

# *Washington Update*<sup>8</sup>

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## **Highlights of Education Leaders Council Annual Conference Suggest What Changes in NCLB Are Likely to Occur**

The Education Leaders Council, which was instrumental in molding the current NCLB, is likely to support several changes in the Law as reflected by some of its key leaders during the Council's September annual national conference. While virtually all members of the ELC continue to support NCLB's underlying mission, several suggested the need for "fine tuning" and common sense related to resolving some of the unintended consequences caused by strict interpretations of several provisions.

During "State and National Leaders Panel" session, Florida Secretary of Education Jim Horne pointed out that a major problem in Florida is to fill the teacher gap. About 20,000 additional teachers are needed annually due to student population growth, while Florida teacher colleges graduate only 4,000. He indicated that to meet this need Florida has established a very successful teacher recruitment campaign. However, by taking teachers from other states the national shortage of highly-qualified teachers will become even more acute. He suggested the need for alternative certification routes which is one of the highest priorities of the ELC. As with any industry which has to reinvent itself, he called for a massive

teacher retraining effort in order to truly reform education.

Cheri Yecke, Minnesota Commissioner of Education, who during her brief stint with USED was responsible for drafting regulations and Non-Regulatory Guidance for Title II/A Teacher Quality, admitted that she was shocked when she reviewed the results of the State's eighth grade math assessment which found that students of color had scores more than 40 percent lower than their non-color counterparts. Moreover, achievement gaps existed on other tests such as NAEP and SAT, such that students of color are on average four grade levels behind their non-color counterparts. One of the problems, she noted, was that the public is somewhat apathetic toward such findings and is hesitant to support reform measures. A related problem is providing choices for schools in these rural districts that are identified for improvement; distance learning, which the state strongly supports, may be the only solution,. Another problem is addressing the needs of limited-English-proficient students, especially children of recent immigrants.

A member of the California State Board of Education noted that over 80 percent of the schools that failed to meet AYP were so identified because fewer than 95 percent of the students took the state assessment. She noted that California had applied for a waiver on the 95 percent "threshold," but USED refused

the waiver while it provided flexibility in other states. She also noted that the media tends to confound and confuse the public when there are two sets of results --- the state assessment accountability results and those under NCLB --- and there is a lack of uniformity across states. She noted that there is no fair way to compare states; reported results tend to confuse the public and erode whatever NCLB support has been generated.

She also expressed concern about whether AYP and related issues would become part of the 2004 election campaigns. If so, "finger pointing" in the heat of political debate will camouflage the success which has been made in California over the last five years in terms of student achievement increases on state assessments.

Illinois Superintendent, Dr. Robert Schiller, indicated that, within his state, two challenges exist: (a) to ensure that teachers are not only highly-qualified according to NCLB standards, but also that they are "proficient in teaching students basic subject areas"; and (b) that the major AYP problem appears to be related to the late elementary and middle schools where students are not adequately prepared to enter high school and eventually do not graduate with regular diplomas.

Recently appointed Texas Education Agency Commissioner, Dr. Robert Scott, noted at least three major challenges in Texas: (a) downsizing of the Texas Education Agency from slightly over \$100 million to \$57 million while it releases approximately a third of

the TEA staff; (b) use of the TAKS for the first time for assessments, in which a much higher percentage of students, at all levels, failed to meet minimal proficiency standards compared to the previous TEKS assessment; and (c) overhaul of the Texas school education finance system which will require a special session of the legislature in the immediate future. His vision is to mesh the State's proposed performance-based finance system with its accountability standards and the development of an "individual graduation plan" for every student, which will include individualized test preparation courses for students with different learning problems. Part of the plan also includes a different approach in the area of choice by focusing on the "bookends on the shelf," namely, preschool choice and high school choice. He noted that currently high school students have only two choices -- to drop out or go to public high schools. He indicated that a myriad of alternative delivery systems must be made available, including distance learning. Clearly, the focus in Texas will increasingly be individualized instruction incorporating alternative means by which students can choose to graduate with a regular high school diploma or otherwise meet graduation requirements.

In another session, Commissioner Yecke urged the ELC group to begin working closely with framers of the legislation to resolve the unintended consequences of NCLB provisions. One major problem is special education teachers who may be certified to teach in a resource room but not be certified to teach all the subject area courses which she teaches in that

environment. The same problem exists in many rural districts where a small number of teachers may have to teach students more than one subject. She noted that it is difficult enough to recruit teachers who are certified in one subject area to such environments, much less multiple subject matter certifications. Similar problems exist in alternative schools and correctional facilities which receive some funding under NCLB provisions. She recommended that the definition of a highly-qualified teacher should be tied more closely to academic performance of students, noting that the State of Tennessee is proposing to do just that using its value-added state assessment capabilities. Her view is that if a school is meeting AYP from year to year, then the teachers should be considered highly-qualified and the Feds should “just leave the school alone.”

In response to previous statements regarding unintended consequences, Michael Petrilli, who is with the Office of Innovation and Improvement at USED, agreed that some of the points were justified. He indicated that the Department had just posted on the website new guidance on what “full state certification” means. Because the Law does not define that term, USED has defined “full state certification” as being what is in a state policy, which provides much more flexibility for states to meet the standards regarding subject matter certification. In several instances, he referred to the American Board certification process as being a valid alternative and emphasized the need to reform teacher certification to include alternative certification routes wherever feasible. In his closing comments, he

emphasized that one of USED’s priorities in terms of enforcement will be reducing the teacher quality gap between wealthy and high-poverty schools.

The September 12 revised draft Non-Regulatory Guidance on Improving Teacher Quality states, “Full state certification is defined by State policy....States are free to redefine, in accordance with State law, their certification requirements...or create non-traditional approaches to certification. For example, if State law so permits, a State may determine that an individual is fully certified if he or she has passed a rigorous assessment of his or her subject matter mastery, such as one of the assessments currently being development by the American Board for Certification of Teacher Excellence.” Undoubtedly, some states will use much more flexible guidance to “define away” the highly qualified requirements, especially for current teachers.

The panel moderator, Kate Walsh, asked panelists to comment on the recently released National Education Trust report which chided the USED for not enforcing the highly-qualified teacher requirements in the Law. Both USED and state officials generally agreed that the first priority was to get assessment and accountability plans approved and then to focus on teacher quality. In response to another question related to the impact upon current teachers vs. new teachers, most of the panelists agree that the major impact will be upon newly-hired teachers regarding subject matter certification; current teachers are resisting taking such competence assessments in subject areas.

Superintendent Yerke commented that the greatest impact in Minnesota will likely be at the middle school level. Moderator Walsh noted that the Council's research has found that subject matter certification is more important in terms of increasing student performance at the high school level, but appears not to have much of an impact at either the middle or elementary level.

The comments of key ELC members about ways to overcome many of the unintended consequences of NCLB suggest several policy changes which could be feasible because of the influence of the ELC in this Administration. Although only 300+ "true believers" attended the Nashville conference, several measures of ELC influence include: (a) over the last two years, ELC has received between \$40 million and \$50 million in grants, appropriation earmarks and contracts and subcontracts related to Follow The Leader Project and other NCLB related initiatives; (b) the \$35 million grant to the American Council, which it co-sponsors with the National Council on Teacher Quality; and (c) the unwavering position of the USED related to parental choice provisions, including supplemental education services.

Some of the likely changes will include:

- Through continuous negotiations and renegotiations with states, state implementation plans will become more uniform; states which have "bitten the bullet on accountability" will be provided greater flexibility;

- Continued flexibility for states to define what is a "fully certified teacher" in subject areas, especially for current teachers, with more rigorous standards being applied to newly-hired teachers, especially at the middle school level;
- Flexibility for states to use out-of-grade level assessments for certain types of special education and limited-English-proficient students;
- Waiver of subject matter requirements for special education teachers of students in resource rooms and alternative settings;
- Allowing states to use AYP and other student performance indicators to assess teachers' performance, as in Tennessee.

As one of the ELC officials noted, if some of the unintended consequences are not removed, a public backlash will occur to the extent of removing some of the mandates such as parent choice and supplemental education services to which the ELC gives the highest priority. Hence, the ELC will likely proceed to facilitate some of the changes mentioned above in order to protect its own priority interests.

## **Highlights of Annual NAFEPA Symposium on No District Left Behind: Some Questions Answered But Many Others Evoked No USED Official Response or Answers that Conflict With NCLB Non-Regulatory Guidance**

During the third annual symposium entitled “No District Left Behind,” sponsored by the National Association of Federal Education Program Administrators (NAFEPA), more than 70 district Title I coordinators and a limited number of state Title I officials raised numerous questions for which USED officials either admitted there were no formulated answers currently or in some cases provided answers in conflict with recently released Non-Regulatory Guidance. Below, we have identified those questions and answers raised during the three-day symposium which have direct or indirect implications for many TechMIS subscribers.

### Choice and Supplemental Education Service (SES)

During a presentation made by Tom Corwin and Susan Wilhelm which stated that SES should be provided “until the end of the school year,” most Title I directors felt that services should be provided, through varied durations, using reading or math interventions similar to those proposed in the reauthorization of IDEA. Some felt such services should be provided until parents argued that the child could make adequate progress in the regular

classroom. Other Title I Directors believed that the amount of funding provided to an SES provider to serve a particular student should be based upon the severity of that student’s need. USED officials indicated that “the end of the school year” could be perhaps as early as April, but probably not January or February. Another question was whether unused parent choice transportation and SES earmarks could be used to conduct a summer school program operated by an approved supplemental education service provider. The response was that SES did not really apply to summer schools but rather to ongoing interventions after school during the regular school year. However, he did indicate that, if the LEA was an approved SES provider, then the likelihood is greater that such summer school programs could be provided to meet the SES requirement.

The implications for using summer school to provide SES services are very positive for firms that have solutions that could be used by staff of a high-performing school in a four-to six-week summer school program. On the other hand, if districts decide not to set up summer schools, they may be required to spend unused parent choice transportation and supplemental education service earmarks by the end of the fiscal year.

Our special analysis of the draft Non-Regulatory Guidance on Supplemental Education Services (see enclosed) addressed the issue of who has the final decision-making power -- the parent or district -- to terminate the contract with a specific SES provider initially selected

by the parent. For example, if the basis of the termination was a difference between the child's academic performance on the test used by the SES provider and the state assessment (which holds the district responsible), the response by Corwin was that the SEA makes the final decision as to whether or not an SES provider would be taken off the state-approved list for not having met the student academic progress after two years. Most district Title I officials were very upset with the response and noted that, whereas the NRG does not allow the LEA to impose any additional criteria beyond that used by the state in approving the SES provider, that LEAs should have the right to require, for example, that an SES provider clearly demonstrate that a criminal background check was conducted for all of its staff who provide direct services to students. Corwin agreed that in situations where a child's safety was endangered, the SEA could require an SES provider to meet such standards, for which the LEA would otherwise be liable. Other questions which were posed for the purpose of discussion included:

- Do LEAs have to make space available to provide staff or equipment or meet other costs if that is what is called for in a provider's contract? The generally agreed response that these additional costs must be taken into account in deciding whether or not to enter into contract with a service provider.
- If the district spent 20 percent this year on supplemental education services and

transportation and additional schools next year have been identified for improvement, is the district required to spend more than 20 percent? The generally agreed response was that such choice options for either transportation or SES services would be only for the highest priority Title I students.

USED officials did confirm several flexibility-related points of guidance including:

- If there are no SES providers available for eligible children in the district, the LEA can apply to the SEA for a one year exemption;
- Regarding an exemption from the choice provisions, state laws can create an exemption but only if they correctly prohibit transfers (of students).

To the latter point, Corwin indicated that this was a situation in only one state. Title I directors requested the name of the state which he would not divulge. USED officials did not go out of their way to encourage districts to request SES approval authority from the state and to operate programs by having high-performing schools in the district provide afterschool SES services.

For those firms that have been approved as SES providers, the implications are clear. For those firms that wish to partner with a high-performing school in a district which has been approved as an SES provider, there are positive

implications in spite of USED's policy to favor the use of outside SES providers.

#### Assessments and Accountability

One of the most controversial provisions in the draft regulations related to the requirement that no more than one percent of students can be exempted from the taking regular state assessment, particularly those who are "most cognitively impaired." Sue Rigby of USED indicated that the final regulations were close to being published, indicating perhaps there may be a "Christmas gift." In a meeting with her following her presentation, the question was raised whether or not USED is seriously considering allowing "out-of-grade-level testing" for students who are not the most "cognitively impaired" but who are significantly behind their classmates in reading and math achievement. She was aware that Secretary Paige had recently provided guidance in the form of a letter allowing that such test scores could be used to determine AYP where out-of-grade-level testing occurred during the 2002-2003 school year. However, this exemption would apply only to last year's scores and not for this year and subsequently. She indicated that she has not seen the entire set of regulations and could not respond to the question, indicating that this issue is being hotly debated. She also noted before the group that states were allowed to go beyond the minimal accountability requirements in the law. A previous speaker noted that New York State is applying for Title I accountability provisions that include some sanctions to all schools, not just Title I schools.

In her presentation, Rigby indicated that USED is now reviewing state accountability plans and later will monitor implementation. As reported in previous TechMIS Washington Updates, both Secretary Paige and President Bush somewhat "exaggerated" the number of state assessment accountability plans that had been "approved" during their press conference in June. She noted that all of the state accountability plans and approval letters are available at [www.ed.gov/offices/OESE/CFP/csas/index.html](http://www.ed.gov/offices/OESE/CFP/csas/index.html). In closing, she urged Title I directors to attempt to educate reporters regarding details about some of the key accountability provisions in order to reduce the enormous amount of confusion in local media news items. She suggested that the attendees review the "tools" that are available at the CCSSO website which can be used at the state and district levels for public relation purposes.

As we have recommended in recent TechMIS Special Reports and Washington Updates, TechMIS subscribers are urged to continue to monitor the changes in state accountability and assessment plans as negotiations continue. In many respects, the language and implementation plans indicated in these documents are much more relevant than non-regulatory guidance on certain issues.

#### Highly-Qualified Teacher Requirements

Several officials addressed portions of several NCLB titles related to highly-qualified teachers and paraprofessionals; different interpretations reflected in their comments suggest even greater

flexibility is being provided in this area. Most questions related to the certification of teachers to teach their subject areas. One official indicated that, if an eighth grade teacher is providing remedial reading instruction at about the fourth grade level, the teacher would have to be certified to teach the level of subject matter which he or she is actually teaching --- namely, fourth grade reading. If Title I operates a pre-K program, the high teacher quality (HQT) requirements apply only to a paraprofessional that provides instruction (vs. a paraprofessional that provides babysitting functions). However, it would not apply to a pre-K teacher noting that HQT “kicks in” only at the kindergarten level. Ironically, several days after the NAFEP symposium, the Center for the Study of Childcare Employment, University of California at Berkeley, reported that the best way to foster high-quality pre-K programs was to ensure that all teachers have a four-year college degree, preferably with a concentration in teaching young children. Veteran USED official Robert Stonehill was asked a question as to whether USED would be encouraging other states to tie HQT requirements directly to the performance of a teacher’s student as is currently the case in Tennessee (see related item). He indicated that a state could use the High Objective Uniform State Standard of Evaluation (HOUSSE) option to do so. After his presentation, it became clear he was aware of Minnesota Commission Cheri Yerke’s recommendation during the ELC conference that if a school continues to meet AYP each year, then the Feds should look the other way as far as HQT requirements are concerned.

One USED presentation identified the seven duties of Title I paraprofessionals, including to assist in computer instruction. While it is clear that a teacher aide who merely operates equipment would not have to be “highly qualified,” it is not clear whether a teacher aide who is employed by an approved supplemental education service provider and who assists in the instructional process would have to meet the requirements for being highly qualified. This is a question which SES providers should explore with SEAs when requesting approval or particularly when providing distance learning services. It is clear, however, that the aide would have to be under the direct supervision of a highly-qualified teacher, which is defined as: the teacher plans instructional activity, evaluates the achievement of students and the aide works in close and frequent proximity with the teacher.

To the extent that greater flexibility is provided to states in meeting the HQT requirement for current teachers by 2006, the more time, effort, and dollars can be used for purchasing instructional products and related services from TechMIS subscribers.

Other presentations addressed other important provisions in NCLB that repeated the language in the Law or regulations. The parent involvement session reiterated that, if a district receives more than \$500,000, it must reserve not less than one percent to carry out parental involvement activities, which could include family literacy and parenting education. However, rather

than conducting such activities at the district level, at least 95 percent of that amount must be redistributed to eligible Title I schools, including eligible private schools. During a session on improving schools through schoolwide reform, officials stated that a comprehensive school reform approach requires “a program based on scientifically-based research or strong evidence that it will improve achievement.” The scientifically-based research provision in Title I is the only major provision that has not been addressed by USED in any published NRG. Allowing programs which have “strong evidence” they will improve student achievement, provides much greater flexibility than having to follow a rigorous definition of scientifically-based research which is included in the Law.

In one of the last, but most lively, sessions, Kathleen Leos, Deputy Under Secretary in the Office of English Language Acquisition, noted the subtle differences between ESEA Title III/English Language Acquisition and Title I. While the major mission of Title III is to ensure that limited-English-proficient students acquire English language proficiency, Title I requires that these same students meet AYP academic proficiency levels. This distinction suggests that instructional materials used in the two programs differ, but certainly should be aligned with each other to achieve the major goal of increased academic proficiencies.

Deputy Under Secretary Leos announced that the National Institute of Child Health and Human Development office

headed by Reid Lyon, is conducting a study involving more than 5,400 children in California, Illinois, Massachusetts, Michigan, Pennsylvania, Texas, Virginia, and Utah, plus Puerto Rico and the District of Columbia. The fourteen projects are designed to determine what factors help limited-English-proficient children learn to read and what goes wrong when they don't learn to read. As noted in a recent article in Education Week, Dr. Lyon's office has also initiated an \$18 million effort to study “learning disabilities” in mathematics and what types of interventions work most effectively in developing mathematic skills. The same office was instrumental in the design of the Reading First initiative and many of the assessment and accountability provisions in Title I.

The NAFEPA workshop was considered to be very helpful to most Title I directors and hopefully to USED officials as they attempt to soften some of the unintended consequences to high-level decision makers and resolve some of these critical problems. Several of the vendors in attendance thought the workshop was enlightening as district Title I coordinators discussed creative alternative ways to implement NCLB. Most attendees also felt that USED officials were open in their responses even on issues for which there was no resolution.

In addition to the annual September NAFEPA symposium, NAFEPA conducts its annual legislative conference in Washington, D.C. in April. As with last year's conference, plans are underway to allow exhibitors

to display products on tabletops during the conference, which is attended by 250 Title I directors from mid- to large-size districts. For information go to [www.nafepa.org](http://www.nafepa.org) and for information about exhibit opportunities or other sponsorships, contact Carol Brush at (916) 971-7389.

### **A General Mood of Apathy Among Education Lobby Groups Detected During the Annual Committee for Education Funding Gala Held in Late September**

The September 25 Committee for Education Funding (CEF) annual “gala,” was dampened, not only because of the smallest proposed increase in education funding in the last three years in both the House and Senate current versions of the FY 2004 appropriations, but also by the apathy of many lobby groups regarding the prospects for passing any technical amendments to reduce the unintended consequences of No Child Left Behind this year. It appears that the only major education association willing to take legal action is the National Education Association which reportedly is looking for at least one state to join in its class action lawsuit that was announced during the NEA annual convention this summer.

During his brief remarks accepting a CEF award, Subcommittee Chairman Mike Castle (R-DE) noted that he had several “enlightening” conversations with district officials during the August recess. Jokingly or not, he disavowed

much involvement in the NCLB negotiation prior to its passage, pointing to Democrat George Miller as one of the instrumental House members during the “bipartisan” negotiation. Following the comments from Chairman Castle and new Republican Congressman Van Hollen from Maryland (who referred to No Child Left Behind as an unfunded mandate), I mentioned to several lobbyists comments made by ELC leaders regarding NCLB’s unintended consequences and the willingness of ELC to work now with other organizations to resolve some of these unintended consequences (see related item). Surprisingly, most of these lobbyists indicated that key staff members among the Democratic leadership were opposed to any amendments at this time. Reportedly, Senator Kennedy was more concerned about the level of funding to implement NCLB than some of the related, unintended consequences. In fact, I asked one key lobbyist whether his association (which has opposed many of the provisions in No Child Left Behind from its inception), would support a proposed set of amendments in the House addressing many of the intended consequences related to AYP and assessments. He responded the proposed legislation created as many problems as it solved and that the Democratic leadership does not want to address any amendments.

While the Administration has been very vocal in its opposition to any technical amendments, referring to the imminent NEA lawsuit (as noted in the last TechMIS [Washington Update](#) and in this update on the NAFEPA meeting), USED

is providing greater flexibility on issues such as highly-qualified teachers, in non-regulatory guidance (e.g., the HOUSS process) and through ongoing behind-the-scenes negotiations with most states regarding their accountability and assessment plans. While the USED approach certainly is politically more “face saving,” there is always the possibility that some language will be included in the FY 2004 Appropriations Act which could result in the de facto “amendments” or otherwise extend certain NCLB deadlines. Anyone who is interested in discussing options or strategies should contact me directly at 703-536-2310.

**FY 2004 Education  
Appropriation is Likely to  
Include Lowest Increase in  
Several Years Unless Increases  
are Included in the  
Supplemental Proposal for Iraq  
Initiatives**

The FY 2004 education budget is likely to have the lowest percent increase in several years unless Democrats are successful in earmarking funds in the supplemental proposal for \$87 million to cover US troops and Iraqi reconstruction costs. Both the House and Senate have gone along with the President’s request to increase Title I funding by slightly over \$650 million. The House would put all of the increase under “targeted” grants while the Senate would include all of its increase in the “education finance incentive” grants component of the Title I formula. In either case, the major

beneficiaries will be large districts with high rates of poverty. The likely biggest winner will be IDEA/Special Education, which is likely to receive a \$1-\$2 billion increase. The final FY 2004 education funding level for IDEA will depend upon the result of the IDEA reauthorization which is likely to occur in the next month or so. The 21<sup>st</sup> Century Community Learning Centers program is likely to be level-funded at about \$1 billion. Continued funding for Star Schools and Community Technology Centers is uncertain as the House version would eliminate these programs. The PT<sup>3</sup> program, Technology Teacher Training initiative, is also likely to become a casualty. The Math and Science Partnership initiative may not end up receiving the 50 percent increase in the House version but will continue to be a likely. The House and Senate have passed a month long “continuing resolution” for ESEA programs. The majority of FY 2003 funding, which was “advance funded,” will be released to the states after October 1, with some districts receiving their final allocation (after SEA adjustments) as early as mid-October; however, most districts will not receive their final allocations until late October through December.

Perhaps one of the most promising alternatives for increasing funding for certain education programs is through amendments to the \$87 million Bush-proposed supplemental budget to cover Iraq war costs. On September 30, Democrats proposed the American Parity Amendment which would add \$20 million in domestic spending for healthcare, infrastructure, and education

spending, similar to the Bush proposal for Iraq. One might expect a number of additional “earmarks” usually included in the appropriation act to be now included in the supplemental budget request.

## **New Special Education Expenditure Project (SEEP) Report Suggests Growth Opportunities in Special Education Niche Market**

In its 24<sup>th</sup> Annual Report to Congress, USED included findings from the Special Education Expenditure Project (SEEP) which suggest some opportunities for certain types of technology tools and applications in this growing niche market. The data presented are from the 1999-2000 school year.

During that time frame approximately \$50 billion was spent on special education services, while another \$27.3 billion was spent on regular education services for students with disabilities. An additional \$1 billion was spent on other special needs programs -- such as Title I and Gifted and Talented -- for students with disabilities who were eligible for special education. Total expenditures were \$78.3 billion. The total annual spending used to educate the average student with a disability amounted to \$12,639, of which slightly over \$8,000 was specifically for special education services. Total spending to educate students with disabilities -- including regular education, special education, and other special needs

programs combined -- represent 21.4 percent of the \$360 million spent in 1999-2000. On the average during that time, almost 90 percent more was spent on a special education student than on a regular education student. Excluding capital facilities costs, the additional “current operating expenditure” to educate a special education student was more than double the cost of educating a non-special education student.

About 80 percent of total special education expenditures in 1999-2000 were allocated for direct instruction and related services. Approximately nine percent of total special education expenditures -- or about \$4.4 billion -- was spent on special education preschool programs. Approximately 72 percent of total instructional special education expenditures -- for almost 5.4 million special education students ages 6-21 -- were spent by K-12 school districts. Special education spending for direct instruction and related services for school age students within public schools was approximately \$5,700 per pupil compared to \$7,667 per pupil served in pre-school programs within the schools.

This report attempted to determine how much was expended on pre-referral and referral activities, initial screening, ongoing assessment, evaluations, reviews, and preparation of IEPs. The report estimates that approximately \$6.8 billion or \$1,086 per special education student was so expended during 1999-2000 school year. Without question, most of these costs were spent on IEP preparation involving special education service providers at the school site,

special education teachers, regular teachers, central office staff, and IEP-related tools, software, etc. Indeed, the Senate and House versions of the proposed IDEA reauthorization encourage, if not mandate, the use of such applications to reduce the amount of time and paperwork expended by teachers on IEP-related activities which are estimated to be between 1 and 1.5 days per week by the Council for Exceptional Children. Under the proposed versions of the IDEA reauthorization, initial screenings and prereferral intervention services will increase dramatically as the House version requires such interventions to be used for students K-3 to remediate reading problems, if possible, before students are placed in special education. Up to 15 percent of IDEA funds, or approximately \$1.5 billion, could be spent nationally to purchase such intervention products and services. The report also estimates that, in the 1999-2000 school year, almost \$650 million was recovered by districts through reimbursements from Medicaid for costs of related services. For school year 2002-03, we estimate that the amount of reimbursement has increased to almost \$1.4 billion of the annual \$4-\$5 billion available for reimbursement. Tools and applications used to document related costs and to reduce the time and paperwork in applying for Medicaid reimbursements will usually pay for itself in a short period of time. For a copy of the 24<sup>th</sup> Annual Report to Congress go to [www.ed.gov/about/reports/annual/osep/2002.pdf](http://www.ed.gov/about/reports/annual/osep/2002.pdf).

## **New USED Non-Regulatory Guidance on Allocation of Title I Funds for Private Schools Participating in Title I Further Reduces the Amount of Title I Funds To Be Used For “Non-Earmarked” Purposes**

About a year ago, USED issued draft Title I guidance which called for districts to earmark up to 20 percent of total Title I allocations to cover the potential cost of parent choice transportation and supplemental education services. This summer, new Non-Regulatory Guidance (NRG) on funding allocations to private schools for the first time requires districts to earmark, in the Title I “reserve,” specific funding levels for: (a) students who reside in a Title I-eligible school attendance area but who have decided to enroll in private schools; (b) the cost of providing staff development for private school teachers of eligible students, especially if the student was previously enrolled in a school identified for improvement; and (c) proportional earmarks by the district for parental involvement. In the past, districts were required to provide an “equitable level of service” to eligible students enrolled in private schools based upon consultation and a determination made in conjunction with private school officials. Although the new Title I legislation does not require such an earmark, once again USED has shown its favoritism toward private schools by telling districts they must earmark specific levels of funding, rather than merely providing an assurance that an equitable level of service would be

provided. The bottom line is that the earmarked funds for private school participation, transportation, and supplemental education services further reduce the amount over which district and school officials have sole discretion in deciding how such funds would be used, including the purchase of specific products and services. As Title I Reports recently stated, "The law has not changed; the No Child Left Behind Act does not include any new language relevant to this issue. Only ED's interpretation has changed."

This recent NRG, in combination with the August NRG on supplemental education services, could be a real boon for private schools that serve Title I-eligible students who, in many cases in the past, have not been provided equitable levels of resources. Moreover, a private school that is also an approved supplemental education service provider could receive additional funds to provide afterschool supplemental education services, if the school previously enrolling a student has been identified for improvement for two consecutive years. The primary opportunities in these situations are the private school as a potential customer rather than only schools identified for improvement.

## **Growth of Distance Learning at Post-Secondary Level Likely to Receive Increased Momentum From Several Economic Factors Which Could Create Similar Growth at the High School Level**

In 2001, about 3.1 million individuals enrolled in distance education courses at two- or four-year post-secondary institutions (twice the number so enrolled in 1995), according to a recent report by the National Center for Education Statistics. The number of degree-granting colleges or universities offering distance learning courses grew from 33 percent to 56 percent over that same time frame. While about a third of the institutions offering distance education courses reported that making such access available for more affordable cost was an important goal, current economic factors could add to this momentum, not only in colleges, but also at the high school level.

In early September, the House Committee on Education and the Workforce issued a report on the "college cost crisis." The report argues that the explosion in college costs can not be attributed to the economy and state budget cuts; rather... "the facts show tuition increases have persisted regardless of circumstances such as the economy or state funding, and have far outpaced inflation year after year, regardless of whether the economy has been stumbling or thriving." On the heels of the release of the report, Subcommittee Chairman McKeon (R-CA) submitted proposed legislation which would demand accountability for

cost increases and require institutions proposing significant tuition increases to have such increases approved by USED if they are to receive Federal funding. Also, because of the increased cost of college tuition, at least three of the 20 states with prepaid tuition plans have suspended enrollments until next year. Colorado has closed down its plan for new participants, providing those already enrolled a chance to move their money elsewhere, according to the Chronicle of Higher Education (September 7). One alternative way to reduce costs is through the use of distance learning. In 1999, USED initiated a demonstration program which now includes 17 individual institutions, four systems, and two consortia for a total of 107 institutions. The purpose of the demonstration was to deliver online instruction which would provide certification in four degree programs by allowing waivers of several USED rules, to determine whether this had any impact on enrollment, quality of courses, and other factors. Sixteen of the participants requested and received waiver approval from the "50 percent rule" which requires that a student spend 50 percent of his or her instruction as "seat" time in order to continue receiving Federal financial assistance. Fourteen of the participants received waivers on the "12 hour" rule. As the recent USED report notes, the number of students enrolled in distance education has more than doubled since the 1998-1999 academic year -- from 13,000 to more than 27,000 -- while the number of on-site students taking distance education courses increased from 19,000 to more than 43,000. As the report concludes, "The Department has

uncovered no evidence that waiving the 50 percent rule or any of the other rules for which waivers were provided has resulted in any problems or have negative consequences." This conclusion will provide strong justification for deleting certain rules that serve as barriers to the growth of distance education at the college level.

The Internet and two video technologies were used most often as the primary modes of instructional delivery, with 90 percent reporting that they offered Internet courses using asynchronous computer-based instruction, while 43 percent offered courses using synchronous computer-based instruction. About half also used two-way video with two-way audio. Over the next three years, almost 90 percent indicated plans to start using, or increase the number of, Internet courses using asynchronous computer-based instruction as a primary mode of instructional delivery.

On the other hand, the increase in college tuition has contributed directly to another trend, namely, state policies which encourage dual enrollment in order to reduce the number of years an enrolling college "freshman" takes to receive a certificate or graduate with a full degree. For example, Virginia Governor Mark Warner has introduced a plan to expand college curricula into the State's high schools. With funds from the Gates Foundation, he hopes to create at least 100 "early college high schools" of which more than 20 should be up and running this school year. California, Georgia, and New York also have many dual enrollment schools, while Utah provides financial incentives to dual

enrollees who earn two years of credit during high school. For many LEAs who do not have the necessary resources to provide college credit courses at the high school level, including AAP preparation courses, the only option is distance learning. For a copy of Distance Education at Degree Granting Postsecondary Institutions 2000-2001, go to [www.nces.ed.gov](http://www.nces.ed.gov).

### **Scheduled Release of NAEP Results in October will Contribute Even More to Confusion About Student Performance in Reading and Math**

One of the provisions in NCLB is that selected districts in all states have to participate in the administration of the NAEP in order that the results of the sample of students taking the NAEP could be compared with state assessment results which are used to determine how many students meet adequate yearly progress. During the NAFEPA workshop on September 25-28, USED official Sue Rigby, explained to more than 75 Title I district directors that the definition of proficiency on the NAEP differed from the definition on virtually all state assessments currently being used. She also noted that the purpose of NAEP results are to measure student performance over a lengthy time period, while state assessments are supposed to be used to inform instruction for individual students, or subgroups of students. In addition, the assessment's focus, method, and format are different between the two tests. The net result of

the scheduled release in October of NAEP scores will contribute further to the confusion, as reported in the press, due to the differences between state designation of low-performing schools following the state accountability model vs. schools identified for improvement under NCLB.

As we reported over two years ago before the legislation was passed, the Administration's argument to use NAEP as a benchmark to ensure that states do not use "dumbed down" state assessments, was flawed from the beginning. First, of the two NAEP longitudinal tests, the "trend" test (which has been available for almost 30 years) and the "main" test are very different, as Rigby acknowledged in an interview. The trend NAEP test continues to be aligned with many norm-referenced tests which are increasingly used, with certain modifications, for state assessments. However, the benchmark test results being released shortly are from the "main" NAEP test which is more closely aligned with national standards such as NCTM mathematics standards. One of the arguments for not using the "trend" NAEP instrument was that the NAEP student performance reading scores on the trend test actually has been increasing since the mid-1990s and gaps between subgroups of students narrowed.

During the NAFEPA conference, at least one state Title I director asserted that the state assessment results for last year will likely be much more positive than the results on the forthcoming NAEP assessment release. Rigby referred to the differences between NAEP tests and

state assessments used to determine increases in student proficiency in the context of urging Title I district administrators to educate the press about assessment and accountability provisions related NCLB. In fact, she referred them to a public relations effort with tools available online developed by the Council of Chief State School Officers. She particularly pointed out the differences to the attendees by displaying, in a PowerPoint presentation, the following, "The national assessment of education progress...cannot be used to verify state test results." She correctly noted that, if a district is selected to have a sample of its student participate in the NAEP, the district must comply using guidance as well as additional resources provided by NAEP to each state. On the other hand, she also noted that if a parent does not want his or her child to take the NAEP, the student has the right to "opt out." If too many students at a certain grade level opt out, then the size of the sample could be reduced to a level where the results would not be statistically valid.

NAEP governing board, which is [www.nagb.gov](http://www.nagb.gov).

Several Title I directors acknowledged that parents -- particularly parents of students taking AP courses -- have already requested to have their students opt out. As we suggested shortly after the passage of NCLB, firms should attempt to ensure that their content is related not only to state assessments but also to NAEP content domains. At least one firm which followed this suggestion has had its internal assessment adopted by a state. For up to date decisions relating to use of the NAEP results as a "benchmark," go to the website of the