

# *Washington Update*<sup>8</sup>

---

*Vol. 9, No. 9, September 30, 2004*

## **Chief Bush Architect of No Child Left Behind Act Provides Hints on NCLB Changes and Other Priorities Which Can Be Expected During the Second Bush Administration**

During the Education Week Talk Back Live Webcast with Sandy Kress, the Chief Bush Architect of No Child Left Behind, Kress provided some hints regarding NCLB changes the Bush White House would likely make, including additional flexibility in certain NCLB provisions. In response to a request that NCLB be changed to hold schools accountable for each child making annual progress rather than subgroups demonstrated minimal competency, Kress responded, "I believe there is flexibility under NCLB for a state to do both. The AYP provisions of the Act do look at the proficiency of subgroups as a key measure....Yet, states can incorporate growth measures into their accountability systems to reflect the progress you're describing. Indeed, many have done so already. As states become more familiar with options under NCLB, I think there will be new opportunities for the use, along side the required elements, of such 'multiple snapshots' in accountability."

In response to a request to use such growth measures by almost 20 chief state school officers earlier this year, USED issued a negative response.

However, as Kress noted, negotiated changes in states' accountability and assessment plans over the last 6-8 months allow use of growth measures. In response to another question, Kress replied, "As the President says so eloquently, education will become more individualized. We will ask not so much what a child's age is but rather what he or she knows." Ironically, while this Administration, on one hand has gone on the record as wanting to reduce the number of students in special education, Kress is suggesting that education generally adopt the assessment (diagnostic and prescription interventions) and IEP development process required under IDEA for all at-risk students.

In a response to a question about the evolution of NCLB over the next decade, Kress responded with a related answer, "Above all else, NCLB demands data for teachers and parents. Over time, this data will become so much better! Just as in medicine, when the diagnostic tools improve, 'treatment' will improve dramatically."

On several occasions, Kress went out of his way to emphasize the President's new secondary education reform initiative which he formally announced during the Republican Convention. He reiterated the President's emphasis on using "early interventions" based upon eighth grade student scores for those at risk of failing to pass the mandated exit

exams for graduation. Kress mentioned on several occasions the President's proposed "striving" readers initiative and expansion of the math/science partnership to improve math achievement by providing professional development for teachers. While he noted that the President will be requesting additional funding for several middle school and secondary level initiatives including the struggling readers initiative, he reiterated the Administration's position that existing Federal funds must be used more effectively.

Responding to several questions, Kress also referred to areas in which technology can and should be used including:

- "For teacher training, technology poses wonderful possibilities"
- For rural districts that have virtually no teachers who meet the highly qualified teacher mandate in all subjects they teach, he emphasized, "be creative, work with state leaders to build online professional development and assessment tools that can be used easily anywhere in the state to help these teachers be more qualified in the subjects they teach."

For a copy of the Education Week Talk Back Live transcript go to [http://www.edweek.org/ew/tb/tblive/transcript\\_09-09-2004.htm](http://www.edweek.org/ew/tb/tblive/transcript_09-09-2004.htm).

## **Key NCLB Advocates and Policy Influencers Recommend Legislative Changes Based on Lessons Learned**

In the September issue of Phi Delta Kappan, Chester (Checkers) Finn, President of the Thomas B. Fordham Foundation, and Frederick Hess, Director of Education Policy Studies at the American Enterprise Institute, called for a number of changes in NCLB based on "lessons learned" over the last two years, particularly related to the provision of supplemental education services and parent choice options. Some of the recommended changes can have significant implications for firms selling products and providing services to the Title I niche market.

Citing numerous surveys which have found that only about two percent of students eligible for transferring from a failing school to a high-performing school actually did go through with the transfer and the disruptive nature and cost of transportation even where capacity exists in high-performing schools, the co-authors argue that supplemental education services should be offered before mandating student transfer options by parents. This reversal also reflects "a stark reality" that, in many districts with schools from which NCLB gives students the right to exit, there just aren't any high-performing schools with "empty seats." Even where seats are available in high-performing schools, there are disincentives for principals to "open their doors" to students who are likely to reduce achievement levels of certain

subgroups in the future, an unintended consequence of the Law which they also recommended should be changed. USED officials have been moving toward this position and recently, according to Florida SEA officials, during a recent Title I directors conference, stated that among the five options approved by USED was the provision of supplemental education services as an option to student transfers during the first year of a school being identified for improvement.

Finn and Hess also recognize the lack of a “level playing field” created by districts which also provide supplemental services. According to them, “School districts need to function either as providers of supplemental services or as regulators of other providers, not both. It is never a good idea to allow the fox to guard the hen house, however noble the fox’s intentions.” If a district wishes to provide SES and is approved by the state, then a third-party broker or referee should be created through the use of Federal “seed funding.” Some of these “service coordinators” might eventually operate in dozens or hundreds of districts, permitting them to build expertise in managing and evaluating providers, negotiating contracts with them, and ensuring that providers deliver the promised services. In an oblique manner, Finn and Hess also recognized one likely advantage of district-provided SES over an independent third party providing tutoring by noting, “...a district may legitimately ask whether a provider’s education program is reasonably aligned with the district’s (or state’s) course of study. Considering

that the district schools attended by these students are still obliged to demonstrate AYP on state tests, if the provider of supplemental services is teaching something different, it may do neither district or students much good.” In the same issue of Kappan, the most recent Gallup Poll results found that 55 percent of respondents preferred tutoring provided by teachers in the child’s school while 40 percent supported tutoring provided by outside agencies. In a previous question, 80 percent preferred to have additional efforts made in a child’s present school to improve their student’s performance rather than transferring their child to a high-performing school.

If the above changes relating to SES and parent choice were put into effect, the number of schools having to provide supplemental education services would increase dramatically, creating a much larger demand for such services than currently exists; transportation costs -- which in some states are significant -- and related logistical problems would be reduced. The creation of the referee-type organization recommended by the authors is similar to the “management support group” and “education audit group” entities recommended by the U.S. Office of Education and the Office of Economic Opportunity which promoted and financially supported numerous performance contract projects during the late 1960s and early 1970s. The degree to which the playing field would be made more level for third-party tutors is unclear.

Recognizing that the Law fails to distinguish between “truly horrendous

schools and those that barely miss AYP by one or two subgroups,” Finn and Hess recommend that choice options be mandated only for pupils in schools that are clearly inadequate, which would help districts “focus resources, ensure that fewer students seek transfers and that more schools can receive them, and reduce the management problems.” This recommendation fits “hand in glove” with the views of Sandy Kress, the President’s architect of NCLB, who took the lead in negotiating NCLB with Congress and who two years ago began talking about targeting SES funds and states “school improvement earmarks” for those schools which were “most broken.”

In two areas, expanded use of technology is called for in order to reduce chaotic situations toward the end of August and September when state test scores are released and schools are identified for improvement. The two authors recommend that current assessment and reporting systems be “retooled” with increased investments and information technology to shorten dramatically the turnaround time for reporting subgroup and school test scores. They also recommend “restructuring the choice system” with incentives and support to “entrepreneurs” including districts who wish to provide new classrooms and tutoring programs: “Rural areas will need to rely more heavily on inventive options such as virtual schools, distance learning, schools within schools, and other learning modes that can mitigate the constraints imposed by geography.”

Supplemental education services and parent choice were two of several areas that the Center on Education Policy, a Washington think tank, addressed in a recent meeting convened for “NCLB experts” to consider ways to change NCLB provisions to be more aligned with its overall intent while minimizing unintended consequences. As reported in Education Week, August 11, among the changes related to supplemental education services were seriously considered are:

- “Identify schools for improvement, corrective action, or destruction only if the same subgroup misses its performance target in the same subject for two years in a row.
- Target the law provision of choice and supplemental services to students in the subgroup that missed the performance targets, not the whole school population.
- Permit states to use growth of value added models which tracks the progress of individual students over time designed a growth target so that all students will reach the proficient level within a specified period.”

If the current Administration and the composition of Congress remain essentially the same after the November 2 election, the degree to which NCLB’s provisions are changed, either through the legislative route or regulation route, will be influenced by the following factors:

- The source of the recommended changes, ranging from an NCLB advocate or critic.
- The degree to which the proposed change is based upon a rationale or justification that helps both officials in the Administration and Congress save political face by supporting such changes.
- The degree to which additional Federal funds are made available to implement the changes where appropriate.
- Extending NCLB state assessments in grades 3-8 by adding two grade level test beyond the current one grade level test in grades 9-12; this would provide more than \$250 million in annual funding to help states design and administer these two additional tests;
- Require twelfth grade students to take the NAEP;
- Provide \$200 million for states to provide early interventions using eighth grade test data to develop individual performance plans for students entering high school and ongoing assessments to monitor progress;
- Expand funding for the proposed “striving” readers initiative from \$100 million to \$200 million annually;
- Increase funding for Math and Science Partnership, with an emphasis on professional development for math teachers, by reallocating over \$100 million from the National Science Foundation to USED;
- Provide an additional \$28 million for a total of \$52 million to expand advanced placement course funding for low-income students;
- Modernize vocational education by reallocating more secondary-level funding for academic

**Bipartisan Support, Even Among Presidential Candidates, For High School Reform Gains Front and Center Priority Overshadowing to Some Extent “Fixes” Needed For NCLB at the Elementary Level**

When the Education Trust released a report a year ago on high school graduation and dropout rates showing significant differences among states, particularly among minority groups, and the varying definitions used by districts and states in reporting dropout rates, we suggested that high school reform would be this Administration’s next priority. Following a pattern similar to his last term as Governor in Texas, the President announced during the Republican Convention his new proposed secondary initiative which, as detailed on the President’s website, would include the following:

courses including four years of English, four years of math and science, and 3-1/2 years of social studies as part of the curriculum for students concentrating on vocational education.

After the convention, during a campaign speech in Pennsylvania, the President stated -- as reported in Education Week (September 15) -- "Over time, we will require exit exams from high school because we want high school diplomas to mean something." In the same Education Week article, John Bailey who is Deputy Policy Director for the Bush campaign and former Director of the Office of Education Technology within USED, said the President's used the word "exit exam" mistakenly and that the proposed rigorous exam is "absolutely not an exit exam." Rather, Bailey indicated it would be an extension of testing required under NCLB.

Critics, including some Republicans, have pointed out some problems which could be created with the President's proposal. For example, the Center on Education Policy (CEP) on several occasions has questioned the amount of proposed Federal funding for efforts such as extending high school NCLB assessments and reporting to two additional high school grade levels, noting that the real cost of assessment is in providing followup remediation. In Indiana alone, the cost of this remediation is higher than the \$250 million proposed by the President for remaining states, which do not have either exit exams or state assessments in all grade levels in math and reading.

CEP also found in its most recent report (see August TechMIS) that 19 of the 25 states which are proposing to use exit exams to fulfill the high school testing and accountability requirements of NCLB have been confronted with major problems. With more and more states moving toward exit exams as a requirement for graduation, the CEP also noted some unintended consequences of tying exit exams to NCLB are perverse incentives, such as schools "might feel added pressure to nudge students who are low performers to dropout or transfer to improve the school's average test scores." On the other hand, if tests in addition to exit exams are required for NCLB, then one of the major problems seen at the elementary and middle school level thus far with NCLB will surface at the high school level --- namely the existence of dual accountability systems, one for the state and for NCLB. As reported in the Education Week article, former Chairman of the House Education Committee, Bill Goodling from Pennsylvania, said that he believes the President should focus on getting the details of NCLB fixed before introducing more high school testing requirements.

In agreement with former Chairman Goodling is Governor Mark Warner of Virginia who is the new Chairman of the National Governors Association. Warner indicated on September 9, when he unveiled the new NGA high school reform initiative, that the Federal government should not add new test requirements for high schools, especially in a state like Virginia which has its own end-of-course tests that students must pass to graduate. The NGA task force,

headed by Governor Huckabee of Arkansas, Governor Baldacci of Maine, and Governor Taft of Ohio, plans to identify best practices and to seek improvement ideas from 10,000 high school students through a national survey. The NGA initiative focuses on dropout prevention, higher quality courses, and remediation for struggling students.

According to Education Week, President Bush has also proposed a \$500 million incentive fund for states and school districts that “want to reward teachers for improving student test scores and to attract teachers to difficult-to-fill jobs in rural and urban areas in subjects such as math and science.” In an interview with Education Week, Governor Warner said he was “open to Federal grants or other types of funding for teacher rewards and individual education plans for high school students.” Presidential candidate John Kerry has also hinted that he would support some type of teacher rewards or incentives tied to student performance. He also would like to increase accountability in high schools and would use as a primary measure graduation rates, especially increasing them for disadvantaged and minority students. NGA, President Bush, and Candidate Kerry have also called for more challenging high school curricula.

## **States Refusal to Adopt American Board for the Certification of Teacher Excellence (ABCTE) Alternative Certification Approach Could Open Up Opportunities for Distance Learning Vendors to Partner With States or Other State-Authorized Entities to Expand Their Alternative Route Certification Options**

Under a \$7 million a year USED grant, the ABCTE which was co-established with the Education Leaders Council, has been recognized by state boards of education only in Florida, Idaho, New Hampshire and Pennsylvania over the last 14 months because of bitter opposition by groups including the National Education Association and associations representing colleges of teacher education. Critics argue that the Federally-subsidized ABCTE should never have been funded because every state already has several alternative routes for teacher certification to ensure newly-recruited college graduates receive appropriate certification in content areas to meet the requirements of highly-qualified teachers by 2006. Although the estimates vary, more than 100,000 teachers have received certification through state-recognized alternative routes over the last two years. According to ABCTE officials, as reported by Education Daily (September 13), only 13 individuals have received certification thus far, although over 2,000 are predicted to receive such certification by next summer.

Currently the ABCTE offers skills tests in mathematics, English/language arts, and elementary education, and a certification test that all applicants must pass. Applicants are charged a fee of \$500 plus an additional \$50 for a starter kit per subject area. ABCTE officials have stated that the ultimate goal is to operate on applicant fee revenues rather than Federal subsidies. Much of the current \$7 million a year grant is being used for development of new certification tests in special education, general science, and ESL. Current content area tests (as well as the certification test) can be taken online by applicants.

As recent reports from NSBA and AASA have concluded, distance learning for teacher staff development and certification may be the only option in isolated rural school districts to meet the highly-qualified teacher and supplemental education services mandates under NCLB. As Lisa Kagan Graham, Executive Director of the Education Leaders Council, noted in a speech before the Education Industry Association last Spring, many of the individuals seeking content area certification are mid-career “switchers” who already have Bachelor’s and Master’s degrees and are highly motivated toward teaching. Online staff development and certification alternatives would appear to be in growing demand. And, as with the provision of supplement education services, firms with online instructional capabilities should seek to partner with SEAs and other recognized providers of alternative route certification, including powerful state affiliates of national

teacher groups and other associations which perceive federally-subsidized entities such as the ABCTE as a threat or competitor.

For more information about ABCTE offerings go to [www.abcte.org](http://www.abcte.org). For additional information on alternative route certification initiatives across states go to [www.ncei.com/introduction04.html](http://www.ncei.com/introduction04.html).

### **Strange Bedfellows Unite to Pressure House and Senate to Restore Proposed Budget Cuts For Title V in FY 2005**

A coalition, which includes the National School Boards Association, National Association of Independent Schools, National Catholic Education Association, and the Council of Chief State School Officers, is currently lobbying both the House and Senate to restore funding cuts for the Title V Innovative Program Strategies flexible block grant, which the Senate would zero budget and the House would cut from \$297 million to \$20 million for FY 2005. As reported in Education Daily, September 24, Karl Rove, the President’s longtime Chief Political Strategist, is also pressuring the House and Senate leadership to restore Title V funding.

The current State Grants for Innovative Programs under Title V of NCLB is the most resent reincarnation of the first major education block grant created in 1982 when more than 30 individual programs were consolidated into one



block grant; it allowed such funds to be used at the discretion of SEAs and LEAs for more than the purposes of the previously separate categorical programs. Proponents of the block grant argued at that time that such a block grant would lose its individual political constituencies and reduce pressure on Congress to appropriate funds. And, in fact, after having received as much as \$500 million in the 1980s, it has currently been reduced “incrementally” to the current \$297 million level with greater flexibility in the use of such funds. Title V popularity increased over the last few years among administrators and school board members as many districts have used Title V funds to “make up” for local and state budget shortages. Under NCLB’s “50 percent transferability provision,” funds from other NCLB titles (with the exception of Title I), can be transferred into Title V and used in a more flexible manner than Titles from which funds were transferred. Indeed, more funds have been transferred into Title V than any other Title because it can be used as a “slush fund.” (See related item.)

Private schools and parochial schools also benefit from Title V as school districts which receive such funds must ensure “equitable participation” from parochial and other nonpublic schools in their attendance area. Title I, also requires nonpublic participation whereby districts purchase products and services which are then made available to nonpublic schools serving Title I eligible students. Under Title V, districts in several states, including Louisiana, have provided Title V funds directly to nonpublic schools which has resulted in

a mix of state court rulings. During the late 1990s, an estimated 10-15 percent of Title V funds were used for purchasing instructional software and related staff development.

The Council of Chief State School Officers also is joining the fray as 15 percent of a state’s Title V allocation is set aside usually for hiring SEA staff to provide school improvement related activities. In some states, the Title V 15 percent set aside and the new 15 percent set aside under Reading First support over half of all of the SEA staff and consultants.

This Bush Administration has been the strongest advocate for converting categorical programs to state block grants since the Presidency of Ronald Reagan during the 1980s. Two such new state block grant programs under NCLB are Title II D (Enhancing Education Through Technology) and the 21<sup>st</sup> Century Community Learning Centers which states now administer. Under previous laws, USED awarded competitive grants and administered programs. One not-so-well-known Federal block grant is part of IDEA and will expand under the IDEA reauthorization which could occur in a lame duck session this year. Both the House and Senate versions would allow districts to use eight percent of approximately \$6 billion (the excess amount of IDEA appropriations above \$4.1 billion) to be treated as a local block grant by district officials without requiring such funds to be used for special education programs. The reauthorization is also likely to include a set-aside for “prereferral interventions”

for students in grades K-3 who have reading problems to determine whether or not the problem is the result of a learning disability, in which case a student would be placed in special education. The amount of this earmark could be between \$1 billion and \$1.5 billion. As a result, the behind-the-scenes pressure being exerted by the White House to restore Title V cuts is not surprising.

Some widely respected Washington policy analysts contend that the House and Senate purposely proposed cutting Title V significantly in order to force constituency and interest groups to decry the cuts and hence provide Congress the opportunity to “grease the squeaky wheel” in appropriations conference markups by restoring the cuts. And, by generating the support of the White House in restoring cuts, “budget busting” criticism during election could be pointed to bipartisanship for the restorations.

### **Probability of Passage of IDEA Reauthorization This Year Heightens as Recalcitrant Senate Appoints Conferees in a Surprise to the House Leadership**

The House Republican leadership, at this writing has not appointed House conferees. In response to our requests, Alexa Marrero, spokeswoman for the Republican majority in the House Education and Workforce Committee, stated, “We are looking forward to a conference soon and we are optimistic

that the President will have an opportunity to sign IDEA reauthorization legislation into the law this year.” Democratic leadership in the Senate was holding out for a preconference agreement acceptable to both parties prior to appointing conferees because of heightened partisanship exhibited by House Republicans in previous conference committee markups this year.

From the perspective of education publishers generally and specifically education software publishers, there are significant differences among several provisions in the two proposed versions. As reported in the Washington Update (May 2004 and June 2003), both versions call for increased funding and more rigorous mandates for “prereferral interventions.” The House version would limit use of such funds (between \$1 billion and \$1.5 billion) to be used to purchase interventions which contain all of the “essential components” of interventions approved for use in Reading First, largely as the result of lobbying efforts by textbook publishers and the Association of Education Publishers (AEP). The Senate version would require that such interventions be based upon scientifically-based research and is certainly less prescriptive, thereby allowing more supplemental publishers’ products to be used where appropriate. The Association of Education Publishers, about six months ago, mounted a major lobbying effort to educate House members about the impact on supplemental publishers which AEP is compiling in a survey of its membership. As a result of this effort, some of the House Republican

leaders appear to be in agreement that there should be a “level playing field,” allowing prereferral intervention purchases to be either textbooks or supplemental programs which have a rigorous scientific basis.

Both proposals include versions of the current Section 613 “incidental use provision” which allow, under certain conditions, education software, for example, to be purchased with IDEA funds and used by non-special education students or teachers on an “incidental use” basis. The conditions are that the price for a school would be the same regardless of the number of students or teachers using it; no special education students are denied access; and by having nonspecial education teachers and students use it, the wear-and-tear would be the same. This would hold for software that is licensed on a schoolwide basis.

Both versions call for increased accessibility by students with certain disabilities to instructional programs and assessments. The Senate version would shorten the timetable by which multimedia software and even textbooks are available in electronic formats such that accessibility for all categories of special education students would be increased. In fact, the Senate version calls for the development of such products based upon the “principles of universal design” (see [June 2004 Washington Update](#)). Both the House and Senate versions address the need to reduce the time and paperwork associated with developing, monitoring, and reporting on individual student progress through IEPs. The House

version would clearly allow telecommunications, teleconferencing, and other electronic means for communicating with parents and members of IEP development teams when initially developing and then reviewing IEPs. The Senate version would allow pilot tests of different technology configurations which were designed to expedite the development and implementation of IEPs and thereby reduce staff time and associated paperwork costs. A recent USED-supported survey estimated that, of the \$12,000 per student average cost of providing all services to special education students, slightly over \$1,000 is associated with assessment and the development of IEPs.

The Senate conferees include all members of the Committee on Health Education Laboring Pensions (HELP), which is chaired by Judd Gregg (R-NH). Other influential Republican Senators include:

- Senator Bill Frist - TN, who was the primary sponsor of the Technology-Related Assistance Act of 1988 (Tech Act) which provides grants to states to provide low-cost or on-loan assistive technology to students and individuals with disabilities; he is also Senate Majority Leader.
- Senator Mike Enzi - WY, who has been the major advocate for the use of technology in helping rural districts implement NCLB provisions and IDEA mandates; he is considered the likely next

chairman of the HELP committee if Senator Gregg decides to vacate the chair for another important committee assignment.

- Senator Lamar Alexander - TN, who as Secretary of Education under the First Bush Presidency, promulgated nonregulatory guidance which allowed Title I and other Federal funds to be used to cover the cost of both interest and principal on multi-year lease/purchase contracts related to integrated learning systems and other technology configurations.

In addition to the ranking minority member Senator Edward Kennedy, Massachusetts, other Democratic Senators who are likely to be influential on particular issues, include:

- Senator Tom Harkin - IA, who, through his support for technology use with students with disabilities over three decades, has become the major proponent in the Senate for ensuring technology configurations meet “universal design principals”;
- Senate Jim Jeffords - VT, who is an independent but votes with Democrats on most IDEA issues and who, as former chairman of this committee, has been instrumental in ensuring adequate appropriations for technology-related programs within IDEA.

## **Supplemental Education Services Provided by Districts Which Are Identified for Improvement Becomes the Most Serious Immediate Issue for Districts and Firms**

As the number of districts, particularly large urban districts, are identified for improvement according to USED policy, these districts even though they might have been approved to provide SES services the previous year by the State, would not be allowed to continue providing supplemental education services to eligible students. As stated by USED Deputy Undersecretary Rees (Education Week (September 29), the guidelines are explicit and leave “no room for exceptions” even though the district might have been effective in increasing student achievement. The Council of Great City Schools, an education association once headed by Secretary Paige, and a strong initial supporter of NCLB, holds the position that the USED regulations and Non-Regulatory Guidance are “arbitrary, overly restrictive, and inconsistent with the statute” according to Jeff Simmering, the Council’s lobbyist. Simmering argued, in a recent Education Week article, that NCLB requires states to approve SES providers based upon their “record of effectiveness” in delivering supplemental education services.

During the Spring Legislative Conference held by the Council of Great City Schools, Secretary Paige announced survey results for Council member district that participated in the second year of NAEP testing. Results showed

that these large urban districts had improved the achievement of students in reading and math significantly. Many of these same districts have been identified for improvement based upon low state assessment scores counted toward meeting AYP and for less than 95 percent student participation in the state assessments.

This policy issue has reached the boiling point in Chicago which according to district officials received approval from both the state and USED last Spring to ramp up its district-provided tutoring service to serve approximately 80 percent of eligible students. Illinois SEA officials indicated that their interpretation of USED policy was that Chicago Public Schools could not provide SES services this school year because it had been identified for improvement for two consecutive years. They also indicated that USED said they would receive no official guidance until after the November election. While most SEAs were taking a similar position by accepting USED guidance as the official policy, at least ten percent of the SEA officials whom we contacted on this issue indicated that several previously approved districts which were providing effective SEA services based upon the student achievement gains would be allowed by the SEA to continue providing such services even though they have been identified for improvement. According to Deputy Undersecretary Rees, as reported in Education Week, the only exceptions to this USED general policy are: (a) districts identified for improvement can provide tutoring for special education and English language learners if private

SES providers can't meet their needs; and (b) if private providers have reached their capacity, districts identified for improvement can use the remaining funds to provide tutoring.

A report by the Association of Community Organizations for Reform Now (ACORN), an independent watchdog group monitoring NCLB implementation activities, just concluded a survey of 91 school districts and 30 state departments of education which found that only six of the states had conducted analyses of student performance in supplemental education service programs; and of the 59 districts that provided supplemental services during 2003-2004, only 33 of the districts reported any kind of evaluations, mostly pre- and post-tests done by providers themselves. These included many of the large districts which had been or likely to be identified for improvement this year. Jeff Simmering of the Council in a recent interview indicated about ten percent of the Council's member districts were identified for improvement last year but the number is growing significantly this year. Earlier this week the New York City Board of Education announced that all of its supplemental education services will be out-sourced to third parties this school year, especially in those 33 district jurisdictions under it which have been identified for improvement. Thus far the Council has been the major advocate for providing full flexibility in USED's guidance, although there are some members of the Republican leadership that support the existing guidance, which has very little flexibility. Simmering noted that thus

far USED and Congressional staffers have only heard from certain districts; yet he would welcome any support from private sector firms who wish to partner with districts in providing supplemental services to let USED high level officials know about the potential impact on them. This is particularly true for supplemental publishers.

Immediate resolution of this policy issue has direct implications for many TechMIS subscribers. One overarching decision is whether a firm wishes to “partner” with an SES-approved district or to provide SES services directly as a third party. Another concern for a firm which has partnered with a district which provides SES services is if the district is identified for improvement.

If a firm wishes to partner with a district that is approved to provide SES, there are several ways to minimize the possibility of partnering with a district which is likely to be approved for SES and subsequently being taken off the approval list for being identified for improvement. One is to target districts in states where state accountability plans have been amended and approved by USED to identify a district for improvement if it fails to meet subgroup AYPs in all three levels (elementary, middle school, and high school) for two consecutive years. In states such as Indiana, only test results from schools receiving Title I funds are used to determine whether or not a district fails to meet AYP and is identified for improvement.

Another approach would be to work with SEA technical assistance teams who are

working primarily with districts identified for improvement rather than individual schools identified for improvement. According to Education Week (September 15), the Rhode Island SEA is providing such assistance to 11 of the states 36 districts. Georgia’s SEA technical assistance team works with districts identified for improvement as well as low-performing districts under the state’s accountability system and provides additional Title I school improvement funds as well as state funds for remedial programs.

Another factor to take into account is whether or not the district has affiliated entities which could operate SES afterschool programs. Most districts have foundations that have been created to receive contributions and some districts are also their own intermediate or regional unit. For example, Philadelphia which has been identified for improvement for over four years under state laws and Federal NCLB, operates its afterschool program through its affiliated BOCES entity.

As noted in the Special Report sent to TechMIS subscribers earlier this month, the No Child Left Behind Improvement Act of 2004 sponsored by Senator Kennedy and other Democratic Senators, would clearly authorize districts to provide SES services if “such local education agency meets the criteria adopted by the state education agency.” The question is whether meeting the state criteria for being approved as SES provider would override USED guidance which would prohibit districts identified for improvement from providing SES.

For a list of districts and related entities which have been approved by SEAs go to [www.tutorsforkids.org](http://www.tutorsforkids.org).

### **During the First Year Under NCLB “50% Transferability Provision,” Less than 1,500 School Districts Transferred Slightly Under \$30 Million According to SEA “Official” Reports to USED**

In response to a question regarding how many districts took advantage of the “50% transferability provision” in No Child Left Behind, USED officials recently compiled a list of approximately 1,450 LEAs who, during the 2002-03 school year, actually took advantage of the transferability provision. Approximately \$30 million was transferred during that year. The information shared with TURNKEY noted that \$18.7 million was transferred from other Titles to Title V, Part A, which previously was Title VI Innovative Program Strategies (prior to that, Chapter 2), which continues to be a block grant that can be used by districts to spend in the most flexible manner. Traditionally, Innovative Programs was a source of funding for software purchases and staff development. Slightly over \$9 million was transferred into both Title II A/ Teacher Quality and Title I, Part A; the officially reported transfers into Title I A are significantly less than actually occurred for reasons noted below.

Only \$2.5 million was transferred into Title II D/Education Technology (E<sup>2</sup>T<sup>2</sup>), which is fairly close to the amount reported by the State Education Technology Directors Association from a survey conducted by SETDA after the first year of NCLB implementation. The SETDA survey found that approximately \$4.25 million was transferred into Title II D while \$1.9 million was transferred out of Title II D for a net of approximately \$2.26 million transfer in. USED officials did not know whether the USED numbers represented the total transferred into or whether it was the net transfer into the above programs.

As we have previously reported, the AASA, which monitors implementation of NCLB in rural districts, has reported a high percentage of funds from other Titles being transferred to Title II D in rural districts, especially for technology-related training and online services (see August Washington Update item). Slightly over \$1 million was transferred into Title IV D, Drug Free Schools and Safe Communities.

The officially reported total transfer of approximately \$30 million during the first year of NCLB implementation is much lower than the amount that actually occurred for a number of reasons. First, NCLB provisions required SEAs to have in place a system which could track and report on district transfer of funds before districts were allowed to transfer such funds. On the other hand, the Law was very clear that SEAs did not have the authority to stop a district from transferring up to 50 percent of formerly grant allocations for Titles eligible for transfer. As of

September 2002, no SEA has such a tracking and reporting system specifically addressing the provisions under the 50 percent transferability provision. Before the 2002-03 school year began, a large number of urban districts redesignated “targeted assistance schools” which had 40 percent or more poverty enrollment as “schoolwide programs” for the first time. In several large districts, funds from other Titles were transferred into Title I and, in turn, to these newly-designated schoolwide programs; these funds were used to pay salaries of teachers who might otherwise have to be released because of local budget shortfalls. These districts were aware of USED guidance which told SEAs that schoolwide programs do not have to report on how funds were spent, which could include violation of the 35-year-old “supplement not supplant” provision in Title I.

A second reason for the reporting discrepancy is that the draft guidelines on how to calculate the amount transferred and other related matters wasn’t published by USED in draft form until October 2002. This in itself may have resulted in fewer districts taking advantage of the 50 percent transferability provision because of various uncertainties. The Final Regulations were only published in June 2004.

A third reason is that states granted Ed Flex under previous legislation and NCLB have the right to transfer (i.e., “consolidate”) to the highest priority program Title (e.g. Title I), with minimal reporting as determined in the USED

waiver provided to the state. In addition to seven new states which receive Ed Flex status under NCLB, up to 150 districts could enter into “performance agreements” with USED to consolidate funds of various Titles in return for increased student performance over a two- to five-year time period. Florida was the first state to receive Ed Flex status under NCLB, along with ten of its largest districts. Discussions with some of these district Title I officials suggest that “consolidation” of funds from various Titles will continue to increase having a de facto effect of transferring funds but not having to report on the amounts.

With the Final Regulations on transferability now published, one can reasonably expect more and more districts to take advantage of the “50% flexibility provision,” with more funds being transferred into programs such as Title V A which have many allowable uses of such funds or Title I schoolwides where “supplement not supplant” provisions no longer apply and the way funds are expended does not have to be reported. As reported in Education Daily (August 26), Christine Wolf, USED’s Associate Deputy Secretary for Policy, stated, “We want to encourage them (districts) to use it (the 50% transferability provision) where there’s is a significant amount of flexibility, and are encouraging them to use local flex option (Title VI-A-3 B), too, where there’s even more.” “If there are stumbling blocks with accounting or ways to track the funds, we don’t want that to get in the way.” The Final Guidance includes numerous spreadsheets and procedures for



calculating the amount of funds eligible for transferability and for reporting the use of such funds. Also, in the summary of major changes in the June 8 Final Regulations, the Guidance “clarifies that a state may not restrict an LEAs use of transferability authority.” For a copy of the final guidance on the transferability authority, go to [www.ed.gov/policy/elsec/guid/edpicks.jhtml](http://www.ed.gov/policy/elsec/guid/edpicks.jhtml).

### **New GAO Survey Confirms Growth in Technology Use by Rural Districts in Implementing NCLB Provisions**

As reported in several recent TechMIS e-mailings, distance learning and related technology formats are increasingly becoming a necessity for rural districts to meet many of the provisions under NCLB. This has been confirmed by a recent survey conducted by the Government Accountability Office (GAO) in its report prepared for Senator Kent Conrad, Senator Susan Collins, Senator Michael Enzi, and Senator Tim Johnson. The representative sample survey compared different means undertaken by rural vs. non-rural districts in meeting the teacher quality and student proficiency mandates of NCLB. Seventy-six percent of rural superintendents indicated that they “provided additional computer capability” to implement these mandates compared to 68 percent of non-rural district superintendents. Over 90 percent of both groups provided remedial services for at-risk students and teacher training. Slightly over 85 percent of

non-rural district superintendents indicated that they provided test taking opportunities for students while the percent of rural district superintendents indicated such opportunities were available in only about 75 percent of the districts. About 50 percent of rural districts used distance learning for teacher training compared to 35 percent of non-rural districts. Approximately 35 percent of rural districts used distance learning to provide a highly-qualified teacher online in the classroom for instruction compared to slightly under 20 percent of non-rural districts.

GAO also reported on funding sources used to implement NCLB mandates. Not surprisingly, the most widely used source of Federal funds was Title I which was used by rural districts for remedial services in reading and math, initiatives to help increase academic achievement of students with limited English proficiency, and professional development for teachers. Confirming a recent report by AASA, 70 percent of rural districts used rural school achievement program (REAP) funding and “the majority of them reported using or having plans to use REAP to address technology needs of students and teachers, provide remedial and supplemental education services to students, and offer professional development for teachers to help them meet NCLBA’s qualification requirements.” REAP is a three-year-old program, funded at about \$170 million annually, with funds allocated on a formula basis to small, rural districts. Another important source of technology funding was the E-Rate which GAO reported was used primarily for

technology infrastructure that could deliver instruction from remote locations by qualified teachers to rural district classes.

Somewhat surprisingly, the Title II D E<sup>2</sup>T<sup>2</sup> formula funds were not reported to have been used to any great extent by rural districts. Approximately \$350 million of the almost \$700 million total flow-through to states and, in turn, to districts on a formula basis. However, the formula is weighted heavily for urban districts which receive the bulk of Title I funds. Another somewhat surprising finding is that only half of the rural and non-rural district superintendents indicated that they obtained services from education service agencies (ESAs) in the areas of teacher and paraprofessional training to ensure they meet the highly-qualified requirements under NCLB, which is one of the most serious problems confronting rural districts because one teacher may have to teach several core subject areas across several grade levels. USED recently provided rural districts an extra year to meet the highly-qualified teacher requirements. As we have previously reported, online staff development for rural districts could be an important niche for firms with appropriate products and services. For a copy of the GAO report go to <http://www.gao.gov/new.items/d04909.pdf>.

**National Center for Education  
Statistics Releases Data on K-12  
Revenues and Expenditures for  
School Year 2001-2002**

NCES has released data on K-12 revenues and expenditures for school year 2001-02 which clearly indicate wide variations among states. On the revenue side, almost \$420 billion of revenue went to K-12 schools, ranging from \$52 billion in California which serves one out of every eight students nationwide, to \$794 million in North Dakota which serves roughly one out of 450 students. In unadjusted dollars, the \$420 billion represented almost a five percent increase over K-12 revenues the previous year. Federal contributions made up \$33 billion or approximately 8 percent. However, Federal revenues ranged from 4.2 percent in New Jersey to almost 17 percent in Alaska. States in which Federal funds represented 10 percent or more of revenues included Alabama, Alaska, Arizona, Arkansas, Washington, D.C., Florida, Kentucky, Louisiana, Mississippi, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, and West Virginia.

“Current” K-12 expenditures in school year 2001-02 totaled approximately \$370 billion representing an almost six percent increase over expenditures in previous years in unadjusted dollars. Of that amount, nearly \$230 billion went for instruction or about 60 percent of all “current” expenditures. Approximately \$11 billion of “current” instructional expenditures went for instructional supplies and textbooks which did not include computer equipment. Expenditures for instructional services purchases were nearly \$7 billion which includes contract teachers, computer-assisted instruction, and rental equipment for instruction.

While the average per-pupil “current” expenditure was \$7,734 or a nearly five percent increase from the previous school year, the per-pupil “current” expenditures in five states (New Jersey, New York, Connecticut, District of Columbia, and Massachusetts) were more than \$10,000 per student. Only one state, Utah, had expenditures of less than \$5,000 for each pupil in membership. An average of about \$4,750 was spent per-pupil for instructional services and purchases, ranging from \$3,200 in Utah to \$7,660 in New York.

received less than \$1,100 per eligible Title I student included Alabama, Idaho, Nevada, New Mexico, Utah, and Tennessee. As we previously reported, each year such Title I allocations can change as the result of use of the most recent set of census data. For a copy of the NCES report go to <http://nces.ed.gov/pubs2004/2004341.pdf>.

As we reported in the January 2003 TechMIS Washington Update, state expenditures per groups of students varied significantly during the 2001-2002 school year. The Center on Budget and Policy Priorities ranked states on several indices related to state funding for low-income students and found that the average state poverty funding for low-income students ranged from \$111 in Arkansas to almost \$5,200 per low-income student in Massachusetts. Other states with high poverty funding for low-income students included Connecticut (\$4,200 per poor student), New Jersey (\$3,732 per poor student), and Minnesota (\$3,075) per poor student. In a similar manner, Federal funds which are designed to provide services to students from low-income families, such as Title I, vary significantly among the states. While the average Federal Title I allocation per eligible Title I student last year was almost \$1,300, states receiving allocations of \$2,000 or more per eligible Title I student included Alaska, Vermont, and Wyoming. States which