go to www.ed.gov/above/overview/budget05/05action.pdf.

“Improvement” Amendments to NCLB Would Have a Major Impact on Supplemental Education Services, AYP, and Related Mandates

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Anticipating a groundswell of support immediately after the election to “fix” certain aspects of NCLB, Senator Edward Kennedy and other leading Democratic Senators, including Hillary Clinton, have proposed the “No Child Left Behind Improvement Act of 2004.” Proposed changes in supplemental education services and other AYP sanctions could have an impact, not only on districts, but also on groups which provide supplemental education services or otherwise have products and interventions which can be used by districts to provide such services. Additional changes have been proposed by conservative groups such as the Fordham Foundation and American Enterprise Institute as noted in the last TechMIS report.

The proposed legislation, S. 2794, would make a number of changes which have direct implications for SES providers including:

- Not only would personnel delivering SES to students be required to have “adequate qualifications” but teachers would also have to be “highly-qualified,” as defined by NCLB.
- Districts would have to ensure that the list of approved SES services include providers that have “sufficient capacity to provide effective services for children who are limited English proficient and children with disabilities.”

Requiring all SES providers’ teachers to meet the “highly-qualified” requirements of NCLB would “level the playing field” between district-provided SES and independent third-party provided SES. This could reduce the number of current SES third-party SES providers significantly as currently their teachers do not have to be “highly-qualified.” The proposed amendment is silent, however, by not requiring that SES providers use approaches that meet the “scientifically-based research” requirements which school districts are supposed to meet. The amendment would also give a competitive edge to SES providers who do have capabilities for effectively providing services for LEP students and students with disabilities, which would likely include providing reasonable

accommodations to ensure adequate student access.

A state-approved SES provider would be “deemed to be a recipient of Federal financial assistance.” As a result, the SES provider would be subject to all of the other civil rights laws, financial reporting rules and regulations, etc. to which districts are now equally subject. Later on, the amendment explicitly identifies the various Federal laws related to civil rights, ranging from the Civil Rights Act of 1964 to the Americans with Disabilities Act.

Another provision explicitly states “Nothing in this section shall be construed to prohibit a local education agency from being considered by a state education agency as a potential provider of supplemental education services under this subsection if such local education agency meets the criteria adopted by state education agency....” On one hand, this amendment would likely increase the number of districts which would provide SES services to schools identified for improvement. On the other hand, as the number of districts which are identified for improvement increases under the current Law, these districts could not provide SES services. The amendment is silent on this issue.

As we reported in the previous TechMIS report, Administration advisors Checkers Finn of the Fordham Foundation and Rick Hess of the American Enterprise Institute have formally proposed that supplemental education services be offered when a school is first identified for improvement, in addition to the parent choice transportation option or in lieu of it. This was based on the fact that more parents have chosen SES tutoring as opposed to transferring their child at the district’s expense to another school. While the Senate proposal would provide additional grants for construction and renovation to expand capacity in high-performing schools (which is one alleged reason why the transportation choice was not offered by many districts), it is somewhat surprising that the Democratic leadership did not include the proposal recommended by Finn and Hess in S. 2794.

In mid-September, we interviewed state Title I Directors and other officials in nine states. In only one state, which had a large increase in the number of districts identified for improvement, the official said that it had requested a waiver to allow districts identified for improvement who have previously provided supplemental services in an effective manner to continue doing so. The remaining states indicated that, once a district was identified for school improvement, it no longer could provide the services although entities operated by teachers could provide such SES services if they were approved by the state, a trend which is occurring nationally. Among the nine states, virtually all officials supported the “common sense” of the Finn and Hess proposal to allow SES tutoring first and then offer parent choice transportation options.

The proposed Senate Amendment would also make retroactive some of the recent changes in regulations promulgated by USED related to the assessment of LEP students (i.e. continuing to count them as part of the subgroup after they obtain English proficiency) and other changes related to alternative assessments for special education

students. A review process would be provided to allow a district to recalculate the number of subgroup student assessment scores for 2002-03. This would likely have the effect of reducing the number of schools identified for improvement, while at the same time likely increasing the number of districts identified for improvement.

The Senate Amendment also proposes to establish competitive grant programs for states which are increasing data capacity for assessment and accountability. Twenty percent of a grant could be used to collect and report information on student achievement and graduation rates with the remainder allocated to LEAs which have “the ability to put a longitudinal data system in place.” Allowable uses would include purchasing database software, hardware, and training staff in how to use data effectively to implement instructional strategies. \$100,000,000 is authorized for FY 2005.

Another program would provide competitive grants to states or consortia of SEAs to design and improve state academic assessments for students who are limited English proficient and students with disabilities. Newly-designed alternative assessments would be developed and pilot tested along with the use of a variety of appropriate accommodations. Grants would also be used to develop “universally-designed” assessments that are accessible to all students and to develop computer-based applications of “universal design principles.” While this amendment is one of the first to call for assessments that follow “universal design principles,” the House and Senate versions of the IDEA reauthorization address universal design principles applied to instruction for students with disabilities. (See June 2004 Washington Update)

And last, the Amendment has proposed to ensure uniform collection and reporting by states on data related to student enrollment in grades 7-12 and defines how graduation rates are determined for each school year.

Most NCLB observers believe that amendments in S. 2794 are likely to become the starting point in Congressional action during the lame duck session to fix certain aspects of current NCLB provisions and regulations which have resulted in clearly unintended consequences.

For a copy of S. 2794 go to
<http://thomas.loc.gov/cgi-bin/query/C?c108:/temp/~c108tuEXA6>.