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## MEMORANDUM

**DATE:** April 27, 2016  
**TO:** TechMIS Subscribers  
**FROM:** Charles Blaschke and Dr. Suzanne Thouvenelle  
**SUBJ:** Sales Opportunities During Current Transition Period to ESSA; Negotiated Rulemaking for Supplement-Not-Supplant Meeting; Funding Opportunities for Pre-K-12 STEM, College Remediation; and FCC Expansion of Lifeline Program to Reduce Homework Gap

Included in this TechMIS issue are two related Special Reports.

The first Special Report identifies specific opportunities created by NCLB old “flexibilities,” which are not well known, but have been confirmed with USED lawyers that they are still in effect for all districts when state waiver flexibilities run out on August 1<sup>st</sup>. Past resistance by Title I SEA officials to “discourage” or “not allow” districts to take advantage of these “flexibilities” will be reduced significantly as the new ESSA, which goes into effect in September 2017, creates an environment conducive to their acceptance by codifying such old “flexible regulations” in the new ESSA. Potential opportunities exist especially in many districts which are “identified for improvement” under NCLB, especially those which are listed in the March 10<sup>th</sup> TechMIS issue identifying 1,200+ districts receiving increases in Title I funding in July.

The second Special Report identifies specific flexibilities in current NCLB law for use of Title I and other Federal education program formula funds in schoolwide programs; these are included in the new WestEd guide for SEA Title I offices, which currently allows districts opportunities to innovate and provide more comprehensive solutions in schoolwide programs without violating supplement-not-supplant provisions, which SEA officials in the past did not encourage or allow districts to take advantage of.

Our future TechMIS reports will continue to identify new opportunities during the transition period to the new ESSA to give TechMIS clients a competitive early advantage over other firms which are awaiting the development of final ESSA regulations, which will not be until next year

at the earliest.

**If any TechMIS clients have not renewed your TechMIS agreement, which runs out this month, please do so ASAP or call Charles directly (703-362-4689) if problems exist in order to continue receiving TechMIS reports. Many thanks to current subscribers who have renewed.**

Related and other items of special interest are included in the following Washington Updates:

- **Page 1**  
Negotiated Rulemaking Meetings End Without Stakeholder Agreement on Key Supplement-Not-Supplant (SNS) Details Thus Requiring that USED Draft the Proposed Final Version for Public Comment Going Through the Normal Regulatory Development Process; Implications for TechMIS Subscribers Remain Positive at the General Level
- **Page 3**  
USED April 13<sup>th</sup> “Dear Colleague” Letter Identifies Examples on How SEAs, LEAs, and Their Partners Can Use Federal Funds to Support Innovative Pre-K-12 STEM Education Strategies to Ensure Equity During School Year 2016-17 Under Existing NCLB Provisions Affecting Formula Programs; New Provisions in the New ESSA Are Also Referenced
- **Page 4**  
New Achieve Report for the First Time Identifies Actual Student Remediation Rates Using College and Career Readiness Measures Among All States
- **Page 5**  
New Education Commission of the States (ECS) Report Identifies 31 States Which Officially Permit and/or “Allow” Dually Enrolled Students to Take Developmental/Remedial Courses, Which Could Provide Opportunities for Some TechMIS Clients
- **Page 6**  
During the Council of Great City Schools’ Annual Legislative Conference, the Council Estimated the Amount of Funding Which States Would Actually Set Aside for Districts for School Improvement Under Title I
- **Page 7**  
The FCC Expands Federal “Lifeline” Program to Subsidize Internet Service for Low-Income Families, Which Educator Groups Argue Will Reduce the “Homework Gap” in Households With Inadequate or no Internet Access

- **Page 8**

What could Universal Pre-K do to the Achievement Gap?

- **Page 9**

A number of miscellaneous items are also addressed including:

- a) The Center for Disease Control, Autism, and Developmental Disabilities Monitoring Network estimated that the percentage of children identified with Autism Spectrum Disorder (ASD) is about one in 68, or about 1.5 percent of eight-year-olds.
- b) ACT announced in late March that its PreACT will be available in 2016 as a multiple choice test to prepare 10<sup>th</sup> grade students to take the ACT college entrance exam.
- c) The National Conference of State Legislatures (NCSL) “Listing of Number of State Bills Introduced this Year” through March 29<sup>th</sup> indicates priorities thus far in state policies related to K-12 education and include accountability systems and assessments.

**Special Report:**  
**New Guide for SEAs Identifies Opportunities for Districts to Use  
Title I and Other Federal Education Formula Funds  
in Schoolwide Programs During Transition to New ESSA Full  
Implementation in 2017, Without Violating Supplement-Not-Supplant  
Provisions Under Existing ESEA/NCLB Provisions**

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

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*April 27, 2016*

During the April 4<sup>th</sup> Council of Chief State School Officers Legislative Conference, Federal Education Group authors of the WestEd Guide Sheara Krvaric and Melissa Junge briefed SEA leaders on the new ESSA supplement-not-supplant provisions which, as *Politics K-12* noted, “Doesn’t change Title I funding as much as some lawmakers envisioned last year, but it does make a few notable changes to how Federal K-12 spending works.” To introduce or refresh chiefs’ memories of flexibilities under the existing NCLB, which have been codified as stipulated in the WestEd Guide, according to the Education Week blog, these “could ultimately create breathing room for districts to try new approaches with Title I aid and they encouraged state leaders to help districts make creative uses of Title I, and to make sure broader groups of officials are thinking about and overseeing how schools can use Federal funds.”

The new WestEd guide identifies opportunities for SEAs to allow districts to use Title I funds in schoolwide programs without violating supplement-not-supplant provisions under existing NCLB/laws and regulations, which should benefit all districts and many TechMIS subscribers now, and after August 1, when state waivers become null and void during the transition when ESSA full implementation occurs in 2017. The WestEd guide funded by USED should reduce past resistance from many SEA Title I offices to allow districts to take advantage of many of the existing flexibilities under NCLB which are cited extensively, which have now been codified in the new ESSA and will likely be reflected in forthcoming USED regulations for ESSA.

In addition to those flexibilities which we identified in our September 15, 2009 TechMIS report (see related Special Report), schoolwide programs and other opportunities are addressed below.

As we have reported over the last decade, Title I schoolwide programs have been in USED

guidance since 1997 and subsequently in USED regulations regarding the “comingling” of Title I and other Federal funds without the need for detailed reporting and serving both Title I eligible and other at-risk students. However, in spite of USED guidance “encouraging” these and other schoolwide program flexibilities, SEAs, for a variety of reasons, have resisted districts taking advantage of such opportunities. The guide provides examples of activities, which are allowable Title I expenditures along with citations on how “schoolwide schools can spend Title I on activities such as:

- Upgrading the curriculum for the entire school
- Implementing an early warning system
- Extending the school day
- Reorganizing classes to promote personalized learning
- Implementing career academies
- Implementing school safety programs”

Moreover, the guide states, “In a schoolwide school, all students may participate in Title I-funded activities, and schools need not demonstrate that Title I activities are ‘supplemental.’” In a footnote, it states, “Title I’s supplement-not-supplant rule has changed significantly under the new ESSA...ESSA’s approach to Title I supplement-not-supplant should make it easier to support comprehensive programming including school turnaround activities.” The guide lists the three existing tests when supplanting is presumed when Title I funds are used, including:

- Services the district is required to provide under other state, Federal or local laws
- Services the district provided with state or local funds in the prior year
- Same services to Title I that the district provided with state or local funds to non-Title I students

Several exceptions to the three test presumptions of supplanting are:

- Title I funds can support activities mandated by state law “if those mandates were enacted to facilitate the state’s ESEA flexibility plan” (e.g., in order to receive state waiver approval such as teacher evaluations using student test scores)
- Title I-like activities supported by supplemental state funds such as state comp ed funds, which are excluded from the supplement-not-supplant analysis

After citing the above three presumptive test and exceptions, the guide explicitly states, “As schoolwide programs compliance with supplement-not-supplant is tested differently, the three presumptions listed in Q-5A [noted above] do not apply. Instead, a ‘supplemental funds’ test applies, which requires districts to ensure their schoolwide program schools receive all the state and local funds they would receive if they were not Title I schools. In other words, a district may not reduce its allocation of state and local funds/resources to a schoolwide program school because the school receives Title I funds to operate a schoolwide program.” This supplemental funds test is very similar, if not identical, to the new test in ESSA for all not just Title I schoolwide programs.

The WestEd guide for SEAs, which encourages them to allow districts to take advantage of the

flexibility opportunities in current law during the transition period (which all districts will be under after August 1), as well as the new ESSA (beginning in September 2017) can be an important document for sales staff to share with districts when discussing how to use Title I funds to pay for products and services without violating existing supplement-not-supplant provisions, especially in schoolwide programs (which are 70-80% of all Title I schools).

The guide also addresses similar “intents” related to Title II and IDEA, supplement-not-supplant provisions which differ under existing laws, and will likely differ more in some respects under ESSA when applicable to using Title III English Language Acquisition funds. The guide also could be used by districts when approaching SEAs to suggest strategies, which should be considered by SEAs in order to give districts maximum allowable flexibility in the context of other state requirements placed upon LEAs. In addition, the guide suggests ways districts could assist SEAs in developing strategies or providing guidance in areas requiring “qualitative judgement” such as the nature and extent of acceptable “needs assessments” conducted in planning schoolwide programs and what costs are “necessary and reasonable” and how one should go about developing such benchmarks.

WestEd officials with whom we discussed the new guide for SEAs were pleased with the reception the guide has received thus far.

For a copy of the 22-page document, go to:

<http://www.schoolturnaroundsupport.org/resources/using-federal-education-formula-funds>

**Special Report:**  
**USED Office of General Council Confirms that USED Guidance  
September 2, 2009 on Using Title I ARRA/Stimulus Funds Will Be  
in Effect for Districts in 42 States, Which After August 1<sup>st</sup>,  
Will Go Back Under NCLB Regulations Until New ESSA Takes Effect  
in September 2017; This Creates Unique Opportunities for  
Many TechMIS Subscribers by Taking Advantage of  
Old NCLB “Flexibilities” During the Current Transition Period**

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

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During an offline discussion on March 21<sup>st</sup> with Jane Simons, Attorney USED Office of General Council, she confirmed that the September 2, 2009 USED guidance providing flexibility for using Title I ARRA /stimulus and regular Title I funds continues in those districts in the six non-state waiver states and all districts in the 42 state flexibility waiver states after August 1<sup>st</sup> during the transition to full implementation of the new ESSA in September 2017. Many of the relevant flexibilities and encouragements in the September 2, 2009 guidance have been codified in the new ESSA reauthorization, which will/should reduce resistance by SEA officials who have discouraged districts from taking advantage of the guidance because SEA officials at that time felt the 2009 guidance would be null and void when ARRA funds ran out in 2011-12. As a result, many districts did not take advantage of the September 2 guidance flexibilities and the vast majority of districts are not aware that these flexibilities continue to be allowed now for districts that want to get a “jumpstart” on implementing similar, if not identical, provisions in the new ESSA. Making district officials aware of such flexibilities creates opportunities for a unique competitive advantage for TechMIS clients’ marketing and sales staff. Many of the flexibilities in the September 2, 2009 guidance were covered in our September 15, 2009 TechMIS Special Report. Below we have once again pointed out these flexibilities tying them to recent developments, which suggests TechMIS clients with appropriate products and services should take into account when they approach district-level decision makers, particularly relatively new Title I coordinators, who are likely unaware that these “old NCLB flexibilities” are still in effect.

As we reported in our September 15, 2009 TechMIS Special Report, “In many areas, the new guidance emphasizes the need for short-term investments in intensive professional development, attracting effective teachers to Title I schools and conducting pilots to test approaches in Title I that, if successful, may be supported in all schools with other funds in the future.” Virtually all of the flexibilities at that time related to districts which were “identified for improvement;” the majority of districts now in both non-state waiver and state waiver states will once again be eligible in August. Hence, many more districts are eligible to take advantage of these flexibilities than were the case in 2009. Many of the flexibilities relate to supplement-not-supplant, which was addressed directly in the new ESSA provision, which only requires that a district develop and use a methodology for ensuring state and local resources are equally distributed to both Title I and non-Title I schools, and that many of the current “tests” (e.g., required by state law, detailed cost breakdown on supplemental products, etc.) do not have to be met.

As we state in our April 2015 TechMIS Special Report, this would allow any district to purchase for use in Title I a product/service using Title I funds, and if successful, the product/service could be used in non-Title I schools if funds other than Title I are used to purchase it. The ESSA intent is clearly in line with the September 2, 2009 purpose of that guidance for districts identified for improvement. The new ESSA supplement-not-supplant general rule could result in districtwide purchase opportunities for products/services. The example cited in the September 2, 2009 guidance follows, “For example, if an LEA [identified for improvement] offers after-school tutoring for any student, who scores below proficient on the state’s math assessment, paying for Title I students with Title I funds, and non-Title I students with supplemental local funds would not violate supplement-not-supplant requirements because the students in the non-Title I schools by virtue of being non-proficient in math, are failing to meet the state’s mathematic standards and thus would be eligible for Title I services if they attended a Title I school.”

In the area of “increasing investments in intensive professional development,” the September 2, 2009 guidance had a “major new interpretation” which is “the only exception” to the rule that Title I funds cannot be used to provide professional development for non-Title I teachers: “An LEA in improvement status may provide professional development to instructional staff throughout the LEA with Title I Part A ARRA funds it reserves on the top of its Title I Part A allocation provided professional development activities are related to the reasons the LEA is in improvement status.” The types of professional development include online coaching/mentoring platforms, technology applications, which can facilitate such training, and collaboration for all teachers in the LEA, as well as more traditional professional development activities. Our March 10<sup>th</sup> TechMIS Special Report identified districts which will receive preliminary Title I increases of 20% more before SEA adjustments in July; many of these districts will likely feel that the large percentage increase was a one-time “windfall” for a variety of reasons and would like to invest in professional development. If the district has been identified for improvement, it could take advantage of this “old” NCLB Title I flexibility.

The September 2, 2009 guidance emphasized that schoolwide programs do not need to “provide services that supplement and do not supplant the services participating students would otherwise



receive if they were not participating in a Title I program.” It also encourages schoolwide programs to consolidate or “comingle” other Federal funds with Title I, stating that programs would not have to account for funds for each specific program separately. Many states have resisted districts’ requests to implement these flexibilities in schoolwides, largely because of the need for state auditing which calls for detailed accounting of how funding under each “comingled” Federal program is spent. The new ESSA codifies basically the September 2, 2009 guidance, which should now reduce much past resistance from SEA Title I offices or SEA compliance/audit offices, thereby allowing more districts to take advantage of these flexibilities, which not only minimize the threat of supplement-not-supplant violation, but also allows more at-risk students in schoolwide programs to be served along with Title I eligible students (see related Special Report on schoolwide programs).

Largely because of the increased Title I ARRA stimulus funding in 2009 of \$10 billion over two years for Title I, the September 2<sup>nd</sup> guidance encouraged districts to take funds “off the top” to be used to support Title I and other Federal programs (e.g., School Improvement Grants) including activities such as professional development for lowest-performing schools and/or to operate preschool programs. This provision encouraged more district-level centralized decision-making on how Title I funds are allocated and spent, which should be taken into account when firms approach districts which are receiving increased Title I funding such as the 1,200 districts in the March 10<sup>th</sup> TechMIS Special Report.

The new ESSA strongly encourages the use of Response to Intervention (RTI) or Multi-Tier Systems of Support (MTSS) in Federally-funded programs, including Title I and IDEA. The September 2, 2009 guidance confirmed that Title I ARRA funds could support implementation of an RTI model “to help schools identify students who are at risk of poor learning outcomes, monitor student progress, provide evidence-based interventions, and adjust the intensity and nature of these interventions, depending upon the students’ responsiveness.” In a recent discussion with key staff directly involved in drafting the new ESSA supplement-not-supplant provision, it became clear that the intent of Congress is that the district only has to prove that the methodology of distributing state and local funds is equitable, as stated above, and that requirements “required by state law” test would no longer be relevant in determining whether supplement-not-supplant violations occurred. Specifically, when asked, the USED Office of General Council Attorney agreed that if a state once again “requires” the use of RTI that such a requirement no longer poses an “audit exception” threat to a district if it used Title I funds, especially in a Title I schoolwide program, to purchase and use RTI products and/or training/services.

One other provision in the September 2, 2009 guidance would appear to be very relevant for “identified” districts receiving preliminary increases in Title I funds before SEA adjustments when such increases would be considered “windfalls.” We noted in our September 15, 2009 report: “In Section B-12, the guidance clarifies that equipment and supplies an LEA purchases with Title I ARRA funds can remain in the school served even if the school no longer operates as a Title I school after ARRA funds are exhausted. However, Title I funds cannot be used solely to purchase equipment (G-12).” If a district plans to expand the grade level served in an existing

Title I school using increased “windfall” Title I funding or wishes to expand the Title I program to an additional school, these provisions (identified above) would allow them to do so with the intent of leaving such materials, some equipment, and professional development “investments” in that school, if and when, the school no longer was able to continue its Title I program.

In addition to the above, the September 2, 2009 guidance also provided other examples of how such Title I funds could be used. We will send this September 15, 2009 TechMIS Special Report, if requested.

If anyone has any questions, call Charles Blaschke directly (703-362-4689).

# ***Washington Update***

***Vol. 21, No. 4, April 27, 2016***

## **Negotiated Rulemaking Meetings End Without Stakeholder Agreement on Key Supplement-Not-Supplant (SNS) Details Thus Requiring that USED Draft the Proposed Final Version for Public Comment Going Through the Normal Regulatory Development Process; Implications for TechMIS Subscribers Remain Positive at the General Level**

After eight days of meetings, the 20 plus members of the “negotiated rulemaking” stakeholder team failed to agree on the key issues in USED proposed supplement-not-supplant draft regulations which was based upon USED’s interpretations of Congressional intent of key statutory provisions in the new ESSA. As we have previously reported, the ESSA statute requires that districts only have to develop a methodology which ensures that both Title I and non-Title I schools receive equal amounts of state and local resources and that Title I funds are not used to supplant state and local funds. The bone of contention boils down to whether actual dollars (e.g. actual teachers’ salaries) or average expenditures (e.g., teachers at the same pay scales, not actual salaries or average teacher salaries in the calculation are used. In the draft, USED proposed that actual costs and salaries be used while Chairman Alexander argued this was not the intent, reflecting positions taken by district administrators and SEA members of the negotiating team. At a general level, this issue does not affect the potential increased flexibility provided to many TechMIS subscribers to a number of

areas such as allowing Title I to pilot test a product and if it is successful it can be purchased by the entire district (using non-Title I funds) without violating SNS. Also, the “required by state law” test impeding Title I “paid-for” RTI approaches in states requiring RTI would be dropped. And other examples are included in the enclosed TechMIS Special Reports. However, if the USED position reflected in its draft regulations were adopted, it is more likely that more state and local funds would be allocated to Title I schools than currently and under ESSA districts continue to be required to ensure only “comparable” amounts of state and local resources are allocated to the two types of schools.

Some of the arguments made by Chairman Alexander during hearings with Secretary King on the initial draft SNS regulations and the types of oversight actions which Congress would take if USED regulations did not reflect the intent of Congress are described below.

Arguing that the USED-proposed draft regulation for implementing supplement-not-supplant provision would “force districts to include teacher salaries in how they measure their state and local spending and require that state and local spending in Title I schools be at least equal to the average spent in non-Title I schools,” the former Secretary of Education Senator Alexander said that the proposed rule had several consequences, most of which violate congressional intent, including:

- it would require a “completely costly

overhaul of almost all of the state and local finance systems in the country”;

- “require forcing teachers to transfer to new schools”;
- require states and districts to move back to the burdensome practice of detailing every individual cost on which they spend money to provide a basic education program to all students “which is exactly what we are trying to free states and districts from under this law”;
- ...According to the Council of Great City Schools, he noted it would cost \$3.9 billion just for their 69 districts to equalize expenditures between Title I and non-Title I schools.

In addition, Alexander argued that the USED proposed supplement-not-supplant provision prohibits the Secretary from doing what USED proposed and in Section 1605 ESSA says, “Nothing in this Title shall be construed to mandate equalized spending per-pupil for a state, local education agency, or school.”

As reported in *Fritzwire*, during the hearing with Secretary King, Senate Committee Chairman Lamar Alexander used his bully pulpit arguing that the draft USED supplement-not-supplant regulations in no way reflected the congressional intent as written, but also violated specific provisions prohibiting the Secretary of Education for regulating the law in such a way that contradicted congressional intent, and, specifically, “effectively regulating things that Congress prohibited the department from doing. He was clear he plans to do everything he can to stop King from overstepping his bounds as the regulating

process moves forward.”

In addition to the “bully pulpit,” Chairman Alexander also mentioned three “levers” to use if the Secretary does not change his course, “One way is using the Congressional Review Act, an obscure rarely used law that allows congress to overturn a final rule issued by an Administration. Second, he could use the appropriation process to defund implementation efforts and third, states could spur action.” As an example, he stated, “A state submits a plan that the Department refuses to approve; the state can ask for a hearing, or it can sue in court and say the law says something different.”

As reported in USA TODAY, the Chairman Lamar Alexander, also charged the department with trying to implement new regulations that would require “equal,” not “comparable” spending per-pupil. He accused the department of trying to dictate the methodology that local districts must use when calculating whether funding between schools is “comparable” – a move he said is not allowed under the law.” During the recent Council of Great City Schools Annual Legislative Conference, a key GOP House Committee staff person also strongly emphasized that the new “supplement-not-supplant” provision is not designed to change the current “comparability” provision (which has been in effect since 1970) by requiring “equal” amounts of funding rather than “comparable” amounts of state and local funds being equitably allocated to both types of schools.

The bottom line for TechMIS clients is the flexibilities in the new Law creating new opportunities for them will very likely remain and create an environment during the transition period conducive to increased

opportunities as detailed in the two Special Reports in this TechMIS issue.

**USED April 13<sup>th</sup> “Dear Colleague” Letter Identifies Examples on How SEAs, LEAs, and Their Partners Can Use Federal Funds to Support Innovative Pre-K-12 STEM Education Strategies to Ensure Equity During School Year 2016-17 Under Existing NCLB Provisions Affecting Formula Programs; New Provisions in the New ESSA Are Also Referenced**

The Dear Colleague Letter and its lists of examples on implementing a five-year STEM Education Strategic Plan are designed to assist in the transition period to ESSA “which explicitly mentions STEM.” The letter includes examples of how funds from Title I, Title II, Title III, Title IV, IDEA, and Perkins Career and Technical Education Act can improve instruction and outcomes in STEM fields. As a footnote explains: “In general, during the ESSA transition period, FY 2016 formula grant funds will be awarded under existing ESEA provisions during 2016-17.”

The letter specifically states, “For example, an SEA or LEA might use Title I funds to purchase STEM materials, devices, or STEM-focused digital learning resources, Title II funds to train educators on new STEM concepts and approaches – Perkins funds to develop comprehensive STEM pathway programs...under Title IV Part B, an SEA may continue to provide students at 21<sup>st</sup> Century Community Learning Center (CCLC) programs sites with the opportunity to engage in authentic STEM content that aligns to their school day and a focus on hands-on STEM experiences.”

To increase access to rigorous STEM coursework, several examples include:

- use Federal funds to support STEM coursework in Title I schoolwide programs consistent with the schoolwide program comprehensive needs assessment;
- use IDEA funds to make regular education STEM instruction more accessible for students with disabilities who may require accommodations;
- use 21<sup>st</sup> CCLC grants to provide high-quality STEM activities in out-of-school learning settings; and
- fund field trips in schoolwide programs to allow students access to real world hands-on STEM experiences, activities, and applications.

In the area of increasing student access to materials and equipment needed to “support inquiry-based, pedagogy-enacted learning,” different Federal funds can be used for the following activities:

- purchase of devices for students to access materials in general instruction and to collaborate with peers and educators to support learning;
- provide students in schoolwide programs with mobile learning devices to support STEM learning and provide funds under IDEA to purchase assistive technology devices for students with disabilities;
- use Title I funds in schoolwide programs to update STEM labs, specialized learning spaces, and to support inquiry-based STEM or “maker” activities to upgrade schoolwide program plans and

- programs; and
- use of Title III funds to improve instruction or provide access to English learners to STEM content and materials.

In all of the above areas, Title II and other Federal funding sources can be used to provide professional development and means of collaboration between educators, STEM professionals, and others; and use of Title II Part B Math Science Partnership funds to purchase software and devices to create and provide digital and professional learning communities with scientists and engineering.

Detailed references to provisions allowing the use of specific Federal funds to support the above and other activities related to STEM improvement and outcomes are available at: [www.ed.gov/](http://www.ed.gov/)

### **New Achieve Report for the First Time Identifies Actual Student Remediation Rates Using College and Career Readiness Measures Among All States**

In its Annual Report “The College and Career Readiness of U.S. High School Graduates,” Achieve looked at postsecondary indicators, including remediation rates, along with high school graduates’ enrollments and persistence at two- and four-year colleges. As it concludes, “For the most part it shows that too few high school graduates are prepared to succeed in postsecondary education, the military, and careers.” The survey also found that states differ in definitions of remediation and persistence.

The indicator of postsecondary remediation included in the report is the percentage of students who “upon entrance to a postsecondary institution are placed into or enrolled in a remedial course in English and/or mathematics or require any remediation at all.” The percent remediation indicator includes both the students who graduate from high school in the state and enrolled in the state’s postsecondary institutions, and also includes students who graduated from high school in another state and then enrolled in the postsecondary institution within the state from which data are being collected. As the report notes, the “differences in remediation rates among states may also be significantly affected by the standards used by institutions for placing students in credit-bearing versus remedial courses.”

At a general level, the percentages of students taking remediation math, English, and/or “any remediation” courses indicate the potential demand for remedial courses in the states’ two- and/or four-year institutions; in general, the percentages appear to be highest across the states for students needing remediation when they are enrolled in two-year colleges; and the percentages appear to be highest when “any remediation” is provided not just math and/or English remediation. For example, in Connecticut, using 2011-12 actual performance data the percentages for math remediation in two-year colleges was 55 percent and 50 percent requiring English remediation, with 70 percent requiring any type of remediation. As a footnote states, “The data do not specify how many of the states’ high school graduates required remediation,” which suggests that many of those students needing remediation graduated from high schools in other states. In California, using 2014-15

actual student performance data, the remediation rates in four-year colleges was 27 percent for math and 30 percent for English remediation. And, in Texas, using 2013-14 data, the math remediation rate in two- and four-year colleges combined was 18 percent compared to 17 percent in English remediation.

As a reality check, a new report from the Education Trust argues that only eight percent of U.S. high school graduates complete a curriculum “that prepares them well for college and the workplace,” as reported by Education Week. The Education Trust used data from the 2009 High School Longitudinal Study that tracks ninth-grade students through graduation in 2013. For example, only 31 percent completed four years of English, three years of math, science, and social studies, and two years of foreign language, and 13 percent completed three-year courses focusing on a career field; while eight percent completed both of the sets, about 50 percent completed “no cohesive curriculum,” according to Education Trust. It also reported that 81 percent did not take enough science courses, and a third did not take algebra 2.

The 18-page report is available at: <http://www.achieve.org/state-profiles> The earlier Achieve report provided a snapshot of student performance across a number of indicators of college and career readiness and is also available at the Achieve website.

## **New Education Commission of the States (ECS) Report Identifies 31 States Which Officially Permit and/or “Allow” Dually Enrolled Students to Take Developmental/Remedial Courses, Which Could Provide Opportunities for Some TechMIS Clients**

The ECS update on its dual enrollment policies report across the states identifies nine states which permit dually enrolled students to take developmental/remedial courses, and an additional 16 states plus the District of Columbia where state policy is silent on whether dual enrollments enrolled in such coursework is allowed. In these cases, agreements between high schools/districts and postsecondary institutions may permit student participation in developmental and other such courses. In six additional states, students may participate in supplemental remedial coursework while being enrolled in another dual enrollment program under certain conditions.

The nine states in which state policy permits dually enrolled students to take remedial courses include: Arkansas, California, Colorado, Massachusetts, Nevada, North Carolina, Oregon, Tennessee, and Texas. The state policies for each state are included in the ECS updated database which describes certain conditions and requirements. In California, under the College and Career Access Pathways Partnership, the agreement with the district requires that any remedial course taught by community college faculty is offered only to high school students who do not meet grade level standards in English or math on an interim assessment in grade 10 or 11. The high school and community college faculty

must collaborate to deliver an “innovative remedial course in the student’s junior or senior year to ensure the student is prepared for college-level work upon graduation.” In Massachusetts, the Dual Enrollment Partnership courses are credit bearing and can include tutorials and co-requisite support which can be provided in the Dual Enrollment Partnership courses. In Nevada, a dual enrollment college readiness remedial program requires a registration fee covering the cost of the program, salary, supplies, and equipment and appropriate overhead. The remedial dual enrollment program in Tennessee generally relates to college use of applied technology and is targeted to high school students who need remediation in technical math and reading. In Texas, each of the 1,000+ school districts must partner with at least one institution of higher education “to develop and provide twelfth-grade courses and college preparatory math and English/language arts. A course may be offered for dual credit at the institute of higher education’s discretion. However, public colleges may not offer remedial and developmental courses for dual credit.”

The primary audience for the new updated ECS report on dual enrollment generally is states considering new or revised legislation on policies affecting dual enrollment expansion. One of the recommendations regarding inclusion of developmental remedial coursework for dual enrollment credit is that state and local partners should “ensure developmental interventions are targeted to areas of student need and aligned with research and best practices.” Over the last year, TechMIS Washington Updates have highlighted some of the models and promising practices which groups, such as Columbia University, have identified as being effective in providing

remedial/developmental support, mostly at the college level when enrolling freshmen are identified as needing remediation in math and other areas. The updated ECS report also identifies the types of funding mechanisms used by states and districts to support dual enrollment generally and remedial developmental coursework in dual enrollment settings. One of the takeaways in the report states, “Many states removing the tuition burden from the dually enrolled students see larger proportions of minority and low-income students participating in dual enrollment programs.” As we and others predicted several years ago, as the number of students identified as “proficient” on the new Common Core-aligned state summative assessments have dropped significantly, the demand for college preparation remedial courses, particularly at the high school level, should increase dramatically, which appears to be happening.

To review the ECS dual enrollment state database, go to: [www.ECS.org](http://www.ECS.org)

### **During the Council of Great City Schools’ Annual Legislative Conference, the Council Estimated the Amount of Funding Which States Would Actually Set Aside for Districts for School Improvement Under Title I**

Regarding the calculation of the 4% set-aside in the FY 2016 budget for school year 2016-17, the Council states, “This does not involve simply taking 4% from each of the districts’ Title I allocation, but rather is a 4% average amount based on the total of all LEA allocations. There is a hold harmless provision in place for FY 2016...As a result, districts with increases in Title I funding



over the previous year may see more than the 4% of their total allocation and a larger part of their increase contribute to the state's 4% set-aside." To come up with the possible amount that districts that have increased funding would have after the 4% set-aside, taking into account hold harmless, would still have, the Council estimated for their members the amount left over in their increase. The Council provided estimates for several as examples.

In Baltimore City Public Schools, which gained \$5.6 million in preliminary Title I allocations with 21 of the total 24 districts also receiving gains, it estimated that the 21 districts receiving increases in Maryland will have their increases reduced only slightly. Or in the case of Albuquerque, New Mexico, which estimated to lose \$2.2 million in preliminary Title I funding, most districts in the state also lost funding, but 20 districts had slight increases. However, because the 4% state set-aside is larger than the total amount of LEA increases of \$2.8 million, all of the increases in the 20 districts will be taken away to maximize their allowable 4% set-aside.

This information provided by the Council of Great City Schools could be taken into account by TechMIS clients in deciding what districts to target in our March 10<sup>th</sup> Special Report of Title I district preliminary increases before SEA adjustments; and in subsequent discussions with such districts in exploring how the districts will be spending the remaining portions of their increases, if any, in their preliminary Title I allocations.

## **The FCC Expands Federal "Lifeline" Program to Subsidize Internet Service for Low-Income Families, Which Educator Groups Argue Will Reduce the "Homework Gap" in Households With Inadequate or no Internet Access**

The 3:2 party line FCC vote will provide eligible low-income families a \$9.25 per-month subsidy for Internet and bundled packages in addition to current telephone service subsidies. The order would set an annual budget of \$2.25 billion, up from the previous \$1.75 billion limits, but according to Education Week's Digital Education blog (March 31<sup>st</sup>), "will contain no real lever for enforcing that spending limit. If disbursements through the program should reach 90 percent of that figure in any given year, the commission would be required to prepare a report and have the option of taking action." The two GOP members which voted no said the "limit" was a "joke not a budget."

The American Library Association, which has supported the expanded Lifeline program and Democratic FCC Commissioner Jessica Rosenworcel have been major proponents of efforts to close the "homework gap." She has also called for additional strategies to close the homework gap by reserving more "slices of the broadcast spectrum for mobile broadband," and "identifying and supporting innovative local programs that promote broadband access," according to Education Week (March 16<sup>th</sup>).

The FCC also approved the creation of an independent third party to determine participants' eligibility. The participating household eligibility for the subsidies, is

currently determined by providers. As reported by Education Week, FCC Chairman stated, “The fox is no longer guarding the henhouse.” Since the implementation of the new E-Rate Modernization Initiative, which began last year and will be fully implemented this year, a provision allows E-Rate refunds be sent directly to districts whose appeals have been found to be meritorious or otherwise paid a pre-discount price for E-Rate eligible products directly rather than sending reimbursement of refunds first to providers.

### **What could Universal Pre-K do to the Achievement Gap?**

A [new report](#) explores this question. In its latest report the Center for American Progress with researchers at the National Institute for Early Education Research (NIEER) looks at the possibilities that a high-quality, nationwide pre-K program for four-year-olds would have on the country’s youngest learners. The report begins with the current state of affairs for preschoolers and documents the persistent gaps that continue to follow low-performing children into later grades, and then in life.

Hispanic and African American children, on average, enter kindergarten anywhere from 9 to 10 months behind in math and 7 to 12 months behind in reading compared to their white peers. We also know that those kindergarten gaps are difficult to make up and, therefore, [often persist](#) into later grades (Nores and Barnett, 2014). These children, mostly of color are in the lowest quintile of family income and begin kindergarten with academic skills about [twenty months behind](#) those of children in the top quintile. High-quality pre-K programs have been proven to

reduce these achievement gaps at kindergarten entry and even lead to long-term life benefits for children.

So what’s the problem? Although enrollment in Pre-K has increased over the past decade, access remains variable, and in particular, for children from low income homes and neighborhoods. Nationally, less than one-third of four-year-olds are enrolled in state-funded preschool programs. So the actual number of Pre-K slots available is limited, but also the quality of the early care programs is also variable.

The NIEER researchers found that high-quality universal pre-K would significantly narrow or virtually close achievement gaps in math and reading at kindergarten entry for African American, Hispanic, and low-income children. For African American children the achievement gap with their white peers would decrease by 45 percent in math and 98 percent in reading. For Hispanic children the results would be equally striking: a 78 percent reduction in the math achievement gap and a complete elimination of the gap in reading. Finally, the achievement gap between low- and high-income students would be decreased by 27 percent in math and 41 percent in reading.

The summary of the report findings produced by the Center for American Progress argues that access to high-quality pre-K remains quite low and highly unequal due to two problems: access rates for African-American, Hispanic and low-income children to center-based early childhood education compared to white and more affluent peers is low and the quality of early education programs attended by “low-income children of color is not high enough

to substantially improve academic readiness.”

It is important to note that the Center for American Progress is closely associated with the previous Clinton Administration and the now presidential candidate, Hilary Clinton, who during her early years worked with the Children’s Defense Fund, which served important watchdog functions over the early implementation of Title I and other early childhood ESEA programs.

Read the full report from the Center for American Progress  
<https://cdn.americanprogress.org/wp-content/uploads/2016/04/01115656/NIEER-AchievementGaps-report.pdf>

### **Miscellaneous (a)**

The Center for Disease Control, Autism, and Developmental Disabilities Monitoring Network estimated that the percentage of children identified with Autism Spectrum Disorder (ASD) is about one in 68, or about 1.5 percent of eight-year-olds. The rate has basically stayed the same between 2010 and 2012. It also found “black and Hispanic children are less likely to be identified with ASD. Those who are identified with ASD receive comprehensive developmental evaluations later than white children.” However, the overall rate has increased since 2007, when the CDC first reported the incidence rate was one in 150 students.

The most recent CDC report also estimated the total economic cost per year for individuals from birth through age 17 was \$11.5 billion to \$60.9 billion, taking into account total costs including the amount of

parent time lost from gainful employment and other opportunity costs.

As Education Week (April 4<sup>th</sup>) reports, rates vary widely among groups and communities. For example, in parts of South Carolina, one in 81 children were diagnosed with autism compared to one in 41 in areas of New Jersey. As the article notes, where CDC researchers had access only to health records, these areas showed a much lower rate of autism than did areas where the CDC researchers had access to more complete records, “suggesting that schools play an important role in diagnosing children with autism spectrum disorder and getting them treatment.” Where school and health records were available, the rate was 1.7 percent, compared to where health records were only available for review, the rate was 1.1 percent. This suggests that where districts’ special education offices conducted evaluations and provided treatments, ASD prevalence was much greater. It is interesting to note that three years ago at the annual Title I National Conference, approximately 25 percent of exhibitors had signage at their booths which promoted their products/services as being appropriate for students identified as having ASD.

### **Miscellaneous (b)**

ACT announced in late March that its PreACT will be available in 2016 as a multiple choice test to prepare 10<sup>th</sup> grade students to take the ACT college entrance exam. The new practice test focuses on English/language arts, math, reading, and science with the option for a student to take the writing section similar to the ACT college entrance exam. The practice test

will cost \$12 per student, as reported by Education Week (March 22<sup>nd</sup>). In an interview with Paul Weeks, ACT's Senior Vice President, he said the PreACT was intended to be a competitor PSAT sold by College Board. Weeks reportedly said that PreACT was also designed to let students practice for the ACT, predict early scores, indicate weaknesses, and produce results quickly.

In January, ACT announced that the Explore and Plan test, typically given in grades eight or nine and tenth grade respectively, would be replaced. At the same time, it announced its summative tests for grades three through ten called the ACT Aspire, which according to Education Week, "was intended to capture a big chunk of the Common Core testing market, which is now used in 900 individual schools or districts." The recently-announced practice tests initiatives by both ACT and College Board are important, as states are increasingly adopting the ACT and SAT tests as their high school exams for Federal accountability. Education Week also has published the EdWeek's chart of states 2015-16 testing plans, based upon its 50-state survey, which include states requiring all students to take the SAT or ACT and which states are using these college entry exams for Federal accountability purposes. The chart of states is available in Education Week's *High School and Beyond* blog (March 25<sup>th</sup>): [http://blogs.edweek.org/edweek/high\\_school\\_and\\_beyond/2016/03/state\\_testing\\_edweek\\_interactive\\_breakdown\\_of\\_2015-16\\_plans.html](http://blogs.edweek.org/edweek/high_school_and_beyond/2016/03/state_testing_edweek_interactive_breakdown_of_2015-16_plans.html)

## Miscellaneous (c)

The National Conference of State Legislatures (NCSL) "Listing of Number of State Bills Introduced this Year" through March 29<sup>th</sup> indicates priorities thus far in state policies related to K-12 education and include accountability systems and assessments. Over 150 bills related to accountability systems, which ESSA delegates most responsibilities from the Federal to the state level, have been introduced with slightly over 100 bills related to assessments having been introduced by March 29. However, as Education Week's *Politics K-12* blog (March 28<sup>th</sup>) notes, the number of proposed bills on the two topics in 2015 were slightly more in both categories. The number of bills introduced thus far relating to charter schools, choice, computer science, career and technical education, and early childhood education, which are priorities in the Administration's proposed FY 2017 budget, have been proposed by state legislatures less than ten times across the country. While a number of the state legislatures are still in session, the deadline for introducing bills in the majority of the states is passed. However, for state legislatures to seriously take into account ESSA provisions for which the effective date of implementation is September 2017, state legislatures may still introduce bills which take into account ESSA provisions that have implications for them.

Beginning about two years ago, we mentioned one of the areas for which implications could be serious related to subsequent laws that were passed by state legislatures to comply with or otherwise meet conditions in order to receive approval for state waivers in about 40 states and/or to

receive Federal grants such as Race to the Top prior to that time. In some of these cases, by states having to pass state laws in order to receive such funds (e.g., teacher evaluations taking into account student test scores), these laws could create problems when state waivers, for example, became no longer in effect during the transition to ESSA. In a nutshell, these state activities required by state laws to have received state flexibility waiver approval would conflict with existing supplement-not-supplant tests related to the “required by state law” presumption. As we note in a related update addressing supplement-not-supplant (SNS) provisions, USED recently published regulations/guidance which would exclude such state laws passed in order to receive state waiver approval two and three years ago. Hence, the need for state legislatures to rescind such state laws would not be required in order to allow, for example, Title I to continue paying for such services after

August 1. Moreover, as we recently confirmed in the related interviews with a Committee staff person who drafted the new supplement-not-supplant requirements and a USED attorney in the Office of General Council, the “required by state law” rebuttal tests would no longer apply under ESSA in determining whether Federal funds such as Title I could pay for activities required by state law. As a result of that potential hurdle, the SNS problem should be minimized.

It is important to note that over 100 bills have been introduced in 2016 according to NCSL listing related to “Education Policies,” which most likely included some retraction or rescinding of certain bills state legislatures passed in order to meet Federal conditions for grants and flexibility waiver approval over the last several years.