

*Washington Update*⁸

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Senate Appropriations Committee Rejects Administration's New Initiatives and Restores Many of the Administration and House Proposed Funding Cuts Thereby Increasing the Probability of the FY 2006 Education Budget Being Included in a Multi-Agency Omnibus Bill Which Will Include Across-the-Board Budget Cuts

In mid-July, the Senate Appropriations Committee rejected virtually all of the requested FY 2006 funding included in the President's proposed Secondary Reform Initiative, which included \$1.2 billion for high school interventions and \$500 million for teacher incentive funds intended for merit pay. It would also zero-fund some of the existing authorized programs, such as Smaller Learning Communities, which the Administration has used to partially fund some of the Administration's middle and high school intervention programs (see [May TechMIS Washington Update](#)). On the other hand, the Senate Committee would restore funding for many programs proposed for funding reductions by both the Administration and the recently passed House version, including:

- The E²T² State Technology Grant program would receive \$425 million which is above the House "mark" of \$300 million.
- Star Schools would be level-funded at \$21 million compared to zero funding in the House version.

Some of the funding restorations come from Title I and IDEA, for which the Senate would provide each only \$100 million more -- less than the amounts proposed by the House and the Administration.

For a number of reasons, reconciliation between the proposed House and Senate funding levels could be stalled which could result in a last minute omnibus appropriations bill of which the USED appropriations would be a part. First, the Administration and House Republicans could use "earmarked" programs in the education appropriations bill to negotiate with key senators to line up behind the President's proposed replacement for Justice Sandra Day O'Connor on the Supreme Court. Key senators may also hold up the Senate floor vote on the Committee report until they have been assured that their "pork barrel" projects will be included in the bill. Second, the Senate version includes a budget gimmick which would extend the markup process -- namely extending approximately \$3 billion worth of Federal employees' salaries by one day

from the FY 2006 to FY 2007 fiscal year. This budget gimmick was rejected last year by the House and is likely to be rejected once again, thus extending the budget resolution process. If the FY 2006 education appropriations final markup exceeds the budget resolution cap and is included in an omnibus bill, two things are likely to occur: (a) an across-the-board cut will have to be applied which will erode any increases in large programs such as Title I and IDEA; and (b) the number of pork barrel earmarks will increase and are more likely to be hidden and not “picked up” by the press in a budget document several thousand pages in length. Last year, almost a billion dollars was included in the education appropriation for “pork barrel” earmarks.

Senate Appropriations Committee Report Goes Beyond the Numbers by Communicating Congressional Intent to USED

While the above Washington Update item reflects the appropriation priorities of the Senate Committee, the accompanying Committee Report goes beyond the numbers by communicating clearly the Committee’s intent and implementation priorities to USED. One specific area relates to Reading First. The Report reflects numerous allegations and official legal complaints filed with the USED Office of Inspector General, many of which have been covered in the Gerald Bracey Policy Brief and the new CEP report on Reading First, included in the Special Report which accompanies

this Washington Update. The report states:

“The Committee intends for funds available under the Reading First program to encourage and support the use of reading programs with the strongest possible scientific evidence of effectiveness. The Committee urges the Department to provide clear guidance to its technical assistance centers and the States to: fully consider scientific evidence of effectiveness in rating programs for use under Reading First; contemplate expanded lists of allowable programs that include innovative programs with scientific evidence of effectiveness; when awarding new grants, consider giving preference to those schools that select programs with strong, scientific evidence of effectiveness; emphasize that the Department has not established a predetermined approved list of reading materials; and allow comprehensive reading programs that have scientific evidence of effectiveness to be implemented in full, as they have been researched, without modification to conform to other models of instruction. The Committee also is concerned that certain practices under the Reading First program may unduly interfere with local control of curriculum. The Committee notes that Reading First materials decisions are to be made at the school

level, subject to the approval of the State.”

Very specifically, the Committee report directs USED to give guidance to the Reading First Technical Assistance Centers, whose assistance goes beyond the Reading First program and now includes assisting states in selecting and developing modified or alternative assessments and selecting interventions for so-called “gap students” under the two percent cap policy. Specifically, USED is to ask these centers to “fully consider scientific evidence in rating programs” and to “contemplate expanded lists of allowable programs.” In 2002, the American Association of Publishers (AAP) criticized the University of Oregon rating system as not being scientifically based and as not considering the scientific evidence compiled on various programs. Guidance, which would emphasize that the “Department has not established a predetermined approved list of reading materials” is in direct reference to numerous allegations from many quarters beginning in 2002. The guidance, which is designed to prevent comprehensive programs from being modified to conform to other models of instruction, appears to be directly related to the recent official complaint filed by the Success For All Foundation with the USED Office of Inspector General. Since its inception, Reading First policymakers have been very selective in implementing their priority provisions in Reading First while disregarding other activities allowable under Reading First Law.

Under the Title II D Enhancing Education Through Technology (E²T²), most states have interpreted that the minimum of 25 percent of an LEA’s allocation for professional development applied only to competitive grants as opposed to formula flow through funds going to an LEA. The Committee Report clarifies this point as follows, “An LEA must use at least 25 percent of its formula allocation for professional development in the integration of technology into the curriculum unless it can demonstrate that it already provides such highly-qualified professional development.”

The Senate Committee Report also clarifies the bone of contention which has arisen under the 21st Century Community Learning Centers (21st CCLC) program with proposed funding of almost \$1 billion for next year. Most SEAs have given a priority to allocating 21st Century grants to Title I schoolwide programs. However, many eligible Title I schoolwide programs have opted out of SWP to become Targeted Assistance Programs because they wish to more clearly target specific eligible students. The Committee Report states, “Centers must target their services on students who attend schools that are eligible to operate a schoolwide program under Title I of the Elementary and Secondary Education Act or serve high percentages of students from low-income families.” To receive 21st CCLC funds, a Title I school must only be eligible to become or continue as a schoolwide program and hence would be eligible to receive and/or continue receiving funding under 21st CCLC for afterschool programs.

Of the \$411 million proposed for state assessments, slightly over \$11 million could be used for enhanced assessment instruments. The Senate Committee Report urges USED to focus specifically on the development of assessments for students with specific learning disabilities (SLDs) and students with limited English proficiency. As noted in another Washington Update item, a large portion of the remaining \$400 million will be allocated to states to develop or select alternative or modified instruments for gap students. Later on, the Committee Report reiterates its concern “that states do not yet have the tools and resources to appropriately implement the new policy in the 2005-06 school year.” (for the two percent gap students)...The Committee strongly urges USED to provide “guidance to states and LEAs and parents that will define how students are identified for this category and ensure that eligible students have every possible opportunity for full and consistent participation in the general education curriculum and be on track to graduate with a regular diploma.” The Committee also urges USED Office of Special Education Programs (OSEP), “...to ensure that the National Research Center on Learning Disabilities (NRCLD) continues to conduct and synthesize research on how to best implement and take to scale identification methods that rely on students’ responses to scientific research-based instruction. OSEP, through the NRCLD, should assist states and LEAs in identifying the criteria for determining an SLD and ensuring the consistency and integrity of the classification system across the States, and provide guidance and technical

assistance systems for the improvement of SLD identification and eligibility.” The National Institute for Child Health and Human Development headed by Reid Lyon, has taken a lead research role in this area for almost a decade. Perhaps the new emphasis on the NRCLD reflects Reid Lyon’s departure from NICHD.

Under the new Spellings regime, greater flexibilities have been allowed through state amendments and individual negotiations with states in many areas other than Reading First. Congressional intent reflected in the Senate Committee Report will likely be reflected in the final, most likely omnibus, appropriation, bill language. It remains unclear whether USED will implement the Committee’s recommendations and urgings. However, in some areas such as proposed IDEA regulations, Congress appears to be exercising its oversight role more aggressively, which could mean USED will likely take into account Congressional intent more so than in the past.

New Government Accountability Office (GAO) Report Confirms Newly-Created Opportunities in What States For Products and Services to Assist States in Implementing Alternative Assessments for Academically-Disabled Students or “Gap Students”

In a recent report to Senator Ted Kennedy, the GAO confirmed

opportunities which exist as a result of the USED “interim policy” (see May Washington Update) for states to develop or select alternative or modified assessments for the two percent of students with academic disabilities, often referred to as “gap students.” Through case studies in four states and interviews with assessment companies and national groups such as the National Center for Educational Outcomes (University of Minnesota). GAO concluded that designing and implementing alternative assessments that measure student achievement on state grade level standards is “difficult” and that special education teachers need training over a period of up to three years to administer these alternative assessments properly. At last count, 45 states have requested approval for amendments, under the USED interim policy, which will allow them to select and/or develop alternative tests with alternative proficiency levels which are aligned with grade-level standards. In the very limited number of states which have such alternative assessments required under the USED “interim policy,” officials reported that it took about three years to design these alternative assessments which included portfolios, performance assessments, out-of-level assessments, and combinations of the three. One can reasonably assume that a large portion of the \$400 million annual Federal funding to states to meet the NCLB testing requirements will be used by states to develop/select these alternative assessment instruments, as well as interventions for so-called “gap students.” GAO reported that, during the first year of implementation in one study state, almost \$600,000 was spent

in designing the assessment, training teachers to administer the assessment, and training scorers to score the assessment. The assessment experts with whom GAO talked estimated that the annual cost for alternative assessments for special education students ranged from \$75 to \$400 compared to \$5 to \$20 for assessments for non-special education students.

Several types of teacher training needs are being created. One area, according to the assessment experts GAO interviewed, is training on how to administer alternative assessments and use results to improve instruction. GAO found that new special education teachers need additional training in the area of assessments because teacher preparation programs in colleges and universities usually provide only one course on assessments. In addition, refresher training is needed when alternative assessments are modified over time. Another training need identified in the GAO report is for certain special education teachers, such as resource room teachers (who teach primarily functional skills such as shopping independently or how to use public transportation); these teachers need to learn the regular academic curriculum, or as GAO stated, “A special education teacher would need to learn the grade-level curriculum and then match a student’s skills with an appropriate task to demonstrate mastery for the student’s individual level.”

More than 45 states have submitted proposed amendments under USED’s “interim policy” to use alternative assessments with gap students; many

have a large percent of students with disabilities already participating in alternative reading assessments measuring below-grade-level standards. The states which GAO found had a high percent of students with disabilities who participated in alternative reading assessments measuring grade level standards (which is the requirement under the USED “interim policy”), include Kansas, Massachusetts, North Carolina, Oregon, and Vermont. These states will likely be able to “tweak” their existing alternative assessments in order to meet the mandate that such alternative reading tests measure grade-level standards rather than measuring only below-grade-level standards. Partially as a follow-up report to the GAO report, Education Daily Reporter Steve Brown explored with several groups the possibility that the current Kansas modified assessment approach may become a model for other states to follow, as Secretary Spellings and other USED officials have noted on several occasions. Such groups as the National School Boards Association support the modified assessment for the two percent gap students. However, as reported in Education Daily (July 28), Reggie Felton, NSBA’s Director of Federal Relations, stated, “The Kansas modified assessment ought to be viewed as one approach, but other states might have other options. So what we don’t want is to move from one mandated assessment structure to another mandated assessment structure. But the concept of a modified assessment we support.” Based upon a discussion with Assistant Commissioner for the Kansas SEA, Alexa Posny, Brown reported that Kansas was able to “roll out modified

assessments for all grades, just in time for the 2005-06 school year, for less than \$4 million.” Kansas began developing its current modified assessment for gap students after the 1997 reauthorization of IDEA.

If one makes the following assumptions:

- 40 states will have to develop/select alternative instruments and train teachers to administer them;
- the process will take on average two years instead of three years as GAO estimated;
- the average cost per pupil will be about \$200, which is a conservative midpoint between the GAO estimates of \$70 and \$400 per student; and
- an estimated 2.5 million students will be assessed using alternative assessments with lower proficiency targets which are aligned with grade-level standards;

then, the total estimated expenditures would be about \$500 million over the two-year period.

As we have noted in several previous TechMIS reports and as the recent Technology Counts 2005 (Education Week) found, not only is the use of online computer-based assessments increasing, but they are more likely to be used (based upon our survey of state assessment directors last Fall) in the areas of alternative assessments and state

test retaking, especially in those states with high school exit exams. Not only can the cost of state assessments be reduced, but also results can be quickly made available to teachers to inform instruction when online assessments are used. Also, with students having different types of disabilities, accommodations can be provided more easily and the cost of administration can be reduced.

For a copy of the GAO report, go to www.gao.gov/new.items/d05618.pdf.

Education Industry Association (EIA) Eduventures Conference Addresses Opportunities in High School Reform and New IDEA Special Education Niche Market

During the EIA Eduventures Conference -- attended by over 300 officials from firms, many of which provide supplemental educational services, private tutoring and education management services -- identified private sector opportunities in high school reform initiatives by governors and in several provisions in the new IDEA.

A spokesperson from the National Governor's Association, Center for Best Practices, identified two major challenges noting that only 71 percent of students graduate from high school and nearly one-third of high school graduates who go to college require immediate placement in remedial courses. The NGA Center Action Agenda recommendations include redesigning

high schools and restoring "value" to high school diplomas. The Center has provided two-year grants to governors to develop plans to increase high school graduation and college readiness rates in Arkansas, Delaware, Indiana, Louisiana, Massachusetts, Maine, Michigan, Minnesota, Rhode Island, and Virginia. Most of the \$15 million has been provided by the Gates Foundation. Some of the Phase I states have similar strategies which fall under the categories of improving standards, aligning curriculum and assessments, and increasing the rigor of graduation requirements. For example, Massachusetts, Michigan, Minnesota, and Rhode Island will expand college-level course-taking in high schools. Massachusetts and Rhode Island will enhance current data systems to track student performance better, while Minnesota and Indiana will target improving science, technology, engineering, and math education. Several states, including Louisiana, Minnesota, and Virginia, would also expand remedial or dropout prevention programs.

During Phase II, 25 grants of between \$50,000 and \$500,000 will also be provided to governors to implement one or more of several strategies, including:

- Expansion of advanced placement programs;
- Use of virtual learning to advance high school improvement;

- “Turn around” of low-performing high schools;
- Development of statewide longitudinal K-16 data systems.

Grant awards will be announced in November 2005.

A spokesperson from the Alliance for Excellent Education pointed to its July 18 issue of Straight A's which highlights a new report from the Southern Regional Education Board which found that, between 1992 and 2002, only three SREB states (Louisiana, Oklahoma, and Texas) saw an increase in their high school graduation rates, while the 13 remaining states experienced an average drop of more than five percent. The SREB report also found that more students fail classes in the ninth grade than in any other year and recommended states focus on transition to high school. It also recommended that low achieving middle school students have “personalized instructional plans” developed for them as recommended by the Administration’s proposed Secondary Reform Initiative. SREB also recommended that states develop opportunities for charter schools and technical high schools and provide greater flexibility so that options such as Internet-based instruction could be used to allow students to retake courses and tests and to provide more remedial support to help students pass exit exams required for graduation.

Several days prior to the conference, governors from 45 states agreed to adopt a common formula for calculating high school graduation rates. Earlier, Deputy

Secretary of Education Ray Simon announced that USED would be using a common “average freshman graduation rate” for all states as one of the AYP measures under NCLB. Because states have traditionally used different ways of calculating graduation rates, differences between state-reported rates and the newly-calculated rates were as high as 30 percentage points in some states.

Another session, entitled “We Have An IEP For You: New Special Education Contracts and Opportunities,” identified new opportunities for providing supplemental educational services (SES) for special education students who are enrolled in schools identified for improvement for two consecutive years and for contracted “related services” to students which districts are unable to provide. An underlying rationale for districts to contract out certain services for certain special education students is to protect the district from any “due process” complaints and lawsuits. One speaker noted that, in California last year, more than 2,000 due process complaints were filed, costing districts millions of dollars with the most complaints focusing on lack of student progress as stated in students’ IEPs, on the lack of service providers to deliver services, and on lax record-keeping due to antiquated electronic record-keeping systems. One of the presenters, whose firm has specialized in contracting with districts for special education “solutions,” pointed to significant growth; the firm covers nearly 3,000 students in over 200 public and private schools in California and Michigan. Its primary service is to provide special education certified support staff to

districts but does not provide actual teachers.

Mark Claypool, of Education Services of America, described the business model his firm has used to achieve significant growth over the last several years. This is based upon acquisition of brand schools, each of which has a proprietary unique approach for addressing problems and providing services to students with very specific handicapping conditions, such as autism, developmental disabilities, and emotionally disturbed students. Each acquired school has an “individualized instructional program,” which is designed to build skills. All speakers reported that their biggest problems are finding certified staff and retaining them to provide continuing services.

Andrew McCasker, Vice President for Engineering at 4GL, described some of the new administrative capabilities of 4GL that have been integrated into the firm’s overall solution to take into account the new “early intervening services” and tracking for limited-English-proficient students in special education. These are in addition to its traditional Medicaid billing and reimbursement capabilities. The 4GL solution has been adopted by more than 200 districts since 1998. He mentioned several key ingredients of a “changed management process” which is necessary to ensure 100 percent adoption:

- Subject matter experts on the 4GL implementation team and senior-level evangelists in the district;

- A solution which has to match or be customized to existing processes, terminology, and conventions;
- A process which begins with pilot-testing in a limited number of progressive schools, tweaking the solutions in districts, and then rollout based on pilot success and buy in.

He emphasized that all users -- teachers, service providers, principals, etc. -- must be committed to success. To be successful, firms with administrative-type applications in special education must be involved in implementation from the start to the finish and customers must use that specific application exclusively rather than holding on to piecemeal components such as MS Word documents.

During the two-day Eduventures conference, four sessions addressed “supplemental educational services.” The last of these summed up an undercurrent, which many of the firms had uppermost in their minds: “So you want to get approved as an SES provider....This session will be a 101 for those still not sure if SES for them.” One firm which has, for three decades, been operating programs for middle and high school students who have been placed in alternative settings reiterated what he said a year ago --the current SES approach does not fit well with their overall business model. He also noted that, in one large district in which they have 20 alternative schools, instability regarding SES policies still exists because of the district’s proposal to

charge \$400 per SEP student for use of the school facilities. Another firm, which was created during the 1970s to operate “bypass programs in Title I,” indicated that it had decided to move into the SES arena very slowly and in only specific geographical areas. Many of the firms which are experiencing significant growth in directly-related areas are hesitating to enter the SES arena. For example, one firm’s presenter noted during the special education session, that his firm was growing so quickly in its specialization areas that it would probably not consider taking advantage of the new SES provisions in IDEA regulations. On the other hand, another firm’s presenter said her firm recently assisted a district which is providing its own SES program and selecting prereferral intervention services. Even the more traditional tutoring firms which have entered the SES market, such as Sylvan and Kaplan, are expanding slowly and cautiously such that it represents a small percentage of their overall sales. As Stu Magnuson reported in Education Daily (July 25), “School and district leaders are often hostile to tutoring services, denying them access to school facilities and posing other obstacles, according to attendees at the recent industry (Eduventures) forum.”

While a certain mindset and attitude toward schools and districts remains unchanged on the part of some service providers, one major change has occurred --- namely the Education Industry Association has published a “Code of Professional Conduct and Business Ethics For Supplemental Educational Service Providers, Updated

June 10, 2005.” An impetus behind the “Code” was the statement made by an official from one of the largest SES providers over a year ago at the EIA March meeting emphasizing that the firm’s major objective was to get parents to enroll their students in the program and get students to attend because they were paid based upon attendance. During this meeting, an official from the same firm addressed the issue of ensuring that students attend tutoring sessions and advised current, as well as prospective, SES providers not to “offer incentives to parents to enroll their students in your program.” As he noted, this would violate one of the specific tenets of the EIA code which states “members will not offer a student any form of incentive for signing up with a provider.” As reported in Education Daily (July 25), Ayeola Fortune of the Council of Chief State School Officers, “reminded Eduventure participants “that the long-term goal was not for them to sign up as many students as possible, but rather to remove schools from the ‘needs improvement’ list. The ultimate goal may actually end up putting you out of business.”

For more information about the Education Industry Association and subsequent meetings, go to www.educationindustry.org, 800/252-3280.