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## MEMORANDUM

**DATE:** October 12, 2016  
**TO:** TechMIS Subscribers  
**FROM:** Charles Blaschke and Dr. Suzanne Thouvenelle  
**SUBJ:** New Non-Regulatory Guidance on Existing Flexibility in Schoolwide Programs; Final Draft on Supplement-Not-Supplant for Comments; Suggestions and Guidance to Districts on Selecting and Using Evidence-Based Products for School Improvement; New Juvenile Delinquency Bill Passes House; Bipartisan Reauthorization Bill for Perkins Career and Technical Education Goes to Senate; Varying State Funding Approaches to Kindergarten and New Parent Concerns; and EdNET Conference Highlights on Existing Title I Flexibilities Under New ESSA

The first TechMIS Special Report is on USED's long-awaited Non-Regulatory Guidance on existing flexibility in the use of Title I and other Federal funds to support school reform in schoolwide programs, which are well over half of all Title I schools in the country. These existing flexibilities were also addressed in our April 27<sup>th</sup> TechMIS Special Report and include specific "old" and "new" flexibilities in the new guidance. This new guidance can provide districts and partnering firms specific citations on allowable uses when approaching SEAs, as most existing flexibilities are now codified in new ESSA.

The second Special Report addresses the final draft version of supplement-not-supplant (SNS) controversial requirements in previous drafts which have been opposed by Congress, and if finally approved, will increase by over \$1 billion more state and local funds in about 10% of all Title I schools, and increase the demand for professional development and directly-related products for young, inexperienced, and lower-paid teachers in existing Title I schools.

At the last minute, before the September 30<sup>th</sup> deadline, Congress passed a Continuing Resolution through December 9<sup>th</sup> which would maintain funding at existing levels for all titles and programs funded by USED. It would appear that no significant language changes were quietly hidden in the bill. If Candidate Clinton is elected President, then Congress and the Administration will likely resolve the funding battle and pass an education appropriation bill individually or as part of an omnibus bill. On the other hand, if Candidate Trump is elected and the House and Senate

remain in GOP hands, the finalization of an FY 2014 budget may not be addressed until February-March.

The Washington Updates address new guidance on districts selecting evidence-based products, new juvenile delinquency and Perkins reauthorization bills, state funding for kindergarten, among other items of interest to TechMIS subscribers. Washington Updates:

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**Special Report:**  
**USED Releases Long-Awaited Non-Regulatory Guidance  
on Existing Flexible Uses of Title I and Other Federal Funds  
to Support School Reform in Schoolwide Programs**

*A Technology Monitoring and Information Service (TechMIS)  
Special Report*

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Following a decade of issuing guidance which was increasingly more flexible on how Title I funds (in conjunction with other Federal funds) can be leveraged for school reform, USED has published “significant” guidance which supersedes previous guidance [i.e., expands upon flexible uses] issued in June 2015, which were covered in our April TechMIS Special Reports. In the two April reports, we relied heavily on our own analyses of “regs” conducted over the last decade and a half and those published by USED-funded entities (e.g., the WestEd). This Special Report summarizes the 11-page set of guidance “Supporting School Reform by Leveraging Federal Funds in Schoolwide Programs” (September 2016). We cite verbatim specific guidance on provisions to which TechMIS clients can refer district or SEA officials when they question allowable uses of Title I funds to purchase their products/services.

This update of USED guidance on flexibilities, which exists today under NCLB provisions during the transition to the newly-passed ESSA, reinforces two significant points which have been made in previous TechMIS reports:

- that current NCLB regulations and interpretations of existing law allow such districts and TechMIS subscribers to take advantage of them now; and
- that almost all of these flexibilities have now been codified in the ESSA statute thus reducing SEA “discouraging” LEAs to take advantage of them.

Both of these realities strongly suggest that districts and SEAs which have cited some concerns about allowing districts’ flexible uses of funds will be more accommodating because of the legal environment created by ESSA (see highlights of EdNET Conference ESSA session). As the guidance states, “Under the ESSA schoolwide programs remain a key tool for using Title I funds to improve academic achievement and enable a school to more effectively leverage Federal funds to upgrade its entire education program.” In addition to the new ESSA provisions to

expand previous flexibilities, ESSA allows the opportunity to broaden definitions of excellence, maintain critical civil rights, and “includes provisions designed to enable SEAs and LEAs to focus on providing students the diverse integrated curriculum and learning experiences for a well-rounded education.”

USED reiterates the conditions under which a Title I school can be designated as a schoolwide program, which includes having 40% or more students living in poverty or otherwise receiving a waiver from the SEA to operate a schoolwide program; and the school is a Tier 1 (Priority) or Tier 2 (Focus) school, which receives approved interventions under the existing SIG program. Two benefits of a schoolwide program include being able to serve all students, and consolidating Federal, state, and local funds without having to report in detail how each Title program funds are spent. For TechMIS subscribers, targeting schoolwide programs which, according to several estimates are more than half of all Title I schools, currently have much greater flexibility to use creative and innovative approaches and products for improving student performance.

Opportunities for some TechMIS clients exist in helping LEAs/schools plan and implement schoolwide programs. The first required step is for a school to conduct a comprehensive needs assessment of students who are failing or at risk of failing academic standards. A new priority is the requirement for more extensive consultation with a broad range of stakeholders including parents, school staff, and others to understand pressing needs and “root causes” through “interviews, focus groups, or surveys, as well as data review on students, educators, and schools to give a better understanding of the root causes of identified needs.”

The second step is to develop a comprehensive schoolwide plan, which describes how the school will “provide opportunities and address the learning needs of all students in the school, particularly the needs of lowest-achieving students...[It must] contain descriptions of how the methods and instructional strategies the school intends to use will strengthen the academic program...including programs and activities necessary to provide a well-rounded education.”

And last, as the plan is being implemented, it should be continually and, must be evaluated at least annually, “using data from States assessments, other student performance data, and perception data to determine if the schoolwide program has been effective...particularly for lowest-achieving students.”

The key to taking advantage of the funding flexibilities is determined “by the comprehensive needs assessment and articulated in the schoolwide plan.” The school must implement strategies that provide opportunities for all children, use methods and instructional strategies to strengthen academic programs, increase the quality of learning time, and provide an enriched curriculum including one which supports providing a well-rounded education. Specific examples of uses of funds in a schoolwide program as determined by the needs assessment, which are cited in the guidance include:

- “High-quality preschool or full-day kindergarten and services”;
- “Instructional coaches to provide high-quality school-based professional development”;

- “Evidence-based strategies to accelerate acquisition of content knowledge for English learners”;
- “Equipment, materials, and training needed to compile and analyze student achievement data to monitor progress, alert the school to struggling students, and drive decision making”;
- “Response to Intervention strategies intended to allow for early identification of students with learning or behavioral needs and to provide a tiered response based upon those needs”;
- “Devices and software for students to access digital learning materials and collaborate with peers and related training for educators (including accessible devices and software needed by students with disabilities)”;
- “School climate interventions (e.g., anti-bullying strategies, positive behavior interventions and supports).”

Some of the “newer” examples, cited in the guidance, of use of funds in Title I schoolwide programs include:

- “Career and technical education programs to prepare students for post-secondary education and the workforce”;
- “Counseling, school-based mental health programs, mentoring services and other strategies to improve students’ non-academic skills”;
- “Activities that have been shown to be effective at increasing family and community engagement in the school, including family literacy programs”;
- “Two generation approaches that consider the needs of both vulnerable students and parents, together, in the design and delivery of services and programs to support improved economic, educational, health, safety, and other outcomes that address the issues of inter-generational poverty.”

After citing the above examples, the guidance states, “Each school, in conjunction with LEA officials, has the discretion to determine the specifics of a schoolwide plan, including which methods and instructional strategies will be used based upon the schools’ identified needs in its comprehensive needs assessment.”

In the section entitled “Dispelling Misunderstandings About Uses of Title I Funds in a Schoolwide Program,” the guidance provides specific statements and language that can be cited by TechMIS subscribers who have products and services which districts can use to take advantage of such flexibilities. In many cases, both TechMIS subscribers and district/school officials might have to refer “cautious” SEA officials to the specific statements and citations in the guidance. One common “misunderstanding” is that Title I funds can only support reading, math, or remedial instruction. Rather, as the guidance explains, preparing low-achieving students may require “intensive summer school courses to accelerate knowledge and skills, offering an elective course to prepare them to take advanced courses, or providing after-school tutoring while they are taking advanced courses.” Another misconception is using Title I funds only to serve low-achieving students, whereas the law provides for upgrading the entire

education program in the school which improves achievement of low-achieving students among other students.

In addition to using Title I funds for instruction, they also can be used to improve “the quality of instructional materials, improve attendance, improve school climate, counteract and prevent bullying, provide counseling, mentoring, and school-based mental health programs, or provide positive behavioral interventions and supports.” Despite a common misunderstanding among many SEAs and LEAs who believe Title I cannot support preschool-aged children, the guidance clearly states that a schoolwide program can use Title I funds for a preschool program “to improve cognitive, health, and social/emotional outcomes for children from birth to the age the LEA provides a public elementary education...all preschool-aged children who reside in a school attendance area are eligible to participate.”

Since its “creation” in 1997, schoolwide programs have been allowed to “consolidate” or “comingle” other Federal and state funds with Title I under certain conditions; however, many states do not allow or encourage districts to do so even today for, among other reasons, state auditing procedures requiring detailed tracking the use of funds under each title or funding source. The guidance is very specific by stating, “When a school consolidates funds in a schoolwide program, those funds lose their individual identity and the school may use the funds to support any activity of the schoolwide program without regard to which program contributed the specific funds used for a particular activity. Each SEA must ensure that it will modify or eliminate state fiscal and accounting barriers so that these funds can be more easily consolidated.” However, the guidance also states, “Regardless of whether funds are consolidated, a schoolwide program need not use Title I funds to provide services only in a pullout setting, although this practice is not prohibited. Title I funds may be used to upgrade the entire education program in a schoolwide program school and serve all students, even if the school does not consolidate Title I funds with other funds. However, the primary purpose of a schoolwide program is “to raise the achievement of the lowest-achieving students by upgrading the entire education program and can best be achieved by consolidating funds.”

The advantages of consolidating funds include flexibility to allocate all resources effectively, minimizing the need to meet specific regulatory requirements of specific other ESEA Federal programs included in the consolidation, and no longer requiring maintenance of separate fiscal reporting records as long as program intents are met. When a district consolidates IDEA funding with Title I in a schoolwide program, additional conditions in IDEA must be met: a) the amount of IDEA funds per student may be limited; and b) the requirement under IDEA that the services provided to a student with disabilities are in accordance with a “properly-developed individualized education program (IEP).”

Noting that passage of ESSA has helped boost districts’ taking advantage of existing flexibilities, Melissa Jung, a co-author of the earlier-mentioned WestEd report commented on existing barriers which “can live in informal or formal state spending policies...they can be in the application and review process.” The co-author, Sheara Krvaric, emphasized another an important barrier related to SEA oversight “Because districts are very conscious of audits, in

many cases they will apply for and spend money through separate and well-worn silos until they trust that the auditors know what they're doing is allowable," as reported in Education Week (October 5, 2016).

Many of the flexibilities and examples of allowable uses of funds in schoolwide programs are covered in the WestEd report, which is summarized in the April 27<sup>th</sup> TechMIS Special Report on schoolwide opportunities. In some cases, the new USED Non-Regulatory Guidance appears to be more "cautious" in its allowances than the WestEd report regarding supplement-not-supplant. For example, the guidance states that, "An LEA must ensure that each schoolwide program receives funds from non-Federal sources [i.e., state and local funds] to provide services that are required by law for students with disabilities and English learners before using Title I funds in the school." The WestEd report, which provided guidance to SEAs, suggests that the "required by state law" test for determining compliance with supplement-not-supplant ESSA provisions no longer applies in schoolwide programs, which is also a position of Congressional leaders who object to the current proposed draft USED regulations on supplement-not-supplant. However, as this new guidance states, "Information regarding compliance with this requirement, will be issued by the Department at a later date."

And, as we have noted in the April 27<sup>th</sup> TechMIS Special Report, other specific opportunities were created by flexibilities in the 2009 "stimulus funding" regulations affecting districts, which are "identified for improvement." The opportunities today are significantly greater as the number of districts identified for improvement in 2009 when the stimulus-related September 2<sup>nd</sup> guidance was released, has increased from 15-20% to an estimated 70-80% of all districts as a result of state waivers no longer being in effect after August 1, 2016.

If anyone has any questions, please call Charles Blaschke directly (703-362-4689). If you would like the two April 27<sup>th</sup> TechMIS Special Reports emailed to you, please send us a request via email.



**Special Report:**  
**Regulatory Update: USED Seeks Comments on  
Supplement-Not-Supplant Proposed Title Regulation,  
Which Could Increase State and Local Funding for Title I Schools  
by \$.5-\$2 Billion, and Generate a Greater Demand  
for Professional Development and Products**

*A Technology Monitoring and Information Service (TechMIS)  
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*October 12, 2016*

On September 6, USED published proposed regulations on the Title I Supplement-Not-Supplant (SNS) regulations for comments due 60 days later, which could have significant implications for most TechMIS subscribers. As we have previously reported, the negotiated rulemaking process did not result in agreements on SNS and a USED working draft was pulled, largely because of disagreements between USED officials and selected representatives from vested interested education groups. Strong opposition came from key ESSA senatorial architects of ESSA such as Senator Lamar Alexander, who argued that USED's proposals were too prescriptive beyond the flexibility in the ESSA statute and specifically violated the statute's prohibitions placed on USED discretion. The big battle was over USED's contention that state and local funds should be provided equally per pupil to Title I and non-Title I schools before Title I funds are allocated.

The new proposed Title I regulations, according to USED, attempt to address some of these concerns; however, preliminary reactions from GOP leadership, particularly Senator Alexander, continue to oppose them, alleging legal violations of the statute regarding lack of flexibility and prohibitions placed on USED. Key democratic architects, such as Representative Bobby Scott (D-VA) and Senator Patty Murry (D-WA) are more supportive, reflecting positions of virtually all civil rights groups. School administrator groups such as NSBA, AASA, Council of Great City Schools, and the Chief State School Officers have argued that the proposed rigid prescriptive solutions still violate the flexibility in the ESSA statutes and call for fewer restrictions.

While it is very likely some further minor changes will be made as a result of comments from these and other groups, if the proposed provisions in the recently-published SNS version are generally included in the final regulations and are implemented by the vast majority of districts,

then several important implications exist for many TechMIS subscribers.

One implication in USED’s “Fact Sheet” and statements reported in *Education Week’s Politics K-12* blog, is that in about 5,000 schools in 1,500 LEAs adherence to the proposed final regulations would result in up to \$2 billion in additional state and local funding being allocated for these high-poverty Title I schools which have been “short changed.” The battle here would be where would the additional money come from – such as increased local and state taxes, which GOP congressional leaders have strongly opposed, or reallocating funds from local programs both of which GOP leadership opposes? However, with more state and local funding allocated, especially to about a tenth of all Title I schools, the Title I market niche would certainly become more attractive.

The increase in districts’ allocation of more state and local funds to Title I schools could be a result of the proposed “tests” to determine SNS compliance. The proposed regulations clarify that SEAs and LEAs must “use the funds that each receives under Part A of Title I only to supplement-not-supplant the funds made available from state and local sources for the education of students in Title I schools.” In addition, “an LEA must demonstrate that the methodology it selects for allocating state and local funds results in each Title I school receiving all of the state and local funds it would otherwise receive if it were not receiving Title I funds...Further, the statute specifically prohibits the department from prescribing the specific methodology that an LEA may use to allocate state and local funds.” The proposed regulation lists the tests which would be used to determine whether the LEA methodology ensures that the LEA allocates “almost all” state and local education funds equally to all of its public schools. The “tests” are:

- A. “The actual distribution of funds is based upon the characteristics of students in each school, providing more funding for students with characteristics associated with education disadvantage, including students living in poverty, English learners, students with disabilities, and other subgroups of students chosen by the LEA;
- B. The actual distribution of funds is based upon a districtwide formula for allocation of personnel and non-personnel resources, provided that the total amount going to each Title I school is at least equal to the sum of the amount of personnel costs expected based upon the districtwide average salary for each category of school personnel and the average districtwide per-pupil expenditure for non-personnel costs.”

An additional test would be: (C) the distribution of funds through any other approach that meets a funds-based compliance test established by the SEA that is rigorous as (A) or (B) and is approved through Federal peer review that relies on “professionals with the expertise of school finance, state and local education officials, and individuals who represent the interest of special populations of students.”

The test which has the greatest potential benefit for most TechMIS subscribers is (B), which is similar to a test proposed by the Center for American Progress several years ago and one which we have advocated in previous discussions of SNS and “comparability.” If one assumes that all personnel in all of the schools except teaching staff are paid equal average salaries per category of staff (e.g., janitors, kitchen personnel, et al.) and that the teaching staff in Title I schools are

younger, probably less experienced, and are lower paid than same teaching staff in non-Title I schools (which is the main reason for USED’s proposal for reducing inequities in Title I schools), then schools with lower personnel costs could make up for such deficiencies in state and local funds by increasing non-personnel costs by more than the districtwide average per pupil to ensure that the totals are “nearly” equal between Title I and non-Title I schools. In the discussion of “rules of construction,” the regulation clarifies that “these regulations would not be construed to require the force of involuntary transfer of any school personnel,” which was a major concern in the earlier draft regulations expressed by both school administrators and teacher groups.

Available options to meet the SNS non-personnel costs could include “providing additional compensation or some other incentives to educators in high-poverty and hard-to-staff schools, increasing wraparound services or other resources in high-poverty and hard-to-staff schools, such as school counselors, school-based health providers, extended learning time, or high-quality preschool opportunities.” Also, but not stated, could be the use of state and local funds to invest in professional development and expanded, continued “on-demand” on-time support for younger, lower-paid teachers and/or purchases of products and related services to make up for the differences due to the use of inexperienced, lower-paid teaching staff in Title I schools.

If school administrators and LEA decision makers use tests (B), many of the problems identified by various policy analysts such as forced teacher transfers, altering collective bargaining agreements and changing of teacher compensation scales would be minimized and most likely supported over other tests by both LEA administrators and local and national teacher groups. Selection of alternative test (B) is more likely in about half of the states which currently do not have weighted student formula for distributing state aid (i.e., where the formula counts students with disabilities as 1.2 students or 1.4 students, etc. given as examples in the guidance). The states which currently do use weighted student counts in the state aid formula might be more apt to use test (A) in determining SNS compliance, although as the proposed regulation states, the school might still have variation of cost in terms of the amount of state and local funds allocated; it might have to change the weights provided to students which is another reason why groups such as the major GOP architects of ESSA (e.g., Senator Alexander) argued would be extremely costly and disruptive. The bottom line is that even if the weighted formula test option (A) is used, variations in state and local resource allocations may still be wide between the two types of schools and require further adjustments using the sum of personnel and non-personnel costs test option (B).

The newly-proposed regulations emphasize that statutory language of ESSA does not focus on cost or services, but on funds. It also “clarifies that an LEA is not required to: 1) identify an individual cost or service supported under funds it receives under Title I Part A is supplemental; or 2) provides services through a particular instructional method or in a particular instructional setting.” As we noted in previous TechMIS reports, this clarification refutes a common belief on the part of many SEA and LEA officials that a product or service purchased with Title I funds and used in Title I schools cannot be purchased and used in non-Title I schools. In fact, the 2015 NCLB regulations already allow Title I schoolwides to use Title I funds to replace an entire

curriculum and/or to use such funds to purchase Tier 1 of the multi-tier systems support (MTSS)/RTI and Tiers 2 and 3 as long as such needs are identified in a schoolwide needs assessment (see April 27<sup>th</sup> TechMIS report and enclosed Washington Update in this TechMIS issue). Nor does it preclude Title I from becoming a “testbed” for innovative approaches, which can be expanded to non-Title I schools, which has been a major barrier to the quality improvement as alleged by some TechMIS subscribers and many district-level officials in the past.

And, as we discussed in the April and other TechMIS reports on old flexibilities in NCLB regulations, the ESSA statute on SNS clearly dismisses the age-old test “required by state law,” which some SEA officials have used to deny Title I funds from being used for RTI approaches when RTI applications for at-risk students are required by state law.

# ***Washington Update***

*Vol. 21, No. 9, October 12, 2016*

## **The Center for American Progress' (CAP) New Report Entitled "Better Evidence, Better Choices, Better Schools" Suggests How States and Districts Should Select and Use Evidence-Based Practices for School Improvement Under ESSA Statutes; If States and Districts Follow CAP's Advice, Specific Implications Exist for Many Providers of Products and Services Designed for School Improvement, Especially Under the New SEA 7% Set-Aside**

Written by school improvement veterans Steve Fleischman, Kaitlin Scott, and Scott Sargrad, CAP distinguishes ESSA's "evidence-based" definition from that of NCLB's "scientifically-based research" in a practical manner with operational definitions based upon the authors' experience. This is done in the context of a much more flexible ESSA environment distinguished from NCLB's prescriptive approach for school improvement. While the focus is upon the use of the 7% SEA set-aside for school improvement, the use of Title I and other funds is generally relevant even though the authors' advice is based upon their interpretations of ESSA without the benefit of having any published final ESSA regulations thus far (see related Washington Update on USED "Guidance" which suggests steps for districts to follow). The suggestions in both, if they are taken seriously by districts, have a number of implications for TechMIS providers' products and services, which must meet several levels of evidence-based criteria.

The CAP report rightfully recalls that the "scientifically-based research" (SBR) requirement after the turn of the century within NCLB brought both advances and frustration to the field. It seemed over the past decade that decision makers were constantly hearing from researchers and experts that almost nothing works, while at the same time, product and service providers were all saying their offerings worked and were supported by scientifically-based research...In effect, the scientifically-based research standard created a so-called thumbs-up/thumbs-down system with the main question being will the evidence count or won't it? In contrast, ESSA evidence-based language suggests a different approach that broadens the range of acceptable evidence for improving low-performing schools and effectively asks: On a scale from zero to three, how strong is the evidence? This new strategy for using evidence seems more suited to the reality of existing research-based in education and the choices available to decision makers."

ESSA has four tiers of evidence with the first three applicable to school improvement under the 7% SEA set-aside:

- strong evidence from at least one well-designed and well-implemented experimental study;
- moderate evidence from at least one well-designed and well-implemented quasi-experimental study; or
- promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias.

The fourth tier of evidence is one that demonstrates a rationale based on high-quality research findings or positive evaluations of interventions, which are under ongoing evaluations. As the CAP report concludes, “In essence, state and local agencies must use their own judgment regarding available evidence across the three tiers.”

Among the eight CAP “categories of recommendations,” many of the implications for some TechMIS subscribers is under the category of how to “Ensure high-quality services from improvement providers.” Among the “few things” that state and local education decision makers should keep in mind as they work with potential providers of evidence-based school improvement strategies is to “make sure that the provider addresses local needs.” Emphasizing that matching alternatives to district needs as the most “critical element,” CAP’s relevant district question is, “Of the evidence-based approaches available to us, which one is most likely to meet our needs and align with our improvement plan?”

During the process of reviewing evidence of alternative approaches, products, and services, and making the final selection the collaborative decision making process at the district level must clearly involve and take into account the comments and suggestions of the stakeholders who will be affected most during the implementation if specific approaches are to be implemented. This highlights the critical importance to providers to generate “buy-in” from specific stakeholders (e.g., teachers) when approaching districts.

Throughout the school improvement process, a number of questions must be

continually asked:

- How the intervention serves the districts’ goals?
- How will the provider ensure everything works well in the districts’ context?
- Is the evidence-based approach aligned with the districts’ improvement goals and based upon a data-driven planning process, and does the provider make clear what actions the district or school must take to achieve desired outcomes?
- Has the provider submitted references, recent financial audits, and committed management and staff capacity?
- Is the rollout being implemented with fidelity and are key decision makers at the district and provider levels open to adjust their actions?
- During rollout, are evaluations continued and are they collecting data for making corrections?
- Are well-designed and implemented school improvement plans given the needed time to succeed?

Other implications for providers are implicit in other recommendations for districts and states. For example, states should build upon knowledge and databases from existing clearinghouses on practices or study findings which meet the evidence-based criteria for the different tiers of evidence strength. One cited source is the What Works Clearinghouse (WWC), which the report notes has 700 publications and catalogs, and more than 11,000 reviewed studies in its database.” Obviously, if a providers’ product evaluation studies pass the WWC “gold bar” or less rigorous “standards” with positive results, providers should share such study findings and references when asked or when submitting proposals to districts. Other clearinghouses

include the Results First Clearinghouse database which has links to eight clearinghouses which have reviewed 1,300 programs for their effectiveness.

The Best Evidence Encyclopedia (BEE) also offers access to research syntheses and program reviews of more than 900 programs and approaches in math, reading, science, early childhood, and whole school improvement. John Hopkins University Center for Data-Driven Reform and Education, which publishes BEE is the home of Success for All. When appropriate, providers should make existing reports, evaluations, and other data available to such clearinghouses. The experiences of providers in doing so have been mixed, as we have noted in numerous TechMIS reports over the last decade.

CAP also notes that the new ESSA specifies that Regional Education Labs, among other intermediaries “shall provide technical assistance upon request to any state or district in meeting the evidence-based provisions of the law.” These labs and comprehensive centers, funded by USED, along with other intermediaries such as BOCES and Education Service Agencies (ESAs) should be made aware of provider’s products and their evidence and their supporting effectiveness evidence to increase the likelihood that the providers’ products can be made known to districts and schools.

The CAP report also recommends that states and districts should consider professional associations as a useful source of information. CAP cites a survey of education leaders that ranked 14 identified sources of research administrators use, which found that they “were most likely to

access research through professional associations and professional conferences.” The inference for providers is clear: providers should share evidence on their products with appropriate professional associations and other relevant organizations when perceived benefits outweigh costs.

### **USED Releases Non-Regulatory Guidance on “Using Evidence to Strengthen Education Investments,” Emphasizing a Process for Selecting and Using Interventions Based on the Degrees of Rigorous Evidence**

The guidance is very much in line with the enclosed TechMIS update which summarizes the Center for American Progress (CAP), perhaps because at least one author, Scott Sargard, before joining CAP was the USED official responsible for implementing evidence-based policies over the last two years. The guidance also includes examples of important steps which should be taken by SEAs and districts to increase the probability that suggested selected interventions will meet local needs; and that meet high degrees of evidence-based tiers of evidence-based rigor; and that they be implemented with fidelity. USED, in its preface, denies any “endorsement by the Department of any views expressed or materials provided,” perhaps in response to the new Congressional opposition to USED’s prior use of the Secretary’s waiver authority and issuance of regulations, which GOP leaders felt (e.g., Senator Lamar Alexander) violated intent of NCLB and, particularly, will not violate statute provisions in the new ESSA.

Below, we have identified the important steps based upon our and the experience of

other observers and researchers, who have monitored and analyzed many technology and directly-related interventions, which have been “experimented with” over the last decade and a half; these appear to be most relevant for many TechMIS subscribers when they approach districts, especially with “new, innovative, and creative” products.

Step 1 in the guidance is the identification of local needs, which has a new emphasis also in other guidance for the SEAs and districts in implementing interventions in other areas (see enclosed item on schoolwide programs) in the new ESSA. Beyond the political importance of involving additional local stakeholders, who can help identify needs, is the implicit strong encouragement of districts to conduct local school and/or district needs assessments to ensure “buy-in,” especially as required in existing Title I schoolwide programs (see April 27<sup>th</sup> and enclosed TechMIS Special Report on SWP). Indeed, high-demand products/services in the Title I marketplace being created by ESSA are the tools and approaches along with services, which firms can provide and/or use in partnership with many TechMIS firms in assessing district and school needs.

The second step is the selection of relevant evidence-based interventions. The guidance spells out the three tiers of rigor producing strong evidence, moderate evidence, and promising evidence, and explains in simple terms the fourth tier, which “demonstrates a rationale based on high-quality research findings or positive evaluation that such activity/strategy or intervention is likely to improve student outcomes or other relevant outcomes.” One of the newly-emphasized guidance suggestions is that LEAs could “should look for interventions supported by

strong or moderate evidence in similar settings or populations to the ones being served.” As noted in our September TechMIS Special Report, most influential education groups opposed this USED interpretation of ESSA statute intent because of the difficulty of conducting Tier 1 experiments in an LEA or indeed the legality of doing so with certain populations such as special education in treatment/control group evaluations in actual district environments. The guidance cautions LEAs to be realistic in assessing their local capacity to implement selected interventions in terms of available funds, staff skills, and “is there buy-in for the intervention?” Over the last 15 years, most firms participating in USED-sponsored evaluations faulted USED’s requirement of “random assignment” as violating significantly the question of teacher and other “buy-in” for specific technology-based interventions being assessed against a control group.

As districts develop plans for implementation, Step 3, the guidance calls for clearly-defined roles and responsibilities of those involved in implementing the intervention and the development and use of strategies to monitor performance and enhance “continuous improvement.”

In Step 4, the guidance lists numerous questions districts should consider to ensure that the “fidelity of implementation” is not compromised, that the plan is being followed, and whether changes are needed. Many of the USED-sponsored evaluations during the NCLB decade violated the “principle” of ensuring fidelity of implementation. Moreover, although not specifically identified in the guidance, another major fault, which has been



identified in numerous studies conducted by groups such as the Center on Education Policy, among others, is that implementation was not given the amount of time needed to demonstrate results.

And, the remaining step is to “examine and reflect” about assessing the impact of a specific intervention on relevant outcomes. The number one question at the local level is “what are reasonable expectations of success and how can success be measured?”

The guidance also emphasizes that some of the new ESEA (now amended by ESSA) programs “encourage the use of evidence-based interventions...including several competitive grant programs, and Title I Section 103 requires the use of evidence-based interventions that meet higher levels of evidence.” As we have noted in several TechMIS reports, groups such as SIIA question whether the intent of Congress was in fact to require Title I -funded products having to meet as rigorous a tier of “evidence-based” as those required for “comprehensive” and “targeted” schools. These interventions are respectively required for the lowest five percent performing schools and those with specific low-performing subgroups of students with wide achievement gaps.

Perhaps these and other issues will be addressed in final accountability regulations when and if published by year’s end. If the election results support the Democratic nominee, then USED’s most rigorous interpretations of “evidence-based” as well as “supplement-not-supplant” will likely be similar to the respective proposed final regulations on these issues. If the GOP nominee is elected, the nature of the “ballgame” and the players remain

uncertain. Education Week has reported that one of the candidates for Secretary of Education under a Trump Administration was the “father” of Scientifically Based Research (SBR) under NCLB.

### **House Passes Bipartisan Perkins Career and Technical Education Reauthorization to Reflect the Realities and Challenges Facing Students by Helping Them “Gain the Knowledge and Skills They Need to Succeed”**

The “Strengthening Career and Technical Education for the 21<sup>st</sup> Century Act” would increase “more flexibility to use Federal funds to support CTE programs that are focused on unique and changing education and economic needs for state-based innovation,” according to the bill’s summary released by the Education and Workforce Committee on September 13<sup>th</sup>. Shortly after that, the House passed the bipartisan bill easily. The bill would also increase from 10-15 percent the amount of CTE funds states can set aside for rural areas or areas with significant number of CTE students. The reforms are designed to help to provide students skills to meet in-demand jobs in local communities now rather than low-demand jobs. At the secondary level, the performance measures used to evaluate CTE programs will be streamlined and aligned with measures established by each state under ESSA; it replaces “technical skill proficiency indicators with state-determined indicators.

At the community college level, performance measures must be aligned with the Workforce Innovation and Opportunity Act (WIOA) to continue further education or

go directly into good paying jobs. As Education Week's Politics K-12 blog notes, the Association for Career and Technical Education, a supporter of the Bill, a local program needs to conduct a needs assessment before applying for CTE funds and reduces most paperwork. The state set-aside for increasing innovation has more flexibility to target resources; however, such funds would be based upon identifying proven and promising CTE practices.

It remains unclear whether the Senate will take quick action on this bi-partisan bill and attempt to pass it in a “lame duck” session after the November election.

### **How States Vary in their Funding and Approaches to Kindergarten, An Important Beginning For Young Readers**

The Education Commission of the States (ECS) has responded to the recent focus on the important role kindergarten plays in national efforts to ensure every child is a reader by Grade 3. Research indicates that a high quality, full-day kindergarten experience is a crucial component to setting students up for ongoing academic success, yet vast differences exist in the quality of kindergarten programs and how they are funded across the states. As states continue to develop strong pre-kindergarten (pre-K) programs, many are also looking to establish quality full-day kindergarten to support the gains made in the pre-K space and to set students up for success throughout their academic careers. The report highlights different funding models across the states and their requirements for full-day kindergarten, including state bans on parent

tuition and the length of day for full-day kindergarten.

Several key takeaways from this report include:

- In 13 states plus the District of Columbia, districts are required to offer full-day kindergarten
- In 27 states, the length of full-day kindergarten (whether it is required or optional) is equal to that of first grade length of day.
- The definition of full-day, and the level at which the program is funded, varies considerably from state to state.

The majority of states do not require full-day kindergarten programs—only 13 states and the District of Columbia are required to offer full-day kindergarten. The report describes full-day kindergarten models (not necessarily required) and offers examples of funding approaches in the states of Maine, New Hampshire, Nebraska, Oklahoma and West Virginia. In the example of West Virginia, the state offers the highest amount of financial support for kindergarten. West Virginia does require all districts to exclusively offer full-day kindergarten, without an option for half-day kindergarten. At the opposite end of the spectrum Maine, for example, allows districts to offer full-day kindergarten, but does not provide additional funding for this option, and prohibits districts from charging tuition to families. Currently, no states prohibit districts from offering full-day kindergarten.

As more states consider the benefits and long term positive impacts on student achievement and future success of full-day kindergarten, more states will establish requirements and funding for kindergarten.

The potential of this program expansion for TechMIS subscribers offers increased markets for early childhood materials and curricula as the numbers increase.

Access the full ECS report here: [Full-Day Kindergarten: A look across the states](#)

### **More Academically Focused Kindergarten Raises Concerns for Parents**

The September 26<sup>th</sup> [Washington Post](#) article reiterated the “trickling down of accountability pressures” to Kindergarten cited in a recent University of Virginia study which analyzed teacher surveys. The UVA study referenced in the article compared teacher surveys from 1998 with those from 2010; the results noted significant differences between the two cohorts of teacher respondents with the 2010 teacher expectations identifying academic work as a major focus of curriculum experiences in kindergarten. One of the findings for example is that in 1998, only 31 percent of teachers surveyed believed that most children should learn to read in kindergarten, whereas in 2010 this more than doubled to 80 percent of teachers believing that children should learn to read before leaving kindergarten. Kindergarten, which once encouraged play and exploration, has been evolving to what some parents regard as “a pressure cooker of rigorous academics, standardized tests, homework, and what seem like outrageous expectations.”

The more academic approach reflected in kindergarten nowadays is raising parents’ concerns about the stress on young children that is evident in the push-down of first

grade curriculum. The kindergarten curriculum of today reduces the emphasis on learning by doing and intentional play as central experiences in what was once considered appropriate education for 5-year-olds.

### **Business Leaders Promote Pre-K Expansion Through Financial Investment and Partnerships**

A recent *New America Foundation* article by Kristina Rodrigues describes how business leaders are taking an active role in supporting pre-K expansion through financial investments and strategic partnerships. In three states -- Alabama, Indiana, and Pennsylvania -- businesses are touting the ability of high-quality pre-K programs to help equip the next generation of workers with important skills. The well-documented return on investment (ROI) justifies that every dollar invested in high quality pre-K [yields](#) a seven dollar return on investment. This cost-benefit ratio has become a key selling point for business-minded pre-K advocates across the country, according to the article. In these three states, business leaders are taking an active role in supporting pre-K expansion through financial investments and strategic partnerships.

#### **Alabama**

In a brief released earlier this summer, the Alabama School Readiness Alliance (ASRA) outlines how business leaders can play a role in pre-K expansion (e.g., Alabama Power and PNC Bank are providing funds and materials). High-quality pre-K would improve the future workforce and economy. Citing the “skills gap” -- the gap between the skills employers need and

the skills employees have -- the ASRA urges business leaders to support expanding the Alabama First Class Pre-K program (beyond the \$15 million state increase next year) to better prepare future employees.

### **Indiana**

Currently, Indiana has a [more fledgling](#) state-funded pre-K program when compared to the pre-K expansion in Alabama. August 2015 marked the beginning of Indiana's first full year of the program called On My Way Pre-K. It's currently operating in five pilot counties (including Indianapolis) across the state and serves [only four percent](#) of the state's four-year olds.

A "roadmap" acknowledges the need for expanded pre-K access across the state and calls on business leaders to continue supporting pre-K expansion as a way of investing in the state's future workforce. Additional financial contributions from the state's business community would be used to enhance program quality and expand access to children from low-income families.

### **Pennsylvania**

A review of the Pennsylvania pre-K situation indicates that the state's pre-K offerings are more diverse than those in Alabama or Indiana. Pennsylvania has [four different programs](#) currently operating across the state. Altogether, only about 12 percent of four-year-olds are currently enrolled in pre-K. Business leaders who are advocates for the Pre-K expansion referenced this lack of access in their appeal for increased funding and emphasized that the additional funding would enable [7,400 more children](#) to attend pre-K. They also emphasized the potential for pre-K to

prepare students for future employment by highlighting research showing that Pennsylvania companies currently spend over \$188 million per year preparing employees, while 52 percent of employers face difficulty hiring people with adequate skills.

In June, Philadelphia Mayor Jim Kenney signed a controversial soda tax, partly meant to raise funds for expanding pre-K programs (details [here](#)). Local business leaders [feel more can be done](#) and are pushing for an additional \$90 million of funding from the state. Representatives from the Greater Philadelphia Chamber of Commerce, the Main Line Chamber of Commerce, the African American Chamber of Commerce, and the U.S. military are calling for further government investment, arguing that high-quality pre-K can narrow the skills gap, particularly for the STEM workforce.

In summary, the article contends, "The foundations for important workforce skills, such as critical thinking and problem solving, are laid in the crucial early years of a child's life. We can expect to see more businesses becoming involved in pre-K expansion as companies realize that advocating for high-quality pre-K is both good for kids and good for future business."

Access the article: <https://www.newamerica.org/education-policy/edcentral/good-business-how-some-states-are-building-pre-k-funds/>

## **House Education Panel Passes Bipartisan Bill to Improve Education and Rehabilitation Practices for At-Risk Youth and Juvenile Offenders, Creating Opportunities for Expanded and Innovative Approaches**

The Youth Opportunity and Preventing Delinquency Act overhauls the 1974 Juvenile Justice and Delinquency Prevention Act. It is designed to provide smoother offender transitions through education and community-based services, and requires the use of evidence-based strategies, which can help end the school-to-prison pipeline; these are new provisions included in ESSA. House Education Committee Chairman John Kline (R-MN) and ranking Democrat Bobby Scott (D-VA) championed the Act, which emphasizes the conduct of “needs assessments” in identifying needs of at-risk youth and offenders to personalize treatments that employ evidence-based strategies and interventions. As noted in Education Week’s Politics K-12 blog (September 15<sup>th</sup>), it supports a “continuum of evidence-based or promising programs that rely in part on ‘trauma-informed’ services for children in families.” It is very specific in requiring programs operated by Federal grantees for at-risk or delinquent youth to conduct needs assessments in their communities and monitor and demonstrate how programs address the needs.

As the Committee Summary statement emphasizes, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is responsible for prioritizing “evidence-based strategies and to use current, reliable data in efforts to reduce juvenile delinquency”; the legislation calls for the Administrator to “issue an annual plan for research and evaluation in certain areas critical to

effectively serving youth, including reentry to public society, mental and behavioral help, and secure confinement conditions...this and other information will help provide a better understanding of the best ways to serve juveniles.”

While the Summary does not specifically place a priority upon “pay for performance” strategies as an “intervention” to reduce costs by preventing incarceration and recidivism, it certainly supports this provision in the recently-passed ESSA. Further, Education Week notes, “For instance, the new law tries to improve the transfer of credits from students’ juvenile justice education programs to traditional schools. The bill also requires ‘timely reenrollment’ in students’ traditional public schools or other appropriate education programs when they depart the juvenile justice system.”

In addition, as we reported in the May 2016 TechMIS issue, the GradNation Annual Report recommends that so-called “dropout factories” (i.e., lowest-graduation rate high schools) under the new ESSA minimum enrollment be lowered from 300 enrollment to 100 which would double the number of “dropout factories” to almost 2,000. Half of these “new” dropout factories would be alternative schools and other schools which have a heavy intake of offenders leaving incarceration facilities.

The new House Committee-passed bill goes to the Senate where bipartisan support likely exists. It should be noted that the House Committee has also passed a reauthorization of the Perkins Technical Career Education Act, which has also gone to the Senate. In late September, the Senate held its first hearings on its version, which also has

chances for bipartisan passage this year. Such action will likely occur to resolve differences during a “lame duck session” at the end of the year.

### **New Education Commission of the States (ECS) Trends Report Identifies States in which Computer Science Can Count as Credits in Math, Science, and/or Foreign Language to Meet Graduation Requirements**

The ECS Education Trends Report *Computer Science in High School Graduation Requirements: 2016* (an update to an April 2015 report) found 20 states now require computer science credit be allowed to fulfill a math and/or science credit, while three states permit such credit in math or science to count for graduation. The report notes that additional states authorize such course substitutions, but have not included them in statute or regulations.

As Education Week's *Curriculum Matters* blog (September 13<sup>th</sup>) notes, over the last year, this is an increase of six states requiring such credits, but notes that the requirements vary from state to state. For example, in Georgia and Utah, computer science can count as a science credit, while in nine other states it can only fulfill a math credit; but in nine other states, a computer science course can fulfill either math or science. In Arizona, California, and Colorado, the decision of computer science fulfilling credits in math or science for graduation is the local district decision. The non-profit Code.org has reported that additional states use “non-policy means” such as board resolutions to allow fulfillment of math and/or science credits; these include Alabama, Indiana, Kentucky,

New York, Oregon, Rhode Island, Tennessee, Vermont, and District of Columbia.

In an interview with Education Week, the ECS report author, Jennifer Zinth, reportedly cautioned that such credit is futile where high schools do not offer computer science, which about half of the students taking the NAEP 2015 test said their high schools did not offer. Another question remains is whether the instructors of computer science courses, when offered, are taught by qualified teachers or have quality support for the specific instruction. Also, it is not clear whether state colleges and universities will accept computer science as a credit for math or science for admissions. For more information, go to: <http://www.ecs.org/computer-science-in-high-school-graduation-requirements-2016-update/>

### **Highlights of EdNET Conference Sessions on Superintendents' Advice to Technology Firms on Effective Selling; and Policy Experts Identify Current and New Opportunities in ESSA**

During the annual EdNET conference in Dallas in late September, advice from key superintendents and policy experts were shared with more than 300 representatives from education technology firms, which should be taken into account by TechMIS subscribers.

In a superintendent's panel, moderated by Kathy Hurley, CEO and co-founder of Girls Thinking Global, the panel of four superintendents shared their expectations when they are being approached by

marketing/sales staff of education technology vendors of products and services. The panelists included:

- Thomas S. Woods-Tucker, AASA National Superintendent of the Year from Princeton City, Ohio;
- Michael Hinojosa, Dallas ISD, Texas;
- Alberto M. Carvalho, Miami Dade County; and
- Dr. Wanda Banberg, Aldine ISD, Texas

Suggestions made by or otherwise agreed with by two or more of these superintendents included:

- Sales representatives should get to know the districts and their needs prior to making sales calls and should develop an ongoing mutually-beneficial relationship with the district.
- Before approaching superintendents, sales persons should target appropriate central office as well as school staff who want the product/service and should jointly approach the superintendent with recommendations to seek final approval.
- The proposed product/service must be “customized” to meet the district’s needs and instructional programs should offer “personalized” education for individual or small subgroups of students.
- The goal of the product/service should be to improve instruction, and in many cases be designed to meet immediate student needs in order to prevent remedial and other costly interventions later.
- When a product is positioned to meet a Federal or state requirement, the firm should be “realistic” when they say it “meets all requirements and outcomes,” especially since many requirements in NCLB are likely to reflect a “desire” but are not realistic (e.g., NCLB’s goal to

have all students meet “highest proficiency levels”).

- If a product is relatively new, innovative and/or creative, the sales person should be able to provide evidence that it works and references, which are known to the superintendent, and the price should include necessary professional development in any sales agreement.

Other suggestions Superintendent Woods-Tucker shared during a discussion prior to the session included:

- The firm should clearly “guarantee” the technical functionality of the product and the firm’s commitment of its staff support during implementation.
- For new creative, innovative products, staff “buy-in” should be developed to ensure fidelity of implementation.
- Communications between the firm and the district staff should be ongoing, fostering a partnership relationship.

As a Segway into the session on ESSA, all of the superintendents on the panel moderately or strongly agreed that while the new ESSA could reduce the amount of “Federal intrusion” into their instructional and other programs, they expressed serious concerns that it would be replaced by “state policy intrusion,” which would reduce their local autonomy and funding (e.g., increasing the SEA set-aside for school improvement from 4% to 7%).

The session on ESSA “What to Expect and How to Prepare,” moderated by Bob Wise, former West Virginia Governor and now President of the Alliance for Excellent Education, also included David DeSchryver, Director Whiteboard Advisor and highly-regarded education policy influencer, and

Joseph Smith, Director of Office of Education Technology, U.S. Department of Education, which is primarily involved in the implementation of the new Title IV consolidated grant program. If funded at authorized levels, Title IV could provide a significant increase in funding supporting education technology and related professional development at the district level.

Governor Wise pointed to one of the major differences between the new ESSA and NCLB: ESSA is designed to support innovation, replacing NCLB's emphasis on compliance. In addition, the new flexibilities also tell states "you can't blame the Feds" as the states take on their new leadership role.

DeSchryver pointed to a number of other differences under ESSA:

- The statute language increases in "flexibility" removes some of the "old road blocks," especially at the state level, to innovation in Title I, which in turn will reduce the probability of district and state Title I officials saying "no, you can't do that" to "yes."
- The focus on math and reading in NCLB is expanded to developing the "whole child." The ESSA provisions encourage more flexible and expanded use of Title I funds to go beyond the proficiency goal for individual students to improving school climate, which can contribute to individual student performance, (i.e., it would appear to be a major goal in itself).
- A continuing emphasis is on school improvement in lowest-performing schools, with more funding and the flexibility to use locally determined

interventions, especially under the increased state set-aside for school improvement from 4% to 7%.

DeSchryver specifically mentioned one of the benefits of the new supplement-not-supplant (SNS) provisions in the statute that makes it clear that Title I funds can be used to replace the core curriculum in a Title I school's program; and that once a district allocates state and local resources equally to Title I and non-Title I schools, such Title I funds can be used for purposes other than being "supplemental" to the core instructional program, as long as such school's needs have been identified. In the September 19<sup>th</sup> [EdSurge](#), he reiterated "The focus on supplemental investments [under NCLB statutes] also made it hard to combine Title I with state and local funds to make comprehensive technology purchases. What you bought with Title I for eligible at-risk students could not be also used for all students...The new law (not the newly-proposed rules, but the statute itself) changes all of that...Simply put: Title I funds can now be used to make a comprehensive technology purchase without violating supplement-not-supplant rules that was not possible under the old rules....And because the new rule is written into ESSA itself, no matter what happens with ED's 'ambitious' [draft] rules, this is here to stay."

He also reminded EdNET attendees that even though some of the USED enforcement capabilities at the Federal level in ESSA have been delegated to the state level, education is a protected "civil right" under existing civil rights laws going back to 1964. As such "equal education opportunities" for minority, disadvantaged children, especially students with disabilities and English



language learners, must be met by districts; if not, they could be visited by civil rights lawyers “knocking on a district’s door.”

In the September 19<sup>th</sup> EdSurge article, DeSchryver stated that he would “bet that the proposed rules do not survive in their current form, if at all, when schools begin to operate under the new final rule. They will be operating without clear guidance – but they will have a new statute that clearly makes Title I a more accessible funding source for comprehensive technology solutions which will be a big win for the ed tech community.”

When asked in a Q&A session about how many of the new Title I flexibility provisions allowed in ESSA statute can be taken advantage of now by districts and firms, he agreed that existing USED guidance allow many of the above flexibilities currently and that the new ESSA basically codifies them, which creates a legal framework environment which is more conducive to flexible use of Title I funds.