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MEMORANDUM

DATE: September 20, 2005

TO: TechMIS Subscribers

FROM: Charles Blaschke

SUBJ: Federal Policy Changes/Proposals to Meet Katrina's Challenges for States and Districts

USED has approved a number of SEA requests through its waiver authority to meet some of the challenges created by Hurricane Katrina's damages in Mississippi, Louisiana, and Alabama, and also the additional burdens placed upon districts in other states receiving displaced students. In addition to supplemental appropriations totaling \$60 billion signed by the President for general recovery administered for the most part by FEMA reimbursements to districts, USED earlier this week proposed a \$2.6 million effort which will require additional supplemental funds which must be appropriated by Congress or provide USED the power to reallocate FY 2005 funds, perhaps those that have yet to be obligated under advanced funding for this proposed initiative. The USED proposal would also allocate almost \$500 million to parents enrolling displaced students in parochial or private schools through reimbursements up to \$7,500 per student (similar to proposed vouchers), and about \$20 million of Charter School Program funds to states which allow charter schools to serve some displaced students. In addition, the FCC under the E-Rate program would reallocate slightly over \$100 million to states and districts, whose infrastructure has been damaged, to submit revised E-Rate applications for this year.

Thus far, announced policy changes and the evolution of additional proposed initiatives are forcing districts to look at alternative ways of delivering instruction, including distance learning, and the use of supplemental education services, particularly in districts receiving large unexpected increases in enrollments of homeless students. Even though the two supplemental appropriations for \$60 million have been signed by the President, many districts will be disappointed that many of the costs incurred to serve displaced students might not be reimbursable. Vendors and contractors should be prepared for lengthy time lapses for receiving payment for services. We will continue to provide updates as significant policy changes are made. If anyone has any questions contact me directly.

Emerging Federal Policy Changes Will Affect Education in States Impacted Directly or Indirectly By Katrina

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

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USED -- and other -- Federal policies and waivers are just beginning to emerge in an attempt to help states to meet the myriad challenges created by Hurricane Katrina. USED approval of waivers requested by certain states suggest increased flexibilities for states affected directly or indirectly by Katrina. Some likely implications, both positive and negative, for many TechMIS subscribers are highlighted below.

In addition to the general waiver authority delegated to the Secretary of Education under NCLB, there are also a number of one-year extensions of NCLB sanction deadlines related to certain provisions when “natural disasters” occur. In the areas identified below, the Secretary can provide a state one additional year beyond current deadlines if the state can demonstrate that the natural disaster, or a precipitous decline in financial resources of the state, prevented implementation of the provisions related to:

- Full implementation of academic assessments in all grades 3-8 and one grade in high school as required by the NCLB 2006 deadline;
- Implementation of academic growth of English language proficiency among ELLs;
- Publication of state and local agency report cards;
- Implementation of “corrective action” for schools identified for improvement for three consecutive years.

In her September 12 letter to Mississippi State Superintendent Hank Bounds, Secretary Spellings granted a waiver of the Title I “maintenance of effort” requirement for districts which will not be able to provide at least 90 percent of the local resources which they expended last year. She also granted the State an immediate 12-month extension of time, within which the State has to obligate funds for four ESEA programs (for which the obligation deadline would otherwise be September 30, 2005). These waivers will have the effect of reducing the amount of Federal funds the affected

districts would otherwise receive next year or, on the other hand, they ensure that certain Federal program funds which are unspent by September 30, 2005 do not have to be returned to the Federal Treasury. In a related waiver, the SEA also asked for an increase in the amount of Title I and Title IV (Safe and Drug Free Schools) of funds it could carry over to next year. The Secretary's letter stated that Mississippi already had the authority to waive the 15 percent carryover limitation in Title I and the 25 percent carryover limitation in Title IV. Hence, because Mississippi is not one of the ten Edflex states (which are allowed to carryover more than 15 percent of Title I funds two or three years in a row), one must assume that Mississippi did not carry over more than 15 percent of Title I funds the previous year to last year. Or, that the Secretary refers to a policy letter sent from Secretary Paige in August 2003 to SEA Chiefs allowing districts with unspent SES earmarked funds to carry over more than the 15 percent. If this is the case and this policy applies to all other states, then one can anticipate the amount of end-of-year funding using previously unspent earmarked SES and transportation funds will once again be reduced. Hence, the fairly large Title I purchasing cycles experienced over the last three years from April through June 30 will likely be reduced significantly in many states (see September 6 TechMIS Special Report).

State Superintendent Bounds also requested a waiver "to provide more funding to districts that will absorb displaced students and decrease allocations to affected districts that are not operational," through funding reallocation flexibility. The Secretary stated that Mississippi already had the power to reallocate Title I Part A funds from districts no longer operational to those receiving their students. Impacted districts such as New Orleans received between 40 and 50 percent of the Title I allocation for school year 2005-06 in late July/early August. Some of these funds would be returned to the state and used for "grant backs" to districts, such as Shreveport, which have absorbed many displaced New Orleans students. In addition, the Secretary's letter indicates that the state has the authority to work with districts who are receiving displaced students to negotiate an agreement with districts which are no longer capable to providing services to displaced students on a case-by-case basis.

While Title I and other formula program reallocations can be made by SEAs among districts in a state, the larger question being posed by districts and states receiving displaced students is whether Title I and perhaps other Federal formula program funds can be reallocated from one state to another. USED has indicated it would allow districts and/or states, in some cases, to modify their annual grant applications to refocus grant activities on "relief efforts" which may not otherwise be an allowable cost under, for example, Title I. The answer to the larger question will be determined by the size and nature of two supplemental appropriations, already at slightly over \$60 billion, signed by the President last week. Most of the \$10 billion initial supplemental will go to FEMA which has told some of the impacted states that some portion of their funds could be used for temporary schools, mental health counselors, and even replacement of computers that were destroyed, but FEMA funds could not be used to hire teachers or purchase books and supplemental materials. Shortly after 9/11, the New York City Board of Education requested approximately \$30 million of FEMA funds for counseling which was approved; however such funds, have never been reimbursed to the district. Most education groups who testified during a bipartisan Senate Health, Education, Labor, and Pensions Committee roundtable discussion in early September felt that a separate fund created for the Department of Education is needed. Such a fund could receive funding for distribution to states to address immediate problems in districts receiving evacuees as well as districts affected by the

hurricane. Many of these same groups also believe that the additional supplemental should include increases in all formula funds ranging from Title I to IDEA in an amount equal to the average per-pupil expenditure in the states receiving evacuees where funding “follows the child.”

As this Special Report was being finalized on September 19, Secretary Spellings released the USED proposed Katrina Initiative that would provide up to \$2.6 billion in additional Federal funds through supplemental increases in existing programs such as Title I and Impact Aid. As much as \$7,500 per student -- up to 90 percent of the state’s average per-pupil expenditures for K-12 education -- would be provided on a quarterly basis to take into account possible changes in student enrollment of displaced students during the year. For Louisiana and Mississippi, such funds will go to the State and then be reallocated to districts in severely impacted areas. Funds could be used for teacher salaries, materials and equipment, supplemental educational services, and counseling. Approximately \$490 million would be reimbursed (i.e., similar to voucher proposals) up to \$7,500 per pupil, to parents who have enrolled their displaced students in private schools taking into account the fact that many of the Louisiana parishes had high previous enrollment in private schools. In an earlier letter to Chief State School Officers, Secretary Spellings provided guidance for charter schools to enroll displaced students, especially independent charter schools who submit requests for supplemental funds (where needed) and waivers. Twenty million dollars of non-obligated fiscal FY 2005 funds would be available under the Charter Schools Program (CSP) for supplemental funding. Two days earlier, new emergency relief legislation was submitted in the Senate. Approximately \$900 million would be used for purposes such as initial replacement of instructional materials and equipment and other activities necessary to reopen schools. Up to \$100 million could be provided to impacted districts for supplemental educational services and afterschool programs. Up to \$2.5 billion in additional funding would be made available to districts enrolling displaced students to cover the additional cost of serving displaced students.

The additional cost burden placed upon states receiving evacuees has been estimated to be at least \$450 million in Texas, approximately \$60 million (excluding construction and renovation) in Houston alone. Louisiana State Superintendent Cecil Picard has estimated the total cost of services in Louisiana would be almost \$3 billion, excluding construction; Mississippi Superintendent Bounds has requested a similar amount of aid. As of September 10, the White House issued an emergency declaration for 29 states which allows FEMA to provide category B “emergency protective measures,” including direct Federal assistance at 100 percent Federal funding. These include Alabama, Arizona, Arkansas, Colorado, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia.

Mississippi State Superintendent Bounds also requested approval of a waiver for his state and several others related to adequate yearly progress. In response the Secretary stated, “You requested a waiver of adequate yearly progress (AYP) for several affected states. As you know AYP is the linchpin of No Child Left Behind accountability system and I am reluctant to waive AYP now. The test in Mississippi in which AYP determinations are made will not be administered until the Spring 2006. It is premature for us to consider this request at this time. However, we will contact you in the

coming days to discuss this further.” Regarding a waiver request relating to meeting deadlines under highly-qualified teacher and paraprofessional provisions, the Secretary noted, “As you know teacher standards are largely governed by state law which may give you much of the authority you need.” However, she indicated that this waiver would be reviewed through continued discussions with state officials.

For the 25 known states receiving displaced students as a result of Katrina (which could total 80-100,000) the problem goes beyond covering the costs for educating these evacuees, but also for meeting some additional NCLB requirements. Following mandates from USED, states are treating these displaced students as “homeless children” which fall under the McKinney-Vento Homeless Assistance Act, under which they must receive Title I services, including free lunches. As noted in Education Week (September 14), “homeless students should not be segregated from the rest of the student population which could pose a problem for districts that plan to teach displaced students in shelters or to open mothball school buildings to serve them.” SEA guidance in such states as Texas and Louisiana also requires these students receive Title I services even if the students are enrolled in a school which is currently not a Title I school. As recent discussions with district Title I officials confirmed, many homeless children change schools 2-3 times per year as they move from one housing project to another. Transportation costs are significantly higher for homeless children than they are for regular Title I students and so is the cost of transportation for itinerant teachers to provide Title I services for non-Title I schools as they move from school to school. Given the increased administrative, logistical, and transportation problems and costs of serving these large influxes of homeless students, some district Title I directors with whom we talked are considering the possibility of online instruction as a cost-effective solution for homeless students enrolled in non-Title I schools. In the September 14 Education Week article, Mississippi State Superintendent Bounds indicated that the state “would seek \$50 million to expand online education opportunities.” While one of the major objectives of this initiative was to ensure 12th graders have ample opportunities to take the required courses to graduate on time, the opportunities for providing online services for displaced students generally could increase.

Another challenge for districts enrolling large numbers of homeless evacuee students is whether or not students should also be placed in special education. Nationwide, approximately one-third of students placed in special education are also enrolled or receive Title I services. For students who previously had IEPs but who no longer have copies of their IEPs or other school records (which in many cases were destroyed by Katrina), in some states districts will likely develop interim IEPs before formally evaluating students and then placing them in special education as the result of the evaluation team recommendations. Other districts that are not required to do so may opt to use up to 15 percent of their IDEA funds to provide “early intervening services” for these borderline students to determine whether or not, after receiving one or more interventions, the student should formally be evaluated and placed in special education. As Education Week (September 14) also notes, when districts in the past have enrolled large numbers of student evacuees, the need for mental health services and counseling increases significantly. Psychologists and mental health experts generally agree that it is not uncommon for students who have had a traumatizing experience to develop learning disorders thereby creating a need for special education and related support services.

In addition to USED proposals, other agencies have announced plans or proposals to assist in the Katrina damage recovery. On September 15, the FCC announced an initiative under the E-Rate program to allow districts and libraries in areas affected by Katrina to resubmit their request for E-Rate funds for this year. Districts which have been damaged by the hurricane and flooding will receive 90 percent discounts for 2005 and 2006 funding years. This will almost guarantee these districts will receive not only Priority 1 services (telecommunication and Internet fees), but also connectivity and wiring. It should be noted, however, that severely impacted districts such as Orleans Parish and other Louisiana districts already qualified for a 90 percent discount because of the high proportion of students from low-income families enrolled in the districts. While content-related online instruction is not an allowable E-Rate product or service, in those districts where infrastructure has been damaged, the increased priority, particularly for wiring and connections which consume about half of all E-Rate discounts will certainly help. Districts with increased enrollments of displaced students will also be allowed to amend their applications for E-Rate support for this year. The FCC estimates that approximately \$130 million of increased E-Rate discounts will be reallocated to districts impacted by the hurricane. Details on the FCC initiatives are being updated on the FCC website.