



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF GENERAL COUNSEL

135-  
DUE 7/14  
COB

JUL 7 1993

MEMORANDUM

TO: Legislative Services Officers  
Attn: Mr. Borches, OIG  
Mr. Ginsburg, OPP  
Mr. Hazzard, OMB/CFO  
Ms. Henderson, ODS  
Ms. Lim, OCR  
Mr. Johns, OVAE  
Ms. LeTendre, OESE  
Mr. March, OSERS  
Mr. Link, ES  
Mr. Logel, OBEMLA  
Ms. Rairdin, OLCA  
Office of the General Counsel  
Attn: Mr. Rosenfelt  
Ms. Craig  
Mr. Sky

JUL 8 1993 10:40  
OFFICE OF GENERAL COUNSEL

FROM: Jack Kristy  
Assistant General Counsel for Legislation

*Jack Kristy*

SUBJECT: "Cross-cutting Issues" for ESEA Reauthorization.

Attached for your review and comment is draft bill language to implement a variety of cross-cutting issues pertaining to the Department's proposal for reauthorization of the Elementary and Secondary Education Act of 1965. These provisions would be placed in the reauthorized ESEA and apply, according to their terms, to a variety of individual ESEA programs. Please review the attached draft and forward your comments to me (Room 4093 FOB-6; 401-2670; FAX 401-3769) by COB Thursday, July 15. Thanks for your prompt response.

Attachment

cc: Ms. Winston  
Mr. Winnick  
Mr. Smith  
Mr. Peterson  
Ms. Dozier  
Mr. Payzant  
Mr. Corwin

*See comments,  
J. Winnick - 7/19-8:30*

BUDGET SERVICE

JUL 8 1993 12:45

RECEIVED

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-2110

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

*AB30708003*

Crosscut provisions to be included in new ESEA Title III

## TITLE III

"PART C - ADMINISTRATIVE FLEXIBILITY AND COORDINATION TO  
STIMULATE INTEGRATED AND EFFECTIVE USE OF FUNDS

[NOTE: These provisions could either be part of Title III or  
merged into Title VIII.]

## \*DEFINITIONS

"SEC. 320. For the purposes of this part and part C, the  
following terms have the following meanings:

"(a) The term "covered programs" means the programs authorized  
by parts A-F of title I of this Act, part A of title II of this  
Act [Human Capital], and part A of title III of this Act [Safe  
and Drug-Free Schools] (except section \_\_\_\_).

"(b) The term "Goals 2000 Act" means the Goals 2000: Educate  
America Act.

"(c) The term "local improvement plan" means a plan adopted by  
a local educational agency pursuant to title III of the Goals  
2000 Act.

"(d) The term "State improvement plan" means a State  
improvement plan adopted by a State and approved by the Secretary  
pursuant to title III of the Goals 2000 Act.

"(e) The term "single State application" means an application  
submitted by a State educational agency pursuant to section 8011  
of this Act.

*This is a manual of "systemic reform" which is already covered under the "Improvement activities" of the State Dept. of Education. No need to repeat.*

"(f) The term "systemic reform activities" includes educational activities that are designed to achieve high student performance in challenging content areas and

(1) in the case of a State educational agency, carry out a State improvement plan, including activities described in section 308(b)(2) of the Goals 2000 Act, and

(2) in the case of a local educational agency, carry out a local improvement plan, including activities described in section 309 of the Goals 2000 Act.

"CONSOLIDATED STATE ADMINISTRATIVE ACCOUNT FOR ELEMENTARY AND SECONDARY PROGRAMS

"SEC. 321 (a) CONSOLIDATION OF ADMINISTRATIVE FUNDS. From the amounts available to it for State administration under any of the covered programs, a State educational agency may establish a consolidated administrative fund for carrying out the purposes of this section.

"(b) USE OF FUNDS. (1) A State educational agency shall use the sums in its consolidated administrative fund for the administration of the covered programs in which it participates.

"(2) A State educational agency may also use funds available under this section for administrative activities designed to enhance the effective and coordinated use of funds under such programs, such as the coordination of covered programs with other Federal education programs, the establishment and operation of

*reference of ?*

quality review teams and other peer review mechanisms, the administration of incentive, evaluation, and remediation activities for participants in covered programs, the dissemination of information regarding model programs and practices, technical assistance, and the coordination of covered programs with systemic reform activities.

*What do students mean?*

(c) PLANS. A State educational agency may not establish a consolidated administrative fund under this section unless the State agency submits to the Secretary [as part of its single state application under section 8011 of the Act,] a plan for the use of such funds that contain<sup>s?</sup> such provisions as the Secretary may require, and the Secretary approves the plan. ] ?

(d) RECORDS. A State educational agency that establishes a consolidated administrative fund under this section shall not be required to keep separate records, by program, regarding the time of individual staff members assigned to the administration of one or more of the covered programs.

(e) PERFORMANCE. "The Secretary may periodically review the performance of State educational agencies in using a consolidated administrative fund under this section and shall take such

? [remedial] steps as the Secretary deems appropriate to ensure the improvement of such performance when warranted. Such review shall take into account performance outcomes and in the review, the Secretary shall consult with representatives of the State educational agencies and of the students to be served.]

*who represents these students?*

(f) UNUSED ADMINISTRATIVE FUNDS. If a State educational

agency does not use the funds available to it under this section for administration, it may use such funds during the applicable period of availability for the purposes of one or more of the covered programs.

"(g) SINGLE LEA STATES [To avoid the duplication of administrative functions, a State educational agency that serves also as a local educational agency may use funds under this section only for administrative activities related to its responsibilities as a State educational agency, and may not charge the cost of administrative activities under the covered programs to other grants under this Act.]

IS THIS THE APPROPRIATE SPECIAL PROVISION FOR SINGLE LEA STATES, OR SHOULD THE SECRETARY JUST HAVE THE AUTHORITY TO REGULATE?

"STUDY OF USE OF FUNDS FOR LOCAL ADMINISTRATION

"SEC. 322 (a) GENERAL AUTHORITY. The Secretary is authorized, with funds appropriated pursuant to this section, to conduct a study of the use of funds under this Act for the administration, by local educational agencies, of covered programs specified in section 320(a). Such study shall include the percentage of grant funds used for such purposes in covered programs. Based on the results of such study, the Secretary is authorized to establish regulations or guidelines regarding the use of funds for local administration under these programs, including the use of such funds on a consolidated basis and a limitation on the amount of

such funds that may be used for administration.

"[(b) REPORT. The Secretary shall submit to the appropriate committees of the Congress a report regarding such study within two years of the enactment of this act.] *- NO make it two years after funding for this section be comes available*  
WE WOULD RECOMMEND DELETING THIS.

"[(c) AUTHORIZATION There are authorized to be appropriated for the purposes of this section such sums as may be necessary for fiscal year 1995 and the succeeding fiscal year.]

"CONSOLIDATED SETASIDE FOR DEPARTMENT OF INTERIOR FUNDS

"SEC. 323 The Secretary shall transfer to the Department of *the* Interior as a consolidated amount for all of covered programs, the amounts allotted to the Department of *the* Interior under the covered programs for the schools for Indian children operated with Federal assistance or operated by the Department of Interior. The Secretary and the Department of Interior *the* *shall* *(will)* enter into an agreement for the distribution and use of these funds under terms as the Secretary best determines meets the purposes of the covered programs. The Department of Interior *the* may use up to five percent of these funds for administrative activities.

*This is not nearly as good a way as getting rid of the BIA set asides*

"SCHOOLWIDE PROJECTS

"SEC. 324 As set forth in section 1015(d) of this Act, funds

under covered programs listed in that section may be used for schoolwide projects in certain schools.

IS THIS THE APPROPRIATE PLACEHOLDER GENERAL PROVISION?

PART D - WAIVERS AND OTHER FLEXIBILITY MECHANISMS

"USE OF FUNDS FOR SYSTEMIC REFORM.

["SEC. 330 (a) GENERAL AUTHORITY; LOCAL EDUCATIONAL AGENCIES.

With the approval of its State educational agency, a local educational agency in a State [with an approved State improvement plan] DO WE NEED THIS? may use no more than [3] percent of its grant under Title I of this Act and 10 per cent of its grant under any of the other covered programs specified in section 320

(a) for any fiscal year for the establishment of a systemic reform account to be used for the purposes specified in subsection (b).

"(b) USE OF FUNDS. A joint account established under this section may be used by a local educational agency for systemic reform activities, [consistent with the State improvement plan,] to carry out an approved local improvement plan under section 308 of the Goals 2000 Act. Such activities may include the following:

- (1) planning for systemic reform;
- (2) professional development as described in section 309 (b) of such Act;
- (3) involving the community in systemic reform activities;

and

*Wont States receive more money than we will  
Re: Bill  
25. Bill  
Grants  
(NGD)?*

*What's the point of this? Don't it just duplicate Goals 2000?*

(4) other systemic reform activities.

["(c) STATE EDUCATIONAL AGENCIES. With the approval of the Secretary, a State educational agency may use no more than 10 per cent of the amount available for its direct use under any covered program for any fiscal year (other than funds available under section 321) for the establishment of a systemic reform account for activities under an approved State improvement plan under section 306 of the Goals 2000 Act.]

"(d) RELATIONSHIP TO PROGRAMS. (1) Systemic reform activities carried out pursuant to this section must serve the categories of children intended to be served by the programs from which funds are drawn pursuant to subsections (a) and (c).

"(2) Professional development activities carried out under this section must be carried out on a high-intensity basis as defined in regulations promulgated by the Secretary.

"(3) Funds under Title I of this Act may not be used for the purposes of this section to the extent that such use would reduce below the level required by section \_\_\_\_ of this Act [relating to targeting], the allocations under Title I of a school for which children from low-income families constitute at least 50 [75] percent of the children enrolled or residing in the school attendance area.

SHOULD THE PROTECTED SCHOOLS' PERCENT BE 50 OR 75%?

"(e) CONDITIONS. (1) A State or local educational agency may not transfer funds to an account as provided in subsection (a) unless it has first used funds available to it for the

purposes of this section under the Goals 2000 Act.

*- what's the purpose of this requirement?*

"(2) A State or local educational agency shall use funds in a joint account established under this section, so as to supplement and increase the level of State, local, and other non-federal funds that would, in the absence of funds under this section, be made available for the purposes of subsection (b) and not to supplant such State, local and non-federal funds.

"(f) PRIVATE SCHOOL CHILDREN. Funds placed in a systemic reform account pursuant to this section shall be taken into account in determining the equitable participation of children in private schools pursuant to applicable requirements of the statutes authorizing the programs described in subsection (a). If appropriate, private school children and teachers may participate in the services provided with such funds.

"(g) PLANS. A State educational shall in its single State application under Section 8011 set forth its plans, procedures, and criteria for approving applications from local educational agencies under this section.]

"MAINTENANCE OF EFFORT

*- This doesn't mean we would include anything of other programs, into it?*

"SEC. 332 (a) UNIFORM STANDARDS. (Notwithstanding any other provision of law), the Secretary shall prescribe uniform standards for determining compliance with any requirement for maintenance of fiscal effort under any covered program. Such standards shall provide that any such requirement shall be deemed to be met if the recipient maintains a level of effort that is equal to at

least 95 percent of the recipient's level in the second fiscal year preceding the fiscal year for which the determination is made.

(b) RECOVERIES. The amount recovered as a result of a violation of such requirement shall be proportionate to the ratio by which the recipient fails to meet the requirement.

(c) WAIVERS. Such requirements <sup>may</sup> can be waived by the Secretary when necessary to respond to substantial reductions in ~~the~~ State budgetary resources if reductions to the State education fiscal effort are comparable to reductions in the rest of the budget.

SHOULD A MORE COMPLETE, SELF-STANDING PROVISION BE PLACED HERE? *I think so.*

"WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS

"SEC. 333 (a) GENERAL. (1) Except as provided in subsection (c), the Secretary may <sup>waive</sup> waive any requirement of this Act or the General Education Provisions Act or of the regulations issued under such statutes for a State educational agency, local

educational agency, or ~~school~~ that requests such a waiver if--

"(A) the Secretary determines that such requirement impedes the ability of the State, local educational agency or school, to achieve more effectively the purposes of such statute or the National Education Goals;

*Why would we entertain waiver requests from 85,100 individual schools?*

"(B) the State educational agency has waived, or agrees to waive, similar requirements of State law; and

"(C) in the case of a Statewide waiver, the State educational agency--

"(i) provides all local educational agencies

in the State with notice and an opportunity to comment on the State educational agency's proposal to seek a waiver; and

"(ii) submits the comments to the Secretary.

"(2) Any such request by a local educational agency or a school under this section, shall be reviewed by the appropriate State educational agency prior to submission to the Secretary. The comments, if any, of the State educational agency shall be included with the request.

"(3) The Secretary shall act promptly on any such request.

"(4) Each such waiver shall be for a period not to exceed three years. The Secretary may extend such period if the Secretary determines that the waiver has been effective in enabling the State or <sup>the</sup> affected local educational <sup>agency or</sup> agencies to carry out the activities for which it was requested.

"(c) WAIVERS NOT AUTHORIZED. The Secretary may not waive, under this section, any statutory or regulatory requirement of the programs listed in subsection (b), including applicable general provisions under this title, title VIII of this Act, or the General Education Provisions Act, relating to --

"(1) maintenance of effort; *except as provided for in 332(c).*

"(2) comparability of services;

"(3) the equitable participation of students attending private schools;

"(4) parental participation and involvement; or

"(5) the distribution of funds to States or to local

educational agencies.

"(d) TERMINATION OF WAIVERS. The Secretary shall periodically review the performance of any State, local educational agency, or school for which the Secretary has granted a waiver and shall terminate the waiver if the Secretary determines that the performance of the State, the local educational agency, or the school in the area affected by the waiver has been inadequate to justify a continuation of the waiver."

#### TITLE IV-EQUALIZATION ASSISTANCE

#### PART B - TECHNICAL AND OTHER ASSISTANCE REGARDING SCHOOL FINANCE EQUITY

"SEC. 420. (a) TECHNICAL ASSISTANCE. (1) From the sums appropriated pursuant to this section, the Secretary is authorized to make grants to, and <sup>enter into</sup> contracts with, State educational agencies and other public and nonprofit private agencies, institutions, and organizations for the provision of technical assistance to State and local educational agencies to assist them in achieving a greater degree of equity in the distribution of financial resources for education among local educational agencies in the State. *STET.*

"(2) ACTIVITIES. A grant or contract under this section may support technical assistance activities, such as --

"(A) The establishment and operation of a center or centers for the provision of technical assistance to State and local agencies;

"(B) The convening of conferences on equalization of resources within districts, within States, and among States; and

"(C) The purchase of services from experts and consultants regarding equalization;

"(b) RESEARCH. (1) From the sums appropriated pursuant to this section, the Secretary is authorized to carry out applied research and analysis designed to further knowledge and understanding of methods to achieve greater equity in the distribution of resources among school districts. *but not within?*

"(2) The Secretary may carry out research under this section directly or through grants, contracts, or cooperative arrangements to, or with, any public or private organization.

"(3) In carrying out the program authorized by this section, the Secretary is authorized to --

"(A) Support research on the equity of existing State school funding systems;

"(B) Train individuals in such research;

"(C) Promote the coordination of such research; *what does this one mean? why is Federal support for it needed?*

"(D) Collect, analyze, and disseminate statistics and *information* other data related to school finance equity in the United States and other nations; and

"(E) report periodically on the progress of States in

school finance equity.

"(4) A state or local educational agency shall provide such data and information on equity as the Secretary may require to carry out the purposes of this section.

"(c) MODELS. From the sums appropriated pursuant to this section, the Secretary is authorized, directly or through grants, contracts, or cooperative agreements, to develop and disseminate models and materials useful to States in planning and implementing revisions of their school finance systems.

"(d) AUTHORIZATION. There is hereby authorized to be appropriated for fiscal year 1995 and the succeeding four fiscal years such sums as may be necessary to carry out the purposes of this title.

#### PART C - INTEGRATION OF SERVICES

##### "INTEGRATION OF SERVICES

"SEC. 430 (a) GENERAL AUTHORITY. A local educational agency may use funds described in subsection (b) for the purpose of assisting students at all grade levels to learn effectively by (1) identifying the most pressing needs facing students and their families with regard to social services, health care, nutrition, Head Start<sup>site</sup> and other early childhood programs [mentoring, including intergenerational mentoring SHOULD THIS BE HERE?] and child care, and (2) entering into partnerships with public and private agencies to coordinate the provision of such services to students and families in a school setting or at a nearby site.

yes

"(b) AVAILABLE FUNDS. In addition to the funds under Title I that are available for the purposes described in subsection (a) in accordance with section \_\_\_\_\_, a local educational agency may use up to [five] percent of the funds under part A of Title II and part A of Title III of this Act [WHAT ABOUT TITLE VII OF THE ACT?] for any fiscal year for these purposes.

"(c) USE OF FUNDS. (1) [Funds under this section may be used for services to coordinate the needed services outlined in subsection (a), such as the use of case managers, data management, staff development, and community outreach.]

(2) With the exception of uses under subsection (d), funds under this section may not be used to provide social services, health care, nutrition, (early childhood<sup>education</sup>), or child care services, unless the provision of such services is otherwise consistent with the statutes authorizing such programs.

about  
counseling?  
can we capture  
distribution?  
↑  
we will get  
lots of  
questions  
on these.

"(d) HEALTH SCREENING. A local educational agency may use funds under this section for health screening for elementary school students served in the covered programs, as set forth in regulations promulgated by the Secretary.

THIS IS A PLACEHOLDER. WE MAY WANT TO INCLUDE MORE DETAILS.

"(e) PRIVATE SCHOOL CHILDREN. A local educational agency using funds under this section for coordination activities shall ensure that children who are enrolled in private schools, and who are otherwise eligible for participation in one or more covered programs, and their parents are afforded equitable opportunities to participate in the programs integrated under this section.

SINCE INTEGRATION OF SERVICES MAY BE HANDLED IN TITLE I, THIS SECTION IS DRAFTED TO COMPLEMENT A TITLE I PROVISION.

TITLE VIII

"GENERAL PROVISIONS

PART A

"SEC. \_\_\_\_ Title VIII of the Elementary and Secondary Education Act is amended by inserting "Part A" before "Section 8001" and by adding the following after Section 8005.

"PART B - CONSOLIDATED STATE AND LOCAL APPLICATIONS

"DEFINITIONS

"SEC. 8010 For the purposes of this part, the following terms have the following meanings--

"(a) The term "covered programs" means the programs authorized by parts A-F of Chapter 1 of title I of this Act, part A of title II of this Act (except Part B), and part A of title III of this Act (except section \_\_\_\_).

"(b) The term "Goals 2000 Act" means the Goals 2000: Educate America Act.

"(c) The term "local improvement plan" means a plan adopted by a local educational agency pursuant to title III of the Goals 2000 Act.

"(d) The term "State improvement plan" means a State improvement plan adopted by a State and approved by the Secretary

pursuant to title III of the Goals 2000 Act.

"(e) The term "single State application" means an application submitted by a State educational agency pursuant to section 8011 of this Act.

"(f) The term "systemic reform activities" includes educational activities that are designed to achieve high student performance in challenging content areas, and

(1) in the case of a State educational agency, carry out a State improvement plan, including activities described in section 308(b)(2) of the Goals 2000 Act,

(2) and, in the case of a local educational agency, carry out a local improvement plan, including activities described in section 309 of the Goals 2000 Act.

"SINGLE STATE APPLICATION

[CONSOLIDATED STATE APPLICATION]

"SEC. 8011 (a) GENERAL AUTHORITY. (1) In lieu of a separate State plan or application under any of the covered programs specified in section 8010 (a) and an application pursuant to section 435 of the General Education Provisions Act, a State educational agency <sup>may</sup> ~~shall~~ submit a single State application meeting the requirements of this section.

"[(2) The submission of a single State application meeting the requirements of this section shall be deemed to be compliance with the State plan or application requirements contained in sections of this Act. (sections to be supplied)].

~~Education~~  
~~Program?~~

"(b) RELATIONSHIP TO STATE IMPROVEMENT PLAN. In the case of any State that has submitted an approved State improvement plan, the State educational agency shall coordinate the single State application required by this section with the State improvement plan and shall submit the single State application as a component of or amendment to such State improvement plan in accordance with regulations of the Secretary.

DO WE NEED TO COVER THE TIME OF THE SUBMISSION?

"(c) STATE EDUCATIONAL AGENCY ROLE. The single State application shall designate the State educational agency as the State agency responsible for the administration of the covered programs, unless the authorizing statute specifies another agency, in which event the agency identified in the authorizing statute shall be designated as responsible to the extent required."

"(d) COORDINATION. The single State application submitted under this section shall describe--

"(1) how the use of funds under the covered programs will be coordinated with and contribute to the implementation of (A) the State improvement plan; (B) the National Education Goals; and (C) other systemic reform activities in the State.

"(2) how funds under the covered programs are coordinated with and take into account activities under other Federal education programs, including other programs authorized under this Act, the Individuals with Disabilities Education Act, the Carl D. Perkins Vocational Education Act, other applicable

<sup>^</sup>  
and Applied  
Technology

programs, the National Foundation on the Arts and the Humanities Act, the Museum Services Act, the Head Start Act, and the Family Support Act of 1988, and, in the case of programs under title II of the Act, with programs available from the National Science Foundation, <sup>and</sup> the Department of Energy, ~~or both~~, and, in the case programs under title V of the Act; with programs, with activities under the Alcohol, Drug Abuse and Mental Health block grant under part B of title XIX of the Public Health Service Act.

"(3) how funds under such programs will be coordinated with State and local funds serving the same purposes.

"(e) ADMINISTRATIVE PLAN. A State educational agency shall include in the single State application under this section a description of its plans for the use of administrative funds made available under section 321 of this Act (related to the consolidated State administrative fund), if it has elected to consolidate such funds.

"[(2) A State educational agency shall include in the single State application under this section a description of the steps it plans to take during the effective period of such application to ensure the equitable participation of children attending private schools pursuant to provisions in covered program statutes calling for such participation.]

DO WE NEED THIS? IT MAY BE BURDENSOME.

"(g) ASSURANCES. An application submitted under this section shall set forth assurances, satisfactory to the Secretary --

"(1) that each covered program will be

administered in accordance with all applicable statutes, regulations, program plans, and applications;

"(2) that the control of funds provided under each such program and title to property acquired with program funds will be in a public agency, and that the public agency will administer such funds and property to the extent required by the authorizing statutes;

"(3) that the State will adopt and use proper methods of administering each covered program including --

"(A) monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law,

"(B) providing technical assistance, where necessary, to such agencies, institutions, and organizations,

"(C) encouraging the adoption of promising or innovative educational techniques by such agencies, institutions, and organizations,

"(D) the dissemination throughout the State of information on program requirements and successful practices, and

"(E) the correction of deficiencies in program operations that are identified through monitoring or evaluation

"(4) that the State will evaluate the effectiveness of covered programs in meeting their statutory

objectives, at such intervals and in accordance with such procedures as the Secretary may prescribe by regulation, and that the State will cooperate in carrying out any evaluation of each program conducted by or for the Secretary or other Federal official;

"(5) that the State will provide such fiscal control and fund accounting procedures as will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each such program;

"(6) that the State will make reports to the Secretary (including reports on the results of evaluations required under paragraph ( )) as may <sup>^</sup> [reasonably] be necessary to enable the Secretary to perform his duties under each covered program, and that the State will maintain such records, provide such information to the Secretary and afford <sup>such</sup> access to the records as the Secretary may find necessary to carry out his duties;

"[(7) that the State has consulted and will continue to consult with appropriate advisory committees, local agencies, representatives of groups served, and other institutions, organizations and individuals interested in the development of this single State application and amendments there to;] DO WE NEED THIS?

"(8) that the State has published the application, in a manner that ensures circulation throughout the State, at least sixty days prior to the date on which the application was

submitted to the Secretary, with an opportunity for public comments on such application to be accepted for at least thirty days: DO WE NEED THIS?

"(9) that the State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration and implementation of the programs. DO WE NEED THIS?

"(h) PROGRAM SPECIFIC DESCRIPTIONS AND ASSURANCES. A single State application under this section shall set forth for each of the covered programs in which the State proposes to participate the descriptions, information, assurances, plans, and other material required by the State application or plan requirements of the covered program statutes specified in section 8010 (a) unless otherwise set forth in the application in accordance with regulations of the Secretary. [At the option of the State, the material provided pursuant to this subsection may be included as an appendix to the State improvement plan.] [As part of such materials, the State educational agency shall describe how the provisions it has made under the program specific statutes supports its overall efforts to achieve systemic reform and the National Education Goals.]

DO WE NEED THIS?

[ALTERNATIVE: Insert program specific plan or application provisions from program specific statutes, including proposed section 1020 of Chapter 1 statute; generalize where appropriate]

"(i) PROCEDURES. (1) The single State application required by

this section shall be filed once for fiscal year 1995 and the [two] succeeding fiscal years, and once for fiscal year 1998 and the two succeeding fiscal years, and shall govern the administration of each of the covered programs during each of the fiscal years for which such programs are authorized under this Act.

"(2) A State educational agency shall amend the single State application to take into account material changes in its programs.

"(3) A single State application under this section may be approved by the Secretary in whole or in part.

"(4) The single State application shall describe the procedures for State approval of applications under each program, including procedures to ensure that the State educational agency does not disapprove any application for a subgrant without notice and an opportunity for a hearing.

["(j) COMPLIANCE; PERFORMANCE RESPONSES. A State educational agency shall include in the single State application pursuant to this section its plans for assessing the performance of local educational agencies under the covered programs and for <sup>en</sup> ~~ass~~uring that local educational agencies assess the performance of schools under such programs. Such application shall describe the range of responses that the State educational agency and local educational agencies will make in the case of continued performance that does not meet the standards established by the State, consistent with the State improvement plan and the

National Educational Goals. Such responses may include but are not limited to the provision of technical assistance, the establishment of requirements for the submission of local or school improvement plans, [the withholding or recovery of funds], the establishment of escrow arrangements for program funds pending the development and implementation of an improvement plan, and other steps as specified in regulations of the Secretary. If the Secretary determines that a State has substantially failed to respond to determinations or findings of substandard performance by a local educational agency (or has failed to require its local educational agencies to so respond) , the Secretary may deem such failure as a determination of noncompliance with the single State application in accordance with the provisions of part E of the General Education Provisions Act." ] [Prefer alternative: See § 8032]

SHOULD WE DELETE THIS?

(5) [NEEDED TRANSITION PROVISIONS TO BE ADDED LATER]

#### "CONSOLIDATED LOCAL APPLICATIONS

"SEC. 8012 A State educational that has filed a single State application pursuant to section 8014 may require local educational agencies in the State receiving funds under more than one of the covered programs specified in section 8010 (a) to submit applications to the State educational agency under such

programs on a consolidated basis, in accordance with regulations of the Secretary.

PART C-DISCRETIONARY PROGRAM REFORM

CRITERIA TO ENCOURAGE SYSTEMIC REFORM PROJECTS

["SEC. 8020 (a) GENERAL AUTHORITY. The Secretary is authorized to issue regulations establishing a priority for applications for the competitive grant programs authorized in this Act that--

"(1) demonstrate unusual promise of advancing the National Education Goals;

"(2) include planning, developing, or carrying out systemic reform activities; or

"(3) include other activities to implement a State improvement plan or local improvement plan.]

\*PARTICIPATION BY PRIVATE SCHOOL CHILDREN AND TEACHERS

"SEC. 8013 PARTICIPATION OF CHILDREN ENROLLED AND TEACHERS IN PRIVATE SCHOOLS.

"(a) PARTICIPATION ON EQUITABLE BASIS.--(1) To the extent consistent with the number of children in the school district of a local educational agency eligible to be served under a covered program who are enrolled in private nonprofit elementary and secondary schools, or with respect to instructional or personnel training programs funded under a covered program, after full and

timely consultation with appropriate private school officials,  
*the LEA or other grantee?*  
shall provide for the benefit of such children in such schools  
secular, neutral, and nonideological services, materials, and  
equipment, including the participation of the teachers of such  
children (and other educational personnel serving such children)  
in training programs, and the repair, minor remodeling, or  
construction of public facilities as may be necessary for the  
provision of services (consistent with subsection (c) of this  
section). If such services, materials, and equipment are not  
feasible or necessary (such as under a schoolwide project) in one  
or more such private schools as determined by the local  
educational agency after full and timely consultation with the  
appropriate private school officials, the local educational  
agency shall provide such other arrangements as will ensure  
equitable participation of such children in the purposes and  
benefits of the covered program.

"(2) If no program or project is carried out under subsection  
(a)(1) of this section in the school district of a local  
educational agency, the State educational agency [shall or may?]  
make arrangements, such as through contracts with nonprofit  
agencies or organizations, under which children in private  
schools in that district are provided with services, materials  
and equipment to the extent that would have occurred if the local  
educational agency had received funds under a covered program.  
DO WE NEED THIS PROVISION?

"(3) The requirements of this section relating to the

participation of children, teachers, and other personnel serving such children shall apply to covered programs and projects carried out by a State or local educational agency, whether directly or through grants to or contracts with other public or private agencies, institutions, or organizations.

"(b) EQUITABLE SERVICES. Educational services and arrangements pursuant to this section for children and teachers in private schools shall be equitable [in comparison] to services and arrangements for similarly situated public school children and teachers. Expenditures for programs pursuant to subsection (a) shall be equal (consistent with the number of children to be served) to expenditures for programs for children enrolled in the public schools of the local educational agency, taking into account the needs of the individual children and other factors ~~which~~ <sup>that</sup> relate to such expenditures, and when funds available to a local educational agency under a covered program are used to concentrate programs or projects on a particular group, attendance area, or grade or age level, children enrolled in private schools who are included within the group, attendance area, or grade or age level selected for such concentration shall, after consultation with the appropriate private school officials, be ensured equitable participation in the purposes and benefits of such programs or projects.

"(c) FUNDS. (1) The control of funds provided under this chapter, and title to materials, equipment, and property repaired, remodeled, or constructed therewith, shall be in a

public agency for the uses and purposes provided in this chapter, and a public agency shall administer such funds and property.

"(2) The provision of services pursuant to this section shall be provided by employees of a public agency or through contract by such public agency with a person, an association, agency, or corporation who or which, in the provision of such services, is independent of such private school and of any religious organizations, and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under this chapter shall not be commingled with State or local funds.

"(d) STATE PROHIBITION WAIVER. If by reason of any provision of law a State or local educational agency is prohibited from providing for the participation in programs of children enrolled in private elementary and secondary schools, as required by this section, the Secretary shall waive such requirements and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this section.

"(e) WAIVER AND PROVISION OF SERVICES. (1) If the Secretary determines that a State or a local educational agency has substantially failed or is unwilling to provide for the participation on an equitable basis of children enrolled in private elementary and secondary schools as required by this section, the Secretary may waive such requirements and shall arrange for the provision of services to such children through

arrangements which shall be subject to the requirements of this section.

"(2) Pending final resolution of any investigation or complaint that could result in a determination under this subsection or subsection (d), the Secretary may withhold from the allocation of the affected State or local educational agency the amount estimated by the Secretary to be necessary to pay the cost of those services.

"(f) DETERMINATION. Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State or local educational agency to meet the requirements of subsections (a) and (b).

"(g) PAYMENT FROM STATE ALLOTMENT. When the Secretary arranges for services pursuant to this section, the Secretary shall, after consultation with the appropriate public and private school officials, pay the cost of such services, including the administrative costs of arranging for those services, from the appropriate allotment of the State under this chapter.

"(h) REVIEW. (1) The Secretary shall not take any final action under this section until the State educational agency and the local educational agency affected by such action have had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why that action should not be taken.

"(2) If a State or local educational agency is dissatisfied with the Secretary's final action after a proceeding under paragraph (1) of this subsection, it may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based this action, as provided in section 2112 of title 28, United States Code.

"(3) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(4) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(i) PRIOR DETERMINATION. Any bypass determination by the Secretary under a covered program in effect prior to the

effective date of this Act, shall remain in effect to the extent the Secretary determines that it is consistent with the purposes of this section.

"(j) REGULATIONS. The Secretary is authorized to regulate on matters covered in this section.

THIS SECTION MUST BE CHECKED CAREFULLY WITH REGARD TO WHETHER IT FITS WITH ALL OF THE NEW TITLE I PROVISIONS (STILL TO BE DRAFTED)

"PART D-BURDEN REDUCTION AND RESULTS<sup>A</sup> ORIENTED ADMINISTRATION  
REDUCING AUDIT BURDEN

"SEC. 8030 Notwithstanding any other provision of law, a local educational agency that receives funds under this Act and has an enrollment of ~~less~~<sup>fewer</sup> than 1,000 students for the most recent academic year ending prior to the date of enactment of this act shall not be subject to audit review under the Single Audit Act [with respect to such funds] more frequently than once every third calendar year. Such State or local educational agency having an enrollment of ~~less~~<sup>fewer</sup> than 2500 students for such academic year shall not be subject to such audit review more frequently than every other year. Nothing in this section shall be interpreted to alter the obligation of such agency to account for funds under this or any other Act for each fiscal year.

"STATE RECOGNITION OF EXEMPLARY PERFORMANCE

"SEC. 8031 (a) GENERAL AUTHORITY. (1) With the approval of the Secretary, and after consultation with local educational agencies in the State, a State educational agency may establish and carry out a program of making State recognition awards under one or more of the covered programs specified in section 8010 (a).

"(2) Such recognition awards shall be made by the State educational agency to local educational agencies and schools in the State participating in such programs that the State educational agency determines to have carried out grant-related activities in an exemplary fashion and to have demonstrated outstanding performance measured in accordance with this section. Such recognition awards may take the form of monetary or non-monetary awards, as determined by the State educational agency.

"(b) MONETARY AWARDS. A State desiring to make monetary awards under this section may, with the approval of the Secretary reserve a portion of the amount of its grant, not to exceed [one?] percent, for any fiscal year under the program to which the recognition awards relate, for a fiscal year to be used for making recognition awards to qualifying schools and local educational agency.

"(c) NON-MONETARY AWARDS. A State educational agency may make a recognition award under this section including in the form of a waiver of statutory or regulatory requirements under the Act.

- why? Shouldn't regulations or other requirements only be waived when they are impediments to success? If the grantee is already highly successful, ~~what's~~ why waive anything?

for a school or local educational agency that has been determined to be eligible for such award in accordance with subsection (a). Such waiver shall be made in accordance with regulations promulgated by the Secretary consistent with section 333 of the Act.

"(d) CONDITIONS. A State educational agency may make recognition awards under this section if --

"[(1) it has filed and had approved an application describing its program under this section consistent with the Act and its State improvement plan];

DO WE NEED THIS?

"(2) it has established performance goals or objectives for such schools and local educational agencies consistent with the State improvement plan, its voluntary standards, and the program in question;

"(3) in assessing performance, it will employ assessment methods established under the Goals 2000 Act

"[(4) in determining awardees, it takes into account improvements in performance rather than comparisons with other schools and school districts, and successful cooperative efforts among teachers, administrators, and other school personnel in achieving educational reform.];

*it takes into account? (I assume this is not wrong "rather than")*

"(5) it employs peer review procedures in identifying schools and local educational agencies eligible for awards, the identity of the awardees, and the amount of the awards, in accordance with regulations of the Secretary.

*awake.*

*it does peer review in identifying the identity?*

"(e) USE OF AWARDS. A school or local educational agency shall use monetary awards under this section for systemic reform activities, which may include technical assistance to other schools and local educational agencies that have not received awards.

#### PERFORMANCE REVIEW AND RESPONSES

"SEC. 8032 (a) (1) GOALS. Each State educational agency receiving funds under a covered program for a fiscal year shall, in consultation with local educational agencies in the State participating in such program, establish objective, measurable, outcome-based goals for subgrants made by it to local educational agencies under such program.

"(2) Such goals shall be directly related to the purposes of the program and shall be consistent with (A) standards established by the State under title III of the Goals 2000 Act; and (B) the National Educational Goals.

"(b) ASSESSMENT. A State educational agency shall <sup>once</sup> every third fiscal year, evaluate and report on the progress of each local educational agency receiving subgrants under the program in attaining such goals. Such evaluations shall be carried out in a manner that is consistent with the assessment methods established [certified] under the Goals 2000 Act. The State educational agency shall determine for each subgrant whether satisfactory progress toward attaining the goals has been

made.

"(c) SCHOOLS. A State educational agency shall ensure that local educational agencies in the State establish goals, consistent with the goals established by the State educational agency under subsection (a), for each school participating in a covered program and assess the progress of such schools in meeting such goals in a manner that is consistent with the methods established pursuant to subsection (b).

"(d) RESPONSES. (1) In any case where the State educational agency determines that a local educational agency is not making satisfactory progress toward meeting the goals established pursuant to subsection (a) over a period of time [not to exceed three fiscal years,] the State educational agency shall take such remedial steps as it deems appropriate. Such steps may include but are not limited to:

"(A) the provision of technical assistance;

"(B) the development and implementation of a program improvement plan;

"(C) holding funds in escrow pending the establishment of appropriate remediation steps by the local educational agency concerned;

"(D) the use of third-party contractors to provide services;

"(E) the withholding [or recovery] of funds; and

"(F) other steps designed to improve the performance of the local educational agency in addressing its goals and

enhancing the programs offered to its students.

"(2) A State educational agency shall ensure that local educational agencies <sup>that</sup> which have determined that individual schools participating in such programs have not made satisfactory progress toward meeting their goals take appropriate steps that are consistent with this section.

"(e) REPORTS. A State educational agency shall annually report to the Secretary regarding the steps it has taken in the administration of this section.

"(f) PROVISION REGARDING TITLE I. A State educational agency that satisfies the requirements of section \_\_\_\_\_ of this Act and a local educational agency that satisfies the requirements of section \_\_\_\_\_ of this Act shall be deemed to satisfy the requirements of this section [with respect to Title I of this Act].

#### "USE OF RECOVERED FUNDS

"SEC. 8033 Notwithstanding section 459 of the General Education Provisions Act, no less than fifty percent of the amount of a refund paid to the Secretary pursuant to such 452 of such Act with respect to a covered program shall be retained by the Secretary for obligation and expenditure, without regard to fiscal year, for the purposes of, and in accordance with, [part F of title IV] of this Act [substitute provision in revised ESEA authorizing FIE program]. Up to fifty percent of the refund paid

may be granted by the Secretary to the agency that returned the funds if it meets requirements set forth in regulations promulgated by the Secretary [consistent with section 459]."

SET-<sup>A</sup>SIDE FOR PEER REVIEW

"SEC. 8034 (a) GENERAL AUTHORITY. In order to provide for the ~~more~~ efficient and effective use of funds under this Act, the Secretary may reserve up to [.1 or .2 percent?] of the amount appropriated for any fiscal year for financial assistance under the programs authorized under this Act, to be used by the Secretary for the purposes set forth in subsection (b).

"(b) USES. Funds reserved under this section may be used by the Secretary for the purposes of peer review activities such as --

- (1) evaluation of competitive applications for grants under discretionary grant program authorized under this Act;
  - (2) review of single State applications submitted under section 8011 of this Act;
  - (3) evaluation of performance under such grants or plans;
- and
- (4) training of peer reviewers.

SET-<sup>A</sup>SIDE FOR APPLIED RESEARCH

"SEC. 8035 (a) GENERAL AUTHORITY. In order to provide for the most efficient and effective use of funds under this Act, the Secretary may reserve up to [.1 percent?] of the amount

appropriated for any fiscal year for financial assistance under the programs authorized under this Act to be used by the Secretary for the purposes set forth in subsection (b).

"(b) USES. Funds reserved under this section may be used by the Secretary for applied research and development, <sup>what's that?</sup> ~~establishing~~ <sup>carrying on</sup> experimental and demonstration projects, data collection, dissemination, and other related activities to further the purposes of this Act, such as --

(1) evaluations of, and research on, the effectiveness of covered programs or program requirements;

(2) arrangements for international studies or conferences on the effectiveness of these programs and programs serving similar populations;

(3) activities to improve the competitive process by which competitive grants are awarded; <sup>- what does this one mean?</sup>

(4) research on improving the quality of elementary and secondary education projects; and

(5) dissemination of the results of the applied research;

*lots of international high-level waste*

Provisions Deleted from this version

"INTERPRETATION OF NO SUPPLANT REQUIREMENT

["SEC. 331 No provision in this Act requiring a State or local educational to supplement and not supplant State, local or other non-Federal funds shall be interpreted to prohibit the use of funds under this Act to carry out systemic reform activities newly required under state or local law as described in section 320(f) or in regulations pursuant to this section."]

THIS PROVISION HAS BEEN DELETED BECAUSE IT DOES NOT ACCOMPLISH THE DESIRED RESULTS. ANY SUGGESTIONS TO NARROW ITS SCOPE TO ACCOMPLISH ITS PURPOSES WILL BE APPRECIATED.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF GENERAL COUNSEL

105 -  
DUE 7/11  
COB

JUL 7 1993

MEMORANDUM

TO: Legislative Services Officers

- Attn: Mr. Borches, OIG
- Mr. Ginsburg, OPP
- Mr. Hazzard, OMB/CFO
- Ms. Henderson, ODS
- Ms. Lim, OCR
- Mr. Johns, OVAE
- Ms. LeTendre, OESE
- Mr. March, OSERS
- Mr. Link, ES
- Mr. Logel, OBEMLA
- Mr. Hays, OERI
- Mr. Berger, OHRA
- Mr. Tinsman, OIIA
- Ms. Rairdin, OLCA
- Ms. Kirkgasler, OPE

Office of the General Counsel

- Attn: Mr. Rosenfelt
- Mr. Schatken
- Mr. Jenkins
- Ms. Craig
- Mr. Haubert
- Mr. Sky

RECEIVED  
MJB JUL -8 P 12:45  
BUDGET SERVICE

See comments  
on both and  
side-by-side.

T. Corwin  
7/19 - 9:30

*Jack Kristy*

FROM: Jack Kristy  
Assistant General Counsel for Legislation

SUBJECT: Amendments to the General Education Provisions Act  
(GEPA)

Attached for your review and comment is draft bill language (and section-by-section analysis) to amend GEPA in a variety of respects to update its terminology, rationalize its relationship with the Department of Education Organization Act, and, in certain respects (e.g. section 431 pertaining to regulations), improve Departmental operations and provide greater administrative flexibility. These amendments are likely to be submitted to Congress as part of the Department's proposal to reauthorize the Elementary and Secondary Education Act.

Please review the attached draft (Honest, it's interesting!) and forward your comments to me (Room 4093 FOB-6; 401-2670;

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-2110

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

PB3070802

FAX 401-3769) by COB Thursday, July 15. Thanks for your prompt cooperation.

Attachments

cc: Ms. Winston  
Mr. Winnick  
Mr. Smith  
Mr. Peterson  
Ms. Dozier  
Mr. Payzant  
Mr. Corwin