

September 5, 2002

Jacquelyn C. Jackson, Ed.D.
Acting Director
Student Achievement and School Accountability Programs
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW.,
Room 3W230, FB-6
Washington, DC 20202-6132

Dear Dr. Jackson:

On behalf of the Software & Information Industry Association (SIIA), I write in response to the U.S. Department of Education's Federal Register Notice of August 6, 2002 seeking comment on proposed regulations for Title I of the No Child Left Behind Act (NCLBA; 34 CFR Part 200). SIIA looks forward with our member companies to continuing to work with the U.S. Department of Education and other stakeholders to implement the new law and improve the academic achievement of our nation's students.

SIIA is the principal trade association of the software code and digital content industries, representing more than 800 leading high-tech companies that develop and market software and electronic information for business, education, consumers and the Internet. Many SIIA member companies provide education software tools and digital curriculum, while all depend on the nation's schools for a skilled high-tech workforce. The NCLBA represents an important effort toward meeting the critical goal that all students achieve to high academic standards.

SIIA and our member companies believe technology is critical to meeting the nation's education goals as well as the goals and requirements of the No Child Left Behind Act. From distance learning opportunities to enhanced data-driven accountability and decision-making, and from individualized learning models to parental involvement, technology is helping transform the way we teach and learn and increasing educational productivity and student achievement.

We are pleased with the NCLBA's recognition and U.S. Department of Education's support of education technology and view continued federal leadership as essential to the nation's progress in effectively integrating technology into instructional and management practices. We take this opportunity to comment on several Title I issues - Title I Applications/Plans, Title I Schoolwide Programs and Title I Supplemental Services - with the goal of ensuring NCLBA implementation meets the law's intent to support the effective use of technology in meeting the law's goals and requirements.

In general, SIIA is concerned that NCLBA regulations and guidance may, in some cases, discourage the use of technology and/or undercut the legislative intent to target technology as both a goal and a means to improving teaching and learning. While SIIA supports the need to balance flexibility for accountability, we urge that this balance not exclude accountability and reporting for such NCLBA goals as "supplement not supplant", the targeting of grant resources to technology, and the outcome goals of technology access, integration and literacy.

Title I Applications & Plans

State officials and local educators have long looked to technology to help meet the goals and requirements of Title I. From instructional software to online professional development to data collection and reporting, states and districts take advantage of the program's flexibility by spending several hundred million dollars of Title I funds each year on technology solutions. In fact, Title I explicitly encourages dissemination of report cards and related accountability information via the Internet. The increased emphasis and requirements with regard to assessment, accountability, data-driven decision making, professional development and instruction will continue to drive the state and district Title I reliance on software solutions.

To support this process, SIIA therefore recommends the Department enhance the degree to which its guidance encourages states and districts to describe their use of technology in Title I plans and applications. With technology so key to NCLBA implementation and receiving significant Title I resources, it is critical that state and local educational agencies consider and implement technology in an integrated and holistic manner. Such a review through the Title I planning process will encourage grant recipients to be more thoughtful -- and thus more efficient and effective -- in their use of technology under Title I.

Title I Schoolwide Programs

Consistent with SIIA's above comments with regard to Title I Applications/Plans, we urge the Department to ensure that Title I schoolwide programs are not used to reprogram Title II, Part D technology grant funds to other purposes not allowed by the technology grant statute. This recommendation should not be construed as opposition to schoolwide programs or the goals of program integration. SIIA recognizes the importance of holistic educational approaches that leverage all program resources toward common means and ends. And SIIA supports the manner in which schoolwide programs can enhance cross-program coordination, planning and service delivery.

We therefore urge that the proposed regulations be amended to more clearly indicate that inclusion of a non-Title I program in a Title I schoolwide program does not permit that local grantee from disregarding the purposes and activities of that non-Title I program statute. SIIA members report that local education officials are interpreting their flexibility under the Title I schoolwide program as identical to that provided under Transferability provided by Title VI, Part A, Subpart II. While Transferability allows the repurposing of funds, Title I schoolwide statute does not allow a local grantee to shift Title II, Part D funds to non-technology purposes and activities that are not authorized under the Title II, Part D local activities.

To that end, we urge amendment to proposed Section 200.28(c)(4)(i)(C) by adding "activities and uses of funds" to both clarify the provision and hold local grantees accountable for proper implementation. This change would produce a regulation that reads: ". . . a school that consolidates and uses in a schoolwide program funds from different Federal programs . . . is required to maintain records that demonstrate that the schoolwide program, as a whole, addresses the intent, purposes, activities and uses of funds of each of the Federal programs whose funds were consolidated to support the schoolwide program . . ."

Title I Supplemental Services

Title I Section 1116(b)(5) of the statute requires that supplemental services be made available to students in schools identified as failing to make adequate yearly progress for 3 consecutive years. SIIA is very supportive of the proposed regulatory recognition that supplemental services includes "technology-based or distance-learning." However, we are concerned these proposed regulations are not explicit enough to balance the statute's provisions in Paragraphs (2)(A)(ii), (4)(C) and (10)(A)(i) of Section 1116(e) that could be interpreted as limiting services to those delivered by providers located within the local educational agency, neighboring local educational agencies or within a reasonable distance.

Section 200.37(b)(5)(ii)(A) of the proposed regulations does include an important requirement that an impacted LEA's notification to parents include: "the identity of approved providers of those services available within the LEA, including providers of technology-based or distance-learning supplemental educational services, or providers that make services reasonably available in neighboring LEAs." However, Section 200.45(b)(4) of the proposed regulations allows that SEA's, at the request of an LEA, may waive these requirements upon determining that: "None of the providers of those services on the list approved by the SEA under Sec. 200.47 makes those services available in the area served by the LEA or within a reasonable distance of that area . . ."

We therefore urge amendment to proposed Section 200.45(b)(4)(i)(A) to guard against this possibility so that it reads: "None of the providers of those services on the list approved by the SEA under Sec. 200.47 makes those services available in the area served by the LEA, within a reasonable distance of that area, or through technology-based or distance learning . . ." Absent this change, an LEA could, and many likely would, follow the 200.37(b)(5)(ii)(A) requirement that notice be given of "providers of technology-based or distance-learning supplemental educational services," but still seek and be granted a waiver from the SEA. As a result, students in many eligible schools will have fewer options available to take advantage of this supplemental opportunity. In fact, students in most rural areas would likely have no options due to the absence of eligible providers located in their geographic area.

In addition, we urge amendment to proposed Section 200.47(a)(3) with regard to SEA responsibilities to "Maintain by LEA an updated list of approved providers from which parents may select." By failing to explicitly require SEAs to include "providers of technology-based or distance-learning supplemental educational services" as is required of LEAs in Section 200.37(b)(5)(ii)(A) of the proposed regulations, the proposed regulations may interpret "maintain by LEA" in conjunction with the waiver provisions as permitting the exclusion of such technology-based or distance-learning providers from their lists. In fact, however, it is likely that such providers, once approved by the state, should be included on the list for each LEA.

We therefore urge the Department to issue clarifying regulations and guidance that require local and state educational agencies to give due consideration to those providers that deliver educational services through distance learning technologies. While this consideration should not compromise other governing provisions such as with regard to the determination of provider criteria, the Department should encourage local and state agencies to take into account the unique nature of Web-based instruction by clarifying the inconsistencies between the statute, legislative intent and regulations.

In addition, we encourage the Department to assist state and local educational agencies in this process by helping to promote maximum participation by local, regional and national providers of web-based instruction.

Thank you again for considering SIIA's comments regarding the implementation of the No Child Left Behind Act and its Title I provisions. SIIA and our member companies look forward to working with you on these and related issues to ensure the new law meets its promise of increased student achievement, including through the integration of effective technology solutions. If we can be of further assistance, please contact Mark Schneiderman, SIIA's director of education policy, at (202) 789-4444 or marks@siia.net.

Sincerely,

Kenneth A. Wasch
President