

Washington Update⁸

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State Legislators Address NCLB Implementation and State Budget Deficits: Education Technology State Funding Has Been One Casualty Although State K-12 Budgets for SY 2003-04 Look Better

During the 2003 state Legislative sessions, two areas were addressed nationwide: (a) the state budget deficit; and (b) accountability and other NCLB provisions which required, in many states, changes in state laws where conflicts existed. As the Education Commission of the States (ECS) reported in State Education Leader (Summer/Fall 2003), the National Association of State Budget Officers has projected that total state budgets for FY 2004 will actually shrink for the first time since 1983 even though the National Conference of State Legislatures projects a 1.5 percent or higher increase in K-12 education spending, as does MCH (see below).

In response to the transition year of the implementation of NCLB, according to ECS, nine legislatures (Arkansas, Iowa, Maine, Minnesota, Nevada, New Mexico, Ohio, Oklahoma, and Utah) enacted education bills which dealt with provisions in NCLB, particularly assessment assistance for low-performing schools, reporting of results, teacher quality, and other accountability-related provisions. In the area of teacher

certification, according to ECS, more than 100 laws were enacted or modified. Legislators also focused upon accountability at the secondary level, including:

- New Mexico which requires that high school curriculum and end-of-course tests be aligned with placement tests for two- and four- year post-secondary institutions in the state.
- Texas which requires “personal graduation plans” for five-year at-risk students;
- Arkansas which requires high school students to attend a full school day with no fewer than 350 minutes of planned instruction daily;
- North Carolina which passed the Innovative Education Initiative Act which is designed, among other things, to decrease the need for higher education remedial programs.

A state budget survey by the State Education Technology Directors Association (SETDA) found that total state budgets for education technology between 2001-2002 and 2002-2003 decreased from approximately \$13.8 million to \$10.4 million per state. Also, more than half of the 31 responding states in the survey have reduced

technology staff within the SEA with some states such as Texas actually abolishing the state technology office by transferring most staff into the office responsible for textbook adoption. State technology directors reported that staff reductions are hampering their reporting and technical assistance responsibilities included in NCLB. SETDA's report does note that over the same time frame, state officials reported some increases in Federal funding for Title IID, although nationwide the amount of such Federal funding actually declined by over \$100 million. Also as SETDA's Press Release notes, "Despite the state level budget cuts, several states continue the status quo and are building new partnerships inside and outside their state departments to leverage their resources and decrease the negative impact of state budget cuts. For example, states are deploying regionally-based professional development, seeking business partners, securing interagency loans/grants, and working collaboratively with other departments to imbed technology professional development into overall professional development offerings."

Reporting in Budget Aware MCH K-12 State Funding Outlook, John Hood, President of MCH recently announced the results of its August-September survey of state budget officials. MCH concludes that, for 2003-04, K-12 state budgets for 46 reporting states show an average increase of 3.2 percent above actual state funds allocated to districts last year. As Hood points out, last year 28 states allocated less to K-12 than initially budgeted; this could happen again this school year in certain states if

projected revenues are not met. Reductions are expected in seven states, no change in one state and an increase from .6 percent in Wisconsin to 20.8 percent in Oregon projected for this year over last year. The projected 5.3 percent increase (over \$2 billion) for K-12 in California is surprising. For a state-by-state breakdown of projected budget estimates, go to www.mailings.com. For a summary of state legislature actions, go to www.ecs.org.

Non-Partisan Public Agenda Survey of Superintendents and Principals Identifies Their Major Concerns and Suggests How Software Publishing and Other Education Publishers Should Approach Them

The findings from the recent Public Agenda survey of superintendents and principals identifies their perceived problems and concerns generally and, specifically, those related to implementation of NCLB; several of the findings have implications for how to approach superintendents and principals in various contexts (urban vs. rural) with what messages about publishers' products and services.

When asked what was "the most pressing issue" confronting them, 70 percent of superintendents and 58 percent of principals cited inadequate funding, with 85 percent of superintendents and 80 percent of principals noting funding for schools has "gotten worse." Only 20 percent and 30

percent of superintendents and principals respectively cite implementation of NCLB as “the most pressing issue.” While over 90 percent of superintendents and principals report “knowing a lot or knowing some” about specific elements of NCLB, only 25 percent of both groups report that NCLB has led to “a lot of change” to date. As the report notes, “Still, with all the commentary and analysis by education groups, associations, and media pundits, the measured pace of change is a useful reality check.”

The relatively “slow” level of change can be attributed, in part, to perceived motivation and intent underlying NCLB. For example, slightly over half of superintendents (53 percent) say NCLB was “motivated solely by politics” or they called it “a disguised effort to attack and destroy public education.” Only 40 percent of superintendents say NCLB is “an effort to improve the nation’s public schools and is motivated by good intentions.” Only about five percent of superintendents and four percent of principals predict that the Law “will work simply as written,” while two-thirds say the Law “will require many adjustments before it can work,” and almost one-third think “it probably won’t work at all.” Interestingly, almost 25 percent of both groups feel their states’ standards will be lowered to make it easier to show progress.

Almost 90 percent of superintendents and principals feel that NCLB is an “unfunded mandate” and contributes to the overall worsening funding situation. Almost half of superintendents (49 percent) and principals (48 percent) feel

“showing adequate yearly progress” on standardized test scores for special education and limited-English-proficient students was “unreasonable and undoable,” while most of the remainder feel it is “doable only with major changes.” While 90 percent of both groups feel that NCLB relies too much on standardized testing as a major or minor concern, about half of superintendents feel that “testing to inform instruction” and disaggregation of test scores by subgroups are positive elements of the Law. On the other hand, 50 percent of principals feel that disaggregated reporting at the school level was counterproductive “because it stigmatizes groups with lower scores.” One reason why principals feel this way may be that almost two thirds of superintendents indicate that student performance on tests is the critical measure in their evaluation of the effectiveness of a principal.

In addition to differences between superintendents’ and principals’ responses to questions related to standardized tests, there were also significant differences in responses between urban, suburban, and small rural superintendents. For example, almost three-fourths of urban superintendents report raising student achievement is the biggest part of principals’ evaluation compared to slightly over half in rural districts. Almost two-thirds of large district superintendents feel that annual testing in grades three through eight and disaggregated test scores by subgroups are helpful compared to 44 percent of small districts superintendents. While 43 percent of large district

superintendents feel higher standards would be the ultimate impact of NCLB, only 28 percent of small district superintendents feel this way. By almost two to one, 41 percent of small district superintendents feel NCLB probably won't work, compared to 22 percent of large district superintendents. While the report notes that large district superintendents are more favorably disposed toward the standards movement generally than are small or rural district superintendents, the report fails to mention that the vast majority of funding increases over the last two years in Title I, IDEA special education, and other NCLB Titles have been directed toward large urban districts who were instrumental in lobbying to revise the Title I formula two years ago to their own benefit.

Beyond perceptions about NCLB, superintendents and principals increasingly perceive themselves as "instructional leaders"; 83 percent of superintendents and 75 percent of principals say they are more focused on the substance of teaching --- curriculum, teaching techniques, mentoring, and professional development -- than ever before. Over the last few years, both superintendents and principals feel the need for more teacher training, with 78 percent of superintendents and 66 percent of principals feeling that additional training contributes to "more effective teaching." However, there were significant differences as to what activities would be the best way to "improve the quality of teaching" between small vs. large superintendents and principals. While almost two-thirds of large district superintendents would

expand professional development, less than one-third of small district superintendents have a similar perception. Conversely, slightly over half of all small district superintendents feel the best way to improve the quality of teaching would be to make it easier to dismiss ineffective teachers, while less than one-third of large district superintendents have similar feelings. Around 45 percent of principals feel both approaches would be equally important to improving quality of teaching.

Perhaps the most overriding issue to surface in numerous ways throughout the survey was complaints about the cost of meeting state and Federal mandates, with 93 percent of superintendents saying their district experienced "an enormous increase in responsibilities and mandates without getting the resources necessary to fulfill them." Over 80 percent of superintendents agree that they "are obligated to spend a disproportional amount of money and other resources on special education." Moreover, eighty-three percent of superintendents feel that state regulations regarding special education have "gotten worse" in recent years.

One overarching implication from the survey is that superintendents generally question the need for, or motivation of, some of the mandates under NCLB which are largely unfunded; they will not likely not be interested in high-priced solutions, whether they be services or tool applications. For superintendents, and to a lesser extent for principals, the exceptions appear to be products which can use test data to

inform instruction and disaggregate reporting by subgroups of students. The findings also suggest that large district superintendents are more likely than small district superintendents to be looking for “tool applications” and solutions to help them “meet” the major mandates under NCLB. Small district superintendents are more likely to be looking for solutions that “protect” them from NCLB sanctions or otherwise help them protect their “backside.” Similarly, large district superintendents are more likely to be amenable to funding for staff development than are small districts as a way to increase teacher effectiveness. However, as noted in the enclosed Washington Update, rural districts are more likely to have had larger numbers of teachers trained in the use of technology over the last 12 months than have city districts.

The findings can also support the notion that as one approaches superintendents generally, they are interested in “solutions” to real world problems confronting them, many of which may have been created by unfunded mandates, or they are interested in solutions that help them “get around the problem.” The survey found that only 35 percent of superintendents feel that the “district’s system” helped them get things done the way they wanted” while almost half note they generally have to “work around the system to get things done.”

Another important finding confirms that both superintendents and principals are increasingly perceiving their role as “instructional leaders.” This implies that they are likely to ask more in-depth

questions about instructional approaches and their effectiveness in increasing student performance and test scores. This trend puts a new face on traditional approaches to “top down sales.” For a copy of the report, entitled “Rolling Up Their Sleeves,” go to www.publicagenda.org.

USED Inspector General Work Plan Indicates What NCLB Provisions Are Most Likely to be Included in Audits Over the Next Year

Each year the USED Office of Inspector General publishes its “work plan” for the upcoming fiscal year indicating the specific areas which will be the foci of Federal audits; this is another critical “flag” as to what provisions USED places priority upon and which ones it will likely enforce. As we have noted in previous TechMIS reports and Washington Updates, this Administration has made extensive use of Non-Regulatory Guidance which “upfront” tells states and districts what USED expects regarding the implementation of selected priority provisions. As we have noted, the Administration places the highest priority on parental choice, including “supplemental education services” for schools that have been identified for improvement. As we reported in the Summer of 2001, the Administration is also placing a high priority upon removing state barriers which constrain Title I schoolwide programs from exercising their utmost flexibility in terms of how they expend Title I and

other Federal funds by eliminating the need for such schools to report how the money is spent. Many districts, including urban districts, confronted with significant shortfalls in state and local funding, are likely to use up to 50 percent under “transferability provision” to transfer funds from other Titles into Title I and then into Title I schoolwides which are not required to report on how the money is spent; this is an open door for supplanting --- which would have been illegal over the last 35 years!

True to form, the OIG FY 2004 Work Plan specifically identifies some of these areas as being the foci of its Federal auditing role over the next year. One focus will be “adequate yearly progress” and choice, the Work Plan noting “This audit will determine whether states selected for review have developed annual statewide measurable objectives for AYP for all students, and have an adequate process in place to monitor LEA and school compliance with provisions of NCLB. This audit will also determine whether LEAs provided students attending schools identified for improvement for two years the option of attending another public school and provided students attending schools that failed to make AYP for three consecutive years supplement education services.” The above language is confusing as to whether the focus will be upon schools which have been failing AYP for two consecutive years and then are identified for improvement, or as stated above, only “schools identified for improvement for two years.” Regardless, one can anticipate that many states will place a high priority upon preparing for these audits, particularly

the length of time it takes many states to analyze state assessment scores, identify schools for improvement, implement an appropriate and objective appeals process, and develop a final list of schools identified for improvement early enough to ensure parents can exercise their appropriate choice options. Many urban districts, such as Chicago, are likely to have audit exceptions in this area.

Another focus will be an audit of “accountability for results” for special populations. The two Achilles’ heels of No Child Left Behind assessment and accountability provisions are students with disabilities and limited English-proficient students. The Work Plan notes, “This audit will examine the extent to which selected states are assessing special populations, how student performance data is being used to improve operation and service delivery, and determine whether special population students are correctly coded in the accountability system.” The audit of selected states and districts will likely show extreme variations among the states in terms of the following: (a) participation rates of students with disabilities and limited-English-proficient students in state assessments through use of accommodation, (b) the extent of out-of-level testing; (c) the use of alternative instruments in lieu of state assessments; (d) the “exit” or “graduation” criteria used by states, which could range from changing the status of a special education student as a member of that particular subgroup to dropping a special education student from that designation as the result of increased reading and/or math scores.

Regarding the latter, some states' approved accountability plans call for continuing counting these students as part of the subgroup until they graduate from one school level to the next; in other states, they remain the subgroup two or three years. While the audits are going to find great variance among states, the number of audit exceptions will likely be minimal because, as of this date, USED has not published final regulations regarding many of the assessment issues surrounding special education and LEP subgroups. While accountability for results is certainly mandated for these populations in NCLB, the 1997 IDEA version also included almost identical provisions which were not enforced by USED to any great extent.

Prompted by several Government Accounting Office reports in the late 1990s, the USED Office of Inspector General has been increasingly concerned about failure of many Title I schoolwide programs to take advantage of increased flexibility provided in the Law (i.e., commingling Title I with other Federal state and local funds), partially due to accounting requirements which were barriers to schools' consolidating funds, particularly state requirements. NCLB requires that each state plan include an assurance that the SEA will encourage schools to consolidate funds from Federal, state, and local sources, and that SEAs will "eliminate or modify fiscal and accounting barriers for funds consolidation in schoolwide programs." This audit focus will "determine what steps selected states have taken to remove barriers to consolidating funds in schoolwide programs and examine the

degree to which schoolwide programs are taking advantage of the program." During the April NAFEPA Conference, the USED Inspector General noted that several states were experimenting with models to be used at the state and local level to increase "consolidation" and "commingling" of Federal, state, and local funds to take advantage of the flexibility which has been written into regulations since the mid-1990s. In February 2003, the Government Accounting Office released a report which concluded that the "supplement not supplant" provision is "unworkable" in schoolwide programs because schools do not have to report how funds from different Federal and other sources have been expended. As a result, the GAO recommended that the "supplement not supplant" provision should be eliminated in schoolwide programs. In a discussion with the Inspector General during the NAFEPA conference, he felt that the official USED policy would not look upon GAO's recommendation "with great favor," noting that removal of "supplement not supplant" provisions could lead to widespread use of Federal funds to replace state and local funds, which have been recently reduced due to budgetary situations.

A related audit focus will be upon the effect of states' budget shortages on SEAs' and LEAs' ability to meet "maintenance of effort" and "supplement not supplant" regulations. As the report notes, "The purpose of this audit is to determine if state and local education agencies are complying with these requirements...Recently, many state and local agencies have experienced budget

problems that could result in reductions in educational spending.”

For many TechMIS subscribers, the findings from these two audits could be significant. On the positive side, as we have noted over the last two years, schoolwide programs have become a priority for targeting sales efforts as more and more funds are transferred into Title I schoolwides. However, this can be a two-edged sword in that money that could be used for purchasing commercial products and services are increasingly being used to retain teachers who are now designated as Title I teachers in new Title I schoolwides -- teachers who otherwise would have been released because of budget shortfalls.

The OIG focus on “supplement not supplant” provisions will cause many SEAs to hasten the process of removing any schoolwide program and district reportings on how money is spent in schoolwide programs so SEAs can respond to inquiries from Federal auditors as follows: “Because you told us to remove any reporting requirements, we can’t say whether or not districts are using Title I and other Federal funds to supplement and not to supplant any other Federal, state, or local funds.” On these “horns of a dilemma,” the Feds may indeed go along with the GAO recommendation to do away with the “supplement not supplant” requirement for schoolwide programs, but rather increase reliance on “maintenance of effort” requirements that local education agencies and schools maintain state and local expenditure levels as in the preceding years at least to a level of 90 percent. GAO recommended that “the

maintenance of effort” margin be reduced in schoolwide programs allowing a reduction in state and local funds of only five percent from one year to the next. If the question becomes one of favoring increased flexibility at the schoolwide program level or precluding supplanting, this Administration will opt for increased flexibility.

Another new NCLB initiative to be audited is the process used by the USED and SEAs for approving and monitoring Reading First grantees. The Work Plan states, “This audit will determine if grantees and subgrantees are appropriately using Reading First funds as stated in the law.” A very fundamental question here is whether the OIG will be guided by the “allowable uses provision” in the Law, or by USED’s Non-Regulatory Guidance, (April 2001) in identifying audit exceptions. For example, if a state or district decided to use the funds for “family literacy” or “tutoring,” such uses are explicitly allowable in the Law but have not been mentioned as allowable uses in the Non-Regulatory Guidance. It is unclear whether the OIG will attempt to determine if USED or SEAs used specific official or unofficial “lists of approved” Reading First “interventions” or “assessment instruments” in providing guidance to districts which submitted proposals for Reading First grants.

The Work Plan includes three separate, but interrelated, audits of the Puerto Rico Department of Education, which represents an ongoing effort by the OIG. The focus of these audits includes: (a) the alleged diversion of over \$81 million of IDEA funds from special education to

other uses; (b) inadequate accounting for approximately \$50 million that was transferred through the newly-created Community Schools Administration which is supposed to be a pass-through entity through which state and Federal funds are transferred to community schools; and (c) inadequate accounting for property acquired with Federal funds by the Puerto Rico Department of Education and several of its contractors. We have contacted several firms who have in the past conducted business with education entities in Puerto Rico and have confirmed that an almost “paralyzed education market” exists in Puerto Rico as a result of these ongoing audits. This is not a good time for software and related publishers to attempt to penetrate the Puerto Rican education market.

And finally, the USED OIG plans to conduct an audit of the Funds for Improvement of Post-Secondary Education (FIPSE)-directed grants which were included as earmarks in the FY 2003 Appropriations Act. The purpose of the audit is to determine if the activities supported by FIPSE-directed grants “are in accordance with the program’s legislation and that funded activities are carried out.” As noted in the enclosed Special Report, the recent People For the American Way (PFAW) report has identified more than \$75 million over the last two years that has been awarded to a “select group” including the ELC and other groups supporting Administration policies on parental choice and privatization; some of these were funded through FIPSE. While there appears to be some interest in Congress to have the Government

Accounting Office “look into” the use of sole source grants funded by earmarks for pro-school choice advocacy groups, it is not clear whether USED Office of Inspector General will address these earmarked projects in their audits over the next 12 months.

In a related event, Congressman David Obey, ranking Democrat on the House Appropriations Committee, has threatened to submit an amendment to the FY 2004 appropriations bill to reallocate all of the \$1 billion+ in proposed Congressional earmarks to the implementation of NCLB programs if the House and the President do not go along with some of the proposed increases for NCLB in the Senate version. As one might expect this has created an uproar on both sides of the aisle. Congressman David Obey also recently released a report (November 2003) entitled “Grand Old Porkers: Special Favor ‘Earmarks’ Contained in Annual Labor-HHS-Education Appropriation Bills,” which states that the number of earmarks has increased from \$33 million in 1995 (when Republicans took control of the House) to over \$1 billion likely to be included in the FY 2004 Appropriations Act. Citing several examples from the \$890 million earmarks in the FY 2003 budget, Obey makes the following point, “If it possible to do virtually anything with such an earmark (referring to an earmark sponsored by Congressman Tom DeLay providing \$1 million to the World Golf Foundation aimed at teaching young people to play golf) what is appropriate? Whose job is it to determine when the use of such grant money becomes inappropriate?” The report also notes

that two similar programs within USED made up 40 percent of the total earmarks in FY 2003. These were the Funds for the Improvement of Education (FIE), and Funds for the Improvement of Post-Secondary Education (FIPSE) which funded several of the above projects for pro-school choice advocacy groups (see Special Report). However, as the report notes, "Since the earmarks are often provided in contravention of underlying legal authority under which they are appropriated or without any legal authority at all, there is no basis for an agency to review and audit the use of funds by the recipient. There simply is no standard by which recipient performance can be judged." As soon as the FY 2004 budget is appropriated, one can expect Congressman Obey to publish a report/list of the pork barrel earmarks in the FY 2004 budget likely to exceed 2000 earmarks at well over \$1 billion.

Any firm which has benefited from Congressional earmarks in the FY 2003 appropriation should be aware of the forthcoming FIPSE audits and be prepared to justify that the recipients, most likely school districts with whom they were involved, have maintained adequate records and justifications for the use of such funds. At least this could reduce any adverse publicity in the press.

For more information, go to www.house.gov/appropriations_democrats/PorkReport.pdf.

For a copy of the USED Office of Inspector General FY 2004 Work Plan, go to

www.ed.gov/about/offices/list/oig/misc/wp2004.doc.

Latest NCEES Survey On Internet Access in Public Education Suggests Opportunities for Many TechMIS Subscribers

The new National Center for Education Statistics survey, "Internet Access in U.S. Public Schools and Classrooms: 1994-2002," includes some interesting findings which suggest several targets of opportunity for many TechMIS subscribers.

For the first time, the survey asked who is primarily responsible for computer hardware, software, and Internet support at the school level. Thirty-eight percent of public schools indicated there was a full-time paid school technology director or coordinator responsible for technology and support. An additional 11 percent indicated that primary responsibility was through a part-time paid school technology director or coordinator. Only 26 percent indicated that responsibility rests at the district level. In large schools with 1,000 or more enrollment, 48 percent relied on a full-time paid school technology director compared with 29 percent in schools with less than 300 enrollment. Over half of the respondents in rural districts indicated such responsibilities were at the hands of full-time or part-time paid technology directors. One can infer from these statistics that technology-related decisions, in terms of selecting

products, may not be as centralized as other surveys have concluded (e.g., the QED Technology Purchasing Forecast presented at the last EdNet Conference reported that approximately 70 percent of district-level technology coordinators indicated that schools in their district could not make any technology purchases autonomously).

Several other findings suggest that opportunities in rural schools, particularly for products and services available via the Internet, continue to grow; this confirms some of the findings in the recent AASA guidance for small and rural districts to implement NCLB provisions (go to www.AASA.org). In terms of the ratio of students to instructional computers with Internet access, rural districts are at 4.0 compared to 5.5 students per Internet computer in city schools. Compared to large city schools, rural school districts average 40 computers with Internet access regularly available to students outside of regular school hours compared to 51 computers in city districts, which of course are typically much larger. The percent of rural schools providing handheld computers to students and teachers for instructional purposes is about ten percent compared to five percent of city schools, and the percent of public rural schools lending laptop computers to students are 11 percent compared to six percent of city schools. The percent of rural schools without laptop computers for loan this school year which are planning to make laptop computers available for students to borrow during next school year, is 11 percent compared to five percent of city schools. And last, the new NCES survey reported that 34

percent of rural schools compared to 25 percent of city schools, during the past twelve months, offered professional development for 76-100 percent of their teachers on how to integrate the Internet into the curriculum. Another recently-released study by NCES on Computer and Internet Use by Children and Adolescents 2001 found that almost 85 percent of students aged 5-17 in rural schools used computers compared to 76 percent in metropolitan city center schools. Other findings of interest include:

- In 2001, seven percent of public schools provided handheld computers to students or teachers for instructional purposes and the median number of handheld computers in those schools providing handheld computers was nine;
- Eight percent of public schools lent laptop computers to students, providing about one laptop computer per 16 students in those schools.

For copies of both of the NCES surveys, go to <http://nces.ed.gov>.