

6/25/93

Note to Jack Kristy

Attached are final specifications for Indian Education. They should now be suitable for drafting.

*Tom*  
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Attachment

cc: Mike Smith  
Mary Jean LeTendre  
Jon Wade

DRAFT SPECIFICATIONS FOR REAUTHORIZATION OF  
THE INDIAN EDUCATION ACT OF 1988  
(Part C of Title V of Public Law 100-297)

Structure of Reauthorized Act: The following Parts are to be included in the reauthorization proposal. In general, each program should have a separate section, with its own statement of purpose, authorized activities, and eligible recipients. Authorizations of appropriations, which should in each case be "such sums" for FY 1995 and the four succeeding years, should be put at the end in a general provisions section, so that the reader can find them easily.

Part 1 -- Formula Grants to Local Educational Agencies

Part 2 -- Discretionary Programs to Improve Educational Opportunities for Indian Children

- o Grants to Indian-Controlled Schools
- o Demonstration Grants

Part 3 -- Postsecondary and Adult Education Programs

- o Professional Development
- o Adult Education

Part 4 -- National Activities and State Grants

- o Research, Evaluation, Data Collection, and Technical Assistance
- o State Grants

Part 5 -- Program Administration

- o Office of Indian Education
- o National Advisory Council on Indian Education

Part 6 -- General Provisions

- o Definitions
- o Authorization of Appropriations

Subpart 1 -- Formula Grants to Local Educational Agencies

SECTION 5311. DECLARATION OF POLICY

Current Law -- The current section declares the policy to be one of supporting LEAs in their efforts to conduct elementary and secondary school programs designed to meet the "special educational and culturally related academic needs" of Indian students.

Proposed Amendments -- Move this section to the beginning of the bill and make it a statement of findings and purposes for the entire Act on the education of American Indians and Alaska Native children and adults. (The current Declaration of Policy refers only to Subpart 1.)

Begin with a section of findings that establishes the basis for all programs in the Act. Findings would include the following:

- o The Federal Government has a special responsibility to ensure that educational programs for all Indian children and adults: (1) are based on high-quality, internationally competitive content and performance standards; and (2) assist local educational agencies in providing Indian students with the opportunity to learn to those standards, so that the Nation can achieve the National Education Goals.
- o Since enactment of the original Indian Education Act in 1972, Indian parents have become significantly more involved in the planning, development, and implementation of educational programs that affect them and their children, and schools should continue to foster this involvement.
- o Although the numbers of Indian teachers, administrators, and university professors have increased since initial passage of the original Act, teacher training programs are not recruiting, training, and retraining sufficient numbers of Indians as educators to meet the needs of a growing Indian student population in elementary, secondary, and higher education settings.
- o From 1980 to 1990, the percentage of Indians living in poverty increased from 24 percent to 31 percent.
- o The readiness of Indian children to learn is hampered by a high incidence of health problems among Indian mothers, by Fetal Alcohol Syndrome, and by problems such as low birthweight.
- o Research related specifically to the education of Indian children and adults is very limited. Much of it is poor in quality or focuses on limited local or regional issues.

Conclude with a statement that it is the purpose of the Act to support the efforts of local educational agencies, Indian tribes and organizations, State educational agencies, and other entities to meet the unique educational needs of American Indians so that they can achieve to the high academic standards expected of all students. This support shall be carried out through programs of direct assistance for the education of Indian children and adults, training of Indians as educators, and projects in research, evaluation, data collection, and technical assistance.

## SECTION 5312. GRANTS TO LOCAL EDUCATIONAL AGENCIES

### SECTION 5312(a) IN GENERAL

Current Law -- The current section contains general language stating that the Secretary shall make grants to LEAs "which are entitled to payments."

Proposed Amendments -- This section should be changed to a "Purpose" section that summarizes the purpose of the LEA formula grant program.

1. The purpose would be to support LEAs in their efforts to reform elementary and secondary school programs serving Indian students in order to ensure that these programs are based on high-quality, internationally competitive content and performance standards and are designed to assist Indian students and the schools they attend in meeting the National Education Goals related to school readiness, high school completion, mastery of challenging academic subject matter, literacy, and safe, drug-free, and alcohol-free school environments.
2. In addition, delete the reference to LEAs that are "entitled" to payments and replace it with language that does not imply entitlement -- refer, for example, to LEAs "that are eligible for payments."

### Explanation --

1. Each program in the Act should begin with a statement of purpose. Although most of the proposed activities can be conducted under current law, the stated current purpose of the program is too broad. As a consequence, many current projects focus on remedial activities for which other programs are available and provide non-academic services rather than educational programs that could be of more benefit to Indian students.
2. The term "entitlement" is not appropriate for a program such as this one in which the Secretary has a certain

amount of discretion about whether to award grants and in which the amount of funding depends on the level of appropriations.

#### SECTION 5312(b) AMOUNT OF GRANTS

Current Law -- This section sets forth the eligibility factors and formula for LEA grants:

1. An LEA is eligible if the number of Indian children it enrolls is at least 10 or constitutes at least 50 percent of its total enrollment. (This requirement does not apply to an LEA that is located on or near an Indian reservation or that is in Alaska, California, or Oklahoma).
2. The amount of a grant to an LEA is determined by multiplying the number of Indian children in an LEA by the average per-pupil expenditure (PPE) in the LEA's State. Amounts are then ratably reduced according to the level of the appropriation.
3. Subject to certain provisions regarding appropriation levels, BIA schools are eligible.

#### Proposed Amendments --

1. An LEA would be eligible if the number of Indian children it enrolls is at least 20 or constitutes at least 25 percent of its total enrollment. This requirement would apply to all LEAs, with no exceptions.
2. Revise the formula so that the number of children is multiplied by either the State average PPE or 80 percent of the national average PPE, whichever is higher.
3. Delete the eligibility of BIA-operated schools, but retain the eligibility of BIA-contract schools (generally called tribal or Indian-controlled schools).
4. Institute a minimum grant level of \$4,000, below which an otherwise eligible LEA would not receive a grant, except that a grant could be awarded, at the Secretary's discretion, when an otherwise eligible LEA applies as part of a consortium of eligible LEAs that collectively meet the minimum grant requirement and the minimum child count requirement.

Explanation --

1. The eligibility provisions are very minimal and there is no apparent reason to lower the threshold for LEAs in certain States or located on or near reservations.
2. The PPE revision would ameliorate the current situation in which Indian students who live in poor States that have low per-pupil expenditures are penalized because their school districts receive significantly lower Federal per-pupil payments under the Act. At the same time, it would preserve a certain amount of reward or incentive for States that have a higher than average commitment to educational expenditures.
3. This amendment is consistent with a cross-cutting decision to terminate all ED grant programs to BIA-operated schools on the grounds that: (1) it is inappropriate for the Department of Education to award and monitor grants to another Federal agency; and (2) since BIA schools already receive funding directly from Congress based on a complex formula, it is inconsistent and potentially duplicative to provide additional funds under a different formula.
4. Currently, many LEAs receive very small grants -- too small, some believe, to permit those LEAs to mount effective programs. This approach would require small grantees to coordinate services with other neighboring local schools.

**SECTION 5312(c) GRANTS TO SCHOOLS THAT ARE NOT, OR HAVE NOT BEEN, LOCAL EDUCATIONAL AGENCIES**

Current Law -- This section authorizes an appropriation, not to exceed 10 percent of the appropriation for the formula program, for discretionary grants to schools on or near reservations that are not LEAs or have not been LEAs for longer than three years.

Proposed Amendments --

1. Move this section to Part 2. The authorization of appropriations should be independent of the LEA formula program; that is, delete the percentage set-aside and replace it, up front, with an authorization of "such sums" for FY 1995 and each of the following four fiscal years.
2. Delete eligibility of LEAs. Discretionary awards would be granted to Indian tribes and organizations, with a priority given to applicants that are starting new schools, including those in the process of gaining tribal control over a BIA-operated school. To gain the priority, the applicant must show that the school has been under

tribal control for fewer than three years at the beginning of the proposed project.

3. Clarify that the purpose of the grants, in addition to helping "schools get off the ground", is for supplemental services to assist schools in meeting the National Education Goals; that is: helping children become ready for school; increasing the high school graduation rate; and improving academic achievement in challenging subject matter, including English, mathematics, science, history, and geography, arts, and foreign languages. A goal of this program, as well as other programs authorized by this Act, is to enable Indian students to meet the same high standards that States will expect all students to meet.

Explanation --

1. Moving this discretionary program to Part 2 would place it with the other elementary and secondary discretionary programs.
2. Very few LEAs have applied under this program. This change would focus the program to tribes that now need this type of assistance for a limited time to get a school off the ground.
3. Schools that are currently receiving funds under this program receive basic support through tribal contracts with the BIA. Funds from this program should be used specifically to provide academic support to Indian students, in addition to the basic support that they are already receiving.

SECTION 5312(d) GRANTS FOR DEMONSTRATION PROJECTS

Current Law -- This section (which has never been funded) authorizes an appropriation of funds, not to exceed 10 percent of the appropriation for the LEA formula grant program, for discretionary grants to support demonstration programs in LEAs. The Secretary is to reserve a portion of the funds, not to exceed 25 percent, for grants in school districts with high concentrations of Indian children.

Proposed Amendments --

1. Delete the entire subsection.

Explanation --

1. There is no need for a separate authority for this demonstration program. The new Part 2 will contain a demonstration authority under which LEAs will be eligible.

## SECTION 5313. USES OF FEDERAL FUNDS

Current Law -- The section currently specifies allowable uses of funds under all three programs covered by the Subpart (LEA formula grants, non-LEA and LEA discretionary grants, and LEA demonstration grants).

Proposed Amendments -- Building on what is currently there (the specific references to minor remodeling, equipment, and drug counselor training may be retained), rewrite the section as an "authorized activities" section that would apply only to the LEA formula grant program. Stress that activities supported through IEA funds must be in addition to regularly supported activities and cannot be those that would have been carried out in the absence of these Federal funds. In addition, specify that:

1. LEAs must adopt academic content and performance goals for Indian children, as a condition of receiving IEA funds, and must report on their progress toward those goals; however, the goals should be based on challenging State or local standards (adopted, if applicable, under the Goals 2000 Act) that will apply to all children.
2. LEAs may combine Indian Education Act funds with other State, local, and Federal funds in Chapter 1 schoolwide projects -- provided that there are sufficient protections related to participation of Indian children and involvement of Indian parents as determined by the Secretary. (This amendment will need to be consistent with recommendations for the Chapter 1 program.)
3. The following authorized activities would be added: early childhood and family programs emphasizing school readiness, integrated educational services in combination with other programs meeting similar needs (Chapter 1, Special Education, Title VII, Math and Science, etc.), enrichment programs targeting problem-solving and cognitive skills development, vocational education, school-to-work transition activities, and substance abuse and Fetal Alcohol Effects Syndrome prevention and education programs.

Explanations --

1. This proposed amendment is consistent with the Department's Goals 2000 proposal. In addition, it would increase program accountability by requiring an LEA to report on progress made in order to receive IEA funds. In the past, this program has lacked accountability, aside from verification of 506 forms.
2. By allowing LEAs to combine Indian Education Act funds with other State, local, and Federal funds in Chapter 1 schoolwide projects, LEAs are able to administer resources more efficiently. This recommendation is consistent with all of ESEA.
3. This amendment specifies early childhood activities as authorized activities to allow preschool activities to take place whether or not individual State law permits these activities. Under current law, funds are used for preschool activities only if a State defines "elementary and secondary" to include preschool activities. (See the proposed amendment under Section 5351 amending the definition of "free public education".) This amendment should enable Indian Education Act programs to be more effective in helping to reach National Education Goal 1.

## SECTION 5314. APPLICATIONS FOR GRANTS; CONDITIONS FOR APPROVAL

## SECTION 5314(a). IN GENERAL

Current Law -- Subsection (a) contains a list of application contents that are required for all three programs currently authorized by the Subpart.

Proposed Amendments --

1. Make the section applicable only to the LEA formula program.
2. Each LEA will be required to have a comprehensive plan for its overall approach to the education of Indian students that explains how other Federal, State, and local programs are meeting the needs of Indian students, and how funds from the Indian Education Act grant will supplement State, local, and other Federal funds. The plan must demonstrate how the LEA's formula grant funds will be used to support the approved supplemental activities listed under Section 5313, Uses of Federal Funds. The plan must also describe whether and how the LEA will provide appropriate inservice training, as needed, to ensure that teachers who are new to the Indian community are prepared to work with Indian

children and to ensure that all teachers who will be involved in the project have been properly trained to carry out the project. Revise paragraph (4), related to evaluations, to specify that the application must provide the results of an evaluation (on the progress of Indian students in the LEA toward the academic goals set by the school district) to the parent committee and publicize them in the community. These evaluations would be conducted every three years and would cover all Indian students in the LEA's schools, whether or not they participate in the project funded through the Indian Education Act. Finally, an LEA would have to describe, in its next formula grant application, how it is responding to the findings.

3. Add a requirement that the LEA (but not BIA-contract schools) provide for State review, though not approval, of the LEA's application, and that the application contain comments, if any, by the State.
4. Delete the language on planning in paragraph (a)(3).

Explanation --

1. The purpose of the formula program is different enough from the purposes of the two discretionary programs currently in Subpart 1, that it makes sense for it to have a discrete set of application requirements.
2. The formula grant program currently contains few provisions to ensure accountability for results, and little is known about the educational status of the children it serves. Requirements for a comprehensive plan, performance goals, and an evaluation conducted every three years and presented to the Indian community, will help to ensure better accountability. The annual reports currently required of grantees, when received, are not really used by the Department. This proposed amendment provides a more meaningful way to hold grantees accountable and to involve the Indian community.

The planning requirement related to teacher training should ensure that LEAs take into account training needs, including the needs of teachers who are new to the Indian community and may need particularly intensive inservice training, in developing their Indian education programs.

3. State review of LEA applications would further the goal of encouraging more State involvement in, and responsibility for, the education of Indians, and may promote coordination of services.

4. The provisions on use of funds for planning are too detailed and restrictive. Appropriate planning activities can be beneficial to a project; if there is a need to restrict the use of funds for planning, it can be handled through regulations.

#### SECTION 5314(d) ELIGIBILITY FORMS

Current Law -- This subsection outlines provisions governing the student eligibility form that is filled out for the LEA formula grant program by each Indian child's parents. Paragraph (1) states that the LEA is required to have a form for each child it counts toward its formula allocation. Paragraph (2) prescribes the minimum information that the Secretary must request on the form, including information needed to provide an accurate program profile. The data elements track the elements of the definition of "Indian" in the Act and refer to the "tribe, band, or other organized group of Indians with which the child claims membership". Paragraph (3) stipulates that nothing on the form is to be construed as modifying the statutory definition of "Indian", and lists the minimum information that must be on the form in order for a child to be counted. Paragraph (4) directs that the only form and standards of proof of eligibility that may be used are those that were in use during the 1985-86 academic year. Paragraph (5) stipulates that the Department may not require tribal enrollment numbers as proof of eligibility.

Proposed Amendments -- Make some clarifying amendments. For example, in paragraph (2)(A), subparagraphs (i) and (ii) could probably be combined; and paragraph (4) could probably be deleted as unnecessary, in view of other restrictions in the section.

Amend the definition of "Indian" in Section 5351(4) to delete the reference to "other organized groups" and make corresponding changes in Section 5314(d).

Explanation -- The clarifying amendments simplify this section without making significant changes that could threaten the eligibility of currently eligible groups. NACIE and the NIEA both recommend deletion of the term "other organized groups." The definition in the current law puts the Department in the position of determining whether we are truly serving Indian students as opposed to those who are simply claiming membership in an outside group in order to generate additional funding. The proposed definition satisfies congressional intent that the Department serve terminated and State-recognized Indian children, as well as federally recognized Indian children, and would remain a broader definition than that used by the BIA. The deletion of the term "other organized groups" conforms with the recommended change under Subpart 5, Section 5351.

## SECTION 5314(e) AUDITING; PENALTIES FOR FALSE INFORMATION

Current Law -- This subsection, among other things: (1) requires the Department to conduct a so-called "rolling audit" of the LEA formula grants (not less than one-fourth of the grantees each year) and to submit a report to Congress on the audit findings; (2) prohibits an LEA that provides false information on an application under the subpart from applying for any other grants under the subpart and makes the LEA liable for any unexpended grant funds; and (3) stipulates that a student who provides false information on the student eligibility form may not be counted in determining the amount of a formula grant.

Proposed Amendment -- Delete the entire subsection.

Explanation -- The so-called "audits" have, in fact, been conducted as part of regular program monitoring responsibilities by staff of the Office of Indian Education. However, it is inappropriate for the statute to mandate program administration responsibilities at this level of detail -- for example, by specifying the number of "audits" that must be conducted each year. The audits have been used primarily as a way for program staff to ensure that LEAs maintain proper documentation of student eligibility forms, a function that does not require this statutory mandate. Furthermore, the annual reports to Congress that are required under this section have been submitted years late and have not been very useful in conveying compliance information. The emphasis in the statute should be on assessment and monitoring to ensure educational benefits.

## SECTION 5315. PAYMENTS

## SECTION 5315(a) IN GENERAL

Current Law -- Subsection (a) provides that the Secretary will make periodic payments to grantees under the LEA formula grant program.

Proposed Amendment -- Delete.

Explanation -- The paragraph appears to be unnecessary.

## SECTION 5315(b) DENIAL OF PAYMENTS IF PAYMENTS TAKEN INTO ACCOUNT BY STATE

Current Law -- Subsection (b) provides that an LEA may not receive payments under this program if the LEA's State has taken

the LEA's Indian Education Act formula grant funds into account in determining eligibility for State aid.

Proposed Amendment -- No changes needed.

#### SECTION 5315(c) REDUCTION FOR FAILURE TO MAINTAIN FISCAL EFFORT

Current Law -- This subsection sets out the maintenance of effort requirements as well as the conditions under which the Secretary may waive the requirements.

Proposed Amendment -- No specific amendment proposed. The maintenance of effort requirement and the waiver provisions are sufficiently flexible. However, maintenance of effort provisions should be consistent throughout the programs contained in the reauthorization bill.

#### Subpart 2 -- Special Programs and Projects to Improve Educational Opportunities for Indian Children

#### SECTION 5321. IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES FOR INDIAN CHILDREN

Proposed amendment -- The Grants to Indian-Controlled Schools program would be authorized under Part 2. See page 5 for a description of the proposed amendments and explanations.

#### SECTION 5321(a) IN GENERAL

Current Law -- Subsection (a) summarizes the four separate discretionary programs authorized in Section 5321.

Proposed amendment -- Delete.

Explanation -- Unnecessary.

#### SECTION 5321(b) DEMONSTRATION PROJECTS and 5321(c) SERVICES AND PROGRAMS TO IMPROVE EDUCATIONAL OPPORTUNITIES

Current Law -- These two sections authorize programs of discretionary grants to improve educational programs for Indian children. In general, the eligible applicants and the activities carried out are the same, except that one program supports "planning, pilot, and demonstration" projects and the other supports "educational services and exemplary" projects.

Proposed Amendments -- Change the title of Part 2 to Discretionary Programs to Improve Educational Opportunities for Indian Children. Combine these two programs into one grant authority, with the following features:

- o The purpose of the program would be to support projects designed to develop, test, and demonstrate the effectiveness of services and programs for improving educational opportunities for Indian children.
- o Eligible applicants would be SEAs, LEAs, and Indian tribes, organizations, and institutions. BIA-operated schools would no longer be eligible (consistent with our overall policy on those schools). Language referring to "consortia" would be deleted from the legislation as it is unnecessary.
- o Recipients of grants would be required to participate, at the request of the Secretary, in any national evaluation of projects. The Secretary would be authorized to select educational areas or approaches in which projects would be carried out.
- o Allowable types of projects would include:
  - Coordination of the operation of Federal, State, local, and tribal education and education-related services for Indian children.
  - Instruction to raise the achievement of Indian children in the seven core curriculum areas (English, mathematics, science, foreign languages, arts, history, and geography), including assessment and reporting of progress.
  - Programs designed to reduce the incidence of students dropping out of school and increase the rate of high school graduation among Indian students.
  - Partnership projects between high schools and institutions of higher education that allow high school students to enroll in courses at the college/university level to aid in the transition from high school to postsecondary education. (For these projects, LEAs would apply jointly with IHEs).
  - Partnership projects between schools and local businesses for work-study or apprenticeship-type study programs to reduce absenteeism, increase the rate of high school graduation, and aid in lowering the school dropout rate among Indian students.

- Family-based preschool programs emphasizing school readiness and parenting skills, based on the Even Start model.
  - Programs designed to encourage and assist Indian students to work toward and gain entrance into institutions of higher education.
  - Programs to meet the needs of gifted and talented Indian students.
- o Applications would include provision for the involvement of parents and tribal representatives.

The authority in Section 5321(c)(2), for special projects to encourage postsecondary enrollment or discourage dropping out, would not be retained.

Explanation -- There is very little difference between the current demonstration and educational services authorities. The amended legislation would combine the two activities and emphasize new priorities and current needs. Putting all of the funding into one authority and broadening the eligible applicants will increase the quality of projects funded under this program. The partnership projects listed under allowable activities would encourage involvement of local businesses and institutions of higher education in local areas.

SECTION 5321(d) TRAINING  
SECTION 5322. SPECIAL EDUCATIONAL TRAINING PROGRAMS  
FOR THE TEACHERS OF INDIAN CHILDREN

Current Law -- Both of these sections authorize discretionary grant programs to train educational personnel.

- o Under both sections, priority is given, among other things, to Indian applicants and programs with only Indian participants. Projects may be either pre-service or in-service, and training may be at either the undergraduate or graduate level.
- o Under Section 5321(d), eligible applicants are institutions of higher education (IHEs) and State and local educational agencies in combination with IHEs.
- o Under Section 5322, eligible applicants are IHEs, Indian tribes, and Indian organizations. However, because preference in selecting grantees is given to Indian tribes and organizations, IHEs (unless they are tribal colleges) do not receive grants.

Proposed Amendments -- Delete these two authorities, along with the Fellowship authority, and move them into the new Part 3, Postsecondary and Adult Education Programs. (See Part 3 for a description of this new Part.)

Explanation -- Combining the three authorities (EPD - Sections 5321(d) and 5322, plus the Fellowship program) will result in a clearer, simplified statute.

#### SECTION 5321(e) GRANTS FOR EVALUATION AND TECHNICAL ASSISTANCE

Current Law -- This subsection authorizes:

- o The establishment of regional centers to evaluate Indian education programs, provide technical assistance to grantees and parent committees, and disseminate information on Federal education programs that affect the education of Indian children and adults.
- o National dissemination of information on educational programs, services, and resources available to Indian children.
- o The evaluation of federally assisted programs in which Indian children may participate.

Proposed amendments -- Replace this section with a new discretionary authority for research, evaluation, data collection, and technical assistance. This program, as well as the new Grants to States program, would be placed under Part 4, National Activities and State Grants.

- o The purpose of the section would be to give the Secretary authority, directly or through grants, contracts, or cooperative agreements, to:
  - Conduct research related to effective approaches in the education of Indian children or adults.
  - Evaluate federally assisted education programs from which Indian children or adults may benefit.
  - Collect and analyze data on the educational status and needs of Indians.
  - Provide assistance to LEAs, SEAs, IHEs, and Indian tribes and organizations related to education programs for Indians through multi-disciplinary Indian Education resource centers. Authorize the Secretary to establish resource centers focusing on such areas as teacher training, adult education, preschool education, math and science, or Indian culture and

language preservation, or such other areas as the Secretary deems appropriate. Note that this proposal may be amended, depending on the decision on the cross-cutting technical assistance reauthorization issue.

- o Eligible applicants would be Indian tribes, Indian organizations, SEAs, institutions of higher education, and other public and private agencies and institutions.

Explanation -- These amendments would give the Department urgently needed authority to conduct research, evaluation, and data collection activities under the Indian Education Act. They would also provide the Secretary with authority to replace the current Technical Assistance Centers with new Centers focusing on content, methodology, and assessment rather than application completion, needs assessments, and other process-oriented activities.

#### SECTION 5321(f) APPLICATIONS FOR GRANTS

Current Law -- This subsection applies to the programs in Subpart 2 and contains general application requirements and provisions related to: (1) evaluations; (2) parental and tribal participation; (3) equitable participation of private school children; (4) priority for applications from Indian educational agencies, organizations, and institutions; and (5) supplement/not supplant.

Proposed Amendments and Explanations -- General application requirements should be retained only if needed in the statute. If they can be left to regulation, do not include them. Specific requirements should be placed only with the programs to which they apply. Of the requirements in this subsection:

- o Evaluations should be required for all projects.
- o Parental participation should be required, as should tribal participation when appropriate.
- o The requirement for equitable participation of private school children should be deleted for these discretionary grant programs, since it is inappropriate and has never been enforced.
- o The general provision giving priority to applications from Indian groups should be deleted.
- o The "supplement/not supplant" provision is not appropriate for programs authorized by this Part and should be deleted from this section.

## SECTION 5323. FELLOWSHIPS FOR INDIAN STUDENTS

Current Law

- o The Secretary is authorized to award fellowships to Indian students for courses of study that do not to exceed more than four academic years.
- o A student's course of study must lead toward a postbaccalaureate degree in medicine, clinical psychology, psychology, law, education, or a related field or to an undergraduate or graduate degree in engineering, business administration, natural resources, or a related field.

Proposed Amendments

1. Delete the Fellowship authority (5323(a) - 5323(e)).

Explanation

1. Fellowships would be awarded under the "Professional Development" program. (See next page.)

## SECTION 5324. GIFTED AND TALENTED

Current Law -- The section authorizes a gifted and talented program consisting of: (1) the establishment of two centers at tribally controlled community colleges; (2) a demonstration grant program under which funds also are to be awarded to two tribally controlled community colleges; and (3) a program under which grants are to be awarded to five BIA schools for research and development.

Proposed Amendment -- Delete the entire section.

Explanation -- Programs for gifted and talented students can be supported with funds from: (1) the LEA formula grant program; (2) the discretionary grant programs authorized under Part 2 for elementary and secondary students; and (3) the "non-LEA" program currently authorized under Section 5312(c). There is no need for a separate authority, particularly one so restrictive.

Subpart 3 -- Special Programs Relating to Adult Education  
for Indians

SECTION 5330. IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES  
FOR ADULT INDIANS

Current Law -- Subpart 3 authorizes several adult education activities, including demonstration projects, research and development, surveys, evaluations, dissemination, and educational services projects.

Proposed Amendments --

- o Change the title of Subpart 3 to Postsecondary and Adult Education Programs.
- o In general, delete the multiple program authorities and authorize one professional development program and one demonstration program in adult education (literacy and high school equivalency).

For the Professional Development Program:

- o The purpose would be to increase the number of qualified Indians in professions serving Indian students.
- o For allowable activities, projects could be at either the undergraduate or graduate levels, but all preservice training would have to be geared toward meeting State certification standards in particular fields (e.g., elementary education, mathematics teaching, science teaching, school administration, guidance and counseling, bilingual education) and/or result in a terminal degree (e.g., B.A., M.S., Ph.D.). Fifty percent or more of available funding would be designated for preservice and inservice training of educational personnel and the remaining fifty percent would be available for other fields of study.
- o Eligible applicants would be made up of two categories of recipients: (1) institutions of higher education, and applications from an SEA or LEA in consortium with an institution of higher education; and (2) Indian tribes, Indian organizations, and applications from an Indian tribe or organization in consortium with an institution of higher education. The Secretary could hold competitions that would restrict the types of projects funded (for example, to in-service training, graduate training, or training for particular types of teacher) and could run

competitions for which only Indian tribes and organizations would be eligible. We would not, however, be required to give priority to Indian tribes and organizations in competitions for which other entities are also eligible.

- o Individuals would receive assistance for up to 5 years.
- o Add a service requirement that participants agree, upon completion of their training, to work in the Indian community for a year for each year of training. Failure to do so would make the participant liable for payback. The kind of work that would satisfy this requirement is work directly related to the education of Indian children or adults -- for example, a classroom teacher in a school on a reservation or instructor in an adult education program that serves Indians. This service requirement would only apply to recipients in programs aimed at attainment of credentials or a degree.

For the Adult Education program:

- o Eligible applicants should be Indian tribes, institutions, and organizations.
- o Require coordination with other adult education projects in the geographic area to be served -- in particular, those administered by tribes with funds from the Bureau of Indian Affairs and those administered by States with funds from the Adult Education Act.
- o Incorporate the following provisions from the Adult Education Act -- the statement of purpose and definitions of "adult" and "adult education" (found in Sections 311 and 312 of the AEA).
- o Require data collection, evaluation, and reporting in such areas as the number of participants, the effect of the program on the subsequent work experience of graduates, progress of the participants in achieving literacy, and the number of participants that pass high school equivalency examinations.
- o Recipients of grants would be required to participate, at the request of the Secretary, in any national evaluation of demonstration projects. The Secretary would be authorized to select educational areas or approaches in which demonstrations would be carried out.

Explanation --

- o Combining the three authorities (EPD - Sections 5321(d) and 5322 and the Fellowship program) will result in a clearer, simplified statute. However, the Secretary would still have the option of establishing priorities that can produce the same kind of diversity in program grants that is possible under the current authorities.
- o Moving the EPD and Fellowship authorities to Part 3 and changing the title to Postsecondary and Adult Education. Programs would clearly delineate the differences between the discretionary programs for elementary and secondary students under Part 2 and activities designed for Indian adults, namely professional development and adult education under Part 3.
- o Merging the Fellowship program into EPDs would allow fellowship-type activities to continue but would: (1) simplify program administration by permitting the Department to make grants to institutions rather than directly to students; and (2) enable funds to go to institutions that had a true commitment to the program. The change would also broaden the fields of study eligible for support.
- o Other activities currently authorized -- surveys, research, evaluation, dissemination -- can be carried out under the proposed new Part 4.

Part 4 -- National Activities and State GrantsNEW PROGRAM -- STATE GRANTS

Proposed Provision -- Add an authority under the new Part 4 for a program of grants to States as an incentive for States to have a comprehensive, statewide education plan that includes strategies for providing Indian children and adults with greater opportunities to learn to high academic standards. State authority would be restricted to public schools (LEAs). Currently, States have no role in Indian Education Act programs.

- o Eligible applicants would be States or, as designated by the Governor, State Departments of Education.
- o The amount of each State's grant would be determined by the Secretary based on the number of Indian children and adults in the State (as determined by the most recently available data from the U.S. Bureau of the Census), the complexity and comprehensiveness of the State's plan,

evidence of State commitment to quality education programs for Indians, and other factors the Secretary may establish by regulation. However, the amount of any State's grant would not be less than \$50,000 or 5 percent of the aggregate of the amounts paid to LEAs in the State through the formula program, whichever is greater.

- o To be eligible, a State would have to have an approved State plan under the Goals 2000 Act that includes adequate provision for the education of Indian children and adults. Alternatively, for the first year only, States could use funds under this program to develop the Indian education portion of that plan.
- o State could use funds for expenses associated with the new requirement that they review LEA applications; data collection; technical assistance to LEAs; inservice training for teachers in schools serving Indian children; measurement of Indian student achievement against the benchmarks set forth in the Goals 2000 State plan; and other activities and services designed to build the capacity of the State to serve the educational needs of Indians.
- o Each State receiving a grant would submit an annual report to the Secretary containing data and information as specified by the Secretary in regulations.

Explanation -- This change would provide, for the first time, a role for States in the LEA portion of the program and should facilitate the State's ability to ensure that Indian children are adequately provided for in comprehensive State and local plans. Funding for States would also facilitate implementation of the proposed requirement that LEAs obtain State review of their formula grant applications.

#### Subpart 4 -- Program Administration

#### SECTION 5341. OFFICE OF INDIAN EDUCATION

Current Law -- This Section:

- o Establishes an Office of Indian Education (OIE) within the Office of Elementary and Secondary Education (OESE).
- o Provides that the Secretary selects the Director of OIE from a list of nominees submitted by the National Advisory Council on Indian Education.

- o Provides that the Director, in addition to administering OIE, is responsible for: (1) developing policies affecting Indians under OESE programs; and (2) coordinating development of policy and practices for all Department programs related to Indians.
- o Requires that preference be given to Indians in hiring and promotions for OIE.
- o Requires that a one-time preference be given to non-Indians in OIE who wish to move to positions in other offices.

Proposed Amendment -- Reauthorize as Part 5 -- Program Administration.

- o Delete the provision giving one-time preference to non-Indians.
- o Delete the provision that the Secretary pick the Director of the Office of Indian Education from a list submitted by the National Advisory Council on Indian Education. (See amendment under Section 5342).

Explanations --

- o Five years after establishment of Indian preference for OIE, the preference to non-Indians wishing to leave the office will no longer be needed.
- o See explanation 2 under the following Section 5342. This amendment conforms to proposed changes under the Section below.

SECTION 5342. NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

Current Law -- This Section establishes a National Advisory Council, with members appointed by the President. The Council:

- o Advises the Secretary about administration of any program from which Indian children or adults can benefit;
- o Reviews applications and makes recommendations to the Secretary about their selection;
- o Evaluates programs;
- o Provides technical assistance to LEAs and tribal groups;
- o Assists in developing regulations;

- o Submits a list of nominees for Director whenever a vacancy occurs; and
- o Submits an annual report to Congress.

Proposed Amendments --

1. Delete requirement for the Council to review applications and make recommendations about their selection.
2. In place of the requirement for NACIE to submit to the Secretary a list of nominees for the position of Director of the Office of Indian Education, mandate the Council to make recommendations to the Secretary for the position of Director.

Explanation --

1. The Council has recommended that it be relieved of this responsibility, since it is not feasible for Council members to review the numerous applications that are submitted. The Council recommended that, instead, its role be one of oversight and monitoring of the application process. No amendment to the statute is required to authorize this kind of role.
2. The Secretary is currently required to select the Director of the Office of Indian Education from a list of nominees submitted by NACIE. This requirement has contributed to delays in selecting Directors and infringes on the Secretary's authority. The proposed amendment will make the selection process easier to administer and will increase the Secretary's discretion. NACIE would still be called on to make recommendations, but the Secretary would not have to restrict selection to one of NACIE's recommended candidates.

SECTION 5343. AUTHORIZATION OF APPROPRIATIONS.

Proposed Amendment -- Authorize the appropriation of "such sums" for FY 1995 and each of the succeeding four fiscal years for the Office of Indian Education and the National Advisory Council on Indian Education.

Subpart 5 -- Miscellaneous

Current Law -- Section 5351 contains definitions. Section 5352 repeals provisions of other laws.

Proposed Amendments and Explanation -- Rename this subpart as Part 6, General Provisions. Delete Section 5352, which is no longer needed. In Section 5351:

- o Amend the definitions of "adult and "adult education" to make them consistent with those definitions in the Adult Education Act. The Department should have consistent definitions for similar programs. In addition, the AEA's definition of "adult education" is broader and offers more flexibility.
- o Amend the definition of "free public education" in 5351(3) to include preschool education. Currently, under the formula grant program, grants are made to LEAs that provide a "free public education". LEAs are able to use their formula grant funds for preschool projects to the extent that "elementary" is defined to include preschool activities under State law. Individual State laws vary in their definition of "elementary" - some States include preschool and kindergarten and some do not. In the past, grantees who have submitted formula grant applications have not been allowed to use grant funds for preschool activities due to the limited scope of some State laws. This amendment would target funds to a population that clearly could benefit from early intervention activities.
- o Delete the term "other organized group", a term that is used in the definition of "Indian". Under current law, a person may qualify as an Indian under the Act if he or she (or a parent or grandparent) is a member of a tribe or "other organized group of Indians." Ever since the definition of "other organized group" was removed from the regulations (in the interest of deregulation), many have considered the term to be too loose because it may allow persons who claim "membership" in questionable groups to be counted.
- o In the definition of "local educational agency", delete the provision that incorporates, for the purpose of formula grants, schools operated by the Bureau of Indian Affairs. The Department has decided to eliminate eligibility of BIA schools for this and other Department programs. However, retain the eligibility of BIA contract schools.
- o Delete Section 5351(B)(i)(I). This particular provision defines the term "local educational agency" for purposes of the formula grant program as including tribes and tribally sanctioned organizations that "provide its students an educational program that meets the standards

established by the Secretary of the Interior". This provision has never been implemented and is irrelevant.

#### INDIAN PREFERENCE IN GRANTS AND CONTRACTS

Awards under the Indian Education Act are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (P.L. 93-638). That section requires that grantees, in connection with administering their grants, give preference to Indians for training and employment and to Indian organizations in awarding contracts. However, for the purposes of this requirement, the definition of Indian includes only federally recognized Indians (that is, the same eligibility factors as used by the BIA), rather than the broader definition contained in the Indian Education Act. OGC suggests adopting our own preference provisions, tied to the Indian Education Act's definition, and making the Self-Determination Act inapplicable.



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE GENERAL COUNSEL

Tom FYI  
Patsy

July 26, 1993

NOTE TO: Sandra Spaulding, OESE/OIE  
Tom Corwin, M&B/CFO  
Patsy Mathews, M&B/CFO  
Lisa Gorove, M&B/CFO  
Nancy Loy, OPP

SUBJECT: Indian Education Reauthorization

Attached, for your review, is a clean draft of the legislative language to reauthorize the Indian education programs that:  
(1) incorporates the language that we agreed to at Friday's meeting, as well as my attempts to improve some of it; and  
(2) marginal notes pointing out important issues and other items that I think the Under Secretary should see. I'd like to send this to him tomorrow, so please give me your comments by noon tomorrow.

I'm in Room 4093 and can be reached at 401-2670; fax: 401-3769.

Thanks.

*Paul R*

Paul Riddle

7/27/93 - 4:20 PM

Attachment

cc: Jack Kristy

*Paul -*

*Sorry I'm 4 hrs + 20 min late.*

*Patsy*

"TITLE VI--INDIAN EDUCATION

"SHORT TITLE

"SEC. 6001. This title may be cited as the 'Indian Education Act'.

"FINDINGS AND PURPOSE

"SEC. 6002. (a) FINDINGS. The Congress finds that--

"(1) the Federal Government has a special responsibility to ensure that educational programs for all Indian children and adults--

"(A) build on Indian culture and the Indian community, and are based on high-quality, internationally competitive content and student performance standards; and

"(B) assist local educational agencies, Indian tribes, and others in providing Indian students the opportunity to learn to those standards;

"(2) since enactment of the original Indian Education Act in 1972, Indian parents have become significantly more involved in the planning, development, and implementation of educational programs that affect them and their children, and schools should continue to foster this involvement;

"(3) although the numbers of Indian teachers, administrators, and university professors have increased since 1972, teacher training programs are not recruiting, training, or retraining sufficient numbers of Indian persons as educators to meet the needs of a growing Indian student population in elementary, secondary, and higher education;

\*

\*\*

\* Accommodates Under Secretary's comment  
\*\* Added to address Bill Demmert's comment on BIA-operated and BIA-supported schools

1           "(4) the dropout rate for Indian students is  
2           unacceptably high; for example, <sup>9</sup>~~nine~~ percent of Indian students  
3           who were 8th graders in 1988 had already dropped out of school by  
4           1990;

5           "(5) from 1980 to 1990, the percentage of Indian  
6           persons living in poverty increased from 24 percent to  
7           31 percent, and the readiness of Indian children to learn is  
8           hampered by the high incidence of poverty, unemployment, and  
9           health problems among Indian children and families; and

10           "(6) research related specifically to the education of  
11           Indian children and adults is very limited, and much of it is  
12           poor in quality or focused on limited local or regional issues.

13           "(b) PURPOSE.--(1) It is the purpose of this title to  
14           support the efforts of local educational agencies, Indian tribes  
15           and organizations, State educational agencies, postsecondary  
16           institutions, and other entities to meet the unique educational  
17           needs of American Indians and Alaska Natives, so that they can  
18           achieve to the high academic standards expected of all students.

19           "(2) This title carries out this purpose by authorizing  
20           programs of direct assistance for--

21           "(A) the education of Indian children and adults;

22           "(B) the training of Indian persons as educators  
23           and in other professions serving Indian people; and

24           "(C) research, evaluation, data collection, and  
25           technical assistance.

"PART A--FORMULA GRANTS TO LOCAL EDUCATIONAL AGENCIES

"PURPOSE

"SEC. 6101. It is the purpose of this part to support local educational agencies in their efforts to reform elementary and secondary school programs that serve Indian students, in order to ensure that those programs--

"(1) are based on high-quality, internationally competitive content and student performance standards; and

"(2) are designed to assist Indian students and the schools they attend in meeting the National Education Goals.

"GRANTS TO LOCAL EDUCATIONAL AGENCIES

"SEC. 6102. A local educational agency is eligible for a grant under this part for any fiscal year if the number of Indian children who were enrolled in the schools of the agency, and to whom the agency provided free public education, during the preceding fiscal year--

"(1) was at least 20; or

"(2) constituted at least 25 percent of the agency's total enrollment.

"AMOUNT OF GRANTS

"SEC. 6103. (a) AMOUNT OF GRANTS. From the sums appropriated under section 6602(a) for any fiscal year, the Secretary shall allocate to each local educational agency with an application approved under this part an amount that bears the same ratio to such sums as the product of--

\* Major issue remains: Should we continue to provide formula grants to BIA-operated schools? The final specifications say "no". See, also, p. 26

1           "(1) the number of Indian children described in  
section 6102; and

3           "(2) the greater of--

4                   "(A) the average per-pupil expenditure of the  
5 State in which the agency is located; or

6                   "(B) 80 percent of the average per-pupil  
7 expenditure in the United States,  
8 bears to the total of such products for all such local  
9 educational agencies.

10           "(b) MINIMUM GRANT AMOUNT. The Secretary shall not make any  
11 grant to a local educational agency if the amount determined  
12 under subsection (a) is less than \$4,000, except that the  
13 Secretary may make a grant to a consortium of local educational  
agencies, one or more of which does not qualify for such a  
minimum award, if--

16                   "(1) the total amount so determined for such agencies  
17 is at least \$4,000; <sup>those (?)</sup>

18                   "(2) such agencies, <sup>those (?)</sup> in the aggregate, meet the  
19 eligibility requirement of either section 6102(1) or 6102(2); and

20                   "(3) the Secretary determines that such a grant would  
21 be effectively used to carry out the purpose of this part.

22           "(c) DEFINITION. For the purpose of this section, the  
23 average per-pupil expenditure of a State is determined by  
24 dividing--

25                   "(1) the aggregate current expenditures of all the  
26 local educational agencies in the State, plus any direct current

\* The '1115 STATE on cross-cutting issues does not address the computation of APPE.

1 expenditures by the State for the operation of such agencies,  
2 without regard to the sources of funds from which such local or  
3 State expenditures were made, during the second fiscal year  
4 preceding the fiscal year for which the computation is made; by

5 "(2) the aggregate number of children who were in  
6 average daily attendance for whom such agencies provided free  
7 public education during such preceding fiscal year.

8 [This subsection may not be needed unless we want to use data  
9 from a different fiscal year (2nd preceding as opposed to 3rd  
10 preceding) than is used elsewhere in the ESEA.] \*

11 "APPLICATIONS

12 "SEC. 6104. (a) GENERAL. Any local educational agency that  
13 desires to receive a grant under this part shall submit an  
14 application to the Secretary at such time, in such manner, and  
15 containing such information as the Secretary may require.

16 "(b) COMPREHENSIVE PLAN REQUIRED. Each [such] application  
17 shall include a comprehensive plan for meeting the needs of  
18 Indian children in the local educational agency, including their  
19 language and cultural needs, that-- \*

20 "(1) includes academic content and student performance  
21 goals for those children, and benchmarks for attaining them, that  
22 are based on the challenging State or local standards, if any,  
23 adopted under title III of the Goals 2000: Educate America Act  
24 for all children;

25 "(2) explains how Federal, State, and local programs,  
26 especially under title I of this Act, will meet the needs of  
27 those students;

\* Accommodates general comment of Under Secretary.

1 "(3) demonstrates how funds under this part will be  
used for activities authorized by section 6106;

3 "(4) describes the professional development to be  
4 provided, as needed, to ensure that--

5 "(A) teachers and other school professionals who  
6 are new to the Indian community are prepared to work with Indian  
7 children; and

8 "(B) all teachers who will be involved in the  
9 project have been properly trained to carry it out; and

10 "(5) describes how the agency--

11 "(A) will periodically assess the progress of all  
12 Indian children in its schools, including those not participating  
13 in programs under this part, in meeting the goals described in  
14 paragraph (1);

15 "(B) will provide the results of that assessment  
16 to the parent committee described in subsection (c)(8) and to the  
17 community served by the agency; and

18 "(C) is responding to findings of any previous  
19 such assessments.

20 "(c) ASSURANCES. Each such application shall also include  
21 assurances that--

22 "(1) the local educational agency will use funds  
23 received under this part only to supplement the level of funds  
24 that, in the absence of such Federal funds, the agency would make  
25 available for the education of Indian children, and not to  
26 supplant such funds;

1           "(2) the local educational agency will submit such  
2 reports to the Secretary in such form and containing such  
3 information as the Secretary may require to--

4           "(A) carry out the Secretary's functions under  
5 this part; and

6           "(B) determine the extent to which funds provided  
7 under this part have been effective in improving the educational  
8 achievement of Indian students in the local educational agency;

9           "(3) the program for which assistance is sought will  
10 use the best available talents and resources, including persons  
11 from the Indian community;

12           "(4) the local educational agency has developed the  
13 program in open consultation with parents of Indian children,  
14 teachers, and, where appropriate, secondary school Indian  
15 students, including holding public hearings at which these  
16 persons have had a full opportunity to understand the program and  
17 to offer recommendations on it;

18           "(5) the local educational agency has developed the  
19 program with the participation and written approval of a  
20 committee--

21           "(A) that is composed of, and selected by, parents  
22 of Indian children in the local educational agency's schools,  
23 teachers, and, where appropriate, secondary school Indian  
24 students; and

25           "(B) of which at least half the members are  
26 parents described in subparagraph (A); and

1                   "(6) the parent committee described in paragraph (5) | Why is  
2 will adopt and abide by reasonable bylaws for the conduct of the | this  
3 activities of the committee. | needed

4                   "(d) STATE EDUCATIONAL AGENCY REVIEW.--(1) Before submitting  
5 its application to the Secretary, the local educational agency  
6 shall obtain comments on the application from the State  
7 educational agency.

8                   "(2) The local educational agency shall send the State  
9 educational agency's comments to the Secretary with its  
10 application.

11                   "(e) APPLICATION PERIOD.--(1) The Secretary may--

12                                   "(A) set the period to be covered by applications  
13 under this part at up to three years; and

14                                   "(B) provide for the submission of such  
15 applications on a staggered basis.

16                   "(2) In any year for which a local educational agency  
17 is not submitting a complete application, it shall submit to the  
18 Secretary--

19                                   "(A) the number of Indian children described in  
20 section 6102; and

21                                   "(B) any significant changes to its application,  
22 including its comprehensive plan described in subsection (b),  
23 from the previous year.

24 Note: Subsection (e) responds to the Under Secretary's comments.  
25 We could, however, leave this to program regulations and/or  
26 §430(a) of GEPA, which provides that,

27  
28                   Notwithstanding any other provision of law, unless  
29 expressly in limitation of the provisions of this section,

1 the [Secretary] is authorized to provide for the submission  
of applications for assistance effective for three fiscal  
2 years under any applicable program with whatever amendments  
3 to such applications being required as the [Secretary]  
4 determines essential.

5  
6  
7 In addition, this program is currently subject to the EDGAR  
8 provision (34 CFR 75.250), which allows the Secretary to make  
9 "direct grants" of up to 60 months. This topic may also be  
10 addressed in revisions to Title VIII [cross-cutting provisions].

11 "AUTHORIZED SERVICES AND ACTIVITIES

12 "SEC. 6105. (a) GENERAL REQUIREMENTS. Each local  
13 educational agency that receives a grant under this part shall  
14 use the grant funds for services and activities, consistent with  
15 the purpose of this part, that--

16 "(1) are designed to carry out its comprehensive plan \*  
17 for Indian students, described in its application under  
section 6104(b);

18 "(2) are designed with special regard for the language \*  
19 and cultural needs of those students; and

20 "(3) supplement the regular school program.

21  
22 "(b) PARTICULAR ACTIVITIES. [Such] services and activities  
23 include, but are not limited to--

24 "(1) early childhood and family programs that emphasize  
25 school readiness;

26 "(2) enrichment programs that focus on problem-solving  
27 and cognitive skills development and that directly support the  
28 attainment of challenging State content and student performance  
29 standards;

\* Accommodates Bill Demmert's comment, without making  
this a separate authorized activity under subsection (b).

1           "(3) integrated educational services in combination  
with other programs meeting similar needs;

3           "(4) school-to-work transition activities to enable  
4 Indian students to participate in programs such as those  
5 supported by the [insert name of Administration's school-to-work  
6 transition bill] and the Carl D. Perkins Vocational and Applied  
7 Technology Education Act, including tech-prep programs;

8           "(5) prevention of, and education about, substance  
9 abuse; and

10           "(6) acquisition of equipment, but only if it is  
11 essential to meet the purpose of this part.

12           "(c) CHAPTER 1 SCHOOLWIDE PROJECTS. Notwithstanding any \*  
13 other provision of this part, a local educational agency may use  
14 funds it receives under this part to support a schoolwide project  
15 under section 1015 of title I of this Act, in accordance with  
16 such section, if the Secretary determines that the local  
17 educational agency has made adequate provision for the  
18 participation of Indian children, and the involvement of Indian  
19 parents, in such project.

20                           "STUDENT ELIGIBILITY FORMS

21           "SEC. 6106. Each local educational agency that applies for  
22 a grant under this part shall maintain in its files a form,  
23 prescribed by the Secretary, for each Indian child described in  
24 section 6102, which shall contain at least--

25           "(1) the child's name;

\* May not need to retain here,<sup>10</sup> depending on what is said  
in §1015 and in the "cross-cutting" provisions.

\* Retained from current law; may not be needed if comparable provision is added to "cross-cutting" provisions.

1           "(2) the name of the Indian tribe or band of Indians in  
which membership is claimed; and

3           "(3) the parent's signature.

4                               "PAYMENTS

5           "SEC. 6107. (a) GENERAL. The Secretary shall pay each local  
6 educational agency with an application approved under this part  
7 the amount determined under section 6103, subject to  
8 subsections (b) and (c) of this section.

9           "(b) PAYMENTS TAKEN INTO ACCOUNT BY THE STATE. The \*  
10 Secretary shall not make a grant under this part for any fiscal  
11 year to any local educational agency in a State that has taken  
12 into consideration payments under this part (or under subpart 1  
13 of the Indian Education Act of 1988) in determining the  
eligibility of the local educational agency for State aid, or the  
14 amount of that aid, with respect to the free public education of  
15 children during that year or the preceding fiscal year.

16           "(c) REDUCTION OF PAYMENT FOR FAILURE TO MAINTAIN FISCAL \*\*  
17 EFFORT.--(1) The Secretary shall not pay any local educational  
18 agency the full amount determined under section 6103 for any  
19 fiscal year unless the State educational agency notifies the  
20 Secretary, and the Secretary determines, that the combined fiscal  
21 effort of that local agency and the State with respect to the  
22 provision of free public education by that local agency for the  
23 preceding fiscal year, computed on either a per-student or  
24 aggregate expenditure basis, was at least 90 percent of such  
25

\* Retained from current law; <sup>11</sup> may not be needed if comparable provision is included in "cross-cutting" provisions. The 7/15 draft, however, would not apply to this program, and uses a higher (95%) standard

1 combined fiscal effort, computed on the same basis, for the  
2 second preceding fiscal year.

3           "(2) If the Secretary determines for any fiscal year  
4 that a local educational agency failed to maintain its fiscal  
5 effort at the 90 percent level required by paragraph (1), the  
6 Secretary shall--

7           "(A) reduce the amount of the grant that would  
8 otherwise be made to the agency under this subpart in the exact  
9 proportion of that agency's failure to maintain its fiscal effort  
10 at that level; and

11           "(B) not use the reduced amount of the agency's  
12 expenditures for the preceding year to determine compliance with  
13 paragraph (1) for any succeeding fiscal year, but shall use the  
14 amount of expenditures that would have been required to comply  
15 with paragraph (1).

16           "(3) (A) The Secretary may waive the requirement of  
17 paragraph (1), for not more than one year at a time, if the  
18 Secretary determines that the failure to comply with such  
19 requirement is due to exceptional or uncontrollable  
20 circumstances, such as a natural disaster or a precipitous and  
21 unforeseen decline in the agency's financial resources.

22           "(B) The Secretary shall not use the reduced  
23 amount of such agency's expenditures for the fiscal year  
24 preceding the fiscal year for which a waiver is granted to  
25 determine compliance with paragraph (1) for any succeeding fiscal  
26 year, but shall use the amount of expenditures that would have

1 been required to comply with paragraph (1) in the absence of the  
2 waiver.

3 [Need to make sure that, to the extent sensible to do so, the  
4 maintenance of effort and other fiscal requirements are  
5 consistent throughout the entire revised ESEA, including this  
6 title.]

7 "(d) REALLOCATIONS. The Secretary may reallocate, in the  
8 manner the Secretary determines will best carry out the purpose  
9 of this part, any amounts that--

10 "(1) based on estimates by local educational agencies  
11 or other information, will not be needed by those agencies to  
12 carry out their approved projects under this part; or

13 "(2) otherwise become available for reallocation under  
14 this part.

"PART B--DISCRETIONARY PROGRAMS TO IMPROVE  
EDUCATIONAL ACHIEVEMENT OF INDIAN CHILDREN

17 "GRANTS TO INDIAN-CONTROLLED SCHOOLS

18 "SEC. 6201. (a) PURPOSE. It is the purpose of this section  
19 to support Indian-controlled schools by providing assistance to--

20 "(1) help Indian-controlled schools get started and  
21 established; and

22 "(2) pay for supplemental services that will--

23 "(A) enable Indian students to meet the same high  
24 standards that all students will be expected to meet; and

25 "(B) assist the Nation in reaching the National  
26 Education Goals.

1 "(b) ELIGIBLE APPLICANTS. Indian tribes and Indian  
organizations may apply under this section for grants for schools  
for Indian children.

4 "(c) PRIORITY.--(1) In making grants under this section, the  
5 Secretary shall give priority to applicants that are starting new  
6 schools, including those in the process of gaining control over a  
7 school operated by the Bureau of Indian Affairs.

8 "(2) To qualify for the priority under paragraph (1),  
9 an applicant must demonstrate to the Secretary's satisfaction  
10 that the school for which assistance is sought will have been  
11 under the control of the applicant for less than three years as  
12 of the beginning of its proposed project. *and find it has a reasonable  
plan for carrying out*

13 "(d) AUTHORIZED ACTIVITIES. Recipients of grants under this  
14 section shall use grant funds to carry out projects and  
activities that meet the purpose of this section.

16 "DEMONSTRATION GRANTS

17 "SEC. 6202. (a) PURPOSE. It is the purpose of this section  
18 to support projects that are designed to develop, test, and  
19 demonstrate the effectiveness of services and programs to improve  
20 educational achievement of Indian children.

21 "(b) ELIGIBLE APPLICANTS. [State educational agencies, local  
22 educational agencies, Indian tribes, Indian organizations, and  
23 institutions of higher education, including Indian institutions  
24 of higher education, may apply for grants under this section.

25 "(c) AUTHORIZED PROJECTS AND ACTIVITIES. Recipients of  
26 grants under this section shall use the grant funds to carry out

*This is very  
troublesome  
There is  
nothing  
here  
to ensure  
that  
schools  
with  
no other  
source  
of  
support  
will  
come in  
& then  
be  
totally  
deficient  
in funds  
under  
this  
act*

*Approved to  
include the  
institutions  
mentioned  
wait get decided*

1 projects and activities that meet the purpose of this section,  
such as--

3 "(1) instruction to raise the achievement of Indian  
4 children in one or more of the core curriculum areas of English,  
5 mathematics, science, foreign languages, arts, history, and  
6 geography;

7 "(2) programs designed to reduce the incidence of  
8 students dropping out of school and to increase the rate of high  
9 school graduation;

10 "(3) partnership projects between local educational  
11 agencies and institutions of higher education that allow high  
12 school students to enroll in courses at the postsecondary level  
13 to aid them in the transition from high school to postsecondary  
14 education;

15 "(4) partnership projects between schools and local <sup>businesses</sup> ~~work study or~~ apprenticeship programs <sup>to reduce</sup>  
16 ~~absenteeism, increase the rate of high school graduation, and~~  
17 ~~reduce the dropout rate among Indian students;~~

18 "(5) family-based preschool programs that emphasize  
19 school readiness and parenting skills;

20 "(6) programs designed to encourage and assist Indian  
21 students to work toward, and gain entrance into, institutions of  
22 higher education; and  
23

24 "(7) programs to meet the needs of gifted and talented  
25 Indian students.

*school-to-work transition programs designed to provide Indian youth with the knowledge and skills necessary to make an effective transition from school to a first job*

*These are by products but not the end goal of school-to-work programs*

*in a high skill high-wage career.*

1           "(d) APPLICATIONS.--(1) Any eligible entity that desires to  
2 receive a grant under this section shall submit an application to  
3 the Secretary at such time and in such manner as the Secretary  
4 may require.

5           "(2) Each such application shall contain--

6           "(A) a description of how parents of Indian  
7 children and representatives of Indian tribes have been, and will  
8 be, involved in developing and implementing the project for which  
9 assistance is sought;

10           "(B) an assurance that the applicant will  
11 participate, at the request of the Secretary, in any national  
12 evaluation of projects under this section; and

13           "(C) such other assurances and information as the  
14 Secretary may require.

15           "PART C--PROFESSIONAL DEVELOPMENT AND ADULT EDUCATION PROGRAMS

16           "PROFESSIONAL DEVELOPMENT

17           "SEC. 6301. (a) PURPOSE. The purpose of this section is to  
18 increase the number of qualified Indian persons in professions  
19 serving Indian people.

20           "(b) ELIGIBLE APPLICANTS. Eligible applicants under this  
21 section are--

22           "(1) institutions of higher education, including Indian  
23 institutions of higher education;

24           "(2) State and local educational agencies, in  
25 consortium with institutions of higher education; and



1 benefits and responsibilities of effective citizenship and  
2 productive employment by supporting projects that--

3 "(1) provide them sufficient high-quality education to  
4 enable them to benefit from job training and retraining programs  
5 and to obtain and retain productive employment; and

6 "(2) enable Indian adults who so desire to continue  
7 their education through the high school level and beyond.

8 "(b) ELIGIBLE APPLICANTS. Indian tribes, Indian  
9 organizations, Indian institutions of higher education, [and other  
10 public and nonprofit private agencies and organizations] may apply *silly*  
11 for grants under this section.

12 "(c) PROGRAM REQUIREMENTS. Each recipient of a grant under  
13 this section shall--

14 "(1) provide adult education, as defined in  
15 section 6601(2), to Indian adults in a manner that supplements  
16 ~~and does not supplant~~ State funds expended for adult education  
17 for Indian adults;

18 "(2) coordinate its project with other adult education  
19 programs, if any, in the same geographic area, including programs  
20 funded under the Adult Education Act and programs operated or  
21 funded by the Bureau of Indian Affairs;

22 "(3) collect, evaluate, and report on data concerning  
23 such matters as the Secretary may require, including the number  
24 of participants, the effect of the project on the subsequent work  
25 experience of participants, the progress of participants in

*How can these  
grants guarantee  
what's  
done with  
State  
funds?*

*We  
need  
parallel  
language  
in AEA*

1 achieving literacy, and the number of participants who pass high  
2 school equivalency examinations; and

3 "(4) participate, at the request of the Secretary, in  
4 any national evaluation of the program authorized by this  
5 section.

6 "PART D--NATIONAL ACTIVITIES AND GRANTS TO STATES

7 "NATIONAL ACTIVITIES

8 "SEC. 6401. (a) AUTHORIZED ACTIVITIES. From funds  
9 appropriated for any fiscal year to carry out this section, the  
10 Secretary may--

11 "(1) conduct research related to effective approaches  
12 to the education of Indian children and adults;

"(2) evaluate federally assisted education programs  
from which Indian children and adults may benefit;

15 "(3) collect and analyze data on the educational status  
16 and needs of Indians;

17 "(4) support the development and evaluation of  
18 prototypical centers for students and professional development to  
19 meet the purpose of this title; and

20 "(5) support multi-disciplinary Indian education  
21 resource centers to provide technical assistance to local  
22 educational agencies, State educational agencies, institutions of  
23 higher education, including Indian institutions of higher  
24 education, Indian tribes, and Indian organizations in areas the  
25 Secretary finds appropriate, such as--

*not necessary  
no it?  
if it is -  
it ought to  
all go to  
under programs  
Act, not  
Prose.*

]\*

\* From the Under Secretary. 19 It's not very clear to staff  
what's envisioned or how it relates to paragraph (5).  
Ret'd for sub.

*Should there be a list of Indian tribes?*

- "(A) teacher training;
- "(B) adult education;
- "(C) preschool education;
- "(D) mathematics and science; and
- "(E) the use of Indian culture and languages.

[May need to revisit paragraph (5) pending overall ESEA plan for technical assistance.] *when will we know this*

"(b) ELIGIBILITY. The Secretary may carry out any of the activities described in subsection (a) directly or through grants to, or contracts or cooperative agreements with, Indian tribes, Indian organizations, State educational agencies, local educational agencies, institutions of higher education, including Indian institutions of higher education, and other public and private agencies and institutions.

"GRANTS TO STATES

"SEC. 6402. (a) PURPOSE. The purpose of this section is to assist States <sup>in</sup> implement <sup>ing</sup> comprehensive, Statewide strategies for providing Indian children and adults with greater opportunities to learn to high academic standards...

"(b) ELIGIBILITY. Each State is eligible for a grant under this section if it has a State plan approved under title III of the Goals 2000: Educate America Act that, in the Secretary's judgment, includes adequate provisions for the education of Indian children and adults.

*Should there be a list of Indian tribes at a plan that would meet approval of the books zero? No*

(c) GRANT AMOUNTS.--(1) From funds appropriated to carry out this section, the Secretary shall make a grant to each State

\*Section is revised to clarify that we won't be paying for the development of these strategies, just their implementation; see subsection (d) & pp. 21-22.

1 educational agency in an eligible State whose application for  
assistance under this section has been approved.

2 "(2) (A) The Secretary shall determine the amount of  
3 each such grant on the basis of--

4 "(i) the number of Indian individuals in the  
5 State, as determined on the basis of the most recent available  
6 data satisfactory to the Secretary;

7 "(ii) the comprehensiveness and quality of  
8 the State's plan;

9 "(iii) the State's commitment to high-quality  
10 education programs for Indian children and adults; and

11 "(iv) other factors that the Secretary finds  
12 appropriate.  
13

14 "(B) Notwithstanding subparagraph (A), no grant  
15 under this section shall be in an amount less than the greater  
16 of--

17 "(i) \$50,000; or

18 "(ii) five percent of the total amount paid  
19 to local educational agencies in the State for that fiscal year  
20 under part A of this Act.

21 "(d) AUTHORIZED ACTIVITIES. Each State that receives a  
22 grant under this section shall use the grant funds for activities  
23 to meet the purpose of this section, including--

24 "(1) reviewing local educational agency applications  
25 under part A of this title;

26 "(2) collecting data;

1 "(3) providing technical assistance to local  
2 educational agencies;

3 "(4) providing in-service training to teachers in  
4 schools serving Indian students;

5 "(5) measuring the achievement of Indian students  
6 against the benchmarks set out in the State's plan, if any, under  
7 title III of the Goals 2000: Educate America Act; and

8 "(6) carrying out other activities and providing <sup>ing</sup> other  
9 services designed to build the capacity of the State to serve the  
10 educational needs of Indian children and adults.

11 "(e) Each State that desires to receive a grant under this  
12 section shall submit an application to the Secretary at such  
13 time, in such manner, and containing such information and  
14 assurances as the Secretary may require, including an assurance  
15 that the State will submit to the Secretary, every two years, a  
16 report on its activities under this section containing such data  
17 and other information as the Secretary may require.

18 "PART E--PROGRAM ADMINISTRATION

19 "OFFICE OF INDIAN EDUCATION

20 "SEC. 6501. (a) OFFICE OF INDIAN EDUCATION. There shall be  
21 an Office of Indian Education (hereafter in this section referred  
22 to as "the Office") in the Department of Education.

23 "(b) DIRECTOR.--(1) The Office shall be under the direction  
24 of the Director, who shall be appointed by the Secretary and who

*Wanted to  
make  
provision  
in case  
there is  
(No  
Goals 2000?)*

1 shall report directly to the Assistant Secretary for Elementary  
and Secondary Education.

*Why would we let the Dept of Ed take care of this? If it were a danger to the kids or the kids will be someone else's to take care of?*

2 "(2) The Director shall--

3 "(A) be responsible for administering this title;

4 "(B) be involved in, and be primarily responsible  
5 for, the development of all policies affecting Indian children  
6 and adults under programs administered by the Office of  
7 Elementary and Secondary Education; and

8 "(C) coordinate the development of policy and  
9 practice for all programs in the Department relating to Indian  
10 persons.

11 "(3) The Director of the Office shall be a member of  
12 the career Senior Executive Service.

13 "(c) INDIAN PREFERENCE IN EMPLOYMENT.--(1) The Secretary  
14 shall give a preference to Indian persons in all personnel  
15 actions in the Office.

16 "(2) Such preference shall be implemented in the same  
17 fashion as the preference given to any veteran under  
18 sections 2108(3)(A), (B), or (C) of title 5, United States Code.  
19 [need to confirm this cite]

20 "NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

21 "SEC. 6502. (a) MEMBERSHIP. There shall be a National  
22 Advisory Council on Indian Education (hereafter in this section  
23 referred to as "the Council"), which shall--  
24

"(1) consist of 15 Indian members, who shall be appointed by the President from lists of nominees furnished, from time to time, by Indian tribes and organizations; and

"(2) represent different geographic areas of the country.

"(b) DUTIES. The Council shall--

"(1) advise the Secretary on the funding and administration, including the development of regulations and of administrative policies and practices, of any program, including programs under this title, for which the Secretary is responsible and in which Indian children or adults participate or from which they can benefit;

"(2) make recommendations to the Secretary for filling the Director's position whenever a vacancy occurs in that position; and

"(3) submit to the Congress, by June 30 of each year, a report on its activities, which shall include--

"(A) any recommendations it finds appropriate for the improvement of Federal education programs in which Indian children or adults participate, or from which they can benefit;

and

"(B) its recommendations with respect to the funding of any such programs.

#### "PEER REVIEW

"SEC. 6504. In reviewing applications under parts B and C of this title, the Secretary may use a peer review process.

\* New section to accommodate Under Secretary's general comments

1 "PREFERENCE FOR INDIAN APPLICANTS

2 "SEC. 6505. In making grants under parts B and C of this  
3 title, the Secretary shall give a preference to Indian tribes,  
4 Indian organizations, and Indian institutions of higher education  
5 under any program for which they eligible to apply.

6 "MINIMUM GRANT CRITERIA

7 "SEC. 6506. In making grants under parts B and C of this  
8 title, the Secretary shall approve only projects that are--

9 "(1) of sufficient size, scope, and quality to achieve  
10 the purpose of the section under which assistance is sought; and

11 "(2) based on relevant research findings.

12 "PART F--DEFINITIONS; AUTHORIZATIONS OF APPROPRIATIONS

"DEFINITIONS

13 "SEC. 6601. The following definitions apply to terms as  
14 used in this part:

15 "(1) The term 'adult' means an individual who is  
16 either--

17 "(A) at least 16 years old; or

18 "(B) beyond the age of compulsory school  
19 attendance under State law.

20 "(2) The term 'adult education' has the meaning given  
21 that term in section 312(2) of the Adult Education Act.

22 "(3) The term 'free public education' means education  
23 that is--  
24

\*  
This seems  
(1) unnecessary  
(2) something  
that, if  
it would be  
should be  
used in  
Other ESEA  
Programs  
But not  
just for  
this  
program.

\* New section to accommodate Bill Dornert comment.

"(A) provided at public expense, under public supervision and direction, and without tuition charge; and

"(B) provided as elementary or secondary education in the applicable State or to preschool children.

"(4) The term 'Indian' means an individual who is--

"(A) a member of an Indian tribe or band, as membership is defined by the tribe or band, including--

"(i) tribes and bands terminated since 1940; and

"(ii) tribes and bands recognized by the State in which they reside;

"(B) a descendant, in the first or second degree, of an individual described in subparagraph (A);

"(C) considered by the Secretary of the Interior to be an Indian for any purpose; or

"(D) an Eskimo, Aleut, or other Alaska Native.

"(5) The term 'local educational agency'--

"(A) has the meaning given that term in [whatever the overall ESEA cite is; currently §1471(12)]; and

"(B) also includes, solely for the purpose of part A of this title (except for sections 6104(c)(5) [parent committee], 6104(d) [SEA review of LEA applications], and 6107(c) [maintenance of effort]), any Indian tribe, or an organization controlled or sanctioned by an Indian tribal government, that operates a school for the children of that tribe under a contract with, or grant from, the Department of the Interior under the

major issue: Whether to retain eligibility of BIA-operated schools for the LEA formula grant program. [See p. 3.]  
The current statute includes them through the definition of "LEA".

~~W/ 6  
B needed!~~

\*

1 Indian Self-Determination Act (25 U.S.C. 450f et seq.) or the  
2 Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.).

3 "AUTHORIZATIONS OF APPROPRIATIONS

4 "SEC. 6602. (a) PART A. For the purpose of carrying out  
5 part A of this title, there are authorized to be appropriated  
6 such sums as may be necessary for each of the fiscal years 1995  
7 through 1999.

8 "(b) PARTS B THROUGH D. For the purpose of carrying out  
9 parts B, C, and D of this title, there are authorized to be  
10 appropriated such sums as may be necessary for each of the fiscal  
11 years 1995 through 1999.

12 "(c) PART E. For the purpose of carrying out part E of this  
13 title, including section 6502 [NACIE], there are authorized to be  
14 appropriated such sums as may be necessary for each of the fiscal  
15 years 1995 through 1999.

\* \* \* \* \*

The technical and conforming amendments below would be included  
with other such amendments for the entire bill. Page references  
are to Volume II of the compilation.

1 REPEAL; TECHNICAL AMENDMENTS RELATING TO THE INDIAN EDUCATION ACT

2 SEC. \_\_\_\_ (a) The Indian Education Act of 1988 is repealed.

3 (b) Section 1128(c)(3) of the Education Amendments of 1978

4 (25 U.S.C. 2008(c)(3)) [p. 430] is amended--

\* Staff prefer 3 authorizations, rather than 1, to: (1) be able  
to determine the amount available for formula grants,  
and (2) avoid arguments with <sup>27</sup> NACIE over the amount  
available to it. This separation also comports with  
current (and long-standing) appropriations practice.

\*  
But if it  
were  
all  
grouped  
together  
here as  
Mike  
Went -  
could  
The  
Appropriations  
still  
be for  
specific  
parts  
It's hard  
to see what  
this  
accomplishes

3 (1) in subparagraph (A)(i), by striking out "(as  
4 determined pursuant to section 5324 of the Indian Education Act  
5 of 1988)"; and

6 (B) in subparagraph (B) [need to track down the years  
7 in question and revise (i) or all of (B) or all of (3),  
8 accordingly].

9 (c) Section 209 of the Indian Education Assistance Act  
10 (25 U.S.C. 458e) [p. 406] is amended by striking out "title IV  
11 of the Act of June 23, 1972 (86 Stat. 235)" and inserting in lieu  
12 thereof "the Indian Education Act".

13 (d) Section 5(a) of the Act of April 16, 1934, commonly  
14 known as the "Johnson-O'Malley Act" (25 U.S.C. 456(a)), is  
15 amended by striking out "section 305(b)(2)(B)(ii) of the Act of  
16 June 23, 1972 (86 Stat. 235)" and inserting in lieu thereof  
17 "section 6104(c)(8) of the Indian Education Act".

18 (e) Section 103(2) of the Native American Languages Act  
19 (25 U.S.C. 2902(2)) is amended by striking out "section 5351(4)  
20 of the Indian Education Act of 1988 (25 U.S.C. 2651(4))" and  
21 inserting in lieu thereof "section 6601(4) of the Indian  
22 Education Act". [This Act cross-references our definition of  
23 "Indian", but uses the Self-Determination Act's definitions of  
"Indian tribe" and "tribal organization". That seems odd and may  
merit further tinkering at some point.]

\* \* \* \* \*

## DISTRIBUTION FORMULA

The Administration's proposal would replace the current payment provisions with a simpler and more equitable formula for **Basic Support Payments** on behalf of federally connected children who both live on Federal property and whose parents work on Federal property or are in the uniformed services, as well as children living on Indian lands.

o The new formula would consider only three factors: (1) the number of federally connected children served by a local school district; (2) the cost of educating those children, as measured by the State's average per-pupil expenditure; and (3) the average share of revenues for education provided from local sources in each State.

o These three factors would be multiplied together to determine the maximum Basic Support Payment a district could receive. If annual appropriations were insufficient to pay this full amount, all payments would be ratably reduced.

o The formula would attach a slightly greater weight (125 percent) to children living on Indian lands, in order to recognize districts' extra transportation and other costs incurred in educating these children.

o No payments would be authorized for children who either live on or whose parents work on Federal property, commonly referred to as "b" children.

o The eligibility threshold in current law would be eliminated, so that a district that currently receives payments on behalf of "a" children would continue to receive payments, even though it may rely on "b" children to reach the current eligibility threshold.

## PAYMENTS FOR CHILDREN WITH DISABILITIES

Under the current statute, certain federally connected children eligible for services under the Individuals with Disabilities Education Act are eligible to be counted for supplemental funding under Impact Aid. Such children generate an additional 50 percent of the local contribution rate, which must be spent on supplemental services for those children. This 50 percent supplemental payment is paid in full off the top of the appropriation, without consideration for the amount of the appropriation, while all other payments are ratably reduced if appropriations are insufficient to pay full entitlement. Consequently, as "full entitlement" has increased (with the national cost of education) but appropriations have remained relatively constant in recent years, the cost of the supplemental payments for children with disabilities has gradually increased as a percent of the total section 3 program, diverting funds from regular payments for other federally connected students.

- o The Administration's proposal would provide separate categorical supplemental assistance for federally connected children with disabilities, funded through a separate line item.
- o The payments would take into consideration the percentage of educational costs provided from local resources, as would the Basic Support Payment formula.
- o A separate line item for these payments would allow the Congress to clearly determine how much is needed for this purpose.

#### SUBSTANTIAL INCREASES IN MILITARY DEPENDENT ENROLLMENTS

A basic assumption of the Impact Aid program is that the Federal Government has a responsibility to assist local school districts with the costs of educating the children of our armed forces. During the military draw-down, school districts serving certain military bases will be enrolling increasing numbers of these military dependents. Because of the limited availability of on-base housing, the vast majority of these families will live in the local community; virtually all of these new enrollments would therefore be excluded from regular Impact Aid payments.

- o The Administration's proposal would authorize supplemental assistance to LEAs that experience sudden and substantial increases in federally connected children due to a base consolidation, whether or not these children live on Federal property.
- o A one-time payment of up to \$200 would be provided to an LEA that meets a threshold requirement, for each new military dependent enrolled in the schools.
- o School districts would provide a certification from the base commander that the increase is due to military transfers.
- o Available funds would be paid on a pro-rata basis to school districts that apply for assistance.
- o This new authority would provide immediate relief for LEAs that are suddenly burdened by substantial increases in military enrollments and must hire additional teachers.

#### REVISED EQUALIZATION STANDARD

Under current law, Impact Aid payments to LEAs are considered supplementary general financial assistance and cannot be taken into account by States in calculating the level of State aid for each local district. The only exception is provided by section 5(d)(2), which allows States that have education funding formulas "designed to equalize expenditures for free public education" to reduce

assistance to LEAs by a specific proportion of the Impact Aid payments to those LEAs.

Currently, the Department implements section 5(d)(2) by allowing three separate standards for the measurement of a State's equalization program: the "disparity" standard, which examines expenditures or revenue per pupil; the "wealth neutrality" standard, which examines the percentage of a school district's revenue that is dependent on property wealth; and the "exceptional circumstances" standard, which is used only if the previous two standards are inappropriate. The process of determining which States qualify under this provision has been very cumbersome and has led to protracted litigation with some States.

- o The Administration's proposal would allow only the use of the disparity standard to determine whether a State is equalized.
- o After meeting a threshold of 75 percent disparity, States would be allowed to take deductions for Impact Aid in inverse proportion to the degree to which a State is equalized.
- o Determinations would be based on data from the second preceding year; no deductions could be taken prospectively.

#### ELIMINATION OF SECTION 2 PAYMENTS

Section 2 of P.L. 81-874 provides payments to any school district in which the Federal Government has acquired, since 1938, a considerable portion (at least 10 percent) of the assessed value of real property and, in so doing, has imposed a substantial and continuing financial burden on the district because of the removal of that property from the district's tax base. Section 2 is currently funded at approximately \$17 million, a small fraction of the total Impact Aid program. However, the exceptional complexity and inequity of the distribution of these payments casts doubt on the viability of this program.

- o The Administration's proposal would eliminate section 2 payments in order to focus available resources on Basic Support Payments, which would provide directly for the education of federally connected children.

- o The fundamental inequity in the section 2 program stems from the statutory designation of 1938 as the eligibility cut-off date. Federal property acquired after that year is eligible for compensation, while property acquired earlier is ineligible for consideration. This results in a select group of approximately 270 school districts that are eligible for section 2 assistance.

- o Eligible districts are no different from many others that were once similarly affected by Federal acquisition of real property. In

most instances the Federal property was acquired more than 30 years ago; local communities have had ample time to adjust to the loss of tax base and develop alternative revenue sources.

o The program currently is receiving only a few new section 2 applications each year and these applications are usually based on Federal property acquired years ago.

o Some Federal agencies make annual payments in lieu of taxes (PILOT) to local governments for Federal property over which the agency has jurisdiction (e.g., Departments of Agriculture and Energy). The agency responsible for the Federal property is in the best position to determine the economic impact the property brings to a given community and the level of continuing Federal compensation that should be provided. Elimination of Section 2 payments would eliminate the current duplication in Federal payments for federally owned property within a school district.

#### PAYMENTS FOR CAPITAL IMPROVEMENTS

The current construction program is a morass of overlapping program authorities, confusing eligibility requirements, and cumbersome administrative procedures. The authorized funding level is far outstripped by applications for assistance; current priority lists for sections 5 and 14 include hundreds of unfunded construction applications totalling \$200 million in originally estimated need, while annual appropriations have provided only enough for two or three new construction projects a year. A recent review of applicants on our priority lists confirmed the continuing need for facilities and an ongoing Federal impact in applicant districts. Some qualifying applicants still report need after having been on the priority lists since 1967. The current approach does almost nothing to address these hundreds of districts' need for construction assistance.

o The Administration's proposal would distribute funds for capital improvements on a per-capita basis to LEAs with 20 percent or more federally connected students.

o Providing capital improvement funding on an equal, annual per-pupil basis would allow eligible LEAs to accumulate and manage their own capital funds and meet their highest-priority capital improvement needs (including small-scale renovations and repairs instead of new construction) within current budget constraints.

o School districts could save for several years (or contribute substantial State and local funding) to amass sufficient funds to undertake major construction projects. Any interest accrued on the Federal contribution would also be used for capital improvements.

5/11/93

Note to Jack Kristy

Attached are final specifications for:

- o Impact Aid; and
- o Inexpensive Book Distribution.

Mike has cleared these specs for legislative drafting.

Tom  
Tom Corwin

cc: Mike Smith

5/11/93

IMPACT AID REAUTHORIZATION SPECIFICATIONS

Maintenance and Operations, P.L. 81-874

TITLE I -- FINANCIAL ASSISTANCE FOR LOCAL EDUCATION AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITY

Proposed Amendment -- Amend the name of the program to IMPACT AID.

SECTION 1 -- DECLARATION OF POLICY

Current Law -- This section describes the purpose of the program and sets the authorization levels.

Proposed Amendment -- Amend section 1(a) to improve its wording and to clarify that the education of federally connected children is a responsibility shared by the Federal Government, the States, and local educational agencies. Delete clauses (1) through (4) and specify instead that financial assistance will be provided only to those local educational agencies that (1) educate children whose parents both reside on Federal property and are employed on Federal property, (2) have recently experienced sudden and substantial increases in enrollments because of military realignments, or (3) need assistance with capital expenditures for construction due to the enrollments of substantial numbers of children whose parents both reside on Federal property and are employed on Federal property. Amend section 1(b) to authorize "such sums" for 1995 through 1998 to carry out this title.

Explanation -- Our proposal would eliminate financial assistance to LEAs in some situations for which current law provides assistance, including payments for Federal property, independent of the presence of federally connected children, and payments for "b" children. This amendment would clarify that payments would be made only for those children currently designated as "a" children and for increased enrollments because of base consolidations.

SECTION 2 -- FEDERAL ACQUISITION OF REAL PROPERTY

Current Law -- Section 2 authorizes payments to school districts that have experienced a partial loss of tax base due to the Federal acquisition of real property.

Proposed Amendment -- Repeal section 2.

Explanation -- Payments would no longer be provided to school districts that have experienced a loss of tax base because of Federal acquisition of property. Payments would be provided exclusively for the education of federally connected children.

Very little Federal property has been acquired in the last twenty years and, with few exceptions, communities that lost some tax base between 1938 and 1970 have had ample time to adjust to the loss. In many instances the Federal agency that acquired the property makes substantial payments to local communities to support education. We believe that in many school districts that receive section 2 payments, there is no need for further assistance.

SECTION 3 -- CHILDREN RESIDING ON, OR WHOSE PARENTS ARE EMPLOYED ON, FEDERAL PROPERTY

SECTION 3(a) -- CHILDREN OF PERSONS WHO RESIDE AND WORK ON FEDERAL PROPERTY

Current Law -- Section 3(a) describes children for whom the Secretary makes payments and how they are counted for payment.

Proposed Amendment -- Amend section 3(a) to change the phrase "For the purpose of computing the amount to which a local educational agency is entitled..." to "For the purpose of computing the amount a local educational agency is eligible to receive...". Further amend section 3(a) to require that payments be based on the number of federally connected children in average daily attendance in the previous fiscal year. Make any conforming changes necessary throughout the statute.

Explanation -- These changes would eliminate the reference to entitlement, which does not accurately depict the nature of Impact Aid payments, and would specify that payments be based on the previous year's enrollment data, so that districts may apply for and receive full payments early in the school year. This change would allow districts to plan for increasing or decreasing payments based on changes in enrollment well before those payments are made.

Proposed Amendment -- Amend section 3(a) to clarify that payments will be provided on behalf of three categories of federally connected children: (1) children who reside on Federal property and who have a parent employed on Federal property in whole or in part within the taxing authority of the local educational agency; (2) children who reside on Federal property and who have a parent on active duty in the uniformed services; and (3) children who reside on Indian lands described in \_\_\_\_\_ (the definition of Federal property as renumbered in section 8).

Explanation -- This amendment would exclude from eligibility children whose parents cross LEA lines to work on Federal property elsewhere in the State, and would clean up awkward language in section 3(a) that lumps children living on Indian lands into the same category as military dependent "a" children.

The former change is intended to eliminate compensation for students whose parents' employment on Federal property outside the local taxing authority has no greater adverse impact on the local tax base than any other parent's employment on private property outside the local taxing authority.

SECTION 3(b) -- CHILDREN OF PERSONS WHO RESIDE OR WORK ON FEDERAL PROPERTY

Current Law -- Section 3(b) describes other children ("b" children) for whom the Secretary makes payments, and how they are counted.

Proposed Amendment -- Repeal section 3(b).

Explanation -- Payments would no longer be provided for "b" children, those children who either live on Federal property or whose parents work on Federal property. We have long argued that these children do not represent a burden to their school districts that needs to be compensated by the Federal Government.

CURRENT SECTION 3(c) -- ELIGIBILITY FOR PAYMENTS

Current Law -- Section 3(c) establishes an eligibility threshold of at least 400 federally connected children in average daily attendance or 3 percent of total average daily attendance. This section also includes the "Purtell" provision, which allows those districts that drop below the three percent eligibility threshold to continue to receive payments for two additional years.

Proposed Amendment -- Repeal existing section 3(c).

Explanation -- Under our proposed policy, the eligibility threshold would be eliminated so that any school district with federally-connected students as defined under the amended statute could receive a payment. This will ensure that the many school districts that are currently paid for some "a" students but that rely on "b" student enrollments to reach the eligibility threshold would not drop out of the program and would continue to be compensated for their "a" students. Since there would be no eligibility threshold, the "Purtell" provision would no longer be needed.

NEW SECTION 3(c) -- BASIC SUPPORT PAYMENTS

Proposed Amendment -- Create a new section 3(c) that establishes Basic Support Payments for each LEA that educates federally connected children defined under section 3(a). The maximum Basic Support Payment would be the product of: (1) the weighted number

of federally connected children in average daily attendance as defined in section 3(a); (2) the average per pupil expenditure in the applicant LEA's State for the third preceding fiscal year, as defined under the General Provisions; and (3) the average local share of revenues for current education expenditures in the applicant's State (the local contribution percentage or LCP) for the third preceding fiscal year, as defined under the General Provisions. To establish the weighted number of federally connected students, each child living on Indian lands shall be counted as 1.25, and other federally connected students for whom payments are provided shall be counted as 1.0. Include language specifying that individual Basic Support Payments shall be ratably reduced from the maximum payment so that the aggregate amount of these payments will not exceed the annual appropriation for section 3(c).

Explanation -- This will create a simpler and more equitable payment formula.

#### CURRENT SECTION 3(d) -- AMOUNT OF PAYMENTS

Current Law -- Section 3(d): (1) establishes weights attached to "a" and "b" children; (2) provides increased payments to certain school districts with more than 50 percent federally connected students (section 3(d)(2)(B)); (3) provides increased entitlements for children with disabilities and children living on Indian lands; (4) provides increased entitlements for school districts with unusual geographical factors (section 3(d)(3)(B)(ii)); and (5) specifies the calculation of the local contribution rate.

Proposed Amendment -- Repeal existing section 3(d).

Explanation -- These provisions are not needed since: (1) the proposed payment formula would exclude payments for "b" children and the weights for "a" children would be established in section 3(c); (2) section 3(d)(2)(B) and 3(d)(3)(B)(ii) are inequitable payment provisions that inappropriately favor a handful of LEAs; (3) children living on Indian lands would be assigned a higher weight under the Basic Support Payment while additional payments for federally connected children with disabilities would be provided separately from the Basic Support Payment; and (4) the local contribution rate would be replaced by the LCP in the section 3(c) formula.

#### NEW SECTION 3(d) -- SUPPLEMENTAL PAYMENTS FOR CHILDREN WITH DISABILITIES

Proposed Amendment -- Create a new section 3(d) to authorize supplemental payments for certain federally connected children

with disabilities. Payments would be made for certain federally connected children (military and Indian) with disabilities (as defined in section 602(a)(1) of the Individuals with Disabilities Education Act) for whom an LEA is providing a program designed to meet the special educational needs and related services of such children under the provisions of IDEA. These payments shall be distributed using the Basic Support Payment formula described under section 3(c), from the amount appropriated for this section.

Explanation -- This amendment would create a new supplemental payment for federally connected children with disabilities that can be calculated and administered separately from Basic Support Payments.

#### CURRENT SECTION 3(e) -- ADJUSTMENTS FOR DECREASES IN FEDERAL ACTIVITIES

Current Law -- Section 3(e) provides special payments for school districts that experience decreases in federally connected enrollments due to a decrease or cessation of Federal activities, such as a base closure.

Proposed Amendment -- Repeal section 3(e).

Explanation -- Our proposal would eliminate these special payments for decreases in Federal activities. Scarce Federal resources should be directed to school districts currently serving federally connected students rather than to those LEAs that no longer enroll such students.

#### SECTIONS 3(f)&(g) -- DETERMINATIONS ON THE BASIS OF ESTIMATES

Current Law -- Section 3(f) allows payments to be based on estimates if no satisfactory data are available. Section 3(g) specifies that no State may require that a vote of the qualified electors of a heavily impacted school district be held to determine if such a district will spend Impact Aid funds.

Proposed Amendment -- Retain sections 3(f) and 3(g). Perhaps move them to the General Provisions.

Explanation -- Even with the use of prior year data, we may occasionally need the authority to base payments on estimates. Section 3(g) addresses a specific problem in Montana, where an old attorney general's opinion would require a school district to vote on impact aid funds in order to spend them, and probably needs to be retained.

### SECTION 3(h) -- SPECIAL PROVISIONS

Current Law -- Section 3(h) provides for increased payments of full entitlement (as defined by current law) to LEAs that are coterminous with military installations, and describes how the local contribution rate of such LEAs is calculated.

Proposed Amendment -- Repeal section 3(h).

Explanation -- This provision is unnecessary, since our proposed formula would provide larger and more equitable payments to most LEAs and would eliminate "entitlements."

### SECTION 4 -- SUDDEN AND SUBSTANTIAL INCREASES IN ATTENDANCE

Current Law -- Section 4 authorizes payments to school districts that have experienced sudden and substantial increases in enrollments of federally connected students as a direct result of activities of the United States.

Proposed Amendment -- Replace all of existing section 4 with new language that would authorize payments to a school district if: (1) the total average daily attendance in the current year is at least ten percent greater or one-hundred more than the total average daily attendance reported in the LEA's prior year application; and (2) the increase in average daily attendance is substantially the result of base consolidation or realignment activities of the Department of Defense. Payments shall be determined as a pro rata share of the increase reported by applicant LEAs that is demonstrably due to defense realignment, from funds appropriated for this section, except that no payment shall exceed \$200 per additional child. The second part of section 4 should specify application procedures: any LEA seeking payments for sudden increases must apply by September 30, reporting the net increase in enrollment from the prior to the current year and providing a certification from the appropriate local base commander(s) that the increase is the result of defense realignment activities.

Explanation -- Section 4 has not been implemented in recent years. However, defense realignments and base consolidations are beginning to burden certain school districts. Current law appears to be unworkable and is not designed to provide immediate assistance to school districts experiencing increasing enrollments. Our proposal would be simpler to administer and would provide immediate payments for net increases in enrollments in school districts that are affected by base consolidations.

### SECTION 5 -- METHOD OF MAKING PAYMENTS

SECTION 5(a) -- APPLICATION

Current Law -- Section 5(a)(1) specifies the application procedures for all sections of the Impact Aid program. Section 5(a)(2) authorizes the Secretary to establish a deadline for applications, and provides that payments for applications received within 60 days after that deadline shall be reduced by 10 percent. Section 5(a)(3) is a special provision for the Alaska SEA, which claims federally connected children that are being educated by LEAs, thereby gaining "super a" payments for those districts.

Proposed Amendment -- Redesignate section 5(a) as section 3(h) and amend it to describe the application procedures for section 3 only. Include in section 3(h) the current 60-day grace period for late applications. Repeal section 5(a)(3).

Explanation -- Redesignating and amending this section would appropriately place the application procedures for section 3 payments within section 3. Because our proposed payment formula would eliminate "wave" payments and the "super" designations, Alaska could no longer benefit from "super a" payments. Therefore, there would be no need for the special section 5(a)(3) provision.

SECTION 5(b) -- PAYMENTS BY THE COMMISSIONER

Current Law -- Section 5(b)(1) authorizes the Secretary to make payments to LEAs, and specifies limitations on the availability of funds.

Proposed Amendment -- Repeal section 5(b)(1). Include language similar to the first sentence of that section in sections 3(h), 4, and 7, except remove the reference to entitlement.

Explanation -- The first sentence in this section is the operative language that authorizes payments, so it needs to be included in those sections that provide payments. The rest of the section has little meaning in view of the annual appropriation law and the "M" account legislation that govern the availability of funds.

Current Law -- Section 5(b)(2) authorizes preliminary payments under sections 2 and 3.

Proposed Amendment -- Repeal section 5(b)(2).

Explanation -- Preliminary payments would no longer be needed under our proposal since full payments could be made early in the fiscal year based on prior-year data.

Current Law -- Section 5(b)(3) prescribes policies and procedures that LEAs must establish to provide for consultation with the parents of children living on Indian lands, and establishes an appeal process.

Proposed Amendment -- Renumber and streamline the current provisions of section 5(b)(3) to provide a basis for regulating, as we do now, the requirement that an LEA consult with local tribes or tribal organizations on the use of Impact Aid provided for children living on Indian lands. Add to this section a requirement that the LEA maintain records demonstrating that it has fully consulted with representatives of the tribe or tribal organization about the educational program supported by the Impact Aid funds. Include a provision that would allow tribes or tribal organizations to waive the Indian policies and procedures requirements otherwise imposed on the LEA if they are satisfied with the LEA's provision of educational services to children living on Indian lands.

Explanation -- The current language of section 5(b)(3) is excessively lengthy and the appeal process laid out in the section is prescriptive. A more concise version of the current provisions would provide adequate authority for the regulation of the Indian policies and procedures process. The addition of the requirement that records of consultation be maintained would provide the Indian community enable the Impact Aid program to adequately monitor the extent to which such consultation takes place and identify LEAs that need additional assistance in meeting this requirement.

#### SECTION 5(c) -- ADJUSTMENTS WHERE NECESSITATED BY APPROPRIATIONS

Current Law -- Section 5(c) establishes payment priorities if appropriations are insufficient to pay "full entitlement" under current law, and prescribes the current "wave" payment scheme, which provides larger percentages of entitlement to LEAs with larger percentages of federally connected students.

Proposed Amendment -- Repeal section 5(c).

Explanation -- This section is extremely complex and inequitable and would be replaced by a simpler payment formula under section 3(c) in our bill.

#### SECTION 5(d) -- TREATMENT OF PAYMENTS BY THE STATES IN DETERMINING ELIGIBILITY FOR, AND THE AMOUNT OF, STATE AID

Current Law -- Section 5(d)(1) prohibits payments to be made to LEAs if their States have taken into consideration Impact Aid in

determining State aid for free public education. Section 5(d)(2) provides exceptions to this prohibition for States that have in effect a state funding program that is "designed to equalize" expenditures among LEAs, as determined by the Secretary through regulations. In addition to certain threshold criteria, the Secretary has established three standards for such a determination: (1) the disparity standard, which measures revenue or expenditure disparity among all LEAs in the state; (2) the wealth neutrality standard, which measures the extent to which LEA revenues are dependent on local wealth; and (3) consideration of exceptional circumstances.

Proposed Amendment -- Amend section 5(d)(1) to say that:

(a) No State shall take Impact Aid payments into consideration in determining the eligibility for or amount provided of State aid for free public education; and (b) an LEA need not exhaust its administrative appeal rights under section 5(d)(2) prior to seeking injunctive relief against a State that has violated this provision.

Amend section 5(d)(2) to be something like the following:

"Notwithstanding paragraph (1) of this section, if a State has in effect a program of State aid for free public education for any fiscal year that equalizes education expenditures for free public education among the local educational agencies of that State as measured by a disparity in treatment of current expenditures or revenue per pupil of not more than 25 percent, payments under section 3(c) of this title may be taken into consideration by the State in determining the financial resources available to local educational agencies in that State and the financial need of such agencies for the provision of free public education.

"A State may reduce State aid with respect to funds received under section 3(c) of this title only in inverse proportion to the percentage of disparity in revenues or expenditures for free public education among the local educational agencies of the State. The payments provided under sections 3(d), 3(e), 4, and 7 shall not be taken into consideration by the State for the purpose of this section. A State seeking approval under this section shall not take into consideration funds provided under section 3(c) until the Secretary has notified it that its program of State aid for a given fiscal year meets the disparity standard described above based upon final data from the second preceding fiscal year.

"The terms 'State aid,' 'equalized,' and 'disparity standard' shall be defined by the Secretary by regulation, provided that the terms shall not be construed in a manner adverse to a program of State aid for free public education that takes into consideration the additional cost of providing free

public education for particular groups or categories of pupils or LEAs.

"A State seeking to take payments under section 3(c) into consideration under this section for any fiscal year shall, not later than sixty days prior to the beginning of the State's fiscal year, submit a notice to the Secretary of its intention to do so. Such notice shall be in a form and accompanied by information specified by the Secretary. In addition, such notice shall be accompanied by evidence that each local educational agency in that State has been given notice of the intention of the State to take into consideration payments under section 3(c). If the Secretary determines that the program of State aid of a State submitting notice under this paragraph is consistent with the disparity standard described above, the Secretary shall certify that determination to the State.

"Prior to certifying any State under this section, the Secretary shall give the local educational agencies in that State an opportunity for a hearing at which the agencies may present their views with respect to the consistency of the State's aid program with the disparity standard. The Secretary shall not finally certify or deny certification to any State for any fiscal year without first giving that State and the LEAs within it an opportunity for a hearing."

Repeal section 5(d)(2)(D).

Explanation -- This language would eliminate the current untenable requirement that the Department take back Impact Aid from LEAs in States that have violated section 5(d), would place in law the standard that we believe best measures expenditure equity in States, and would permit States that are equalized to within 25 percent to partially consider Impact Aid in their funding programs, in proportion to their degree of equalization. Determinations would be based on State education funding data from the second preceding fiscal year, so that determinations would be made prospectively and States would be prohibited from taking deductions prior to certification. Supplemental payments for children with disabilities, supplemental payments for children living on Indian lands, payments for increases in federally connected children, and payments for capital improvements would be excluded from consideration by the State, since these payments provide supplemental assistance rather than basic support.

SECTION 5(e) -- HOLD HARMLESS; DISCRETIONARY ALLOCATIONS

Current Law -- Section 5(e) specifies hold-harmless payments.

Proposed Amendment -- Repeal section 5(e). Create a new section 3(i) that would provide that total payments under section 3 (Basic support plus supplemental payments) must be at least 80

percent of the previous year's total "a" payment in the first year of the new statute, at least 60 percent in the second year, and at least 40 percent in the third year. Neither current "b" payments nor section 2 payments would be included in this phase-out.

Explanation -- This section of current law provides for extremely complex hold-harmless payments that are difficult to administer and inequitable. The new hold-harmless provision would phase out in a straightforward manner payments to school districts that lose "a" funds under the new law.

**SECTION 5(f) -- USE OF FUNDS PAID WITH RESPECT TO ENTITLEMENTS INCREASED UNDER SECTION 3(d)(2)(C)**

Current Law -- Section 5(f) specifies that the increased payments provided for children with disabilities shall be used for special educational programs designed to meet the special educational needs of those children.

Proposed Amendment -- Redesignate section 5(f) as section 3(d)( ) and amend it to make it apply to the supplemental payments provided for children with disabilities under the new section 3(d).

Explanation -- This would carry forward from current law the requirement that funds provided for children with disabilities be used to meet their special needs.

**SECTION 5(g)**

Current Law -- Section 5(g) outlines the hearing procedures available to any LEA that is adversely affected under the law.

Proposed Amendment -- Redesignate section 5(g) as section 8(a)(3) of the General Provisions.

Explanation -- Renumbering would place this provision more logically with the General Provisions.

**SECTION 5(h)**

Current Law -- Section 5(h) provides special treatment for Hawaii, which technically has only one LEA, by allowing administrative school districts within that LEA to be considered LEAs for purposes of Impact Aid. This provision allowed certain administrative school districts in Hawaii to achieve "super a" or "sub-super a" status, resulting in higher payments.

Proposed Amendment -- Repeal section 5(h).

Explanation -- Our proposal would eliminate the current formula, with its "super" and "sub-super" provisions, and replace it with a formula in which every "a" child would carry the same weight for purposes of the Basic Support Payment. Therefore, this provision would no longer benefit Hawaii and is unnecessary.

SECTION 6 -- CHILDREN FOR WHOM LOCAL AGENCIES ARE UNABLE TO PROVIDE EDUCATION

Current Law -- Section 6 authorizes the Secretary to make arrangements for the education of children residing on Federal property when State and local funds cannot be spent for this purpose or no LEA is able to provide a suitable free public education.

Proposed Amendment -- Repeal current section 6. Redesignate section 6(f) as section 8(a)(4) of General Provisions.

Explanation -- Section 6 has been administered by the Department of Defense for many years, as authorized by the Omnibus Reconciliation Act of 1981, etc. It should be included in one of DOD's authorizations. Section 6(f) prohibits or reduces payments under sections 3 and 4 if a State or LEA refuses to expend tax revenue for the education of federally connected children, and has little to do with the rest of section 6. Placing it with the General Provisions makes more sense.

NEW SECTION 6 -- MAINTENANCE AND TRANSFER OF FEDERALLY OWNED SCHOOL FACILITIES

Proposed Amendment -- Redesignate section 10 of P.L. 81-815 as section 6 of P.L. 81-874 and revise it to authorize only the maintenance and transfer of property currently owned by the Department. Clean up the language and eliminate the reference to property under the control of the Atomic Energy Commission. Eliminate the authority for the construction of new facilities. Revise the last sentence of current section 10(a) to state that children for whom facilities are provided under section 10 shall not be counted for payments for capital improvements under section 7. Delete section 10(c).

Explanation -- Moving this section into P.L. 81-874 would consolidate all the reauthorized Impact Aid programs into one statute and permit the repeal of P.L. 81-815.

CURRENT SECTION 7 -- ASSISTANCE FOR CURRENT SCHOOL EXPENDITURES IN CASES OF CERTAIN DISASTERS

Current Law -- Section 7 authorizes the Secretary to provide financial assistance to school districts that have suffered a major disaster.

Proposed Amendment -- Repeal section 7.

Explanation -- The Federal Emergency Management Agency has the authority to provide the same type of assistance to school districts provided under section 7(b). By agreement between the two agencies, ED no longer provides such assistance. We would prefer not to provide section 7(a) assistance, either. The entire authority should be repealed.

#### NEW SECTION 7 -- PAYMENTS FOR CAPITAL IMPROVEMENTS

Proposed Amendment -- Create a new section 7 to authorize payments for capital improvements to certain LEAs that are eligible for payments under section 3. Payments would be made to all section 3 recipients in which federally connected children (as defined under section 3(a)) comprise more than 20 percent of ADA, and would be distributed on a per capita basis from the amount appropriated for this section without regard to the local contribution percentage (LCP) or state average per pupil expenditure. No separate application would be required. Payments could be used for immediate capital expenditures for construction, used for bonded debt service, or retained for future capital needs.

Explanation -- This new authority is intended to address the construction and capital improvement needs that are inadequately met by the current construction authorities under sections 5 and 14 of P.L. 81-815, which would be repealed. It would distribute scarce funds for construction and renovation projects more equitably among all LEAs that educate large proportions of federally connected children. The Department would no longer be required to make funding determinations based on "need".

#### Title IV -- GENERAL PROVISIONS

Current Law -- The General Provisions cover a variety of issues that govern the Department's administration of the program and define key terms.

Proposed Amendment -- Redesignate the General Provisions as section 8 of the statute, and renumber the sections appropriately. Repeal sections 401(c), 402(a), 402(c), and 402(d). Redesignate sections 401(b) and 402(b) as sections 8(a)(1) and 8(a)(2).

Explanation -- The current numbering system of the General Provisions makes little sense. Section 401(c) describes a reporting requirement that is now included under GEPA; 402(a) allows the Secretary to make use of the services of other agencies, also included under GEPA; 402(c) pertains only to FY 1951 appropriations and can be deleted; 402(d) no longer has any meaning and can be deleted.

Proposed Amendment -- Revise the definitions as follows:

(1) Federal property -- revise as follows:

(A) Except as otherwise described in paragraphs (B) - (D) of this paragraph, 'Federal property' means real property that is not subject to taxation by any State or any political subdivision of a State due to Federal agreement, law, or policy, and--

(i) that is owned by the United States or leased by the United States from another entity;

(ii) that is--

(I) held in trust by the United States for individual Indians or Indian tribes;

(II) held by individual Indians or Indian tribes subject to restrictions on alienation imposed by the United States;

(III) conveyed at any time under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq., to a Native individual, Native group, or Village or Regional corporation;

(IV) public land owned by the United States that is designated as being for the sole use and benefit of individual Indians or Indian tribes;

(V) used for low-rent housing as otherwise described in this paragraph, that is located on land described in clauses (I), (II), (III), or (IV) of this subparagraph or on land that met one of those descriptions immediately before its use for such housing;

(iii) that is part of a low-rent housing project assisted under the United States Housing Act of 1937; or

(iv) that is owned by a foreign government, or by an international organization.

(B) 'Federal property' includes, so long as not subject to taxation by any State or any political subdivision of a State, and whether or not that tax exemption is due to Federal agreement, law, or policy--

(i) any school that is providing flight training to members of the Air Force under contractual arrangements with the Air Force at an airport owned by a State or political subdivision of a State; and

(ii) real property that is part of a low-rent housing project assisted under--

(I) section 516 of the Housing Act of 1949, 42 U.S.C. § 1486 (domestic farm labor low-rent housing); or

(II) part B of title III of the Economic Opportunity Act of 1964, formerly 42 U.S.C. § 2861 et seq. (migrant and other seasonally employed farmworker low-rent housing).

(C) 'Federal property' includes, whether or not subject to taxation by a State or a political subdivision of a State--

(i) any non-Federal easement, lease, license, permit, or other such subordinate interest in Federal property as otherwise described in this paragraph;

(ii) any improvement on Federal property as otherwise described in this paragraph; and

(iii) real property that, immediately before its sale or transfer to a non-Federal party, was owned by the United States and otherwise qualified as Federal property described in this paragraph, but only for one year beyond the end of the fiscal year of such sale or transfer.

(D) 'Federal property' does not include--

(i) any real property under the jurisdiction of the United States Postal Service that is used primarily for the provision of postal services; or

(ii) pipelines and utility lines.

[Note: repeal Section 2 of P.L. 92-277 (1972) which provides that property transferred to the United States Postal Service is eligible for two years after the transfer.]

(2) Child -- maintain as is;

(3) Parent -- maintain as is;

(4) Free Public Education -- revise as follows:

education that is provided at public expense, under public supervision and direction, and without tuition charge, and that is provided as elementary (including preschool and kindergarten) or secondary school education in the applicable State;

[This would clarify current policy of allowing pre-school children to be counted in certain situations.]

(5) Current Expenditures -- maintain as is, unless the definition for Chapter 1 is changed, in which case Impact Aid should follow suit;

(6) Local Educational Agency -- delete the last sentence, which provides a special exception to the "sham" district prohibition;

(7) State Educational Agency -- maintain as is;

(8) State -- substitute the most current definition;

(9) Secretary -- maintain as is;

(10) Average Daily Attendance -- revise as follows:

Average daily attendance, generally defined as the aggregate number of days of attendance of all students during a school year divided by the number of days school is in session during that same period, shall be determined in accordance with State law, except that:

(A) the average daily attendance of children with respect to whom payment is to be made under section 3 or 4 of this Act shall be determined in accordance with regulations of the Secretary, which shall permit the conversion of average daily membership to average daily attendance for local educational agencies in States that reimburse local educational agencies based upon average daily membership and that do not require local educational agencies to keep records based on average daily attendance, and

(B) notwithstanding any other provision of this Act, where the local educational agency of the school district in which any child resides makes a [tuition or other] payment for free public education of such child in a school situated in another school district, for purposes of this Act the attendance of such child at such school shall be held and considered:

(i) to be attendance at a school of the local educational agency so making or contracting to make such tuition payment, and

(ii) not to be attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such payment under the contract.

A child shall be deemed to be in attendance at a school of a local educational agency if such child is attending a public or private school other than a school of such agency because such child is disabled (as defined in section 602(a)(1) of the Individuals with Disabilities Education Act) and if such agency makes a tuition payment on behalf of such child to such school for such fiscal year.

(11) County -- repeal;

(12) Construction -- replace it with the construction definition currently included in 81-815;

(13) School Facilities -- replace it with the definition in 81-815 and update the reference to section 10;

(14) Equipment -- repeal;

Add the definitions of Indian Lands, Average Per-Pupil Expenditure, and Local Contribution Percentage as follows:

The term 'Indian lands' means any real property described in paragraph (A)(ii) of the definition of 'Federal property' in this section.

The average per pupil expenditure in a State shall be (1) the net current expenditures (as determined by the National Center for Education Statistics) of all local educational agencies in the State divided by (2) the aggregate number of children in average daily attendance for whom such agencies provided free public education (see language in current section 3(d)(3)(D)(ii)).

The local contribution percentage shall be the expenditures from revenue from local and intermediate sources as reported to and verified by the National Center for Education Statistics for the National Public Education Financial Survey, except that the Local Contribution Percentage for the District of Columbia and for Hawaii shall be the national average. [Without this last provision, the fact that most revenues in Hawaii are counted as State revenue while more in DC are counted as local revenue distorts the distribution of funds.]

Explanation -- These revised definitions will better reflect the purposes of the new statute.

#### Construction, P.L. 81-815

Current Law -- Authorizes assistance to federally affected LEAs for construction and renovation of school facilities.

Proposed Amendment -- Redesignate section 10 as section 6 of P.L. 81-874. Repeal the remainder of P.L. 81-815.

Explanation -- The new authority for payments for capital improvements under section 7 of P.L. 81-874 would replace the current construction authorities in P.L. 81-815, with the exception of section 10, which would be revised and redesignated as section 6 of P.L. 81-874. Therefore, P.L. 81-815 would no longer be needed.