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## MEMORANDUM

**DATE:** January 12, 2017  
**TO:** TechMIS Subscribers  
**FROM:** Charles Blaschke and Dr. Suzanne Thouvenelle  
**SUBJ:** Final IDEA Regulations for RTI Expansion; Trump Options Affecting Future of Obama ESSA Regulations; RTI Opportunities in Charter School Expansion; Civics Education; Opportunities in Breaking “School to Prison” Pipeline; and New Developments in Pre-K Policies

The first Special Report identifies the options under which the Trump/DeVos Administration could reduce the “impact” of the Obama final ESSA regulations, including supplement-not-supplant (if final by January 20<sup>th</sup>), which could generally benefit most TechMIS subscribers by allowing more flexibility for state/district interpretations. Even if some of the final regulations are “trashed,” some states and districts which favor the “intent” of the Obama regulations will develop very similar regulations and guidance in certain areas (e.g., allowing more funding flexibility for charter schools, dropping “required by state law” tests for SNS, allowing more flexibility for failing schools’ interventions and RTI). We plan to follow closely developments in these areas and will be providing periodic alerts and reports over the next several months.

The second Special Report highlights changes in the final IDEA regulations which will increase the number of districts having to set aside 15% of IDEA funding for CEIS/RTI due to “significant disproportionality” of particularly minority students among different disability categories in special education programs. It also extends the age limits to pre-K through 12 so that more juveniles who have been expelled or suspended and placed in restrictive environments can also qualify for such funding for the use of RTI approaches as they transition back to receive GED, or high school diplomas, etc. This will provide opportunities for firms with credit recovery and other related products and services. One of the first pieces of legislation which could be passed in the new Congress would reauthorize the Juvenile Delinquency Act which would facilitate such activities with increased funding.

The Washington Update includes a number of areas of interest to most TechMIS clients. These include:

- **Page 1**  
USED Publishes Non-Regulatory Guidance Regarding for IDEA Requirements Placed Upon Charter Schools Using IDEA Funds for Serving Students With Disabilities, Which Suggest Expanded Funding and RTI Opportunities in Charter Schools
- **Page 3**  
State Elections Shift More Power to GOP
- **Page 4**  
The Education Commission of the States (ECS) 50-State Comparison of “Civics Education” Found that More Than Half of the States Require Some Form of Civic Education Assessments
- **Page 5**  
New Report on the Role of Computer Science in Afterschool Programs Suggests Several Opportunities for Some TechMIS Subscribers
- **Page 7**  
New Education Commission of the States (ECS) Report on Education for Incarcerated Youth Suggests Opportunities Under New ESSA Provisions for Providers/Firms
- **Page 8**  
Recent Education Commission of the States (ECS) Guide to Action in Early Childhood For Policymakers
- **Page 11**  
The Conservative Leaders for Education (CL4E), Which is Dedicated to Education Policy Reflecting Conservative Principles, Appears to Be Supporting Selected Policies/Priorities from the Obama/Duncan Administration, Which Will Increase Demand to Implement Technology
- **Page 12**  
A number of miscellaneous items are also addressed including:
  - a) New York judge orders state to release approximately \$70 million to 20 “persistently failing” schools as part of a state legislature set-aside passed in 2015.
  - b) Satisfaction with school choice is higher with parents of students enrolled in private schools rather than those parents with students in charter and traditional local district schools according to Education Next, a journal from the Hoover Institute at Stanford University.
  - c) Office of Head Start Issues Official Instruction for Head Start For-Profit Grantees to Comply with Selected Uniform Guidance Requirements

For the most part, the next TechMIS report will focus on “detailed” policy and funding developments proposed or mandated by the Trump/DeVos Administration or even Congress which will be able to exercise much more control over USED policies and activities under ESSA than under the Obama Administration and most NCLB provisions. However, we want to emphasize that many of the NCLB provisions reflected in current NCLB guidance and regulations will be in effect until September 2017 at the earliest; deadlines for some important regs will more likely be extended through 2018-19 in key areas such as the selection and use of interventions for lowest-performing schools, as well as some other accountability provisions. The Trump/DeVos Administration can easily extend effective dates.

Very shortly, TechMIS subscribers will be sent the agreements to renew their continued subscriptions to our TechMIS reports and prepaid consulting services. When you receive the slightly revised new agreement and the new fee structure, please review and complete the agreement. Just as we honor our “trust agreement” with clients, we expect clients to honor the commitment to complete the fee agreement with “best” estimate of sales from whatever sources in pre-K-12 marketplace, upon which the annual subscription fee is based. Please call Charles if you have any questions (703-362-4689).

**Special Report:**  
**As the ESSA Era Under the Trump Administration Begins, a Major  
Question is How Will the New Administration Reduce the Impact of  
the Obama Final ESSA Regulations?**

*A Technology Monitoring and Information Service (TechMIS)  
Special Report*

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*January 12, 2017*

Without question, the new Trump Administration will overturn and/or reduce the impact of the Obama ESSA final regulations in a number of areas. The question is how and to what extent will this action impact states and districts as they implement their interpretation of ESSA statutes? In the November-December 2016 Legislative Column of Urban Educators, Jeff Simering, Director of Legislative Services for the Council of Great City Schools states, “At this point, the reversal of a considerable number of Federal regulations and executive actions appear to be nearly certain. The regulations that are the primary candidates for disapproval are accountability and state plan regulations, assessment regulations, and the supplement-not-supplant regulations if they are finalized before January 20<sup>th</sup>.” Simering argues that the Congressional Review Act (CRA), enacted in 1996, permits Congress to overturn executive branch regulations and this is one option seriously being considered even though so far it has been successful only one time in overturning a 2001 regulation. A “resolution of disapproval under the CRA,” as he notes, “is an all or nothing mechanism by which the entire final regulation must be overturned in contrast to the regular legislative process which Congress could invalidate, amend, or repeal parts of a final rule.” As we have argued, the prime candidate for CRA “resolution of disapproval” is likely the supplement-not-supplant regulation if finalized; this action would likely allow districts more flexibility in how Title I funds are used and would benefit virtually all TechMIS subscribers more than the “regulations,” which, however, are still in draft form and may not be published before January 20<sup>th</sup>.

Phillip Lovell, Vice President of the Alliance for Excellent Education, argues in its publication (December 19<sup>th</sup>) regarding the final “accountability” regulations that the new Administration could reissue the regulation using the same lengthy process required under the Administrative Procedure Act, which would include issuing a formal notice in the Federal Register and providing a comment period...Actually, the process for reissuing a regulation could be more complicated than the development of the initial one because the CRA bars issuance of another

regulation ‘substantially similar’ to the rescinded regulation absent a new legislative authorization.” As we noted in our latest TechMIS report and Lovell emphasizes, “This prohibition has not been interpreted by any court or any other authority, so it is unclear what the impact this could have on the process.”

The “accountability” regulations, Lovell argues, provide much greater flexibility, extended time for implementation, and other rules, which received much more positive reaction in the earlier draft from education groups, as we have reported (see September TechMIS). An additional alternative would be for the Trump Administration to “pause or delay the implementation of the regulation providing notice in the Federal Register.” It could then “move forward with ESSA implementation through policy letters and Non-Regulatory Guidance, leaving the interpretation of the law to state and local agencies.” Another alternative for the Trump Administration would be to keep the regulation, but “do little to enforce it.” However, as Lovell notes, this alternative could “put states and districts at increased risks for lawsuits, something that civil rights groups may be very willing to attempt under the next Administration, and something states and districts would certainly rather avoid.”

Carolyn Phenicie, of The 74 Million organization, headed by former news anchor Campbell Brown, suggests that “While ESSA delegated more power to the states, the election of Trump will place the burden of executing the new K-12 Federal Education law on local districts.” Phenicie also argues that the supplement-not-supplant regulations, if finalized before January 20<sup>th</sup>, are the most “contentious provisions” and “those rules are almost sure to be overturned next year...” As reported in The 74 Million article, Chris Minnich, Executive Director of the Council of Chief State School Officers, is quoted as saying, “No one is sitting around waiting for the Federal government to either change or not change the regulations... The best thing you can do is just largely continue what you’ve been doing on the equity and accountability issues under ESEA.” Other state education leaders reportedly stated that they were “already heading down the road anyway,” and while the Trump Administration could influence how states think about accountability, the “fundamentals on their mind haven’t changed.”

The option supported by the Council of State School Officers is similar to a position taken in 2002 by the then newly-appointed National Title I Director, Dr. Joseph Johnson, when NCLB regulations were first published. Having directed the “Texas miracle for Title I,” Dr. Johnson before the April 2002 Annual Conference of the National Association of Federal Education Program Administrators (NAFEPA); in response to a question about implementing the confusing, hastily drawn non-negotiated Non-Regulatory Guidance regulations for NCLB said to the Title I directors, “Do what you think is right and don’t ask any questions.” He then concluded his comments stating he would resign from the National Title I position immediately after a short two-month stay at USED.

The 74 article implies that the primary enforcement of equity civil rights and opportunities for minority children will be coalitions of civil rights and business groups to increase equity through accountability, especially where there is local buy-in rather than forced compliance from the top down. This is important, as it would appear that a Trump Administration will reduce the USED

enforcement authority through its Office of Civil Rights and, if that office is transferred to the Department of Justice, equal education opportunities rights will not be enforced to any greater extent. For those states which do not have an existing education reform infrastructure to build up civil rights coalitions, “The best thing to do is celebrate successes and shame bad actors,” according to interim Director of Legislative Affairs, Kelly McManus, at the civil rights advocacy group Education Trust.

While the “general stage” has been set at this writing, the probability of some Obama regulations such as “supplement-not-supplant” being “disapproved” under the CRA, or otherwise having its impact reduced through lack of enforcement can be expected. As new actors appear on the stage, different scenarios could play out. For example, if Betsy DeVos, Secretary designee, is not confirmed by the Senate and an alternative “policy position” such as that espoused by the Conservative Leadership for Education Platform headed by former Secretary of Education William Bennett could emerge then the ending of the saga will be different (see related Washington Update).

UPDATE:

On January 6<sup>th</sup>, the House Education and Workforce Committee announced that the House had passed the so-called Midnight Rule Relief Act (MRRA), designed to expedite the implementation of the Congressional Review Act overturning final regulations posted by the Obama Administration during its last 60 days before January 20<sup>th</sup>. As reported in Education Week’s Politics K-12 blog (January 5<sup>th</sup>), “It would allow Congress to overturn simultaneously multiple regulations finalized in the last 60 days of a Presidential Administration.” The MRRA was sponsored by 14 GOP congressmen and is now awaiting action by the Senate. Among the final regulations, according to *Politics K-12*, the “Senate has also indicated they’re interested in getting rid of the accountability rules for Every Student Achieves Act and Teacher Preparation Rules from the U.S. Department of Education... We’re still waiting for the Obama Administration to issue a final rule on the controversial supplement-not-supplant spending provision of ESSA, but when (or if) it does, expect Republicans to target that rule too.”

**Special Report:**  
**USED Publishes Final Rule Mandating 15% of IDEA Be Set Aside for  
CEIS/RTI in Districts With Disproportionate Student Representation in  
Different Disability Categories in Special Education Programs in  
Juveniles in “Restrictive Environments”**

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Since the 2004 reauthorization of IDEA and subsequent publication of regulations in 2006, USED has required districts who have significant over-representation of minority students in special education programs to set aside 15% of IDEA funds for Coordinated Early Intervening Services (CEIS)/Response-to-Intervention (RTI), with the intent of reducing the number of at-risk students being placed in costly special education programs. In March, USED announced a new draft set of regulations in which a number of changes which would have the effect of increasing the number of districts “identified” by states by over a factor of 15. An increase in the amount of IDEA funds allocated would increase by a factor of ten or more (see April 2016 TechMIS Special Report). Data submitted in reports by states, which have great leeway in defining “disproportionality” and the criteria under which districts would be “identified,” indicated that only about half of the states reported any districts with significant over-representation, particularly of black students, in special education. About half of the number of students were in less than ten states. The latest report (2013) on funds allocated under the state 15% set-aside was between \$275-300 million.

The proposed regulations were announced at the Council of Great City Schools conference in mid-March 2016 by Assistant Secretary Mike Yudin who announced his resignation shortly thereafter. As we detailed in our May 24<sup>th</sup> TechMIS Special Report, the major changes in the draft regulations included:

- The use by states of several optional “standard” definitions to identify districts with “over-representation”;
- In addition to identifying degrees of over-representation of at-risk students, particularly black students, to determine “early intervening” strategies, the new rules would allow states to include students, who have been placed in special education programs due to

“behavioral disruption” and/or similar students who were expelled and/or placed in “more restrictive” environments in special education programs;

- Districts could also be “identified for having over-representation in specific special education categories (emotionally disturbed)” requiring such funds be set aside for CEIS, which was a major reason for USED estimating that the number of districts so “identified” would increase by a factor of over 15;
- And last, to placate the opposition from District Offices of Special Education Programs due to 15% of their districts’ IDEA budget were being transferred to other offices, such as the Title I Office to be used to provide RTI for example in Title I schoolwides, the new rules would allow students that have been placed in special education also receive part of the 15% set-aside. For example, the 15% set-aside funds could be used primarily for intensive RTI approaches such as one-on-one tutoring and interventions.

The final rules have modified the draft version in several very important aspects, including:

- The grade levels at which disproportionality could occur was moved from K down to age three, reflecting the administration’s increased priority placed on pre-K education and moved up to grade 12 to more easily include juveniles who have been expelled or suspended and sent to more restrictive environment classrooms and/or facilities.
- The rules would also apply not only to the districts with over-representation, but also districts with significant “under-representation” of minorities in their special education programs, which as we reported had been the case in Massachusetts several years ago.
- While the intent of the proposed regulations was to ensure greater uniformity in the criteria used by states to determine districts identified with disproportionality, the new regulations also provide increased flexibility to states to allow districts which are making progress in lowering over-identification rates over the last several years to not be “identified.”

In our May TechMIS Special Report, we estimated that the number of districts identified for over-representation based upon the proposed rules and the amount of funding allocated under the 15% set-aside would increase dramatically from about \$500 to an additional one billion dollars. The new more “flexible” regulations estimates the costs, as reported in *Education Week’s On Special Education* blog (2012) “over ten years would be between \$50 million and \$90 million, while the amount of funding transferred out of special education would be between about \$300 million and \$550 million for “early intervening services that could be used by students who have been identified as having a disability as well as students who have not.”

In our May 24<sup>th</sup> Special Report and subsequent reports addressing the proposed set-aside regulations, questions arose regarding whether the regulations would ever be finalized. USED has recently released detailed “guidelines” for districts using Federal funds for services for juvenile students who have been suspended or expelled or otherwise placed in more restrictive environments. However, these final regulations have been published with a much greater degree of flexibility allowed for states in identifying districts than would have otherwise occurred under the draft regulations; hence, lower estimates in the amount of funds to be transferred under the

15% set-aside. The important question now is whether the new Trump Administration would want to nullify the final regulations (see related item). As Education Week's Politics K-12 blog noted in a recent article that the Congressional office responsible for implementing the Congressional Review Act has already stated the USED final “accountability” and “teacher prep” rules would be prime candidates. And, as we have suggested, the final regulations for “supplement-not-supplant” are also an even larger potential target for nullification under the Congressional Review Act; now that the current 15% set-aside rules have been published, we suspect that this set of regulations will also become a target for nullification.

Perhaps more important than the final regulations designed to reduce “significant disproportional representation” is the fate of the final “Supplement Not Supplant” (SNS) regulations affecting ESSA Title I, Title II, and other new ESSA provisions. Under USED interpretation of NCLB SNS statute, Title I and other ESEA funds could not be used to pay for services “required by state laws.” State laws in many offices require districts to provide response-to-intervention and related intervening services to at-risk students. When the 2004 reauthorization occurred, many states “jumped on the bandwagon” to require RTI and then to their surprise were told that Title I and Title II and other ESEA funds could not be allocated to districts who wanted to use these funds in addition to the IDEA 15% set-aside for RTI approaches. As we noted in our May report, over time, USED guidelines increasingly allowed Title I schoolwide programs to use Title I funds to pay (in combination with the IDEA 15% set-aside funds) for the purchase/implementation of RTI with at-risk students enrolled in Title I schoolwide programs. The USED proposed ESSA final regulations once again included in several sections statements which strongly suggests or state that the “required by state law” factor could be taken into account in determining whether districts could use Title I funds to pay for RTI services in Title I programs. Shortly after the passage of ESSA and negotiated rulemaking over SNS regulations occurred, several Congressional Committee staffs involved in drafting the new ESSA strongly stated that the new ESSA statutes did not prohibit using Title I funds to provide services “required by state law.” The amount of state and local resources allocated to Title I schools have to be equal to those allocated to non-Title I schools has been the primary focus of the debates (see October TechMIS Special Report). Hence, if the SNS requirements are basically discarded, the “final” USED regulations (based upon USED interpretation), states will be allowed to require rather than only permit state and local funds to be used for RTI. As a result, one can expect the number of states requiring RTI, which now number between 10 and 15 will likely increase, which will increase the number of funding sources to implement RTI in the states. This should increase total funding from a variety of sources allocated to RTI approaches, which could be a significant boon for most TechMIS subscribers.

# ***Washington Update***

*Vol. 22, No. 1, January 12, 2017*

## **USED Publishes Non-Regulatory Guidance Regarding for IDEA Requirements Placed Upon Charter Schools Using IDEA Funds for Serving Students With Disabilities, Which Suggest Expanded Funding and RTI Opportunities in Charter Schools**

The new guidance could be used by the Trump/DeVos Administration to justify additional funding for charter schools, especially if the \$20 billion proposed for school choice is not funded, which is very likely. In addition to requirements placed upon charter schools by IDEA, another set of guidance focuses upon somewhat different requirements under the Americans With Disabilities Act. Below are some of the relevant highlights related to IDEA requirements and expanded funding opportunities for different charter schools. Some public charter schools have received a district and/or LEA designation from the state; others are private charters.

For a public charter school LEA to be eligible for IDEA funding and assistance from the State Education Agency (SEA), it must meet all of the eligible requirements as a school district must, including it must “establish its eligibility for IDEA Part B subgrants...For example, the charter school LEA must establish policies and procedures related to child find and conducting evaluations, placement of children in the least restrictive environment, and development and implementation of IEPs.” In order to receive IDEA funding, the

charter LEA must use IDEA funds to pay only for excess cost of special education and related services, meet IDEA “supplement-not-supplant requirements,” and meet most maintenance of effort (MOE) requirements. As one reads the Frequently Asked Questions (FAQ) in the guidance, there seems to be a double-edged sword: a) on one hand, if the charter LEA receives no IDEA Part B funds, the state is responsible for ensuring that the charter school meets all of the IDEA requirements; b) on the other hand, an eligible charter school LEA can receive IDEA Federal grants even if it is not serving any children with disabilities,” if the charter school meets all of the IDEA requirements placed upon it (e.g., for RTI opportunities see below).

The guidance clarifies that several existing provisions are designed to ensure that “newly-created charter school LEAs receive the funds for which they are eligible.” For “newly-created” charter LEAs, states can determine funding levels for their charter LEAs which do not have a record of performing special education services in the past on which the regular IDEA funding formula is based. The state is responsible for coming up with an estimated base payment adjustment that are “distributed equitably among all LEAs.” Those instances where an existing charter school “undergoes a significant expansion in enrollment, the state can make additional adjustments and increasing the amount of funding based upon poverty and general population of students enrolled.” Hence, when the enrollment of Title I-eligible

students in a “district attendance area” increases at a charter LEA, the adjustment is made to the district Title I allocation by the state as additional Title I funds follow the child to the charter LEAs. The process used by a state for determining the base payments and adjustments was briefly described with links to more detailed descriptions of previous regulations and guidance under IDEA. The FAQ explains that, however, if a public charter school operated by the district is new or receives an expansion of the public charter school enrollment, IDEA funds do not have to be allocated to the new or expanded public charter school. However, if the LEA already provides IDEA funds to its public schools, it would provide IDEA funds or services to the public charter school in an equitable manner.

It would appear that the most critical requirements affecting potential and actual IDEA funding received by a charter school of either type (i.e., charter LEA or private ones), but particularly a charter LEA, is Child Find. IDEA requires that SEAs and LEAs have in place policies and procedures to ensure that all children with disabilities who need special education and/or related services are identified, located, and evaluated regarding the severity of the disabilities. In certain cases, the Child Find responsibility in a charter LEA could be delegated by the SEA to another entity. For a charter LEA that is interested in receiving IDEA funding and has Child Find procedures in place, the FAQ describes how a charter school can implement a response-to-intervention (RTI) framework as part of its Child Find process. It would appear that a charter LEA would have an incentive to establish and operate programs providing RTI approaches prior to referring a child for an evaluation under IDEA which suggests

opportunities for firms with RTI programs and components!! However, a parent could request an evaluation be conducted at any time at which there’s a dispute, then the process would go into “mediation.”

In one area particularly, the Section 504 ADA requirements can have a significant impact upon charter LEAs as Education Week’s On Special Education blog (December 29<sup>th</sup>) states, “Notably, the charter school guidance restates that virtual schools are also responsible for providing accommodations to students with disabilities. For example, a school that offers web-based classes must ensure that those classes are modified for students who are blind or have visual impairments. Relatedly, individual districts have already come to settlement agreements with the Education Department over inaccessible websites.”

Some of the above provisions are candidates for tweaking, making small changes, and/or removing some requirements. Virtually all of the above “flexibilities” have resulted from lobbying on the part of groups supporting charter schools, voucher and other parent “choice” alternatives over the last couple of decades. Beyond Federal requirements and guidance, it is important to note that to the extent the Congressional Review Act “trashes” certain regulations in ESSA the impact upon their “counterparts” under IDEA could be affected. However, one could anticipate that states where the GOP controls the governorship along with the legislature could pass significant state laws, similar to the McKay Scholarship Program in Florida which would further encourage expansion of charter schools using IDEA and other Federal funds such as Title I. For example, to the extent further

actions are taken under CRA to remove the proposed Title I “supplement-not-supplant” regulations, reliance upon individual state interpretations of the new ESSA statutes could provide additional funding flexibilities, which could help some charter LEAs and TechMIS clients.

And, because parent empowered rights under IDEA are much stronger than in Title I, and due to the expansion of certain “private placements” in charter schools and specialty special ed schools (The Texas Brown School), the growth of charter LEAs is most likely in the special education “arena” than in others. This is particularly true because more parents of students with disabilities are lawyers and are more litigious than parents/guardians of Title I students.

### **State Elections Shift More Power to GOP**

According to The Hill, the GOP will control 4,170 state legislative seats after the November elections, for a net gain of 46; Democrats will control 3,129 seats in the 98 bipartisan legislative chambers for a net loss of 46; and Independents will control 71 seats.

The Hill reports that during the Obama Administration’s eight years, Republicans gained more than 70 seats in 2010 and nearly 300 in 2014. Across the country, Republicans control about 1,000 more legislative seats than they did when Obama took office. Next year, Republicans will control 67 of the 97 legislative chambers.

According to the Hill, largely due to increased voter turnout for Hispanics, the

Democrats picked up 11 legislative seats in Nevada, 7 in New Mexico, and 7 in Texas, while Republicans picked up more than 10 seats in red states Arkansas, Kentucky, and North Dakota. One of the major implications for the strong GOP winning the election results is that not only will legislation reflect GOP leadings, but the ten-year redistricting is due in 2020, which in 2010 basically “locked state control” for Republican legislative districts, assuring them the GOP continuing re-elections.

Across the board, the number of GOP governors increased from 33 to 36. As a result of the election, the Republicans now control the legislative bodies and the governorship in the 25 states, while the Democrats “trifecta” dropped to six states. Some state superintendents who were elected in 13 states, five were up for re-election this year including Indiana, Montana, North Carolina, North Dakota, and Washington; in two states – North Carolina and Washington, the state superintendents remain Republican and Democrat. However, in Indiana, Montana, and North Dakota, state superintendents went from Democrat to Republican.

Discussions with knowledgeable groups, such as the American Association of Publishers (AAP), indicate the impact of the elections varied from state to state on issues of greatest concern to some TechMIS clients. One reason for addressing the impact of the elections on states rather than the Federal level is that the K-12 agenda of President-elect Trump is not known, or if known, hasn’t yet been publicized in enough detail to determine the nature and extent of implications. A few exceptions are some type of increased support and higher priority placed upon pre-K, early childhood, and

charter schools relative to providing more parental choice. One key official noted that since the technology companies have primarily contributed funds in the past to supporting candidate Hilary Clinton, the Trump Administration does not owe a political debt to mostly California-based technology vendors, although one can expect them to increase support to Trump based upon the election results. His response is uncertain. In addition, unlike candidate Clinton, the Trump position on copyright and OER issues has not been announced.

In California, the number of Democrats in the state legislature increased, with an overall general movement toward the center and the prohibition against bilingual education since 1998 was lifted, which can provide opportunities once again for bilingual education and related materials. We have noted this in previous TechMIS reports, which is a trend which is likely to occur in other states.

It is likely that tight K-12 funding will continue across most states with some increase in bond funding, according to AAP. Increases in state instructional materials funding are uncertain at this time. Privacy bills are likely to increase in a number of states currently without them, such as Texas.

## **The Education Commission of the States (ECS) 50-State Comparison of “Civics Education” Found that More Than Half of the States Require Some Form of Civic Education Assessments**

The majority of the states do not include civics, social studies, or citizenship in their education accountability system.” The Education Trends “policy brief” report updates an earlier report and contains new data points “highlighting key aspects of state law and policy related to civics education.” In terms of state statutes, 47 states and the District of Columbia address civics education as a result of legislative action. In the most rigorous state statutes, education goals and skills related to civic learning engagement requirements for coursework subjects and content, assessment accountability, and instructional pedagogies are included -- these states include Rhode Island, Tennessee, and Pennsylvania. Compared to these states, other state statutes only establish a course requirement or recommendation and allow districts to develop guidelines; these include Hawaii, D.C., Vermont, South Carolina, and Virginia. ECS reports 37 states “require assessments in civics, many as part of the state annual summative assessment and in some states as a condition of graduation.” Two distinct trends that are reported include:

- Most states require schools to administer assessments in social studies and/or for civics, typically taking the form of end-of-course exam (Oregon, Texas, Kansas, Delaware, and Georgia);
- 15 states go further, making demonstrated proficiency on a social studies or civics test a condition of graduation from high school.” As

ECS notes, 12 states have passed laws requiring passage of a civics test based upon the U.S. Immigration and Naturalization test.

Other accountability and standards/curriculum trends reported include:

- 17 states include civics and social studies in their accountability system;
- Student proficiency measures in social studies and civics may be factored into accountability (e.g., Louisiana and Massachusetts);
- 48 states include specific civics language as a standard strand across multiple grade levels; and
- 20 states provide curriculum framework to support instruction in the area of civics and government.

In a concluding comment, ECS says, “As the nation begins to transition both to the education sphere as a result of ESSA and in the political sphere as a result of a 2016 elections, policymakers may want to consider several important ideas when addressing civic and character education.” One idea is for states to take advantage of new assessment flexibility in ESSA to consider more “authentic and innovative learning assessment options to determine student progress in civic education and citizenship.” Another is to “make measures of civic learning and engagement a part of education accountability.” As it notes, civics learning may drive alternative indicators and provide metrics for tracking this type of learning in a meaningful way.” They also recommend states recognize the important role citizenship and character education play in social and emotional

development in 21<sup>st</sup> century schools, as well as career explorations and post-secondary “aspirations.”

The full report is available at: <http://www.ecs.org/>

### **New Report on the Role of Computer Science in Afterschool Programs Suggests Several Opportunities for Some TechMIS Subscribers**

“Growing Computer Science Education in Afterschool: Opportunities and Challenges,” by the Afterschool Alliance, is based upon a survey conducted in 2015 involving 389 afterschool program directors and two focus groups with local and state after-school leaders. Though not a representative sample, respondents were located in 46 states with about 50 percent located in urban areas, 35 percent in urban clusters, and 13 percent in rural areas; almost 60 percent of the programs were in one location and over 80 percent of these locations had five or fewer sites, suggesting that these were local programs and not part of “chains.” Almost half came from after-school programs with high-poverty populations; about 60 percent of the programs surveyed offered computing at that time, with 40 percent never having offered computing education for a variety of reasons. As *Education Week’s Time and Learning* blog (December 9<sup>th</sup>) noted, “Almost 90 percent have never offered computing indicated a high or medium level of interest in offering in the future.” Some of the finding’s highlights are noted below.

All but three percent of respondents are likely to offer computer science in the future. Among the 40 percent respondents who have never offered computing

education before, 89 percent indicated a high or medium level of interest in offering computing in the future. As the report notes, respondents indicated a strong interest in developing professional skills in the field, with 87 percent saying they would participate in professional development if it were available.

Given the different perceptions of computing education among the respondents, respondents were asked to identify the three top activities they associate with “computer science” or “computing.” Responses were categorized into three areas: computing (e.g., coding, designing software); new media (audio production, photo editing); computer literacy (Internet use and safety, typing). As expected, those respondents never having been offered computing were more likely to list activities focused on computer literacy than those offering computing. “New media” was consistently mentioned among those that currently used, previously used, or never used computing, or never conducted computing education.

Robotic activities were the most popular activity (75 percent of respondents), followed by creation of animations and other media, video game design and activities featuring integration such as MaKey MaKey, Arduino, or LilyPad. The most popular products were LEGO robotics, Snatch, Minecraft, Google’s CS First, and MaKey Makey. Across the previous and non-users, the greatest challenges were qualified staff, funding, access to technology, and curriculum availability. Only in about a quarter of the cases was Internet connection a major challenge. As a challenge, curriculum was highest in those sites never offering computing. As the

report notes, “Many individuals mentioned the desire for curriculum designed specifically for afterschool settings.”

The study also included focus groups with veteran afterschool leaders (i.e., called “ambassadors” from the 50 statewide afterschool networks. Participants who came from New Hampshire, New York, North Carolina, Oregon, South Carolina, and Texas, identified key challenges and discussed potential strategies for meeting such challenges. The challenges and strategies covered a wide range from “speaking the same language to disseminating promising practices and structuring funding streams to accommodate after-school program needs.” One particular area with implications for some TechMIS subscribers was the lack of available curriculum which is suited for the afterschool environment, and that the most popular curriculum “tend to reduce opportunities for creativity and innovation – two qualities valued by many practitioners in the out-of-school space. Focus group participants suggested that new computing curriculum and development should focus on the creation of technology as an end goal rather than focusing solely on learning a new coding language.” About one-fifth of survey respondents felt the need for curriculum designed specifically for afterschool settings and also felt “developers should actively seek front-end input and feedback from afterschool practitioners on the most useful structure and components of these curriculum.”

For a copy of the report, go to: <http://afterschoolalliance.org/documents/Growing Computer Science Education 2016.pdf>

## **New Education Commission of the States (ECS) Report on Education for Incarcerated Youth Suggests Opportunities Under New ESSA Provisions for Providers/Firms**

The November 2016 ECS report entitled “State and Federal Policy: Incarcerated Youth” estimates that on any given day, 51,000 youth are held in residential placement facilities. These youth are overwhelmingly male (86%) and minorities (68%) in mid-to-late teens, with 65% charged with non-person offenses, such as property offenses, drug law violations, or technical violations. In 2013, 13 states had more youth detained for technical violations (parole, missing curfew, reporting to scheduled office meetings, testing positive for drugs) rather than crimes against a person. About half of juvenile defenders receive less than six hours of education instruction a day, and a third do not attend schools.

Enrollee characteristics include:

- At least 30% are diagnosed with a learning disability, seven times above the national average for 12-17-year-olds;
- Almost half demonstrate academic proficiency below grade level;
- 60% have been suspended or expelled from schools.

A 2015 survey by the Council of State Governments Justice Center found:

- Youth committed do not have the same education services, rigorous curriculum, or student performance standards as traditional public schools;

- More than half of committed youth obtain high school course credits while in custody, but few earn academic credentials (high school diploma or GED);
- 66 percent of committed youth never return to school, and of those who do, many never graduate high school;
- while half earn high school course credits while in facilities, 20% do so within 90 days of exit;
- 3% obtain high school diplomas in facilities, while only one percent do so within 90 days of exit; and
- 9% earn GEDs while in facilities, but only 3% do so within 90 days of exit.

The report suggests several opportunities under IDEA. All facilities are supposed to provide a Free Appropriate Education (FAPE) for students with disabilities, which constitute about a third of the incarcerated youth. Under the new ESSA under Title I, funds are provided to serve youth in residential placement facilities to meet their education needs.

Further, as the report argues, under the new ESSA, SEAs must establish:

- Opportunity for incarcerated youth to obtain credit-bearing coursework while in high school, post-secondary education, or career and technical education;
- Adequate procedures to ensure timely re-enrollment of students back into secondary schools or in a re-entry program that meets the needs of students;
- Procedures to ensure credits a student can earn while incarcerated will be transferred upon re-entry; and

- Evidence-based services for youth who come in contact with juvenile justice system, particularly to help them obtain high school diplomas and to minimize disruption during the transition for re-entering youth.

As we have reported in previous TechMIS reports over the last year, increased priority and funding should be expected under ESSA for small (less than 100 enrollment) “lowest performing” alternative schools, many of which are designed for helping juvenile defenders in the re-entry process, which will now be included under the definition of “dropout factories.” The increased 4 to 7% set-aside for school improvement funds can be used to serve them. Moreover, one of the first new bills to be passed under the new Administration and Congress is likely to be reauthorization of the Juvenile Delinquency Act, which during the last Congressional session almost got reauthorized with strong bipartisan support. The opportunities for firms which provide credit recovery and directly-related online services to schools to regular district operated programs or specialty schools within the school or alternative schools could become a priority among many states.

The report is available from ECS at: <http://www.ecs.org/state-and-federal-policy-incarcerated-youth/>

### **Recent Education Commission of the States (ECS) Guide to Action For Policymakers**

This guide reports on the consensus of national experts on K-3 education regarding state policy levers with the greatest potential to impact student outcomes. In the Guide to

Action for Policymakers these levers are identified and prioritized as essential to building a high-quality K-3 system. One premise of the group discussion is that “meaningful improvements in student academic outcomes, increases in graduation rates, and the success of students later in life depend on improving the quality of the educational foundation promoted by a quality kindergarten through third-grade (K-3) continuum.”

During the discussions experts identified more than 25 specific policy levers that are important to delivering quality education services in the kindergarten to third-grade (K-3) system. Of these 25 they agreed on the following six key areas: (1) funding, (2) quality full-day kindergarten, (3) workforce development, (4) alignment across the continuum, (5) curriculum, instruction, and assessments, and (6) accountability metrics (which are not student-based). Highlights of some of these areas are listed below.

A. Funding often stimulates people to look for new funding streams; however, another approach maybe to consider supporting quality through making the current system more efficient and even re-distributing available funds perhaps through a change in the funding formula, including:

- Utilize Title II, as well as other federal and state funds designated professional development dollars to build principal skills and knowledge on an ongoing basis about what is age – and developmentally appropriate in K-3, such as providing collaborative opportunities

for principals, teachers and early childhood center directors and educators.

- Establish ongoing, job-embedded professional learning opportunities for teachers along the K-3 continuum.
- Conduct meaningful teaching evaluations that examine implementation of age-appropriate practices and incorporate opportunities for ongoing professional development, including job-embedded training, mentoring and coaching.
- Require training for K-3 teachers in the science of literacy, early brain development<sup>15</sup>, math, science, social-emotional development and the arts. Ensure that school leaders and teachers have formal job-embedded training in how to work productively with families so they are engaged and trusting allies with the schools in support of K-3 student success.
- Incentivize data systems that effectively incorporate data specifically needed by K-3 teachers and leaders, such as student performance on assessments, chronic absenteeism and quality of a student's pre-K experience.
- Fund (and evaluate) extended day and year programs aimed at K-3 students.

B. Quality Full-day Kindergartens set the foundation for future achievement and as such emphasize more rigorous curricula and higher standards while maintaining a balanced approach to meeting the developmental needs of young children. Despite this shift to more demanding expectations of children and educators, there are only 13 states and Washington, DC, which require full-day kindergarten programs that have the same length of day as first-third grade. 15 states do not require students to begin public schooling until they are 7-8 years-old.

C. Alignment across the continuum addresses elements that are essential to creating an efficient and coordinated system of services. As the ESC report summarizes, “systematic and governance infrastructure are significant and needed to maintain, efficiency, and accountability; and to establish a vision and authority to accomplish short and long-term outcomes for children in the P—3 continuum.” Further, the authors encourage districts to dedicate a position to support K-3 leadership and innovation to align standards, curriculum and instruction, as well as adoption of teacher and leader competencies.

D. Curriculum, instruction and assessment are the building blocks of early childhood education and are evident in 48 states plus DC's comprehensive early learning

guidelines. Alignment provides teachers and principals road map for reviewing benchmarks and defining coherent learning experiences that promote achieving outcomes essential to gauging progress. Below are state actions from the report.

- Conduct assessment of alignment of early learning guidelines to the state's K-12 standards.
- Adopt statewide social and emotional standards.
- Encourage use of curricula that emphasizes student-centered learning through developmentally appropriate play and exploration that is sensitive to students' age, individuality, culture and home language.
- Ensure that literacy development is recognized and supported statewide as a unique gateway to academic success in all content areas.
- Utilize age and culturally-appropriate formative assessments that measure student growth and intentionally inform leaders and teachers in a timely manner.  
Ensure individual assessments are utilized to guide instruction and for diagnostic purposes.

E. In general, accountability metrics are an important way to determine and promote continuous progress toward quality improvement, and this is no

less true for the K-3 continuum. The newly-passed ESSA offers states an opportunity to redesign their accountability systems using alternative ways to measure student learning, professional practice, and levels of family engagement. The measurement areas are expanded beyond the traditional academics to include social-emotional factors within the context of student growth and development, and examining school climate as an integral indicator of program quality.

This ECS Guide for Policymakers offers many practical action steps for states to consider as they begin the work of addressing early childhood provisions of ESSA. TechMIS subscribers should be aware of the many opportunities inherent in any of the areas highlighted in this report. The specific strategies and flexibilities outlined under the section on funding, curriculum/content and assessment may offer options for purchases of your relevant products. Professional development opportunities for principals and teachers are an additional area of promise for those with offerings to support K-3 quality improvements.

To access the full report go to <http://www.ecs.org/k-3-policymakers-guide-to-action-making-the-early-years-count/>

## **The Conservative Leaders for Education (CL4E), Which is Dedicated to Education Policy Reflecting Conservative Principles, Appears to Be Supporting Selected Policies/Priorities from the Obama/Duncan Administration, Which Will Increase Demand to Implement Technology**

The CL4E 2017 platform includes four founding principles – local control, parent choices, accountability, and quality content and effective testing. Similar to the parent Trump/DeVos priorities regarding expanded parent choices and accountability, some of the activities for all four of the priority CL4E principles are similar to those the Obama Administration’s “re-directions” during the last two to three years of its tenure.

Some of the activities CL4E supports under increasing parental choice include:

- explore innovative uses of federal school improvement set-aside funds to empower parent access to more options;
- encourage greater access to advanced placement, dual credit, or other specialized or remedial coursework by creating course-level choices through digital approaches; and
- reinvigorate the charter school sector by supporting innovative charter schools and spur more models for struggling students.

Under the accountability principle, CL4E supports:

- inclusion of parent empowerment measures in school intervention plans;

- development of new turnaround approaches for chronically-failing schools and disseminate best practices;
- support professional certifications in high-demand fields and outcome-based measures in career and postsecondary readiness; and
- create individualized learning plans (ILPs) for non-proficient students and identify problem areas with plans to accelerate growth, train teachers and administrators on the use of data to drive student-specific interventions, and improve class-level performance.

In order to advance quality content and reform testing systems, CL4E supports:

- local control which champions both high academic standards and rigorous curriculum;
- encourage “substance-based” curriculum, emphasizing in-depth reading;
- transform testing regimes into diagnostic tools that are directly relevant to the ILP and development of each student by creating actionable information for teachers and parents.

Interestingly, local control support does not include abolishing the USED, but rather assist in “rethinking the size and function of the Department;” it does emphasize ensuring states and localities are “central in education policymaking.”

Many of the CL4E policies and activities are similar to varying degrees with those in the previous Administration and most rely on technology use to facilitate their

implementation at the district and classroom levels.

Most of the “founders” and “members” of CL4E represent state education agencies, legislative committees, and boards. The Chairman of the CL4E is the former Secretary of Education under President Reagan, William Bennett. As we reported on the Power On supplement Report to the Office of Technology Assessment in the late 1980s, under Bennett, USED allocated less money over 8 years directly to support education technology than did the U.S. Office of Education in 1967. The CL4E platform appears to be an alternative in several areas to the Trump/DeVos stated “threats” to dismiss many Obama/Duncan policies, regulations, etc. and suggest that Bennett’s earlier low priority placed upon technology in education has changed over the last two decades.

### **Miscellaneous (a)**

New York judge orders state to release approximately \$70 million to 20 “persistently failing” schools as part of a state legislature set-aside passed in 2015. The release of these state funds was held up because nine schools “were being removed from the list because the Federal government no longer considered them among the state’s lowest performers a requirement for the ‘persistently failing’ program,” according to the The New York Times (December 29<sup>th</sup>). Parents from the nine schools sued because the state division of budget argued that the state should not distribute money for persistently failing schools that were no longer on the list. The acting Supreme Court Justice Kimberly O’Connor sided with the parents and

ordered the release of the money. According to the Education Law Center, which represented the parents, the state is urged not to appeal the ruling to create further delays. However, the Times reports that Governor Cuomo was reviewing the decision. The \$70 million set-aside for 20 persistently failing schools over two years is one of the largest state set-asides for school improvement in the country.

### **Miscellaneous (b)**

Satisfaction with school choice is higher with parents of students enrolled in private schools rather than those parents with students in charter and traditional local district schools according to Education Next, a journal from the Hoover Institute at Stanford University. As reported in Education Week’s Charters & Choice blog (December 13th), while most parents with children in all three sectors were happy; those who were “very satisfied” were those parents of private school students. These results are based upon a June survey conducted by Education Next, which was supported by a Federal survey that used 2012 data. Among the factors survey respondents were asked to report was their degree of satisfaction with teacher quality, discipline, and academic standards. The Education Next survey “found on average the difference in the number of charter school parents who indicated they were ‘very satisfied’ versus school district parents was 13 percentage points; the difference between private and charter school parents was 12 percentage points.” As the journal article reports, “We find higher levels of satisfaction among parents of children attending charter schools than among those attending district schools, but lower levels of

satisfaction than among those whose children attend private schools. We found that parents report less social disruption at charter schools than at district schools. Charter school parents also report more extensive communications with school officials.” Further, as the article states, when taking into account an earlier companion survey, “Both studies find that charter school parents’ assessments of their schools generally fall somewhere between those of parents of district and private charters students; the results have “important implications for their school choices, and perhaps their political behavior if the number of charter schools continue to increase, the parents who use these schools may form a growing constituency in support of the charter school option.”

As Professor Martin West, Editor in Chief of Education Next, and close advisor to Committee Chairman Lamar Alexander and his staff during the drafting of the new ESSA reportedly said in Education Week, “Although parent perceptions cannot necessarily be interpreted as identifying in-school realities, they do suggest that parental demand for charters and private schools is likely to grow.”

Currently, of the U.S. school age population, district-operated schools serve more than 80 percent, private schools serve close to ten percent, and public charters serve only six percent, which is slightly higher than those served in home schools. The charter sector is the most rapidly growing segment of the education marketplace with wait lists now exceeding one million, according to the National Alliance for Public Charter Schools.

## Miscellaneous (c)

The Office of Head Start has issued official instruction for Head Start grantees to comply with selected uniform guidance requirements. On Friday, January 7, 2017, the Office of Head Start issued a Program Instruction (PI) for Head Start Grantees, which are for-profit entities. This official guidance from OHS explains Head Start programs’ obligations to comply with subparts A-E of the [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards](#), commencing with fiscal years that begin on or after Jan. 1, 2017. Note that the previously published requirements did not include for-profit entities as these were not permitted to operate as Head Start grantees at that time.

In the TechMIS edition from February 2015, we reported an extensive analysis of how these Uniform Administrative Requirements would affect firms doing business with states and districts that use Department of Education funds for vendor contracts and product purchases.

For the full text of this Program Instruction regarding the **Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards** to For-Profit Head Start Grantees use the url below: <http://hsicc.cmail20.com/t/ViewEmail/j/3E8F196D384ADD6E/705DEF979A9B66D1C9C291422E3DE149>

See the link below for previously published information from the OHS regarding required implementation for Head Start grantees, which *are not-for-profit* and/or *institutions of higher education* entities for what is termed the “Super Circular.”

<https://eclkc.ohs.acf.hhs.gov/hslc/tta-system/operations/mang-sys/fiscal-mang/ug-resources>