DATE: September 12, 2007

TO: TechMIS Subscribers

FROM: Charles Blaschke

SUBJ: Special Report on SES and EIS Provisions in Proposed NCLB Reauthorization

Attached are two items of high interest to many TechMIS subscribers.

The Miller/McKeon working draft of ESEA/NCLB reauthorization includes new or modified provisions relating to supplemental educational services (SES) and early-intervening services (EIS) which should benefit the majority of subscribers. In several places in the 1,000+ page document, the proposal would mandate implementation of early intervening services (EIS), including response-to-intervention (RTI) provisions currently in IDEA, in Title I schoolwide programs which currently serve over 85 percent of students served by Title I. EIS would be an alternative “activity” (currently referred to as a sanction) for schools in which only one or two groups failed to meet AYP and thus have been identified for improvement -- now called “priority schools.” Even “high priority schools” -- in which over 50 percent or more of groups or students failed to meet AYP -- may also implement EIS along with supplemental educational services.

The second item focuses on proposed changes relating to supplemental educational services. The provision would not require “priority” schools to provide SES along with parent transfer options as is required of “high priority” schools. This contentious change has been opposed by Secretary Spellings and the Education Industries Association. Several potential compromises were discussed during hearings on September 10th.

One thing becomes clear, mainly because the EIS/RTI concept, which has been a “flagship” of the Administration, its support by Miller/McKeon strongly suggests the inclusion of EIS/RTI in Title I is a “done deal.” This would almost double the amount of set-aside funds which could be used for early intervening services and response-to-intervention products and services. Call me if you have any questions.
House’s Proposed NCLB Reauthorization Would Place a High Priority on Incorporation of Early Intervening Services/Response-to-Intervention Model into Title I Programs Which Would Codify USED Existing Policy in Non-Regulatory Guidance

A Technology Monitoring and Information Service (TechMIS)
SPECIAL REPORT

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The working draft of the ESEA/NCLB reauthorization proposed by Chairman Miller and Congressman McKeon would place a high priority on the incorporation of early intervening services/RTI provisions -- currently in IDEA -- into Title I school improvement planning, Title I operations -- especially in school-wide programs -- and allowable activities for schools identified for improvement, known as “high priority” or “priority schools.” As we have noted in TechMIS updates and reports over the last year, USED officials, and Non-Regulatory Guidance (NRG) have been telling districts that early intervening services/RTI is a “general education,” not “special education” function, and specifically Title I program officials should take a lead role in district implementation. Indeed, the RTI approach strongly encouraged in IDEA was formulated by Dr. Reid Lyon and his “inside” group of consultants, including former USED Assistant Secretary for Special Education Robert Pasternack, during the design of the Reading First program. The House working draft adoption of EIS/RTI into Title I is almost a certainty!

EIS/RTI mandates in the working draft occur in several areas. If a school is identified as “priority” or “high priority,” the district must develop a school improvement and assistance plan. The plan would include an analysis of the current curriculum and use of current interventions, if any, which have contributed to achievement gaps between groups of students and/or the school’s failure to meet AYP targets. The plan must “determine how changes to such interventions (which may include schoolwide positive behavioral intervention supports, tiered instructional interventions and other research-based approaches with evidence of improving the learning environment) could address the causes for the school not making AYP.” It must also describe the current use of formative assessments and database instructional decision-making and the changes needed to be made in these areas that are critical to successful implementation of RTI.

Following the Non-Regulatory Guidance on school wide programs, published by USED over a year ago, the draft reauthorization not only requires schoolwide programs to
devote “sufficient resources,” it also mandates that schoolwide programs implement “schoolwide reform strategies that:

i. coordinate with early intervening services under sections 613(f) and 618(d)(2)(B) of the Individuals with Disabilities Education Act;

ii. provide high-quality instruction and intervention activities matched to students needs using learning rates over time and proficiency levels to make educational decisions….”

The instructional strategies should also be based on “scientifically valid research” and can include extended learning programs. As we have reported in the past, former USED Deputy Assistant Secretary for Special Education, Alexa Posny and former national Title I Director Jackie Jackson called for districts to implement RTI in schoolwide programs in a joint statement issued during the January 2007 National State Title I Directors Association Annual Conference. The draft NCLB reauthorization document also calls for the use of early intervening services in Targeted Assistance Schools for Title I eligible students in groups failing to meet AYP targets.

As noted earlier, both “priority” and “high priority schools” identified for improvement may use one or more of seven authorized “activities” (previously referred to as “sanctions”), one of which was spelled out in detail as follows: “current interventions including supervised or centrally-developed intervention models or strategies for low-performing schools, to determine how changes to such interventions (which may include schoolwide positive behavioral intervention supports, tiered instructional interventions, and other research-based approaches with evidence of improving the learning environment) could address causes for the school not making adequate yearly progress.” Decisions about EIS/RTI “interventions” and materials would be made at the district level.

Recent discussions with national associations’ lobbyists suggest that additional pressures will be brought to bear on Congress to allow some of the SES Title I set-asides (e.g., the 20 percent) be used for implementing EIS/RTI and to allow more districts identified for improvement to provide a combination of SES and EIS/RTI activities. One might surmise that this will likely occur initially in the large urban districts for several reasons. One is that most of these districts have already been identified as having disproportionality under IDEA and have already been allocating up to 15 percent of the IDEA funds they receive to provide early intervening services, usually to the Title I program office; and second, many of these same districts have participated in the Council of Great City Schools “Urban Trial,” which has shown, over the last two years, an increasing number of districts have demonstrated increases in student academic achievement on the NAEP. These districts would have a “demonstrated record of effectiveness in increasing student academic achievement,” which is the primary criterion taken into account by SEAs in deciding whether any SES potential provider, including LEAs, can be approved.
Opportunities for “partnering” with schools and districts which implement SES and EIS/RTI should increase along with more “set-aside” funding under Title I if the proposed legislative provisions pass.
Battle Lines Being Drawn by the Administration and Congress on Changes to the Supplemental Educational Services (SES) Provisions in NCLB Reauthorization; Final Negotiated Settlement is Difficult to Predict, Although in the Final Analysis, Congress will Likely Side with the Proposed “Working Draft” of Miller/McKeon NCLB Reauthorization Proposal

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Shortly after Chairman George Miller and ranking Republican Buck McKeon released their working draft of proposed NCLB reauthorization, Secretary Spellings voiced her “concerns” about the House’s proposed use of “multiple measures” for calculating adequate yearly progress and the proposed English language learner assessments, both of which were picked up by the media. However, below the surface is a smoldering disagreement by the Secretary with proposed changes recommended for SES and the options for “priority schools” or “high priority schools” (i.e., schools identified because most, if not all, subgroups failed to meet AYP). Some of the other changes proposed in the draft are very similar to those currently reflected in USED’s non-regulatory guidance and will likely make it through the final negotiations (i.e., the use of response-to-interventions which the Administration included in the 2004 IDEA reauthorization), while the inclusion of other changes related to “who benefits financially” is difficult to predict at the present.

The draft would require that both “priority schools” and “high priority schools” set aside ten percent to plan and implement professional development, mentoring for new teachers, incorporation of results of formative assessments and assignment of “best equipped” teachers to help students who need the most assistance. Using their 20 percent set-aside, “high priority” elementary schools will have to adopt at least three of the following interventions and four of the interventions for middle schools will have to adopt:

- Revising instructional programs to align them better with state standards and, for high schools, including adoption of AP and similar courses, as well as implementing integrated curriculum;
- Expanding use of formative assessments and database decision-making that provide teachers with real-time diagnostic information on student progress which can be used to inform instruction;
• Use of free after-school tutoring for eligible students – who, for the most part, are those associated with groups failing to meet AYP -- and public school choice currently in the Law; and

• Providing activities that personalize learning environments, including dropout/credit recovery, smaller schools and ninth grade transition programs.

“Priority” schools, which would include those that miss AYP in only one or two student groups and need only minor interventions, would select at least two options from the above four and the following:

• Increased student access to after-school, summer school and other extended learning opportunities which could include additional instruction in reading or math;

• “Supervised intervention models,” such as response-to-intervention approaches, tiered instructional interventions as currently provided under IDEA early intervening services mandates; and

• Provide specialized in parent and community activities, such as counselors, social workers and other support to help meet students’ non-academic needs, including, in high schools, career academies and other student engagement activities.

Most of the optional activities have been supported to varying degrees by USED policies, particularly in the last two years, through Non-Regulatory Guidance (i.e., encouraging 21st Century Community Learning Center operators to provide SES, use of response-to-intervention in Title I schoolwides, etc.). The Administration’s major bone of contention is with the proposed change which would require only “high priority schools” to provide supplemental educational services and parent choice. In her letter to Chairman Miller, dated September 5th, Secretary Spellings stated, “While I support increased accountability in the provision of supplemental educational services, I am extremely concerned that the draft bill would significantly restrict the opportunities for children in schools that fail to make AYP to obtain free tutoring to help increase their academic proficiency, whether by limiting the situations in which those students would have the right to tutoring or by reducing the amount of funds available to pay for tutoring. The opportunity to obtain this aid should be expanded, as proposed by the Administration, not curtailed, in order to meet the goal of having all students on grade level by 2014.” During a news conference on September 5th, she stated that the two-tiered accountability system or that this change would make 250,000 students ineligible for tutoring. In an afternoon press conference on September 5th, Chairman Miller responded to the Secretary’s concerns about limiting the SES and parent choice option only to high priority schools. On his blog “NCLB: Act II,” David Hoff noted Miller’s comment, “About the Secretary’s assertion that 250,000 students would lose access to tutoring from outside providers, he countered that schools could choose to provide that tutoring from a roster of interventions.”

Not surprisingly, the Education Industries Association -- which represents most of the larger private SES providers -- in an August 30th statement, not only argued that limiting the SES option only to “high priority schools” would take away the opportunity for three million at-risk, low-income students who are eligible to receive SES by denying them
service; at the same time it would “divert SES funds to an unproven ‘extended learning time’ program.”

As we have noted on numerous occasions, current non-regulatory guidance precludes districts identified for improvement from providing their own supplemental educational services (with the exception of the five districts participating in the National Pilot program). While not addressed directly, the draft defines a “provider” as a “non-profit entity, a for-profit entity, or a local education agency that:

- “Has a demonstrated record of effectiveness in increasing student academic achievement;
- Is capable of providing supplemental educational services that are consistent with the instructional program of the local education agency and the academic standards described under Section 111,” among other criteria.

As the USED Office of Inspector General concluded earlier this year, the USED Non-Regulatory Guidance policy is in conflict with the current statute which clearly states that the sole responsibility for approving SES providers is up to the SEA.

A related concern the Secretary mentioned in her letter is that “a low-performing school might never be held accountable for real change or be required to provide real options for parents,” arguing once again the need for “priority schools” having to offer SES and parent transfer options. Indeed, the Administration’s NCLB reauthorization blueprint, released in February, did differentiate between schools failing to meet AYP across the board from those narrowly missing AYP in terms of the intensity of interventions, calling for additional funding through the school improvement grant (from $125 million to $500 million) and for “intensive tutoring” (about half that amount) for students enrolled in schools that are “the most broken.”

There are a number of changes in the House draft which the Administration has also supported to varying degrees, including:

- Up to one percent of the 20 percent set-aside for SES could be used by districts to increase outreach efforts to parents to increase SES participation rates and to cover administrative costs;
- Allowing districts to allocate twice the amount of funds for SES for limited English proficient and special education students and, where districts could not identify approved SES providers willing or capable of serving such students, the districts could provide their own SES programs, even if the districts are identified for improvement;
- Encouraging the use of distance learning to provide SES for students with disabilities and limited English proficient students, especially in rural districts;
- Ensuring SES-approved providers have a demonstrated record of performance and have been in existence for at least two years prior to becoming an approved provider.
- Delineating the SEA role and responsibilities in a range of activities such as approving SES providers, evaluating student achievement results, and withdrawal of approvals for providers, who after two years have not met the academic
achievement provisions of their agreements with the district, in terms of individual student performance.