

# **New General Provisions In ESEA Will Impact Title I and Other Separate Titles Providing Vendors With Both Opportunities and Challenges**

*A Technology Monitoring and Information Service (TechMIS)  
SPECIAL REPORT*

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Several general new provisions could have a major impact on Title I and other ESEA Titles and, in the end, could create both challenges and opportunities for vendors of technology-based solutions. We highlight these provisions below and conclude this report with several potential implications for TechMIS subscribers.

## **A. ACCOUNTABILITY AND ASSESSMENTS**

The new Law requires states to implement accountability systems which cover, not only Title I students, but all students. By 2005-06, all students in grades 3-8 will be required to take annual assessments in mathematics and reading/language arts using state achievement assessment instruments. Within twelve years, all students must reach state-defined “proficiency levels.” Assessment results and other state-selected measures must be reported by individual students and subgroups (i.e., poverty, ethnicity, disability, and English proficiency). Schools which fail to meet the Adequate Yearly Progress (AYP) criteria determined by states, will be subject to “improvement,” “corrective action,” or “restructuring.” In such schools, parents will have the opportunity to have their children use alternative service providers (e.g., private tutoring) at the districts’ expense.

Under previous law, states were supposed to have submitted their accountability and assessment plans -- which included student “performance” standards -- for USED approval by September 2000. Fewer than 20 states, as of January 2002, had their plans approved by USED. However, by mid-

April 2002, all remaining states must be in compliance with the previous legislation. If not, USED is supposed to cut the SEA Title I set-aside by 25 percent! The new “academic” standards must:

- apply to all public school students in the state;
- focus on mathematics, reading/language arts, and -- by 2005 -- science;
- specify what students are expected to understand and be able to do;
- contain rigorous and coherent content and encourage development of advanced skills;
- be aligned with state content standards and state assessments;
- have at least “advanced,” “proficient,” and “basic” levels.

The new Law requires states to implement yearly student academic assessments -- which must be aligned with content and student achievement standards and must also be valid and reliable -- in three phases:

- Between July 1, 2002, through the school year 2004-05, yearly assessments must be given one time each during the 3-5, 6-9, and 10-12 grade spans.
- Beginning 2005-06, state assessments must be given yearly to all students in reading and mathematics in grades 3-8 and one time in grades 10-12; the NAEP will be taken by samples of students in grades 4 and 9 biannually.
- Beginning no later than school year 2007-08, assessments must be administered in science at one time in each of the above three grade spans.

Under the new Law, state assessments must:

- use most current measures of academic achievement including those relating to higher order thinking skills;
- be given to all students while providing “reasonable accommodations” for students with disabilities and those with limited English proficiency;
- be provided in English for LEP students who have been enrolled in public schools for three consecutive years, unless a two-year waiver is provided.

Assessment results must be disaggregated at the state, LEA, and school levels by gender, ethnicity, English-proficiency status, migrant status, special education status, and economic status. Proposed regulations state that: “States must produce individual student interpretative, descriptive, and diagnostic reports and itemized score analyses that allow parents, teachers, and principals to understand and address the specific academic needs of students relative to their achievement against state standards.” The timeline for states to meet this specific requirement is unclear.

Adequate Yearly Progress (AYP) definitions and criteria are to be used to determine whether a school is designated as “needing improvement,” under “corrective action,” or under “restructuring.” Previously, AYP applied only to Title I schools; however, under the new Law it applies to all students in determining whether a state is narrowing achievement gaps. In addition to being statistically valid and reliable, the state’s definition must include measurable objectives for determining whether continued improvement in student achievement is occurring. The state’s definition of AYP must include graduation rates for secondary schools and at least one other academic indicator for elementary schools. Assessment data for 2001-2002 school year is to be used to determine baseline in terms of the percentage of students which meet each state’s proficiency level. While all sub-groups of students must meet the state’s proficiency level in at least 12 years, intermediate goals must be measured at least once in the first two years; states are allowed the use of averaging over time or grade spans.

The new Law requires set-aside increases from .5 percent to 2 percent of the state Title I allocation to provide resources and technical assistance for low-performing schools. Schools which have not met AYP for two consecutive years will immediately receive technical assistance the third year and have to develop a two-year plan for improvement. During the third year, low-performing schools would be eligible to receive school improvement set-aside funds. Districts of such schools must provide children with transportation to a public school of choice selected by parents. For schools not making AYP for three consecutive years, the district must also provide “supplemental services” from a provider of choice using five percent of the district’s Title I funds and the ten percent set-aside for “supplemental services.” If a school fails AYP for four consecutive years, “corrective” action such as replacing staff or implementing a new curriculum, while continuing the above choice and

supplemental options, may be provided. “Restructuring” could occur after five consecutive low-performing years; this could include hiring a private management contractor or making the school a charter school. If a school under current Title I has failed to meet AYP for three consecutive years, as of September 2002, it will be required to provide supplemental services as noted above, and schools under corrective action could be required to implement a new curriculum this coming September.

## **B. PROGRAM EFFECTIVENESS AND RESEARCH-BASED APPROACHES**

Included in all major new ESEA Titles are provisions that ESEA funds are to be used to design or purchase products and approaches which are research-based and have proven to be effective in increasing academic achievement. Under Title I/Reading First, the approaches that are designed or used must be based upon scientifically-based research; instructional approaches that are used to provide Title I supplemental services must be of high quality and also be research-based. Under Title IV/Drug Free and 21<sup>st</sup> Century Community Learning Centers, such approaches must meet the “principles of effectiveness” and, under Title I/Comprehensive School Reform, not only would model approaches have to be based on reliable research and proven practices, but comprehensive school providers must be financially stable and must have the capacity to provide quality technical assistance over a three-year reform period. For those schools which must provide alternative “supplemental services,” the SEA must develop a list from which districts can select “effective” providers of supplemental services.

## **C. TEACHER QUALITY**

Also, throughout the various Titles, activities related to teacher quality are interspersed, beyond the new Title II Part A block grant for “teacher and principal quality, training and recruiting.” Overall, by school year 2005-2006, all teachers must be “highly qualified,” meaning they must be state-certified or have four-year college degrees. Title I targeted schools in various stages of “improvement” must spend ten percent of their funds the first year for professional development. A large portion of state set-asides under Reading First may be used for professional development. However, while there is overall much more funding for professional development than in previous years, the funds can be used in a more flexible manner by districts, including activities such as

paying incentives to individuals to teach in high-poverty schools. Aides who are funded under ESEA programs must also have higher experience and education qualifications.

#### **D. FLEXIBILITY**

The reauthorized ESEA provides greater flexibility to SEAs and LEAs in their use of ESEA funds. It allows SEAs and LEAs the flexibility to transfer funds among five major components under Title II (Teachers, Technology), Title IV (Safe and Drug Free, 21<sup>st</sup> CCLC) and Title V (Innovative Programs), and to Title I, but not from Title I. It provides additional flexibility for small rural LEAs in the use of Federal funds.

##### **1. State Transferability**

A state can transfer up to 50 percent of the funds it receives for state administration and state-level activities or set asides among the above five programs, plus state funds reserved under the Governor's program (e.g., Title IV Drug Free and 21<sup>st</sup> Century Community Learning Centers). Under the new provisions, to transfer funds, a state must notify USED 30 days before the proposed transfer, modify the state plans affected, and provide USED with a copy of the modified plans within 30 days. The state set-asides range from about 3 percent to 15 percent in the four programs which would be affected.

##### **2. Local District Flexibility or Transferability Authority**

Under the prior law, districts could transfer up to five percent of program funds to another Federal education program under the "unneeded funds" provision, if their SEAs approved such a transfer. Many districts did not take advantage of this provision; GAO found that almost half of the SEAs opposed this transferability provision due to a pervasive "audit mentality" at the state level. As with state authority, up to 50 percent of the funds among any of the above four programs could be transferred into, but not out of, local Title I programs. During hearings and in several conference reports and meetings, Republican leadership indicated that funds could be transferred to other ESEA programs but not to special education programs (see April 2001 TechMIS Special Report). However, in schoolwide programs, Title I funds can be commingled with IDEA as well as with any of the above four programs and can be used to serve all students -- including special education students --

in that school. The new reauthorization states that Federal, state, and local funds in schoolwide programs do not have to be accounted for separately indicating what students benefited from each of the commingled funds. Hence, with the number of Title I schoolwide programs increasing because of the reduction of the 50 percent poverty criterion to 40 percent for designation, one can anticipate that many districts will transfer ESEA funds from one or more of the four ESEA funding programs to Title I schoolwides in order to serve special education students to meet numerous Federal and state special education mandates, some of which are unfunded, or transfer funds to Title V which can be used to purchase anything remotely related to school improvement.

If a school has been “targeted for improvement” under ESEA Title I provisions, it may transfer up to 30 percent of its allocations from the above programs only if it plans to use the funds to supplement its school improvement allocation or to carry out overall Title I improvement activities. As with states, LEAs must notify the SEA, modify its plans, and submit copies of modified plans indicating how much has been transferred. If a district is in a “corrective action” status, no funds can be transferred.

### 3. Local Flexibility Demonstration Program

Under this new initiative, up to 80 school districts would enter into performance agreements with USED to improve student achievement; in turn, these districts would be able to consolidate Federal funds under Title II (Teacher Quality and Technology), Title V (Innovative Programs), and Title IV (Safe and Drug Free Schools). USED would select these districts under a grant competition using a peer review process. No more than three districts in any state may be selected and no LEA located in a state participating under the State Flexibility Demonstration program (noted below) may participate independently. If an LEA participates in the Local Flexibility Initiative, it will receive the same amount of funds as it would otherwise; hence, there is no new money! No more than four percent of its consolidated funds could be used for administrative expenses. As with Title I schoolwide programs, the funds can be used for any educational activities allowable under the new law to improve academic achievement. The peer review process would give greater priority to districts proposing to use an approach which has a “substantial promise of improving student performance.”

If an LEA does not achieve “adequate yearly progress,” as determined by the state, for three consecutive years, the performance agreement may be terminated.

#### 4. State Flexibility Demonstration Program

Under the State Flexibility Demonstration Program, up to seven states could be selected to consolidate the entire amount of their Federal funds earmarked for state-level activities or state administration (except for amounts reserved to the state for professional development). Up to ten LEAs may also receive authority to consolidate their formula allocations under guidelines and conditions similar to the Local Flexibility Demonstration initiative described above. A state can, however, mandate how LEAs within the state use their Title V/Innovative Program funds; currently districts decide how such funds will be used. In a parallel manner, LEAs enter into performance agreements with SEAs; the participating states, as with LEAs, are selected by USED using a peer review process. At least half of the up-to-ten participating LEAs must have poverty rates of at least 20 percent. Each state application must demonstrate that there will be “substantial promise” in the SEA’s alignment of state and local reforms. It must provide for assistance to LEAs that have entered into performance agreements with the state to make “adequate yearly progress”; the application must include these performance agreements entered into by the SEA and LEAs. If a state does not make “adequate yearly progress” for two consecutive years, the contract can be terminated and they will not be eligible for future participation.

#### 5. Rural Education Initiative

This initiative under Title VI Part B is designed to provide greater flexibility for rural districts to consolidate ESEA funds under certain conditions to meet their unique needs in the areas of personnel and resources, when individual formula grant allocations are too small to meet intended purposes and have an impact.

Under the Small Rural School Achievement program, which was first funded in the FY 2001 appropriations act, qualified districts will be provided additional flexibility to consolidate their allocations under Teacher Quality, Innovative Programs, Safe and Drug Free Schools, 21<sup>st</sup> CCLC, and Technology. Previously, only Eisenhower Professional Development, Innovative Program

Strategies, and Safe and Drug Free School Funds could be consolidated. The previous flexibility now applies to all of the block grant titles under ESEA. Eligible LEAs include districts with ADAs less than 600 or districts in counties which have less than ten persons per square mile and whose schools have a School Locale Code (SLC) of 7 or 8. Grants of between \$20,000 and \$60,000, based upon the districts' ADA, would include the amounts the districts would have received from the separate formula grant programs plus supplemental funds; participating districts would have to meet high accountability standards under Title I.

LEAs not eligible for the above program would be eligible under the new Rural and Low-Income School Program if the district has 20 percent or more of its enrollment from low-income families and all schools are designated an SLC of 6,7, or 8. States are allocated funds through a formula based upon ADA served by eligible LEAs or schools in the state. States have the flexibility to use alternative formulas in distributing funds to eligible districts as long as it can prove that the formula targets LEAs with high concentrations of poverty enrollment. Allowable uses of funds, as well as accountability provisions related to Title I that apply to the sub Part A program, apply equally here.

#### **E. IMPLICATIONS FOR VENDORS OF TECHNOLOGY-BASED PRODUCTS AND SERVICES**

Without question the new assessment provisions, particularly those related to state analyses and reporting on individual students (i.e., itemized score analysis and objective diagnosis descriptions) before the beginning of the next school year, will provide even greater momentum for the movement toward state-based online assessments and student reporting. To the extent that a state's online assessment and reporting system does not have the capability of analyzing and scoring certain items that are aligned with state content standards, such items may be dropped (i.e., if technology cannot assess them then remove the test item). As we have reported over the last year, the use of the NAEP assessment for samples of students in grades 4 and 8 in math and reading to ensure that state assessments are not watered down, could provide incentives for math and reading publishers to address domains on the NAEP which are typically not highly correlated to state content standards to which the state assessments are aligned. One other important assessment question could affect states



that currently do not administer to Title I students an approved assessment in at least one grade level in the 3-5, 6-9, and 10-12 grade spans; i.e., whether under the new Law beginning in September, do all students, not just Title I students, have to take such assessments? If so, the market demand for assessment and related remedial and other products and services could increase significantly beginning in September 2002.

The 50 percent flexibility transfer provisions could result in less formula funding under the Title II D Core Technology program actually being used for purchasing technology products and services. On the other hand, if a vendor has products that can be used effectively in Title I schoolwide programs (i.e., meets the needs of special education, limited English proficient, as well as other students in such schools), then one sales approach may be to suggest such funds be allocated to schoolwide programs. Generally, there is likely to be less money transferred from Title II A Teacher Quality because of the mandates relating to all teachers having to be “highly qualified.” Drug Free funds, especially in light of the Administration’s proposal to rescind approximately one-third of those funds in the FY 2002 budget, are more likely to be transferred to other programs.

The implications of the “principles of effectiveness” and scientifically-based research provisions could be significant if both Federal and state-level officials provide specific guidelines and then enforce them. Vendors should be prepared to provide evidence on effectiveness obtained through independent and objective evaluations, such as quasi-experimental control studies; or they should be prepared to show how their product configurations facilitate the implementation of processes which USED and other studies have found to be effective in reducing, for example, reading achievement gaps (see TechMIS Washington Update, September 2001). And, it is not too early for vendors to present such evidence to state officials responsible for developing approved “lists” of products and services that can be used as “supplemental services” in Title I schools that have been targeted for three consecutive years and under Reading First projects. Firms with new products should attempt to establish at least one reference site in each of the priority states it plans to target by providing products and services at substantial price reductions in return for school or district commitments to conduct evaluations of pilot programs.