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House Republican Leadership Releases *Guide to "Frequently Asked Questions"* about Newly-Reauthorized IDEA Which Should Establish the Framework for USED to Write Regulations

Within the context of mounting bipartisan opposition to USED interpretations of NCLB provisions, Chairman John Boehner and Subcommittee Chairman Mike Castle of the Education and the Workforce Committee, released a *Guide to "Frequently Asked Questions"* about the newly-reauthorized IDEA which should establish the framework for the development of regulations by USED. Released before the last of the scheduled IDEA public hearings on February 24 (the results of which are supposed to be taken into account by USED officials who will be drafting IDEA regulations), the Guide communicates the intent of Congress to those drafting regulations, as well as to the general public. Another reason for this unprecedented release of the IDEA "Guide," is that the provisions of reauthorized IDEA exist in at least four different documents rather than one complete coherent conference report. So what is USED going to do with respect to regulations? According to Education Daily (February 25), newly-appointed Assistant Secretary of Special Education and Rehabilitative Services, John Hager, stated, ED "is in the process of developing several one pagers -- what

they're trying to do is take one subject at a time and push that information out to the districts so that they'll be fully informed and fully prepared to deal with the variety of deadlines that impact the states. They're basically information sheets." The Q and A format of the guide addresses many of the new provisions which have significant implications for TechMIS subscribers who focus on the special education niche market.

As highlighted in the November 2004 TechMIS Special Report, of particular importance to most TechMIS subscribers is whether supplemental materials and instructional software can be used for "prereferral" or "intervening" services for borderline students and would the interventions have to include most, if not all five, of the "essential components" of Reading First interventions. This Guide goes beyond the current language in one of the "conference reports," which would allow supplemental materials to be used if they are aligned with core basal texts which meet scientifically-based research criteria by stating, "LEAs can use early intervening funds to support professional development activities, educational supports and services, positive behavior supports and evaluations, or other activities to help children succeed in the general education curriculum. The purpose of prereferral intervening services is to reduce the number of children who have reading problems, but

not learning disabilities, being placed in special education programs."

Another area of the Guide relates to how to identify a child as having a "specific learning disability." While the new IDEA prohibits states from requiring that districts use an IQ test as part of the determination of specific learning disabilities (i.e., the "achievement discrepancy model"), the Guide emphasizes "States and LEAs are encouraged to look to research-based practices, especially models using response-to-intervention strategies, to determine whether a child has a specific learning disability. The Department of Education will develop guidance and provide technical assistance to states and LEAs using effective, scientifically-based research to help states and LEAs develop effective models of identification practices." The current provision in the Law states that the student who is thought to have learning disabilities cannot be placed in special education unless an intervention which has all or most of the five components of a Reading First-approved intervention is available and is used with that student. When asked whether the "response-to-intervention" is a subset of "prereferral interventions" or "intervening services" or whether indeed they are the same, the primary author of the Guide stated that "response to intervention" is a sub-set of "early intervention."

Several issues surrounding Individualized Education Program provisions are clarified in the Guide. One issue is whether the IEP has to include benchmarks and short-term objectives for all students with disabilities, to

which the Guide states "No." Rather, most information provided to parents for most students with disabilities will be similar to the level of information about the child's academic performance that other students' parents receive under NCLB. However, if a student is taking an alternative assessment aligned to alternative achievement standards, the IEP team will be required to include benchmarks and short-term objectives: "Since these students will typically not perform at or near grade-level, measuring their progress requires a different approach that can be accommodated through the use of benchmarks and short-term objectives."

On a related issue, the Guide clarifies who decides whether a child with disabilities takes the regular state assessment or an alternative assessment with alternative proficiency levels, stating, "However, all decisions about which assessment a child with a disability should take are to be made by the IEP Team." The Guide also emphasizes new flexibility in the conduct of IEP team meetings to develop and then update IEPs. As it states, "In order to facilitate the meeting process, reduce paperwork, and make meetings more efficient, IDEA allows IEP Teams to use computers to develop an IEP for a child with a disability instead of using typewriters or written documents. Additionally, to better accommodate busy work schedules for parents and school personnel, IDEA allows parents to agree to use conference calls, video conferencing, or other alternative means of participation to conduct IEP meetings and other meetings required under

IDEA, including resolution session meetings."

Not unexpectedly, the Guide -- which was prepared by Republican leadership - - notes that IDEA funding has increased nearly 360 percent since 1994 when Republicans won control of the House, increasing the Federal share from 7.3 percent of the average per-pupil expenditure for special education students in 1996 to 18.7 percent in FY 2005. In 1975, when IDEA's preceding legislation (P.L. 94-142) was passed, Congress mandated that the Federal portion of special education expenditures reach 40 percent. However, as we have noted in previous reports (November 2004), the FY 2005 budget provides on paper \$10.6 billion for IDEA. The total amount going to fund special education programs nationwide, however, will likely be about \$1 billion less. One reason is that many districts will allocate up to 15 percent of their IDEA funds for prereferral services which are not likely to be operated by the district's office of special education programs. In addition, the new Guide notes that LEAs are allowed to reduce their own spending in special education programs by an amount up to 50 percent of the increase in IDEA funds which it receives. So, if a district received a \$5,000 increase in IDEA funds over the previous year, it could reduce its own local funding by \$2,500. However, what is new here is the clarification that, "Any reduction in the maintenance of effort level is permanent, so LEAs will be able to plan accordingly in making decisions about whether to use this authority and how to develop their own budgets and spending decisions." So, if a district receives an

increase in IDEA funds the following year it could reduce local funds for special education programs once again. The Guide argues that this is appropriate because of "significant increases in Federal funding for IDEA and the maintenance of effort requirements, local education agencies (LEAs) have been required to maintain artificially high levels of funding on special education programs, even as the federal share has increased."

For a copy of the Guide go to <http://edworkforce.house.gov/issues/109t/h/education/idea/ideafaq.pdf>.

National Conference of State Legislatures Points Out Flaws in NCLB, Recommending over Forty Changes; Those Recommendations Based on Common Sense and Reduced Cost Burdens on Districts Are Most Likely to Be Seriously Considered in the Short Run

After ten months of study and hearings, the bipartisan NCSL Task Force on No Child Left Behind submitted its report on February 23, identifying current flaws in the Law and recommending more than forty changes in NCLB provisions, regulations, or USED interpretations. The changes most likely to be made, primarily through the regulatory or peer review process, are those that are "common sensical" and reduce cost burdens upon districts by targeting more NCLB-required earmarks on schools and students most in need. Other categories

of recommendations are based upon Constitutional issues -- e.g., Federal intrusion on state rights and allegations of inadequate Federal funding to implement many of the provisions in the Law. Regarding the former, future lawsuits will have to be settled in the courts which may take time. As to the latter, NCSL recommends that the Government Accounting Office conduct a comprehensive study to identify the real cost of each state becoming compliant with the Law and meeting the proficiency targets, which could require enormous funding for remediation and other programs.

Of the forty plus recommendations made by the NCSL task force, most of those which have implications for TechMIS subscribers have been covered in TechMIS reports beginning before the final legislation was signed into a Law -- e.g., the impossibility of gaps between LEP and special education subgroups being narrowed if students who exit from the program cannot have their achievement scores counted toward AYP. Many of the proposed changes, which are based upon common sense and the need to reduce costs and administrative nightmares for districts (please note that none of the Law's SES or other earmarks can be used to cover district administrative costs) which have direct or indirect implications for publishers and vendors, are highlighted below.

Regarding supplemental educational services (SES) and parent transportation options, the NCSL report recommends that states be allowed to decide the order of interventions when a school is

identified as being in need of improvement: "Offering school choice before providing individual remediation through supplemental services is illogical. If an effective and accurate accountability system is focused on the diagnosis of individual problems as it should be, deficiencies should be remediated before students are allowed to transfer." Citing findings of several groups, including the Center for Education Policy, only two percent of eligible students transferred during the 2003-2004 school year. The report states, "Many administrators contend that the money they spend to provide transportation could be diverted to other programs that are more effective in improving student achievement." As we noted in our January TechMIS report, if USED made such a policy change, the amount of expenditures on SES would likely increase from less than one-half billion dollars to well over one billion dollars overnight, thereby providing increased opportunities for firms wishing to partner with districts or to provide SES directly. The Thomas Fordham Foundation which is cited in footnotes has made similar arguments and recommendations.

The NCLB task force also recommends more targeting -- that SES provide subject matter tutoring related to the academic subject and for the subgroup of students that causes a school to miss AYP. If the total amount of the earmarks are not needed to be spent on intervention services, states should be allowed to redirect those resources to other activities that serve disadvantaged students. Such a change would likely increase the amount of unspent SES and

transportation earmarks to be reallocated toward the end of the year (in most states unofficially June 30) to be used to purchase other types of products and services allowable under current Title I legislation. To some extent, this is already occurring. However, as reported in the February 28 Education Daily, during a session at the recent AASA Conference, Superintendents expressed confusion about what flexibility they have in spending unused earmarked funds and decried the lack of leadership and guidance from SEAs. Sandy Kress, chief architect of NCLB, who negotiated major provisions on behalf of the Bush Administration and who also testified during the NCSL hearings, has on more than one occasion indicated that NCLB funds should be targeted on schools that are "most broken." These recommendations too have been made by the Thomas Fordham Foundation among many other pro-NCLB advocacy groups.

A number of recommendations were also made by the NCSL Task Force on ways to reduce the number of districts and schools identified for improvement; these recommendations are based upon common sense and will affect decisions on how Title I funds are likely to be expended. As previously reported, if a district which has been approved by the state to provide SES becomes identified for improvement, according to USED current policy, it cannot continue using Title funds to provide its own afterschool tutoring and related services to eligible students. This has resulted in a major reallocation of Title I resources from district operations to outside, third-party groups, and in a growing number of cases entities created by teachers or

local union affiliates. As the report notes, "At least nine states have been allowed to identify *districts* as being 'in need of improvement' only when they do not make AYP in the same subject across multiple grade spans for two consecutive years. The task force recommends that (USED) authorize all states to use this option if they desire." (See related Washington Update item.) If this recommendation were to be followed the opportunities for firms to partner with districts who provide SES would be increased significantly. States which currently have been allowed to use the above AYP criteria in being identified for improvement are Connecticut, Delaware, Georgia, Louisiana, Maryland, Missouri, Nebraska, New Hampshire, New Jersey, North Carolina, Oklahoma, Oregon, South Dakota, Tennessee, West Virginia, and Wyoming.

The NCSL task force also recommends a number of changes, mostly regulatory, which could reduce the number of schools identified for improvement as a result of unintended consequences which could have implications for firms, including:

- Allow students who exit from special education programs to have their scores continue to be counted in determining AYP for that subgroup in a particular school, which could require dual administrative reporting systems; this would be very similar to the current regulatory change which allows limited-English-proficient students to be counted as part of their subgroup until they achieve

- English language proficiency, three to five years after enrolling in the school.
- Allow states to determine the number or percent of students with disabilities to be tested according to out-of-level standards or using alternative tests with alternative achievement proficiency levels (currently USED policy says that only one percent of the student population can be so tested); the report argues that so-called "gap students" who are not severely cognitively impaired, should also be allowed to take out-of-level tests following guidance from the state or even district (the new IDEA legislation gives the IEP team sole discretion in deciding what level of test a student receives); such a change would increase the momentum among the states toward the use of online assessments, particularly for alternative tests, and create an even greater demand for adaptive testing.
 - Allow states flexibility to establish a formula for participation rates of schools and districts in state assessments and also allow states greater flexibility in deciding whether to include students who obtain a GED or other type of certification, particularly for special education students to be counted as high school graduates. This would likely increase the demand for GED prep programs which has declined significantly over the last couple of years.
 - Include students that have been identified in multiple subgroups (e.g., an Hispanic student who has learning disabilities and is from a low-income family) in the smaller subgroup of which they are a part when calculating AYP; this would include the student's test score in only one subgroup rather than three, thereby minimizing across-subgroup scores for AYP purposes.

In response to the NCSL report, Assistant Secretary Ray Simon released a statement on February 23 which referred to the intent of NCLB noting that after just three years it is "already working." He noted that the NCSL report "could be interpreted as wanting to reverse the progress we have made." Assistant Secretary Simon did indicate, "The Department will continue to work with every state to address their concerns and make this Law work for their children."

New York Times (February 24) reporter Sam Dillon concluded that the NCSL task force "pronounced it (NCLB) a flawed, convoluted and unconstitutional education reform initiative that has usurped state and local control of public schools." The Times article also noted that many pro-NCLB groups as the Business Roundtable took issue with the report as reflected by a statement by Susan Traiman, Education Director for the Business Roundtable, who stated, "My big concern is they did a better job of pinpointing problems than identifying

solutions." The acceptance of the existence of unintended consequences and specific problems associated with implementation by groups such as the Business Roundtable provides hope that some of the implementation problems will be fixed in the very near future. For a copy of the NCSL report go to www.ncsl.org/programs/educ/nclb_report.htm.

Assistant Secretary Susan Sclafani Suggests Opportunities for Technology Use in the Proposed Middle School/High School Initiative

During the SIIA Fly-In on March 2, Assistant Secretary Susan Sclafani, a self-proclaimed education technology practitioner for more than 30 years, told software publishers that the implementation of the Administration's proposed middle/high school initiative would require a different and more effective use of technology to individualize instruction and to make teachers more productive. One of the major challenges of this proposed initiative would be to help more English language learners achieve English language proficiency and master core content programs, perhaps through the use of an "integrated learning system" type of configuration. This could be particularly important for the development of "individual performance plans" for students at the risk of not graduating, beginning at the eighth grade level. Also, greater use of interactive software for students struggling in math and reading will be needed, noting that

there will be some "seed" money available from USED under the Striving Readers Initiative and proposed middle/high school math initiative. She also noted that the Math/Science Partnership funds could be used to train teachers to use math and science interventions effectively. In the area of science, she called for programs which simulate science concepts and allow for online ongoing assessment.

Dr. Sclafani expressed great confidence that the money would be found somewhere to fund the President's secondary reform initiative. Her presentation also reflected a higher degree of technology "advocacy" than one could have gleaned from any other high-level USED official. Although other members of the Fly-In panel, such as Jack Jennings, Director of the Center for Education Policy, predicted that the reform initiative would not be passed (even though he agreed with some components such as the development of individual performance plans for at-risk eighth graders), Dr. Sclafani seems to imply the following scenario: The reauthorization of the Perkins Act (currently in process) will place enough priority on improved rigor of science and math instruction to allow USED to provide seed money for demonstrations of the effectiveness of math and science interventions; additional funds for the current Striving Readers Initiative could be reallocated from other areas (e.g., 21st Century Community Learning Centers). With these components included in the Perkins II reauthorization, which would become a consolidated block grant, the governors could decide how much of the "old

Perkins" vocational technical education funding would be allocated to math, science, and reading academic instruction. The thirteen states which are developing plans to implement their own high school reform initiatives (announced at the recent National Governors Association conference) are the states more likely to reallocate funds from vocational education to these and other reform initiatives. This would decentralize the political battle between the vocational education community and high school reformers to the state level and the Bush Administration could get credit for whatever success is made in the area of high school reform by governors.

USED's NCLB Negotiations with Texas, California, and Utah Has Implications for Many Firms

The final NCLB agreements being negotiated with California, Texas, and Utah regarding alleged violations could have direct implications for many firms, particularly those targeting supplemental educational service funds and alternative assessments. The pending USED decision addresses Utah's allegation that NCLB fundamentally is unconstitutional because of Federal intrusion into state's rights; the resolution of the other two states' alleged violations could have immediate impacts.

According to a USED announcement reported in Education Daily (March 9), USED will allow California to identify districts for improvement only if they are not meeting Adequate Yearly Progress

targets in math and reading/language arts in the same grade spans for two consecutive years (see NCSL recommendations in related item). The current California AYP determination methodology uses the state's Academic Performance Index (API) as the achievement measure for the low-income subgroup of students; only 14 districts have been identified for improvement. USED argued that the use of the state's API for the low-income subgroup was illegal and that more than 320 districts should have been identified for improvement under USED's interpretation of the Law. Under the "newly-found flexibility," the negotiated agreement would result in about 190 districts being identified for improvement. During the 2005-06 school year, under current USED policy guidance these districts would not be allowed to provide supplemental educational services for students directly but would have to contract with an outside group, which could include local teachers' groups or private tutoring companies.

According to a recent study by the Center on Education Policy (March 2005), which conducts annual surveys on the implementation of NCLB at the state and district levels, approximately 20 states have received USED approval in their accountability plans to use the AYP determination policy USED has now also allowed for California, which still has to submit a formal amendment for official USED approval. Nationally, the CEP found, in its survey last Fall of 32 states, about one-half reported that ten percent or less of their districts were identified for improvement in 2004-05.

However, in at least two states, between 76 and 90 percent of districts, were identified for improvement. One can reasonably expect that the majority of states who have a large number of districts identified for improvement and who are now not using the process USED has approved for California will have submitted such amendments to the negotiated peer review process (see February Washington Update). This will certainly reduce the number of districts identified for improvement next year. The districts which have been approved by the state to provide SES will continue to be allowed to do so and to offer partnering possibilities for firms, as we have discussed in the past. If those districts which have been identified for improvement continue to fail to meet AYP for two consecutive years thereafter, they must implement corrective action which can include instituting an entirely new curriculum along with other state-approved corrective initiatives. Also, during the first year of being identified for improvement, a district must create an improvement plan which devotes at least ten percent of a district's Title I Part A fund for professional development over and above the Title I and other Federal funds used to ensure all teachers are highly-qualified.

The CEP report raises once again the issue of USED's authority to disallow the use of Title I funds in the Chicago internally-operated afterschool program in meeting SES mandates because the district has been identified by the state as needing improvement. The report notes, "...USED has issued non-regulatory guidance stating that if a district is

identified as in need of improvement, it can no longer be the provider of supplemental education services (SES). Instead, the services must be provided by organizations and individuals that have been approved by the state as SES providers." The Council of Great City Schools has, on numerous occasions, argued that USED Non-Regulatory Guidance does not have the effect of Law and such prohibition against districts providing SES after being identified for improvement is not in the Law. USED is forcing to revisit its policy in the Non-Regulatory Guidance and will likely discover "newly found flexibility" allowing a district to operate its own SES as long as it can demonstrate some degree of overall student improvement, which is the argument voiced by the Council of Great City Schools.

During the Council of Great City Schools Legislative Conference on March 13, I asked Secretary Simon whether the USED policy decision regarding Chicago would apply to Los Angeles USD which had been "identified" in need of improvement five days earlier even though it has a good record of improving student performance, he noted that current USED policy here is in the form of guidance and not in the Law, suggesting some immediate changes could occur. A key Congressional Committee staffer also confirmed that USED policy does not reflect the intent of Congress and that the Education Workforce Committee had communicated this to USED on numerous occasions.

In Texas, the conflict is between USED's regulations and state law (and even the new IDEA law); it revolves around how many special education students who achieve proficiency levels on alternative tests can be counted toward meeting the AYP targets for the students-with-disabilities subgroups. The USED regulation allows more than one percent of students to take alternative tests with alternative proficiency levels. However, not more than one percent of those students (who achieve proficiency) can be counted toward AYP. The remaining students which achieve proficiency on the alternative test are counted as failing to make AYP. Texas state law and now the new IDEA allow the IEP team to decide whether a student with disabilities is to be given the alternative assessments and the performance level for determining proficiency. Between 8 and 10 percent of students in Texas have taken alternative tests. A similar number of special education students took the state's alternative test in the Spring 2004 shortly after the USED regulation was finalized. If the state determines what districts and schools have failed to meet AYP, taking into account the one percent proficiency cap, about half of the districts and over 20 percent of the schools in the state would have failed to meet AYP targets. Texas Education Agency Commissioner Shirley Neeley invited districts and schools who failed to meet AYP because of the one percent proficiency cap to file appeals and last month approved waivers for these districts. As a result, now only 86 districts failed to meet AYP and only 402 schools failed to meet AYP targets.

If USED rules that states can provide waivers as Texas did, or increases the number of conditions where the proficiency cap can be significantly higher than one percent, in most states, there could be increased opportunities for firms to work with states in developing alternative assessments and training teachers in providing accommodations for students during assessments. One could reasonably expect that, as more and more students can take alternative assessments, the instruments that are used would likely have to be more reliable and valid. As we found, in a survey of state assessment directors last Fall, more than 40 states are currently planning, developing, or otherwise modifying alternative assessment instruments, procedures, and analyses, in many cases using the state's portion of the \$400 million earmarked for use to meet the expanded state assessments required next year under NCLB. On the other hand, if the one percent rule proficiency cap policy remains intact, then the demand for products and services which can ensure many of the so-called "gap" special education students who are not provided alternative tests maximize their achievement levels as part of the students with disabilities subgroup.

During her presentation before the Council of Great City Schools Conference on March 13, Secretary Spellings indicated that a task force has been studying the "one percent proficiency cap" problems that have been created. As reported in Education Daily (March 15), "One resolution supposedly under consideration, say parties privy to the talks, would be to let

any state make a request to raise the one percent limit. ED officials would then grant the request on a case by case basis." The general consensus is that the cap could be increased to three percent but certainly not the eight or nine percent as in the case in Texas. The Secretary also noted that the task force is also considering the use of "growth" or "value added" models as AYP targets for subgroups of students, especially students with disabilities and limited English proficiency. Both of these changes would reduce the number of schools and districts identified for improvement significantly.

While the situations in California and Texas can conceivably be handled through the kinds of "newly-found flexibilities" which USED discovered over a year ago, the situation in Utah strikes at the heart of NCLB on the issue of Federal usurpation of state's rights as being unconstitutional. Utah has requested an amendment which would allow local districts to seek waivers from the state whenever there exists a conflict between NCLB accountability and assessment provisions and the current state's accountability system. As reported in Education Daily, a 250-word letter to President Bush dated March 7 was sent by the Utah Senate Republican Caucus stating that if USED doesn't approve their request they will pass H.B. 135, which would allow the state to use components of the state accountability system in lieu of NCLB mandates, which would create a Constitutional crisis.

Fifth Annual Education Industry Association Conference Focuses on Supplemental Education Services Issues; USED Promises New SES Guidelines Would Be Released Shortly

During the Fifth Annual Education Industry Association Conference in Washington, D. C., on March 1-2, attended by a number of SES providers, tutoring groups, and charter school operators, panels of USED officials, House and Senate Committee staffers, and EIA member firms discussed major issues and concerns related to implementation of the SES provisions in NCLB. USED officials assured attendees that new USED guidance on SES will clarify some of the flexibility which states have following a December letter from Assistant Secretary Simon to Chief State School Officers (see January TechMIS report). In our analysis of that "letter guidance," we noted that states appear to have the flexibility to set hourly tutoring rates and create financial incentives for SES providers to use highly-qualified teachers. As USED's Michael Petrilli told Education Daily (March 7), "Some states have interpreted recent letters as an opportunity to really micromanage this sector and the marketplace and to determine a...statewide hourly fee, for example. And let me be clear, that was not our intent." Rather, as he stated during a panel discussion, USED "wants as little regulation as possible so the marketplace can be vibrant and innovative."

One of the urgent issues for which there was great confusion and little USED guidance, relates to what types of evaluation designs and test instruments are most appropriate for determining the "demonstrated effectiveness of SES." According to the Law, states are supposed to analyze data on SES participants provided by SES providers and districts to the state to determine whether to remove from the approved list those SES providers which have not demonstrated adequate student progress. One panelist argued for an evaluation design which compared the academic growth of SES participants to other students in the school. However, he noted that third party SES providers do not have access to data on SES students. Another panelist argued that the use of one state-imposed test would result in a standardized "one size fits all" curriculum rather than innovative approaches, which many SES providers claim to have. Another panelist discussed the idea of a third-party evaluator who would be paid to conduct the evaluations on a "shared-cost basis" among the providers. An AFT representative who monitors private sector initiatives in education, indicated that the AFT's recent survey found only eight states which were currently evaluating SES providers. In another session, a representative from the American Institutes for Research, which operates the SES website www.tutorforkids.org, indicated that Dr. Steven Ross who participated in the SIIA Fly-In three years ago, is currently completing a white paper on alternative designs to determine the "effect" of SES on student achievement. Petrilli noted that a meeting of all state SES directors

is scheduled to be held in Washington, D. C., on March 29 and 30 and would address many of the evaluation issues.

One question simmering below the surface among SES providers was whether or not USED would allow SES to be provided before, or in addition to, the parent transportation choice, which could increase the amount of estimated funding for SES by a factor of four or five (see February TechMIS report). A staffer from the Senate Committee on Health, Education, Labor and Pensions noted that the committee was giving serious consideration to reversing the SES-transportation choice provision. On the other hand, a staffer for the Education and Workforce Committee said there would be no waivers for states which want to change NCLB's tutoring requirements. After his dinner speech to the group, ranking House Democrat, Congressman George Miller, was asked whether such a reverse in policy could be done in response to recommendations being made by conservative, pro-NCLB advocacy groups such as the Education Leaders Council and the Thomas Fordham Foundation. His rambling response suggested that this could not happen. On the other hand, discussions with one of the two key individuals who actually drafted the initial SES provision while a lobbyist for a leading SES provider, said that a reversal in policy was seriously being considered in several quarters.

USED/Institute of Education Sciences Director Russ Whitehurst Tells Education Software Publishers "We Have A Long Way To Go" on the What Works Clearinghouse, Inviting Comments and Suggestions

During the SIIA Fly-In on March 2-3, Institute of Education Sciences' Director Russ Whitehurst stated that IES has a "long way to go" in making sure the What Works Clearinghouse is successfully implemented and encouraged suggestions from SIIA members. One SIIA member who attended the Whitehurst presentation during the D.C. Fly-In three years ago, noted that he was much more "humble" and recognized the need for different levels of rigor in evaluating the effectiveness of supplemental materials and instructional software vs. basal texts, which he noted parenthetically, have not been evaluated with the rigor required under scientifically-based research (SBR). He also stated that the What Works Clearinghouse results are not required to be used by the USED Title I program and other offices. Moreover, he admitted that the SBR requirements provided for Reading First and Title I supplemental education services vary significantly which has created a "messy situation." Even though the What Works Clearinghouse has identified only a limited number of evaluations that meet SBR criteria used by the WWC, he argued that as more and more district decision-makers ask questions about "evidence" regarding a product's

effectiveness, over time competition in the marketplace will result in greater use of products that have such empirical evidence of success.

One of the questions uppermost in the minds of SIIA attendees was how to get cooperation from districts to participate in rigorous evaluations of their products. Dr. Whitehurst expressed great empathy for such firms, noting that the industry often moves more quickly than districts or states. Garnering participation from such districts requires the art of "making a deal" where everyone potentially benefits. On the other hand, where there exist regulations or provisions under NCLB which would prevent district-use of randomized trial evaluations, he indicated that his office does not have the authority to provide waivers. On the other hand, he noted that his office would consider a number of possible ways of facilitating the "matchmaking" between firms/products, and districts willing to participate in evaluations including:

- the development of a registry of both firms/products and districts which would be willing to participate under certain conditions;
- the development of a uniform template which could be used as a "participation agreement" between the firm and the district to ensure greater uniformity and
- the possibility of facilitating a forum between participating

firms and districts wishing to participate.

He also told SIIA members that once they design an evaluation, they could send it to the WWC Help Desk which would be pleased to review the evaluation design to ensure that its results would more likely to meet WWC acceptance (in final reports).

After he spoke, Dr. Whitehurst was asked whether the What Works Clearinghouse would be considering studies of administrative applications using additional criteria beyond math and reading achievement scores. He indicated that another group within the Institute of Education Sciences was planning to address this issue, especially in light of the fact that most of the NCLB expenditures for software have been for administrative, evaluation, and reporting applications.

USED Secretary Spellings Encourages Parochial Schools to Consider Becoming "Providers of Supplemental Educational Services"

In a speech before the U.S. Conference of Catholic Bishops, Secretary Spellings stated, "The President and I hope you will consider becoming providers of supplemental educational services. Thousands of students in your communities could benefit from the knowledge and skills of your teachers and you can do it in a program that protects your religious freedom because the Department has issued a faith-based

regulation with strong language to protect religious organizations providing supplemental services." While we have discussed opportunities for firms to partner with parochial schools in providing SES even before NCLB was passed, this is the first speech by a high-level USED official pointing out such opportunities for parochial schools. In fact, several TechMIS subscribers currently have arrangements with urban Catholic dioceses to provide such services online to eligible students in schools required to provide SES. Over the last several decades, parochial schools have benefited from Title I because districts are required to provide "similar and equitable" services, online or through itinerant teachers, to Title I-eligible students enrolled in parochial schools. Now there exists an alternative way for parochial schools to receive direct funding in the form of tutoring fees for providing SES. Moreover, to the extent parochial schools set up after-school tutoring programs operated by Catholic school teachers, these teachers do not have to meet the requirements of highly-qualified teachers that school districts are supposed to meet if they provide SES currently.

A prepared press release highlighting Secretary Spellings' speech states, "The law's Supplemental Educational Services (SES) provision gives parents of eligible low income children the opportunity and federal funding to choose a private tutor or other academic support to help their child succeed in school." Without mentioning the transportation option, the press release further supports our prediction that USED will change, through the regulatory process, its policy

allowing SES options to be provided when a school is identified for improvement for the first time, rather than mandating only the transportation option. Interestingly, the Education Leaders Council, which was recently critical of the NCSL Task Force report which identified numerous flaws in NCLB (see related item), also state, "The NCSL report does identify some promising ideas that are worth exploring within the context of NCLB, such as incorporating growth elements into AYP and using supplemental educational services tutoring earlier in the school improvement process."

For a copy of the ELC press release on the NCSL report go to www.educationleaders.org.

Majority of International Reading Association Members Agree with the Basic Premise of NCLB But Strongly Disagree that Federal Funding Has Been Sufficient, and Strongly Disagree about the Effectiveness of NCLB Sanctions, with the Exception of Supplemental Educational Services and Afterschool Programs

The International Reading Association released, in "Reading Today" (February-March 2005), preliminary results of its survey of 4,000 randomly-selected members on issues related to NCLB. About three-quarters of the members agreed with some of the underlying assumptions and premises of NCLB

such as student reading achievement improves when research-backed curriculum and instruction are fully implemented. On the other hand, a similar percent disagreed or disagreed strongly with the premise that Federal funding has been sufficient to achieve NCLB reading proficiency targets. Responses to the statement, "The education benefits resulting from NCLB implementation in your school or district will, on balance, outweigh any adverse impacts for students in the aggregate," were bimodally positive or negative from about 40 percent of the respondents each. More respondents agreed that reading curricula had been revised, that funds were reallocated, and that existing staff members were reassigned as a result of NCLB; and most felt that reading instruction has received more attention because of the new Law. However, almost 80 percent disagreed with the statement that teacher morale has improved as a result of NCLB. While IRA members generally felt that the assessment requirements of NCLB provided a sound basis for assessing student reading proficiency and identifying students who need additional reading instruction, the vast majority felt such assessments are not a sound basis for evaluating teacher performance or rating the effectiveness of schools. Rather surprisingly, most respondents felt that the supplemental educational services (and extended learning) provisions could assist in improving children's reading achievement. However, more than nine out of ten respondents disagreed or disagree strongly with the idea that having the state take over a low-performing school would improve achievement. As further

results are reported, they will be posted at www.reading.org.

National Center for Education Statistics Releases the First Nationally-Representative Study of Use of Distance Education by K-12 Districts Which Can Be Useful in Developing Marketing and Sales Strategies for Firms with Certain Products and Services

The new NCES Distance Learning report provides baseline data gathered for 2002-03 over a twelve-month school year on the prevalence of technology-based distance education courses across the nation, as well as estimated enrollments of students in these distance education courses. The report identifies the types of technology used for delivering distance education courses; provides information on the reasons districts choose to make available distance education courses; and identifies costs and other factors affecting expanded use.

Students are enrolled in distance education in 5,500 districts including 46 percent of rural districts. Approximately 40 percent of districts with ten percent or more poverty enrollment have students enrolled in distance education. At the school level, 8,200 schools participate in distance education (about nine percent of all public schools nationally); and, when small districts offer distance education, they are more likely to involve a greater proportion of their schools. This is also

true in rural districts for which there is obvious overlap. Almost 40 percent of public high schools offer distance education compared to only four percent of middle schools and one percent of elementary schools.

In terms of enrollments by curriculum area, 23 percent of enrollments are in social studies/social science; 19 percent in English/language arts; 15 percent in mathematics; and 12 percent in natural science. The percentage enrollments in foreign language courses is much higher in smaller and rural districts than in medium or large districts. About half of the districts (2,700) using distance education offered Advanced Placement or college-level courses (The Administration's proposed secondary reform initiative called for funding increases in AP courses and incentives for districts to offer college level courses which has also been recommended by the National Governor's Association.). These districts enrolled about 45,000 students in AP or college-level courses. About 24 percent of small and 27 percent of rural districts offering distance learning do so in the area of Advanced Placement and college-level courses. Districts with larger poverty enrollments appear to be placing a higher priority on offering Advanced Placement or college-level courses than those districts with smaller poverty enrollment.

The study found that the primary modes of instructional delivery were: two-way interactive video (55 percent); Internet courses using asynchronous computer-based instruction (47 percent); and Internet courses using synchronous

computer-based instruction (21 percent). In rural districts, two-way interactive video served as the primary delivery mode in 64 percent of the districts and a similar percentage is reported in small districts; medium and large districts use asynchronous computer-based instruction most often as a primary delivery mode.

Almost 60 percent of districts with students enrolled in distance education courses used online courses; 92 percent of these districts reported students accessed online courses from schools, 60 percent from home, and 8 percent of students accessed online courses from some other location. In an interesting finding, no differences were detected in online access from home by poverty concentration. It would appear that students in high-poverty schools have equal access to the Internet from home. About 30 percent of districts provided computers for "all" students to go online, while eight percent did so for "some" students. Moreover, small districts and rural districts are much more likely to provide for online access than medium or large districts.

The major providers of distance learning for K-12 schools were postsecondary institutions (48 percent), other school districts (34 percent), education service agencies (18 percent), virtual schools (18 percent), and their own district (16 percent).

While the most important reason for districts providing distance education courses is "offering courses not otherwise available at the school," the second most important reason was

"meeting the needs of specific groups of students." Given the fact that the 2002-03 school year was the first year some schools had to offer SES, we suspect this reason has become more important, particularly in rural districts, in order to meet the SES sanctions under NCLB. Even at that time, this reason was more important in districts with 20 percent or more poverty than those with poverty rates.

In terms of district plans to expand distance learning, those with 20 percent or more poverty enrollment were more likely than others to be planning to expand distance education courses, especially those districts in rural settings. In terms of barriers to expansion of distance education, almost 70 percent indicated that the cost of course development or purchasing was the greatest barrier and, not surprisingly, small and rural districts were more likely to report that "limited infrastructure to support distance education was a larger barrier" than reported by medium and large districts. Only 17 percent of districts reported that restrictive Federal, state, or local policies was a major barrier. For a copy of the report go to <http://nces.ed.gov/pubs2005/2005010.pdf>.

NCES Study Describes Trends in Internet Access in American Public Schools

The National Center for Education Statistics (NCES) has released its annual study of trends in educational Internet access. Entitled "Internet Access in U.S. Public Schools and Classrooms: 1994-

2003," the report is prepared from data collected through NCES's Fast Response Survey System (FRSS).

As of the Fall of 2003, virtually all U. S. public schools had Internet access compared with only 35 percent in 1994. In 2003, 93 percent of classrooms in public schools had Internet access compared to three percent a decade ago.

The types of Internet connections have also changed over the past decade: In 1996, 74 percent of Internet-connected public schools used dial-up access; by 2001, the percentage was down to five percent. In 2003, 95 percent of the public schools accessed the Internet through broadband connections, up from 80 percent in 2000 and 85 percent in 2001.

- In 2003, large schools (100 percent) were more likely to use broadband than small schools (90 percent); and urban and suburban schools (98 percent) were more likely to use broadband than rural schools (90 percent).
- When first measured in 1998, the ratio of students to instructional computers was 12.1 to 1. By 2003, the ratio had dropped to 4.4 to 1.
- In 2003, nearly a third of public schools used wireless connections to the Internet, up from 23 percent the year before.

In 2003, 37 percent of public schools indicated they had a full-time, paid

technology coordinator; 27 percent used district staff to coordinate technology; 16 percent used a formally assigned teacher; nine percent a part-time, paid technology coordinator; three percent an outside consultant; and three percent used a staff volunteer. As might be expected, a higher percentage (44 percent) of secondary schools than elementary schools (35 percent) had a full-time, paid technology coordinator responsible for computer hardware, software, and Internet support.

The survey also addressed changes in the availability of computers to students outside regular school hours:

- In 2003, nearly half (48 percent) of public schools indicated they made Internet-connected computers available before or after school hours; 98 percent of the schools that provided access outside regular school hours made them available after school, 71 percent before school, and 9 percent on weekends;
- Nearly 70 percent of secondary schools made Internet computers available outside school hours (compared with 41 percent of elementary schools) and 74 percent of large schools did so compared with 39 percent of small schools; similarly only 60 percent of high-minority schools provided Internet access outside of school hours compared with 80 percent of low-minority schools.

In 2003, ten percent of U. S. public schools provided hand-held computers to teachers or students for instruction, up from seven percent the prior year. In schools providing hand-helds, an average (median) of ten devices were made available. More than 20 percent of large schools provided hand-held computers to teachers or students for instruction compared with five percent of small schools. And, 14 percent of secondary schools made them available compared with nine percent of elementary schools. Also in 2003, eight percent of schools lent laptop computers to students with an average (median) of five per school. An additional six percent of public schools were planning to lend laptops to students during the 2004-05 school year.

Nationally, 88 percent of public schools maintained their own websites in 2003, up from 75 percent in 2001.

More than 80 percent of public schools, in 2003, reported that they (or their district) offered teacher training on how to integrate use of the Internet into the curriculum within the prior year. Of the schools that offered such professional development; 38 percent indicated that between one and 25 percent of their teachers attended; 18 percent had 26 to 50 percent of their teachers in attendance; 13 percent of the schools trained 51-75 percent of their teachers; and 30 percent trained 76 percent or more of their teachers.

The report may be viewed online at: <http://nces.ed.gov/pubs2005/2005025.pdf>.

Secure Rural Schools and Community Self-Determination Act Being Reauthorized by the Congress

Over the last century, 25 percent or more of revenues from logging in National Forests have been earmarked for local rural counties and specifically for school services, road construction, and maintenance. Over the last several decades, however, such revenues have dwindled by as much as 40%-50% in certain locations or varied significantly from year to year. Because of the loss or uncertainty of timber revenues, the quality and amount of education services provided to students in these areas was affected.

Not only have school districts benefited from National Forest timber sales, but some states have also earmarked a large portion of such funds for technology purchases. During the late 1990s, for example, the only source of state funding earmarked specifically for technology in Montana was timber sales fees which amounted to between \$10 and \$20 million; after a few years, however, the funding was eliminated.

Initiated in October 2000 and administered by the Forest Service within the U.S. Department of Agriculture, the Secure Rural Schools program was designed to provide stable funding of more than \$1 billion -- over five years beginning October 1, 2001 -- to schools in rural counties which have been receiving declining and/or varying fees from logging and timbering in National Forests.

Currently, the U. S. Congress is considering the reauthorization of the original Law. The two versions of the bill being considered -- H. R. 517 in the House of Representatives and S. 267 in the Senate -- are identical and currently contain very little language that would change the program beyond extending it for seven more years through 2013.

One of the purposes of the Secure Rural Schools and Community Self-Determination Act is to “stabilize payments to counties to provide funding for schools and roads that supplement other available funds.” According to lobbyists, such as AESA, who were involved in the passage of this Act, rural districts which receive funding have much flexibility in deciding how to use such funds. A substantial portion of such funds were supposed to be used for connectivity, hardware purchases, and online distance learning services, to deliver advanced placement, foreign language instruction, etc.; however, given state and local budget “shortfalls,” some of these funds will be used for other purposes, including purchases of instructional materials.

More than 700 rural counties currently receive timbering fees under this program first established in 1908. Under the 2000 law, these counties have the option of: (1) continuing to receive a portion of revenues from National Forest timber receipts; or (2) receiving a full stabilized payment not dependent on variable revenues. For most counties, the full payment option will be considerably higher.

Funds available under this program are to be used for education and public roads. The distribution between these two purposes is specified by the states; typically, half of the funds have gone for education and half for roads. The distribution, however, varies from state to state. (Vermont is, according to Federal sources, the only state that devotes all funds to education.) It has been suggested that some of the states that receive the largest allocations of funds from this Act are reconsidering their typical distribution ratios with an eye toward directing a larger portion to education.

Counties receiving funds have considerable flexibility in the use of funds, although some states may earmark portions for specific purposes. Some counties treat the education component of the funds as additions to their general education budgets. Counties receiving more than \$100,000 are required to reserve 15-20 percent of their payments for special projects, some of which are not education-related. (The only exceptions noted in the Law are after-school conservation education programs.)

Prior to 2001, three-quarters of the state’s funds were distributed in October each year with the remaining 25 percent distributed approximately three months later (generally in mid-January). The 2000 Law stabilized payments; full payments are now made in October each year.

Funds are typically reallocated to counties very soon after each state receives its funds. It is, therefore, likely

that counties and schools have their funding allocations in hand by December.

Under the 2000 formula, certain counties received substantial increases; Lane County, Oregon, for example, was allocated in the 2002-03 school year \$31.5 million up from \$19.8 million in 1999-2000. In Skamania County, Washington, \$10.5 million was allocated under the 2000 formula, compared with \$6.2 million in 1999. Almost three-fourths of the annual \$200 billion allocation to approximately 700 counties will go to Oregon counties with National Forests.

Within general state set-aside percentages, use of funds varies from county to county. The education components of the payments are usually treated as part of local general education funds; therefore, they are budgeted in accordance with county or school district budgetary policies. Unlike other Federal programs they are not targeted at specific constituencies.

Within each county, there exists a Resource Advisory Committee (RAC) which recommends special projects and decides how the funds will be used. Because of tight state K-12 budgets and/or reduced funding in some states, attempts have been made to reduce state funding by the amount the county receives under the 2000 Law.

The school districts to be contacted are those in rural counties which currently receive fees from National Forest timbering and logging activities.

Key decision-makers include the RAC members, district superintendents, and school business officials at the district level. For a list of the annual allocations go to

http://www.notes.fs.fed.us:81/r4/payments_to_states.nsf.