

**Highlights of NAFEPA Conference:
New Flexible Policies on Alternative Assessments
And Test Taking Participation Rates Likely
To Have the Greatest Impact On NCLB Implementation**

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

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During the 30th National Association of Federal Education Program Administrators (NAFEPA) annual conference, most Title I directors and other experts felt that the new policies of providing greater flexibility on alternative assessments for certain special education students and alternative ways of calculating whether or not 95 percent of students enrolled in school subgroups took state assessments will have the greatest positive effects on NCLB implementation at the district level. Other newly-found flexibility in the Law -- regarding science teachers and current (vs. new) teachers meeting highly-qualified requirements, greater district flexibility in certifying paraprofessionals, and extensions of time for rural districts to ensure all teachers are "highly qualified" -- (see March TechMIS [Washington Update](#)) are not likely to have as much an immediate impact.

As announced by Secretary Paige during the recent National School Boards Association annual meeting, states may now allow schools to average test taking participation rates over two or even three years to determine whether at least 95 percent of students in subgroups on the average participated in state assessments; if that average is below 95 percent then the school is counted as failing to meet AYP. The Secretary also announced that if a student can not take these assessments or is scheduled to make up tests for medical reasons, that student is not counted as failing to meet AYP. Many education lobbyists feel this new flexibility will reduce the number of schools that are identified for improvement for failing AYP two consecutive years this year and in the future. However, most were also upset that USED will not allow such flexibility to be "retroactive," which would reduce the number of schools failing AYP this last year...about 26,000...significantly. Several key Congressmen involved in drafting NCLB have written letters requesting that this participation rate, as well as alternative assessment flexibility described below, be made retroactive. The Secretary has indicated on several occasions this will not be allowed. Neither USED nor any other group has actually determined the percent of the 26,000+ schools which failed to make AYP last year that failed because less than 95 percent of students took the state assessment. Estimates appear to be that the percentage should be between 30 and 40 percent. For example, California SEA officials have estimated that nearly two-thirds of the high schools that failed AYP did so because less than 95 percent participation rate occurred. As reported in [Education Week](#) (March 31), slightly over 1,000 Texas schools failed to meet AYP in the 2002-03 school year, with the number one reason being the test participation rate. In Georgia, more than 135 schools were placed in improvement

because of low test participation rates.

The other newly-found flexibility allows alternative tests with lower proficiency levels to be given to certain special education students; this will have an impact in certain states but not others. The December and March USED Guidance documents state that SEAs must determine what groups of special education students will be allowed to take the alternative tests. However, for AYP reporting purposes, students who pass the alternative test (i.e., being proficient) in excess of one percent will not be allowed to be counted toward meeting AYP. On the other hand, during her session Julie Miller, publisher of Title I Reports, reiterated that USED officials during the national Title I conference in February stated that a district could “assign strategically” those student proficient scores beyond the one percent cap to Title I as well as non-Title I schools in such a way as to minimize the number of schools failing to meet AYP because of low performance among special education subgroups. A number of Title I directors in attendance indicated that they were planning to do so and, in fact, an education consultant from Michigan noted that the Michigan SEA is planning to allow approximately 2.3 percent of the students in the state to take the alternative state assessment (see related Washington Update item). As we noted in the February TechMIS Washington Update, there is certainly an incentive for SEAs to increase the number of cognitively-impaired as well as “borderline” special education students who take alternative tests and “strategically assign” their scores.

Also, in her session entitled “Where is the Current Enforcement Focus?,” Julie Miller indicated that the newly-found flexibility regarding LEP assessment, (i.e., by not requiring LEP students, during their first year enrolled in US public schools, to take the English reading tests) would have “little practical effect as LEP student scores could already be excluded in their first year.” However, she noted that, allowing students to remain as part of the “LEP subgroup” for up to two years after attaining English language proficiency was a positive step that reduces the negative effects of the “catch 22” situation by partially removing the disincentive to have English language learners “exit” from the program. Miller argued that alternative assessments, parent transportation choice, and supplemental education services, are the areas in which USED is most likely to use its enforcement power. According to Miller, most of the enforcement letters and determinations sent to states and districts resulted from formal complaints filed with USED on its “complaint tracking system.” Enforcement related to choice and SES “will probably continue to focus on complaint-generated cases,” according to Miller. Many related complaints can be attributed to the “inevitable conflict” between private SES providers and local districts who want to minimize the total amount of Title I funds following the child to external SES providers. Many districts place major blame on SEAs for not providing guidance on how to evaluate the performance of SES providers as they conduct their SEA monitoring. In closing, she noted that use of the new census data has caused “historic Title I funding shifts” among different types of districts for this coming year as eleven states and 7,500 districts will be “losers” in Title I funding. She argued that “funding uncertainty” will continue in the future as NCLB requires the use of the most current annual census data.

USED official Tom Corwin provided an update on recent developments in Guidance related to supplemental education services, noting that the two current sets of Non-Regulatory Guidance should be considered a “living document,” as future changes are likely. One likely such change

would allow a district to offer parents the option of having their child receive supplemental services rather than being transferred to another school under the “parent choice” option provisions. He also confirmed that the district could provide SES to a school which failed to meet AYP for the first time only in an attempt to prevent it from failing again during the second year and, therefore, being under the choice sanction. Corwin also noted special situations regarding the 20 percent earmark included in the regulations for choice and/or SES services, stating “An LEA that does not have to implement choice but does have to implement supplemental services must spend a full 20 percent on supplemental services if demand exists.” This would be the situation in a district such as Hillsborough County (Florida) which already has district-provided transportation for parents to exercise transfer choice options for their students. The question was raised by a conference attendee as to whether the district has to reserve 20 percent for SES, because the Law states that the cap is five percent for SES and five percent for choice transportation and that the remainder is at the discretion of the district; he noted that a number of large urban districts are planning to earmark only five percent this coming year for SES regardless of the demand. His response was that such is “not a totally correct interpretation of the Law.” In her session, Julie Miller also indicated that her interpretation of the Law was that the cap earmarked for SES is five percent, not the 20 percent claimed by USED officials or in the Non-Regulatory Guidance.

As noted in the last TechMIS Washington Update, USED enforcement of the 20 percent earmark vs. the five percent earmark cap in the Law could have a significant impact on the size of the market for supplemental education services --- around \$500 million under the five percent cap vs. over \$2 billion if the 20 percent minimum is to be enforced. Partially in a response to a question raised during the March 31 Education Industry’s Association meeting (see March [Washington Update](#)) and subsequent discussions which we held with some of the leading supplemental education service providers and Steve Pines, Executive Director of the American Education Industries Association, its members are being invited to attend a meeting in May to form a coalition to address supplemental education services issues and USED policies.

In another session addressing the need to blend IDEA reauthorization with NCLB, Paul Zinni of Avon (Massachusetts) Public Schools urged USED to find “additional flexibility” to allow states to certify special education teachers as being highly-qualified without having them pass content-related tests in all the content areas they teach. He also pointed out that, just as the LEP student who gains English proficiency becomes a “Former LEP” (or FLEP) student for two years to be counted as part of the LEP subgroup, that similar flexibility needs to be allowed for treating special education students who exit from special education; otherwise it will be impossible to close the achievement gap over time. He also noted that, in Massachusetts, the percent of students who achieve proficiency on the state alternative assessment for special education students did not meet the one percent cap and, therefore, the recent alternative assessment flexibility would not likely affect many Massachusetts districts.

Celebrating its 30th anniversary, the NAFEPA organization has undergone a number of changes including having A+ Events manage the conference, including the exhibits. And, for the first time attendance exceeded 400 Title I directors, other school officials, and representatives from approximately 20 exhibitors and/or other vendors. Even though the number of attendees is smaller

than the national Title I conference (usually held in January/February), this conference provides a good opportunity for firms to “network” with key Title I and other decision-makers who influence how well over half of the Title I funds across the country are used. For more information contact Lisa Brandies at 800/403-4783 or go to www.Aplusevents.com.