

# **Substantive Changes in Title I Final Regulations Which Have Implications For Some, If Not Most, Subscribers**

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

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As we noted in our latest regular TechMIS issue, on October 28, the U.S. Department of Education announced its final regulations for Title I. These new regs include changes that will have important implications for many TechMIS subscribers.

## ***A. Unexpended Funds for SES and Choice***

The final regulations emphasize that an LEA should carry over any unexpended amount of its 20 percent set-aside for SES/choice to the subsequent year and add it to the 20 percent set-aside for that year. However, an LEA may reallocate such unspent SES/choice funds for other allowable products and services if it meets, at a minimum, the following criteria:

- To the extent practical, the LEA must partner with outside groups (including faith-based groups) to help inform eligible students and their families of the opportunities to transfer or to receive SES;
- It must provide timely and accurate notice and ensure that “signup forms” for SES are distributed directly to all eligible students and their parents and made available through “broad means” of dissemination, including the Internet, thereby providing a “genuine opportunity” to sign up for SES;
- It must provide at least two enrollment windows, at separate points in the school year, that are of sufficient length to help parents make informed decisions about requesting SES and selecting a provider (in the draft regulations, enrollment in SES could occur throughout the entire school year);
- The LEA must ensure that SES providers are given access to school facilities “using a fair, open and objective process on the same basis and terms as are available to other groups that seek access to school facilities.”

The LEA must maintain records/documentation that demonstrate it has met the minimum criteria. The LEA must also notify the SEA that it has met the criteria and intends to

spend the unspent remainder, if any, of the 20 percent obligation on other allowable activities, “specifying the amount of that remainder.”

Generally, the SEA must follow its regular LEA monitoring process; however, if an SEA determines an LEA has spent a “significant portion” of its set-aside on other activities and has been the subject of multiple complaints regarding implementation of SES or school choice, and if the SEA determines that the LEA did not meet all of their criteria, then the LEA has to reallocate the amount of unspent funds for that year to the next year and add it to the twenty percent SES/choice set-aside for the next year. In that year, if any SES choice set-aside is unspent, the LEA has to get SEA permission to reallocate such funds for other non-SES/choice purposes.

In another SES change, an LEA may use up to one percent of its 20 percent set-aside to provide outreach and assistance to parents and count that toward the 20 percent. If additional Title I funds are used to administer SES they cannot be used to count toward the 20 percent overall set-aside; moreover, final regs state, “The Department is not, at this time, intending to collect data on the use of these funds.”

Included in the final regulations are a number of changes in the SEA’s responsibility for implementing SES, including:

- In the parent notification regarding availability of SES, the SEA must indicate those providers that are “able” (based on the providers’ word) to serve students with disabilities or LEP students;
- The LEA must post on the district website the number of students eligible for and participating in choice and SES, a list of state-approved SES providers and their locations which are to be updated regularly, and the schools available for choice transfer. For districts without websites, the information must be posted on the SEA website.

The SEA is also required to post on its website, for each LEA, the 20 percent set-aside amount and the maximum per-child amount available for SES calculations. It should be noted that, after state adjustments, the actual per-eligible child allocation could be considerably lower than the maximum determined by USED. This will tend to favor SES providers who are usually able to charge the “inflated” maximum per-student rate for SES tutoring.

Regarding the SEA role in approving SES providers, the final regulations require that a provider must agree to “assure” that the instruction it provides and the content it uses “are of high quality, research-based, and specifically designed to increase the academic achievement of eligible children;” this language replaces the requirement that such instruction and content both are “research-based.” The SEA must also consider whether the providers’ SES programs and services are consistent with the instructional program of the LEA and the academic standards of the state and are aligned with the state’s academic achievement standards. Although it is an LEA’s responsibility, through its agreement with the provider, to determine whether the instructional programs address each students’ individual needs, states must also consider, when available, parent surveys on the success

of the provider's program, whether any state has removed the provider from that state's list, and the results of any evaluation of the effectiveness of the provider's program.

### ***B. Determining and Reporting Uniform Graduation Rates***

The final regulations clarify that the four year graduation rate must include only students who earn a regular high school diploma at the conclusion of their fourth year, before the conclusion of their fourth year, or after a summer session immediately following their fourth year. While most states will report this graduation rate, the states can also calculate and report separately an "extended-year adjusted cohort graduation rate." This extended year adjusted cohort graduation rate is defined as the number of students who graduate with a regular high school diploma in four years or more divided by the number of students who form the four-year cohort adjusted for any students who transfer into the cohort by the end of the year of graduation minus the number who transfer out, emigrate to another country, or are deceased by the end of that year.

The regulations also specify the definitions and adjustments for cohorts of students which apply and which should be taken into account in calculating the overall rates and the disaggregation of data by groups of students. The final regs also do not require states to use the currently-required Average Freshmen Graduation Rate (AFGR) prior to the state's ability use of an adjusted core graduation rate.

For purposes of determining AYP, particularly for high school students, each state must set a single graduation rate goal and annual targets indicating that "continuous and substantial improvement" are expected of all high school students; the LEA must be held accountable for meeting these targets by 2009-2010 school year. By the 2011-12 school year, states must use disaggregated data for groups of students (e.g., poor, ethnicity, etc.) in determining whether a school has made AYP.

While the definitions and ways of calculating graduation rates are very prescriptive, it would appear that, overall, the regulatory changes have pretty much been accepted by most stakeholder groups, Congressional leaders, and SEAs. For students with disabilities, there still appears to be some conflict with IDEA regulations which will likely be worked out over time and which is likely to be included in "non-regulatory guidance" before the end of this year.

### ***C. Restructuring***

In the regulatory framework for school restructuring, final regulations clarifys that if a school begins to implement a "restructuring" option as a "corrective action," the school does not have to implement a "significantly more rigorous and comprehensive reform" at the "restructuring" stage. In another change, the restructuring of a school's governance may include replacing the principal as long as this specific change is part of a broader reform effort.

#### **D. Miscellaneous Changes/Clarifications**

Other changes included in the final regulations include:

- A clarification that the term “multiple measures” means that states may use single or multiple question formats or multiple assessments within a subject area.
- At the state and district level, disaggregated data for student groups’ scores on the most recent NAEP assessment must be included in report cards for math and reading.
- All states are permitted to request authority to include student growth models and measures in determining AYP “so long as state’s growth proposals meet certain criteria that other states which have been approved to use growth models have also had to meet.”
- The National Technical Advisory Council (National TAC) is now codified to assist in advising policy regarding identification of schools in LEAs for improvement. Members should also reflect knowledge and experience in dealing with students with disabilities and LEP students.
- The definition of “a highly qualified teacher” will align the Title I regulations with the definitions and criteria currently in the Individual with Disabilities Education Act (IDEA).

The final regulations also appear to provide more flexibility than the draft regulations in determining the minimum “N size” of subgroups for including these students in AYP determinations. Even though such increased flexibility appears to exist, each state has to justify its proposed “N size” and other AYP determination components in revised Consolidated State Application Accountability Workbooks (“Accountability Workbooks”) for peer reviews. The Department will make final determinations in deciding whether or not to approve the revised Accountability Workbooks. The issues of “lack of transparency” and “negotiated state-by-state changes” between individual states and USED are likely to continue.

During discussions with appropriate officials in several education associations about the final regulation provisions -- particularly those related to SES -- most of these officials stood by their initial positions in response to the draft regulations which we highlighted in the June TechMIS Washington Update. It appears that key state SEA Title I administrators -- who will be held responsible for monitoring LEA implementation of some of the SES-related regulations -- will be developing a “position paper” that will be communicated to USED prior to publication of non-regulatory guidance. During one of the three press conferences on the day the final regulations were released, USED officials promised the availability of such guidance, particularly on uniform graduation rate reporting, by the end of this calendar year, but were less clear about when non-regulatory guidance would be available on SES-related regulations. During this press conference, the key officials from the Council of the Great City Schools indicated that they would be preparing detailed comments on points of clarification, on SES provisions which need to be addressed in the non-regulatory guidance.