

*Washington Update*⁸

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No Child Left Behind is at a Crossroads With Likely Opportunities Emerging Out of a Current Chaotic Situation

The three-year-old No Child Left Behind Act is at a crossroads. States, districts, and education groups have filed lawsuits, most claiming it is an under-funded mandate which requires that state and local funds be allocated to implement its provisions which, in itself, violates a provision in the Law. In response, Secretary Spellings has called for a common-sense approach announcing new flexibilities for states that adhere to the "bright line" principles of NCLB and that are meeting proficiency targets, reducing achievement gaps, or (as stated in her April 18, 2005 Press Release), "If you can show that students are making progress toward this overarching goal, or 'prime directive,' as I call it, we'll give you the necessary room to keep doing what works. It's the results that matter, not the bureaucratic way you get there." And, during April, several reports were released by highly-respected third-party evaluation groups which found that NCLB -- in particular, some of the sanctions -- have not worked well in improving student performance.

Clearly, the recently filed NEA lawsuit by nine districts in Michigan, Texas, and Vermont, and ten NEA state and local affiliates, argues that USED has violated

the unfunded mandate provision of NCLB, Section 9527A, which prohibits states and districts from being forced to use non-Federal funds to implement certain provisions which the NEA argues should be provided by the Federal government. The 60-page NEA lawsuit refers to numerous state and other studies which, it argues, demonstrate current levels of NCLB funding are clearly inadequate. The document also highlights other lawsuits by districts in California and Pennsylvania which argue that SEA responsibilities in certain areas, such as providing assessments in native languages for English language learners, are not being met. The newly-passed legislation in Utah and the pending Connecticut lawsuit also related to assessment issues. The new Utah law would allow the State's assessment and accountability system to override NCLB requirements where they conflict. Recent reports suggest that USED might be willing to allow the "growth measures" in the current Utah system (U-PASS), if it modifies some of its U-PASS "growth measures" and disaggregates scores by sub-group. The Connecticut lawsuit claims that the State's current assessment program is highly-respected across the country, that it meets the intent of NCLB, and that it would cost an additional \$7 million over the next two years to conduct additional assessments in grades 3, 5, and 7 (as required under NCLB). Beyond lawsuits, many more states are defiantly resisting implementing specific NCLB

provisions because they violate state law, or otherwise “don’t make sense.” For example, Texas was recently notified that USED will fine the Texas Education Agency’s (TEA) state administrative set-aside \$440,000 because, during the 2003-04 school year, the TEA did not notify districts what, if any, of their schools had been identified for improvement before school began in the middle of August. The TEA has already provided waivers to districts to allow special education students who achieve proficiency on state alternative tests beyond the so-called one percent proficiency cap, to be counted toward having met AYP. The TEA has also told districts which carried over more than 15 percent of Title I funds last year to this school year, that they could, once again, carry over more than the 15 percent amount to next year even though the Law clearly states that districts can do so only once every three years, even with SEA approval. The TEA claims that as an Edflex state it can provide such waivers.

Two reports released in April question the effectiveness of NCLB sanctions. A report from the National Center for Research on Evaluation, Standards, and Student Testing (CRESST), examined pre-NCLB sanction-based accountability programs in seven states, plus Chicago and Philadelphia, and found that the impact on student performance showed “haphazard” or “highly-mixed results.” A second report by the Northwest Evaluation Association (NWEA) compared student academic progress, as measured by their own NWEA assessment before NCLB was passed, and individual student progress made

through 2003; it found that student academic progress had “slowed down” after implementation of NCLB, although a number of caveats were offered.

Within this context, early in April, Secretary Spellings announced, in *Raising Achievement: A New Path For No Child Left Behind*, a set of “guiding principles” which are designed to help states implement NCLB provisions. She stated “the Department will take these principles into account when discussing amendments to state accountability plans or consolidated applications....” Emphasizing the paramount importance of raising overall student achievement and closing achievement gaps, states must, in order to receive additional flexibility, justify such progress through indicants such as AYP results, improvement trends (particularly for subgroups) on state assessments, and NAEP results indicating overall improvement or reduction in achievement gaps. Another Raising Achievement “principle” is ensuring information is accessible and choice options are available to parents. Rigorous implementation of this principle can be demonstrated in several ways, including:

- schools are identified for improvement before the beginning of the school year;
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- providers of supplemental services are rigorously evaluated.

The two remaining principles are “making school systems accountable” and “improving the quality of teachers.”

The response to Secretary Spellings *Raising Achievement* “principles” for providing flexibility to states which are demonstrating student achievement progress and are effectively implementing NCLB provisions, have ranged from support among many Chief State School Officers (see related item) to cautious optimism among groups such as the Center for Education Policy and the Progressive Policy Institute, to opposition among a number of disability groups and associations. Calls for even-handed treatment of states in approving amendments have been made by most of the sponsors and supporters of NCLB during the initial years of its implementation.

The first “details” of this new round of flexibilities was the announcement regarding the two percent proficiency cap for students with persistent academic disabilities who take alternative tests with alternate proficiency levels. States have to request this change through the amendment process and demonstrate that they are meeting some of the predetermined conditions (see related item). Additional flexibility has been formally discussed by Secretary Spellings and other high-level USED officials with respect to the use of “growth models,” especially for special education and ELL students, and other flexibilities in treating ELL students generally. Task forces are being constituted to address issues and guidance in these areas. Without question, the policy change related to the two percent proficiency cap, as noted in the related [Washington Update](#) item, will create a higher demand for out-of-level testing systems, content alignment tools,

interventions which are effective in improving student achievement for “so-called gap students,” and professional development for special education and regular teachers, including IEP teams. Below, we have identified some other areas where certain policy changes could have direct implications for many TechMIS subscribers. It is important to emphasize that the increased expenditures in both Title I and IDEA, as well as the demand for appropriate products, are increasingly being targeted in very specific areas in the form of earmarks or reallocation priorities.

One policy change which already has been, or soon will be, requested in state amendments will allow supplemental educational services to be offered first, or along with, parent choice transportation in schools identified for improvement for the first time. This option was approved for Florida last year and is being widely implemented throughout the State. Another related policy change would be to allow a district which has been identified for improvement to continue providing its state-approved district-operated SES program, as long as the district can demonstrate student progress is being made. During the Council of Great City Schools conference in March, Secretary Spellings stated that districts would be considered on a case-by-case basis. The question is ‘considered by whom’ --- the state that could submit criteria as part of an amendment to the state accountability plan, or USED? Even though Chairman Boehner of the House Education and Workplace Committee argued, in an April hearing on supplemental education services, that school districts identified

for improvement should not be eligible to offer Federally-funded tutoring, he did state that the final Law “effectively left it to the U.S. Secretary of Education to determine whether an underachieving school district could provide supplemental services to its students” (see related Washington Update item). These two changes would increase the number of students participating in SES programs by a factor of 3 or 4 up from the 18 to 20 percent of eligible students who participated in SES programs this year.

Numerous other areas exist where future USED guidance -- in the form of regulations or Non-Regulatory Guidance -- could have significant implications for firms with certain types of products and services. One area is the IDEA provisions related to pre-referral or early intervening services and the related Response to Intervention (RTI) provision regarding how prescriptive will USED guidelines be in allowing the up-to-\$1.5-billion to be used to purchase products and services (e.g., could products be classified as supplemental vs. those that have been approved for use in Reading First programs be purchased with these funds?). A related question is how prescriptive will the Reading First Technical Assistance Regional Centers be in advising what assessments, or even instructional interventions, should be used to help students with “persistent academic disabilities,” who would fall under the new two percent proficiency cap.

Other changes with implications for certain firms could be reflected in funding reallocations to support the

President’s proposed “Secondary Reform Initiative.” For example, on March 30, grant applications were announced under the Small Learning Communities program, funded under the Perkins Act/vocational education to conduct “randomized trials” on 8-9th grade interventions --- One from the University of Kansas and the other from Regional Education Lab/WestEd. Or the Administration could require a certain portion of 21st Century Community Learning Centers funding to be earmarked for middle school, high school, and afterschool tutoring; or, require states to place a higher priority in allocating the four percent set-aside to middle and high schools which have been identified for improvement; these constitute almost 5,000 of the total of 10,000 schools so identified.

We will continue to monitor official policy as well as unofficial policy developments and changes that have implications for TechMIS subscribers. If anyone has any questions, contact Charles Blaschke directly.

USED Policy to Increase the Proficiency Cap For Special Education Students Achieving Proficiency on Alternative Tests and Conditions States and Districts Must Meet For Approval Will Create New and Expanded Opportunities For Some Firms

On April 7, Education Secretary Spellings announced a new policy which

would allow states, under certain conditions, to allow students with "persistent academic disabilities" to take alternative assessments and/or out-of-level tests and count up to two percent of these students who achieve proficiency as making adequate yearly progress. This is in addition to the one percent proficiency cap under current policy for students with "significant cognitive disabilities." However, states must meet certain conditions in revising their current Accountability and Assessment Plans which must follow USED guidance (to be made available shortly); amendments must be submitted by May 16 to USED for approval. The new policy and conditions could create a high demand for certain products and services; however, some of these same conditions could have little impact on reducing the number of schools failing to meet AYP. The new policy could allow certain states to use the additional out-of-level or alternative tests with students with "persistent academic disabilities" next school year.

A USED document entitled, "Raising Achievement: Alternative Assessments for Students with Disabilities," which was made available during the Chief State School Officers annual legislative conference on April 17, details a number of conditions which states must meet in their amended state plans which must be approved by USED: "To implement this policy, States must agree to several activities including improving alternative assessments based upon alternate achievement standards, developing modified achievement standards, implementing a strong accountability system, offering high

quality professional development, and training individualized education program (IEP) teams and teachers, particularly general education teachers....In the short-term the Department will establish state-specific agreements where details about assessment development, AYP transition, and technical assistance will be described. The Department will use the *Raising Achievement* principles (such as student achievement, system accountability, and teacher quality) to determine which States may implement this interim flexibility. States using this provision must ensure their accountability system appropriately includes students with disabilities. For example, AYP group size for students with disabilities must be reduced to the same number and/or percent as the AYP group sizes for all other student subgroups."

If the USED April 11 "Raising Achievement" document is reflected in subsequent interim guidance and in final regulations, then the demand for certain products and services should increase the need for out-of-level tests, which measure both subgroup progress and individual student progress in meeting AYP proficiency levels, should expand. Two years ago, the National Center for Education Outcomes reported that 17 states had some form of out-of-grade-level testing. Because of USED's adamant past opposition to out-of-level testing, as of November 2004, out-of-level testing was reported in only ten states (Iowa, Kansas, Mississippi, Nebraska, North Carolina, Oregon, South Carolina, Tennessee, Texas, Vermont). Another USED task force is

analyzing the "pros and cons" of using growth models, especially for assessing progress being made by special education and English language students. In addition to the demand for such testing should also come a concomitant increase in the demand for high-interest-level, effective, aligned, instructional materials which can be used by students taking alternative assessments. The demand should also increase for professional development for both regular and special education teachers and IEP teams, particularly training related to diagnosis and selecting interventions. The USED document clearly discourages IEP teams and teachers from "basing their instruction on a student's IQ score." One condition, which was not mentioned by any USED official during the CCSSO legislative conference, is the required reduction of numbers of students in special education subgroups to the same number as other subgroups which will likely result in more schools being identified for improvement; this could negate the reduction of schools not meeting AYP under the planned two percent proficiency cap.

Beyond the forthcoming interim guidance and regulations regarding the new alternative assessment policy, USED also released its "action plan" for implementing, or assisting states in developing the capacity to implement, alternative assessments; \$14 million from current fiscal year funds which be used to provide technical assistance to states to improve assessments and instruction for students with disabilities and to conduct research on alternative assessments and modified achievement

standards. Some of the funds will be used to develop a "tool kit" to be completed in the next several months which will include, among other things, examples of state comprehensive assessment systems that address students with disabilities and guidelines to help individualized education program teams select the most appropriate assessments for students with disabilities. Approximately \$3 million will be used to provide grants to "consortia of entities" that will link with the three existing technical assistance regions for Reading First to provide technical assistance to states in reading and math. The three centers were key actors and/or influencers in the design and implementation of Reading First. It should also be noted that the rationale and research supporting the two percent proficiency cap was conducted by many of these same center officials including Dr. Jack Fletcher, University of Texas; Dr. Joseph Targeson, University of South Florida; and Reid Lyon of the National Institute for Child Health and Human Development. As a side note, most of the interventions which were cited in the research occurred over an entire year which could have implications for implementation of the new IDEA provisions related to prereferral or early intervening services and Response To Intervention approaches. One can assume that the technical assistance effort will affect the types of assessments and intervention materials which will be recommended for use with many students taking alternative assessments. Other research projects include a demonstration of the use of computerized curriculum-based measurement aligned with state

academic content standards and several grants to improve and evaluate teacher training designed to improve reading, writing, math, and science skills for special education students.

As noted in a related [Washington Update](#) item, many SEA officials have not thought through how districts will implement some of the new IDEA provisions, much less how they are likely to attempt to implement the two percent proficiency cap provision. As reported in [Education Daily](#) (April 11) and during the CCSSO conference, most state officials are taking a "wait and see" approach. Without question, the final implementation of these provisions will vary considerably among the states as details will be negotiated individually with each state as it submits its proposed amendments. For a copy of the "Raising Achievement" statement go to www.ed.gov/policy/elsec/guid/raising/alt-assess-long.html.

State Special Education Officials Are Unclear About the Intent of New IDEA Provisions For Prereferral or Early Intervening Services and Are Awaiting USED Guidance

During an IDEA subgroup meeting at the CCSSO legislative conference and through individual discussions with SEA officials responsible for implementing new IDEA provisions, it has become very clear that SEAs are unlikely to provide much guidance to districts related to the prereferral or early

intervening services provisions in IDEA until USED regulations or Non-Regulatory Guidance is provided. Unlike officials in some of the larger districts who are planning to implement these provisions based on their interpretations, SEA officials are not even aware of some of the major issues and the Administration's intent, which includes using IDEA funds to promote the use of Reading First-approved interventions under this new set of IDEA provisions to reduce the number of minority students in special education programs. .

Most of the fifteen SEA officials who attended a closed session focusing on implementation of new IDEA provisions believed that districts in their states are already providing early intervening services through the use of student support teams to borderline students before determining whether or not these students should be placed in special education. Several also noted that district psychologists are also already providing such services. However, when the Administration's intent was clarified to mean that all early intervening services, particularly Response To Intervention (RTI) services, had to be scientifically-based and include the essential elements of Reading First, they expressed disbelief. Only one of the officials indicated that she was aware that the technical assistance responsibilities for implementing the new alternative assessments under the two percent proficiency cap for some special education students would be provided by the three existing Reading First Technical Assistance Centers (see related item). Most of the

SEA officials indicated that current or planned early intervening services would be relatively short, perhaps three-six weeks of intensive instruction or behavioral interventions. They were surprised to learn that the research on early intervening services cited in the April 11 USED guidance related to the two percent proficiency cap calls for much longer interventions, as much as an entire year in most cases. Much of the cited research was conducted by centers and individuals intimately involved in the design and implementation of the Reading First program. These SEA officials have not considered lengthy interventions which could result in reduced numbers of students being placed in special education before the December 1 count, in which case state special education funding to districts would be significantly lower than in the past.

When the possibility that supplemental materials which do not meet all the requirements of a Reading First-approved product could not be used as an intervention was raised, few if any of these officials appear to have even thought about such a possibility. On the other hand, several SEA officials expressed opposition to the notion that the early intervening services had to use Reading First-approved products, approaches, or training.

On the other hand, there appears to be consensus about one issue, namely that the Response To Intervention provisions (vs. the discrepancy model based upon IQ tests) is a subset of early or prereferral interventions. Several of these SEA officials indicated that they

expected the USED regulations related to response to intervention (RTI) would be more prescriptive than any further guidance related to prereferral or early intervening services.

As we have noted in previous reports, at stake here is between \$1 and \$1.5 billion of IDEA funds which, for the first time, would be allocated most likely to general education groups or Title I offices in districts to provide prereferral or early intervening services to borderline students in an attempt to remediate reading problems before having to place such students in formal special education programs. The effective date of these provisions is July 1. Given the "wait and see" attitude of many SEAs as reflected by the above comments during the CCSSO meeting, it would appear that firms which have prereferral or early intervention services should, as soon as possible, approach districts and/or schools with large numbers of minority students enrolled in special education programs to begin providing such products and/or training as part of early intervening services. The most likely office to contact within a district is the Title I office after "courtesy calls" on the district level special education office. In some instances, the school psychologist's office may be taking a lead or influential role in implementing these provisions.

State Superintendents' Meeting With Secretary Spellings, Assistant Secretary Simon, and Other USED Officials Strongly Suggests Additional Flexibility Will be Provided to States Once Details Are Thought Out by Task Forces and Stakeholders Buy-In

At the annual Chief State School Officers Legislative Conference, which began on April 17, during the "conversation" between USED officials – including Secretary Spellings and Assistant Secretary Ray Simon (who was just nominated to be Deputy Secretary and more than 30 chief state school officials, it became clear that further flexibilities will be provided to states who have demonstrated success in increasing student achievements and reducing achievement gaps between subgroups of students. USED guidance will be provided after details are worked out by existing and newly-created task forces addressing three key issues:

- Allowing an additional two percent of students who achieve proficiency on out-of-level testing or other alternative tests to be counted toward AYP, a change which was announced early in April by Secretary Spellings (see related [Washington Update](#) item);
- Numerous assessment and reporting issues related to English language learners, for

which a task force is being created; and

- The use of "growth models" for assessing subgroup proficiency for certain special education students and English language learners, is being addressed by another task force.

As Assistant Secretary Simon noted, the dynamics of developing "new flexibilities" following Secretary Spellings' "principles" and "bright lines" require well-thought-out details so that USED can avoid, among other things, litigation. It also became clear that the new flexibility allowing the two percent proficiency cap for "gap students" could be made available to states through amendments to their state plans if certain other conditions are met, such as increased training for IEP team members (particularly regular education teachers), requiring all subgroups to have the same minimum number or percentage to be eligible for being counted toward AYP at the school level, among others. USED guidance is expected to go out immediately to help states prepare amendments to be submitted by the May 16 deadline. Discussions with officials from several large states which do not have flexible alternative assessment systems in place strongly suggest that these states will not be able to implement changes in time to apply them to this year's data for determining which schools and/or districts are identified for improvement or having to make AYP under the newly-found flexibility.

Most of the questions addressed by chiefs to USED officials related to "fixes" or changes in strict USED interpretations of the intent of the Law, rather than questions or issues about the Administration's proposed Secondary Reform Initiative. Virtually all of the chiefs from rural states, with large numbers of small, sparsely populated districts, expressed the seriousness of challenges confronting them in implementing certain provisions of the Law, including:

- meeting the requirements of highly-qualified teachers even with exceptions based on narrow definitions of what is a rural district; Assistant Secretary Simon indicated USED would review existing definitions;
- the need to allow non-English speaking immigrants and Native Americans taking tests in English beyond the current three year timeframe as some states have passed laws promoting diversity through the use of spoken Native American language.

The Chief State School Officer from a North Central state pointed to the problems of implementing NCLB assessment provisions for recent teenage refugees who have very low academic performance in their native language. She requested that her state be allowed to implement an alternative to the regular state math assessment which would require little English language skills (i.e., naked reading) for three or four years before requiring these

students to take the state's regular math assessment.

Most of the chiefs appeared to agree with the need for "growth models" for determining proficiency for special education and English language learners, but clearly indicated that implementation of such models could take a long time and require a transition period. Assistant Secretary Simon suggested that the states that are interested in moving quickly should review growth model assessments in states already using them, such as Massachusetts. He did indicate that long-term state plans would have to take into account the recommendations of the newly-created task force.

Not unexpectedly, many of the chiefs called for increased funding to develop SEA capacity to provide school support teams and leadership to districts and schools identified for improvement. Assistant Secretary Simon, formerly Chief State School Officer in Arkansas, empathized with the challenges facing SEA staff such as one who indicated his department had been down-sized over the last ten years; his department only has ten percent of the staff that they had ten years ago. Not only did Simon indicate that technical assistance to states was "at the top of his agenda," but that in his new role as Deputy Secretary, his responsibility will focus solely on implementation of NCLB at the K-12 level.

Chairman Boehner Argues that School Districts That Are “Under-Achieving” Should Not Be Eligible to Offer Federally-Funded Tutoring But Concedes that the Final NCLB Law Leaves That Decision Up to the Secretary of Education

During hearings on April 26 before the Education and Workforce Committee as requested by the Democratic Leadership, Committee Chairman Boehner said that ensuring Federal tutoring funds are spent responsibly, should start with ensuring under-achieving school districts are not eligible for those funds. “My hope is that Secretary Spellings and the Education Department will come to make clear that if a district isn’t getting the job done with Federal dollars in the classroom for children, it won’t be entrusted with the responsibility of using federal dollars to provide remedial tutoring for children, either.” The Chairman’s carefully worded message to USED comes just before the pending release of new USED guidance on SES announced in January. On several cases, Secretary Spellings has stated that for those districts identified for improvement, USED would consider the districts’ record of progress in improving student achievement and take such considerations into account on a case-by-case basis which could allow such districts to continue providing district-operated SES programs. Groups such as the Council of Great City Schools continue to argue that if a district has a demonstrated record of student progress, it should be allowed to continue

providing SES as USED’s current policy is not included in the Law or regulations. On two separate occasions, Assistant Secretary Ray Simon agreed that the current USED policy which disallowed use of Title I funds in Chicago’s district-operated SES program is in Non-Regulatory Guidance, which does not have the effect of Law; he also noted that Chairman Boehner was generally opposed to any changes. On the other hand, ranking Democrat Congressman George Miller of California apparently has changed his position since speaking before the Education Industry Association’s Summit on March 1, when he indicated that NCLB does not allow a district which has been identified for improvement to continue providing its own SES. In a prepared statement before the hearing, Miller, who led the request for the SES hearings, stated, “The Law itself does not prohibit school districts from continuing as providers for all students and districts have shown they can often reach more children at a lower cost with the same teachers. I hope the Department will rethink its regulations on this.” During the Council of Great City Schools conference approximately two weeks after the EIA summit, the Los Angeles Unified School District, which operates one of the largest and most effective SES programs known as *Beyond the Bell*, was “identified for improvement,” which prompted Secretary Spellings before the Council of Great City Schools to emphasize that she would take into account student performance progress as a primary consideration, on a district-by-district basis, in deciding whether districts identified for improvement could continue to provide SES.

While some of the folks at the hearing might have felt that Chairman Boehner's committee and USED were on a collision course, the two may not be that far apart. In the Secretary's press statement and during the Chairman's hearings, statements that "under-achieving" school districts should be not eligible to offer SES is not inconsistent with the idea that a district that had been identified for improvement but continues to show progress could continue its SES programs. Conversely, an under-achieving district where little progress is being made in light of the state's low trajectory for all students becoming proficient in meeting AYP targets may not have been identified for improvement. This might explain the Secretary's position of handling this issue on a case-by-case basis.

During the hearing, other issues were addressed such as: (a) the use of incentives, and even bribes, by certain providers to have parents re-assign their students to their particular SES program; (2) whether it was proper for state-approved SES providers to use off shore online tutoring; and (3) criticism of states for not conducting timely and in-depth evaluations of SES providers' programs and their effect on student achievement. In a prepared statement, Congressman Miller noted that he and several Committee Democrats have requested a GAO investigation of how states are implementing SES provisions, how academic content being taught by SES providers aligns with district and state standards, and the effect of SES on student achievement.

One of the witnesses was Elizabeth Swanson, Director of Chicago Public Schools' Office of Afterschool and Community School programs, which until February 1, 2005, provided SES programs to City students. She argued that only 25,000 of 80,000 eligible students next year will receive SES because outside providers are charging 3-4 times more per pupil than what the district allocated when it operated its own SES program. As reported in Education Daily (April 27), Chairman John Boehner, R-Ohio, had expressed little sympathy for Chicago, indicating that, after all the money the Federal government has sent to CPS without academic results, "it's hard for me to hear 'trust us.'" For more information about the hearing and statements go to www.edworkforce.house.gov/press.

Center for Research in Educational Policy Releases Report on Suggested Means by Which States Can Evaluate Supplemental Educational Service Providers

The Center for Research in Educational Policy (CREP), in conjunction with the Supplemental Educational Services Quality Center, has prepared an Issue Brief entitled "Evaluating Supplemental Educational Service Providers: Suggested Strategies for States." The Issue Brief recommends that states evaluate the performance of providers of supplemental educational services (SES) along three dimensions: effectiveness, customer satisfaction, and service

delivery. It also stresses the need for providers to demonstrate success across all types of students served, including students with disabilities and English language learners. The Issue Brief highlights technical and practical considerations associated with SES evaluations in each identified area.

Among the effectiveness measures discussed are student-level state assessments, supplementary individualized assessments, and provider-developed assessments. Key evaluation considerations for these measures include:

(1) Student-level state assessments

- data may only be available for some grades
- pretest scores not always available
- secondary students may take tests at different times
- appropriate control groups may be hard to find
- state assessment must be consistent with purpose of SES evaluation
- data collection for control students may be expensive and time-consuming
- states need to analyze test results in time to evaluate SES providers.

(2) Supplementary individualized assessments in reading/language arts or math.

- SES gain cannot be determined without pretest scores
- test administration can be costly and time-consuming
- supplementary assessments must not conflict with state assessments or take time away from instruction
- convenient testing site must be identified.

(3) Provider-developed assessments in reading/language arts or math

- provider assessment may not be valid for state evaluation purposes
- provider assessment may tend to show greater gains than independent test
- providers should be encouraged to use some pre-test and post-test.

Common satisfaction measures include perceptions from students and their families:

(1) Student perceptions

- young students often cannot judge the quality of services
- perception data may be difficult to obtain
- gaining SES student participation can be time-consuming
- translators may be required for ELL students.

(2) Family perceptions

- parents may be familiar with only one SES provider making comparisons difficult
- providers serve widely different numbers of students yielding varying sample sizes
- identifying and contacting parents can be time-consuming and expensive
- translators may be needed for parents of ELL students.

The CREP Issue Brief also describes evaluation measures associated with service delivery, including numbers of students served, number of tutoring sessions, duration of tutoring sessions, student attendance, and program cost:

- data must be obtained from a variety of sources
- data may not be readily available from schools and school districts
- state staff resources will be needed to collect and analyze data
- onsite visits are expensive and time-consuming
- district staff may not be familiar with SES provider programs
- districts which are SES providers may not provide unbiased information on their own or competitors' services.

The CREP report also outlines key features of different evaluation designs for student achievement including: (a)

within-school matched treatment-control group with pretest and posttest; (b) between school matched treatment-control group with pretest and posttest; (c) regression-correlation using pretest and posttest; (d) matched treatment-control group or regression using posttest only; (e) treatment group only, pretest and posttest; and (f) treatment group only, posttest only.

Overall, CREP concludes that the evaluation of SES providers is an evolving endeavor requiring evaluators to make trade offs between rigor and such practical concerns as cost and time. CREP urges that evaluation experiences nationally be exchanged so that, over time, state officials can improve the validity, reliability, and usefulness of their SES evaluations while saving time and resources.

New Center on Education Policy Reports that the Average Number of SES Providers Available to Students Almost Tripled Since 2003, While the Percent of Eligible Students Actually Receiving SES Has Remained About the Same Over the Last Three Years

In its third annual survey regarding the district-level implementation of NCLB, the Center on Education Policy (CEP) reports that the average number of SES providers approved and available to students increased from 4 in 2003 to 11 in 2005 and, in very large districts, from 7 to 31 providers. On the other hand, the

percentage of Title I students eligible to receive SES who actually participated in education service provider programs has remained about the same at 20 percent over the last three years. One possible reason for the 20 percent participation rate was that, between 2004 and 2005, the percentage of districts which had to provide SES that were approved as district providers, dropped from 37 percent to 26 percent. In the case of Chicago Public Schools, which provided about half of all its SES services at the beginning of this school year, it could do so at a cost of approximately \$400 vs. \$1,500 per pupil for independent, third-party providers; the USED mandate that Chicago stop providing SES necessarily reduced the number of eligible students that could have participated in Title I-funded SES programs. The CEP survey also found that, on the average, districts reported they had the funding capacity to serve only about 22 percent of eligible students under the 20 percent Title I set-aside for a combination of parent choice-related transportation and/or SES. As we projected in our January *TechMIS Washington Update*, if USED changes its policy (which is included in Non-Regulatory Guidance but not the Law) by allowing many districts which have a demonstrated record of increasing student performance to continue providing SES even after they had been identified for improvement, the percentage of eligible students that can participate in SES programs will likely increase dramatically. Indeed, within days after the release of the CEP study, the Council of Great City Schools released its findings on the results of the 2004 administration of the states' tests to students in its member urban districts.

These findings indicated that significant gains in math and reading have been achieved in the majority of these districts since 2001 and that achievement gaps continue to narrow.

The current USED policy toward districts that were state-approved SES providers, but that have now been identified for improvement, has reduced district-provided SES. For example, in urban districts between 2003 and 2004, the percentage of districts approved as service providers decreased from 43 percent to 11 percent, thereby reducing the possibility of firms "partnering" with these districts as they could no longer provide Title I-funded SES to eligible students. On the other hand, the CEP survey findings point to an opportunity of which few firms have taken advantage. District respondents were asked to report on the extent to which their SES providers were able to meet the needs of various types of students in 2003-04 school year. While around 50 percent of districts felt "most or all" providers could meet needs of primary, elementary, and middle school students, only about 40 percent of districts felt current SES providers were able to meet the needs of students with disabilities or English language learners who were eligible for SES. This finding is consistent with policies of the vast majority of third-party for-profit SES providers. Moreover, 45 percent of all district respondents felt that the districts themselves could meet the needs of eligible SES students when other state-approved providers are unable to serve them. Under the new IDEA reauthorization which allows IDEA funds to be used to provide SES to

eligible special education students, the Law is very clear that, even if a district is identified for improvement under NCLB, the district is responsible for providing SES to students with disabilities and English language learners if state-approved SES providers cannot or will not provide such services. Firms with products or services that can be used by districts or related entities, such as local teacher unions, to provide services for these two subgroups of students should consider seriously "branding" their solutions to meet these specific needs.

Differing from the situations of most urban and very large districts which have been identified for improvement, the number of suburban districts which have been approved by their states as offering SES has increased from 25 percent in 2003 to 28 percent in 2004. Overall, suburban districts are much more likely than urban or large districts to feel that the district has the capacity to serve eligible SES students. On the other hand, almost sixty percent of suburban district respondents felt that they did not have the capacity to serve students whose needs cannot or will not be provided by other state-approved providers. It is not clear whether the lack of capacity relates to a smaller amount of earmarked Title I funds for SES or that the suburban districts currently do not have the necessary program materials or cannot provide the necessary services to eligible special education or English language learners. Opportunities for partnering with suburban districts, particularly those which have received significant increases in preliminary Title I

allocations for 2005-06 school year, could be great.

For a copy of the CEP survey go to <http://www.ctredpol.org/>.

Slightly Over a Half Billion Dollars of School Improvement Funds Could Provide Opportunities for Firms Which Have Whole School Reform Curricula/Programs and/or Provide Effective Staff Development and/or Other Services for Schools Identified for Improvement, Which Do Not Require Re-Occurring Costs After One Year

Slightly over \$500 million will be earmarked, at the state level, as School Improvement Funds (SIF) Under Title I for school year 2005-06. Five percent of such funds in each state are to be used to establish a "statewide system of intensive and sustained support" for implementing improvement strategies for schools identified for improvement. The remaining 95 percent of these funds are supposed to be allocated directly to schools, particularly those schools whose student achievement levels are lowest with a large number of subgroups of students failing to meet AYP proficiency targets. Prepared by Phyllis McClure, Independent Education Consultant for the Center for American Progress, a new report entitled "School Improvement Under No Child Left Behind," indicates that states have adopted a variety of approaches in

distributing their school improvement funds (SIF) to schools through districts which have a great deal of flexibility as to how such funds could be used depending upon the number of years the districts' schools have been identified for improvement. As the report notes, "After receiving their improvement money, schools have some discretion in how they may use these funds. States, however, do exert some influence over how schools spend this money, and many states have cautioned schools that these funds should only be used for non-recurring expenses...If the number of "identified" schools in a state increases next year, with only a minimal increase (if any) in overall state Title I funding the amount of funds available next year per school "identified" for improvement may be reduced significantly. Between 2003-04 and 2004-05, the Minnesota state set-aside for school improvement was reduced from \$4.2 million to \$628,000.

The report notes, "Federal school improvement money is not intended to pay for major investments in low-performing schools...Consequently, school improvement grants can only cover non-recurrent costs that do not extend beyond a year." For example, Georgia's policy limits expenditures for computers and related hardware and prohibits use of SIF for any capital expenses. For schools identified for improvement (SIFI) who are under "corrective action" sanctions, the Law suggests a number of interventions, at least one of which must be taken, which include, as the report notes, more professional development, and instituting a new curriculum as two of

nine interventions. The report also notes that a school improvement grant, as part of corrective action, could pay for "some supplemental reading materials." Or, if the intervention is the replacement of existing curriculum with an entirely new curriculum -- district-wide or in a certain grade level -- the school improvement grant could be used to provide for extra professional development.

Using the five percent SIF set-asides for statewide support, most states have created school support teams which, according to USED, is "mandatory." In fact, Maine has received an audit exception for not having school support teams; some states such as Michigan, who rely on their intermediate units to provide school support teams, have also been cited. As the report notes, the USED Non-Regulatory Guidance policy is in conflict with Congressional intent which calls for states to use a portion of its SIF to promote the use of comprehensive school reform models, including those supported under the Comprehensive School Reform Demonstration Act of 1997, which next year will receive reduced Federal funding. While state school support teams go under different names (such as "school turn-around specialists" in Virginia), one of the capacity-building activities for schools identified in the first two years of improvement is to help schools choose effective instructional strategies. Another such activity is to teach school staff how to use assessment data to identify and resolve instructional problems. The report recommends that USED policy should be more flexible in allowing states to decide how to use the five percent SIF earmark to improve

overall school effectiveness. The school support team approach represents too much of a "one-size fits all" solutions according to the report.

If a firm has products, staff development, or related services which can increase student performance quickly without requiring recurring costs, then it should take into account several considerations in deciding whether opportunities exist. One is to target states in which overall state Title I funding will increase next year, with the number of schools identified for improvement (SIFI) being reduced. The report cites Georgia, as the school improvement fund earmark more than doubled between 2003-04 and 2004-05, yet the State had 90 fewer schools designated as needing improvement; this resulted in more funding allocated per school that remained in an "identified" status. The report also noted that the Texas SIF doubled from \$20 million in 2003-04 to \$44 million for 2004-05 which resulted in each of the almost 200 schools identified for improvement receiving slightly over \$200,000 each. Or, one could focus on states which have a low number of schools currently identified for improvement or which are likely to have few additions next year. These include Kansas, Iowa, Nebraska, Oregon, Wisconsin, West Virginia, and Delaware. Another consideration is whether the state has allocated some of its Comprehensive School Reform Demonstration funds for grants so schools identified for improvement could select comprehensive programs. The report also recommends that, in the future, some of the state IDEA special education and Title III English Language

Acquisition funds be added to the school improvement Title I SEA set-aside funds. For a copy of the report go to www.americanprogress.org/site/pp.asp?c=biJR8OVF&b=476775.

NCES Survey Provides Spending Data for U. S. Public Schools

An April 2005 study by the National Center for Education Statistics (NCES) provides state-by-state information on the finances of public schools as of three years ago. Entitled "Revenues and Expenditures by Public School Districts: School Year 2001-02" (NCES 2005-342), the report uses data drawn from NCES' Common Core of Data (CCD).

The report (Table 3) shows that median district expenditures for public education range from highs of \$16,738 per pupil in the District of Columbia and \$16,456 per-pupil in Alaska to a low of \$5,954 in Mississippi, with a national median of \$8,424 per-pupil. In eight states -- Alaska, Connecticut, Delaware, the District of Columbia, Massachusetts, New Mexico, New York, and Wyoming, median total expenditures exceeded \$10,000 for the 2001-02 school year.

Median per-student expenditures for instruction (including teacher salaries, instructional materials and supplies) also ranged from \$8,931 in Alaska to \$3,254 in Mississippi with a national median of \$4,500 (53 percent of total expenditures). Of the ten states with the highest median per-pupil expenditures for instruction, eight (New York, New Jersey, Rhode Island, Connecticut,

Massachusetts, Maine, Vermont, and Delaware) were in the Northeast.

Median per-pupil capital expenditures (generally school construction) showed a much greater range -- from \$3,198 in the District of Columbia and \$1,597 in Delaware to \$145 in Vermont. The national median was \$443 per student.

The large differences in school construction often cause researchers to use current per-pupil expenditures which exclude construction, equipment, debt service and non K-12 programs. The national median per-student current expenditure was \$7,294, again with Alaska (\$14,459) and the District of Columbia (\$13,330) on the high end and Mississippi (\$5,420) on the low end.

The median total expenditures per-pupil in independent (not district-affiliated) charter schools was \$7,066 nationwide.

The full study can be found at: <http://nces.ed.gov/pubs2005/2005342.pdf>.

The Finance Project Reports on Professional Development Expenditures in Urban Districts

The Finance Project has recently published a report, entitled "Inside the Black Box. School District Spending on Professional Development in Education: Lessons from Five Urban Districts," which is a collaboration between researchers at Education Resource Management and those at the Consortium for Policy Research in Education.

Existing research indicates that school districts use a range of sources -- often non-local -- to pay for professional development. For example, significant professional development expenditures are often embedded in Federal Title I programs. The Finance Report is an effort to look at professional development expenditures in five urban districts with an emphasis on identifying sources of funding that are frequently hidden among various Federal and state programs. Each of the five school districts participating in the study have large poor and minority enrollments and are in early stages of reform efforts focusing on building teaching capacity. The districts range in student populations from 47,000 to 85,000 students.

The report found that the five districts spent an average of \$19 million -- \$4,380 per teacher -- during the school year studied for professional development, an average of 3.6 percent of the districts' total operating budgets. The data showed considerable variation in the amount of resources devoted to professional development. The districts in the Southwest and Midwest had per-teacher expenditures for professional development of \$2,100 and \$2,700, respectively, representing 2.3 percent and 2.2 percent respectively of their total operating budgets. Conversely, the Great Lakes area school district spent an average of \$7,900 per teacher for professional development -- 6.9 percent of the district's total operating budget.

A range of departments within these districts allocated funds to professional

development, including curriculum development, Federal programs, special education, and instructional technology. Moreover, three of the participating districts provided "intervention" support for low-performing schools, including professional development from district staff and from such outside providers as universities and non-profit organizations. The study found that, often, the different departments did not coordinate or integrate their professional development efforts and that outside providers' offerings often duplicated or conflicted with district conducted professional development.

Four out of the five participating school districts focused their professional development spending at improving school-level teaching capacity rather in development individual capacity.

All five of the districts studies used a significant amount of non-local resources to fund their professional development efforts. Overall, 43 percent of the combined spending of the districts on professional development came from non-local sources. Federal funds -- 33 percent of total revenues -- were the largest source of outside support; Title I, National Science Foundation, IDEA, and Title II were the leading Federal sources. The study concludes that "...the prevalence of outside funding perpetuates the notion that investing in professional development is an extra bonus, added when funding is available instead of a core essential..." For more information go to www.financeprojectinfo.org/publications/insidetheblackbox.pdf.

Technology Advocacy Update

Numerous advocacy initiatives and events are underway to restore funding for the Title IID Enhancing Education through Technology funding which the President proposed to zero-out for FY 2006, and to exempt the e-Rate from the Anti-Deficiency Act (ADA) or otherwise ensure the e-Rate will continue under the reauthorization of the Telecommunications Act. Over 300 Hill visits have been held as a result of fly-ins organized by SIIA, ISTE, SETDA, and COSN. Some estimate that over 5,000 e-mails have been sent to Congress through "grass roots" efforts by ISTE and COSN. State Education Technology Directors Association also initiated a technology "blackout day" where teachers and students let Congress know what it is like to not be able to use technology in their classrooms.

The Ed Link coalition which has been resurrected on several occasions to save the e-Rate program, is in full gear, particularly after House Commerce and Science Committee Chairman Joe Barton from Texas stated about a month ago that if he "had to vote now he would kill the e-Rate program." More moderate Republican leadership and their staff would undertake additional efforts to reduce fraud and abuse, ensure that more schools and LEAs participate in the program, and ensure that e-Rate funding flows on a continuing basis and not have funding interrupted as happened last year when the Office of Management and Budget ruled that e-Rate fell under the Anti-Deficiency Act.

In addition a new left loosely coupled group referred to the Critical Mission Coalition is collecting information and data which have clearly demonstrated the use of technology to improve student performance and otherwise increase productivity and education. For more information about the Critical Mission Coalition which has links to Ed Link and other groups go to <http://www.missioncriticalcampaign.org/>

If you have any questions or wishes to actively participate, contact Charles Blaschke directly.