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MEMORANDUM

DATE: November 16, 2011
TO: TechMIS Subscribers
FROM: Charles Blaschke and Blair Curry
SUBJ: State Waiver Updates; SES/Parent Choice; FY 2012 Education Appropriations; State Compensatory Education Funding

Because of the timely nature of developments at the Federal level, we are sending a Special Report and several Washington Update items in response to inquiries from many TechMIS subscribers. The Special Report highlights findings from a recent Center on Education Policy (CEP) report on districts' views about SIG requirements. Many of the state waiver requests will take into account the views of districts which have experience implementing SIG requirements which could have implications for TechMIS subscribers. Even though some of these changes may not be specifically requested, some SEAs are very likely to actually implement them based on consultation with district Title I, and other officials. Earlier this week, 11 states submitted their waiver applications following guidelines addressed in our last two TechMIS reports. Our analyses of certain state waiver requests will be sent to TechMIS subscribers as applications are posted. It should be noted, however, that the peer review process, which should begin next month, could be lengthy; the iterative process of USED negotiating with individual states could also be lengthy and result in changes or even disapprovals. State approvals by USED are scheduled to occur early next year.

Other timely Washington Update items include:

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An update on the likely future of supplemental educational services (SES) which has been addressed in numerous recent articles, some of which predict that, under the State Waiver Initiative, SES funding will decrease dramatically. On the other hand, leading SES advocacy groups are confident that the GOP-led House Committee developing ESEA reauthorization "pieces" will include SES-type requirements and set-aside funding for "tutoring" under the guise of "parent choice." Future TechMIS Washington Update items will address the initial state-by-state waiver requests relating to SES/choice.

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A recent update on state funding policies for at-risk students suggest which states are likely to increase state compensatory education funding as the states' economies improve and tax revenues increase.

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The FY 2012 education budget outlook remains a puzzle. A Continuing Resolution through mid-December is likely which, however, could be affected by potential sequestration through across-the-board cuts. These could be changed by Congress later in 2012.

We will be providing highlights and our analysis of individual state waiver requests as they are completed by our team later in the month and in early December. Our next TechMIS report on developments and state profile updates will be provided in mid-December. If anyone has any questions, please contact us directly.

**Special Report:
Recent Center on Education Policy (CEP) Study Findings on District
Views About SIG Requirements Suggest the of Several Types of
Waivers State Education Agencies (SEAs) Will Implement Under the
State Waiver Initiative, if SEAs Take Into Account Districts'
Preferences**

A Technology Monitoring and Information Service (TechMIS)
SPECIAL REPORT

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November 16, 2011

A recent (November 2011) report from the Center on Education Policy (CEP) entitled “Federal Efforts to Improve the Lowest-Performing Schools: District Views on School Improvement Grant Requirements,” includes findings which suggest that SEAS WHO CONSULT WITH DISTRICT Title I and other officials are more likely to actually implement the State Waiver Initiative “principles” which will differ from some current SIG requirements. As part of a major nationally representative survey, CEP released the results of its survey questions focusing specifically on district views concerning several of the current requirements of the SIG program. Of the 455 responding school districts, 125 had schools that were eligible for ARRA SIG funding -- referred to as “eligible districts.” Of these, 87 districts had one or more schools actually receiving SIG funding. The study’s major findings compared districts “eligible” for SIG funding (including the approximately 73 percent which actually received SIG funds) with districts that were “ineligible” to apply for SIG funding. This comparison between eligible and ineligible districts is probably more important than the comparison of eligible districts to “all districts.” As CEP notes, “ineligible” districts probably “have not had experience implementing ARRA SIG programs and would be “unsure about the effectiveness of various provisions.” Moreover, some “ineligible” districts might have been dissatisfied about “being passed over for funding.”

One area in which the responses of ARRA SIG-eligible and ineligible districts related to the effectiveness of using external providers to help turn around low-achieving schools. Significant proportions of both eligible (39 percent) and ineligible (31 percent) districts disagreed or strongly disagreed with the statement that contracting with outside entities is an effective way of improving low-performing schools. On the other hand, nearly half of eligible districts -- but only 28 percent of ineligible districts -- agreed or strongly agreed. Indeed, 42 percent of ineligible

districts were not sure about external providers, compared with only 12 percent of ARRA SIG-eligible districts. As reported in our last two TechMIS Special Reports on waiver guidance, SEA or LEA selection/use of external providers must follow “a rigorous review process” similar to the prior guidance under the SIG program.

Under ARRA SIG guidance, SIG grants are for three years. While 33 percent of eligible and 32 percent of ineligible districts agreed or strongly agreed that three years was an appropriate amount of time to improve the lowest-achieving schools, half of all eligible districts disagreed or strongly disagreed as did 28 percent of the ineligible districts of which almost 40 percent were not sure. For all districts, 33 percent strongly agreed, 32 percent strongly disagreed, and 36 percent were not sure. This finding suggests that states are likely to request waivers to extend the three-year SIG deadlines for “priority” or “focus” schools. If a low-performing priority school exits its status, then the state/district must continue to provide funding for three additional years so the school does not regress. To the extent that states receive approval to extend the timeline for turning around low-performing priority or focus schools, then partnering firms might be able to receive an extended revenue stream for providing replacement materials, other consumable items, and support services.

Another area in which eligible and ineligible districts had similar responses was for the question whether using a competitive grant application process is an effective way of distributing ARRA SIG funds to support improvement of low-achieving schools: 47 percent of eligible and 50 percent of ineligible disagreed or strongly disagreed. Thirty-three percent of ineligible schools were not sure whether the competitive approach is effective. Under the waiver guidance, SEAs have some flexibility in the selection and funding of districts with priority schools, which include some districts with schools not receiving SIG funds. More importantly, SEAs have much greater flexibility in selecting and deciding how much funds are allocated to districts with focus schools.

Districts were also asked whether they agreed or disagreed that the approach of concentrating large amounts of funds on a small number of districts is a more effective school improvement strategy than approaches under NCLB, which allowed any school identified for improvement to receive some school improvement funds under the state 4% set-aside. Among the eligible districts, 45 percent agreed or strongly agreed, while 40 percent disagreed or strongly disagreed, representing a major contrast within the SIG ineligible districts. Among the ineligible districts, only 16 percent agreed or strongly agreed. This finding strongly suggests that many districts would like to have funds available -- such as those freed up from the 20% SES set-aside and/or the 10% professional development set-aside -- to be allocated, not only to priority schools perhaps not currently receiving SIG funding, but more importantly to the ten percent focus schools. Under the Waiver Request Initiative, SEAs are to select/encourage interventions to be used in focus schools. Also, for the five percent priority schools which are not currently receiving SIG funding, the SEA has the flexibility to decide or encourage districts to use interventions other than the four required for schools receiving SIG funds.

As a corollary to these CEP findings, districts were also asked whether they agree with the criteria that were used by USED/SEAs to identify low-achieving schools that need the most

assistance. Among ARRA SIG eligible districts, 65 percent agreed or strongly agreed, while only 27 percent of the ineligible districts agreed or strongly agreed. Almost 50 percent of ineligible districts were not sure. Under the Waiver Initiative guidance, SEAs are allowed some increased flexibility in using selection criteria for the five percent priority schools, but much greater flexibility in identifying the ten percent focus schools. SEAs with preconceived notions of alternative intervention options beyond the four prescribed for SIG schools may attempt to use selection criteria to ensure that priority schools also include those not receiving SIG funds so that their ideas of appropriate interventions could be “encouraged” or even mandated.

Regarding the perceived effectiveness of the four SIG models, the CEP survey found that 49 percent of ARRA SIG recipient districts indicated it was “too soon to tell about the effectiveness of any of the three models. One-third (33%) of recipient districts saw positive results from implementing the models, while five % saw negative results and four % saw mixed results.”

As a closing comment, the CEP report concluded that its findings also raise “questions about whether the decision to concentrate section 1003(g) SIGs on a limited number of low-performing schools will affect the program’s level of support among policymakers, educators, and the public. If districts that are ineligible for funds are less inclined to view the program as effective, they may be less likely to support continued funding for SIGs. In this era of tight education funding, policymakers may be more inclined to continue programs that directly benefit a broad base of districts and schools than those that benefit a more limited group.”

Even though the House-proposed FY 2012 education budget would eliminate funding for the School Improvement Grant program, most observers feel that, during the House/Senate conference, the program will continue to receive some funding. Or, if there is a further Continuing Resolution then SIG will likely be level-funded at about \$550 million. On the other hand, the House has proposed a billion dollar boost in funding in FY 2012 for Title I. This would increase the amount of “freed-up” set-asides which would likely be the primary funding source of funding for priority and focus school improvement initiatives under the State Waiver Proposal. About 17 states have signaled their intent to submit their waiver requests on November 14th for peer review and approval next year. Our discussions with a number of SEA and LEA officials suggest that, in some states, district views are seriously being taken into account by SEA officials who, at this writing, are developing waiver requests.

Washington Update

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Supplemental Educational Services (SES) Being Discussed and “Cussed” in the Context of New Waiver Initiative and Recent Programs on ESEA Reauthorization

A number of recent articles have predicted that the State Waiver Initiative will likely bring an end to the 20 percent SES tutoring set-aside program, as the Obama/Duncan Administration points to more than \$1 billion of SES/choice set-asides being freed-up to provide greater flexibility for other reform initiatives. As a result of a recent Senate bill submitted by Senator John McCain, several observers believe that the GOP-controlled House Committee, as it drafts its “accountability piece” as part of the ESEA reauthorization, will likely include some tutoring provisions as a means to provide “parent choice.” Such provisions would increase SEA responsibilities, help most established SES providers, but would not likely reduce tensions between LEAs and SES providers.

As we reported in the last two TechMIS Special Reports on State Waiver Initiative guidance, states could receive waiver approval so that districts would no longer be required to set aside 20 percent of Title I funds for SES/parent choice as low-performing districts and schools would no longer be identified for “improvement.” AP reporter Chris Williams predicted in an October 31st article, *Waivers spell likely end for tutoring programs*, “Dozens of states intend to apply for waivers that would free their schools from a federal requirement that

they set aside hundreds of millions of dollars a year for after-school tutoring, a program many researchers say has been ineffective.” The article notes that there has been “no connection between students’ success and tutors’ paychecks,” and refers to several SES evaluators, including University of Southern California Professor Patricia Burch, who argued that the whole concept of SES has had design flaws stating, “It’s not necessarily that the idea is that bad, it’s just not designed well.” Other SES evaluators whose studies we have cited, such as Steven Ross and John Nunnery, have found that SES has had negligible effects and, when provided by many third-party providers, is not cost-effective. “The bottom line is we need performance-based contracts if we’re going to have outside contracts,” Burch said, noting that several states and districts are considering them.

A related article by Clare McCann of the New America Foundation, entitled “Department of Education Waivers May Bring an End to NCLB Tutoring Program,” looking at the evolution of SES, cites reports by the Government Accountability Office (GAO) and USED’s Inspector General, as well as evaluations of SES by numerous research groups, which collectively have pointed to challenges and problems, including:

- low participation rates of students, usually between 15 and 20 percent of those eligible; and
- limited effectiveness in light of the amount of time in which students

participate and per-participant cost, which varies significantly.

The McCann article points to another problem, “States are required by the Department of Education to monitor SES programs, measure their impact, and remove from the list of authorized providers any who fail to demonstrate student achievement. But no federal funding is provided for any studies of the programs.” Assessment of SES varies from state to state. In early 2006, GAO found that only two states -- New Mexico and Tennessee -- had provided SES evaluation reports to the public and only a few others were on their way to doing so.

In his November 2nd Education Daily article, Frank Wolfe quotes Steven Pines, Executive Director of the Education Industry Association (which represents several hundred third-party SES providers) who predicted that, in the House, “there will be amendments on SES” that will likely mirror Senator McCain’s proposed Tutoring for Students Act (S.1570). According to Wolfe, S.1570 “aims to improve the quality of SES providers by requiring states to develop a process for the selection of providers based on a number of factors.” Unlike the current NCLB provision which requires districts to set aside up to 20 percent for SES/choice, the McCain proposal would also require the SEA to set aside ten percent of Title I funds of which 97 percent would be allocated to LEAs identified by the SEA as being eligible to apply. The selection of eligible SES providers would involve “the highest quality providers” and, to be approved by the SEA, providers would be required to demonstrate:

- provider’s curricula are aligned to the state content student achievement standards;
- provider has not less than five years of continuous operating experience providing education instruction to youth;
- provider uses instructional methods and materials that are research-based; and
- provider employs tutors that meet state-determined qualifications.

The SEA must also develop and implement a system to evaluate each approved provider which will take into account the extent to which a provider improves student academic achievement, while accounting for the length of each course and including data for all students that have completed the provider’s program. Additional supplemental criteria could be established by the SEA. The SEA would also establish a fair mechanism for removal of a provider who fails to improve performance based on the evaluation for two consecutive years. Most districts would qualify as a provider; however, third-party providers would be limited to those which have been operational for at least five years in providing tutoring to at-risk youth and have a demonstrated record of performance.

We agree with most observers/policy analysts on the following:

- Under the State Waiver Initiative, most states will receive approval to allow districts the option of reallocating freed-up 20% SES set-aside funds for other purposes such as after-school and extended learning (see July 7 and September 28, 2011 TechMIS Special Report); however,

some districts will likely continue using some of the freed-up funds for “SES-type” tutoring, probably under a different name, especially where parent/choice-of-schools options do not exist (e.g., rural schools in which online tutoring may be used).

- When an ESEA compromise is reached in Congress and is signed by the President, there will likely be some type of tutoring in an overall “parent choice” provision in order to placate the many civil rights groups who have been critical of the ESEA accountability provisions (or lack thereof) passed in October by the Senate Committee, but which would not likely take effect for a year to 18 months after passage.

A Recent Update on State Funding Policies for At-Risk Students Suggests Which States Which Are Likely to Increase “State Comp Ed” Funding as the Economy Improves and State Tax Revenues Increase

A new report by Deborah Verstegen of the University of Nevada (Reno), provides a ten-year update on public education finance systems in the United States. It includes sections on state funding policies for populations with special needs, including at-risk poverty students, special education, and ELL students. The section of the report which addresses funding for low-income students is the most recent significant update since 2001 when Kevin Carey, now with Education Sector, conducted a study which identified the amount of state funding per “poor student” provided in 2001-02. The Casey study found that the amount of state funding per poor student at that time ranged

from slightly over \$5,000 annually in Massachusetts to less than \$200 in Arkansas.

Verstegen collected data on state funding levels and policies in effect during the 2006-07 school year, just before the major recession began in 2008. The current study found that 34 states provide funds for students from low-income families which the study considers to be a proxy for being “at-risk.” Some of the states base funding directly on the number of students in need of remediation rather than income status. Others base funding on participation in Federal free or reduced lunch programs. Most states use a combination of categorical funding and “weightings” under a state foundation program. The report found that, in 2007, 16 states did not provide funding for low-income students through compensatory education or categorical programs or through at-risk programs. In 2001, 25 states funded categorical state “comp ed” programs or programs to remediate students who failed certain exams. As the new report stated, “Most states provide about an additional 25% in funding for low-income students and target eligibility on either federal free or reduced price lunch status or both. Connecticut provides an additional 25%, Georgia 31%, Hawaii 10%, Louisiana 19%, Maine 20%, Michigan 11.5%, Minnesota 100% for free lunch participants and 50% for reduced lunch participants, Missouri 25%, Oregon 25%, South Carolina 26%, Texas and Vermont, 25%.” It should be noted that, whereas Massachusetts provided over \$5,000 per poor student in state funding in 2001, in 2007 the amount of categorical funding ranged from \$2,285 to \$2,831 per-pupil. The states which, in 2007, did not provide any compensatory or other funds targeting

poor student in their state foundation formula were: Arkansas, Alaska, Florida, Idaho, Kansas, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Rhode Island, South Dakota, Utah, West Virginia, and Wyoming.

While it is very likely that some states have changed their foundation weighting, or levels of funding for “compensatory education” since the recession began in 2008, many did not because some of the major buckets of ARRA stimulus funding were allocated using state funding education aid and categorical program formulas beginning in 2009. Even with the possibility of certain changes, the 34 states which do have moderate or significant amounts of per-pupil funding allocated for low-poverty students are those which are likely to increase some funding for state compensatory education/remedial programs as the economy improves.

For a copy of the report go to: <http://epaa.asu.edu/ojs/article/view/769/923>

FY 2012 Education Budget Outlook: House Increases Proposed Budget Level Which Senate Will Not Accept; Likely Continuing Resolution Through December, All of Which Could be Affected by Potential Sequestration of Across-the-Board Cut Which Could be Changed by Congress Later in 2012

There are several changing pieces to the FY 2012 education budget puzzle which makes it difficult to construct more than a hazy picture.

As reported in the last TechMIS [Washington Update](#), a large gap exists between the

House and Senate proposed spending levels and provisions for FY 2012. Although the House recently increased appropriations level by \$14 billion, it would still be less than the Senate mark. It would also zero fund most of the flagship Obama/Duncan programs, such as Race to the Top, while providing a billion dollar increase in Title I and IDEA. The Senate Bill would level fund Administration priority programs and restore funding for some others previously cut in FY 2011. Hence, we agree with Frank Wolfe, [Education Daily](#) (November 10th), who predicts another FY 2012 continuing resolution through December. In the meantime, the Committee For Education Funding (CEF) and two other lobby groups representing labor and health have lobbied Congress urging the “largest possible allocation” for the three agencies. CEF Executive Director Joel Packer stated he was “very confident” that the final allocation for the three agencies will be higher than the House amount.

Overshadowing the traditional House/Senate budget battle and a string of continuing resolutions (CRs), the 12-member Super Committee on Debt Reduction is scheduled to recommend up to \$1.5 trillion in additional discretionary funding cuts beyond the \$900 billion over ten years already in the Budget Control Act. The action by the Committee, if not passed by Congress, would trigger a sequestration requiring across-the-board cuts for discretionary programs in both defense and domestic programs of about \$1.2 trillion. Clare McCann, in her *Early Ed Watch* blog on [NewAmerica.net](#), argued that such predictions are somewhat premature since Congress hasn’t even began FY 2013 appropriations process; moreover, as she stated, “...even if the sequesters are put in

place, Congress will have alternatives to cutting funding...The lawmakers could always cancel the sequester by including the appropriate language in any bill that the President signs into law, as was done several times in the late 1990s and early 2000s...There are ways to get around spending limits, including emergency designations and what is effectively unlimited funding for defense spending.”

obligated funds through September 2012.

As the pieces of the FY 2012 budget puzzle are rather elusive, some changes could also occur in the FY 2011 budget which, as a result of the last Continuing Resolution, included a 1.5 percent rescission/cut in Title I and IDEA funding for this school year (see October 13 TechMIS Stimulus Funding Alert). During a November 9 webinar focusing on Title I ESEA waivers and budget situations, Dr. Rich Long, Executive Director of the National Title I Association, reported that USED has stated that, if the next Continuing Resolution includes certain appropriate language, most if not all of the 1.5 percent rescission could be restored for the remainder of the year. This would likely require states to conduct another readjustment of Title I budget levels for districts for the remainder of this year.

As a result of all of these emerging developments and increased uncertainties, TechMIS subscribers should not be overly concerned about Title I purchases of products and services slowing down beginning in October, which will likely not increase again until the overall budget situation appears to be crystallizing. We remain optimistic about Title I and to a lesser extent IDEA prospects through next summer, especially in those districts in states which received waiver to “carry over” both Title I “regular” and ARRA non-