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## MEMORANDUM

**DATE:** April 18, 2017  
**TO:** TechMIS Subscribers  
**FROM:** Charles Blaschke and Dr. Suzanne Thouvenelle  
**SUBJ:** Title I Allocations; Council of Great City Schools Conference Highlights on Regulations; USED “Guidelines” to States; Open Digital Product License Requirements; Juvenile Justice Reforms Re-Introduced; States’ Private School Choice Proposals

In our last April 11<sup>th</sup> TechMIS Special Report, we highlighted the major implications of President Trump’s proposed 2018 “skeleton budget,” and perhaps of more immediate concern, the implications of extending without “language exchanges” the April 28<sup>th</sup> Continuing Resolution to September 30<sup>th</sup> for 2017 education funding levels. If either are subsequently passed, which some key Congressional GOP leaders say “is not likely,” the implications could have significant impacts on virtually all TechMIS subscribers.

The first Special Report in this TechMIS issue highlights major concerns of the Council of Great City Schools (CGCS) about the Administration’s education general policies, and particularly calls for more guidance on flexibilities in Non-Regulatory Guidance to replace the nullified Obama Accountability final regulations. The CGCS concerns and recommendations should benefit virtually all TechMIS clients who should support CGCS’ negotiations with USED and Congressional Committee staff. The second Special Report describes some of the major impacts of increased Title I SEA set-asides and removal of “hold harmless” protections, whose adjustments by SEAs could have the most important impact upon Title I district allocations this year when (if) they officially become available from USED; based on new poverty counts used in the Title I formula, some preliminary district increases and mostly cuts are estimated for 2017-18.

This April TechMIS issue will be the final one for subscribers, and as described in our March 9<sup>th</sup> email letter, future TechMIS reports, updates, etc. will be discontinued after April 30<sup>th</sup>. If USED publishes Title I preliminary district allocations shortly after extension of the existing April 28<sup>th</sup> Continuing Resolution, we will attempt to provide information on district allocations to the extent we are able to shortly thereafter. Also, if any major developments regarding USED policy

changes, guidance, and/or funding occur in the next two weeks, subscribers are advised to contact Charles Blaschke directly to discuss the implications for them. If any TechMIS subscribers are interested in discussing limited consultation services from Charles or Dr. Suzanne Thouvenelle after April 30<sup>th</sup>, please discuss these opportunities with Charles directly by [calling 703-362-4689](tel:703-362-4689).

This report also includes a number of very important Washington Updates which will have major implications for certain TechMIS subscribers and include:

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A number of miscellaneous items are also addressed including:
  - a) The number of low-performing high schools, which states identify for comprehensive support and related interventions under ESSA could be reduced as a result of the Trump Administration nullifying the Obama final Accountability regulations.
  - b) Education Week (April 5<sup>th</sup>) reports that in slightly more than 30 states, legislation has been proposed to create or expand private school choice through tax credits, scholarships, education saving accounts, and vouchers; but, according to the National Conference of State Legislatures, only about half of the proposed bills have made some progress, or have at least have been passed by a state legislative committee.

- c) New annual ranking of state public charter school laws is available from the National Alliance for Public Charter Schools and could provide very useful information to TechMIS subscribers who see opportunities for selling their products/services in particular to public charter schools, authorized by districts.
- d) The Education Commission of the States (ECS) in its April “State of the States Landscape Report” highlights computer science policy which is emerging for seven states that have adopted subject standards for computer science education and 20 states that have related teacher licensure standards.
- e) As reported in *Fritzwire*, American Institutes for Research has included in their website a so-called ESSA Co-Pilot which will help states and districts “navigate the most important information, key topics, and research-based resources that states and districts can use in planning and implementing ESSA.”

**Special Report:  
Key Concerns of Council of Great City Schools Member Districts  
and Priority Council Focus Are on USED Policy Guidance  
to Protect/Increase Funding of Categorical Programs  
and Ensuring that Congressionally-Disapproved Regulations'  
Desired Flexibilities Are Retained in DeVos' Non-Regulatory  
or Related Guidance to SEAs/Districts**

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

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*April 18, 2017*

If one reviews the Council of Great City Schools' recent conference agenda and briefing papers and listens to member districts' attendees about their major concerns under the new ESSA, two key priorities are increasing/protecting Federal education program funding such as Title I going to districts with fewer SEA set-asides and ensuring that any new USED new guidance maintains priority flexibilities, which benefit member districts in light of the Congressional disapproval of Obama Accountability and related regulations. Some of the activities of the overall Council strategy of most interest to many TechMIS subscribers are highlighted below.

During the March 10-12 conference, on several occasions, Council staff and district officials asked Congressional staff and USED "panelists" if they will support allowing some of the "favorable" flexibilities in regulations that were disapproved to be included in their state plans and used by districts to actually implement. One important Obama regulation would have extended the identification of lowest-performing districts and the use of interventions in these schools be extended from 2017-18 school year to 2018-19 school year, with an additional planning year being optional. Congressional committee staff said "yes"; USED officials indicated this flexibility would be "looked into." Because Congress has much more influence through oversight on any new USED guidance as a result of its use of the Congressional Review Act, USED answers to this question could take time, although logic would say that any flexibilities allowed in the old regulations would certainly be allowed under a state's strict interpretation of the ESSA statute. However, some states and districts might not take advantage of them because of inertia and audit uncertainties (see February TechMIS report).

Another issue of primary concern to the Council and member districts is the increased SEA set-asides from 4 to 7% of Title I funds for school improvement and an optional 3% for “direct student services” without districts having any protection under “hold harmless” provisions during school year 2017-18. The Council urged members during their Congressional visits to redirect the approximately \$450 million of SEA set-aside increases to the Title I regular formula and to increase Title I Part A funding by an additional \$450 million to “mitigate” some of the local funding losses for most districts. Implications for firms would vary, depending upon the products/services (e.g., RTI services and components) which they provide Title I programs.

The Council also urged members to seek increased funding for Title II to offset the amount of funds to be withheld under a new optional 3% SEA set-aside, which was created under ESSA. And regarding the new Title IV Consolidated Block Grant, members should urge Congress to provide adequate funding, especially since the Trump Administration is proposing zero-funding for this new program in FY 2018 and unless language changes are made in a Continuing Resolution extension through September 30<sup>th</sup> school year 2017-18 could receive no funding. This would be a double whammy for a new program, which had bipartisan support during the passage of ESSA (see February TechMIS Special Report).

As the briefing guide notes, the new ESSA expands the required subgroup accountability interventions period beyond NCLB and state waivers, which will result in “more schools including non-Title I schools will be identified for targeted interventions, particularly for students with disabilities and English learners. Funding increases in IDEA and ESEA Title II programs for these traditionally under-performing subgroups remains a major priority.” If Council member districts are successful in encouraging Congress to increase funding in these areas, implications are generally positive for most TechMIS subscribers. During the last decade, the Chairman of the House Education and Workforce Committee, Congressman Kline, had been an ardent supporter of increased funding for IDEA, but his replacement, Representative Virginia Fox (R-NC), may be of a different persuasion.

In order for the Council’s strategy to be successful on issues which it supports (e.g., accountability, paperwork reduction, flexibility, targeted funding), the Council would increase their efforts in providing “facts” and “research findings” in a more focused manner to the new Secretary and appropriate Congressional/Committee staff, while also providing such research support for other education associations. This would require the Council’s participation in more coalitions, such as groups representing rural communities and districts.

As noted in the Council’s briefing papers, there are a number of other former Obama Regulations which should be included in new Non-Regulatory Guidance or Dear Colleague letters, which the Council would support. Some of these are what states and districts can do to take advantage of flexibilities, while others are those which the Council feels that USED should address in any guidance. These include:

- allow districts to focus on English learner progress more than English attainment and allow for variations based upon certain ELL student characteristics;

- support limits on the impact of non-academic indicators for ELLs while maintaining a major focus on academic indicators such as math and reading scores;
- allow flexibility for school summative performance determinations, such as the California “accountability dash-board,” which the state will use;
- maintain accountability flexibility for specialized schools such as alternative schools;
- allow three years rather than two years for under-performing subgroups before being identified for targeted school interventions; and
- allow implementation of school improvement interventions for school year 2018-19 rather than school year 2017-18, and retain the option for an additional planning year for school improvement (noted above).

During other conference sessions, a takeaway worth noting is that key majority of Congressional committee staffers felt that flexibilities in the disapproved Obama accountability regulations that were reasonable would be allowed, including extensions of certain deadlines in the ESSA overall statutes. However, no old flexibilities that are considered to be violations of Secretary “prohibitions” written by Chairman Lamar Alexander, which number 23, would be allowed. Key staff members agreed with Anne Hyslop, who argues that if some guidance and examples are not provided in any USED subsequent non-regulatory guidance, many states will not take advantage of the flexibilities that are actually allowed.

USED staff confirmed that district Title I preliminary allocations will not be available until appropriations for 2017 are determined, although the allocation of district Title I funds in July will not be affected by whether a state’s plan is approved by then. Two major adjustments, which will be made by SEAs and take effect during the school year 2017-18 will be the SEA set-asides amounts, and what schools are eligible to be allocated of such funds (e.g., whether or not a non-Title I but low-performing school can receive a portion of set-asides for interventions).

Without doubt, the Council of Great City Schools has perhaps one of the most competent and experienced staff with new education policies and regulations, and not only how they work, but the staff know what items in USED guidance are important, not only for its member districts, but for most other districts. In addition to having developed a working relationship with USED officials responsible for categorical programs and funding over four decades, they are highly respected and are often asked for their advice by key education committee staff persons to comment and otherwise assist in forming policy. The latter will be more important over the next few years, as Congress will provide more oversight and guidance to USED. The primary author of ESSA is Chairman Lamar Alexander, a former Secretary of Education during the first Bush Administration, and will serve the same “de facto” role on the implementation of ESSA. TechMIS subscribers whose goals and strategies would be reinforced by the Council’s influence are strongly suggested to attend their annual legislative as well as other conferences to keep abreast of developments.



**Special Report:**  
**Estimated Title I District Allocations Based Upon Most Recent Census  
Poverty Counts for Member Districts of Council of Great City Schools**

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

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*April 18, 2017*

During the March 11-12 Council of Great City Schools Annual Legislative Conference, we met with Todd Stephenson, USED Official responsible for determining preliminary district Title I allocations. Todd confirmed that preliminary district Title I allocations cannot be determined by his office until a final appropriation bill for the FY 2017 budget is passed.

If the budget levels for the Title I program result from an extension of the April 28<sup>th</sup> Continuing Resolution (CR) through September 30<sup>th</sup>, some possibly significant adjustments will have to be made, which would ensure that most of the district preliminary Title I allocations will have to be adjusted downward. These adjustments include language changes in the CR for Title I Part A based upon some changes in ESSA in September/October. One is the increased amount of districts allocation being made to ensure equitable services are provided for Title I eligible students who go to charter schools. Based upon a number of changes addressed in our December 2016 TechMIS report, the amount per eligible Title I student will most likely increase as will the number of eligible students enrolling in new or expanded charter schools in the districts' attendance area. Another likely adjustment will be the state taking 7% off the top for school improvement, which last year was only 4%, although some potential language changes in the extended CR could change the amounts -- this is yet to be determined. A language change for the increased 7% SEA set-aside could have a dramatic impact on some districts' allocations because for the 2017 fiscal year, the "hold harmless" protection for districts which minimizes dramatic budget cuts for specific districts have been removed under the new ESSA. Beyond Title I, additional language changes in the CR as described in our latest TechMIS Washington Update will also affect how much, if any, funding under an extended Continuing Resolution will be allocated to the new Title IV Block Grant program which consolidates almost 50 existing programs and Title II A.

If Congress passes a FY 2017 new appropriations bill, the funding levels and the nature and extent of adjustments could be changed dramatically, although the passage of a new

appropriations funding levels for education and generally Title I program are not likely.

The most important number in the Title I formula for determining annual changes in a district's Title I allocation are changes in the Census poverty count in the latest Census school year funding. While the Council has also not received district Title I preliminary allocations from USED, at the recent March conference the Council displayed the percentage changes in poverty counts between the 2014 and 2015 Census, which will determine largely the member districts' allocations for 2017-18. The Council estimated that the final district poverty counts have increased at least 2.5% for 13 member districts: Albuquerque (2.9%), Baltimore (3.6%), Buffalo (7.7%), Detroit (4.6%), District of Columbia (5.7%), Jackson (6.8%), Kansas City (11%), Newark (7.9%), Omaha (8.3%), Philadelphia (5.1%), Rochester (6.1%), Toledo (4.2%), and Tulsa (11.0%). On the other hand, a larger number of member districts experienced a reduction in Census poverty counts during the same timeframe of 7.5% or more: Anchorage (-13.5%), Arlington, TX (-8.6%), Austin (-19.3%), Birmingham (-12.3%), Cleveland (-13.7%), Dayton (-9.4%), Des Moines (-16.8%), El Paso (-12.3%), Fort Worth (-12.0%), Fresno (-8.2%), Hawaii (-8.6%), Long Beach (-13.7%), Los Angeles (-14.4%), Milwaukee (-12.2%), Minneapolis (-15.0%), Nashville (-13.1%), New Orleans (-13.2%), Norfolk (-13.5%), Pinellas County (-16.3%), Portland (-15.8%), Salt Lake City (-19.5%), San Antonio (-16.2%), San Diego (-10.4%), Seattle (-21.9%), Shelby County (-19.9%), and St. Louis (-11.1%).

Compared to the rest of the country, the Council member districts overall experienced a 5.3% drop compared to the nation's 4.4% reduction in poverty counts between 2014 and 2015. In FY 2016 (last year), the total amount of funding increase based upon preliminary district allocations for the Council member districts was about \$175 million increase compared to the nation's increase, which was \$4.46 million.

While the use of Census data provides the best estimates of potential Title I funding increases for a district, we must emphasize that the adjustments, some of which could be determined in the language of the Continuing Resolution if extended, will have a relatively greater impact on final district allocations for 2017 than in previous years. This is due to the 4 to 7% increase in SEA set-aside which will be withheld from all districts, but might be reallocated later to some districts receiving their portions of the SEA 7% set-aside; and, due to adjustments related to some districts' funds being allocated to charter and private schools (which will most likely increase in some districts significantly). Clients are reminded that the current CR runs through April 28<sup>th</sup>, after which time preliminary district allocations should have been determined by USED; SEAs will be making adjustments later this coming school year, probably through December-January.



# ***Washington Update***

***Vol. 22, No. 4, April 18, 2017***

## **Secretary DeVos' Prepared Remarks to the Council of Great City Schools Legislative Conference Not as Revealing as "Body Language" and Some Examples of Parent/School Choice She Identified**

During her luncheon speech before the March 12<sup>th</sup> Council conference, Secretary DeVos in her prepared remarks pretty much followed the overall Trump/DeVos general policy to expand parent/school choice; however, in the prepared remarks and several examples in deference to specific district attendees who have implemented important components, she provided hints as to what specific policies and details one might expect over the next couple of years. Unlike some of the prior speeches before the Council by Education Secretaries, for example, by Secretary Arne Duncan, who was Superintendent in Chicago and headed the Council a decade ago, angst was pretty rampant among the district superintendents and board member attendees. Thus her "welcome" was among the "lowest" of any Secretary over the last few decades. However, attendees were reminded that she was the Secretary and the Council was planning to attempt to work with her and the USED on issues on which there was some agreement. Contributing to this "body language" of the entire conference was that she was almost a half hour late before arriving at the Mayflower Hotel conference meeting and after she spoke, rather than a standing ovation from the entire group, only two or three participants rose when she left.

Regarding student improvement, she said that the most important thing is this simple fact: "Parents know what is best for their children, and very often they are guided by their kids themselves. Parents know better than any politician or administrator the unique needs of their children. For emphasis, she added her second conclusion: "Time and again, when parents are empowered to take charge of their children's education, when they have quality options, we see better results for students. For me this is just common sense."

Later in her talk, before reciting some examples in several of the attendees' districts, she announced that the new guidelines for states to follow in submitting their state plans on April 3<sup>rd</sup> or September 18<sup>th</sup> were actually being printed in the Congressional Record that day (see related Washington Update). As the Associated Press, Education Week, USA Today and other media accurately noted, the new guidelines do not require states to report or obtain approvals from stakeholder groups such as parents and their representatives in their plans for which the state is requesting approval from USED. Rather the priority for the wide "stakeholder net" called for in the ESSA statute and Obama accountability regulations (which were later nullified by Congress) would not be "required"; also, the Governor had to be "consulted" but the plan does not require his/her signature. In most states where the state superintendent or commissioner of the SEA is appointed by the Governor, this probably presents no problem, but in states where the Chief State

School Officer and Governor are publicly elected and may not always be in agreement, this could present a problem (e.g., the SEA chief “trumps” the Governor?).

In a March 21<sup>st</sup> letter to CCSSO, 11 education groups including AASA, NSBA, and AFT reminded the CCSSO that “stakeholder” engagement is required under ESSA. The new USED “template” does not require the SEA to document and ensure “stakeholder engagement” be reported in the state plan.

Aside from the disconnects between what DeVos said and what the White House and USED have actually done, she did provide some hints as to what types of activities she would likely support. She mentioned that one “out-of-the box approaches” is that of the “Innovation Schools Program” in Indianapolis public schools where the district “is freed-up to operate independently and thus better attune themselves to unique needs of students.” These Innovation Schools appear to be very similar to what was one of the trends highlighted in the last TechMIS report of districts creating district-operated public charter schools, which attract students not only because of their “innovative approaches” but also such approaches reduce funds from “following the child” to private charter schools located in the district’s attendance area. This notion seems to be somewhat in conflict with the 1993 Michigan State Charter School Law (which she championed). This state legislation made it very difficult for school districts to create their own public charter schools, but rather they had to contract with for-profit independent charter and private schools. She noted that “School 15” in Indianapolis has become a “neighborhood-run” school under the Innovation Schools

program. If indeed the eventual details and policies encourage such “neighborhood charter” schools, this departure from her 1993 Michigan effort would appear to be significant and have positive implications for some TechMIS subscribers.

She also mentioned Cleveland’s Project Lead the Way, which is designed to teach students about engineering, businesses, organizational development, coding, robotics, and other direct employment careers. As she noted, “This type of hands-on experience encourages students to engage in ways that traditional classroom often does not and it introduces them to skills in subject areas with high potential futures.” Indeed, she and her husband were instrumental in creating the Aerospace charter school in Grand Rapids, which has received some national acclaim for being effective in preparing students for such careers as she noted “through the use of hands-on type experiences and instructional approaches to teach skills in subject areas with high potential futures.”

While it’s obvious that some of the districts’ initiatives to foster parent and school choice to improve student performance would be “acceptable,” a major concern from all of the participants with whom we talked was where such funding for the Trump/DeVos priorities in school choice would come from, especially since Congress is not likely to approve new programs with significant funding increases for existing and/or new funding for programs. Rather, a major concern was how much will the Administration attempt to have funds reallocated from Title I and/or IDEA to fund such new initiatives. And, indeed, right after DeVos’ speech, I talked with one reporter who had seen the proposed FY

2018 general budget and wrote a blog indicating that certain very popular programs among the Council member districts, such as the 21<sup>st</sup> Century Community Learning Center after-school programs would be zero-funded. Another program which would be zero-funded is the former Title II program at \$2.25 billion which provides over \$1 billion for professional development. And, as we noted in the last TechMIS report, the Title IV bipartisan Consolidated Block Grant program which is authorized at \$1.6 million would not likely to be funded under an extended Continuing Resolution for FY 2017 without significant language changes in the CR; and if the proposed FY 2018 budget is passed as proposed, Title IV would be zero-funded next year.

Without citing “cyber” charter schools by name, which we reported in the February is a priority which she has supported in Michigan and elsewhere, she stated that she was “agnostic as to the delivery system or the building in which learning takes place, as long as the child is in an environment that meets their needs and the parents are satisfied. If a child is able to grow and flourish, it shouldn’t matter where they learn.” She specifically said such learning “does not have to occur only in brick and mortar schools.” As numerous studies have pointed out, the effectiveness of cyber schools has varied greatly and as a whole for-profit cyber charter schools have not been as effective nationally as they have been in Michigan, according to recent studies.

To say the least, the disconnects and contradictions between the Trump Administration/DeVos statements of

policies and intentions continue to grow as policy actions are announced and intended for actual implementation.

### **Highlights of USED “Guidelines” To States in Submitting State Plans Have New Implications Regarding What It Says and Doesn’t Say**

The March 13<sup>th</sup> USED guidelines for states in submitting state plans (in April/May or September) deletes the requirement in the ESSA statute that a variety of stakeholders be involved in developing the states’ plan; responses from several key groups are worth noting. As reported in *Fritzwire*, the National Governors Association expressed “concern” because it does not require reporting on the outreach to a variety of groups and individuals like civil rights advocates, parents, and state lawmakers. The NGA statement emphasizes its work with states to encourage significant input from teachers, parents and others, and said, “We will not waiver as a result of this development [to delete states’ reports on these topics in their state plan].”

On the other hand, the requirement gives the governor 30 days to review the state plan. Also, the Council of Chief State School Officers, as noted in previous TechMIS reports, has emphasized it will continue to work with states to conduct outreach and that the deletion in the guidelines won’t change that activity, which almost half of the states have been following the Council’s advice. For those states planning to submit on April 3<sup>rd</sup>, USED has stated that the plans have to be submitted to governors by April 3<sup>rd</sup> and they have until May 3<sup>rd</sup> to submit their final plans to USED. The remaining other states have until September 18<sup>th</sup> to

submit their plans.

It is interesting to note that officials at CCSSO argue that while the Governor has 30 days to review the state plan, the plan can be submitted by the SEA without the Governor's formal approval by signing off on the plan. In those states where the SEA superintendent or commissioner is of a different political persuasion (e.g., publicly elected or appointed by the state board), the USED has created potential grave problems where there is serious disagreement between the governor and the SEA chief. A similar situation occurred in 2009 when the funds for major Obama flagship projects -- Race to the Top and School Improvement Grant funding, along with other stimulus funding - - were sent directly to governors instead of the SEA. Bones of contention arose then and could happen now in this situation, which could possibly postpone approval and implementation of the state plan for ESSA "rollout."

In another area, *Politics K-12* questioned whether Secretary DeVos could hold an SEA's submitted plan "hostage" by not accepting the peer reviewers "approval" of the plan because the state plan did not support school choice and privatization enough, which she has advocated. Indeed, according to the March 30<sup>th</sup> *Politics K-12*, Senator Patty Murray is quoted as saying that DeVos must clarify "her comments and make it clear that she does not plan to threaten states or hold their proposals hostage unless they conform to her privatization agenda." As the article notes, the new ESSA specifically prohibits the Secretary's prescriptive or other discretionary authority in numerous areas. There are ESSA opportunities that states may take advantage of for example, the

option of using the Title I state set-aside funds for school choice tutoring or taking advantage of the 50 District Pilot, which uses a weighted student funding pilot, which could also be used for some types of charter initiatives. However, she cannot hold such state plans hostage and not approve them for not including enough school choice related initiatives, as *Politics K-12* argues. The article quotes a Senate GOP aide who worked on ESSA as stating, "She can cajole, plead, request, etc., but she cannot require."

Respected education regulatory expert Anne Hyslop, who is now at the Chiefs for Change, responded in a similar manner saying that "choice" is totally optional in Title I and pointed out that "the word choice doesn't even appear in ESSA application template [the guidelines] that Trump released this month." Also, she noted "the new plan template doesn't mention choice at all, and parents only twice." This is another area in which the lack of clarity and confusion could further postpone implementation of the ESSA plan in certain states.

In addition to the above, there are other portions of the guidelines/template, which could affect some TechMIS subscribers which have different types of interventions and related services as described below:

- The identification of lowest-performing schools is required at least once every three years, which could mean that the pool of schools to replace those successfully exiting low-performing status should be easier to identify than in the past.
- If a state so chooses, it could include "additional statewide categories" of schools such as alternative schools or specialized schools providing credit

recovery programs where students are transferred back to public schools and do not have graduation data on which to determine the lowest five percent as regularly identified. (See related Washington Update)

- Only in cases when identified schools have failed to meet the state's exit criteria after four years must districts/states use the most rigorous interventions likely defined as the top three "rigor" levels of evidence-based criteria; this implies that less rigorous interventions can be used for lowest-performing schools during the first three years.
- Regarding school transitions, SEAs must describe how they will support LEAs in using Title I funds to provide effective transition of students to middle grades and high school to decrease the risk of students dropping out.
- SEAs must describe how they will improve the skills of teachers and principals, who help identify students and provide instruction based on the needs of students with specific learning needs, particularly children with disabilities, English learners, students who are gifted and talented, and students with low literacy levels.
- For Title IV Part A (Consolidated Block Grant), the SEA must describe how it will use funds received under this title, if such funds become available; especially during the first year of implementation (see related Special Report).
- The SEA must describe how 21<sup>st</sup> Century Community Learning Centers afterschool programs will be

selected and how such centers will help students meet state and local academic standards, but it does not mention other activities conducted in most afterschool programs such as extracurricular activities, arts, special projects, etc.

*Politics K-12* blog and other groups will likely be reporting on individual state responses in their plans submitted by September 18<sup>th</sup> or earlier.

#### Update:

Two subsequent articles in The 74 Million.org expand upon Secretary DeVos' strategy, support greater "guidance" for states and districts to take advantage of, and promote school choice flexibilities. Carol Phenicie's article (April 11<sup>th</sup>) "Student Advocates Sound the Alarm: States' ESSA Plans Will Fail the Underserved Kids the Law Was Built to Protect" identifies some of the unintended consequences in the bipartisan new ESSA. The impacts addressed are:

- removal of accountability "guardrails" and "safety nets" due to nullification of the final Obama accountability regulations without publishing any Non-Regulatory Guidance protecting thus far underserved students; and
- the "loosened" ESSA requirements for states to address in their state plans.

In a related The 74 Million.org article, Conor Williams (April 11<sup>th</sup>) states, "It's not what Trump's education department will do that should worry critics; it's what it won't do." He reaffirms some of the points which we have been making in TechMIS reports since Secretary DeVos' confirmation



hearings (see December TechMIS Special Report). In the article, he argues that, “In the Trump era, when every new suspicious fact just gets more concerning upon further investigation, when outwardly disconnected events seem to keep stubbornly linking up into nefarious conspiracies, it’s easy to survey DeVos’ record and short time in office and see the groundwork for a steady campaign against public education...As far as DeVos is concerned, critics ought to spend less time (and cortisol) worrying whether she is trying to ‘advance God’s kingdom’ via U.S. public schools and pay more attention to the consequential things she *isn’t* doing.”

The two articles are in The 74 Million.org’s April 11<sup>th</sup> issue at [www.the74million.org](http://www.the74million.org) (as initially alerted in *Fritzwire* April 13<sup>th</sup>).

### **USED Calls for Delay in Implementing Obama’s Last Minute Final Regulation on Open Licensing Requirements on All Digital Products Developed Under Competitive Grant Programs, Thus “Allowing USED Opportunity for Further Review,” and Possible “Disapproval,” Which Would Be Good News for Most Clients**

After almost two years of negotiations with private sector groups representing for-profit digital software developers/publishers, the Obama Administration published final regulations on the so-called “open-licensing” regulations on January 19<sup>th</sup>, which DeVos has now delayed “for review.” These regulations would require that any digital instructional materials and/or related products developed under a USED competitive grant program be made publicly

available under an “open-licensed agreement,” thereby preventing the developer from having any rights for copyrights, trade secret, or other protections from unauthorized use. Groups such as SIIA and the Association of American Publishers led the opposition to open-license requirements. As a result, the DeVos USED announced in the Federal Register (March 21<sup>st</sup>) that the effective date of implementation would be delayed to May 22<sup>nd</sup> to provide for further comments and “allow the department the opportunity for further review of the final regulations.” Between the current “behind-the-scenes” negotiations and May 22<sup>nd</sup>, pressures from opponents to significantly modify or nullify such regulations perhaps through the passage of a “disapproval” by Congress (i.e., similar to that which occurred with the Obama final regulations for ESSA accountability), will occur, which would be welcomed by some TechMIS clients.

During the waning years of its Administration, the Obama USED undertook the “Open Ed” initiative to promote and actually implement through guidance and other means “open licenses” for products developed under competitive grants and even “called for” such “open licenses” generally where any Federal education funds were involved. This policy was one of many policy actions the Obama/Duncan regime used to create an “unlevel playing field” pitting non-profit organizations against for-profits, a mentality which expanded also at the SEA and district levels to varying degrees. Since the 1980s, USED policies had reflected a written and sometime “unofficial policy,” which minimized “unfair government competition” with the private sector. The only exception was in special education, which was



considered a “thin market.” USED felt the market needed incentives for profit making firms to develop software and related products targeted to meet the individualization required for student with special needs. An early example of successful Office of Education/USED use of Federal funds to allow for-profit organizations to develop products with copyright protection was the Kurzweil reader for the sight-impaired.

The implications of significant changes to or abolishment of the new open-license policy is significant, especially for many TechMIS clients. Currently, the only exception under the “open license policy” rule would be the very successful Small Business Innovation Research (SBIR) program, created in the 1980s under which many products used in general and special education programs have been developed by firms, allowing them copyright and other ownership protections. If the final Obama regulations, even with minor changes, are implemented, the incentives for private software developers to seek competitive grants or participate in competitive grants are significantly less. The only remaining opportunities would appear to be adding value to products, which are “open-licensed.” This suggests that the open-licensed products for the “Feds” might not be of the highest quality and/or effectiveness. Interested parties might want to contact or otherwise support efforts opposing “open-license” policies as proposed in the Obama regulations at SIIA and/or the Pre-K Learning Group at Association of American Publishers.

- **Jay Diskey**, Executive Director, **PreK-12 Learning Group** ([jdiskey@publishers.org](mailto:jdiskey@publishers.org))

- **Bridget Foster**, Senior Vice President and Managing Director of ETIN at SIIA (<http://www.siiia.net/Divisions/ETIN-Education-Technology-Industry-Network>)

### **New U.S. Supreme Court Ruling is Likely to Increase District Spending on Specific Quality Special Education Assessments/Interventions Sold to Schools, Which Could Have Significant Implications for Some Firms**

On March 21<sup>st</sup>, the U.S. Supreme Court ruled that a student with a disability should be offered an educational program which provides “merely more than de minimis” progress from year-to-year [which] can hardly be said to have been offered an education at all.” Chief Justice John G. Roberts, Jr. who wrote the opinion further stated, “The IDEA demands more...it requires an education program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” As such, without deciding the specific case, Endrew F. V. Douglas County School Board, according to Education Week’s On Special Education blog (March 22<sup>nd</sup>), “The unanimous decision from the high court means the case will go back to a lower court for further argument.” Even so, most of the special education community and advocate groups hailed the decision as sending a critical message, or as Senator Patty Murray (D-WA) stated, “Every child deserves the opportunity to reach their full potential and receive a high-quality public education. With this ruling, the court has rightly reaffirmed Congress’ intent [in the IDEA] to hold schools

accountable for providing students with disabilities meaningful education benefit from the instruction and services they receive.” For many districts, higher demand for more effective quality programs is likely to be needed, although some groups such as AASA have argued that many of students’ IEPs already meet the standard of the new Supreme Court ruling. Without question, one can expect parent and other advocacy groups bringing pressure or lawsuits against districts to meet their perception of the most recent court ruling; a variety of case laws will grow, staying the course perhaps, depending to some extent on the lower courts’ final ruling.

As the *On Special Education* blog notes, the new “standard” does not tell districts what to do with future disagreements centered around a definition of “appropriate progress,” according to Dr. Perry A. Zirkel, a nationally-recognized special education legal authority at Lehigh University: “Most practitioners want the law to spell things out so they can go back to their job and know where they’re at.” He cited as an example speed limits on a highway in which case “the speed limit is ‘drive appropriate in the individual circumstances in which you’re traveling.” Over the last two decades Dr. Zirkel has followed the grassroots response-to-intervention (RTI) movement and the expanding legal requirements in Federal and state laws governing the implementation of RTI/Coordinated Early Intervening Services at the district level. One implication of the ruling is that more intensive evaluations of individual students will be even more important in preparation of IEPs and the diagnostic-based selection of the specific interventions will become even more important. Hence, products and services under the general RTI rubric will have to be

more specific and provide evidence-based claims as to what their products and services can do to help students. The notion of “different circumstances” could also result in many case rulings where specific services may not be available to certain districts (rural or isolated districts) which is likely to also be a “bone of contention” in subsequent lawsuits, which will build legal precedents.

One implication of this ruling, affecting some firms, will be an increased district demand for more specialized training for special education teachers and staff and/or professional development services which can be provided by some TechMIS subscribers. Another implication is an IEP for a specific student who is making progress according to the IEP metrics, will have to be updated more often, creating a need for tools that could meet the demand for more “effective” meetings of IEP team members, including parents, in reviewing assessment and other data for prescribing subsequent interventions.

### **Juvenile Justice Reform and Companion At-Risk Youth Bills Introduced in Congress With Bipartisan Support**

The Juvenile Justice Reform Act of 2017, which reauthorizes the Juvenile Justice and Delinquency Prevention Act (JJDP), received bipartisan support last year under the leadership of ranking member Bobby Scott (D-VA) and Representative Jason Lewis (R-MN), and could have a chance to be passed this year as a “sleeper bill.” A related bill “Opening Doors for Youth Act” introduced by Bobby Scott would provide over \$5 billion for education and career opportunities for young people who are not

in school and not working, many of whom have left the justice system. Some of the highlights of the two bills are noted below.

The Juvenile Justice Reform Act would prioritize “what works in setting kids up for long-term success.” According to the bill’s summary (March 29<sup>th</sup>), it would focus on some of the unique needs of youth such as identifying alternatives to detention, and encourage collaboration among state leaders to create smooth transitions out of juvenile justice through education re-entry, family engagement, and community-based services. In addition, the children and youth detained for an offense that would not be considered a crime if committed by an adult, such as truancy and/or running away from home, would be changed to allow children and youth to receive community-based services.

Beyond greater flexibility to meet community needs, the bill requires the Office of Juvenile Justice and Delinquency Prevention to “prioritize evidence-based strategies and to use current and reliable data in efforts to reduce juvenile delinquency.” This office would also provide professional development, technical assistance, and information about best practices to help state and local leaders implement the law.

The Opening Doors for Youth Act would authorize \$2 billion in the form of grants to districts to establish “local community partnerships” to support alternatives for youth to obtain a high school diploma (at least 50 percent or \$1 billion are to be used for this purpose) and support counseling, apprenticeships, and work training to help juvenile offenders acquire necessary skills. It would also support improvement of prevention services. Of the remaining \$5.5

billion, \$1.5 billion would provide formula funds for youth summer jobs and \$2 billion for year-round jobs for older youth.

Both Congressman Scott and former Secretary of Education Arne Duncan pointed out that the current cost of incarceration, help, and public assistance services for such youth is almost \$30 billion, which Scott’s proposed legislation over the last five years has attempted to reduce through preventative programs. Moreover, as we have noted in previous TechMIS reports, the new ESSA does provide for alternative schools enrollments of at least 100 (previously at least enrollments of 300 students) would participate in remediation/credit recovery programs supported by the increased Title I funding under the SEA 7% set-aside for school improvement. (See related Washington Update)

Opportunities for TechMIS subscribers which operate credit recovery, dropout prevention, and related programs for districts and/or provide products and services for districts to operate such “schools within schools” and special district-operated charter schools should also increase if this legislation is passed. Even though the Trump Administration has proposed cutting funding from existing programs (e.g., counseling, social/emotional learning, behavioral interventions, etc.), Congress could pass these bills if for no other reason to “stand up” to the White House and reduce “do nothing” publicity and actually pass these new acts and funding streams rather than spending all energies fighting the Trump/DeVos proposed education cuts, as noted in the related TechMIS Special Report.

## Miscellaneous (a)

The number of low-performing high schools, which states identify for comprehensive support and related interventions under ESSA could be reduced as a result of the Trump Administration nullifying the Obama final Accountability regulations. This could affect clients' strategies for targeting the 5% lowest-performing high schools with interventions called for under ESSA "comprehensive support." As reported in Education Week (April 4<sup>th</sup>), this could occur in several types of high schools, some of which we have identified in previous reports as good opportunities for some TechMIS clients.

The Obama Accountability regulations would have required states to use the "four-year graduation rate" to identify which schools have failed to graduate one-third or more of their students, which had been in effect since 2008 due to the wide-range of "graduation rate" definitions states used prior to that time (e.g., allowing special education students five or six years to graduate or those receiving GEDs in lieu of diplomas). These types of state specific policies allowed states/districts to reduce the number of high schools identified as "dropout factories" and allowed districts to reallocate intervention funds to low-performing elementary and middle school levels. As the article notes, "With those rules now set aside, states could theoretically use other kinds of graduation rate calculations that identify fewer schools for improvement."

As reported in the article, a spokesperson for the National Association of Secondary School Principals and some state superintendents have reportedly said that

states will most likely stick to the "four-year graduation rule" and not attempt to "game the system" to reduce the number of high schools receiving comprehensive support. On the other hand, Anne Hyslop, former accountability regulatory expert at USED and now with the Chiefs for Change, said that under the Obama Accountability rules, "there's a risk that too many schools would be identified for comprehensive support, reducing states'/districts' capacities to provide adequate funding/comprehensive support." As Hyslop also argued, "While inaction is never acceptable when students attend schools with high dropout rates, the question is what is our capacity to support the schools identified for improvement? That's what states will have to think about."

As we noted in TechMIS reports over the last year, the Obama regs offered opportunities for some clients to identify/target high schools enrolling at least 100 rather than 300 students which was the "cut off" under NCLB. The final Obama ESSA regulations would have expanded the number of eligible charter, cyber, and/or "alternative" schools (e.g., those small high schools providing remediation, credit recovery, prison to school transition programs), which would increase the number of so-called high school "dropout factories" to 2,400 compared to the existing 1,000 using the 300 or more enrollment. Based on the most recent report from GradNation, seven states would have 100 or more high schools needing comprehensive improvement under the Obama final regulations.

As Education Week suggests, it is too early to predict how states will take advantage of the new "flexibilities" in defining high schools identified for comprehensive

support if they do not follow the old Obama regulations; moreover, it still remains unclear as to when the effective date of identifying such schools and begin serving such schools with interventions funded by the Title I 7% set-aside and other resources will be. The Law says this must occur by September of this year; however, the Obama regulations extended the effective date for one year with an option for another year for planning. It is conceivable that even though the Obama regulations are nullified, the Trump Administration could extend the ESSA implementation deadline dates.

### **Miscellaneous (b)**

Education Week (April 5<sup>th</sup>) reports that in slightly more than 30 states, legislation has been proposed to create or expand private school choice through tax credits, scholarships, education saving accounts, and vouchers; but, according to the National Conference of State Legislatures, only about half of the proposed bills have made some progress, or have at least have been passed by a state legislative committee. As expected, states in which most proposals have been made are those which are controlled by the GOP governorship or legislature, which includes 44 states. In about half of the states, the GOP controls both the governor's office and the legislature.

According to Education Week, most school choice measures include:

- 21 states in which tax credit scholarships have been proposed, but in several states – Mississippi and Virginia -- they have already failed;
- in 23 states, education savings accounts have been proposed, but

such proposals have failed or been vetoed in the states of Mississippi, Arkansas, and Virginia; and

- traditional voucher proposals have been made in 14 states, with one being enacted thus far in Arkansas.

Even though the Trump/DeVos Administration supports school choice, as we reported in earlier TechMIS reports, the new ESSA prohibits the Secretary from using her discretionary authority in many areas but as reported in a related item, Democratic leaders like Senator Patty Murray (D-WA) have expressed concern that the Secretary could attempt to use her discretion in holding some of the state plans hostage if the plans do not reflect strong support for increased school choice for parents. As a result, DeVos' official power in these areas could be mostly limited to "the bully pulpit" to encourage action by state legislatures and governors to expand school choice through one or more means mentioned above.

The Administration has proposed a \$250 million voucher initiative under Title I and an increase from about \$330 million to almost \$500 million for the Charter School Program, mostly for new and/or expanded charter schools. And as we reported in our December TechMIS Special Report, one can expect the Administration to attempt to create an environment more conducive to expansion of school choice and the use of different pots of Federal funds (Title I and IDEA) through the use of "tweaks" and "unofficial" policies in Non-Regulatory Guidance allowing more flexibility in using existing categorical funds to "follow the child" to schools of parents' choice.



## Miscellaneous (c)

New annual ranking of state public charter school laws is available from the National Alliance for Public Charter Schools and could provide very useful information to TechMIS subscribers who see opportunities for selling their products/services in particular to public charter schools, authorized by districts. The report also ranks states according to a number of components from the 2015 new Alliance “model for assessing state charter school laws,” with Indiana ranking number one, and Maryland ranked last as number 44. As we noted in our last TechMIS report, some increased opportunities under the Trump Administration could occur in district-operated public charter schools using some of the Federal funding streams such as Title I and IDEA, which we have discussed in previous TechMIS reports (see December 2016 Special Report).

The types of information in the annual report include:

- states which allow a variety of charter public schools (41 of 44 states);
- states requiring performance-based charter contracts (4 states);
- comprehensive charter public school monitoring and data collection processes (33 states); and
- equitable operational funding and equal access to all state and Federal categorical funding (1 state).

Some of the important “model” components used in the ratings include:

- clear identification of special education responsibilities, including which entity, the LEA or school, is

responsible for such services and how such services are to be funded, especially for low-incident, high-cost cases;

- equal access to all state and Federal categorical funding flowing to the school in a timely fashion and in the same amount as school districts following eligibility criteria similar to other public schools; and
- full-time virtual charter school provisions including specific provisions regarding authorizing structure, enrollment, criteria for enrollment levels, accountability for costs, funding levels based upon costs, and performance-based funding.

For each of 43 states, a state profile is provided. This ranking should assist TechMIS clients who have adopted a strategy of helping districts create/expand public charter schools operated by the districts compete with private charter schools supported by the Trump Administration. Under such policies more Federal, state and other funds could “follow the child” to private charters and thereby reduce local districts budgets.

## Miscellaneous (d)

The Education Commission of the States (ECS) in its April “State of the States Landscape Report” highlights computer science policy which is emerging for seven states that have adopted subject standards for computer science education and 20 states that have related teacher licensure standards. As it notes, the overlap of these states varies with those states that require high schools to offer computer science or those that have



created a state computer science position. The state “profiles” included in the report could provide useful information for TechMIS subscribers who are planning or providing science-related products and services to K-12 markets. As Education Week (April 6<sup>th</sup>) notes, because of uncertainty over Federal funds for education programs which have or could support state computer science initiatives (Title II, Title IV, among others), “future leadership in computer science will likely come from states.”

The seven states which have adopted computer science subject standards now include: Washington, Idaho, Mississippi, Indiana, New Jersey, Massachusetts, and Florida. States that are given a priority to and/or in process of adopting computer science standards include: South Carolina, Virginia, West Virginia, Michigan, Colorado, Nevada, and California.

The new report produced with the Massachusetts Computing Attainment Network (MassCAN) and other partner organizations, highlights existing policies and those “in process” in a number of areas, including several which should be important for interested subscribers, including:

- K-12 computer science plans and initiatives;
- certification requirements for computer science teachers;
- state-approved teacher preparation in pre-service programs; and
- requirements for high schools offering computer science that can satisfy high school requirements.

The article quotes Jim Stanton, Executive Director of MassCAN as stating, “It seems

clear that the federal government will be playing less of a role driving computer science education now, so it’s really going to be up to the states.” It would appear that a critical factor would be state levels of funding allocated for “computer science.” The report identifies the states which have “dedicated state-level funding to K-12 computer science education,” which also have to meet several conditions (i.e., approved state budget or legislation, funds dedicated only to computer science, funds allocated for 2016 or 2017, and funds which are publicly accessible). These include the following:

- Arkansas: \$2.5 million (2017) for standards, professional development, and other grants;
- Arizona: \$500,000 (2017) for curriculum, professional development, and internships;
- Georgia: \$250,000 (2016) for professional development
- Idaho: \$2 million (2017) for professional development and a variety of computer science initiatives
- Massachusetts: \$1.5 million (2016) for matching grants and private funds supporting professional development
- Rhode Island: \$260,000 (2017) for professional development
- Utah: \$400,000 (2017) for professional development and instructional resources
- Virginia: \$550,000 (2017) for professional development
- Washington: \$1 million (2017) for professional development requiring 1:1 private match for grants

The report notes that in eight states in which

governors are members of Governors for Computer Science Partnership, the governors provided or committed their states to funding for professional development.

While these state-funded levels do not take into account other funds, which could be used for computer science activities, but are not dedicated specifically to computer science, it would appear that increases in the number of states and their dedicated computer science funding levels will be critical for more rapid expansion of computer science activities across the states.

### **Miscellaneous (e)**

As reported in *Fritzwire*, American Institutes for Research has included in their website a so-called ESSA Co-Pilot which will help states and districts “navigate the most important information, key topics, and research-based resources that states and districts can use in planning and implementing ESSA.” The website also provides links to individual states’ pages and draft plans which should be useful for TechMIS subscribers. This information is available at: <http://www.air.org/page/official-state-websites-and-plans> and includes guidance and individual states’ websites in their plans, including drafts.