

**New Report from USED Office of Inspector General Recommends
That More Districts Identified for Improvement Be Allowed
to Provide Supplemental Educational Services**

A Technology Monitoring and Information Service (TechMIS)

SPECIAL REPORT

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A new report from the U.S. Department of Education's Office of the Inspector General recommends that more districts identified for improvement be allowed to provide supplemental educational services (SES) if the districts are approved as providers by the state education agency, an authority which No Child Left Behind Act delegates to the states. The report indicates that the Department of Education regulations which prohibit a district that has been identified for improvement from continuing to provide SES conflict with the Law. With more such districts continuing to provide SES, the number of eligible students participating in SES will increase at a much lower per-pupil cost. When I alerted several associations of this new report, they were elated and several are already developing strategies to lobby for changes in the regulations as soon as possible.

Below we provide quotes from the OIG report and highlight related initiatives by associations and other groups advocating changes in USED policy along with alternative outcomes which could occur.

The OIG report confirms what we and various associations, such as the Council of the Great City Schools have stated on numerous occasions ; USED policy is not explicitly stated in NCLB: "Even though the ESEA contains no specific prohibition, the Department regulations currently prohibit any school or LEA identified as in need of improvement from operating as an SES provider."

While not stating forthrightly that the policy is illegal, the OIG report states, "The Department's policy of not allowing schools or LEAs in improvement to operate as SES providers may override

SEA authority to evaluate and approve SES providers operating in their states and may also unnecessarily increase the cost of delivering SES by eliminating school or LEA providers that could deliver SES at a lower cost than private providers....Therefore, we suggest that the Department reconsider its policy on this matter and explore strategies for evaluating the quality of each SES program operated by a school or LEA that is identified as in need of improvement.”

Later, the OIG report states, “The ESEA requires an SES provider to have a demonstrated record of effectiveness in increasing student academic achievement.” USED regulations and guidance acknowledge that an SEA “is required to identify organizations, both public and private, that qualify to provide these services....an SEA must use a consistent policy for withdrawing supplemental service providers from the state-approved list....However, the Department’s regulations could be viewed as overriding the authority the ESEA grants to the SEAs.” Referring to the regulations as a one-size-fits-all policy, the OIG report recommends, “Specifically, the Department should consider the role of the SEAs, as specified in the ESEA, in evaluating and monitoring providers as well as cost benefits inherent in retaining LEA/school providers and the negative impacts on students if LEA/school providers are eliminated.” The strategies which the OIG recommends USED use for assessing the quality of LEA/school providers that are in improvement include: (a) rely on SEAs to evaluate LEA/school providers during the normal provider approval and assessment cycles or to perform more comprehensive assessments of providers identified as in improvement; (b) perform its own evaluation of LEA school providers; (c) place special conditions in regulations that the LEA/school provider in improvement status is required to meet in order to continue to provide SES. The latter strategy is one that was generally followed in allowing several large urban districts in the USED “pilot program” to continue providing SES-- under a number of rigorous conditions to which they had to agree-- including Chicago, Memphis, Anchorage, Hillsborough County, and Boston.

Several associations with significant vested interests in changing USED policy to allow more districts to provide their own SES have undertaken a number of initiatives. AASA has posted highlights of the report on their website and have blasted e-mails to various list serves. Another large education association has already conducted meetings with key staff members of education-related committees within Congress. Most large city mayors have also been contacted and had the

chance to communicate their desires directly to Secretary Spellings during the week of December 11. Spokespersons for these education groups feel that the changes should not await reauthorization of NCLB but should be made as soon as possible.

One alternative outcome would have USED change the regulations or Non-Regulatory Guidance by stipulating conditions under which a district identified for improvement could continue providing SES and clarify that the SEA has the sole decision-making authority over whether or not any provider should be approved for or deleted from the state-approved list. Another alternative would be to attach a rider to the FY 2007 appropriations bill which would have the effect of making specific provisions in the regulations “null and void”; or, if another continuing resolution is passed in February 2007 to continue funding at current levels through September 30, 2007, such a condition could also be included. Regardless of the mechanism used, it is very likely that more districts and LEAs which have been identified for improvement will be allowed to continue to operate their own SES programs in the near future. As we noted in the August and September Washington Updates, the Department has already issued a policy letter to states stating that, under certain conditions, a district-operated afterschool program, funded in part with 21st Century Community Learning Center funds, could be considered a “separate and distinct” affiliated entity of an identified district and, as such, could operate an SES program. Less than five percent of afterschool program providers currently have been approved as service providers. Such policy changes would increase dramatically the potential opportunities for many TechMIS subscribers to partner with such districts who choose to continue operating their own SES programs.

The major impact will be on large urban districts. As a recent report from the Council of the Great City Schools found in its survey of 36 member districts, the number of schools identified for improvement or in “corrective action” or “restructuring” rose from 975 in 2003 to 2,203 in the 2005-2006 school year. The Council also reported that the number of students enrolled in SES increased from 110,000 in 2004 to more than 180,000 in 2006. It also reported approximately 95 percent of all students participating in SES receive services from private providers noting that local evaluations have found only modest effects, at best, on student achievement.

For a copy of the short report go to: www.ed.gov/about/offices/list/oig/auditreports/s09g0007.pdf.