

# Education TURNKEY Systems, Inc.

256 North Washington Street  
Falls Church, Virginia 22046-4549  
(703) 536-2310  
Fax (703) 536-3225

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## MEMORANDUM

**DATE:** March 13, 2017  
**TO:** TechMIS Subscribers  
**FROM:** Charles Blaschke and Dr. Suzanne Thouvenelle  
**SUBJ:** Congress Disapproves Accountability Regulations and Implications; FY 2017 Budget Update Implications; Remediation and Test Prep; Steps to Improve the Ed Tech Industry; and Proposed Governors' Education Priorities for 2017

The enclosed Special Report addresses the implications of the Congressional "CRA" disapproval of Obama accountability regulations for ESSA. Expert Anne Hyslop argues that opportunities for using innovative and creative means to improve low-performing schools will diminish as the allowable flexibilities in the regulations specifying what states and districts "can do" will not be taking advantage of if states rely only on ESSA statute language, which does not include them. For TechMIS subscribers who have products and services which would benefit from the "can do" flexibilities in the regulations, as we have suggested, would be to target the 17-20 states which are reportedly going to submit their state plans on April 3<sup>rd</sup> which are reportedly basing their new state laws and guidance on many of the "can do" flexibilities in the Obama regulations.

Since our last TechMIS issue on February 27<sup>th</sup>, uncertainties in education policy and funding increase as important deadlines are fast approaching. While subsequent USED policy developments relating to state implementation of ESSA accountability statutes are expected, the fate of the FY 2017 education budget is unclear; however, most likely, the current Continuing Resolution (CR) could be extended through September 30<sup>th</sup>, which has several implications for clients (e.g., determining preliminary Title I district allocations and how much funding will become available to implement new ESSA programs such as Title II LEARN, the SEA 7% set-aside for school improvement, and the "well-rounded" education new Title IV block grant). Many firms are counting on funding for district purchase under these new programs to technology and related staff development. These and other uncertainties' implications are addressed in the following Washington Updates.

Washington Update items include:

- **Page 1**  
FY 2017 Budget Uncertainties Have Implications if the Current Continuing Resolution

(CR) Is Extended for the Remainder of This Fiscal Year

- **Page 3**  
New Education Commission of the States (ECS) Report Identifies FY 2017 Priorities in 42 States Proposed by Governors in Their State-of-the-State Addresses
- **Page 4**  
Seasoned Education Policy Observer Susan Fuhrman Suggests Steps to Improve the Education Technology Industry
- **Page 6**  
More Than Half of District Superintendents Think Students Spent Too Much Time in 2014 Taking Common Core Assessments and Associated “Test Prep,” But Planned to Continue “Test Prep” in 2015
- **Page 7**  
Trends in Charter School Growth Suggest New Opportunities
- **Page 8**  
If Congress Fails to Include Medicaid in the “ObamaCare” (ACA) “Replacement,” School Districts Could Lose Approximately \$4 Billion of Medicaid Reimbursement for Related Services, Affecting Slightly Over Four Million Poor Students With Disabilities
- **Page 9**  
Education Week’s New State Testing Landscape Indicates that Most States are Dropping the Federally-Funded PARCC and Smarter Balanced Assessments, and About a Quarter Are Now Using the SAT or ACT as Their Official High School Test
- **Page 9**  
In This Congressional Session, GOP Education Committee Staff “Will Have the Power to Call in Government Officials and Others for Depositions Under Oath Behind Closed Doors,” According to Education Week (February 17<sup>th</sup>)
- **Page 10**  
The New National Center for Education Statistics Reports on PreK-12 Expenditures, Including Those for “Instructional,” in the Nation and in Those Top 100 School Districts for FY 2014
- **Page 10**  
A number of miscellaneous items are also addressed including:
  - a) As reported in the Los Angeles Times, two new legislative bills have been proposed, which would require the state to develop curriculum standards that teach students how to evaluate online news.

- b) Thus far, state action creating/expanding funding and other activities related to virtual charter schools has been limited, as reported by Education Week's Charters & Choice blog (February 17<sup>th</sup>).
- c) California's Governor proposed 2.1% or \$330 per-student increase could be jeopardized by Federal cuts in Obamacare, which is creating some uncertainties.
- d) A new Fact Sheet Whiteboard report on "DeVos family-supported school choice" in Michigan, and particularly the charter school segment, should interest some TechMIS clients.
- e) The new Evidence for ESSA Clearinghouse is designed to help states and districts "use interventions that have been proven to help students learn," reports Education Week (March 2<sup>nd</sup>).

**Special Report:**  
**Seasoned Education Policy Observer and Regulation Expert Anne Hyslop Argues that the Congressional Review Act (CRA) Disapproval of Obama Accountability Regulations, Which Occurred March 9<sup>th</sup>, and Thus SEA Sole Reliance on ESSA Statutes Could Hamper the Use of Creative, Innovative, and Novel Approaches for School Improvement as Congress Intended Because Statutes Do Not Specify What States/Districts Can Do; and Given “Uncertainties,” History Has Shown SEAs Won’t Take Full Advantage of Many Allowable Flexibilities**

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

*Prepared by:*  
*Education TURNKEY Systems, Inc.*  
*256 North Washington Street*  
*Falls Church, Virginia 22046-4549*  
*(703) 536-2310 / (703) 536-3225 FAX*

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In at least 40 areas, the regulations “clearly signal that certain approaches are okay, giving state education agencies (that are often compliance-oriented) the green light to adopt them and a clear hook to use with stakeholders and state leaders who may be skeptical of whether a strategy is permitted.” Without a clear statement of these additional flexibilities that are included in the Obama ESSA accountability regulations, which “cannot be found in the statutory text and in the absence of regulations, states may default back to the status quo and take the less risky path by hewing closely to the statute, rather than pushing for more creative solutions that work better in their local contexts.” When the Congressional Review Act (CRA) disapprovals occurred, only the ESSA statutes and their general flexibilities, which are open to SEA interpretations, exist; and as she argued, states and districts will make few changes because of SEA/LEA uncertainty and ambiguity as to what state and Federal auditors will be “looking for.” Some of the “additional” flexibilities not in the ESSA statute which are allowed in the regulations and “points of clarification” (many of which we discussed in our July 7, 2016 TechMIS Special Report on flexibilities in the Obama proposed accountability regulations) will not likely be seriously taken into consideration by many states as they implement the ESEA as Congress intended. Below, we list some of Hyslop’s 40 flexibilities and clarifications in the Obama final regulations that are “endangered by Republican’s repeal efforts,” which have implications for TechMIS subscribers. See her February 23<sup>rd</sup> analysis at the Thomas B. Fordham Institute’s website:  
<https://edexcellence.net/articles/40-essa-rules-endangered-by-republicans-repeal-efforts>

### **Intervention Flexibilities**

Perhaps the most important Obama flexibilities in the final accountability regulations in which the new ESSA statute is silent, according to Hyslop (who recently became Senior Associate for Policy and Advocacy at the Chiefs for Change), is “States may stagger their implementation timeline so they use indicators based upon the 2017-18 school year to identify their first cohort of low-performing schools in 2018-19. States may also have a planning year so that interventions in these schools must fully kick in by 2019-20 school year.” As discussed extensively in our July Special Report (also briefly in our most recent February TechMIS Special Report), by extending the effective dates of implementation of ESSA new statutes regarding identification of 5% lowest-performing schools and use of interventions selected by states and/or districts, some of the opportunities afforded to firms with interventions that are allowable under the old September 2, 2009 Title I regulations (discussed in our April 27, 2016 TechMIS Special Report) continue to be allowed until the ESSA 2018-19 proposed effective date deadline. By extending the deadline for state identification of the lowest-performing 5% schools for more “comprehensive support and improvement” interventions could be based upon the most recent assessment data to help identify different types of students’ needs to be addressed by interventions; moreover, the schools will be identified in a more orderly process, providing additional time for many firms to decide which schools in the state or district to target, which was a very confusing process during the hasty implementation of the “new” SIG program created in the 2009-10 “stimulus” legislation. As we also identified in the July TechMIS Special Report, the regulation allowed states to “differentiate and identify low-performing schools in order to include special kinds of schools in their statewide system (such as newly-opened schools, very small schools, schools with non-traditional grade configurations, schools without testing grades, and schools designed to serve new populations as newcomer schools), according to Hyslop. We also emphasized in our July report the opportunities created for alternative schools, with at least 100 (vs. 300) student enrollments which could be selected and targeted, which would include credit recovery schools and schools intended to remedy the “school-to-prison” pipeline.

Related specifically to allowable interventions, Hyslop reaffirmed that “states must ensure that at least one intervention in identified schools [lowest-performing] will be evidence-based, but all activities in the schools’ improvement plans do not need to be supported by evidence (as defined in ESSA).” The ESSA statute defines different tiers of “evidence-based,” which are the three tiers used in the old i<sup>3</sup> program and less rigorous fourth practice, which facilitates a practice as “holding promise” but is only currently being evaluated. This is important for firms which have intervention strategy components that compliment evidence-based practices (e.g., software programs, etc.), which meet more rigorous levels of “evidence-based” research. She also notes that “states may provide school improvement funds under Section 1003 [now the 7% set-aside for school improvement] funds to any school identified for comprehensive or targeted support and improvement, even if the identified school is not a Title I school.” In addition, she notes that while states can create a list of evidence-based interventions, use of the list “may be optional or required depending upon the states’ policy preference.”

### **Clarifications:**

In her article posted February 23<sup>rd</sup> by the Thomas B. Fordham Institute, she also notes a number

of clarifications in the Obama regulations, which if removed will result in different interpretations, confusion, and lack of uniformity in implementation of ESSA statutes, some of which have implications for TechMIS subscribers, including:

- “States must develop a uniform procedure for reporting per-pupil expenditure data, ensuring uniformity in how this new information is conveyed across all districts in the state.” Most TechMIS firms use district per-pupil expenditures as a factor in considering whether to target districts/schools with their interventions.
- “States must identify schools for comprehensive and targeted support by the beginning of the school year in order to ensure prompt notification to parents in timely development of School Improvement Grants.” Early state identification of lowest-performing schools was a problem in the past for many firms; this problem would be reduced in the future if this regulation were left in place.
- “States must communicate with parents and other stakeholders in a manner that is accessible, including providing written information in languages that parents can understand and, where practical, by providing information in alternative formats for parents with disabilities.” A similar requirement has been “required” but with little enforcement. If enforced in the future, the demands for products and services to facilitate meeting this requirement should increase.

During recent discussions with lobbyists for education groups and firms, it is important to note that the need for some types of Non-Regulatory guidance or “Dear Colleague Letters” will be needed if states and districts take more advantage of all of the flexibilities Congress intended, but are not necessarily stipulated in ESSA statute. For Obama regulations that were never finalized, such as Supplement-Not-Supplant, opportunities for “negotiated rulemaking” may become a viable approach.

In light of the fact that the CRA “disapproval” was passed on March 9<sup>th</sup> and will likely be signed by the President, as we previously reported between 17-20 states are reportedly planning to submit their state plans on April 3<sup>rd</sup>. These plans will include their state rules and strategies for implementing the ESSA statute. Most of these states are very likely to have included the Obama accountability regulations, particularly some of those described above, in their stakeholders and districts meetings seeking their support. One might assume the allowable flexibilities in the regulations regarding what SEAs and districts can do would be allowed by USED peer review panels to approve April 3<sup>rd</sup> state plans since they do reflect Congressional intentions (i.e., the can't do or added requirements garnered most of the Congressional objections). Hence, TechMIS clients are advised to at least initially target states submitting their plans by April 3<sup>rd</sup> and reviewing them to determine whether such allowable flexibilities have been incorporated into the individual state's plan.

In any event, developments in these areas will be occurring over the next several months, thus creating uncertainty, which could have direct impact on districts' purchasing cycles for technology and related products sold by TechMIS clients into Federally-funded niche markets such as Title I.

# **Washington Update**

***Vol. 22, No. 3, March 13, 2017***

## **FY 2017 Budget Uncertainties Have Implications if the Current Continuing Resolution (CR) Is Extended for the Remainder of This Fiscal Year**

Amid the confusion over the new Administration's education policies, there exists major uncertainties regarding the FY 2017 education budget, which have major implications for clients. Even though the FY 2018 education budget proposal is supposed to be submitted by the Trump Administration by mid-March, uncertainty remains about FY 2017 education funding. Currently, all education programs (e.g., Title I) are level-funded under a Continuing Resolution through April 28<sup>th</sup>. While domestic education program funds are under fire to be reallocated in the proposed FY 2018 budget to support the proposed \$54 billion dollar increase in military funding, it is likely that the FY 2017 budget will operate under the Continuing Resolution through the end of the fiscal year September 30<sup>th</sup>. Assuming that Congress will not pass a new FY 2017 budget appropriations between now and April 28<sup>th</sup>, in order for funding for programs like Title I to begin being allocated to states in July 2017, we have identified some of the implications for TechMIS subscribers, if the current Continuing Resolution is extended with existing programs being funded at current levels.

The first casualty in this process is USED's publication of district Title I preliminary allocations before adjustments, which is usually available to us in February-March

for our TechMIS Special Reports sent to subscribers. The new USED person in charge of determining allocations told us these allocations cannot be done until a 2017 budget is passed or the Continuing Resolution is extended through September 30<sup>th</sup>. Because of greater uncertainty this year than in previous years, beginning in January most Title I district offices have been withholding more Title I funds in "reserve" which have probably increased from 5-10% to 10-15% of this year's total funding of \$15 billion. Such funds are usually spent or encumbered before June 30<sup>th</sup> (the end of the states' fiscal years in 40+ states). If USED calculations become available shortly after April 28<sup>th</sup>, in most cases only then will districts know whether they will be receiving increases or cuts beginning in July. For districts receiving moderate-large preliminary increases, one can expect a significant increase in purchasing or encumbering such funds before June 30<sup>th</sup>, or later if USED allows through a waiver later, but before September 30<sup>th</sup>. For selected districts, opportunities for subscribers can be great. However, if there is a sequester, then most of these districts will be "carrying over" up to 15% or even more of this year's funds to next year.

With passage of a Continuing Resolution which funds existing programs at current levels, some of the new ESSA programs will be affected as these programs were not included with appropriated funds in the prior FY 2016 budget. As Education Week's Politics K-12 blog suggests from interviews with Joel Packer, the former Executive

Director of the Committee for Education Funding, some “anomalies” and language changes could occur in the Continuing Resolution through September 30<sup>th</sup> to try to “match up” budgets for “older” programs with similar “new programs,” such as the 50 programs now included in the new ESSA Block Grant Title IV which supports “well-rounded education.”

While ESSA authorizes \$1.6 billion for the new Title IV program, as we have reported, the total budgets for the almost 50 programs consolidated under Title IV is only \$270-\$300 million. As *Politics K-12* questions (March 7<sup>th</sup>), will lawmakers allow the existing programs’ budget to be allocated to the new ESSA Title IV or will Congress increase it to the level requested by the House of \$1 billion? Many of the firms whose plans assumed Title IV would be a primary source of funding this school year for technology and related professional development could be confused and very disappointed.

Regarding the new Title II, the article also quotes David Deschryver, education policy and regulatory expert, who argued that new Title II programs covering teacher training and preparation, would not get funded unless “lawmakers were to tweak the resolution to fund it, LEARN [Title II] wouldn’t get a dime....It doesn’t exist absent some change in the CR.”

In another area, district Title I programs could be seriously disrupted under a Continuing Resolution without any language (anomalies) changes being included. While the SIG program was not included in the proposed FY 2017 budget, the new ESSA requires that the state set-aside for school improvement be increased from 4% to 7%,

which would total between \$800-\$900 million. In some states which elect the option of setting aside an additional 3% for Direct Student Services (e.g., tutoring), the net effect could result in significant cuts in Title I funding for districts without “lowest-performing” schools eligible to receive a portion of the 7% set-aside for school improvement; on the other hand, this would help districts with large numbers of lowest-performing schools eligible for the 7% set-aside funding (and/or the additional 3% for Direct Student Services) as they would get funding increases. This is another area where uncertainties will be uppermost in the minds of district Title I coordinators who are very likely going to withhold funds in reserve until the last moment; and at the least, the Title I purchasing cycles using the SEA set-asides would be after October in school year 2017-18.

Over the last previous two decades, key individuals who “influenced” education budgets and monitored the Federal education “budgeting process” would quickly identify some of these unintended consequences noted above and would ensure that appropriate language changes were made in final Continuing Resolution. One person was Congressman David Obey, who was Chairman not only of the House Appropriation Committee, but also the Subcommittee for Education, and was, among other things, instrumental in ensuring that \$100 billion was allocated to education under the 2009 ARRA Stimulus Act. Another was the former Executive Director of the Committee for Education Funding and prior to that lobbyist for the National Education Association, Joel Packer. Congressman Obey retired several years ago. Packer no longer heads the influential Committee for Education Funding, which



represents virtually all major education associations/groups.

TechMIS subscribers would be well-advised to keep abreast of some of the above developments, such as a “passage” of a 2017 Appropriations Bill, which is not likely. However, if passed, it could likely cut Title I and other programs mid-year, with funds being reallocated to the Defense Department supplemental appropriations. Developments leading to and included in the passage of a Continuing Resolution through September 30, 2017 could be critical, which we will monitor for clients in the immediate future.

### **New Education Commission of the States (ECS) Report Identifies FY 2017 Priorities in 42 States Proposed by Governors in Their State-of-the-State Addresses**

According to ECS, governors are hoping to take advantage of ESSA flexibility allowing them to create their “vision for education,” and suggests that governors’ addresses provide a glimpse of these state priorities as transitions to ESSA take shape.

At least 32 governors are calling for increased funding for K-12 education “or changing funding strategies.” In Massachusetts, Governor Baker has proposed an additional K-12 increase of \$90 million which follows a \$227 million increase over the last two years; Arizona Governor Ducey is requesting increased per-pupil funding for high-performing schools, with additional funding for such schools serving low-income students; in Connecticut and Illinois, the governors have proposed increased funding to provide equal access and/or reduce gaps between low- and high-

income schools; and Governor Sandoval in Nevada requested an additional \$30 million for a total of \$80 million to be allocated to turning around low-performing “victory schools” through the use of “wraparound and family engagement services.”

In 24 states, governors emphasized the “need for developing a well-trained, well-educated workforce to foster economic growth in their state.” In Arkansas, Governor Hutchinson has proposed free tuition at community colleges for graduates, who work in Arkansas for three years after graduation, while Iowa Governor Branstad is providing funding to expand programs to help more participants complete workforce training beyond high schools to support work in a digital economy. Michigan Governor Snyder is proposing funding to upgrade career and technical education in community colleges, while Utah Governor Herbert is providing additional funding for training in specific areas such as the aerospace industry.

At least 17 governors focused on issues of teacher compensation, recruitment, and retention, proposing salary increases, loan forgiveness, and mentoring programs. Slightly over \$60 million has been requested by Idaho Governor Otter for professional development and implementing career ladder pay models for teachers, while New York Governor Cuomo has proposed extending its “Teacher Awards” program for top performing teachers of \$5,000 for professional development. In Washington, Governor Inslee has proposed additional funding to support mentoring for beginning teachers.

Continuing a general trend among states over the last five years, at least 16 governors

are proposing more support for preK-3, “including everything from preK expansion to full-day kindergarten funding to early literacy development in their addresses.” Expansion to full-day kindergarten is being proposed in Arizona and Minnesota, while in Pennsylvania, Governor Wolf has proposed \$75 in funding to expand high-quality early childhood education for at least 200 school districts. Alabama Governor Bentley has requested a \$20 million increase to fund 160 more preK classrooms.

ECS reports at least 12 governors “expressed the commitment to improving access to technology for teachers and students, while the majority of these governors called for “improving access to high-speed internet, some focused on upgrading classroom technology.” Idaho Governor Otter is requesting an additional \$10 million for a total of \$28 million for classroom technology, while Wisconsin Governor Walker is proposing an additional \$35 million for a total of \$52 million to expand broadband access, upgrade technology, and train teachers. Most of the governors have such activities earmarked for or focused on small and rural districts.

“School choice” as a policy has different meanings supported by different legislation among states. In the context of the “school choice” priority by the Trump Administration, ECS reports that “at least 10 states’ prioritized school choice in their state-of-the-state addresses...While it is too early to determine how the Federal agenda will impact state school choice policies, the governors’ addresses provide us with a small glimpse of potential choice efforts to come. This year, governors focused on charter school policies and offering or expanding “education savings accounts” (individual

accounts that allow parents or guardians to purchase an array of education services).” As described in more detail in a related item, Kentucky Governor Bevin has proposed charter school legislation for the first time in Kentucky and Maryland’s Governor Hogan has also proposed the “Public School Charter Act of 2017, creating an independent authorizer and increasing autonomy for public charter schools.” In addition, \$7 million is proposed to provide students opportunities to attend private schools. In addition to increased funding for the “victory schools,” Nevada’s Governor Sandoval has also requested \$60 million to fund the state’s “savings account” program; Missouri’s Governor Greitens has also proposed implementing “education savings accounts” programs for students with special needs, similar to the McKay Scholarship Program in Florida.

As we reported in a related item, the Maryland proposal to provide increased autonomy for public charter schools appears to be similar to that which has occurred in Camden, New Jersey and Philadelphia, among other places, as recommended by the Center for Public Reinventing Education. Significant growth in this area, we believe, will occur over the next several years.

### **Seasoned Education Policy Observer Susan Fuhrman Suggests Steps to Improve the Education Technology Industry**

While typical education researchers’ advice to ed tech firms on product designs, etc. abounds, the current President of Teachers College, Columbia University, offers advice to tech firms, investors, particularly in start-ups, and even researchers, “which would

improve effectiveness, increase market share, and economic value over time.” In Education Week (February 21<sup>st</sup>) Fuhrman argues that the “disconnect between ed tech products and education research is failing students...they don’t have time to keep trying bad products nor should scarce taxpayer money be gambled on products that will end up being a waste of time.”

As we have suggested a number of important activities and steps are needed to improve the “logical connection between evidence of effectiveness and the wisdom of investment decisions which are often ignored,” Fuhrman confirms are highlighted below.

The amount of high-quality research and advances in learning sciences, use of technology and learning analytics as a means to evaluation, she argues, “have been overlooked by ed tech industry.” One first step is to use “what we know about learning to develop product designs is available, particularly to “start-up developers and venture capitalists.” As we have argued too often, technology “solutions” are developed by firms who then seek education problems to solve with the solution rather than identifying problems and needs and then developing solutions to meet these needs (i.e., “problem mongers versus solution mongers”).

She also suggests that educator decision-makers or researchers be used extensively on advisory boards of start-up companies in addition to having investors serve on start-up advisory boards.

Another important step is to “try products out in real settings, revising them again and again until they show promise for delivering

results.” A related step is to “view implementation as a central part of the progress.” Some of the more successful technology solutions have emerged in Federally-funded education programs, such as Title I, began with solid research and extensive pilot testing and ongoing formative evaluations. A prime example is the decades-old research initiatives conducted in the Fort Worth Independent school districts in the 1970s-80s with Dr. Pat Suppes who founded Computer Curriculum Corporation. Fuhrman argues that a firm should coordinate very closely with “in-school technology specialists” and such coordination and support be included as part of the product pricing by the firm.

Another suggested step is to work with school districts and users to ensure that there are clear agreements among both parties on how they will judge effectiveness. Over the last two decades in large Federal programs, primary measures for student academic achievement were math and reading scores, which under ESSA now include other measures, such as teacher observations, school climate improvement, and others purporting to measure a “well-rounded education.” Firms should “make sure products can produce evidence on the measures valued by users.”

One last important step, based on her more recent experiences, is “safeguarding student privacy.” Not only are security issues and student rights important to educators and parents, she argues that most sellers and buyers should use mutually agreed-upon effective protection approaches and she cautions “researchers too must attend to privacy concerns -- in the past the field has not educated itself about adequate security.”

## **More Than Half of District Superintendents Think Students Spent Too Much Time in 2014 Taking Common Core Assessments and Associated “Test Prep,” But Planned to Continue “Test Prep” in 2015**

More than three-quarters of districts using the Common Core Assessments used test prep in 2014-15 and plan to consider certain test prep practices with the average student spending about a week or less on test prep activities. The 2016 survey of a representative sample of district superintendents found that a majority of districts’ leaders said their school systems were engaged in activities to prepare students for the 2015 Common Core test. According to the highly-respected Center on Education Policy (CEP) report, “More than three-fourths of officials said their schools reviewed ‘released assessment items’ (78%) and/or administered ‘practice tests in a computer-based format’ (77%), while over half of the officials said their schools had reviewed ‘released scoring rubrics for open-ended questions’ (63%), administered formative assessments based upon Common Core summative exams (60%), and instructed students in keyboard (60%).” Moreover, about half of the district leaders reported that their district had “maintained the same level of focus, and an additional one-fourth or more reported increasing the focus on the following activities during the 2015-16 school year: administering formative assessments, and practice tests, reviewing release time, reviewing score rubrics, and teaching keyboarding skills.”

Even though the majority of superintendents felt student testing time and preparation should be reduced, district officials, according to CEP, “estimated at the average

student in their district spent 6.5 days on direct teacher prep activities for the spring 2015 for math and English language arts assessment; about 15% said the average student spent more than a week; and about 10% said their students spent more than a month on direct test preparation.”

Other CEP survey findings of interest to many TechMIS subscribers include:

- To reduce student testing time, superintendents preferred to shorten state-required tests, and use teacher-designed tests “which are often seen as more instructionally valuable than state tests.”
- Only about a third of the districts’ leaders felt the new CCSS assessments (Smarter Balanced and PARCC) met their district needs for student achievement and felt their assessment data were “easily understood by and useful to teachers.”
- A majority of survey respondents used the 2015 assessment results to revise instructional strategies (67%), tailor remediation services for students who did not achieve a proficient score (60%), revise curriculum materials (56%), and revise teacher professional development (52%).
- About half of the respondents said their districts had adopted or were planning to adopt new textbooks or curriculum materials in response to these test results.

It would appear, as we and others have predicted, that CCSS assessments would increase the demand for test prep/remediation courses in preK-12 schools

and will continue doing so as long as “standardized” tests using proficiency benchmarks are used; and with the apparent growth in the use of student growth measures and increased use of non-standardized competency or mastery tests also increasing, the demand for formative assessments with built-in instructional components will continue to grow. Hence, opportunities for most TechMIS subscribers should continue to grow, although the Trump/DeVos Administration detailed policies and priorities might thwart their growth.

### **Trends in Charter School Growth Suggest New Opportunities**

Last year, only 329 charter schools opened the lowest number in almost two decades. If one takes into account the number of closures that year, the expansion was 2%. This suggests Secretary DeVos’ “bully pulpit” to states for charter school expansion to promote school choice, if left up to the states, will be difficult (see related Washington Update). District-local neighborhood charter schools represent an alternative to traditional charter schools under most state laws, which could provide opportunities for some TechMIS clients.

The report from the Center for Reinventing Public Education (CRPE) suggests that the “bully pulpit” urging states to lift caps and provide more state funding with less regulation regarding accountability for results, may only have a limited impact. However, as CRPE reports, charter school enrollment has surpassed three million this year, which is a 7% increase over last year, which “likely reflects existing charter schools’ addition of grade levels and

approaches to full capacity.” As we have suggested in our last two TechMIS Special Reports, and CRPE also notes, the charter movement “really needs to rethink its dominant assumption that the only factor limiting growth is access to start-up funds. Continued growth will require much more authentic and sophisticated engagement in local and state politics...Cooperative arrangements with districts like those in Camden, New Jersey and Indianapolis will also have to be accelerated so that families who want to stay in their neighborhoods can still get the benefit of excellent charter schools, and charter schools can have a more stable enrollment base. Indianapolis, Philadelphia, and Camden are all great examples of how neighborhood-based charters can work. Citywide arrangements over special education, expulsion, enrollment, and other issues are also critical foundations on which to build a stronger community political base.”

Based upon her testimony and past record over the last three decades in Michigan and other states, Secretary DeVos will likely seek some more funding under the Charter School Program (now \$330 million) for start-ups and remove regulations and guidance holding for-profit charter schools more accountable, especially when serving students with disabilities (see February Special Report). As CPRE argues, while state laws allowing continued charter school growth of high-quality charters and providing access to facilities are crucial, “Local charter school advocates also need to engage in assertive but respectful conversations about how to manage district enrollment loss so that students in district-run schools do not pay the price for unfettered growth....Finally, states may need to look at financial and other incentives

embedded in their laws and policies...Clearly, asking funders to just keep bankrolling charter expansion is not enough.”

As the movement toward district-operated, neighborhood-based charter school alternatives grows, which is recommended by CPRE, and becomes a higher national priority, which Congress will likely push for, then opportunities could be created for firms who have products and services, which can provide quality instruction and allows school districts to use neighborhood-type charter school alternatives to compete with outside private charters and reduce the amount of local, state, and likely Federal funding siphoned from the district, which follow the child to private charter schools. This approach coincides with the intent of charter school early leaders like Joseph Nathan three decades ago.

### **If Congress Fails to Include Medicaid in the “ObamaCare” (ACA) “Replacement,” School Districts Could Lose Approximately \$4 Billion of Medicaid Reimbursement for Related Services, Affecting Slightly Over Four Million Poor Students With Disabilities**

Removing the current Affordable Care Act funding for Medicaid in the proposed “Replacement” could have a significant impact upon the special education market niche for some TechMIS subscribers. A recent survey by AASA “estimates that school districts get about \$4 billion a year through Medicaid,” as reported by Education Week (March 7<sup>th</sup>). Failure to replace Medicaid would affect approximately 4.4 million students, who

would also lose their health insurance. Since the passage of the Medicaid CHIP Program in the 1990s, school districts have increasingly requested reimbursements for district costs of providing related services such as occupational therapy, speech therapy, and health services such as screenings for sight and hearing impairments. Indeed, over the last decade, some firms have developed Medicaid reimbursement models/services which have been purchased and/or otherwise used with a service provider, which have resulted significant revenue streams for these firms.

The AASA survey also found that 68% of districts receiving Medicaid CHIP reimbursements use such funds to pay for salaries of health professionals who provide related services and to expand health-related services. IDEA provisions do not allow IDEA funds to be used to cover the cost of related services, which is one of the reasons why the CHIP legislation was passed over two decades ago. As a result, if Medicaid reimbursements cease, districts will have to pay for salaries and the district costs of such related services using local or state funds. In many cases, districts will seek alternative providers of such services because of the high cost of providing such services by district staff for a limited number of students requiring a related service. Hence, one can expect more students with disabilities requiring related services will be referred to alternative providers, including private schools and/or contractors specializing in certain types of related services.

On one hand, the question of who should bear the cost of contracting for such services -- the district using local or other funds or parents -- will certainly become a growing issue in some districts. However, the

opportunities for independent service providers should increase significantly, which will likely be supported by the DeVos/Trump Administration in its attempt to privatize education. As we reported in our December Special Report, this is one area which the Administration will likely attempt to “tweak” regulations to ensure more related services can be provided by private schools and/or other types of private agencies without them having to meet all of the IDEA conditions (i.e., FAPE) districts have to meet, thus increasing their revenue.

### **Education Week’s New State Testing Landscape Indicates that Most States are Dropping the Federally-Funded PARCC and Smarter Balanced Assessments, and About a Quarter Are Now Using the SAT or ACT as Their Official High School Test**

About 27 states have opted for tests other than PARCC and Smarter Balanced. Other findings include:

- 20 states would administer PARCC or Smarter Balanced in 2016-17; about 9 fewer than two years ago;
- 27 states are using tests they designed or purchased;
- 25 states require the SAT or ACT which is four more than last year, and about 12 use the ACT or SAT for Federal accountability reporting
- 12 states required students to pass a test in order to receive a high school diploma which is two less than last year.

Education Week (February 15<sup>th</sup>) has an interactive breakdown of states 2016-17 testing plans which are reported in the

survey entitled “State Solidarity Still Eroding on Common Core Tests.” The report includes five states the following:

- Tests used for Federal accountability;
- States using PARCC or Smarter Balanced and states using non-consortia tests; and
- States requiring students to pass a test to graduate from high school.

### **In This Congressional Session, GOP Education Committee Staff “Will Have the Power to Call in Government Officials and Others for Depositions Under Oath Behind Closed Doors,” According to Education Week (February 17<sup>th</sup>)**

Under the so-called “Staff Deposition Authority” Majority Committee staff will have much more oversight and investigative authority most likely in those areas in which GOP Congressional members, as well as GOP Majority key committee staff know that the USED is attempting to regulate or otherwise enforce policies which do not reflect the “intent of Congress” in the new ESSA as well as “old” statutes/laws such as IDEA. It is conceivable that where education matters conflicts exist between one agency’s policy versus that of another, they could be the focus of some insight. Given the track record of the Trump Administration during the first month after inauguration, such conflicts have occurred and are particularly likely to continue occurring between USED and other agencies (e.g., DHHS Head Start, Dept. of Justice, etc.), especially if new first tier political appointees at USED have little or no experience in their area and/or wide-scale

ideological differences exist on controversial matters.

As Education Week's Politics K-12 blog (February 17<sup>th</sup>) calculates, "So should we expect a big spike in these sorts of hearings on House Education Committee? Not necessarily." Aside from Congressional oversight issues related to ESSA statutes, one might anticipate some of the topics how such hearings/meetings will focus could include:

- Different answers to questions by districts and/or states by mid-level bureaucrats among USED programs (e.g., Title I) and higher-up political appointees responsible for such programs.
- Differences between Congressional committee staff and USED officials over "Non-Regulatory Guidance," which is not part of the legal framework nor is prohibited by ESSA under the Secretary's discretion.
- Differences between USED program policy guidance and Non-Regulatory Guidance by different programs (e.g., Title I and IDEA) which different Education Subcommittees have a vested interest (special education versus elementary and secondary programs).

Without question, the lack of "guardrails" or general "guideposts" to ensure some degree of uniformity across states will increase Congressional committee staff hearings and meetings under the Staff Deposition Authority, which is already a confusing situation.

## **The New National Center for Education Statistics Reports on PreK-12 Expenditures, Including Those for "Instructional," in the Nation and in Those Top 100 School Districts for FY 2014**

The national median of total expenditures per-pupil across all districts was about \$12,100 in FY 2014, which represents a slight 1.6% increase over FY 2013. The huge statistical report includes tables of revenues from different sources and perhaps more importantly for TechMIS subscribers, includes average per-pupil expenditures and absolute amounts spent on "instructional and related areas" for the top 100 districts, and for the largest two districts in each state. Median per-pupil expenditures for instructional and related instructional purposes increased between 2013 and 2014 by 1.7%. As Sarah Sparks noted in her *Inside School Research* blog (February 17<sup>th</sup>), only half of the states reported high-quality financial data for both charter and non-charter school districts. Of those reporting, charter schools on the average spent 10% less per-pupil than traditional school districts, with most of the "gap" in instruction expenditures (\$6,596 per pupil versus \$4,970 in charter districts).

The entire report is available at: <https://nces.ed.gov/pubsearch/>

### **Miscellaneous (a)**

As reported in the Los Angeles Times, two new legislative bills have been proposed, which would require the state to develop curriculum standards that teach students how to evaluate online news. According to Education Week (January 17<sup>th</sup>), one bill



would require curriculum standards that include “civic online reasoning” so students can differentiate between news that informs and “fake news,” while another related bill calls for a media literacy curriculum framework. The article notes that the need is based upon recent studies conducted by Stanford University, which found teenagers struggle to determine the credibility of what they read online. Several Education Week articles have reported other efforts to address the need for media literacy and actions being taken by a number of media groups to improve “digital leadership.” Several groups such as PBS News Hour now offer lesson plans for media literacy.

In a subsequent article covering an interview with *Newsela* CEO Matthew Gross, whose start-up firm is a “major vehicle for connecting K-12 students to the news,” Benjamin Herold, *Digital Education* blogger concludes, “Clearly there’s a business opportunity here for the company [*Newsela*]. Users can access *Newsela* articles for free, but the related resources and lesson plans come at a cost; meeting teachers’ demands for classroom materials on fake news in media literacy is a way to attract more paying customers.” In the interview, Gross argued that the many developments surrounding the recent primaries and November elections involving various uses of “fake news” have increased the teachers’ demand for such curriculum and materials dramatically, which appears to be a very accurate prediction.

One is reminded that during the 1970s-80s, the Whittle Channel 1 broadcast system proposed and actually implemented with many Michigan district arrangements whereby the company would provide the necessary antennas, hardware, and other

related equipment at no cost to the district if for a limited amount of time before school opened, advertising provided by Whittle, would be allowed in the district. Superintendent John Porter and certain education groups proposed to develop curricula and lesson plans to teach students critical thinking skills by focusing upon the advertisements to identify “fake news.” Afterwards, the movement was significantly reduced or otherwise negatively affected the proposed initiative.

### **Miscellaneous (b)**

Thus far, state action creating/expanding funding and other activities related to virtual charter schools has been limited, as reported by Education Week’s *Charters & Choice* blog (February 17<sup>th</sup>). In light of Secretary DeVos’ statements supporting charter schools generally and specifically virtual charter schools, in states with many rural districts with limited parent choice of school transfers, one might anticipate state activities in this area could increase. Specific Trump/DeVos new policies could include probable elimination or reduction of guidance and regulations for IDEA (see February Special Report). As we have reported, many observers believe that the Secretary’s “bully pulpit” encourages states to expand the number of and funding for charter schools generally may be a means to increase virtual charter school expansion, especially because many of the Secretary’s “discretionary authorities” (which former Secretary Duncan used to create state waivers), are now prohibited under ESSA.

Some of the state developments related to virtual charter schools include:

- Michigan: Governor Rick Snyder’s proposed budget would reduce cyber charter funding to 80% of what they are currently receiving from the state. As Education Week notes, the proposed reduction of approximately \$22 million would reduce online charter school growth in Michigan since the “cap” increased in 2012 the number of charter schools allowed. One justification for limiting funding could be that maintenance and transportation costs are not required by virtual charter schools.
- Ohio: The Ohio legislature is considering a democratic legislative proposal requiring online schools to report the amount of time students participate in online coursework. Republican legislators, according to Education Week, plan to propose legislation to address how these schools are paid. The “bone of contention” is the state auditor’s report that found many students do not graduate, in which case virtual charter schools are receiving about \$80 million more than they should. The policy of student engagement is also being addressed in a bill proposed in neighboring Indiana.
- Kentucky: A new bill would allow the creation of charter schools for the first time in the state, which has detailed plans for virtual charters (i.e., “how they should be regulated beyond brick and mortar charters”). The State Board would have authority to approve virtual charter schools and continued funding would be based upon student performance.

As Education Week notes, three national

public charter school groups have called for stricter regulations being passed by states on virtual charter schools as a result of a number of studies which have found cyber charter schools have had an “overwhelmingly negative impact on students’ academic growth.” It is interesting to note that several state charter school associations, including Massachusetts, have questioned Secretary DeVos’ priority being placed upon cyber charters. The Education Week article also refers to increased lobbying activities by K-12 Incorporated and Connections Education as a result of Education Week’s recent investigative study.

### **Miscellaneous (c)**

California’s Governor proposed 2.1% or \$330 per-student increase could be jeopardized by Federal cuts in Obamacare, which is creating some uncertainties. About one-third of the California total state budget comes from Federal funds, according to the California Budget and Policy Center. About 70 percent of the Federal funding spent through the state budget supports health and human services, including California’s Medicaid and Obamacare programs. Only 7.9% of the total Federal allocation of \$96 billion is for K-12 education. As reported in Ed Source (January 10th), Governor Brown warned that a “recession” could plunge the state into debt and he said that “threats of President-elect Donald Trump and Congress to repeal the Affordable Care Act could jeopardize billions of dollars in Federal Medi-Cal Healthcare subsidies for 3.4 million Californians.” These uncertainties could reduce state funds for education if higher priority Federally-funded areas cut their budgets, which could: a) force the state

to postpone release of the \$7 billion bonds for K-12 school facilities approved in November; b) delay in planned increases in available preschool slots and reimbursement rates for providers; c) and withhold new funds to deal with the state teachers shortage.

In spite of the uncertainties and possible funding cuts, the Director of the States Department of Finance stated in Ed Source that “districts would not have to cut their budgets this year; however, they would just get the amount they expected a month late at the start of next year in July.”

### **Miscellaneous (d)**

A new Fact Sheet Whiteboard report on “DeVos family-supported school choice” in Michigan, and particularly the charter school segment, should interest some TechMIS clients. These include:

- 10% or approximately 150,000 students in Michigan are enrolled in charter schools, which is higher than the national average of about 5%.
- A 2013 study by CREDO concluded that charter school students’ performance increased relatively more than student increases in comparable districts’ schools, but the “performance bar in Michigan is low, compared to many other states and cities.”
- The percentage of charter schools run by for-profit entities is higher in Michigan than any other state (about 70%) and schools associated with for-profit entities produced larger gains than other charter schools.
- Large EMOs, such as National Heritage Academies, CS Partners,

and the Leona Group, collectively operate more than one in four charter campuses; however, “few high-performing multi-state non-profit charter management organizations” such as KIPP have decided to operate in Michigan.

- Over half of the charter school enrollees are minority and are low-income when compared to 18% in Michigan schools.

Overall conspicuous by its absence is the lack of any actual or estimates on the percentage and/or numbers of students with disabilities enrolled in charter schools, either non-profit or for-profit compared to comparable district schools in the state.

### **Miscellaneous (e)**

The new Evidence for ESSA Clearinghouse is designed to help states and districts “use interventions that have been proven to help students learn,” reports Education Week (March 2<sup>nd</sup>). It includes 100 programs that are rated by the criteria specified in ESSA – strong evidence, moderate evidence, and promising evidence – which is similar to those used in the prior i<sup>3</sup> program. According to its director, Dr. Robert Slavin, “the Clearinghouse is designed to help practitioners who want to improve K-12 reading and math performance of students.” Unlike the What Works Clearinghouse created under NCLB, “the evidence for ESSA will be updated more quickly than the What Works Clearinghouse did,” and “if we hear about a new study or program or mistake, we’re going to have it up there in two weeks.” Slavin also noted that the ESSA less rigorous evidence-based criterion

of “promising evidence” (i.e., if at least one well-designed and well-implemented correlational study with statistical controls for selection advice shows it works) will be followed initially, but more rigor can be expected over time. Slavin has a decades-old penchant to promote the use of evidence-based products (which were used to rate his Success for All program). Congress has provided a “welcome ear” for Slavin’s views over the last decade in drafting new legislation.

The article notes that the new Johns Hopkins University Center site was developed in collaboration with key education organizations including AASA, the National PTA, Chiefs for Change, the National Title I Association, the Association of Education Service Agencies, and the National Education Association, and is funded by the Annie E. Casey Foundation. For more information about the new website and procedures for submission, go to: <http://www.evidenceforessa.org/>