

*Washington Update*⁸

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While NCLB-Related Pro and Con PR Campaigns Grow, Senate Leadership, Prodded by Key Education Associations, Formally Request USED to Revise Policies Regarding NCLB Implementation

Amidst some rather vehement accusations regarding NCLB which have been heated up by Presidential candidate campaigns, the Senate Democratic leadership has finally begun to exercise its “oversight” role by recommending some reasonable regulatory changes at USED for implementing NCLB provisions. While the NEA and one or two other national education associations have expressed vocally their opposition to many NCLB provisions, other associations such as the CCSSO have been quietly lobbying the Democratic , including Senator Ted Kennedy, to urge USED to make some policy changes which could probably be handled through non-regulatory guidance or possibly revised regulations, rather than having to seek formally amendments to the Law which Senator Kennedy, among others, have opposed. Most likely in response to the letter, the Washington Times on January 13 stated “The Bush Administration will not bow to liberal or conservative pressure to reopen the Federal No Child Left Behind Act for Congressional changes but will use the regulatory process to improve

implementation, Secretary Rod Paige said in an interview.”

A January 8 letter to Secretary Paige from the Democratic leadership, which was also signed by Senators Harkins and Clinton, chastised the Department for failing to provide timely, accurate, and clear guidelines in a variety of areas and for not placing a higher priority on implementing some of the provisions passed by Congress. Those issues which have direct or indirect implications for many TechMIS subscribers are noted below.

Virtually all states are having trouble implementing Title III English Language Acquisition provisions within the context of Title I. The letter urges USED to provide technical assistance to those states and, in turn, districts which have to develop and use valid instruments, including those given in native languages where appropriate, if Title III is to be implemented uniformly. Indeed, the first lawsuit filed against a state department of education for not providing such assistance and/or instruments was recently filed by the Reading Public Schools against the Pennsylvania Department of Education, arguing that the State had not lived up to its responsibility in providing such instruments. Because of the lack of USED and state guidance in this area, a smaller-than-expected proportion of Title III funds (for FY 2003,

approximately \$660 million) has yet to be spent on many commercial products.

The January 12 Education Daily issue also noted that CCSSO has also chided USED for not providing final guidance on LEP students whose progress as a subgroup is a major issue because they can no longer be counted as LEP once they learn English. In a recent discussion, CCSSO staff confirmed that the same is true about students with disabilities who exit from special education programs and who are no longer counted as special education students. Until such formal guidance is provided, there is a disincentive for program administrators to remove LEP or special education students whose achievement levels have increased significantly from their respective groups. Indeed, this is a vicious "Catch 22" as the Center for Education Policy reported in its 2004 NCLB implementation state survey.

As noted in a related Washington Update item, the letter accuses the USED of developing regulations which allow schools "to make academic progress toward their achievement targets even if dropout rates for at-risk students are increasing." The USED guidance to states in reporting "graduation rates" calls for reporting only those students who dropout during the twelfth grade and does not require states to report dropouts in grades 9, 10, and 11. If the Law were to be implemented as stated, the demand for high interest level, effective programs used in high school would increase significantly in those states which follow only USED current guidance.

Regarding USED guidance for implementing supplemental education service provisions, the letter accuses USED of allowing SES providers to discriminate by refusing to provide services for students with disabilities or non-English backgrounds. The Democratic letter also says that the USED has rejected accountability plans from several states which wanted to require supplemental education service providers to meet the same "highly qualified" teacher requirements that schools have to meet. The fact that SES providers are not on the same level playing field in these two areas was raised during the June 2002 SES conference in D.C. The rationale stated by Administration spokespersons was that the pool of potential SES providers could be significantly diminished if they had to meet the above requirements and, therefore, would reduce choice options for parents. A spokesperson for the Education Leaders Council noted that if the SES provider fails to increase students' achievement as stated in the contract, the parents can go to seek out another SES provider after two years. If USED changes its policy as reflected in individual state negotiations or in non-regulatory guidance, the impact upon SES providers who do not use "highly qualified" teachers or who deny special education and limited English proficient students access to their programs, could be significant. On the other hand, SES providers who meet the above requirements should be at a competitive advantage.

The letter also requests USED to give districts greater flexibility to follow the

Law's requirements related to the use of strategies that are based upon scientifically based research. In a strange "twist," the letter takes "strong issue with the Department's use of such requirements to promote vouchers and other approaches that are based upon ideology, not reliable data." The Senate version of this IDEA reauthorization, passed by its authorizing committee late last year, regarding scientifically-based research, provides for a much greater degree of flexibility on the part of districts implementing pre-referral interventions, especially more so than the narrow definition passed by the House.

All of the Democratic Presidential candidates, except Senator Lieberman, have been critical of NCLB provisions (in most cases beyond just inadequate funding); this criticism appears to have fueled heightened media campaigns by the Administration and its supporters, as well as by groups in opposition, if not to the intent of the Law but certainly many of its provisions.

Leading the opposition has been the NEA whose President Reg Weaver recently cited a survey reported in USA Today (January 13), "Voters believe that public schools do not get enough financial support and they believe the Federal government should do more....the more people who are involved in schools know about NCLB, the less they liked it. While the NEA and the public support the goals of the legislation, there is wide agreement that the implementation plan is flawed, and resources allocated are insufficient to make the changes needed to provide

every child with a first class education." AASA has vocally opposed the Law because it "federalizes" education, usurping state and local prerogatives.

The CCSSO has been less vocal in their opposition but has focused their lobbying efforts on specific implementation issues and interpretations, many of which are reflected in the above Democratic letter. It should be noted that the CCSSO has received over \$3 million funding from USED to monitor or otherwise assist in the implementation of the Law, particularly at the state level. In several of the NCLB programs, such as Reading First, as much as 20 percent of funding has been set aside for state-level training and other activities that are actually conducted by the SEA. SIIA, which recently sent a letter to Secretary Paige, is for full implementation of the Law as Congress intended, particularly for ensuring that every student is technologically literate by the time he or she finishes the eighth grade and that Federal funding for education technology should not violate supplement-not-supplant provisions. Both of these provisions are not being implemented nor enforced by USED, as we have noted in several previous TechMIS reports.

The Administration and its supporters are citing "independent" surveys with findings which purport that Americans overwhelmingly support NCLB and that states and districts don't need additional Federal funding as over \$5 billion of Federal funds allocated as early as 2000 have yet to be spent. House Education Committee Chairman, John Boehner,

issued a press release on January 7 citing a survey conducted by the Winston Group on behalf of Americans for Better Education, stating “These results show convincingly that parents with children in public schools rejected negative rhetoric and excuses of the NEA and other education reform opponents, while 54 percent view NCLB favorably. When those not aware of the Law are given a brief description the percentage goes up to 68 percent.” The Winston Survey found that two-thirds of Americans believe that the reason schools are rated as “underperforming” is because schools need help, not because the standards are unreasonable. On the other hand, a recent survey of superintendents and principals by Public Agenda found almost 90 percent of superintendents felt that the Law was unreasonable and/or could not be implemented as written and that the major intent of the Law was to promote public support for vouchers and other choice options as alternatives to public schools.

Chairman Boehner also referred to a recent USED report which alleged that \$5.75 billion of Federal funds allocated between 2000-2002 was unspent. It concluded, “The truth is the Federal government has been increasing education funding more quickly than states can spend it.” The “unspent funds” argument was used in the 1990s in opposing increases in Technology Literacy Funds. Their argument was based upon data which was at least twelve months old and did not take into account that such funds don’t have to be encumbered by districts until almost three years after they receive their

allocations. In response to the current “unspent funds” argument, association officials have correctly argued that, in most Federal programs, states generally have 27 months to spend the money once it has been released, that because of funding uncertainty or late funding allocations states and districts keep some money in reserve until uncertainty is removed; and that rules on spending Federal money are often confusing and restrictive. As reported in Education Daily (January 16), an internal USED memorandum dated July 2003 concluded that the unspent balance which was then at \$17 billion, was normal and that “Although this is a lot of money, it is not an unusual situation.” Senator Kennedy responded that “The Administration is using accounting gimmicks to claim that \$6 billion in unused Federal education funds are waiting to be used.”

The President has also entered the fray by claiming in a recent trip to St. Louis “We’ve increased the budget, Title I money is up 41 percent since 2001....The reading program money is up by four times.” Shortly thereafter, he also announced that the proposed FY 2005 education budget would include a \$1 billion increase in Title I funds and a similar increase in IDEA funds which, if it happens, will be among the largest increases the President has proposed. In the past, most of the increases for IDEA and Title I have resulted from efforts among Republicans and Democrats in the Congress.

FY 2004 Education Budget Has Over \$100 Million in Technology Related Earmarks

The FY 2004 budget, agreed upon by a House/Senate conference committee, includes well over \$100 million of technology earmarks. A “between the lines” reading of the accompanying 1,100 page report to the pending FY 2004 Appropriations Act suggests even more (perhaps two or three times the amount) could be used for some purchases of technology or related staff development, mostly in the K-12 arena, although earmarks for distance learning are over \$30 million at the post-secondary level.

Following our Special Report in November, a January 2 Washington Post article entitled “Critics Say Education Department is Favoring Political Right” says the pending FY 2004 budget continues to include earmarks for advocacy groups which support administration policies. One such group is the Education Leaders Council for which \$10 million is earmarked to continue implementing the “Following the Leaders” project. This project previously had received at least \$13 million from USED for demonstration sites which include using technology to deliver instruction and to conduct planning and monitoring of the implementation of key NCLB provisions. Products and online services from several firms are being used in this project. A closely associated group, The National Council on Teacher Quality, will receive \$7 million to continue a multi-year, \$35-\$40 million effort to

implement provisions encouraging the use of “alternative routes” for teacher certification and online certification assessments to certify new teachers. The Houston Independent School District continues to receive approximately \$20 million earmarked for an extension of project GRAD-USA Inc., which focuses on “school reform.” The Pennsylvania Department of Education will continue to receive approximately \$20 million to provide subgrants to low-performing schools for afterschool programs, and to promote the acquisition and effective use of instructional technology and equipment. Secretary Paige and Under Secretary Hickock formerly headed these two entities, respectively.

Most of the technology-related earmarks will be provided directly to school districts, colleges, community-based organizations and non-profit entities without specifying technology or training vendors to receive a portion of those funds through purchases by the recipient. However, some of the earmarks will go directly to the vendors to cover most or all of the cost of establishing demonstration and related products. For example, Voyager Expanded Learning of Dallas, Texas, would receive \$800,000 for implementing its program in two Texas congressional districts and two in Ohio. In situations where districts or other agencies are the recipient, the grantee usually has some flexibility, within a certain range, in determining how the funds will actually be used.

Almost \$100 million of earmarks would support projects designed to provide various remedial education for at-risk

students through afterschool programs, mentoring, distance learning, and other means of delivery. Approximately one-third to one-half of these projects would involve the use of technology to some extent. Many of the technology-related earmarks among colleges and universities, which are included in the Fund for the Improvement of Post-Secondary Education, would create and/or expand distance learning initiatives, particularly those related to professional development, training, and certification of nurses, reflecting the pent up demand for trained nurses across the country.

Within the multi-agency omnibus appropriations bill there are 7,900 earmarks totaling \$10.5 billion (of which \$393 million or over \$600 per person) are earmarked for Alaska projects thanks in large part to Alaska Senator Ted Stevens, Chairman of the Senate Appropriations Committee.

TechMIS subscribers who are interested in reviewing the earmarks should go to <http://thomas.loc.gov> and search or call Charles Blaschke directly.

National Education Technology Plan and National Education Technology Evaluation Project: An Update

During the first two weeks in January, USED officials, including John Bailey, Director of the Office of Education Technology, provided updates on the development of the National Education Technology Plan and the \$15 million study of the effects of education

technology. Highlights relevant to most TechMIS subscribers are noted below.

During an SIIA January 13 webcast and in other meetings involving education software publishers, John Bailey provided an update on the third National Education Technology Plan, encouraging software publishers and others to make comments through March 12. Building upon the previous two national plans developed when Linda Roberts headed the Education Technology Office, the envisioned plan contains a heightened focus on students, referred to as the “digital” or “millennium” generation who have “grown up with technology.” The focus will also be expanded to include pre-K through 20. Several of the topics to be addressed include: (a) assessing the impact of broadband growth on delivery of education services, which is a particular interest among White House officials; (b) new funding sources for technology, including Title I and special education which appear to be making up for reductions in state technology earmarks; (c) Federal, state, and local bureaucratic barriers which preclude opportunities for virtual schools, for example, to demonstrate their effectiveness or which otherwise stand in the way of realizing the potential benefits of technology use; and (d) the evolution of “universal design principles” which increasingly will provide special education and other students access to quality content and education programming. In response to a question, Bailey emphasized that technology can make a major impact in high schools. However, a precondition is likely to be the need to “re-engineer”

processes currently used in high schools to take advantage of learning that can only occur through the use of technology (e.g., simulation). In response to another question about what Federal funding increases one might expect to be addressed in the plan, Bailey responded that a major challenge will be to convince state and local governments to increase their allocations for technology. Bailey noted that, since 1998, state and local funding allocations began to decline while the Federal share has been increasing, including the advent of the E-Rate program.

In various recent forums, USED officials, including John Bailey, provided updates on the National Evaluation of Education Technology being conducted by Mathematica Policy and SRI International. The most important question to be addressed by the study is to determine the effect of specific technology “interventions” on student academic achievement as measured by commonly used standardized tests in reading and mathematics. Even though there are other potential benefits of technology use, such as reducing paperwork, improving teacher working conditions, etc., USED officials confirmed that the evaluation would have the narrow academic focus mandated by Congress. Most of the technology applications currently being purchased to implement No Child Left Behind are designed to improve assessments and data-driven decision making. As of the Fall deadline, approximately 150 applications from various software publishers and related groups had been submitted along with evidence of their effectiveness.

Approximately half could be categorized as math interventions with the remaining reading interventions. Based on analysis of the evidence, panels of three persons each reduced the number appropriate interventions to approximately 50.

As noted in the August Washington Update, firms should seriously consider both the potential benefits (i.e., having USED cover most of the cost of evaluating their products in randomized treatment/control studies) and the potential disadvantages. The first potential problem area relates to timing. Pre-tests will be administered in September of this year. Neither participating school districts or participating firms have been finalized and the time available for firms to negotiate with both USED and participating districts is likely to be very limited. Second, it is not clear how certain types of reading and math interventions will be assigned to treatment teachers vs. control teachers. As any vendor knows, teacher “buy-in” is very important. Third, software from several firms which are similar will be categorized as a certain type of intervention. However, even though a firm’s product may be effective, the intervention as a whole may not. And last, while the intent to identify interventions which have moderate to large “effect sizes” in math and reading scores with certain types of students under certain conditions, it is not clear that subgroup sizes will be large enough to measure the effects on subgroups of students (e.g., students with disabilities, limited-English-proficient). Last, if the firms’ products are not aligned with the national norm referenced test to be used,

student actual achievement could be understated.

For more information about the evaluation go to

www.ed.gov/about/offices/list/OS/technology/evaluation.

USED will address the plan, the evaluation, and individual state studies during a summit on May 10-12 in St. Louis. Further information should be available at the above URL.

Recent Reports and Related Developments Suggest Increased Opportunities for Effective Programs and Practices at the High School Level

Recent critical reports by pro-Administration “independent” groups and other developments suggest increased opportunities may exist in the future at the high school level for effective practices and programs which will increase graduation rates and reduce the need for remedial college-level courses. While recent reports have correctly criticized USED for placing a low enforcement priority upon states and their reporting in this area, there is likely to be much more pressure upon districts and states from local employers to ensure that students graduate, not only with regular , but with the necessary basic skills for productive employment.

In December, the Education Trust, a pro-NCLB independent “watchdog” over NCLB implementation released a report clearly showing major differences in state graduate rates between “self-

reported” state data submitted in September 2003 and USED’s own “common core” data on graduation rates, particularly among different subgroups of students. The report partially criticizes USED for providing guidance to states in preparing their self-reported data which is different from the NCLB provisions and even from the definitions used in the past by USED in its common core data compilations. For example, the NCLB provisions clearly state that graduation rate calculations must be made according to the percentage of students, measured from the beginning of high school, who graduate from high school with a regular diploma, not including alternatives such as GEDs, in the standard number of years, or another method approved by USED on a state-by-state basis. In its guidance for the September 2003 report, USED told states to provide “a percentage of students measured from the beginning of the school year who graduate from public high school with a regular diploma.” As the Education Trust report notes, “it ignores the fate of students who drop out in the ninth, tenth, or eleventh grade.”

The Education Trust compared the self-reported state data to that compiled by Jay Greene of the Manhattan Institute who used the USED common core data for 2000-01 following the strict definition included in the Law. It found significant differences across some states which are considered to have “generally high-quality program,s” including North Carolina. States with large differences between state self-reported and Greene’s calculations include Connecticut (17 percentage points), Indiana (16

percentage points), Texas (16 percentage points), among others. The Education Trust also looked at subgroups of students. Significant differences were seen in Latino groups and African-American graduation rates which were even greater, in some states over 30 percentage points. For example, for African-American graduation rates in Indiana, the difference was 35 percentage points and, for Latino graduation rates in Delaware, the difference was 27 percent. Such “sugar-coating” in state self-reporting will likely result in increased pressures on states, and even USED, for more accurate reporting reflecting realities as has already happened in Texas culminating in recent reports on Houston Independent School District’s high dropout rates.

The most significant differences among state self-reporting and other independent reports on graduation rates relates to limited-English-proficient students and students with disabilities. As the Education Trust report states, only 21 states reported data for students with disabilities with graduation rates ranging from 95 percent in South Dakota to 29 percent in Florida. Only fifteen states reported data for LEP , which range from 89 percent in South Dakota to 38 percent in New York. Just as these two subgroups’ test scores have become the major reason for many schools failing to meet AYP this last school year, they will also likely become a major cause for low graduation rates across states. The need for programs which are effective in increasing student performance, especially for students with disabilities, should increase even

more because parents of students who graduate with other than a regular high school diploma can require districts to continue providing services until age 22 at a very high annual cost.

Other reports also suggest heightened interest and priorities being placed upon high schools. One is the massive funding from the Gates Foundation to support a large critical mass initiatives to design and implement smaller high schools. Over several hundred million dollars has been allocated for such current projects or those being planned for implementation in the immediate future. As noted in the last TechMIS report, the University of Oregon recently found a disconnect between the content and skills taught in high schools, even among high school graduates, and those felt to be necessary to succeed in college, which has increased the need for college remediation. The recent Education Trust report on graduation rates and a similar one criticizing inadequate and misleading self-reporting by states on the number of “high quality” teachers are likely to receive increased oversight attention in the form of hearings in this new Congressional session, especially in light of President Bush’s “struggling readers” proposed initiative announced in the State of the Union message. The Education Trust headed by Kati Haycock, one of three winners of the Harold McGraw Award in 2003, continues to be highly-respected in most quarters for its objective reporting and policy recommendations. For a copy of the report go www2.edtrust.org/edtrust.

Exhibitors at Florida Education Technology Conference Provided Advice and Guidance by Policy Influencers and District Officials on How to Take Advantage of Opportunities Under No Child Left Behind

FETC, Mailings Clearinghouse, and Education TURNKEY Systems, district officials and policy influencers provided exhibitors and other vendor representatives advice on how to identify targets of opportunity and guidance on how to approach decision-makers regarding implementation of NCLB. Jim Kohlmoos who heads NEKIA and served as a lobbyist during the passage of NCLB, emphasized that this law represents the highest example of Federal legislation creating a market for certain types of products and services. As a former USED official under the Clinton Administration, he recognized that there were certain “hidden politics” behind the Law but noted that many of the accountability provisions and even parent choice options were in the 1994 ESEA version; however, neither USED nor any states placed a high priority on enforcing these provisions.

In his discussion of scientifically-based research (SBR) and the implications for education publishers, he noted that implementation of this provision has been minimal but that when the What Works Clearinghouse (see related Washington Update item) begins to release some of its evidence-based reports on certain “interventions,” state and district officials are more likely to

be more skeptical as they review claims and documentation provided by vendors, which he felt was “healthy.” He also noted that while solid evidence supporting the effectiveness of a product is important, firms should realize that many local decision-makers are also influenced by politics. To “thrive” in this audience he suggested that education publishers consult with groups and individuals with the necessary expertise in designing the evaluation studies and/or reporting results.

Dr. Joan Kowal, former superintendent in West Palm Beach, Florida, and finalist for President of American Association of School Administrators (AASA), expounded on her vision of “universal accountability” and “proficiency” underlying NCLB. She noted some of the desired instructional characteristics fostered by No Child Left Behind and how digital delivery can help. For example, technology can facilitate greater interaction by providing prompt and patient responses. It can also facilitate individualization by taking into account learner characteristics. She advised firms to view school district officials, particularly superintendents, as “partners” rather than customers, and that even though partnerships take time to develop, in the long run they are mutually beneficial to all parties. She also emphasized that vendors need to have “solutions” to problems that are created for high-level district officials. Dr. Kay Young who directs the Florida Learning Alliance, which is a consortia of over 40 relatively rural counties within the state, also emphasized the “partnership” route to success citing the FLA as an example. It has expanded the

number of partnership relations with various firms over the last few years. Generally the consortia not only facilitates market aggregation for volume discount purchases but also reduces vendors' cost of sales. Now that all of the FLA member counties have Internet in all classrooms, she noted that there currently exists opportunities with firms with online instructional and assessment content and tools as well as professional development content which could assist FLA members.

Chris Master who has directed technology initiatives in Dade County Public Schools for over ten years, advised vendors to "know your audience when approaching large urban districts such as Dade Country." Critical to the success of an evolving partnership is the point of entry into the district. While some vendors attempt entry through the superintendent or school board members, eventually they will ask her to become directly involved in subsequent decisions. While she admitted to some extent she viewed her role to "protect" the board from vendors which had technology solutions that are neither relevant nor appropriate in solving priority problems within the system, she also welcomed vendors who share with her important technology trends, key Federal rules about how funds could be used in a more flexible manner, etc. Of great importance to her is a vendor who not only has a product or services which meets a priority need, but also has enough knowledge about Federal and state funding to help her "creatively finance" the purchase.

Two principals from Hillsborough County Public Schools were very explicit in their advice to vendors. Walt Shaffner prefers to deal with vendor representatives "(a) who are former educators and/or are keenly aware of the needs and problems confronting schools; (b) who are aware of the key provisions under No Child Left Behind and the challenges it creates for principals in the context of their school environment; (c) who have products or services that are pragmatic and can solve current and future problems; and (d) who can explain how the product or service is "student centered" or "what's in it for the kids." The other principal Beny Peretz emphasized that principals always consider whether purchasing a product or service will minimize risks to them emphasizing the need for key referral or credible reference sites which testify on the effectiveness of the product or service. In most cases principals want to pilot test the products or service with the vendor providing the necessary training and follow-up. In many cases vendor materials which appear to be of some interest to a principal will be referred to an assistant principal who will consult with teachers and then come back with recommendations.

One of the highlights of the Institute was the release of a recent survey conducted by MCH by Mary English in which almost 70 percent of school respondents indicated there would be an increase in technology expenditures this year with only four percent indicating a decrease in such expenditures. Another big winner in terms of increased expenditures was special education as over a quarter of respondents indicated

such expenditures would increase with the remaining indicating no change. Expenditures for core curriculum would likely increase for 30 percent of the schools. The survey also reported that district control over school expenditures will increase in approximately a quarter of the responding districts or schools.

As previously reported in several TechMIS Special Reports and Washington Updates, we reiterated the following points:

- This year and most likely next year there will be four distinct purchasing cycles which could be influenced by Federal Title I funding allocations, one for each of four categories of districts, e.g., those with different levels of Title I funding increases, those with a relatively large number of schools identified for improvement, among others;
- That vendors should seriously consider partnering with high-performing schools which are in districts with a relatively large number of failing schools, who wish to use their products in afterschool programs in the failing schools or provide their online remedial and instructional services;
- That schoolwide programs continue to offer good opportunities;
- That the major growth opportunities are in special

education which will spend around \$750 million this year on instructional software and supplemental materials; and

- The final language in the Reauthorization of IDEA regarding “prereferral interventions” could have great impact, on supplemental education publishers or publishers of Reading First basal texts.

In collaboration with the Council for Exceptional Children prior to its annual conference on April 14, we and MCH will be making a similar presentation to exhibitors. If anyone is interested in obtaining handout materials and copies of presentations during the FETC Institute or registering for the CEC conference workshop, contact Mary English at 1-800-776-6373. If you have any other questions contact Charles Blaschke directly.