

H.R. 2, The Student Results Act of 1999

(Updated October 15, 1999)

SUMMARY

H.R. 2, the Student Results Act of 1999 authorizes Title I of the Elementary and Secondary Education Act and other programs assisting low achieving students. Programs authorized in the bill are: Title I, Part A (education of the disadvantaged), Migrant Education, Neglected and Delinquent, Magnet Schools Assistance, Native Americans, Hawaiians, and Alaskan programs, Gifted and Talented, Rural Education, and the Stewart B. McKinney Homeless Assistance program. The legislation was reported from Committee by a vote of 42-6 on October 13, 1999.

Title I, Part A (education for the disadvantaged)

Title I, Part A is the largest program of ESEA and is funded at \$7.7 billion for FY 1999. The program authorizes federal aid to state and local educational agencies for helping educationally disadvantaged children achieve to the same high state performance standards as all other students.

- **Structure.** Continues the current standards-based approach with Title I students being held accountable for meeting the same challenging state standards as all other students.
- **Academic Accountability.** Modifies existing accountability provisions to ensure that each of the separate subgroups of students (economically disadvantaged, limited English proficient, minority, students with disabilities, etc.) as well as students as a whole show increased academic achievement gains at the state, school district and school levels.
- **Public School Choice for Students in Low Performing Schools.** If a school that receives Title I funding is designated for "school improvement" (meaning that the school is low performing), then parents of children who attend the school would have the option of transferring to another public school or public charter school that is not in "school improvement." Title I funding could be used, if local officials so decide, for transportation to another public school or public charter school.
- **Rewards.** Up to 30 percent of any increase in Title I funding may be set aside by states to provide rewards to schools (and teachers in such schools) that substantially close the achievement gap between the lowest and highest performing students and that have made outstanding yearly progress for two consecutive years.
- **Annual State Reports.** The academic performance of all schools receiving Title I funding would be included in annual state reports produced by the states for parents and the public. If states are already producing annual state reports, then the Title I data could be included in such reports or disseminated through alternative means such as posting on the Internet, distribution to media or through other public agencies. The report will include information on each school receiving Title I funds. The information would be for those Title I schools in the aggregate in school districts and individually on the following things: student

Pass. comp:
25% for busines
25% for next.
fund

performance according to subgroups on state assessments; comparison of students at below basic, basic, proficient, and advanced levels of performance on state assessments; graduation rates; retention rates; completion of Advanced Placement courses; and qualifications of teachers and teachers' aides.

- **School District Reports.** School districts receiving Title I funding would prepare annual reports for parents and the public on the academic performance of each Title I school in the aggregate in the school district and individually. If school districts are already producing annual school district reports, then the Title I data could be included in such reports or provided through an alternative means such as posting on the Internet, distribution to media, or through other public agencies. The school district reports will include information on: the numbers and percentages of schools identified within the school district as in "school improvement" (low performing) under Title I; information that shows how Title I students performed on statewide assessments, according to subgroups; graduation rates; retention rates; completion of Advanced Placement courses; and information on teachers' and teachers' aides qualifications.
- **Testing of Students in English language.** Students who have attended school in the United States for at least three consecutive years would be tested in reading and language arts in the English language.
- **Parental Consent for Bilingual Education.** School officials would be required to seek the informed consent of parents prior to placement of their children in an English language instruction program for limited English proficient children funded under Title I.
- **Paraprofessionals (teachers' aides).** Under current law, teachers' aides funded under Title I must, at a minimum, obtain a high school diploma or GED within two years of employment as an aide. The bill would require, not later than 3 years after enactment, all teachers' aides to have: (1) completed at least 2 years of study at an institution of higher education; (2) obtained an associate's or higher degree; or (3) met a rigorous standard of quality established at the local level, which includes an assessment of math, reading and writing. Also, would freeze the number of paraprofessionals at their current levels, with limited exceptions.
- **Priority for elementary school grades.** Requires school districts to continue to rank and serve schools in school districts according to poverty (from highest to lowest) but school districts would be permitted to give priority to elementary schools.
- **Schoolwide poverty threshold.** The 50% poverty requirement for eligibility to have a schoolwide program (where services are made available to the entire school and where the school may combine various federal funds with state and local funds to serve the entire school) is lowered from 50% to 40% poverty. This will permit more flexibility at the local level in implementing schoolwide programs.
- **Schoolwide programs are relieved of separate fiscal accounting provisions.** The bill makes clear that schoolwide programs are not required to maintain separate fiscal accounting records when they combine federal education funds with state and local funds.

- **Formulas.** No changes in the formulas. However, a hold harmless would be applied to the basic and concentration grants. The education finance incentive grant, which has never been funded, is repealed.
- **Consultation with private schools strengthened.** The provisions requiring school districts to have timely and meaningful consultations with private school officials in determining the scope of Title I services to be provided to private school children are significantly strengthened.
- **Bypass for private schools.** In determining whether to grant a bypass of the local educational agency, the Secretary may consider one or more factors, including the quality, size, scope and location of the Title I program and the opportunity of eligible children to participate.
- **1% set-aside for state administration.** The current 1% set-aside for state administration would continue to apply to appropriations that at least equal the FY 1999 level (\$7.7 billion). The set aside would not apply to any increases above that level. A separate line item authorization would be included for additional administrative expenses, and subject to appropriations.
- **½ % for school improvement activities.** One half of one percent of a state's total Title I allocation may be set-aside for school improvement activities. Title I funds at the school district level may also be used for school improvement activities by the school district.
- **Comprehensive School Reform Grants.** Comprehensive school reform grants, currently provided through the appropriations process would be authorized through a statutory grant program as a part of Title I. Schools, through their school districts, would compete to receive such grants from the state. Such grants involve reform of the whole school and must employ innovative strategies and proven methods for student learning, teaching and school management that are based on scientifically based research.
- **Secular, Neutral, Non-ideological Title I services.** During Committee consideration, an amendment was adopted which requires public schools to ensure that Title I services are secular, neutral and non-ideological. This is the same standard that applies to private schools.

Education of Migrant Students

The federal migrant education program assists migrant children to help them overcome the problems associated with multiple moves, which hinders them from performing well in school.

- **State Allocations.** Revises the formula to implement an actual student count (they are currently funded based on full time equivalents (FTEs)). A holdharmless is included for the 2000 school year. Only new funds will go out based on the new formula.

- **Needs Assessment/Authorized Activities.** Eliminates the comprehensive plan section and is replaced by a streamlined section on authorized activities that provides state educational agencies (SEAs) with the flexibility to determine the activities to be provided with funds under this Part.
- **Coordination.** Requires the Administration to assist states in developing effective methods for the transfer of student records within and among states. It further requires that the Administration, working with the states, develop a common set of data elements that must be included in student records when funds under this Part are used for such purposes.

Prevention and Intervention Programs for Children and Youth Who are Neglected and Delinquent

This program provides formula grants to states for neglected and delinquent children being educated in state agency programs for children and youth in institutions or community day programs for neglected or delinquent children and in adult correctional facilities.

- **Subpart 1 (State Program).** The bill increases from 10 to 15 percent the amount of funds states are to reserve to provide transition services for children returning from state-operated institutions to local educational agencies.
- **Subpart 2 (Local Program).** The bill restructures this section to insure the school component focuses on children returning from facilities for delinquent youth. The bill still permits such program to serve other at risk populations, but not to the detriment of delinquent youth in need of assistance.

Magnet Schools Assistance Program

The Magnet Schools Assistance Program supports magnet schools in local educational agencies that are implementing school desegregation plans. Magnet schools offer special vocational or academic programs designed to attract students from outside the school's traditional enrollment area. Grantees receive three-year awards, which cannot exceed \$4 million per year.

- **Emphasizes Student Achievement.** The bill emphasizes a commitment to student achievement by revising the Findings and Applications and Requirements sections and by including professional development as a use of funds.
- **Renews Focus on Magnet Schools.** The bill renews the program's focus on magnet schools by eliminating two outdated priorities and by repealing the Innovative Programs. (Any grant recipient that has an agreement in effect under the Innovative Programs will continue to receive funds through the end of the applicable grant cycle.)

Public School Choice Program

The bill authorizes a new \$20 million public school choice program which would provide competitive grants to state and local educational agencies to support programs that promote innovative approaches to public school choice. This was an amendment adopted in Committee. ✓

Native Americans, Hawaiians, and Alaskan Education Programs

Indian Education Programs within the Department of Education

The purposes of the Department of Education Indian education programs are to provide financial support to reform and improve elementary and secondary school programs that serve Indian students; improve and enrich the quality of education for Indian students; research and evaluate information on the effectiveness of Indian education programs; and improve educational opportunities for adult Indians.

- **Maintains Funding.** Maintains currently funded programs, at current funding levels.
- **Repeals Unfunded Programs.** Repeals four unfunded competitive grant programs: Fellowships for Indian students, Gifted and Talented programs. Grants to Tribes for Administrative Planning and Development, and Special Programs Relating to Adult Education.
- **Includes Family Literacy.** Adds family literacy services as an allowable use of funds.
- **Provides Flexibility.** Adds a new flexibility provision to allow school districts receiving formula grants for Indian students to combine all federal funds they receive to serve Indian students into a single, more flexible and efficient program for improving Indian student achievement.
- **Directs more Money to the Classroom.** Limits the use of funds for administrative purposes to five percent.

Indian Education Programs within the Bureau of Indian Affairs (BIA)

Indian education programs within the BIA serve students in BIA funded schools. To be eligible, Indian students must have membership in a federally recognized Tribe or have a minimum of ¼ degree or more Indian blood and be in residence on or near a federal Indian reservation.

- **Coordination of Family Literacy Services.** Requires coordination of efforts between providers of family literacy services.
- **Accreditation.** Allows BIA funded schools to get state or regional accreditation, rather than meeting BIA federally imposed education standards.

- **Improve and expand educational programs.** Allows Tribes to improve and expand educational programs at BIA funded schools using their own resources.
- **School Choice.** Allows Indian parents the choice of which BIA funded school their children will attend.
- **Tribal Authority and Flexibility.** Gives Tribes a greater say in repair and maintenance priorities; allows Tribes to contract for training services; increases Tribal authority to pick service providers for purchasing supplies; and gives Tribes and local school boards more flexibility in making school staffing decisions. Requires BIA inspectors to get a second opinion from an independent source (with Tribal input) before fully closing a BIA funded school for health and safety violations.
- **Use of Maintenance Funds.** Requires BIA to spend all maintenance money at school sites, rather than diverting it to fund administrative activities.

Native Hawaiian Education Programs

During Committee consideration, an amendment was adopted to repeal the supplemental educational programs for Native Hawaiians under Title IX, Part B of the Elementary and Secondary Education Act.

Alaska Native Educational Programs

The purpose of these programs is to (1) recognize the unique educational needs of Alaska Natives; (2) develop supplemental educational programs to benefit Alaska Natives; and (3) provide direction and guidance to appropriate federal, state, and local agencies to focus resources on meeting the educational needs of Alaska Natives.

- **Consolidation.** Consolidates all three competitive grant programs into a single, more flexible and efficient program, funded at the current level.
- **Includes Family Literacy Services.** Adds family literacy services as an allowable use of funds.
- **Directs more Money to the Classroom.** Reduces the limit on use of funds for administrative purposes from 10 percent to five percent.

The Jacob K. Javits Gifted and Talented Students Education Act of 1999

The Jacob K. Javits Gifted and Talented program supports a national research effort and awards competitive grants to SEAs and LEAs, institutions of higher education, and other public and private agencies and organizations to help build a nationwide capability to meet the needs of gifted and talented students in elementary and secondary schools.

The Committee amendment to this part makes minor changes to current law and incorporates a version of H.R. 637, the Gifted and Talented Students Education Act, introduced

by Mr. Gallegly (R-CA), to provide formula grants to states to help them implement successful research findings and model projects funded by the Javits program over the past 10 years. This program was funded at \$6.5 million for FY 1999.

Subpart 1 – Discretionary Grant Program. Maintains the research focus found in current law with minor improvements. This subpart:

- Stipulates that all research done under this part is to be “scientifically based.”
- Ensures that nothing shall be construed to prohibit a recipient of funds from serving gifted and talented students simultaneously with other students in the same educational settings where appropriate. This language would apply to the entire bill.
- Eliminates previously unfunded subsections to better streamline the program (including all references to gender equity).

Subpart 2 – Formula Grant Program. Subpart 2 authorizes SEAs to distribute grants to LEAs, including charter schools, on a competitive basis to provide gifted and talented students with programs and services. Once the current program (subpart 1) reaches funding sufficient to provide formula grants to the states, subpart 2 activities are triggered and conducted in lieu of subpart 1. The trigger for subpart 2 activities is \$50 million. In subpart 2, states would have the flexibility to competitively distribute funds for gifted and talented programs according to local priorities.

Rural Education Assistance

The Committee amendment, a combination of H.R. 2725, “The Rural Education Initiative Act,” introduced by Rep. Bill Barrett (R-NE) and H.R. 2997, “The Low-Income and Rural School Program,” introduced by Rep. Van Hilleary (R-TN), addresses the unique problems associated with the education of students in rural school districts. Specifically, this amendment to replace part J of title X of the Elementary and Secondary Education Act, will address the different needs of (1) small, rural school districts and (2) low-income, rural school districts.

Subpart 1 – Small Rural School Program. An LEA would be eligible to use the applicable funding under this subpart if:

1. The total number of students in average daily attendance at all of the schools served by the LEA is less than 600; and
2. All of the schools served by the LEA are located in a community with a Rural-Urban Continuum Code (Beale Code) of 6, 7, 8, or 9, as determined by the Secretary of Agriculture.

Flexibility with Formula Grant Programs – An eligible LEA would be able to combine funds from the following programs and use the money to support local or statewide education reform efforts:

- Title II – Eisenhower Professional Development Program;

- Title IV – Safe and Drug-Free Schools and Communities;
- Title VI – Innovative Education Program Strategies;
- Title VII (Part A) – Bilingual Education;
- Title VII (Part C) – Emergency Immigrant Education Program; and
- Title X (Part I) – 21st Century Community Learning Centers

Grants under this subpart would be awarded to eligible LEAs based on the number of students in average daily attendance less the amount they received from the aforementioned formula grant programs. Minimum grants for LEAs will not be less than \$20,000.

Subpart 2 – Low-Income Rural School Program. If an LEA did not qualify for funding under Subpart 1, it would be eligible to use the applicable funding under Subpart 2 if the LEA serves:

1. A school-age population, 20 percent or more of whom are from families with incomes below the poverty line; and
2. All of the schools served by the LEA are located in a community with a Rural-Urban Continuum Code (Beale Code) of 6, 7, 8, or 9, as determined by the Secretary of Agriculture.

Funds are allocated among states by formula based on student enrollment in eligible districts within those states. States, in turn, allocate funds to eligible districts by a competitive grant process or according to a state-determined formula based on the number of students each eligible LEA serves. Funds awarded to LEAs or made available to schools under this subpart can be used for: Educational Technology; Professional Development; Technical Assistance; Teacher Recruitment and Retention; Parental Involvement Activities; or Academic Enrichment Programs.

Stewart B. McKinney Homeless Education Assistance Improvements Act of 1999

This program authorizes formula grants to states, based on state allocations for grants to LEAs under ESEA Title I, Part A. Grants must be used to establish an Office of Coordinator of Education of Homeless Children and Youth within each SEA, implement professional development activities for school personnel, and provide each child the opportunity to meet the same state student performance standards that others are expected to meet.

Improves the McKinney Act by amending it to incorporate a version of H.R. 2888, the Stewart B. McKinney Homeless Education Assistance Improvements Act of 1999, introduced by Ms. Biggert (R-IL) to help homeless children enroll, attend, and succeed in school. The Committee amendment strengthens and clarifies current law to address the educational needs of homeless children and youth including:

- **At-Risk Students.** Allows funds to be used to provide the same services to other children at risk of failing in, or dropping out, of school.
- **Data Collection.** Eliminates the requirement that the state coordinator estimate the number of homeless children in the state and the number of homeless children served by the program.

- **Report.** Directs the Secretary to develop and issue a report to be made available to states, LEAs, and other applicable agencies. This report will address successful ways in which states can help LEAs immediately enroll homeless children and encourages states to follow programs implemented in state law that have successfully addressed transportation barriers for homeless children and youth.
- **School of Origin.** Stipulates that a homeless student be kept – to the extent feasible – in their school of origin. Requires that LEAs provide a written explanation to a parent or guardian (including the right to appeal an enrollment decision) if such child is sent to a school other than their school of origin.
- **Segregation.** Prohibits a state receiving funds from segregating a homeless child, either in a separate school or in a separate program within a school, based on that student's status as homeless. This provision contains a grandfather clause that ensures established schools do not lose funding.

Teacher Liability Protection

During Committee consideration, an amendment was adopted which provides limited civil litigation immunity for teachers, principals, local school board members, superintendents, and other educational professionals who engage in reasonable actions to maintain school discipline.

GOP, Democrats Spar Over Education, As Law Comes Up for Reauthorization

By JUNE KRONHÖLZ

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—Republicans are adamant they won't pass President Clinton's program to reduce class size by helping schools hire 100,000 new teachers. Democrats say "no way" to the GOP's plan to send more education money to local school districts in the form of do-whatever-you-want-with-them block grants.

So what's the buzzword as Congress begins working its way through ESEA, the massive Elementary and Secondary Education Act?

Flexibility. Of course.

Republicans want to give local schools more leeway on using federal funds. Democrats want more-targeted goals. In either case, the lesson is clear: School's out, but education is in as a political issue. With ESEA up for its latest five-year reauthorization, it's becoming the stage on which the political parties are acting out their widely divergent views on the federal role in education—and taking up their positions for the 2000 elections at the same time.

So far, the only ESEA issue to make it to a floor vote has been a House measure that would give schools the choice of either hiring more teachers with federal funds or using some of that money to better train the teachers they already have. The GOP has been stung by the popularity of President Clinton's plan to reduce class size by funding thousands of teachers, and the party is fearful of seeing Democrats use it in their favor in the next elections. So last month, House Republicans revealed in a successful vote to gut Mr. Clinton's teacher initiative in the name of school-district flexibility, even though the president threatened to veto the entire education act if it didn't include his plan.

Quick Response by GOP

Senate Republicans quickly drafted a similar Teacher Empowerment Act that would allow districts to use the money to pay signing bonuses to new teachers, or for bonus pay to teachers in hard-to-fill specialties such as math. Senate Democrats, aware of public frustration with weak teachers, countered with their own teacher-training bills. But Democrats also charged that the GOP had agreed to the hiring initiative in last year's budget, but now is reneging as districts are poised to hire the first teachers under the program.

If the two parties seem at irreconcilable odds over teachers, it's only the least of their disagreements on education. When Congress resumes meeting next month, both houses expect to begin debate on two even thornier issues: block grants and vouchers.

The block-grant proposal, championed by Washington GOP Sen. Slade Gorton, is called Straight A's (for Academic Achievement for All Act). It would bundle two dozen federal education programs with a combined \$12 billion in spending. School districts then would have the flexibility—there's that word again—to either continue receiving their share of that money in program aid or take it as a block grant for another purpose, such as buying new computers.

Democrats hotly oppose Straight A's, fearful that it would cause successful programs to be abandoned. They say it's the local districts and their flexibility to teach what they choose that have gotten the U.S. public-education system into the worri-

some condition it is now. But Senate Majority Leader Trent Lott of Mississippi has endorsed Straight A's, there are 119 co-sponsors in the House, five governors are behind it, and, perhaps most significant, Chicago's much-acclaimed school superintendent Paul Vallas has signed on.

President Clinton has promised to veto any education bill that contains Straight A's. Education Secretary Richard Riley quipped that the bill deserves "straight F's" for not requiring the districts to be more accountable for the money. But Straight A's gives the GOP "a positive message on education," says Nina Shockraii Rees, education analyst at the conservative Heritage Foundation, even if the party seems unable to come up with an education program to counter the president's.

The other no-compromise issue will be an idea by New Hampshire Republican Sen. Judd Gregg to allow what the GOP calls "portability" of Title I benefits and what Democrats call vouchers. Title I is the largest program in the \$14 billion education act, accounting for about \$8 billion that the government distributes to schools with high levels of family poverty.

Under the Republican plan, states would have the flexibility of deciding whether those benefits should stay with the low-income school or be assigned to each low-income student. That means the benefits could move with the youngster to any other school, including a non-Title I public school or, in some cases, a private or parochial school.

Shorn of language that could send Title I funds to private schools, the portability idea could even win support from some Democrats who despair that Title I has become little more than an inner-city jobs program, with the country's most needy students being taught by thousands of poorly educated school aides. But portability is opposed by the teachers' unions, which fear a foot in the door for vouchers.

One thing the Democrats and Republicans do agree on is President Clinton's plan to force school districts to end social promotion, that is, passing students along to the next grade even if they aren't ready for it. In a rare show of togetherness, both sides oppose the idea. Democrats recoil at Mr. Clinton's threat to close schools that pass underperforming students from grade to grade. Republicans recoil at the idea of telling local districts something so basic as who's ready for fifth grade and who's not.

Democrats Predict Tough Time

"Clinton's stuck with it" because he elaborately announced the social-promotion initiative in his State of the Union address and continued to promote it over the opposition of minority congressmen, says a House Democratic staffer. "But it will have a rough time," he adds.

Meanwhile, one thing the president and the Republicans agree on is passage of ESEA before the 2000 elections. Mr. Clinton is eager to have the education act passed so it will secure his legacy as the president who trained teachers, raised student performance, encouraged such innovation as charter schools, equipped classrooms with technology and financed new school construction. The Republicans, hammered by the Democrats in recent elections for having no education ideas of their own and for scuttling those of Mr. Clinton, also are eager for ESEA's passage to show they share voters' concerns about the schools.

Ednc -
ESEA

Insurance Industry and Corporations Battle Over Reimbursement for Y2K Bug

By DEBORAH LOHSE

Staff Reporter of THE WALL STREET JOURNAL
Corporate America thinks it may have found a way to get reimbursed for the huge sums it has had to spend to fix computers plagued with the Year 2000 bug: property insurance. But the insurance industry has other ideas, and it is taking a hard-line stance in what will be a closely watched legal battle with billions of dollars at stake.

So far, GTE Corp. and Xerox Corp. have taken their insurers to court for reimbursement of hundreds of millions of dollars spent to overhaul their computer systems to correctly read the date "2000." Unisys Corp. filed a similar suit earlier this month in state court in Delaware. These companies argue that under an obscure provision of many insurance contracts, known as a "sue and labor" clause, money that a company spends to save its insurer from a loss — such as would occur if its software is corrupted by the Y2K bug and causes property damage — is reimbursable.

Insurance brokers, who help corporations buy insurance, say most of their large corporate clients are now weighing filing claims with their insurers, which will almost undoubtedly wind up in court, too. "There will definitely be a very diligent effort" by insured companies "to look at this matter," says Michael O'Halloran, president of Aon Corp., a large Chicago

insurance broker. "There's a strong possibility that they will seek to get remedy under those provisions."

As many as 100 companies — including pharmacy chain CVS Corp. and Equitable Cos. — a financial-services concern — already have filed such claims or alerted

There are significant hurdles for corporations to get their Y2K costs covered by insurance, underwriters say.

their insurers of expected claims, according to research by PaineWebber insurance analyst Alice Schroeder.

Still, analysts say they don't really expect the insurance industry suddenly to find itself on the hook for \$150 billion or more of Y2K fix-it costs. "The risk of this bankrupting the industry is remote, because the industry's defenses are good," Ms. Schroeder says.

There are significant hurdles for corporations to get their Y2K costs covered by insurance, underwriters say. For one thing, companies typically are supposed to alert their insurers quickly when they incur such costs; yet many have been

fixing their computers for years while only now notifying their insurers of claims.

Also, many policies note that the loss being prevented must be "actual" or "imminent" — not a year or more away, the industry will argue. And the loss being prevented must be one that the insurance policy would cover anyway — yet many insurers have long planned to argue that their policies are intended only to cover unexpected, or "fortuitous," events, not the well-publicized and highly anticipated Y2K event.

Nonetheless, insurers are taking the issue seriously, having learned from previous experience that courts are unpredictable. "The concern is that if you get a bad precedent, there will be more frivolous lawsuits and more legal costs," says Walter J. Andrews, counsel to the Insurers' Year 2000 Roundtable, a group of legal and claims representatives from 34 property-casualty insurers.

The Y2K Act signed by President Clinton last month, which tries partly to give corporations time to fix Y2K problems before being sued, doesn't directly address insurance issues. But it already has been invoked by one company, Xerox, to argue that its insurer should have given it more notice before countering to avoid paying Xerox's claims. The insurer, Zurich Insurance Co.'s American Guarantee & Liability Insurance Co., argues that the Y2K Act

Please Turn to Page C13, Column 3

doesn't apply.

Corporations believe they have strong arguments for having their computer-overhaul costs covered. For starters, they say, if they had done nothing, the insurers would be facing the prospect of damage claims many times greater than the remediation costs. "The whole idea of a sue-and-labor clause is we should try to avoid the big risks of insurance losses," says Robert Ruyak, outside counsel for GTE. "Insurance companies demand that clause," he adds. And many aspects of the policy language, including the requirement that a loss be "imminent," are ambiguous, corporate attorneys say.

The sue-and-labor provision stems from maritime policies and was designed to persuade ship owners not to sit by and do nothing if a craft was about to sink, in the belief that insurance would pick up the tab. Insurers agree to pay if boat owners take steps like retrieving cargo that is sinking with the ship.

Now, the obscure clause is being invoked for costs that are far more widespread, and far more expensive, than ever originally intended, insurers argue. Corporations have been spending more than \$150 billion fixing computers that otherwise might wreak havoc thinking that that code reading "00" means the year 1900, instead of 2000, according to estimates by consultants Gartner Group Inc.

The battle is expected to play out in court, with each side trying to have cases heard in venues friendly to its cause. American Guarantee filed its countersuit to Xerox in New York — which has relatively strict insurer-notification laws, arguing in part that Xerox didn't provide "proof of loss" within the required 60-day time frame after being requested to do so. Xerox, whose suit was filed last month in state court in Stamford, Conn., has estimated its Y2K costs at \$183 million.

Insurance companies say such costs are routine business expenses. They also argue that the history of the sue-and-labor measure is that fix-it costs must be "proportionate and reasonable to the covered loss," and that corporations must show that such costs were incurred for the benefit of the insurer, says Mr. Andrews.

"There's no need to spend hundreds of millions of dollars to save a loss," says Mr. Andrews. "You want a way to save a loss? Unplug the computer."

White House Plans Effort To Clean Up Waterways

WASHINGTON (AP)—The Clinton administration is formulating proposals for a nationwide effort to clean up polluted rivers, lakes and streams.

President Clinton, in his weekly radio address Saturday, said the Environmental Protection Agency will work with states "to assess the state of all our waterways, to identify the most polluted waters and to develop strong, enforceable plans to restore them to health."

He said the plan continues work begun in 1972 with passage of the federal Clean Water Act. The goal is to make waterways clean enough for swimming or fishing, he said, noting that about 40% of U.S. waterways don't meet the swimming or fishing test.

States and the EPA have already identified about 20,000 polluted waterways that fail to meet national water-quality standards, EPA Administrator Carol Browner said. For each, states must produce cleanup plans, she said.

Although states are responsible for making their lists and deciding how to fix pollution problems, the EPA will step in to enforce federal standards if states fall short, Ms. Browner said. The public has 60 days to comment on the rules, which are likely to take effect later this year.

Honorable Dennis J. Hastert
Speaker
United States House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Enclosed for consideration by the Congress is the _____ Act of 1999, the Administration's proposal for reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) and other elementary and secondary education programs. Also enclosed is a section-by-section analysis summarizing the contents of the bill. I am sending an identical letter to the President of the Senate.

Mr. Speaker, this reauthorization will be considered by the Congress at a time that I hope will one day be seen as a critical turning point in American education. A Nation that dominated the 20th century faces tremendous challenges as we draw near to the new millennium, and I believe education holds the key to meeting those challenges. We now have more students in our schools than ever before. We have a technology-driven, information-based economy that requires well-prepared, adaptable workers to ensure continued growth and prosperity. And we have a world that is knit ever-closer together and demands the diverse talents of every American to support the peaceful expansion of freedom and democracy.

To meet these demands and secure our Nation's economic strength, I believe that the new millennium must bring with it the dawn of an Education Age, in which we work together to make every school in America a good school that helps all of its students to reach high academic standards. We also must work together to close the persistent achievement gap based on race, ethnicity, and family income by lifting all of our students up and improving achievement among our lowest- and highest-achieving students. The Administration's ESEA reauthorization proposal would move the Nation toward these goals through a comprehensive strategy focused on early intervention, teacher quality, and real accountability for results.

The enclosed bill would build on and strengthen the positive changes brought about through the last ESEA reauthorization in 1994. In that year, Congress and the Administration took direct aim at Federal policies that for too long had condoned low expectations and low standards for too many of our children. The 1994 Act reflected a bipartisan effort to restructure Federal programs around helping all children to meet challenging State-developed academic

standards. It also focused on better teaching and learning through improved professional development, targeted Federal funds to communities and schools where the needs are greatest, provided educators at all levels with greater flexibility coupled with accountability for results, and strengthened parent and community involvement.

Five years later, we have seen much progress in the effective operation of ESEA programs, but much remains to be done. In part, this is a matter of time: some of the provisions of the 1994 Act are working as intended by the Congress, but many other promising changes are still being phased in by States, school districts, and schools. We also believe, however, that some requirements and provisions should be revised. In effect, we want to preserve the emphasis of the 1994 legislation—stimulating reforms based on challenging standards—but take it to the next stage by helping local communities implement those standards in their classrooms.

Our proposal builds on the positive trends under current law. The Improving America's Schools Act of 1994 and the Goals 2000: Educate America Act gave States and school districts a framework for integrating Federal resources in support of State and local reforms based on high standards. In response, 48 States, the District of Columbia, and Puerto Rico have adopted State-level standards, and the other two States have promoted standards at the local level. States are now developing and implementing curriculum, assessments, and professional development aligned with their standards, and early research suggests these efforts are improving educational outcomes.

In particular, recent results of the ongoing National Assessment of Educational Progress (NAEP) show improved performance for the disadvantaged and other at-risk students who are the primary focus of ESEA programs. NAEP reading scores for nine-year olds in high-poverty schools have improved significantly since 1992, while mathematics achievement has also increased nationally. Students in high-poverty schools and the lowest-performing students—the specific target populations for the ESEA Title I program—have registered gains in both reading and math achievement.

We believe these gains in student achievement are due in part to changes in the 1994 Act that made clear that all students should be pursuing the same high standards and that gave recipients of funds more flexibility in exchange for greater accountability for helping students to reach those standards. This prompted States and districts to make changes in instruction and policies to help all students reach high standards. The new flexibility included expanding the use of schoolwide programs to restructure entire schools in high-poverty areas, encouraging the coordination of program plans and administrative funds to better support comprehensive reforms,

and granting waivers of statutory and regulatory requirements to encourage local innovation to improve student achievement.

Although we are encouraged by these positive trends and results, we must do more if we are to give every child the opportunity to achieve to high standards and if, as a Nation, we are to achieve America's Education Goals. As we prepared our reauthorization proposal, we found that too many children are still taught by teachers who are not well-qualified or are teaching "out of field." Too many children still are attending schools that are not safe and drug-free. The educational system still is insufficiently accountable to parents and the public. And educational results, for many children, remain far below what they should be. Our reauthorization bill addresses these and other continuing needs and problems.

The Administration's proposal for reauthorizing the Elementary and Secondary Education Act would consolidate the current 14 titles into 11 titles. We also would repeal over 20 current programs and consolidate others to better focus ESEA resources on the programs and priorities most likely to make a difference in teaching and learning. Major changes include the following:

In Title I we are proposing to help narrow the achievement gap between disadvantaged children and their more fortunate peers by strengthening accountability for results. Our proposal would give States and school districts additional resources for turning around failing schools and hold schools accountable for raising the achievement of the lowest-performing students. In addition, we would improve the quality of instruction in Title I programs by phasing out the use of paraprofessional aides in instructional roles and encouraging aides to seek full certification.

A new "Education Accountability Act" within the ESEA would hold States accountable for ensuring that students are taught by fully qualified teachers, providing parents with meaningful annual report cards, ending the traditional practices of social promotion and retention in grade, implementing sound discipline policies, and enforcing their own accountability systems.

- In place of the current State grant authorities under Goals 2000, Title II Eisenhower Professional Development, and Title VI Innovative Education Program Strategies, we are proposing a new grant program with adequate resources to move challenging educational standards into every classroom, primarily through high-quality professional development for teachers.

- A new Teachers for Tomorrow authority would support State and local efforts to recruit and retain quality teachers in high-need areas. This authority would include the Troops to Teachers program, which recruits and prepares qualified retired military personnel to become teachers, as well as a similar initiative for mid-career civilian professionals who are interested in transitioning to a teaching career.
- The bill would strengthen early childhood learning and school readiness by supporting the professional development of early childhood educators to help children develop better language and literacy skills in the early years.
- In keeping with the Administration's goal that limited English proficient (LEP) children gain English proficiency after three years in American classrooms, we would hold schools receiving Title I and Title VII Bilingual Education funds accountable for helping these children to master English. LEP students who have attended U.S. schools for three consecutive years would take State reading and language arts assessments in English, and the results of these tests would then inform decisions and actions on school accountability.
- The bill includes an authorization to support growing efforts at the local level to give parents and students more options and choices within the public school sector, as well as measures to increase choice within public schools, with a particular emphasis on increasing access to the rigorous courses that research shows provide the best route to college.
- We would restructure the Safe and Drug-Free Schools and Communities authority as a State-run competitive grant program to ensure that recipients receive sufficient funding to implement comprehensive, research-based drug and violence prevention practices. A separate authorization would be included for Project SERV (School Emergency Response to Violence), a proposal in the President's fiscal year 2000 budget request that would provide emergency assistance to schools affected by violence or other traumatic incidents.
- Our bill strengthens the targeting provisions of the Technology Literacy Challenge Fund to better ensure that schools in low-income communities obtain the same Internet access, hardware, software, and related professional development as in wealthier communities.
- The bill incorporates the Class-Size Reduction initiative—launched by Congress with a

one-year authorization and appropriation in fiscal year 1999—into the ESEA with a five-year authorization that would affirm long-term Federal support for the goal of class-size reduction.

- We also would incorporate the Reading Excellence Act into the ESEA to strengthen the goal of helping all children to read well and independently by the end of the third grade.

As you know, the House and Senate have passed separate bills to expand the ED-Flex demonstration program and are working on a conference agreement. The Administration will shortly submit its own ED-Flex proposal that will reflect both the outcome of Congressional consideration of H.R. 800 and the broad range of flexibility and accountability measures included in our overall ESEA proposal.

I urge the Congress to act favorably and expeditiously on our ESEA reauthorization proposal, which would build on the important strides taken in the 1994 legislation and give schools additional resources and mechanisms for achieving America's Education Goals.

The Office of Management and Budget advises that there is no objection to the submission of this proposal to the Congress and that its enactment would be in accord with the program of the President.

Yours sincerely,

Richard W. Riley

Enclosures

Ednc - ESEA



Toward Performance-Based Federal Education Funding *Reauthorization of the Elementary and Secondary Education Act*

Progressive Policy Institute
21st Century Schools Project

Andrew Rotherham

April 1999

CLINTON LIBRARY PHOTOCOPY

About the Progressive Policy Institute

*"One person with a belief is a social power
equal to ninety-nine who have only interests."*

—John Stuart Mill

The mission of the Progressive Policy Institute is to define and promote a new progressive politics for America in the 21st century. Through its research, policies, and perspectives, the Institute is fashioning a new governing philosophy and an agenda for public innovation geared to the Information Age.

This mission arises from the belief that America is ill-served by an obsolete left-right debate that is out of step with the powerful forces re-shaping our society and economy. The Institute advocates a philosophy that adapts the progressive tradition in American politics to the realities of the Information Age and points to a "third way" beyond the liberal impulse to defend the bureaucratic status quo and the conservative bid to simply dismantle government. The Institute envisions government as society's servant, not its master—as a catalyst for a broader civic enterprise controlled by and responsive to the needs of citizens and the communities where they live and work.

The Institute's work rests on three ideals: equal opportunity, mutual responsibility, and self-governing citizens and communities. Building on these cornerstone principles, our work advances five key strategies to equip Americans to confront the challenges of the Information Age:

*Restoring the American Dream by accelerating economic growth,
expanding opportunity, and enhancing security.*

*Reconstructing our social order by strengthening families,
attacking crime, and empowering the urban poor.*

*Renewing our democracy by challenging the special interests and
returning power to citizens and local institutions.*

*Defending our common civic ground by affirming the spirit of
tolerance and the shared principles that unite us as Americans.*

*Confronting global disorder by building enduring new international
structures of economic and political freedom.*

The Progressive Policy Institute is a project of the Progressive Foundation. For further information about the Institute or to order publications, please call or write:

600 Pennsylvania Ave., SE · Suite 400 · Washington, DC 20003

E-mail: ppiinfo@dlcppi.org · WWW: <http://www.dlcppi.org>

Phone (202) 547-0001 · Fax (202) 544-5014

Toward Performance-Based Education Funding

Reauthorization of the Elementary and Secondary Education Act

As Congress prepares this year to reauthorize the Elementary and Secondary Education Act (ESEA), lawmakers face a critical choice: refight old battles or break the mold with a "Third Way" approach that addresses the demand for a public education system that graduates students prepared for the new global economy.

ESEA is the 14-title federal law that today directs more than \$13 billion in annual education assistance to states and school districts through a crazy quilt of more than 50 programs.¹ The largest and best known program is Title I, the cornerstone of the federal government's commitment to ensure educational equity for poor children. The reauthorization gives Congress the opportunity to transform Washington's role in elementary and secondary education from a focus on *process* to *performance*, and thus leverage the limited role federal spending plays in public education into a major force for change.

ESEA today is best viewed as a welter of spending dictates that prescribe how states and localities must spend federal dollars but does not hold them accountable for achieving measurable improvements. In the future, federal dollars should be tied to performance and results. With this

transformation, Washington's role will shift from a passive enabler of failure to a catalyst for success. In short, what is needed is a new bargain on federal education spending: *States and localities should get increased flexibility for using federal resources but must take increased responsibility for results.*

Changing Times Demand Changing Measures

In his 1999 State of the Union address, President Clinton challenged Congress to tie ESEA spending—more than half of the \$21 billion total federal investment in elementary and secondary education—to results on five key measures of state and local performance: ending social promotion, improving teacher quality, reconstituting failing schools, issuing school report cards, and enforcing discipline codes.² The Clinton proposal represents a historic shift toward performance-based funding and away from virtually unconditional support to states and localities. But unless it is coupled with more flexibility, the President's proposal risks adding yet another layer of federal prescription on local districts already

Toward Performance-Based Federal Education Funding

burdened by excessive reporting requirements. At the state and local level, there is an understandable resistance to anything appearing to be additional federal regulation. State and local officials want additional resources, but describe the layering of additional programs one on top of the next as "an administrative nightmare."³

Enacted in 1965, ESEA is a Great Society landmark that signified a national interest in assuring equal access to a quality education for all Americans. In essence, the federal government took responsibility for compensating poor school districts to put them on a fiscal par with more affluent districts. The federal government must continue to play that role. However, we can no longer define equity solely in terms of fiscal parity. More than 30 years and \$100 billion later, the performance gap between low-income and middle-class students remains disconcertingly wide. To narrow that gap, Washington needs to redefine equity in terms of concrete results.

We need a progressive alternative to the left's habitual demand for more spending and the right's incessant campaign to shrink Washington's role in education. Republicans, for example, propose converting ESEA programs into block grants with no accountability for results, or, in the extreme, eliminating the U.S. Department of Education. Too many Democrats refuse to acknowledge that the problems with ESEA programs go beyond their funding level.

Neither block grants nor more of the same old "top-down" categorical approach driving today's ESEA will ultimately benefit the nation's school children, especially the 20 percent who live in poverty and are most likely to be in failing schools.⁴ Since 1965, titles and programs have been added, but the underlying philosophy and methods have not been rethought. The federal role embodied in ESEA is still critical. However, ESEA has calcified into a confusing, unfocused, and largely ineffective statute, as a result of interest group pressure, constituency politics, and Washington's inability to eliminate or consolidate even the smallest or least effective government program. *In 1999, ESEA is more reflective of symbolic attention to issues than substantive solutions. That is why the Progressive Policy Institute believes a dramatic new approach is essential*

to reshaping the ESEA.

PPI is not alone in this sentiment. Groups across the ideological spectrum are calling for substantial changes to ESEA. For example, the conservative Heritage Foundation advocates that greater control of federal programs be given to the states in exchange for greater accountability. This approach, dubbed "Super-Ed-Flex" will likely be introduced in Congress this year.⁵ PPI supports the Super-Ed-Flex goal of greater flexibility in exchange for greater accountability, but believes that this proposal fails to substantively address the basic problems of the categorical approach.

The federal role in elementary and secondary education is limited but not insignificant. While Washington contributes only about 7 percent to total education expenditures in this country, this money is concentrated—although not to the degree it should be—on impoverished areas. However, Washington must do a better job of leveraging this investment to drive better performance. Specifically, this report proposes that the current categorical approach is broken but that Washington can—and should—play a vital role in elementary and secondary education.

States, school districts, and schools are becoming more flexible and more accountable for performance, and the federal government must support this by becoming flexible and performance-based itself. To achieve a marriage of accountability and flexibility, a real link must be established between funding and results. This must be done in tandem with a commonsense consolidation of programmatic spending and an increase in flexibility. In 1965, equity could be measured in dollars; in the New Economy, equity must be measured by quality.

To update ESEA for the Information Age, PPI believes Congress must:

- Introduce real accountability by making ESEA funding performance-based rather than a guaranteed source of revenue for states and school districts.
- Define performance benchmarks for states and localities.

- Consolidate ESEA programs into funding primarily compensatory education, professional development, limited English proficient students, and innovative strategies.
- Concentrate ESEA funding on impoverished areas where schools are most likely to be in distress.
- Terminate funding for states and districts consistently failing to meet established benchmarks.

With this new role, Washington should be more active in benchmarking quality and measuring performance. It should do less micro-managing of how local school officials raise their students and teachers to higher performance levels. The federal government should get out of the business of accounting for programmatic inputs and instead focus more strategically on empowering citizens with information, setting broad standards and goals, measuring and comparing results, and researching effective strategies for improvement.

In the New Economy, knowledge-intensive jobs are increasingly the norm. As Robert Atkinson and Randolph Court wrote recently, "Since 1969, virtually all jobs lost in goods production and distribution sectors have been replaced by office jobs."⁶ In the past, students at the bottom-end of America's education system were not learning advanced skills and knowledge. This reality was papered over by—and to some degree *driven* by—an abundance of unskilled and low-skill jobs. The economy lent itself to schools that were, in the words of Urban League President Hugh Price, "expected to educate a small percentage of supposedly bright kids extremely well [while paying] scant attention to those who struggled academically."⁷ The Old Economy didn't demand a large number of highly educated workers. The New Economy demands all students be competent learners if they are to thrive in this new era.

ESEA: Then and Now

When ESEA was passed in 1965 it was landmark legislation, codifying the federal role and national interest in ensuring quality education for all students. Prior to 1965, impoverished students and students of color had been denied access to quality education and a chance to become upwardly mobile in the economy.

Before 1965, Congress had passed smaller bills to aid education—the Smith-Hughes Act of 1917 for vocational education,

Impact Aid in 1950, and the National Defense Education Act of 1958. Resistance arising from segregation, and the participation of private and religious schools, however, prevented large-scale federal assistance to elementary and secondary schools. The Civil Rights Act of 1964 helped alleviate the racial issues and ESEA was passed the following year.⁸

ESEA has evolved into a hodgepodge. As a whole, it appears to address different and complementary needs. In addition to the Title I program, there are programs for technology, migrant students, women's educational equity, teacher professional development, civics education, foreign languages, gifted and talented children, arts in education, native American and native Hawaiian children, and various demonstration projects.

Funding is distributed one of two ways: by formula or by competitive grants. Formula programs send money to states and school districts based on certain factors, for example, overall number of students or the number of poor students. Competitive grants are awarded based on an application and selection process.

Besides Title I, the larger programs include the Impact Aid program (\$864 million) compensating school districts that lose property tax revenue because they host federal buildings or installations, such as military bases. The Safe and Drug-

The federal government should get out of the business of accounting for programmatic inputs and instead focus more strategically on empowering citizens with information, setting broad standards and goals, measuring and comparing results, and researching effective strategies for school improvement.

Toward Performance-Based Federal Education Funding

Free Schools program (\$566 million) targets violence and substance abuse prevention. There is also a professional development title (\$335 million), and the Title VI 'block-grant' program (\$375 million), which now also includes last year's class-size reduction initiative (\$1.2 billion). One title is devoted to technology (\$698 million) and another to bilingual education (\$380 million). School construction is even given a title, although it was only funded briefly before the funding was rescinded.⁹

In short, Washington has created a program to address every ill on the educational landscape. What this has created is a statute long on symbolism but woefully short on substance. By undertaking so many challenges through ESEA and related programs, the federal government has ended up doing nothing particularly well. And, the overwhelming emphasis on process has come at the expense of results.

While federal leadership has undoubtedly improved schools over the past 34 years—especially by drawing attention to the special needs of impoverished students—it is difficult to attribute these gains to particular categorical programs. Moreover, as education researcher Dr. Paul Hill points out, many federal programs and regulations have "weakened schools by putting process before results, caused displacement of goals from serving students to guaranteeing administrative compliance, and weakened schools' ability to pursue effective instructional programs and solve the problems presented by their students."¹⁰

ESEA is still arranged and administered in 1999 with the same philosophy as 1965. Federal education dollars are sent to states and localities through a Byzantine patchwork of programs and formulas targeting different discrete needs and populations. This creates confusion, redundancy, and inefficiencies. It also makes systematic collection of useful data a herculean and thus far unsuccessful task.¹¹ In fact, with the exception of Title I, there is a substantial lack of data about the effectiveness of these programs. In addition, in many states it has created a dependency on federal funds to support state education departments, essentially aping the prescriptive struc-

ture of Washington.¹²

A closer look at ESEA reveals problems with the current approach.

Title I

With annual spending of more than \$8 billion, Title I is the largest ESEA program. Title I is, in essence, funding sent to localities by a formula to undertake compensatory education activities for impoverished students. In this sense, Title I is essentially a block grant. Although 99 percent of Title I dollars reach the local level, the money is spread too thinly, and there is no enforced accountability for results from the funding.¹³ Between 70 and 80 percent of Title I funding is used for staff, and the remainder is used to purchase educational services and materials, increasingly from the private sector.¹⁴

Washington has spent more than \$118 billion on Title I since its inception in 1965, and several recent evaluations confirm that these dollars have failed to close the achievement gap between the impoverished students served and their more affluent peers.¹⁵ While some school districts have made demonstrative gains with Title I dollars, the funding has not produced the intended compensatory effect overall.

Not all impoverished schools and impoverished students are served by Title I, so blanket comparisons of Title I spending to the overall achievement of poor students are misleading. As a result of the 1994 Title I reauthorization, Title I funds are more concentrated on high-poverty areas but still not to the degree that they should be. Currently, 58 percent of schools nationwide receive at least some Title I funding.¹⁶ While 95 percent of schools with a poverty level of 75 percent to 100 percent receive Title I funding, often schools with lower but significant percentages of children in poverty do not.¹⁷ For example, one in five schools with poverty in the 50 percent to 74 percent range do not receive any Title I dollars, and only 64 percent of schools with poverty in the 35 percent to 49 percent range do.¹⁸ Research clearly demonstrates that poverty impacts learning, yet many schools with high percentages of impoverished children receive no

Title I funding. At the very least, considering funding limitations, money should be focused more on schools with the highest need. Despite continuing efforts to concentrate Title I funding, the distribution is still based more on politics than policy. While there are four different Title I formulas (two are currently unfunded); 86 percent of Title I funding is allocated based on the least concentrated of the four.¹⁹

During the last ESEA reauthorization in 1994, Congress also made substantial changes to Title I,

allowing local school districts much more flexibility with Title I dollars while requiring that Title I students be held to the same high standards as other students. States were required to adopt assessments to ensure poor children were making progress, and mechanisms were built into the statute to ensure accountability if these steps were not taken. Unfortunately, as one independent evaluation of Title I stated, "There is wide variance in the degree to which states have complied with the requirements of the new Title I."²⁰

Sweeping conclusions based on Title I evaluations are risky. The methodology of social science in this area is notoriously suspect because obtaining random samples often means denying services to students who could otherwise benefit from them. In essence, a random control group is rarely possible. Therefore, as the massive longitudinal evaluation of Title I, the "Prospects Report", pointed out, "[The] inability to discern a compensatory effect of [Title I] is not necessarily an indication of program failure." While the achievement gap didn't lessen as a result of Title I, it didn't grow either.²¹ Basically, because denying a specific group of children services is untenable, measuring what would have happened to these students in the absence of this funding is largely impossible.²²

However, there is evidence of improvement in math and reading scores among the most impoverished students.²³ Nonetheless, aggregate, empirical results from Title I analysis are not encouraging. Further, independent evaluations of Title I still lack academic rigor in activities that the funding sup-

ports.²⁴ The U.S. Department of Education's own analysis of Title I states, "A review of the evidence provided by states shows that [Title I] plans appear to be weak in benchmarking standards against external criteria."²⁵ Rather than raising and holding all students to high standards, Title I funds too often perpetuate a two-tiered educational system setting lower expectations for impoverished students than affluent ones. And, because a true results-

based focus is not part of Title I, the federal government is therefore a silent accomplice in the con-

Accountability provisions are only as effective as the will to enforce them is strong. In the case of Title I, that will has been weak.

tinuing this bifurcated approach to schooling.

Many analysts attribute the disappointing achievement results produced by Title I to the widespread use of unqualified aides or paraprofessionals in the classroom.²⁶ The high percentage of Title I funding used for staff isn't surprising because education is naturally a labor-intensive activity. However, the type of staff this funding supports is often surprising. Half of Title I instructional staff are paraprofessionals who teach even though they lack the educational background to do so.²⁷ Congress has set the bar ridiculously low for these instructional aides requiring only that aides "have a secondary school diploma, or its recognized equivalent, or earn either within two years of employment."²⁸ Eighty-four percent of principals in high-poverty schools reported using aides compared to only 54 percent of their peers in low-poverty schools.²⁹ Moreover, in high-poverty schools, only 10 percent of aides have bachelor's degrees.³⁰ This means that the students most in need of high quality instruction are least likely to get it.

Again, it is important to note that Title I isn't a singular program at all. Rather, it is a funding source for state and local compensatory education activities in many forms. That Title I hasn't shown more encouraging results is not proof that these dollars can't be made to work. With funding based on results, all states and localities would be forced to make Title I work. Ineffective practices, such as the use of unqualified teachers especially for the most needy students, would certainly be curtailed if funding were contingent upon results. Ac-

Toward Performance-Based Federal Education Funding

accountability provisions are only as effective as the will to enforce them is strong. In the case of Title I, that will has been weak.

Because the U.S. Department of Education has never demanded results with Title I funding, it has created a sense among many states and program administrators that Title I is an undertaking without consequences. Although states are not required to fully implement the changes made to Title I during the 1994 reauthorization until 2001, it is unclear if this deadline will be met. The Department's own evaluation of Title I describes, "States are making significant progress in developing content standards, but progress is considerably slower with respect to developing performance standards according to the timeline set forth in the statute."³¹

Washington has never fiscally sanctioned a state or school district for non-performance. Sanctions have been levied for fiscal noncompliance and civil rights violations but never for simply chronically failing to educate children with Title I dollars. Over 34 years this has created a sense that regulations around Title I have no real meaning. Without fiscal enforcement of the substantial changes made to the law in 1994, this trend, unfortunately, will continue. Clearly, state and local officials share some of the blame for the shortcomings, but in the words of the Citizens' Commission on Civil Rights, "The federal government's failure to take the actions needed to implement and enforce the new Title I has also retarded educational progress."³²

If simply spending money on impoverished students were the key to improving student achievement, Title I dollars would have generated more encouraging results. Equally important to resource allocation is accountability for results with those resources. Unfortunately, when it comes to Title I, this has been a forgotten part of the equation.

Safe and Drug-Free Schools

While Title I is the largest and most visible program in ESEA, other parts of the law are problematic as well. The Safe and Drug-Free Schools program offers an excellent example of the focus on symbolism at the expense of results in the

current categorical approach. The \$566 million program is a marriage of the prescriptive requirements associated with categorical programs and the lack of accountability often associated with block grants.

The rationale behind Safe and Drug-Free Schools makes perfect sense. Drugs and violence clearly impact learning, and hence, school districts have a compelling interest in ameliorating both of these problems. Safe and Drug-Free Schools is the classic evolution of a categorical program: Identify a problem (preferably a politically attractive one with a constituency) and create a program to address it.

With the exception of money set aside for state departments of education and prevention activities led by police officers (in practice usually the popular but ineffective Drug Abuse Resistance Education or DARE program), school districts are allowed latitude in spending their Safe and Drug-Free funds. As with Title I, targeting is a problem. Because of a lack of concentration, most school districts don't receive a meaningful amount of Safe and Drug-Free money. According to Secretary of Education Richard Riley, "Three-fifths of school districts currently receive grants of less than \$10,000, with the average grant providing only about \$5 per student."³³

No comprehensive data on the effectiveness of Safe and Drug-Free Schools funds exists and meaningful data would be difficult to gather. Ample anecdotal evidence suggests that funds are often used ineffectively and that the program lacks a clear focus.³⁴ DARE America, the advocacy group lobbying for the DARE program, purports to have data proving the effectiveness of that particular approach. In reality, these are studies of student and teacher perceptions about the program and student perceptions about drug and alcohol abuse.³⁵ Actual empirical data about the DARE program show that it produces results that are "marginal at best."³⁶ In practice, this is probably because DARE is most often offered as an isolated activity to kids during one year of school rather than as part of a comprehensive focus on drug prevention. However, political popularity and a vocal constituency has protected

DARE from being forced to sink or swim on its own merits.

This doesn't mean that the DARE program can't work, but under the current system it is not forced to work. Because funding is set aside for DARE in the Safe and Drug-Free schools program beyond the commitment of local police officers to discourage drug use among kids, there is little incentive for the program to perform. DARE, and Safe and Drug-Free Schools as a whole, are symptomatic of prob-

lems inherent in Washington's top-down approach to educational policy.

Various constituencies, each protecting and advocating their slice of the pie, end up taking the flexibility, accountability, or often both out of programs. The General Accounting Office highlighted problems inherent in balancing flexibility with accountability in a program like Safe and Drug-Free Schools, stating that while local innovation is one of the goals of the program, "the lack of uniform information on program activities and effectiveness" hinders federal oversight.³⁷

Federal process-based accountability is an impossible role for Washington to play. There are more than 14,000 school districts operating in the country right now. How can the federal government possibly monitor them effectively for process compliance?³⁸ However, granting flexibility in the absence of performance measures does nothing to discourage ineffective practices.

Limited-English-Proficient Students

The \$380 million bilingual education program is another example of how entrenched interests can use the inflexibility of the current system to protect categorical programs, often at the expense of children. It also typifies symbolism trumping substance in ESEA. As with Title I and Safe and Drug-Free Schools, bilingual funding is also spread too thin to make a real difference. In addition, the program has no concrete performance measures and often supports activities that research indicates are ineffective.

Educating limited-English-proficient (LEP) students is an urgent issue for many school districts, but the need is not being met. There are 3.2 million LEP students in the United States and more than 75 percent of them attend high-poverty schools.³⁹ Each year, 640,000 LEP students are not served by any sort of program targeted to their unique needs.⁴⁰ Most telling, the dropout rate for Hispanic students (the largest cohort of LEP students) is about 30 percent; 44 percent for Hispanic

students born outside of the United States.^{41 42} A Department of Education re-

There are more than 14,000 school districts operating in the country right now. How can the federal government possibly monitor them effectively for process compliance?

port on dropout rates stated that language difficulty "may be a barrier to participation in U.S. schools,"⁴³ although it is not the sole cause of the Hispanic dropout problem. Further, and fairly obviously, reading ability is a key predictor of graduation and academic success.⁴⁴

Bilingual education and transitional bilingual education are two different concepts. Bilingual education seeks to teach in one language while developing proficiency in a second. Transitional bilingual education simply seeks to teach English as quickly as possible so that a student can transition into mainstream classes.

The federal response to the pressing need to educate LEP kids is a competitive grant program giving priority to bilingual education programs that "provide for the development of bilingual proficiency both in English and another language for all participating students."⁴⁵ In practice, this generally means bilingual education for Spanish-speaking students only because qualified teachers in other languages are rare. More importantly, although the research on bilingual education is mixed and often methodologically suspect, there is no evidence that bilingual education is preferable to other methods of teaching LEP youngsters English. In fact, the National Research Council's Committee on the Prevention of Reading Difficulty in Young Children found the opposite. The Committee reported that that while most bilingual evaluations are too small or flawed to be useful, "the most careful met-analysis of

Toward Performance-Based Federal Education Funding

studies comparing bilingual to English-only programs for language-minority children carried out by Willig (1985) shows better literacy outcomes in English for children who received transitional bilingual education."⁴⁶

In 1998, two types of federal bilingual grants were awarded, Enhancement Grants and Comprehensive School Grants (there are not competitions for every type of grant each year). Applications for Enhancement Grants were filed by 255 school districts and 36 grants were awarded. Applications for Comprehensive School Grants were filed by 401 school districts and 63 were awarded. Only 15 percent of the school districts that applied—that believed they needed federal assistance to educate LEP students—received funding. The average Enhancement Grant in 1998 was \$130,300 while the average Comprehensive School Grant was \$250,000.⁴⁷ Even a \$250,000 grant can be insufficient for a school district struggling to educate a diverse population of students.

Again, the federal focus on bilingual education as a strategy to educate LEP students is surprising in the first place. It seems the only people supporting actual bilingual programs are academics and practitioners with a vested interest in their continuation. A portion of the federal bilingual funding goes to these researchers who, not surprisingly, have a proclivity for producing pro-bilingual research. As James Traub reported in a recent *New York Times Magazine* article, an academic and pedagogical rationale supporting bilingual education actually came about after its inception.⁴⁸ In the words of bilingual scholar Ursula Casanova, "The program was not the result of academic theory but rather "the result of political strategies designed to funnel federal poverty funds to the Southwest."⁴⁹ Boston University professor and bilingual researcher Christine Rossell and Keith Baker, who has directed bilingual studies for the U.S. Department of Education, conducted an exhaustive review of evaluations of 300 bilingual education programs and failed to find any studies showing bilingual education to be superior to other methods of teaching English to LEP students.⁵⁰ In fact, of the 300 evaluations they reviewed, Rossell and Baker only found 72 that were "methodologically sound."⁵¹ Moreover, a recent Public Agenda Foundation report found that

66 percent of Hispanic parents and 75 percent of foreign-born parents reject the idea of bilingual education, preferring English immersion.⁵² As a practical matter, bilingual education just isn't an option in many school districts. Some school districts now serve students speaking more than 100 native languages.⁵³

Voters in California recently gave their verdict on bilingual education by passing Proposition 227. That referendum shifted the focus from bilingual education to teaching children English as quickly as possible. Although, it is too soon to gauge the actual effect of 227 on school districts, changes are clearly afoot.⁵⁴ A similar initiative is on the ballot in Arizona. Meanwhile, states receiving little or no bilingual funding are coping with influxes of LEP students, and America's school-aged population continues to get more diverse.

As a result of demographic and statutory changes, school districts and states nationwide are dealing with a rapidly changing and in many cases, unaddressed situation when it comes to LEP students. However, they are supported by a static and symbolic, rather than substantive, federal role.

Teacher Quality, Class Size, and Student Achievement

Reducing class size is obviously not a bad idea. Quite the contrary, substantial research indicates it can be an effective strategy to raise student achievement. As the Progressive Policy Institute has pointed out, all things being equal, teachers are probably more effective with fewer students.⁵⁵ However, achieving smaller class sizes is often problematic. For example, as a result of a teacher shortage exacerbated by a mandate to reduce class sizes, 21,000 of California's 250,000 teachers are working with emergency permits in the states most troubled schools.⁵⁶

Now a part of Title VI of ESEA, President Clinton's \$1.2 billion class-size reduction initiative, passed in 1998, illustrates Washington's obsession with means at the expense of results and also the triumph of symbolism over sound

policy. The goal of raising student achievement is reasonable and essential; however, mandating localities do it by reducing class sizes precludes local decision-making and unnecessarily involves Washington in local affairs.

During the debate on the Clinton class-size proposal, it was correctly pointed out that research indicates that teacher quality is a more important variable in student achievement than class size. If

fact, this crucial finding was even buried in the U.S. Department of Education's

Instead of allowing states and localities flexibility to address their own particular circumstances, Washington created a one-size-fits all approach.

eliminating funding for the Ellender Fellowships, a small program tucked into

own literature on the issue.⁵⁷ The Committee on the Prevention of Reading Difficulty in Young Children stated, "[Although] the quantity and quality of teacher-student interactions are necessarily limited by large class size, best instructional practices are not guaranteed by small class size."⁵⁸ In fact, one study of 1000 school districts found that every dollar spent on more highly qualified teachers "netted greater improvements in student achievement than did any other use of school resources."⁵⁹ Yet despite this, the class-size initiative allows only 15 percent of the \$1.2 billion appropriation to be spent on professional development. Instead of allowing states and localities flexibility to address their own particular circumstances, Washington created a one-size-fits all approach. Considering the crucial importance of teacher quality, the current shortage of qualified teachers, and the fact that class-size is not a universal problem throughout the country, shouldn't states and localities have the option of using more than 15 percent of this funding on professional development?

Smaller Programs

The smaller programs within ESEA are equally as prescriptive, ineffective, or irrelevant as the larger ones. They are just less expensive. Particularly in Title X—the Programs of National Significance portion of the law—there are numerous programs for such activities as reading, writing, civics, arts, gifted and talented students, and various dem-

onstration projects: Individually these programs are small and seemingly innocuous; collectively they add up to more than \$200 million in annual spending.

Because of political popularity and constituency politics, Congress refuses to eliminate or redirect funding from even programs that the Department of Education says ought to go. For example, each year the Department recommends

Title X of ESEA. The Ellender funding, \$1.5 million last year, goes to the Alexandria, Virginia-based Close-Up Foundation. Close-Up is an excellent program that brings students from all 50 states and many U.S. territories to Washington for a week during the school year to learn about American government.

The Ellender Fellowships were established to provide scholarships for low-income students to attend Close-Up. However, a 1992 evaluation of the program found that "despite a pattern of increasing federal funding for the program and significant increases in private-sector support for the Close-Up Foundation, the number of fellowships had steadily declined."⁶⁰ Funding was clearly going to administration rather than scholarships. Close-Up and the Department of Education developed a plan to wean Close-Up from its dependence on federal funds and as a result the Department consistently recommends against funding the Ellender program.⁶¹ Nonetheless, each year Close-Up comes through the congressional appropriations process unscathed. It is but one example of a larger problem.

Fiscal concerns about the use of the Ellender funds aside, it is also an important philosophical example. Close-Up itself is a worthy program with broad bipartisan support, valuable to many students. However, does every worthy activity deserve a federal program? As a practical matter, who is in a better position to make decisions about worthiness: Washington, or states and localities?

The Categorical Problem

In his book, *Demosclerosis*, Jonathan Rauch likens the current practice of layering federal programs one on top of the next without eliminating or modifying old ones to building houses, each atop its predecessor. The result might work in the short run but would ultimately become "a teetering dysfunctional mess."⁶² ESEA typifies this phenomenon. Its crucial purposes are lost in a maze of programs stifling ingenuity, flexibility, and innovation, and as a result, under-serving the children they are intended to help.

This year, in an effort to address this problem, Congress is already considering legislation to introduce more flexibility into federal education programs. This legislation, commonly referred to as Ed-Flex, would allow school districts to apply for waivers from certain state and federal regulations surrounding federal programs.⁶³ In theory, this flexibility would come in exchange for greater accountability for results. Ed-Flex is a step in the right direction, flexibility in exchange for accountability. However, it has two drawbacks. First, it vests additional power in the hands of bureaucrats rather than practitioners by establishing yet another process around federal programs, albeit a waiver process. Second, it doesn't address the core problems with categorical programs.

The fact is, categorical programs and specific grant programs, large or small, inevitably spawn constituencies and interest groups who then assume a change-averse posture around their programs. Commonsense change becomes difficult and large-scale change nearly impossible. This phenomenon isn't unique to ESEA. A look through the federal tax code or agriculture subsidies reveals parallel trends. It is also a practice that is not unique to either political party. Creating programs with nebulous purposes and no accountability has long been a bipartisan activ-

ity. A side effect of this proliferation of programs has been the accompanying thin dispersal of funds, as is the case with ESEA.

Because educational decisions are generally made at the state or local level, a federal role built around many discrete categorical purposes inherently precludes state and local decision-making.

Because educational decisions are generally made at the state or local level, a federal role built around many discrete categorical purposes inherently precludes state and local decision-making.

We can't expect schools and school districts to be flexible and innovative while supporting them through an outdated, static funding system.

ESEA in the New Economy: Toward a Results-Based Partnership

In the New Economy, the federal government should play the role of investor and catalyst rather than "command and control" manager. National benchmarks should be set, and Washington should empower states and localities to progress toward them. Most importantly, Washington should not use its resources to drive and support ineffective practices and should not subsidize failure.

Ideally, state and school district performance should be measured against national benchmarks. Presidents Bush and Clinton both tried to take commonsense steps toward creating a national framework of standards and assessments. In his 1997 State of the Union address, President Clinton proposed voluntary national tests in 4th grade reading and in 8th grade mathematics. The President hoped that the tests would drive national—not federal—standards embodying what students need to know in the New Economy.⁶⁴ Unfortunately, the Clinton proposal for national testing was killed on Capitol Hill in 1997 and 1998. National standards and a national assessment will ultimately create an environment of less testing for students and more flexibility for states and localities. In addition, standards and assessments create a focus on what will be taught and what should be learned.⁶⁵ This creates clarity for students and teachers and is essential for raising student achievement. PPI continues

to support the President's proposal. However, in the absence of these benchmarks and a way to assess progress against them, states and school districts should be required to demonstrate progress toward established state standards. This is the crux of performance-based support: demonstrative progress toward established goals.

Further, without national standards and assessments, some national comparative measure—for example the National Assessment of Educational Progress (NAEP)—should continue to be employed to allow interstate comparisons and help the public gauge the comparability of standards. Independent groups monitoring the quality of standards and assessments in various states will also play an essential role as providers of public information and arbitrators of quality.

The federal role in education is limited but not trivial. While federal funds only make up about 7 percent of education spending in this country, to a certain degree they are more concentrated in certain areas, increasing the ability of federal dollars to leverage reform. This is why federal aid constitutes 15.5 percent of the school budget in Birmingham, Alabama, and only 3.3 percent in wealthy Fairfax County, Virginia.⁶⁶ Generally, areas receiving higher amounts of federal funds are also areas where the schools are not delivering a high quality education to all students. Federal funds for elementary and secondary education are targeted more toward impoverished populations than state funds and play a key role in addressing fiscal inequities caused by the reliance on property taxes to fund education.⁶⁷ The General Accounting Office reports that for every dollar provided to each student nationwide, federal funds provided an average of \$4.73 per poor student while state funds only provided \$0.62.⁶⁸ A shift to a block grant simply allocating funds on a per-pupil basis would undermine this role.

In the future, to focus federal assistance on resources and results, federal funding should be sent to states and local school districts with minimal

regulations and maximum flexibility. This should be done in tandem with an increased results-based focus. Rather than a programmatic-based approach to each problem, states and localities should be empowered to solve problems and address challenges. Federal decision-making on specific funding use inherently stifles state and local innovation and ingenuity. Federal funding should be concentrated around a

Rather than a programmatic-based approach to each problem, states and localities should be empowered to solve problems and address challenges.

small number of attainable purposes rather than spread across myriad programs

with varying goals.

A shift in the federal role toward performance-based assistance will also reduce paperwork and regulatory requirements at the state level. While obviously skewed toward larger states, it does take an average of 50 full-time employees per state to administer ESEA programs.⁶⁹ Paul Hill has referred to this phenomenon as the federal "colonization" of state education agencies.⁷⁰ With consolidated, performance-based funding, states will no longer be required to administer a plethora of federal programs. Rather, they will only be required to meet basic criteria to be eligible for federal support; and continuing support will be contingent on meeting state, or ideally, national standards. Performance-based funding eases the burden on states and localities for paperwork but dramatically increases the consequences for results. Accountability should be based on results, rather than simply meeting reporting requirements.

In this sense, performance-based funding isn't deregulation as many will argue, rather it is a shift in regulation. The desired performance outcomes become the regulation, as opposed to inputs and process.⁷¹

How to Get There from Here

As much as possible, federal money should be sent to states and school districts by formula, taking into account poverty and special populations such as LEP students. Once there, these funds should supplement and not supplant state and local fund-

Toward Performance-Based Federal Education Funding

ing efforts. Federal dollars should not be looked upon as an alleviation of local tax effort. Targeted formulas ensure that federal dollars are going where they are needed without unnecessarily entangling Washington in the affairs of local school districts. Competitive grants, those that school districts apply and compete for, are necessary under some circumstances (for example, stimulating and supporting innovative practices), but are inherently unfair because not all school districts are able to effectively compete for these dollars. With competitive grants, often the districts needing them the most are least likely to get them. Small rural school districts are at a particular disadvantage here.

While there is variance on a state-by-state basis, localities contribute an average of 43.2 percent to public school funding with the states contributing 47.5 percent and the federal government and private sources adding the remainder.⁷² At the extreme, New Hampshire schools are almost entirely locally funded while Washington State and New Mexico rely heavily on state funding. Overall, localities rely on local property taxes, putting wealthy districts at an advantage over poor districts. Further, poorer school districts tend to have higher concentrations of students with special needs and tend to be the most in distress.

It is here that the federal government can play a vital role by providing funds to impoverished school districts to help them meet the unique challenges they face. For example, principals in high poverty schools, particularly urban ones, report more difficulty hiring teachers.⁷³ Poverty and learning problems are clearly linked, as research shows. Moreover, when a significant percentage of students at a school are impacted by poverty, the achievement of all students is impacted.⁷⁴ Students in impoverished areas are most likely to not receive the education necessary in the New Economy; increased accountability for results is most sorely needed. Consistently, when scores on national and international tests are disaggregated, it is impoverished students

who are most likely to be failing in school. Or, more accurately, impoverished students are the most likely to be in failing school systems. The realities of poverty must be taken into account but are not an excuse for failing schools.

It is in these school districts where the true crisis in public education lies and here that federal dollars can most effectively leverage change. Federal funds are concentrated on these districts now,

Federal money should be sent to states and school districts by formula, taking into account poverty and special populations such as LEP students.

but not to the degree that they could or should be. *The Washington Post* recently referred to this diffusion of federal

funds writing that "[education] reauthorization fights have an earthier side as well. They are partly about money—the old-fashioned issue of slicing the pie."⁷⁵

Conservatives will continue to argue that block grants and vouchers are educational panaceas. Since the GOP controls Congress, block grants are likely to dominate the Republican approach—and there are three primary reasons why this approach to ESEA is ill-conceived. *First*, sending funding to states or school districts solely on a per-pupil basis completely ignores the reality of school finance in the United States. Schools are heavily dependent on property taxes for revenue. Hence, wealthier districts are at a funding advantage relative to poor districts. *Second*, simply transferring regulatory control from one bureaucracy in Washington to 50 in state capitals around the country doesn't address the core problems with the current regulatory burden on schools. *Third*, the federal role in education has more defined purposes than simply revenue sharing. Block granting education programs ignores these purposes, chiefly performance goals.

At the same time, the liberal Democratic solution of simply creating new programs without reforming or eliminating ineffective ones is equally ill-advised. By defending outmoded, ineffective, and unsuccessful practices, liberal Democrats inadvertently swell the ranks and strengthen the hand of those who believe public education is a wasteful and ineffective enterprise. The incredible

response to a privately funded voucher program sponsored by Ted Forstmann and John Walton provides clear evidence that the voucher movement isn't arising from a vacuum. Many parents, particularly in inner cities, have lost faith in the status quo and for good reason. Too many schools don't perform. And throwing good money after bad won't alter the political dynamic or, more importantly, improve the schools.

The Third Way: Performance-Based Grants

There are too many federal education programs creating a confusing and top-heavy bureaucracy, but the answer isn't simply carte blanche consolidation. In the words of PPI analysts Ed Kilgore and Kathleen Sylvester, "[Simply] turning federal programs into block grants makes them easier to administer, but does not accomplish any clarification of federal and state rules, or of the national and local concerns that justify them."⁷⁶ In addition, Republican block grant proposals decrease rather than increase accountability. Performance-based funding creates greater flexibility while requiring increased accountability, by giving "flexibility in exchange for achieving defined results that embody the national purpose justifying the use of federal funds."⁷⁷

Federal performance-based ESEA funds should become more focused on underprivileged children, limited English proficient children, professional development, and innovative practices. These dollars should be contingent upon demonstrated results, and states and school districts not meeting targets should be sanctioned fiscally. Likewise, states exceeding goals and states with particularly rigorous goals should be rewarded.

PPI recommends creating five performance-based grants for compensatory education, professional development, limited-English proficient students, innovative practices, and state administration and oversight. Specifically, we recommend:

- *Turning Title I into a completely performance-based compensatory education grant distributed by formula.* Building on what President

Clinton has proposed, states must demonstrate that they have a plan in place to identify and reconstitute failing schools; are ending social promotion by identifying and helping students in need; and have a standards and assessment plan in place so they can be held accountable for the performance of impoverished students. Title I funding should be contingent upon demonstrated progress toward established state content standards and more concentrated to better serve students in impoverished areas. Making Title I performance-based does not undermine the 1994 reforms but instead strengthens them. While the use of aides should be left as a state and local decision, the qualification prerequisite for these aides should be raised to a bachelor's degree. Title I should be an education program, not a jobs program.

- *Creating a second performance-based grant for professional development programs for teachers and other education professionals.* Again, building on President Clinton's proposal, states must demonstrate that they are taking reasonable steps to curtail out-of-field teaching, and implementing rigorous testing procedures for *all* teachers to improve teacher quality, and offering alternative paths (not simply emergency certification) to attract qualified people into the profession. Performance will be indicated by improvements in student achievement. This funding should be sent to school districts by formula, and the existing local matching requirements should be kept in place. Consolidating four existing professional development programs under the Eisenhower program, Title III technology programs, bilingual education, and the Reading and Literacy Grants program would alone create a fund of more than \$700 million for professional development. This funding, ideally augmented through consolidation of other lower priority programs, could put fiscal muscle behind professional development for the first time. School districts should have the flexibility to determine the specific use of this funding and cooperative arrangements with other school districts and entities should

Toward Performance-Based Federal Education Funding

be encouraged. Rather than guaranteed revenue streams for any provider of professional development services, a market built around delivering high-quality services to school districts will emerge. Local school districts may work with traditional providers, such as regional education laboratories and universities, or non-traditional venues, such as corporations and consulting firms. Fundamentally, school districts should be able to access the services they believe best suit their needs.

- ***Converting the existing Title VII Bilingual Education Program into a third performance-based grant for teaching English to limited-English-proficient students.*** Performance should be based on a three-year goal for moving students served with this funding into mainstream classes and measured by whether students are learning English or not. Excluding professional development, Washington still spends \$330 million on bilingual and migrant education under Title VII of ESEA. This sum should be augmented by new funding or funding from lower priority programs to a full \$1 billion to provide federal funding of \$300 per-LEP student sent by formula to impacted school districts. Providing substantial funding for educating LEP students is a compelling national interest; however, states and local school districts should have the flexibility to teach English in the manner they believe to be most effective. The federal government should not mandate nor preclude any particular curricular or pedagogical approach to educate LEP students. Results, not process, are the best way to gauge success.
- ***Creating a fourth performance-based grant focused on innovative strategies and local flexibility.*** Again, higher student achievement should be the performance measure rather than the methods states or school districts employ.

By defending outmoded, ineffective, and unsuccessful practices, liberal Democrats inadvertently swell the ranks and strengthen the hand of those who believe public education is a wasteful and ineffective enterprise.

Rather than individual federal programs targeted at technology, drug-free schools, class-size reduction, etc, the federal government should send targeted aid to school districts to drive innovation. Again, a formula should be used to ensure that funds are sent to districts requiring additional fiscal capacity. Giving local school districts flexibility with this funding will drive market-based services and solutions at the local level.

Already, private-sector providers of educational services are working with school districts all over the country. Washington should seek to empower this activity.

A portion of this money should be set aside to create a competitive grant program to support and stimulate innovative practices. By funding truly innovative strategies initiated by states and school districts requiring an up-front commitment of resources, Congress can stimulate innovative activity and help researchers capture data on promising ideas. These practices include, but are certainly not limited to, innovations such as longer school days, longer school years, innovative teacher-mentoring programs, and creating charter districts—districts where every school is on a performance contract and parents can choose from among different schools.⁷⁸

- ***Ending "set-asides" of funds for state departments of education within each program and instead creating a fifth performance-based grant for state administration and oversight.*** Performance indicators for this funding will be based on the goals a state has set for its compensatory education, LEP education, professional development, and innovative strategies. These funds will support state oversight, accountability, and reporting requirements. Reward or incentive money for states will also come from this grant. Rather than state departments of education relying on varying percent-

ages of funding from each categorical program, a separate grant should provide funds to states for administration, oversight, and accountability. This funding should be distributed to states on a per-pupil basis and the states should be given discretion to spend it.

- **Recognizing the permanence and importance of public school choice.** Charter schools and magnet

schools are now an integral part of the educational landscape. A separate title should be created for public school choice programs including charter schools, magnet schools, and school report cards—the key informational component to effective public school choice. Thirty-four states and the District of Columbia now have charter schools, and magnet schools are found throughout the country. The unique nature of charter schools requires federal start-up funding and support. This can be accomplished without hindering the flexibility of these schools or unnecessarily involving Washington in their operation.⁷⁹ A recent evaluation of charter schools by the U.S. Department of Education showed that 59 percent of charter schools found a lack of start-up funds to be a “difficult” or “very difficult” challenge.⁸⁰

- **Sustaining Impact Aid.** As long as most states continue to rely largely on the property tax for a substantial amount of school funding, the Impact Aid program will be an important federal contribution. Impact Aid compensates school districts for the fiscal displacement caused by federal property (military bases, offices, etc.) within their taxing authority. Since federal property can't be taxed, its presence adversely affects the local tax base. Impact Aid alleviates this problem and plays an important role in local school finance.

Critics will complain that school districts will squander their funds on ineffective practices

without stringent federal control of means. Certainly this will occur in some places; however, Washington is in a better position to demand results for its investment than to regulate means. This complaint also ignores the reality that substantial federal and state process-based regulatory accountability has failed to curtail ineffective

By linking federal dollars to state standards and assessments and commonsense improvements, the federal government can ensure that taxpayer dollars are driving results-based education at the state and local level.

practices. If the past 35 years of ESEA prove anything, it is that a system comprising 50 states and more than 14,000 diverse

school districts doesn't lend itself to process-based accountability.

Critics of performance-based grants will also attack them as masking cuts in education spending. They will point out that, 38 education programs were consolidated in 1981 into a block grant (now the current Title VI) and that funding for that program has dropped by more than 60 percent since then.⁸¹ The unfocused nature of that particular block grant was more the cause than any inexorable trend of consolidation equaling lower funding. As opposed to performance-based grants, the current Title VI program fails to articulate either a national interest or performance indicators.

Education, especially the education of poor children, is an expensive undertaking. Even fiscal conservatives acknowledge that additional spending is needed, and public opinion is strongly in favor of additional investment in education.⁸² However, simply spending a lot of money doesn't guarantee that impoverished students are receiving a quality education. At a minimum, the more than \$13 billion currently spent on ESEA—consolidated around essential purposes and targeted where it is needed—would for the first time put substantial federal fiscal muscle behind important ESEA purposes rather than spreading funding around too thinly to make a difference.

Even with the introduction of consolidated applications for states and school districts, the process of applying for federal funds is still too arduous. In addition to the basic prerequisites

Toward Performance-Based Federal Education Funding

described above, states should only have to submit to the Secretary of Education their goals on state assessments and should be held fiscally accountable for reaching those goals in order to receive federal funds. Until national standards and benchmarks are developed, Washington can't hold states and school districts accountable to them. By linking federal dollars to state standards and assessments and commonsense improvements, the federal government can ensure that taxpayer dollars are driving results-based education at the state and local level. Writing in the *Los Angeles Times*, Ronald Brownstein recently dubbed this sort of relationship "flywheel federalism".⁸³ It is an apt description and a new, more empowering, and constructive approach to education policy.

While some are far from ideal, 49 states currently have or are developing standards. Federal dollars should support states taking this commonsense step toward accountability.⁸⁴ State standards are not a substitute for national ones, but developing national standards is a process that will take time from both a policy and political standpoint. In the meantime, it is worth noting that 29 of the 41 coun-

tries participating in the Third International Mathematics and Science Study (TIMSS) set curriculum standards at the national level.⁸⁵

Conclusion

The federal government can play a tremendous role in public education; however too often federal involvement doesn't play to its strengths and instead maximizes its weakness. Effective learning happens as a result of adequate resources, high standards, and accountability for results. The federal government can play a leadership role in facilitating these conditions at the state and local level, but it cannot and should not do the job for states and localities. Recasting the federal role to focus on providing resources and demanding results supports the national interest in a strong public school system and most effectively leverages federal strengths. Everyone recognizes that schools must improve, but the federal role must change, too, in order to more effectively support and empower states and localities to achieve excellence.

Endnotes

- ¹ According to the U.S. Department of Education, ESEA spending—including Goals 2000 and Class Size Reduction (now part of Title VI)—was \$13.6 billion in FY99. As to the exact number of programs, estimates vary depending on criteria used. The problem is exemplified by the Department of Education's inability to produce an exact number.
- ² Total federal spending on elementary and secondary education was \$21.4 billion for the 1997-98 school year according to the U.S. Department of Education.
- ³ Summary of comments from Title I forums conducted by the American Association of School Administrators in Detroit, Houston, San Diego, New Oxford, Pennsylvania, and Worcester, Massachusetts. Unpublished Document.
- ⁴ United States Census Bureau, *Poverty Estimates by Selected Characteristics*, 1997.
- ⁵ Nina Shokraii Rees, and Kirk A. Johnson, "Why A 'Super' Ed-Flex Program Is Needed To Boost Academic Achievement," The Heritage Foundation, March, 1999.
- ⁶ Atkinson, Robert D, and Randolph H. Court, *The New Economy Index: Understanding America's Economic Transformation*, Progressive Policy Institute, 1998, 9.
- ⁷ Hugh B. Price, "Establish an 'Academic Bill of Rights'," *Education Week*, March 17, 1999.
- ⁸ Diane Ravitch, *The Troubled Crusade: American Education 1945-1980*, Basic Books, 1985. This contains an excellent discussion of the history surrounding the enactment of ESEA.
- ⁹ All figures cited are for Fiscal Year 1999 and provided by the U.S. Department of Education.
- ¹⁰ Paul Hill, "Getting It Right the Eighth Time: Reinventing the Federal Role," *New Directions: Federal Education Policy in the Twenty-First Century*, Thomas B. Fordham Foundation, 1999.
- ¹¹ Testimony of Carlotta C. Joyner, director of Education and Employment Issues Health, Education, and Human Services Division before the Education Task Force, Committee on the Budget, U.S. Senate, November 6, 1997, General Accounting Office, Washington, DC. GAO/T-HEHS-98-46.
- ¹² General Accounting Office, *Extent of Federal Funding in State Education Agencies*, GAO/HEHS-95-3, 1994.
- ¹³ Most of Title I funding reaches the local level and 90 percent to 93 percent of this is spent on instruction or instructional support according to *Promising Results, Continuing Challenges: The Final Report of the National Assessment of Title I*, United States Department of Education, 1999, 1.
- ¹⁴ ABT Associates, *Prospects: Final Report on Student Outcomes*, Planning and Evaluation Service, U.S. Department of Education, 16.
- ¹⁵ *Ibid.* 56. For additional discussion see: "Title I's \$118 Billion Fails to Close Gap," *Los Angeles Times*, January 19, 1999, A1.
- ¹⁶ U.S. Department of Education, *Promising Results, Continuing Challenges: The Final Report of the National Assessment of Title I*, 1999, Chapter 5, 6.
- ¹⁷ *Ibid.*
- ¹⁸ *Ibid.*
- ¹⁹ *Ibid.* Chapter 5, 1.
- ²⁰ Citizens Commission on Civil Rights, *Title I In Midstream: The Fight to Improve Schools for Poor Kids*, 1998.
- ²¹ ABT Associates, *op. cit.* 56.
- ²² *Ibid.*, 54.
- ²³ U.S. Department of Education, *Promising Results, op. cit.* Chapter 2, 1.

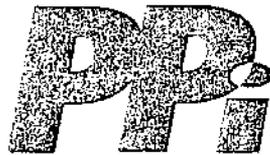
Toward Performance-Based Federal Education Funding

- ²³ Citizens Commission on Civil Rights, *op. cit.*
- ²⁴ U.S. Department of Education, *Promising Results, op. cit.* Chapter 3, 7.
- ²⁵ Ralph Frammolino, "Title I's \$118 Billion Fails to Close Gap," *Los Angeles Times*, January 19, 1999, A1.
- ²⁷ U.S. Department of Education, *Promising Results, op. cit.* Chapter 6, 2.
- ²⁸ Elementary and Secondary Education Act of 1965, as amended. 20 U.S.C. 6301, Sec. 1119.
- ²⁹ U.S. Department of Education, *Promising Results, op. cit.* Chapter 6, 3.
- ³⁰ *Ibid.*
- ³¹ *Ibid.* Executive Summary, 10.
- ³² Citizens Commission on Civil Rights, *op. cit.*
- ³³ Testimony of Richard Riley before U.S. House Committee on Education and the Workforce, February 11, 1999.
- ³⁴ An excellent examination of this program by Matthew Rees can be found in: *New Directions: Federal Education Policy in the Twenty-First Century*, Thomas B. Fordham Foundation, 1999.
- ³⁵ The DARE website at www.dare-america.com features a list of these studies.
- ³⁶ Oakley Ray and Charles Ksir, *Drugs, Society, and Human Behavior*, McGraw-Hill, 1999, 455.
- ³⁷ General Accounting Office, *Safe and Drug Free Schools, Balancing Accountability With State and Local Flexibility*, GAO/HEHS-98-3, 1997.
- ³⁸ United States Department of Education, *Digest of Education Statistics 1997*, Washington, DC, 1997.
- ³⁹ U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, Washington, DC.
- ⁴⁰ *Ibid.*
- ⁴¹ U. S. Department of Health and Human Services, *Trends in The Well Being of Children and Youth 1998*, Washington, DC, 1998. According to the report, Hispanic students are the largest cohort of LEP kids.
- ⁴² U.S. Department of Education, *Dropout Rates in the United States*, Washington, DC, 1996.
- ⁴³ *Ibid.*
- ⁴⁴ National Research Council, *Preventing Reading Difficulties in Young Children*, 1998. 21.
- ⁴⁵ Elementary and Secondary Education Act of 1965, as amended. U.S. Code, vol. 20, sec. 7116.
- ⁴⁶ National Research Council, *op. cit.*, 236.
- ⁴⁷ U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, Washington, DC.
- ⁴⁸ James Traub, "The Bilingual Barrier," *The New York Times Magazine*, January 31, 1999.
- ⁴⁹ *Ibid.*
- ⁵⁰ Glenn Garvin, "Loco, Completamente Loco," *Reason Magazine*, January 1998.
- ⁵¹ *Ibid.*
- ⁵² Public Agenda Foundation, *A Lot to Be Thankful For*, September 1998.
- ⁵³ Glenn Garvin, *op. cit.*
- ⁵⁴ Sioban Gorman, "A Bilingual Recess," *National Journal*, January 30, 1999.
- ⁵⁵ Eric Hanushek, *Improving Student Achievement: Is Reducing Class Size the Answer*, Progressive Policy Institute, Washington, DC, 1998.
- ⁵⁶ Stephanie Soler, *Teacher Quality is Job One*, Progressive Policy Institute, Washington, DC, 1999.
- ⁵⁷ U. S. Department of Education, *Reducing Class Size: What Do We Know?*, Washington, DC, May 1998.

- ⁵⁸ National Research Council, *op. cit.*, 230.
- ⁵⁹ *Ibid.* 278-79.
- ⁶⁰ U.S. Department of Education Budget Summary FY98, FY99, FY00.
- ⁶¹ *Ibid.*
- ⁶² Jonathan Rauch, *Demosclerosis*, Times Books, 1994, 148-149.
- ⁶³ At the time this paper was printed, a conference committee to resolve differences between the House and Senate versions of Ed-Flex had been appointed, but had not yet met. In addition, Ed-Flex does not cover some of the programs with the greatest regulatory burden on schools, most notably the Individuals With Disabilities Education Act.
- ⁶⁴ John F. Jennings, *Why National Standards and Tests*, Sage Publications, 1998, 176.
- ⁶⁵ *Ibid.* 183.
- ⁶⁶ U.S. Department of Education, *Digest of Education Statistics 1997*, Washington, DC, 1997.
- ⁶⁷ U.S. General Accounting Office, *State and Federal Efforts to Target Poor Students*, GAO/HEHS-98-36, 1998.
- ⁶⁸ *Ibid.*
- ⁶⁹ General Accounting Office, *Extent of Federal Funding in State Education Agencies*, GAO/HEHS-95-3. 1994.
- ⁷⁰ Paul Hill, *op. cit.*
- ⁷¹ Mark Felter, *Carrot or Stick? How Do School Performance Reports Work?*, Education Policy Analysis Archives, October 7, 1994.
- ⁷² U.S. Department of Education National Center for Educational Statistics, *State Comparisons of Education Statistics: 1969-70 to 1996-97*, NCES 98-018, Washington, DC, 1998.
- ⁷³ U.S. Department of Education National Center for Educational Statistics, *Urban Schools: The Challenge of Location and Poverty*, 1996.
- ⁷⁴ National Research Council, *op. cit.*, 31.
- ⁷⁵ "School Aid Dispute," *The Washington Post*, February 9, 1999, B6.
- ⁷⁶ Ed Kilgore and Kathleen Sylvester, *Blocking Devolution: Why Block Grants are the Wrong Approach to Devolution and Three Progressive Alternatives*, Progressive Policy Institute, Washington, DC, 1995.
- ⁷⁷ *Ibid.*
- ⁷⁸ For a more detailed discussion see *The New Democrat*, November/December 1996 and March/April 1999.
- ⁷⁹ Jon Schroeder, *Defining a Proper Federal Role in Support of Charter Schools*, Progressive Policy Institute, Washington, DC, 1997.
- ⁸⁰ U.S. Department of Education, *A National Study of Charter Schools, 2nd Year Report*, Washington, DC, 1998.
- ⁸¹ John F. Jennings, "Commentary on the Nature of an Omnibus Bill," *National Issues in Education: Elementary and Secondary Education Act*, Phi Delta Kappa and The Institute for Educational Leadership, 1995, xxi.
- ⁸² "Domenici Wants to Boost Education Funds," *The Washington Post*, February 6, 1999, A10.
- ⁸³ Ronald Brownstein, "Both Parties Take Similar Paths as Nation Travels Road to Innovation," *The Los Angeles Times*, March 8, 1999.
- ⁸⁴ "Quality Counts '99," *Education Week*, January 11, 1999.
- ⁸⁵ U.S. Department of Education National Center for Education Statistics, *Pursuing Excellence: A Study of 8th-Grade Mathematics and Science Teaching, Learning, Curriculum and Achievement in International Context*, Washington, DC, 1996.

About the Author

Andrew Rotherham is director of PPI's 21st Century Schools Project. In this position he will focus on high standards for teachers and students, accountability, and innovations, such as charter schools. Prior to joining PPI, he worked on education policy for the American Association of School Administrators. Mr. Rotherham also has experience as a teacher and facilitator. He received his bachelor's degree from Virginia Polytechnic Institute and State University (Virginia Tech) and is completing his masters degree at the University of Virginia.



PROGRESSIVE POLICY INSTITUTE

600 Pennsylvania Avenue, SE • Suite 400 • Washington, DC 20003
E-mail: ppiinfo@dlcppi.org • WWW: <http://www.dlcppi.org>

514-5014

CLINTON LIBRARY PHOTOCOPY

from the office of

ESEA

Senator Edward M. Kennedy of Massachusetts

For Immediate Release:
May 19, 1999

Contact: Jim Manley
(202) 224-2633

STATEMENT OF SENATOR EDWARD M. KENNEDY ON PRESIDENT CLINTON'S "EDUCATIONAL EXCELLENCE FOR ALL CHILDREN ACT OF 1999"

President Clinton's proposal for reauthorizing the Elementary and Secondary Education Act, the "Educational Excellence for All Children Act of 1999" is another strong step by the President to ensure that all children meet high standards.

Since 1993, President Clinton has consistently led the way on improving schools and making sure that all children meet high standards.

Today, as a result, almost every state has established high standards for its students. "High standards" is no longer just a term for academics experts and policy makers -- it is becoming a reality for the nation's schools and students.

President Clinton's proposal will help schools and communities bring high standards into every classroom and ensure that all children meet them. Major investments are needed to improve teacher quality -- hold schools, school districts, and states accountable for results -- increase parent involvement -- expand after-school programs -- reduce class size in the early grades -- and ensure that schools meet strict discipline standards. With investments like these, we are doing all we can to ensure that the nation's public schools are the best in the world.

President Clinton is right to strengthen public schools, not abandon or undermine them as many of our Republican colleagues are proposing. President Clinton is the Education President, and we need to do all we can to keep the Republican Congress from becoming the Anti-Education Congress.

It is a privilege to introduce President Clinton's legislation in the Senate, and I look forward to working with my colleagues to make it the heart of this year's ESEA Reauthorization Bill.

October 12, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Andrew Rotherham

SUBJECT: Analysis of Second Bush Education Speech and Its Impact on ESEA

Attached are two detailed side-by-sides detailing different aspects of Bush's most recent education proposal. The first compares proposals from his second speech with current law and your ESEA agenda. The second compares Bush's ESEA proposal with the blueprint put forward by the Progressive Policy Institute earlier this year upon which it is largely based.

Again the speech was packaged as a centrist speech and in many ways it was. By proposing to increase spending at the federal level on charter schools, essentially proposing a national test, endorsing school report cards, and proposing to revamp ESEA rather than simply block grant or eliminate it, Bush is attempting to mirror your centrist record on education. Again he deliberately left himself open to attack from the right and the left as a way to burnish his centrist credentials.

Bush did endorse expanding education savings accounts to include K-12 private and parochial school tuition and increasing the annual contribution limit from \$500 to \$5,000. He also called for allowing ESEA funding to be used for private school choice programs although he again shied from using the word "voucher". These nods to the right of his party hurt him with centrist voters. The education savings accounts provide little or no benefit to lower-income parents and you are familiar with the polling on vouchers. Bush also again failed to explain how he would finance any of his proposals in the context of the Republican tax and budget plan which he has said he favors.

Nonetheless, the speech and proposals put a twist on the ESEA debate. Senator Lieberman is still planning to introduce a centrist ESEA package based on the Progressive Policy Institute proposal later this month. Therefore, it is quite possible that this fall, two ESEA plans, the "Straight A's" block grant (which you have threatened to veto) and the Lieberman bill, both supported in principal by Governor Bush could be debated in the Senate. It is unclear what impact Bush's proposal will have on Republicans on Capitol Hill in terms of their overall ESEA strategy as Bush's plan departs from the Progressive Policy Institute proposal on several key points that are also highlights of your ESEA proposal including turning around failing schools, teacher quality, ending social promotion, and increasing the targeting of resources to the neediest communities.

Progressive Policy Institute ESEA Proposal v. George Bush ESEA Proposal

Issue	PPI Proposal	Bush Proposal
Consolidation of ESEA Programs	<ul style="list-style-type: none"> • Consolidates the 60+ ESEA programs and \$13 billion in funding into 5 performance-based grants for: <ul style="list-style-type: none"> -Helping disadvantaged students reach high standards; -Teacher and leadership professional development and recruitment; -Helping limited-English proficient (LEP) students gain English proficiency; -Innovative strategies including technology and class size reduction; -State administration, oversight, and support. <p>The PPI proposal also contains titles for public school choice including magnet schools and the public charter schools program as well as Impact Aid.</p>	<ul style="list-style-type: none"> • Consolidates the 60+ ESEA programs and \$13 billion in funding into five “flexible categories” for: <ul style="list-style-type: none"> -Improving the academic performance of disadvantaged students; -Moving limited-English proficient students to English fluency; -Preparing, training and recruiting qualified teachers; -Creating a safe culture for learning; -Promoting informed parental choice and Research-based innovative practices. <p>The proposal would retain, “a few specific programs like Impact Aid” and administrative funds would be sent to states in “one lump sum” rather than through set-asides in individual programs.</p>
Additional Flexibility	<ul style="list-style-type: none"> • Because there is no specificity beyond the broad purposes of each performance-based grant allowing for local flexibility there is no additional flexibility needed. 	<ul style="list-style-type: none"> • Allows states to become “charter states” which receive all federal funding in one block grant in exchange for agreeing to meet especially high levels of academic achievement. This is essentially the “Straight A’s” proposal.
Targeting and Formulas	<ul style="list-style-type: none"> • Proposes tightening existing formulas to ensure that federal money flows to impoverished school districts. • Funding would flow to states and then to school districts based on formulas to target funding to high poverty areas (and in the case of the LEP title to school districts serving LEP students). • Rather than state set-asides within each program, states would receive funding from a performance-based grant for administration, oversight, and support. 	<ul style="list-style-type: none"> • No information about targeting was given however the “charter states” provision clearly indicates that funding would go to the state without specific targeting to impoverished areas.
Accountability for Performance	<ul style="list-style-type: none"> • States would develop accountability systems as they do now under current law and be required to set numerical targets to raise student achievement. 	<ul style="list-style-type: none"> • Would require each state to establish its own accountability system so long as that system has standards in math, English, science, and history. Each state would also have to

	<ul style="list-style-type: none"> Includes the accountability provisions that the President proposed in his Education Accountability Act: Turning around or closing low-performing schools, increasing teacher quality, ending social promotion, and school report cards. 	<p>conduct annual assessments for students in grades 3-8 in reading and math to measure performance. States will be able to choose their own tests and the federal government will share equally in the cost of administering them. States will also have to have a "commitment" to reward schools for success and sanction them for failure.</p>
Testing	<ul style="list-style-type: none"> Calls for national standards in reading and math but until their development allows states to set standards and assess against them as under current law. The NAEP test or a similar measure would be used to provide parents and policymakers with a reliable gauge for interstate comparisons about the quality of standards. 	<ul style="list-style-type: none"> Each state would have to conduct annual assessments for students in grades 3-8 in reading and math. States receiving federal dollars would be required to participate in the NAEP test at federal expense (or a comparable exam at their own expense) in reading and math at the 4th -and 8th-grades. Bush's education advisors estimate that reliable information can be gathered based on 1,700-2,600 students per-state.
Rewards and Penalties	<ul style="list-style-type: none"> States and school districts failing to improve would be penalized and those making exceptional progress would be rewarded. 	<ul style="list-style-type: none"> Rewards and penalties would be based on the NAEP, AP exams, or SAT's and ACT's.
Private School Choice	<ul style="list-style-type: none"> Would not authorize the use of ESEA funds for private school choice. 	<ul style="list-style-type: none"> Would allow funds to be used for private school choice plans.

W Education Proposals—Second Speech

Issue	Bush Proposal	Clinton Proposal or Current Law
<p>Elementary and Secondary Education Act Overhaul</p>	<ul style="list-style-type: none"> • Consolidate the 60+ ESEA programs into 5 “flexible categories” for Improving the Performance of Disadvantaged Students, Moving Limited English Proficient Students to English Fluency, Preparing, Training, and Recruiting Teachers, Creating a Safe Culture for Learning, and Promoting Informed Parental Choice and Research-based Innovative Practices. Aside from the “creating a safe culture for learning section” and absence of targeting provisions, this is essentially the proposal for ESEA that the Progressive Policy Institute put forward early this spring. • States or individual school districts could also enter into “charter agreements” with the federal government where they would agree to meet especially high levels of academic achievement in exchange for even greater flexibility. This is essentially the “Super Ed-Flex” or “Straight A’s” proposal. 	<ul style="list-style-type: none"> • The President sent Congress an ESEA proposal this Spring that contains 11 titles including an accountability title that would turn around failing schools, improve teacher quality, end social promotion the right way, improve school discipline, and require school report cards to empower parents. The President’s proposal consolidates Goals 2000, Eisenhower Professional Development, and the Title VI block grant into a large professional development title. • This Spring the President signed the “Ed-Flex” bill that allows school districts to apply for waivers from certain federal regulations in order to raise student achievement.
<p>Federal Funds for Private School Choice</p>	<ul style="list-style-type: none"> • States and School districts can use SEA funds for private school choice programs. 	<ul style="list-style-type: none"> • The President has staunchly opposed efforts to allow federal funds to be used for tuition at private and parochial schools.
<p>Education Savings Accounts</p>	<ul style="list-style-type: none"> • Expand the limit on Education Savings Accounts from \$500 to \$5000 dollars and allow the funds to be used for tuition at private and parochial K-12 schools. 	<ul style="list-style-type: none"> • Current law allows contributions of up to \$500 to educational savings accounts that can be withdrawn tax free to pay for college expenses. The President opposes efforts to allow this money to be spent on k-12 private and parochial school tuition because it provides no benefit to most parents. The tax-free savings are negligible and 90 percent of parents have their children in the public schools which don’t charge tuition. Poor families have no way to take advantage of Education Savings Accounts. When a similar bill was being considered in Congress the President said he would veto it.

**State
Accountability
Systems**

- Would require each state to establish its own accountability system so long as that system has standards in math, English, science, and history. Each state would also have to conduct annual assessments for students in grades 3-8 in reading and math. States will be able to choose their own tests and the federal government will share equally in the cost of administering them. States will also have to have a "commitment" to reward schools for success and sanction them for failure.
- States would also have to put in place an "array of responses" for low-performing schools including restructured management, personnel changes, state takeover of schools and/or districts, or the transfer of education dollars to the parents and the implementation of a choice plan.
- Under current law states are required to have accountability systems in place by 2001 to measure performance of Title I schools/students against state standards in at least math and reading/language arts by 2001. Students must be assessed at a minimum at some point during grades 3-5, 6-9, and 10-12. States bear the cost of their testing program although through Goals 2000 the federal government helped states develop standards.
- Requires results that can be disaggregated by demographic group by 2001.
- Current law establishes a process for school and school district improvement that requires that (1) districts identify schools not making adequate progress for two consecutive years; (2) identified schools revise Title I plans in the year after being identified; (3) school districts help the identified schools to improve and ultimately take corrective action against schools that consistently fail. Corrective actions include curtailing a schools decision-making authority, transferring staff and/or students to other schools, or reconstituting the school. States use a similar continuum with regard to failing school districts.
- The President's ESEA reauthorization proposal requires a change in Title I plan within three months of a school being identified for improvement with school district intervention beginning immediately. And, a school district may take corrective action at any time after a school is designated for improvement.
- The President's ESEA reauthorization proposal sets aside 2.5 percent allocation at the state level (about \$200 million total) for states and school districts to carry out corrective action and help low-performing schools. States reserve a share of this money but the majority is sent to the district level to facilitate rapid action.
- The President's ESEA reauthorization proposal states that corrective action must include at least one of the following measures: implementing a new curriculum, redesigning or reconstituting the school, reopening the school as a charter school, or closing the school. State and districts must also allow students to transfer out of schools identified for corrective action and must provide transportation or cover transportation costs for these students to attend other public schools.

National Testing	<ul style="list-style-type: none"> To receive federal dollars states would have to participate in (at federal expense) an annual National Assessment of Educational Progress (NAEP) exam or its equivalent for grade 4 and 8 reading and math. States could use another test in lieu of the NAEP (at their own expense) if they can show that the results can be reliably equated with the NAEP test. 	<ul style="list-style-type: none"> The President proposed creating a voluntary national test in 4th-grade reading and 8th-grade math linked to the NAEP test. The Republican controlled Congress failed to enact his proposal.
Governance of the NAEP Test	<ul style="list-style-type: none"> Make the NAEP "politically independent". 	<ul style="list-style-type: none"> Section 412 of P.L. 103-382 the Improving America's Schools Act of 1994 clearly makes NAEP politically independent stating by establishing a governing board whose members serve 3 year terms (not to exceed to terms) and requiring that, "the Secretary and the Board shall ensure at all times that the membership of the Board reflects regional, racial, gender, and cultural balance and diversity and that the Board exercises its independent judgment, free from inappropriate influences and special interests." Membership of the Board is made up of two Governors, or former Governors, who shall not be members of the same political party; two State legislators, who shall not be members of the same political party; two chief State school officers; one superintendent of a local educational agency; one member of a State board of education; one member of a local board of education; three classroom teachers representing the grade levels at which the National Assessment is conducted; one representative of business or industry; two curriculum specialists; three testing and measurement experts, who shall have training and experience in the field of testing and measurement; one nonpublic school administrator or policymaker; two school principals, of whom one shall be an elementary school principal and one shall be a secondary school principal; and four additional members who are representatives of the general public, including parents. The assistant secretary for educational research and improvement serves as a non-voting member of the board.
State Reward Fund	<ul style="list-style-type: none"> Establish a \$500 million fund to award over 5 years to states that demonstrate substantial and valid progress on state assessments as verified by NAEP. Rewards will be based on or more of these goals: Closing the achievement gap by raising the achievement of disadvantaged youngsters, increasing overall student performance by raising the achievement of all students, increasing opportunities for advanced academic achievement by increasing the numbers of students deemed proficient on NAEP, raising SAT/ACT scores, and increasing the number 	<ul style="list-style-type: none"> The President's proposal for ESEA reauthorization authorizes rewards for states that have demonstrated significant progress on the NAEP test.

Penalize Failing States	<p>of students who pass AP or international baccalaureate exams.</p> <ul style="list-style-type: none"> States that fail to demonstrate improvement will have the administrative portion of their federal funding (approximately 5 percent of the total) withdrawn and redirected into a charter school grant fund. 	<ul style="list-style-type: none"> The President's Education Accountability Act contains sanctions for states that persistently fail including terminating administrative flexibility or withholding administrative funds.
School Report Cards	<ul style="list-style-type: none"> States will be required to provide school by school report cards showing assessment results disaggregated by race, gender, poverty, and English proficiency. 	<ul style="list-style-type: none"> The Education Accountability Act which the President announced in his 1999 State of the Union address and transmitted to Congress as part of his ESEA reauthorization proposal has a school report card component which requires reporting on assessment results (disaggregated), teacher qualifications, and school safety.
Charter Schools	<ul style="list-style-type: none"> Creates a \$3 billion "Charter School Homestead Fund" to support \$3 billion in loan guarantees to private lenders to help upgrade or establish 2000 charter schools. Priority will be given to states with charter school laws requiring high standards and accountability, school site personnel decisions (hiring and firing) and reward teachers based on performance. 	<ul style="list-style-type: none"> The President was one of the earliest supporters of charter schools dating from when Ted Kolderie first articulated the idea in a paper for the Progressive Policy Institute. When the President was first elected there was only 1 charter school operating, this school year there will be more than 1700. The President has invested \$235 million in grants to charter schools and his balanced budget request calls for an additional \$130 million for FY 2000.

THE WHITE HOUSE

WASHINGTON

April 1, 1999

MEMORANDUM TO THE PRESIDENT

FROM: Charles F.C. Ruff, Bruce Reed, Elena Kagan, Daniel Marcus 

RE: Petition for certiorari in Helms v. Picard

This is to advise you of a difficult decision that the Solicitor General must make concerning whether to seek review by the Supreme Court of a Fifth Circuit decision holding that a federally funded program under which public school authorities lend computers and other instructional materials to sectarian elementary and secondary schools violates the Establishment Clause of the First Amendment. The Solicitor General feels strongly that a petition for certiorari should not be filed, and Secretary Riley feels strongly that one should be filed. We are trying to develop a middle course that would serve the Secretary's needs by making clear to the Court that we believe that it needs to revise its Establishment Clause jurisprudence to permit programs of this kind while also reflecting the Solicitor General's view that this particular case may not present the best vehicle for doing so. (If the Solicitor General is to file a petition for certiorari seeking to overturn the Fifth Circuit's decision, he must do so by April 13.)

In Helms v. Picard, a case arising in Jefferson Parish, Louisiana, the Fifth Circuit held that a provision of Chapter 2 of the Elementary and Secondary Education Act (ESEA) that authorizes local educational agencies (LEAs) to use federal funds to purchase computers and other materials for loan to private schools, including sectarian schools, is, as applied, in violation of the Establishment Clause. (That ESEA provision was replaced by a similar provision in Title VI of the Improving America's Schools Act of 1994.) The U.S. Department of Education, as well as the Louisiana and the Jefferson Parish public school authorities, were defendants in the case and are subject to an ongoing injunction.

In Helms, the Fifth Circuit found that two longstanding Supreme Court precedents -- Meek v. Pittenger, 421 U.S. 349 (1975), and Wolman v. Walter, 433 U.S. 229 (1977) -- dictated the conclusion that the Title VI/Chapter 2 program is unconstitutional. In those cases the Supreme Court struck down state laws that authorized public authorities to lend instructional equipment and materials to private schools, including sectarian schools, reasoning that such materials -- unlike secular textbooks, the lending of which to sectarian schools the Court had upheld in Board of Education v. Allen, 392 U.S. 236 (1968) -- could be used directly in aid of the sectarian enterprise of parochial schools. The Fifth Circuit rejected arguments that the Title VI/Chapter 2 program was distinguishable from those held unconstitutional in Meek and Wolman and also rejected arguments that Meek and Wolman had been repudiated or modified by the Supreme Court itself in later decisions -- particularly Agostini v. Felton, 521 U.S. 203 (1997), in which a closely divided Court upheld the constitutionality of using Title I ESEA funds to send public school teachers into private sectarian schools to provide remedial education to

disadvantaged children.

The Fifth Circuit's decision conflicts with an earlier decision of the Ninth Circuit in Walker v. San Francisco Unified School District, 46 F.3d 1449 (1995), upholding a similar Title VI/Chapter 2 program. In Walker, the Ninth Circuit found that Meek and Wolman were no longer good law in light of later Supreme Court decisions, particularly Agostini, that the Ninth Circuit viewed as establishing the principle that the Establishment Clause simply required "neutrality" between secular and religious schools in the provision of government aid.

The Solicitor General believes that, although it is important to persuade the Supreme Court to revise its Establishment Clause jurisprudence to permit programs of this kind, this is not the appropriate case in which to ask the Court to take that step. His reasoning is basically as follows: While the Supreme Court (most notably and recently in Agostini) has opened the door to some forms of assistance by public authorities to sectarian schools (or their students), its decisions have not called into question its longstanding holdings that direct aid to the sectarian school enterprise -- even on a "neutral" basis -- is forbidden. Under current law, the provision of instructional materials that are capable of use by the sectarian school for religious purposes is forbidden, and if we seek Supreme Court review, we will have to ask the Court to overrule, at least in part, the Meek-Wolman precedents.

The Supreme Court could be asked to overrule these precedents on one of three theories. First, we could embrace the "neutrality" principle advocated by Justices Rehnquist, Scalia, and Thomas, and argue that the Court should allow direct aid to parochial schools so long as it does not prefer one religion to another and does not favor the religious over the non-religious. Second, we could urge the Court to abandon its treatment of elementary and secondary sectarian schools as "pervasively religious" institutions, regarding them instead -- like religiously-affiliated universities -- as institutions in which the secular and the sectarian aspects of operations can easily be kept separate. The Solicitor General believes that neither of these broad arguments would be successful or should be made, and we and the Department of Education agree.

There is a third, less radical argument that the Solicitor General believes can and should be made in an appropriate case. This argument would not challenge the principle that the Government cannot directly aid the religious mission of a sectarian school, but would urge the Court to abandon its insistence that materials provided to such schools be "incapable of diversion" to sectarian purposes, and substitute a test that would look to whether there are adequate safeguards against such diversion.

Justice O'Connor is the key to the success of any such argument. Four Justices -- Rehnquist, Scalia, Kennedy, and Thomas -- have indicated a willingness to go this far, and probably further. But the four "liberal" Justices -- Stevens, Souter, Ginsburg, and Breyer, all of whom dissented in Agostini -- would almost certainly reject it. O'Connor wrote Agostini, but she has not gone so far as to question the principle that public funds may not be used to support the religious enterprise of a sectarian school. The Solicitor General believes, however, that she

could be persuaded to uphold programs such as Title VI if she were convinced that there were adequate safeguards to ensure that the computers or other materials lent to the sectarian schools would, in fact, be used for secular, not religious, purposes. These safeguards could take the form of certifications by the private schools, monitoring visits by public school teachers or officials, prescreening of library books, and sanctions for violations.

After the Fifth Circuit decision, the Department of Education, in consultation with the Department of Justice, did publish a Guidance on compliance with Title VI, directing LEAs to employ several safeguards to ensure that equipment and materials lent to sectarian schools will not be diverted to religious purposes. For the first time, this Guidance amplifies the very general requirement in the statute and the Department's regulations that the LEA "ensure secular use." It provides that the LEA should obtain written assurances from private schools that materials will be used only for secular purposes; should review the contents of library books lent to private schools and conduct periodic on-site monitoring; and should ensure that violations are promptly corrected, including, if necessary, removing the materials from the private school.

Nonetheless, the Solicitor General believes that Helms v. Picard is not the right case in which to make the "adequate safeguards" argument. The case was brought in 1984, challenging the former Chapter 2 of ESEA, and neither the ESEA nor Title VI of the 1994 statute nor the regulations in place at the time the case was decided contained any restrictions on the use of loaned materials other than the general requirement that the public agency ensure that the loaned materials be used only for secular purposes. Nor had either Louisiana or Jefferson Parish implemented an effective monitoring program to meet that requirement. Since the Solicitor General believes that it will be difficult, even on a good record, to persuade Justice O'Connor to embrace an "adequate safeguards" exception to the Meek and Wolman line of cases, he worries not only that she will reject that argument, but also that she will react negatively to what she will regard as a disingenuous argument by the Solicitor General that there were adequate safeguards in this case. He is concerned, as well, that her unhappiness will carry over to other cases in which we need her vote. He therefore proposes that we wait for a case in which there is a stronger record of adequate safeguards.

Of course, if no cert petition is filed, the injunction in Helms v. Picard would remain in effect. The Solicitor General notes, however, that the Fifth Circuit decision does not strike down the statute on its face, and applies only to the particular program at issue in the Helms case. The decision is the law only in the Fifth Circuit (Texas, Louisiana and Mississippi), and, even there, LEAs are free to devise other programs under Title VI. The Solicitor General hopes that another LEA program, with more adequate safeguards pursuant to the Department's new Guidance, could become a more promising vehicle for winning over Justice O'Connor and, thus, a majority of the Court.

The Secretary of Education and his General Counsel strongly disagree. They are convinced that the private school community will not understand why the Administration, having supported the legality of this program during more than a decade of litigation in the lower courts,

is abandoning them at the Supreme Court stage and allowing the Fifth Circuit decision to stand. Indeed, Secretary Riley feels that he has made a personal commitment to the private school groups to defend the current program. In addition, they think the Justice Department understates the difficulty that LEAs across the country -- and certainly in the Fifth Circuit -- will face in devising viable Title VI programs during the time (perhaps a long time) before a better case can be found and work its way up to the Supreme Court. They recognize that Helms v. Picard is not the ideal case to present to the Court and that it is by no means a sure winner. But they are not as pessimistic as the Solicitor General is, and they think the importance of this kind of program from both a policy and a political standpoint should lead us to take the risk involved in petitioning for certiorari.

A possible middle course is suggested by the fact that some of the other intervenors/defendants in this case are almost certain to seek Supreme Court review even if we do not. The Solicitor General had proposed to us that, in that event, the United States should file an opposition to their petition for certiorari, arguing that while the Meek-Wolman precedents need to be reconsidered by the Court, this is not the appropriate case in which to do so. But we have begun to discuss with the Solicitor General and the Secretary a somewhat different possibility -- one that we believe could be more acceptable to the Secretary and the private school community while still reflecting some of the Solicitor General's views. Instead of opposing certiorari, the Solicitor General would take no position on whether the Court should take the case, but would instead file a response to the intervening defendants' petition that emphasizes the importance of programs like Title VI, particularly in providing access to computers for all children; explains the need for the Court to modify its precedents; presents the "adequate safeguards" approach that we think the Court should adopt; points to the recent Department of Education Guidance and possible additional guidance from the Department to LEAs; and concludes that the Court has the option of taking this case and deciding this important constitutional question on the record before it or waiting for a case presenting a record containing more specific safeguards in line with the subsequent Guidelines.

We are not sure whether this approach will satisfy the Secretary; much depends on how the brief is actually written. But if the basic idea in this compromise approach makes sense to you, we will continue to pursue it with the Secretary and the Solicitor General.



U. S. Department of Justice

Office of the Solicitor General

Deputy Solicitor General

Washington, D.C. 20530

cc Bruce +
file Educ-Helms
v. Picard

April 9, 1999

MEMORANDUM TO: Charles Ruff
White House Counsel to President
Executive Office of the President

FROM: Barbara D. Underwood *(Bdu)*
Principal Deputy Solicitor General
Office of the Solicitor General

SUBJECT: Helms v. Picard

*Bruce -
This looks
great to me.
Steven*

Attached is a draft of the brief we propose to submit on behalf of the Secretary of Education in response to the petition for certiorari that will be filed in this case. The Solicitor General has reviewed a prior version. The draft will need to be supplemented to take account of the precise content of (a) the petition (which we have not yet seen), and (b) the President's proposed new legislation in this area; it will also be edited to take account of any suggestions from you and other interested entities within the government. We believe, particularly in light of the fact that the President will be proposing new legislation shortly after the date by which a petition must be filed, that this is the most effective, credible, and persuasive way for us to support the petition. The Solicitor General would expect to inform the petitioners of our intention on or before Tuesday, which is the date on which a petition must be filed, and to file our brief within 20 days after the petition is filed (and after the President's proposed legislation has been announced.)

Attachment

DRAFT - DO NOT CIRCULATE

noon 4/9/

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

_____, PETITIONERS

v.

MARY L. HELMS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE SECRETARY OF EDUCATION

SETH P. WAXMAN
Solicitor General
Counsel of Record

*Make sure to make Church's
edit on p. 24*

DAVID W. OGDEN
Acting Assistant Attorney General

*P. 25 - has to be more than
"a wish" - there's always*

BARBARA D. UNDERWOOD
Deputy Solicitor General

*"a wish" - an "under
with"*

PAUL R.Q. WOLFSON
Assistant to the Solicitor General

*Oh. Church will
this too.*

MICHAEL J. SINGER
HOWARD S. SCHER
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED
[alternative formulations]

Whether, as applied in this case, 20 U.S.C. 7351(b)(2) -- which permits local educational agencies receiving federal financial assistance to lend secular, neutral, and nonideological instructional equipment, instructional materials, and library books purchased with that federal assistance to nonprofit, private schools for the benefit of their students, as part of a program also serving public school students and nonsectarian private school students -- violates the Establishment Clause of the First Amendment.

or

Whether the court below correctly analyzed the claim that the provision of instructional equipment and materials to sectarian schools under 20 U.S.C. 7351(b)(2) in Jefferson Parish, Louisiana, violated the Establishment Clause of the First Amendment.

or

[Use -- or adapt -- petitioners' formulation of the question presented, which we have not yet seen.]

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. ----) is reported at 151 F.3d 347. An amendment to that opinion on rehearing (Pet. App. ----) is reported at 165 F.3d 311. The opinion and order of the district court sustaining the constitutionality of the federal program at issue in this petition (Pet. App. ----) are not reported but are available at 1997 WL 35283. A previous opinion and order of the district court holding that federal program unconstitutional as applied (Pet. App. ----) are also not reported but are available at 1990 WL 36124 and 1994 WL 396199. A decision of the district court addressing constitutional challenges to other state and federal programs, which are not pertinent to the question presented by this petition, is reported at 856 F. Supp. 1102.

JURISDICTION

The judgment of the court of appeals was entered on August 17, 1998. A petition for rehearing was denied on January 13, 1999. Pet. App. ---- . The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in pertinent part: "Congress shall make no law respecting an establishment of religion."

Reprinted in an appendix to the petition (Pet. App. ----) are 20 U.S.C. 7301-7373 and pertinent parts of predecessor provisions,

20 U.S.C. 3811-3976 (1982) and 20 U.S.C. 2911-2976 (1988).

STATEMENT

1. This case involves an Establishment Clause challenge to the application, in Jefferson Parish, Louisiana, of a federal program that provides federal financial assistance to local educational agencies (LEAs) for education-improvement programs, and authorizes the LEAs receiving federal financial assistance to lend instructional equipment, instructional materials, and library materials purchased with that assistance to public and private elementary and secondary schools, including nonprofit private religious schools. The federal program at issue here was amended twice during the course of this litigation and has had several titles; it is currently found at Title VI of the Elementary and Secondary Education Act of 1965 (ESEA), Pub. L. No. 89-10, as amended by the Improving America's Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3707-3716. For simplicity we will refer to the program as "Title VI"; previous decisions in this case referred to it as "Chapter 2."¹

¹ When this lawsuit was commenced, the program was known as Chapter 2 of the Education Consolidation and Improvement Act of 1981, Pub. L. No. 97-35, 95 Stat. 469-482; see 20 U.S.C. 3811-3876 (1982) (Pet. App. ----). Subsequently, in the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary Improvement Amendments of 1988, Pub. L. No. 100-297, the program was amended and redesignated as Chapter 2 of Title I of the ESEA. See 102 Stat. 203-219; 20 U.S.C. 2911-2976 (1988) (Pet. App. ----). In 1994, the program was again redesignated as Title VI of the ESEA, as explained in the text. Unless otherwise indicated, references to provisions of Title 20 of the United States Code are to the current (1994) edition.

Title VI authorizes financial assistance to LEAs and to state educational agencies (SEAs) to implement eight kinds of "innovative assistance" programs. See 20 U.S.C. 7351(a) & (b). Among the kinds of programs that may be implemented with Title VI funds are programs "for the acquisition and use of instructional and educational materials, including library services and materials (including media materials), assessments, reference materials, computer software and hardware for instructional use, and other curricular materials which are tied to high academic standards and which will be used to improve student achievement and which are part of an overall education reform program." 20 U.S.C. 7351(b)(2). As pertinent here, LEAs may use Title VI funds to purchase computer hardware and software for instructional use, supplemental instructional materials, and library materials.²

² When this case was commenced in 1985, the permitted purposes of financial assistance under the program were somewhat differently focused. In particular, the program then expressly permitted LEAs to use federal funds for (among other things) the acquisition and utilization of "instructional equipment and materials suitable for use in providing education in academic subjects for use by children and teachers in elementary and secondary schools." 20 U.S.C. 3832(1)(B) (1982). LEAs could, at that time, use federal funds to purchase instructional equipment such as slide projectors, cassette players, and filmstrip projectors, as well as computers. Since the 1988 amendments, the statute no longer broadly allows LEAs to use federal funds to purchase "instructional equipment," except for computer hardware, acquisition of which is still expressly authorized. 20 U.S.C. 2941(b)(2) (1988); 20 U.S.C. 7351(b)(2). Both before and after the 1988 amendments, Title VI permitted LEAs to lend computer equipment for instructional purposes to private schools. Further, computer equipment lent to private schools has been at the center of this case since the beginning. See Complaint para. 41 (Dec. 2, 1985) (challenging loan of microcomputers to private

Title VI requires that LEAs ensure that children enrolled in private nonprofit schools (as well as those in public schools) have the opportunity to benefit from programs financed with Title VI assistance. See 20 U.S.C. 7312, 7372. Moreover, Title VI expenditures by LEAs for private school children must "be equal (consistent with the number of children to be served) to expenditures * * * for children enrolled in the public schools of the [LEA], taking into account the needs of the individual children and other factors which relate to such expenditures." 20 U.S.C. 7372(b).

Any benefit provided to children in private schools, however, must be secular, and must not take the place of any services, equipment, or materials that the private school would offer or obtain in the absence of federal assistance. Thus, Section 7372 expressly provides that LEAs "shall provide for the benefit of such children in such [private] schools secular, neutral, and nonideological services, materials, and equipment." 20 U.S.C. 7372(a)(1) (emphasis added). Title VI also requires that the control of all Title VI funds "and title to materials, equipment, and property * * * shall be in a public agency * * * and a public agency shall administer such funds and property." 20 U.S.C. 7372(c)(1). In addition, any services provided for the benefit of

schools for use by teachers and students); First Amended Complaint para. 43 (Jan. 13, 1987) (same); Second Amended Complaint para. 50 (Nov. 1, 1988) (same).

private school students must be provided by "a public agency" or by a contractor who, "in the provision of such services is independent of such private school and of any religious organizations." 20 U.S.C. 7372(c)(2). Further, Title VI funds for innovative-assistance programs must supplement, and in no case supplant, the level of funds that, in the absence of Title VI funds, would be made available for those programs from "non-Federal sources." 20 U.S.C. 7371(b).

Title VI exhibits a strong preference for local control in determining how Title VI funds shall be used, as long as the uses fall within the permitted ones set forth in the statute. The statute's findings and statement of purpose explain that, although "[t]he basic responsibility for the administration of funds made available under [Title VI] is within the State educational agencies," it is "the intent of Congress that the responsibility be carried out with a minimum of paperwork," and "the responsibility for the design and implementation of programs assisted under [Title VI] will be mainly that of [LEAs], school superintendents and principals, and classroom teachers and supporting personnel." 20 U.S.C. 7301(c). Although funding under Title VI is allotted to the States, the States must distribute at least 85% of that funding to LEAs, according to the relative enrollments of students in public and private schools within each school districts. 20 U.S.C. 7312(a). Finally, subject to the limitations and requirements of the statute (including its requirements that any benefit for

private school children be secular and not supplant benefits from non-federal sources), the LEAs "shall have complete discretion in determining how funds * * * shall be divided among the areas of targeted assistance" that are the permissible uses of federal funds. 20 U.S.C. 7353(c). The Secretary of Education is given authority to issue regulations "only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements and assurances required by [Title VI]." 20 U.S.C. 7373(b).

An LEA that wishes to receive federal funds for innovative-assistance programs must present an application to the pertinent SEA. The SEA shall certify the LEA's application for funds if the application explains the planned allocation of funds among the eight permitted innovative assistance purposes, sets forth the allocation of funds required to assure the participation of private school children, and provides assurance of compliance with the statute's various requirements, including the requirement of participation of private school children in secular benefits under the program. 20 U.S.C. 7353(a)(1)(A)-(B), (3). The LEA must also agree to keep records sufficient to permit the SEA to evaluate the LEA's implementation of the program. 20 U.S.C. 7353(a)(4). The statute does not provide for review by the Department of Education of the LEA's application for Title VI funds.

The Department of Education's Title VI regulations reemphasize the statute's limitations on assistance that may be provided to

children at private schools. Those regulations explain that services obtained with federal funds must supplement, and not supplant, services that the private school would otherwise provide their schoolchildren, 34 C.F.R. 299.8(a); and that the LEA must keep title to all property and equipment used for the benefit of private school children, 34 C.F.R. 299.9(a). In addition, the regulations require that the public agency "ensure that the equipment and supplies placed in a private school * * * [a]re used only for proper purposes of the program." 34 C.F.R. 299.9(c)(1). As explained below, the Department has recently issued further guidance for LEAs on the participation of private school children in Title VI, addressing in particular procedures that should be followed and safeguards imposed by LEAs to ensure that Title VI benefits afforded to private school children are secular. See pp. ---, infra.

2. In Louisiana, the State Bureau of Consolidated Educational Programs, which was headed by Dan K. Lewis during the relevant periods of this litigation, administers the Louisiana Title VI program. After Louisiana receives its Title VI funds from the federal government, the SEA allocates 80 percent of the funds to LEAs. Eighty-five percent of those funds are allocated to LEAs based on the number of participating elementary and secondary school students in both public and private schools, and 15% is allocated based on the number of children from low-income families. Pet. App. ----.

For fiscal year 1984-1985 (immediately before this lawsuit was commenced), the Jefferson Parish Public School System (JPPSS) received \$655,671 in Title VI funds. Approximately 70% of that money (\$456,097) was used for equipment, materials, and services at public schools in the JPPSS, and the remaining amount (\$199,574) was used for Title VI programs provided to students at private schools in the district. Pet. App. ----. In the 1986-1987 fiscal year, the JPPSS received \$661,148 in Title VI assistance. Approximately 32% of that amount (\$214,080) was used to provide Title VI benefits to private school children in the district. Of the \$214,080 budgeted for private school children, \$94,758 was spent to provide library and media materials, and \$102,862 was spent for instructional equipment. Pet. App. ----. With respect to the State of Louisiana as a whole, about 25% of the total Title VI funds was used for children in private schools. Pet. App. ----.

The Louisiana Department of Education "never transmit[ted] dollars to [any] non-public school." Pet. App. ----. Moreover, because the statute requires that a public authority retain title to all Title VI equipment, such equipment was only provided on loan to private schools, and the ultimate authority and control over those items always rested with the public school system, not the private schools. Pet. App. ----.

The SEA and the LEA monitor private schools' use of Title VI equipment and materials to ensure that they were used for purposes consistent with Title VI, including the requirement that they not

be used for religious purposes. Title VI Guidelines issued by the Louisiana SEA emphasize to the LEAs that "the LEA must ensure that [Title VI] equipment and materials * * * are used for secular, neutral and non-ideological purposes." Gov't Exh. D-4 in Opp. to Resp. Mot. for Summ. Judg. (State Guidelines) 22. The State Guidelines suggest that LEA representatives visit each private school site at least yearly and check the materials ordered to ensure that they are secular, neutral, and nonideological. Ibid. Representatives of the SEA visit each LEA every two years to monitor the LEA's implementation of the Title VI program, including the LEA's compliance with statutory requirements. Pet. App. ----.

In those monitoring visits, the SEA examine whether the services, material, and equipment provided to private schools are secular, neutral, and nonideological. State Guidelines 22. In addition, the SEA encourages LEAs to have religious schools sign written assurances that Title VI equipment will not be used for religious purposes (although, consistent with the statute's emphasis on minimal paperwork, the State had not required written assurances). Id. at 84; Pet. App. ----. The JPPSS had required signed assurances from each private school that material and equipment would be used in "direct compliance" with Title VI. Woodward Dep. Exh. 13.

In Jefferson Parish, Ruth Woodward, the coordinator of Title VI programs in the JPPSS, notified private schools each year of the allotment of Title VI funds that would be available for students at

those schools; those notices were accompanied by a reminder from the Director of the SEA that Title VI prohibits the acquisition of religiously oriented material. Woodward Dep. 62-63; Woodward Dep. Exh. 3. Woodward also visited each private school every year to discuss use of the Title VI equipment with a school official, such as the principal or a librarian, and to make sure that logs of use of Title VI equipment were kept, and that Title VI equipment was properly marked as such. Woodward Dep. 96-98, 102-103, 111. Woodward would specifically inquire of private school officials whether the Title VI equipment and materials were used for secular, neutral, and nonideological purposes. Id. at 102, 111. Library books for use in private schools were personally selected by Woodward and another public school official from catalogues; they also personally reviewed all requests by private schools for library books and other instructional materials, such as videocassettes and filmstrips, and deleted titles that might indicate religiously oriented materials. Id. at 38, 88-89; Pet. App. ----.

This monitoring by state and local officials revealed occasional lapses from Title VI's requirement of secularity, which were corrected. For example, Woodward at one time recalled 191 books from religious school libraries because they were "in violation of the Title VI guidelines." Pet. App. ----. A monitoring visit by the SEA to JPPSS also revealed a possible inappropriate purchase of a religious book for a religious school

library, which led to a recommendation by the SEA that JPPSS be more careful in its oversight of Title VI, but investigation by Woodward disclosed that the book in question had not in fact been purchased with Title VI funds. Pet. App. ----.

3. On December 2, 1985, plaintiffs Mary Helms, Amy Helms, and Marie Schneider (hereafter respondents) brought suit in district court against federal, state, and local officials, claiming that several federal, state, and local programs as applied in Jefferson Parish, Louisiana, including Title VI, violated the Establishment Clause.³ Respondents did not challenge Title VI on its face. Rather, they contended that one provision, allowing federal funds to be used for the purchase of instructional equipment and materials, had been unconstitutionally applied in the Parish because such equipment and materials had been "transferred to nonpublic schools for their use." Second Amended Complaint ¶ 50 (Nov. 1, 1988). Respondents argued that this loan of instructional equipment and materials to private schools violated the Establishment Clause because (a) there were allegedly no safeguards in place to prevent the property lent to the private schools from being used for religious purposes, and (b) any monitoring that would be useful in preventing the use of instructional equipment for religious purposes would create an

³ Although the other challenged programs were the subject of extensive decisions in both lower courts, they are not directly pertinent to respondents' challenge to Title VI discussed herein, and will not be further addressed in this brief.

excessive entanglement between the government and private religious schools. Id. ¶ 52.

After discovery, the parties cross-moved for summary judgment on the constitutionality of the Title VI program in the Parish. In 1990, the district court initially concluded that the program was unconstitutional, and granted summary judgment to respondents on that issue. Pet. App. ----. The court concluded (Pet. App. ----) that the program was controlled by this Court's decisions in Meek v. Pittenger, 421 U.S. 349 (1975), Wolman v. Walter, 433 U.S. 229 (1977), and Public Funds for Public Schools v. Marburger, 358 F. Supp. 29 (D.N.J. 1973), aff'd mem., 417 U.S. 961 (1974), which had invalidated state programs that provided instructional equipment and materials to private schools.

The government moved for reconsideration, and on January 28, 1997, the district court reversed itself and upheld the Title VI program as applied in Jefferson Parish. Pet. App. ----. The court relied heavily on the Ninth Circuit's then-recent decision in Walker v. San Francisco Unified School District, 46 F.3d 1449 (9th Cir. 1995), which upheld a "virtually indistinguishable" (Pet. App. ----) Title VI program under which instructional equipment, including computers, were lent to religious private schools. The court emphasized that, as in Walker, the instructional equipment and materials lent to the private schools in Jefferson Parish were secular, that Title VI benefits were made available to students on a neutral basis and without reference to religion, and that all the

monitoring controls in effect in Walker were also in effect in Jefferson Parish: library books and other instructional materials are prescreened by the LEA; most parochial schools sign a pledge agreeing not to use the materials for religious purposes; an LEA official visits the private schools every year; the SEA also monitors the LEA's implementation of the program; and no Title VI money is ever paid directly to religious schools. Pet. App. ----. In light of those factors, the court found that the Title VI program in Jefferson Parish "does not have as its principal or primary effect the advancement or inhibition of religion." Pet. App. ----.

4. Respondents appealed to the Fifth Circuit. The court of appeals reversed, and held that Jefferson Parish's Title VI program was unconstitutional under this Court's decision in Meek and Wolman. Pet. App. ----. The Fifth Circuit expressly disagreed with the Ninth Circuit's Walker decision upholding "a [Title VI] program that was, in all relevant respects, identical to the one * * * in Jefferson Parish." Pet. App. ----.

After examining this Court's decisions regarding aid to religious schools and students, particularly Meek, Wolman, Board of Education v. Allen, 392 U.S. 236 (1968), and Committee for Public Education and Religious Liberty v. Regan, 444 U.S. 646 (1980), the court of appeals concluded that those decisions "drew a series of boundary lines between constitutional and unconstitutional state aid to parochial schools, based on the character of the aid

itself." Pet. App. ----. Whereas Allen had upheld the loan of textbooks to religious school students, Meek and Wolman, "while both reaffirming Allen, nevertheless invalidated state programs lending instructional materials other than textbooks to parochial schools and schoolchildren." Pet. App. ----. The court of appeals also concluded that the "boundary lines" between permissible and impermissible assistance based entirely on the character of the aid was reaffirmed by Regan, which upheld aid to religious schools for the administration of standardized tests developed and required by the State, and which "clarified that Meek only invalidates a particular kind of aid to parochial schools -- the loan of instructional materials." Pet. App. ----.

The court rejected two arguments that these absolute "boundary lines" based on the character of the aid are inapplicable to this case. First, it concluded that the Ninth Circuit, in Walker, had erred in attempting to distinguish Meek and Wolman on the ground that the programs struck down in those cases "directly targeted massive aid to private schools, the vast majority of which were religiously-affiliated," whereas Title VI is a "neutral, generally applicable statute that provides benefits to all schools, of which the overwhelming beneficiaries are nonparochial schools." Pet. App. ----(internal quotations omitted). That reading of Meek and Wolman was flawed, the court concluded, because the programs at issue in both cases were specifically designed to ensure that private schoolchildren would benefit from educational benefits

equivalent to the benefits otherwise received by public schoolchildren. Pet. App. ----.

Second, the Court concluded that Meek and Wolman had not been called into question by Agostini v. Felton, 521 U.S. 203 (1997), which upheld a federal program under which public school teachers may provide supplemental instruction to religious school students at those students' schools. "Agostini does, it is true, discard a premise on which Meek relied -- i.e., that 'substantial aid to the education function of the sectarian schools necessarily results in aid to the sectarian school enterprise as a whole.'" Pet. App. -- --(quoting Meek, 421 U.S. at 306) (emphasis added by court of appeals; brackets and ellipsis omitted). But, the court stated, Agostini "does not replace that assumption with the opposite assumption; instead, Agostini only goes so far as to 'depart from the rule that all government aid that directly aids the educational function of religious schools is invalid.'" Pet. App. ---- (quoting Agostini, 521 U.S. at 225) (emphasis added by court of appeals; brackets and ellipsis omitted). Agostini, the court concluded, "says nothing about the loan of instructional materials to parochial schools and we therefore do not read it as overruling Meek or Wolman." Pet. App. ----.

Applying Meek and Wolman to this case, the court then concluded that Title VI was unconstitutional as applied in Jefferson Parish "to the extent that [it] permits the loaning of educational or instructional equipment to sectarian schools." Pet.

App. ----. The court's prohibitory decree "encompasses such items as filmstrip projectors, overhead projectors, television sets, motion picture projectors, video cassette recorders, video camcorders, computers, printers, phonographs, slide projectors, etc." Ibid. The decree also "necessarily prohibits the furnishing [to such schools] of library books by the State, even from prescreened lists." Ibid. The court could "see no way to distinguish library books from the 'periodicals . . . maps, charts, sound recordings, films, or any other[s] printed and published materials of a similar nature' prohibited by Meek." Ibid. (quoting Meek, 421 U.S. at 355) (brackets omitted). "The Supreme Court has only allowed the lending of free textbooks to parochial schools; the term 'textbook' has generally been defined by the case law as 'a book which a pupil is required to use as a text for a semester or more in a particular class he legally attends.' We do not think library books can be subsumed within that definition." Ibid. (quoting Allen, 392 U.S. at 239 n.1) (citation omitted).

5. The government petitioned for rehearing and suggested rehearing en banc of the court of appeals' decision. Although one of the judges on the court of appeals called for an en banc poll, the court denied both rehearing and rehearing en banc. Pet. App. ----. The panel amended its decision, however, to make clear that the acquisition of textbooks with Title VI funds for use by religious schools is not prohibited by its decree. Ibid.

6. In February 1999, the Department of Education issued

amended guidance for SEAs and LEAs on various aspects of Title VI, including the statutory requirement that all services, equipment, and materials made available to private school students be secular, neutral, and nonideological. See Pet. App. ----. The Guidance explains that LEAs "should implement safeguards and procedures to ensure that Title VI funds are used properly for private school children." Pet. App. ----. First, "it is critical that private schools officials understand and agree to the limitations on the use of any equipment and materials located in the private school."

Ibid. To that end,

LEAs should obtain from the appropriate private school official a written assurance that any equipment and materials placed in the private school will be used only for secular, neutral and nonideological purposes; that private school personnel will be informed as to these limitations; and that the equipment and materials will supplement, and in no case supplant, the equipment and materials that, in the absence of the Title VI program would have been made available for the participating schools.

Ibid.

Second, the Guidance makes clear that the LEA "is responsible for ensuring that any equipment and materials placed in the private school are used only for proper purposes." Pet. App. ----. Thus, the LEA should "determine that any Title VI materials * * * are secular, neutral, and nonideological, * * * mark all equipment and materials with Title VI funds so that they are clearly identifiable as Title VI property of the LEA[,] [and] * * * perform periodic on-site monitoring of the use of the equipment and materials[,] * * * includ[ing] on-the-spot checks of the use of equipment and

materials, discussions with private school officials, and a review of any logs maintained." Pet. App. ----. The Guidance also states that the Department of Education believes that, to monitor private schools' compliance with the requirements of Title VI, "it is a helpful practice for private schools to maintain logs to document the use of Title VI equipment and materials located in their schools." Ibid. Furthermore, the Guidance emphasizes that LEAs "need to ensure that, if any violations occur, they are corrected at once. An LEA must remove equipment and materials from a private school immediately if removal is needed to avoid unauthorized use." Ibid.

ARGUMENT

[Petitioners contend/ The Secretary agrees/[If petitioners take extreme position] It is not necessary to go so far in order to conclude that the decision below warrants review.]

The court of appeals has read this Court's decisions in Meek v. Pittenger, 421 U.S. 349 (1975), and Wolman v. Walter, 433 U.S. 229 (1977), to require invalidation of an Act of Congress, insofar as that statute has been applied to authorize the loan of instructional equipment, instructional materials, and library materials for the benefit of religious school students. Moreover, the court of appeals held that its conclusion was compelled by the character of the aid alone, irrespective of whether the aid was accompanied by safeguards designed to prevent the equipment and

materials lent to religious schools from being diverted to religious purposes. That decision substantially impairs the effectiveness of Title VI and similar programs of federal aid to education in the Fifth Circuit, and it conflicts directly with a decision of another circuit. Accordingly, while we agree that Meek and Wolman may be read as the court of appeals read them, we submit that a categorical rule prohibiting the loan of all instructional equipment and materials to religious schools, without regard to the adequacy of any attendant safeguards or whether the aid is supplementary to rather than a direct subsidy of the religious school's core educational program, is not necessary to secure what this Court has identified as the fundamental principles of the Establishment Clause.

1. The court of appeals read this Court's decisions in Meek and Wolman as establishing a categorical prohibition against lending instructional equipment or materials or library materials purchased with public funds to religious schools. The court rejected the argument that such loans could be made if they supplemented, rather than supplanting, the basic educational mission of the schools, and if safeguards were established to prevent the loaned materials from being diverted to religious purposes.

That holding does not prohibit the Secretary of Education from distributing funds under the statute to Louisiana, nor does it prohibit the state and local educational agencies from providing

other forms of Title VI assistance to religious school students in Jefferson Parish. See 20 U.S.C. 7351(b) (listing the authorized innovative-assistance programs).⁴ The assistance it prohibits, however, is precisely the form of federal assistance that has in recent years been the most important to both public and private schools [is this true? cite?] Moreover, it is the form of assistance that will be even more important in the future, in the effort to make computer-assisted learning available to all children. Indeed, the President has recently proposed legislation that would substitute for the broad menu of aid categories in Title VI a program specifically designed to provide advanced computer technologies to every classroom. [explain relationship of new statute to old Title 3 and to old title 6; of course we can't say this until after it is announced.]

Because of resource constraints, it is not feasible to provide this kind of assistance by lending computers or software directly to each student, in a manner similar to the textbook-loan program upheld in Board of Education v. Allen, 392 U.S. 236 (1968).⁵ Nor is it feasible to hire public school teachers to supervise the use

⁴ But other forms of innovative-assistance programs authorized under Title VI, such as grants for school reform and effectiveness programs, see 20 U.S.C. 7352(b)(3), (7), (8), might raise Establishment Clause problems if applied to religious schools, because they would result in money being provided directly to such schools for schoolwide improvement.

⁵ The funding in this case was less than seven dollars per student per year. See Pet. App. ____.

of Title VI instructional equipment and materials by students at religious schools, so as to bring the program under Agostini v. Felton, 521 U.S. 203 (1997), which permits public school teachers to give instruction to religious school students on religious school premises.⁶ In practical effect, therefore, the court of appeals has invalidated the kind of federal assistance that is most central to the effort to bring modern technology to all students.⁷

2. The court of appeals' decision conflicts directly with the Ninth Circuit's decision in Walker v. San Francisco Unified School District, 46 F.3d 1449 (9th Cir. 1995), which upheld a "virtually indistinguishable" Title VI program (Pet. App. ----). In that case, as in this one, private schools were lent various forms of instructional equipment and materials, including computer equipment; the schools were also lent library books and

⁶ For the same reason, it would also be difficult, if not impossible, to hire public school teachers to give religious school students benefits under other Title VI programs, such as those designed to improve higher-order thinking skills or to combat illiteracy. See 20 U.S.C. 7352(b)(4), (5).

⁷ The court of appeals' ruling that the government may not provide religious schools with any aid in the form of instructional equipment or materials or library materials may have implications for other federal education programs as well. The Telecommunications Act of 1996 requires the Federal Communications Commission to develop policies to ensure that schoolrooms, including schoolrooms at nonprofit private schools, have access to computer networks at discounted rates. See 47 U.S.C. 254(b)(6), (h)(1)(B), (h)(2)(A), and (h)(5)(A) (Supp. II 1996).

instructional materials, selected from prescreened lists to ensure their secularity. Ibid. The Ninth Circuit upheld the program, concluding in particular that it did not have the primary effect of advancing religion because the benefits under the program were available on a neutral basis without reference to religion, and because "controls are in place to prevent [Title VI] benefits from being diverted to religious instruction." Id. at 1467.

The Ninth Circuit's decision is not distinguishable from the Fifth Circuit's decision in this case on the ground that the Ninth Circuit found that the San Francisco program had adequate controls to prevent the diversion of instructional equipment to religious purposes.⁸ With one possible exception, those controls do not appear to have been significantly different from the controls in place in Jefferson Parish.⁹ Indeed, even though the court of

⁸ The Ninth Circuit did not consider itself bound by Meek and Wolman because it read this Court's subsequent decisions as effectively overruling those decisions. [CITE] We do not suggest that the Ninth Circuit acted properly in doing so. See Agosinti, 521 U.S. at ____ (emphasizing that only this Court has the prerogative of overruling its own decisions, and that lower courts should follow those decisions unless and until they are overruled by this Court).

⁹ The possible exception relates to computer equipment, for the Ninth Circuit noted that, at one point, computers lent to private schools under Title VI had been "locked" for use only with prescreened software, thus ensuring that they could not be diverted to use with religiously-oriented software. See Walker, 46 F.3d at 1464. It does not appear, however, that other instructional equipment lent to religious schools, such as overhead projectors and videocassette players, were similarly "locked" for use only with prescreened materials. See ibid.

appeals in this case was aware that the program in Walker had in place various controls, it found the two programs to be, "in all relevant respects, identical." Pet. App. ----.

More importantly, under the court of appeals' decision in this case, the existence or extent of any such controls is simply irrelevant to the constitutional question, for the Fifth Circuit read Meek and Wolman to hold that the permissibility of aid to the educational function of a religious school is dependent entirely on the nature of the aid. See Pet. App. ----. Thus, even if the JPPSS did have in place controls equivalent to those examined in the Walker decision, or even more extensive controls giving even greater assurance that instructional equipment could not be used for religious purposes, that would not have affected the court of appeals' resolution of this case. That conflict in the circuits warrants resolution by this Court. LEAs and SEAs across the Nation should know whether the Fifth Circuit's or the Ninth Circuit's decision sets forth a correct understanding of the constitutional limits on their ability to comply with Title VI's requirement of equitable participation by private school students by lending computer equipment and library books to religious schools.

3. Meek and Wolman may fairly be read as the court of appeals read them, to prohibit flatly the loan of instructional equipment and materials for use by students at religious schools, without regard to the effectiveness of any safeguards designed to prevent such aid from being diverted to religious purposes. It is

questionable, however, whether such a broad categorical rule is necessary to secure what this Court has identified as the core principle of the Establishment Clause that "[p]ublic funds may not be used to endorse [a] religious message." Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 847 (1995) (O'Connor, J., concurring); see also Bowen v. Kendrick, 487 U.S. 589, 623 (1987) (O'Connor, J., concurring) ("any use of public funds to promote religious doctrines violates the Establishment Clause").¹⁰ Where the assistance is appropriately limited and safeguarded, the Constitution does not demand a more sweeping restriction prohibiting all loans of such equipment and materials to religious schools. Individual deviations from such safeguards resulting in Establishment Clause violations can be redressed on a case-by-case basis. Cf. Kendrick, 487 U.S. at 620-622 (opinion of the Court); id. at 623-624 (O'Connor, J., concurring). But it is not necessary to presume as a categorical matter that such safeguards can never be effective or manageable. Cf. Rosenberger, 515 U.S. at 847 (O'Connor, J., concurring) ("Reliance on categorical platitudes is unavailing. Resolution instead depends on the hard task of judging -- sifting through the details and determining whether the challenged program offends the Establishment Clause."); Committee

¹⁰ Both cases in effect invalidated the challenged state-aid statutes on their face. See Wolman, 433 U.S. at 251 n.18 (suggesting that safeguards are irrelevant because "Meek makes clear that the material and equipment are inextricably connected with the church-related school's religious function").

for Public Education and Religious Liberty v. Regan, 444 U.S. 646, 662 (1980) ("[O]ur decisions have tended to avoid categorical imperatives and absolutist approaches at either end of the range of possible outcomes."). Accordingly, we submit that the rule of Meek and Wolman should be limited to cases in which, either because the public aid to a religious school is not supplementary, or because the provision of aid is not accompanied by effective safeguards, there is ^{a undue} a risk of diversion of resources to religious purposes.

To the extent that Meek and Wolman announce a categorical rule prohibiting loans of instructional equipment and materials to religious schools, those decisions rest on two rationales, both of which are questionable in light of this Court's subsequent decisions. The first rationale is that, because religious elementary and secondary schools are considered pervasively sectarian, any aid to the educational function of such schools must be conclusively held to advance the religious and well as the secular aspects of the education that they provide, which are deemed to be inextricably intertwined. See Meek, 421 U.S. at 366; Wolman, 433 U.S. at 249-251.

More recently, however, the Court has "departed from the rule * * * that all government aid that directly assists the educational function of religious schools is invalid." Agostini, 521 U.S. at 225. To be sure, the Agostini case, and the cases on which it relied, involved the distinct situations of aid provided directly to students by public authorities in the form of cash assistance

and instructional assistance provided directly to religious school students by public personnel. Nonetheless those decisions suggest a more nuanced rule than that announced in Meek and Wolman, so that loans of instructional equipment and materials to religious schools should not conclusively be presumed illegitimate. Indeed, much earlier, in Committee for Public Education and Religious Liberty v. Regan, 444 U.S. 646 (1980), the Court upheld a state statute authorizing reimbursement to private schools for the costs of administering state-required standardized tests because "there was no substantial risk that the examinations could be used for religious educational purposes," id. at 656; see id. at 659 (noting that the law "provides ample safeguards against excessive or misdirected reimbursement"). The Court explained there that Meek should not be read to hold "'that all loans of secular instructional material and equipment' inescapably have the effect of direct advancement of religion." Id. at 661-662 (quoting Wolman, 433 U.S. at 263 (Powell, J., concurring in part, concurring in the judgment in part, and dissenting in part)).

Second, Meek and Wolman appear to rest also on the rationale that any safeguards adequate to prevent the diversion of instructional equipment and materials to religious purposes would require detailed supervision of religious schools' instruction, resulting in an impermissible entanglement between state and religion. See Meek, 421 U.S. at 366-367 n.16 (discussing Public Funds for Public Schools v. Marburger, 358 F. Supp. 29 (D.N.J.

1973), aff'd mem., 417 U.S. 961 (1974), and lower court decision in Meek). But again, in later cases, including Agostini, the Court has indicated that the stringency of its previous rules against interaction of public and religious institutions should be relaxed. Agostini observed that "[n]ot all entanglements * * * have the effect of advancing or inhibiting religion," and that "[e]ntanglement must be 'excessive' before it runs afoul of the Establishment Clause." 521 U.S. at 233 (also citing Kendrick, 487 U.S. at 615-617); see also Aguilar v. Felton, 473 U.S. 402, 430 (1985) (O'Connor, J., dissenting) ("state efforts to ensure that public resources are used only for nonsectarian purposes should not in themselves serve to invalidate an otherwise valid statute"). The danger of entanglement exists only where "pervasive monitoring" must be employed to prevent public aid from being diverted to religious purposes. See Agostini, 521 U.S. at 234.

Thus, the question is not (as the court of appeals believed) whether, this Court, having "discard[ed] a premise on which Meek relied -- i.e. that substantial aid to the educational function of sectarian schools necessarily results in aid to the sectarian school enterprise as a whole," has "replace[d] that assumption with the opposite assumption," namely that aid to religious schools is presumptively permissible. See Pet. App. ---- (internal quotation marks, brackets, and ellipsis omitted). While direct material aid to religious schools would violate the Establishment Clause if it were so extensive as to supplant the school's own resources, or if

it were not protected against diversion to religious use by adequate safeguards, each situation must be assessed on its own facts. In this case, therefore, the court of appeals should have had the opportunity to consider whether the statutory limits on the kinds of aid permissible under Title VI and the actual safeguards put in place by the SEA and the LEA are in fact adequate to prevent the diversion of resources. The court of appeals also should have the opportunity to consider the Department of Education's recent Title VI Guidance explaining the kinds of safeguards that should be employed by LEAs administering Title VI programs (see pp. ---, supra).¹¹ And the court of appeals should then consider whether such safeguards, if adequate, are in fact so intrusive that they inhibit the ability of the religious school to fulfill its religious mission or bring religious and public school authorities into conflict over the content of course work that may be assisted by the instructional equipment and materials.¹²

¹¹ Accordingly, should the Court conclude that instead of the categorical rule applied by the court of appeals a review of the adequacy of safeguards is appropriate, the Court may wish to remand the case to the court of appeals for further consideration, rather than addressing for itself in the first instance the adequacy of the safeguards, on which no findings were made by the lower court.

¹² The task of monitoring the use of instructional equipment and materials at religious schools is not likely to require the pervasive kind of surveillance about which the Court expressed concern in Lemon v. Kurtzman, 403 U.S. 602, 619 (1971). In that case, involving state-sponsored salary supplements for religious school teachers, the Court observed that "a teacher cannot be inspected once so as to determine * * * subjective acceptance of

A further important point distinguishes Title VI from the assistance programs invalidated in Meek and Wolman. Title VI expressly requires that any assistance under that program (whether for private or public schools) supplement, and not supplant, non-federal resources available to the school -- reflecting the inherently supplementary role that the federal government plays in education. See 20 U.S.C. 7371(b); 34 C.F.R. 299.8. Moreover, the aid actually provided under Title VI on a per-student basis is quite small, compared to the other resources available to private

the limitations imposed by the First Amendment," and that any effective means to prevent religious school teachers paid by the State from fostering religion would require "comprehensive, discriminating, and continuing state surveillance." Ibid. The same need not be true with regard to monitoring the use of instructional equipment and materials; schools can and do maintain logs documenting the classes in which such equipment and materials are used, the assignments that are carried out on them, and the teachers who use them. Such logs could be required as a condition of acceptance of the equipment and materials, and use of such equipment and materials could also be limited to classes in which the prospect of religious inculcation is relatively minimal. Cf. Allen, 392 U.S. at 248 ("Nothing in this record supports the proposition that all textbooks, whether they deal with mathematics, physics, foreign languages, history, or literature, are used by the parochial schools to teach religion.").

To support its entanglement ruling, Lemon also noted the prospect of state audits of religious schools' accounts to distinguish religious and secular expenditures. See id. at 621-622. But even if that particular rationale has survived the Court's subsequent decisions in Kendrick (see 487 U.S. at 616-617) and Agostini (see 521 U.S. at 233-234), which permit some governmental review of religious institutions' compliance with statutory requirements, the same danger is not present in Title VI. An LEA would not have to examine a religious school's books to determine whether equipment was being used for improper purposes. The LEA could make that determination by examining the information maintained on logs.

schools. See Pet. App. ----- (referring to aid provided per student in San Francisco as "de minimis"). The aid provided in Meek, by contrast, was "massive" (421 U.S. at 365), and the extent of the aid in Wolman, although less clear from the Court's opinion in that case, appears to have been quite substantial as well. See 433 U.S. at 233 (\$88 million biennial appropriation for all auxiliary aid to nonpublic schools).

In Meek and Wolman, therefore, it was reasonable to conclude that the aid programs "relieved sectarian schools of costs they otherwise would have borne in educating their students." Zobrest v. Catalina Foothills School Dist., 509 U.S. 1, 12 (1993) (so characterizing Meek). By contrast, because of the anti-supplantation rule of Title VI and the relatively small amount of money spent per student, it is not reasonable to conclude that Title VI effects a "direct subsidy" to religious schools (ibid.), or that participation in the Title VI program permits religious schools to divert other resources, which would otherwise be used for secular purposes, to religious use. And because, in addition, Title VI benefits are offered to all students on a neutral basis without reference to religion, Title VI does not create "a financial incentive to undertake religious indoctrination." Agostini, 521 U.S. at 231. Therefore, the categorical rule of Meek and Wolman may be limited to situations where the aid program is not required to be supplementary of the resources that the religious school would otherwise have at its disposal.

CONCLUSION

The petition for a writ of certiorari should be granted in order to establish that the categorical ban on lending instructional materials or equipment to religious schools, articulated in Meek and Wolman, is limited to circumstances where the aid to religious schools is more than supplementary, and where there are inadequate safeguards to protect against diversion to religious use.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General
Counsel of Record

DAVID W. OGDEN
Acting Assistant Attorney General

BARBARA D. UNDERWOOD
Deputy Solicitor General

PAUL R.Q. WOLFSON
Assistant Solicitor General

MICHAEL J. SINGER
HOWARD S. SCHER
Attorneys

APRIL 1999

PRESIDENT CLINTON'S PLAN TO STRENGTHEN ACCOUNTABILITY FOR RESULTS IN EDUCATION

In his State of the Union Address, President Clinton will announce a package of accountability measures designed to hold students, teachers, and schools to high standards, and to ensure that school districts and states provide students with a high quality education. These proposals will help to lift student achievement in every public school and close the opportunity gap by giving special attention to disadvantaged students in low-performing schools.

The President's plan marks a sea change in national education policy -- for the first time holding states and school districts accountable for progress and rewarding them for results. While insisting that states and local governments retain primary responsibility for education, President Clinton will call on Congress to make sure federal dollars support what works and not what doesn't. His proposal emphasizes reforms that a growing number of states, cities, and schools across the nation are implementing and that are producing clear results.

Specifically, the President will announce that he will send Congress legislation to reauthorize the Elementary and Secondary Education Act to ensure that schools end social promotion; teachers are qualified to teach the subjects they are assigned; states turn around their lowest-performing schools; parents get annual report cards on school performance; and schools institute effective discipline policies.

End Social Promotion. The President's proposal will require states and school districts to end social promotion -- the practice of promoting students from grade to grade regardless of whether they have mastered the appropriate material and are academically prepared to do the work at the next level. Students who are promoted without regard to their achievement fall even further behind their classmates, and are more likely to lack basic skills upon graduating from high school.

To ensure that this requirement helps more students succeed, rather than simply increasing the number held back, states and school districts would have to show how they will help students meet promotion standards on time by (1) strengthening learning opportunities in the classroom with clear standards, small classes with well-prepared teachers, high quality professional development, and use of proven instructional practices; (2) identifying students who need help at the earliest possible moment; (3) providing extended learning time, including after-school and summer school for students who need extra help; and (4) developing an effective remedial plan, with intensive intervention, for students who still do not meet the standards, so they can get back on track in their schooling.

In 1996 President Clinton challenged every state and school district to adopt policies to end social promotion and require students to pass high school graduation exams. Twenty six states now have high school exit exams, and last year four states adopted policies to stop promoting unprepared students from grade to grade. A growing number of urban school districts, including Boston, Philadelphia, New York City, and Washington D.C. are adopting similar policies. In

Chicago, which three years ago ended the practice of social promotion in a way that gives students who need it substantial extended learning time, citywide math and reading scores have gone up every year, with the largest gains among the most disadvantaged students. President Clinton's FY 2000 budget proposes to triple federal funding for after-school and summer school programs (from \$200 million to \$600 million) to help schools ending social promotion give students the extra help they need to succeed.

Put Qualified Teachers in the Classroom. According to the National Commission on Teaching and America's Future, one of the most important factors in improving student achievement is the knowledge and skills teachers bring to the classroom. Yet every year, approximately 50,000 individuals teach on "emergency" certificates, which means they do not meet the standards the state has set for certification. In addition, numerous teachers teach subjects for which they lack adequate preparation, with fully one quarter of secondary school teachers lacking even a minor in their main teaching field. Students in schools with the highest concentrations of poverty -- those who often need the most help from the best teachers -- are most likely to be in classrooms with teachers who are not fully qualified: for example, in schools with the highest minority enrollment, students have a less than 50 percent chance of having a math or science teacher with a license and degree in the field.

The President's proposal will require states to adopt performance examinations for all new teachers, requiring them to demonstrate both subject-matter knowledge and teaching expertise. The proposal also will require states and school districts to phase out, over five years, the use of teachers with emergency certificates and the practice of assigning teachers to subjects for which they lack adequate preparation. To support these new teacher quality standards, the proposal will provide resources to help states strengthen teacher certification standards, test new teachers, provide training to current teachers, and give incentives to recruit more highly qualified teachers.

Turn Around Low Performing Schools. The President's proposal will require states to identify the schools with the lowest achievement levels and least improvement and take corrective action to turn them around. These corrective actions, based on a careful assessment of each school's needs, would include steps such as intensive teacher training, support to improve school discipline, and the implementation of proven approaches to school reform. If these actions do not result in improved student achievement within two years, the proposal would require states to take additional corrective actions, such as permitting students to attend other public schools; reconstituting the school, by fairly evaluating the staff and making staff changes as appropriate; or closing the school and reopening it as a charter school or with an entirely new staff. Nineteen states currently take similar actions to help improve low-performing schools, and experience demonstrates that when these interventions carefully implemented and accompanied by the resources to support change, schools improve and student achievement increases. The President's FY 2000 budget contains \$200 million to help states begin taking these steps immediately.

Issue School Report Cards. The President's proposal will require states to distribute to all parents annual report cards for each school and school district, as well as the state as a whole. The report cards will include information on student achievement, teacher professional

qualifications, class size, school safety, and other factors that will help parents to judge the performance of the schools. Where appropriate, the report cards also will show the academic achievement of ethnic and racial subgroups, to ensure accountability for helping all students achieve. Thirty-six states currently publish or require local school districts to publish school report cards, and five additional states will begin the practice in the next two years. A recent report by Public Agenda, however, shows that only 31 percent of parents had seen these report cards. The President's proposal will help ensure that all parents in all states have access to the information they need to evaluate the quality of their schools and identify the areas in which improvement is needed.

Adopt Discipline Policies. Schools must be a place of learning. President Clinton already has challenged states, communities, and schools to take a number of steps to restore order and safety, such as adopting school uniforms, enforcing truancy laws, and imposing curfews. But in some schools, the breakdown of classroom discipline remains one of the biggest obstacles to learning and one of the greatest concerns for teachers, students, and parents alike. The President's proposal will require states and school districts to adopt discipline policies to make sure students have the chance to learn and teachers have the chance to teach.

PRESIDENT CLINTON: EDUCATIONAL ACCOUNTABILITY AND EXCELLENCE

May 19, 1999

Today, the President announced that this week he will transmit to Congress his proposal to reauthorize the Elementary and Secondary Education Act (ESEA). This legislation authorizes the federal government's largest investments in elementary and secondary education and is its most significant effort to ensure that all children receive a quality education. This proposal will strengthen accountability, improve teacher quality, increase school safety, expand public school choice, promote secondary school reform, and reauthorize programs such as Title I (aid to disadvantaged students), bilingual education, magnet schools, and programs that support technology in schools.

ACCOUNTABILITY FOR RESULTS. The President's ESEA proposal includes accountability measures he announced in his State of the Union Address that for the first time will hold school districts and states accountable for real results. The federal government spends about \$15 billion a year on our public schools. The President's proposal will fundamentally change the way we spend that money, to support what works and stop supporting what doesn't. The legislation will require states and school districts to turn around failing schools, issue report cards to parents on how schools are doing, put qualified teachers in the classroom, adopt sound discipline codes, and end the practice of social promotion, not by holding students back but by providing meaningful after-school and summer school programs, smaller classes, and other early interventions to lift them up.

Turn Around Failing Schools. The President's proposal will require states and school districts to publicly identify the lowest-performing schools and intervene to turn them around. These interventions would include steps such as intensive teacher training, extended learning opportunities and the implementation of proven approaches to school reform. If there is no satisfactory improvement in student performance within two years, districts would be required to take corrective actions, such as permitting students to attend other public schools; reconstituting the school and making significant staff changes; or closing the school entirely and reopening it as a charter school. Nineteen states currently take similar actions to turn around low-performing schools, and experience demonstrates that when these interventions are carefully implemented and accompanied by the necessary resources, schools and students make significant gains. The President's FY 2000 budget contains \$200 million to help states take these steps immediately.

Issue School Report Cards to Empower Parents. The President's proposal will require states and school districts to distribute to all parents and taxpayers annual report cards for each school and school district, as well as for the state as a whole. These report cards will include information on student achievement, teacher qualifications, class size, school safety, and attendance and graduation rates. Where appropriate, the report cards will show academic achievement by demographic groups, to help focus on the need to close the achievement gap between disadvantaged students and their peers. Thirty-six states currently publish or require local school districts to publish school report cards, and five additional states will begin the practice in the next two years. A recent report by Public Agenda, however, shows that only 31 percent of parents had seen these report cards. The President's proposal will help ensure that all parents have access to the information they need to evaluate the quality of their schools and identify the areas in which improvement is needed.

Put Qualified Teachers in the Classroom. Every year, approximately 50,000 individuals teach on “emergency” certificates, which means they do not meet the standards the state has set for certification. In addition, numerous teachers teach subjects for which they lack adequate preparation, with fully one quarter of secondary school teachers lacking even a minor in their main teaching field. In schools with the highest minority enrollment, students have a less than 50 percent chance of having a math or science teacher with a license and degree in the field. The President’s proposal will require states to adopt performance examinations for all new teachers, requiring them to demonstrate both subject-matter knowledge and teaching expertise. The proposal also will require states and school districts to phase out, over four years, the use of teachers with emergency certificates and the practice of assigning teachers to subjects for which they lack adequate preparation. States would have to ensure that within four years, at least 95% of their teachers are fully certified through regular or alternative routes, are in a program that leads to full certification within three years or are fully certified in another state and working toward meeting any state-specific requirements. To support these new teacher quality standards, the proposal will provide resources to help states strengthen teacher certification standards, test new teachers, provide training to current teachers, and offer incentives to recruit more highly qualified teachers.

Adopt and Enforce Sound, Fair Discipline Policies. In many schools, the breakdown of classroom discipline remains one of the biggest obstacles to learning and one of the greatest concerns for teachers, students, and parents alike. The President’s proposal will require states and school districts to adopt fair, consistent discipline policies that are developed with the participation of the school community. In the case of students who are suspended or expelled from school, schools must provide appropriate supervision, counseling, and educational services.

End Social Promotion and Help All Students Meet Challenging Standards. The President’s proposal will require states and school districts to end the practice of social promotion, not by holding students back but by providing qualified teachers, meaningful after-school and summer school programs, smaller classes, and other early interventions to help students succeed. Students will have to demonstrate that they meet standards at three key transition points, including graduation from high school. States and school districts will need to help all students meet challenging standards by:

Supporting Students Who Need Extra Help. To ensure that this requirement helps more students succeed, the President’s proposal would hold states and school districts accountable for: (1) requiring early identification and intervention for students who need extra help; (2) providing all students with well-prepared teachers who are supported through high-quality professional development; and (3) providing extended learning time for students who need extra help, including after-school and summer school programs.

Reducing Class Size. The President’s proposal will authorize continuation of his class-size reduction initiative -- which seeks to hire 100,000 teachers to reduce class size to a nationwide average of 18 in the early grades -- to give all students the individual attention they need to master the basics and meet challenging standards. Congress agreed last fall to a \$1.2 billion downpayment on class size. Over seven years, the President’s initiative would provide a total of

\$12.6 billion to help communities across the nation hire 100,000 well-prepared teachers. Studies show that smaller classes help teachers provide more personal attention to students and maintain discipline; as a result students learn more and get a stronger foundation in the basic skills.

Providing Extended Learning Time: After-School and Summer School Programs. Giving children more time to learn in enriching after-school, weekend and summer school programs can be an effective tool in helping all students meet high academic standards and ending both social promotion and retention. The President's proposal will continue his administration's strong commitment to the 21st Century Community Learning Centers program, which provides grants to public schools to offer additional learning opportunities for students and community members. The President's FY 2000 budget provides \$600 million for this program – triple what Congress approved last fall.

ENSURING TEACHER QUALITY. The President's proposal includes several measures to improve teacher quality and put more highly trained teachers into America's public schools.

Help Teachers Teach to High Standards. The President's proposal includes a new, comprehensive Teaching to High Standards initiative to help schools and school districts give teachers the tools and training they need to help students reach high standards. The initiative would support state and local efforts to: (1) help teachers and principals align curricula and assessments with challenging state and local content standards; (2) provide teachers with sustained and intensive high-quality professional development in core academic content areas; (3) support new teachers during their first three years in the classroom; and (4) help ensure that all teachers are proficient in content knowledge and teaching skills. This new initiative takes the place of, and incorporates the most successful elements of, three current state grant programs: Goals 2000, Eisenhower Professional Development, and ESEA Title VI Innovative Education Program Strategies. In FY 1999, Congress appropriated a total of \$1.2 billion for those three programs.

Expand Recruitment and Retention Efforts. To help meet the need for 2.2 million new teachers over the next decade, the President's proposal would support state and local efforts to recruit and retain high-quality teachers in high-need areas, including a national job bank and effort to increase portability of teaching licenses and pensions. His proposal would also preserve and build on the successful Troops to Teachers program, which has helped 3,000 retiring military personnel become teachers in public schools since 1994. This expanded initiative -- Transition to Teaching -- would provide scholarships and other support to help retiring military and other non-military mid-career professionals to become teachers, particularly in high-poverty schools and in high-need subject areas like math, science, or special education.

Qualified Teachers in High-Poverty Schools. In order to help ensure that students in the most need are being taught by qualified teachers, the President's proposal would require all new teachers in programs supported with Title I funds to be fully certified in the subject that they teach. Within two years, teacher aides in Title I schools with less than two years of college would be limited to non-instructional duties, while those with two years or more of college could provide instructional support and tutoring only under the supervision of a certified teacher.

SAFE, DISCIPLINED AND DRUG-FREE SCHOOLS. The President has challenged states, communities, and schools to take a number of steps to restore order and safety, such as adopting school uniforms, enforcing truancy laws, and imposing curfews, and has sent Congress common-sense legislation to keep guns out of the hands of criminals and young people. This proposal would take additional steps to help ensure that each school is a safe, healthy, disciplined, and drug-free learning environment that allows teachers to teach and students to learn.

Strengthened Safe, Disciplined and Drug-Free Schools Program. The Safe and Drug-Free Schools and Communities Program represents the federal government's largest effort to prevent youth drug use and school violence. Under the President's proposal, school districts would be expected to develop comprehensive plans that, among other things, use proven anti-drug and violence prevention programs, collect and report relevant data, intervene with troubled youth, and establish security procedures for schools. This proposal would also support programs that educate students about the risks associated with guns; promote alternative schools and "second chance" programs for students who constantly disrupt classes; and expand character education programs that help instill common sense values in our children.

Counseling for Students Bringing Guns to School. Under current law, schools are generally required to expel any student who brings a gun or explosive device to school, as well as to report that student to local law enforcement officials and juvenile justice authorities. During the 1996-97 school year, this national policy of "zero tolerance" for guns resulted in more than 6,000 students being expelled from school. The President's new proposal requires an assessment of any student expelled for bringing a firearm to school to determine if the student poses an imminent threat of harm to himself or others -- in which case the student must receive appropriate treatment before returning to school.

Report to Parents on Gun and Drug Incidents. Parents have a right to know that their children are safe. The President's proposal requires schools to give parents an annual report of gun, drug, and violent incidents in their child's school.

Emergency Response to Violence. The President's reauthorization proposal also contains his Project SERV initiative -- developed with the help of the communities impacted by recent schools shootings -- to provide immediate assistance as soon as a school-related violent or traumatic incident occurs, through: an Emergency Response Fund to help communities meet urgent and unplanned needs, such as additional security personnel, emergency mental health crisis counseling, and longer-term counseling to students, faculty, and their families; and Crisis Response Experts identified and funded by the Departments of Education, Justice, Health and Human Services, and FEMA, who can help local officials identify and respond to community needs. Officials from those federal agencies worked together to help schools affected by last year's shootings. These agencies will continue to work together as part of Project SERV.

“Educational Excellence for All Children Act of 1999”

FACT SHEET

The President announced that he would shortly send to the Congress the “Educational Excellence for All Children Act of 1999,” his proposal to reauthorize the Elementary and Secondary Education Act of 1965 (ESEA). This legislation reaffirms the critical role of the Federal Government in working with schools, school districts, and States to promote educational excellence for all children. Every child, parent, grandparent, and taxpayer deserves high quality public schools in their communities.

More specifically, the proposal would build on the 1994 ESEA reauthorization, which established the core principle that disadvantaged children should achieve to the same challenging academic standards as their more fortunate peers, by helping States, districts, schools, and teachers use these standards to guide classroom instruction and assessment for all students.

Background

In 1994, the Clinton Administration and the Congress began the transformation of the Federal role in education by passing the Improving America’s Schools Act, which reauthorized the ESEA, and the Goals 2000: Educate America Act, which supported State and local school reform efforts based on challenging academic standards and assessments linked to those standards. Prior to 1994, our education system had for too long condoned low expectations and low standards for disadvantaged children, and Federal programs often reflected those expectations. The 1994 laws established the clear expectation that all children can and should reach high standards.

The two laws were built on the principle that students and schools rise to the expectations and standards we set for them. Therefore, Federal resources were focused on helping States to develop and implement challenging State standards for all children and to use those standards to improve learning through a coherent and aligned system of curricula and assessments.

The 1994 laws complemented and accelerated reforms already underway in many States and school districts, while providing a catalyst for change in States that had not yet begun setting high academic standards. In fact, in a recent study by the General Accounting Office, many States reported that Goals 2000 has been a significant factor in promoting their education reform efforts. Similarly, according to the National Assessment of Title I, about half of poor school districts across the Nation report that Title I is “driving standards-based reform in the district as a whole.” With 48 States, Puerto Rico, and the District of Columbia having completed the development of State content standards for all children, it is clear that higher standards are taking hold nationwide.

More importantly, there is strong evidence that where States have implemented standards-based reform over a period of time—together with accountability mechanisms linked to those standards—students have benefited. For example, North Carolina and Texas made greater gains in math and reading on the National Assessment of Educational Progress (NAEP) than any other

State between 1992 and 1996. Texas also showed significant progress in closing the achievement gap between minority and white students. A recent study by RAND researchers concluded that the most plausible explanation for these gains included the effort by both States to align their systems of standards, curriculum, and assessments, and to hold schools accountable for the improvement of all students.

In developing its 1999 ESEA reauthorization proposal, the Administration drew on the experience of implementing the 1994 Act, efforts to measure program performance under the Government Performance and Results Act, and a review of Congressionally mandated evaluations of Title I and other programs. These efforts also were informed and enriched by conversations with hundreds of teachers, principals, parents, community activists, and State and local officials nationwide. Four themes emerged again and again during this process, and these same themes are found throughout the Educational Excellence for All Children Act of 1999: (1) firmly committing to high standards in every classroom, (2) improving teacher and principal quality to ensure quality instruction for all children, (3) strengthening accountability for results coupled with flexibility, and (4) ensuring safe, healthy, disciplined, and drug-free school environments where all children feel connected, motivated, and challenged to learn and where parents are welcomed and involved. To ensure that States adopt policies and practices that promote high quality education for all children, ESEA requires States receiving grants under the Act to adopt policies and programs incorporating these important themes.

High Standards in Every Classroom

The next step in education improvement is to take the high standards set at the Statehouse and move them to schools and classrooms. The Educational Excellence for All Children Act of 1999 renews the Federal commitment to high standards for all children and promotes this next stage of standards-based reform by helping States, districts, schools, and teachers use challenging State standards to guide classroom instruction and student assessment. The bill also supports high standards by helping children to read well and by providing extra resources to help all students succeed. The proposal would:

- Raise student performance by increasing academic standards. The proposal would support implementation of challenging standards and aligned assessments in every State. Title I of the ESEA would continue to focus on high expectations for all children, retaining the current statutory requirement that States establish content standards, student performance standards, and assessments aligned with the standards by the 2000-01 school year. Title II includes a specific authorization to help States and school districts align instruction, curriculum, assessments, and professional development to challenging academic standards.
- Implement continuous improvement and accountability based on challenging standards. States will hold all school districts accountable, and school districts will hold schools accountable, for continuous and substantial gains in overall student performance and in the performance of the lowest-performing students.
- Provide teachers with up-to-date training and support through a new Teaching to High Standards initiative. States have made great strides in developing standards, but only

36 percent of teachers report that they feel very well prepared to teach to high standards. The Title II Teaching to High Standards initiative would help schools and school districts give teachers the tools and training they need to help students reach high standards.

- Put useful technology into schools and classrooms to help teachers teach to high standards. The Technology for Education initiative would help teachers, particularly in high-poverty districts, use technology to teach students to challenging State standards, for instance by using distance learning to get challenging subject matter into all classrooms.
- Strengthen the teaching of reading and reduce class size. The bill would continue the Class-Size Reduction initiative, which seeks to reduce class size in the first through third grades to a nationwide average of 18 students, to ensure that all students receive the individual attention they need to read well and independently by the end of the third grade. It would continue the Reading Excellence Act, which focuses on professional development, extended learning time, and family literacy. Improvements in the Even Start family literacy program would increase the intensity and quality of family literacy services, while a new initiative in Title II would provide professional development for early childhood educators.
- Emphasize math and science education by earmarking the first \$300 million of the Teaching to High Standards grants under Title II for professional development in those subjects. In particular, these funds would help States and school districts take full advantage of new research and curricular materials aimed at improving the teaching and learning of mathematics. The bill also would reauthorize the Eisenhower National Clearinghouse for Mathematics and Science Education and the Eisenhower Regional Mathematics and Science Education Consortia.
- Improve foreign language instruction by setting a national goal that 25 percent of all public elementary schools offer high-quality, standards-based foreign language programs by the year 2005, rising to 50 percent by 2010. The bill would help States and districts meet this goal by supporting the development of foreign language standards and assessments, expanding the pool of elementary school foreign language teachers through improved recruitment and professional development efforts, and encouraging the use of educational technology in foreign language instruction.
- Focus on promoting equity, excellence, and public school choice options for all students. Recognizing that no one school or program can meet the unique needs of every student, public school choice provides students with the flexibility to choose among public schools and programs that differ with respect to educational settings, pedagogy, and academic emphasis. Title V will support programs that can enhance options for students and parents, including the Magnet Schools Program, the Public Charter Schools Program, and a new authority that will fund innovative options for public school choice.
- Continue to target education resources on areas of need. The bill also would continue to target Federal elementary and secondary education resources on those students furthest from meeting State and local standards, with a particular emphasis on narrowing the gap in achievement between disadvantaged students and their more fortunate peers. In this regard,

the bill would also phase in equal treatment of Puerto Rico in ESEA funding formulas, so that poor children in Puerto Rico are treated the same as those in the rest of the country for the purpose of formula allocations.

Strengthen Teacher and Principal Quality

Qualified teachers are critical to improving student achievement, yet too many teachers are not provided with on-going, high-quality professional development to help them improve and build on their teaching skills. In addition, many teachers leave the profession in their first three years, and far too many teachers are teaching in a field in which they were not trained. In Title I schools, an increasing number of unqualified teacher aides are providing direct instruction without supervision by a certified teacher. To address these problems and help ensure that every child in America has a talented and dedicated teacher who is prepared to help all children reach high standards, the President's bill would:

- Help teachers teach to high standards. The Title II Teaching to High Standards initiative would support State and local efforts to: (1) help teachers and principals align curricula and assessments with challenging State and local content standards; (2) provide teachers with sustained and intensive high-quality professional development in core academic content areas; (3) support new teachers during their first three years in the classroom; and, (4) help ensure that all teachers are proficient in content knowledge and teaching skills. This new initiative takes the place of, and incorporates the most successful elements of, three current State grant programs: Goals 2000, Eisenhower Professional Development, and ESEA Title VI Innovative Education Program Strategies.
- Support a national effort to recruit talented individuals to become principals and support their professional development to become effective instructional leaders. The Teaching to High standards initiative would authorize support for new and continuing principal development and leadership.
- Expand recruitment and retention efforts to help meet the need for 2.2 million new teachers over the next decade. The Teaching to High Standards initiative would support State and local efforts to recruit and retain high-quality teachers in high-need areas. These efforts would include, for example, the creation of a national job bank and encouraging portability of licensure and other teaching credentials. The Teaching to High Standards initiative also would include a priority for school districts that support teachers in their first three years of teaching, a period when many good teachers leave the classroom. The Transition to Teaching initiative would expand the existing Troops to Teachers program to help non-military (as well as military) mid-career professionals become teachers, particularly in high-poverty school districts and high-need subject areas.
- Require certification for new teachers in Title I schools. Our proposal would require all new teachers in programs supported with Title I funds to be fully certified in the subject they teach. By July 1, 2002, paraprofessionals with less than two years of college would be limited to non-instructional duties, while those with two or more years of college could

provide instructional support and tutoring only under the supervision of a certified teacher. A new set-aside for professional development in Title I would help create a career-long professional learning environment for teachers in Title I schools.

- Strengthen the State teacher certification process. States would be required to ensure that, within four years, at least 95 percent of their teachers are either (1) fully certified, (2) working toward full certification through an alternative route, or (3) fully certified in another State and working toward meeting any State-specific requirements. States will also be required to ensure that at least 95 percent of secondary school teachers have academic training or demonstrated competence in the subject area in which they teach.
- Help future teachers use advanced technology to improve classroom instruction. The Technology Literacy Challenge Fund would support sustained and intensive high quality professional development in school districts to increase teacher capacity to create improved learning environments through the integration of technology into instruction. The Preparing Tomorrow's Teachers to Use Technology initiative would support consortia of public and private entities to train new teachers to use technology to prepare students to achieve to challenging State and local standards.
- Train early childhood educators to prepare disadvantaged students for school. This Title II proposal would provide grants to partnerships of professional development providers, community-based early childhood programs, and school districts to provide high-quality professional development to early childhood providers. The emphasis would be on research-based approaches to professional development in language acquisition, literacy, and reading development.
- Train classroom teachers to teach students with limited English proficiency (LEP). Because LEP students are found in more and more classrooms, the proposed amended Title VII Bilingual Education program would support teacher education programs that develop the ability of regular classroom teachers to teach LEP students.

Strengthen Accountability for Student Performance

The 1994 laws provided States and districts with increased flexibility to coordinate, modify, and combine program funding and activities in exchange for greater accountability for improved educational achievement. States, districts, and schools have begun to take advantage of this increased flexibility, but too often without the necessary implementation of effective accountability mechanisms. Early research suggests, however, that it is precisely those States with the most comprehensive and effective accountability systems that are making the most progress in increasing expectations and standards for students and schools and improving student achievement.

The President's reauthorization proposal would retain the ESEA flexibility provisions included in the 1994 law, including the expansion of schoolwide programs, consolidation of administrative funds, and waiver procedures for regulatory and statutory provisions that stand in the way of innovative reform efforts. The bill also would retain and update the provisions of the

Education Flexibility Partnership Act of 1999, which expanded eligibility for ED-Flex authority to all States.

To help ensure that this enhanced flexibility leads to improved student achievement, the President is proposing several new accountability measures:

- Strengthen accountability for districts and schools. Our proposal would encourage States to develop one rigorous accountability system that holds all schools, including Title I schools, accountable for making continuous and substantial gains in student performance. States will have the flexibility to use either the model outlined in the statute or an alternative that is at least as rigorous and effective. States without a single State-wide accountability system would be required to develop one for their Title I schools.
- Increase accountability to parents and the public through school report cards. States and school districts receiving ESEA funds would be required to produce and distribute annual report cards for each school, the school district, and the State. The report cards would include information on student achievement, teacher qualifications, class size, school safety, attendance, and graduation rates. Where appropriate, student achievement data would be broken out by demographic groups to identify any gaps between disadvantaged students and their peers.
- End the traditional practices of social promotion and retention, after a four-year transition period during which States would put into place educational practices targeting students who need additional help to meet State promotion standards. Such practices include early identification and intervention strategies, smaller classes with well-prepared teachers, high-quality professional development, greater family involvement, and extended learning time. Following the transition period, States and districts would require students to meet academic performance standards before being promoted at key transition points (e.g., fourth and eighth grade) or graduating from high school. State policies would use multiple measures, including an assessment valid for these purposes, to determine if a student has met the standards.
- Turn around low-performing schools. School districts would be required to identify publicly the lowest-performing schools that have not improved over two years and to implement interventions and provide technical assistance in these schools. Initial interventions could include implementing extended learning opportunities, proven school reform models, and extensive teacher training. If there is no satisfactory improvement in student performance within three years of the initial identification, districts would be required to take corrective actions, such as reconstituting the school by making wholesale staff changes or closing the school entirely and reopening it with new staff or as a charter school. States would be required to reserve 2.5 percent of their Title I LEA Grant funds (increasing to 3.5 percent in fiscal year 2003) to support interventions in failing schools, and would provide 70 percent of these funds to school districts to help them turn around low-performing schools.

Support Safe, Healthy, Disciplined, and Drug-Free Learning Environments

A critical prerequisite for achieving quality and excellence in education is a safe, healthy, disciplined, and drug-free learning environment that provides ample opportunities for each student to make connections with caring adults that support learning and personal development. Notwithstanding the recent tragedy at Columbine High School in Littleton, Colorado, survey data show that schools continue to be safe places in America's communities. Similar survey data, however, show that drug and alcohol use remain disturbingly high in middle and high schools, discipline appears to be a growing problem, and more and more children are leading lifestyles involving little or no physical exercise.

Parents play a critical role in creating and maintaining a healthy learning environment, and the Educational Excellence for all Children Act of 1999 would retain and strengthen the emphasis on parental involvement first established by the 1994 Act.

The following provisions would support State and local efforts to create safe, healthy, disciplined, and drug-free learning environments in all of our schools:

- Help support and expand the connections between adults and students that are necessary for effective learning and healthy personal development through a High School Reform initiative. This new initiative would provide resources to help transform 5,000 high schools into places where students receive individual attention, are motivated to learn, are provided with challenging courses, and are encouraged to develop and pursue long-term higher education and career goals. Participating schools would serve as models to guide reform in all secondary schools.
- Require every school district and school to have a sound discipline policy. Our proposal will require States to hold school districts and schools accountable for having discipline policies that focus on prevention, are consistent and fair, and are developed with the participation of the school community.
- Emphasize parent involvement policies at the school and district levels and continue implementation of Title I parent-school compacts.
- Improve the Parent Information and Resource Centers by focusing on high-poverty communities, encouraging the use of research-based models for increasing parent involvement, and emphasizing early literacy development.
- Expand access to information through technology by supporting community technology centers that make online education and training resources available to parents and other community members in high-poverty areas.
- Strengthen the Safe and Drug-Free Schools and Communities Act by concentrating funds on districts that have a significant need for drug- and violence-prevention and that are developing and implementing research-based prevention programs of proven effectiveness.

- Create a new School Emergency Response to Violence program (Project SERV) that would provide rapid assistance to school districts that have experienced violence or other trauma that disrupts the learning environment.
- Modify the Gun-Free Schools Act to require an assessment of any student who brings a firearm to school to determine if the student poses an imminent threat of harm and, in the case of students who are suspended or expelled from school, provide for appropriate supervision, counseling, and educational services.
- Promote physical fitness and lifelong healthy habits through demonstration projects. Exemplary physical education programs can promote life-long healthy habits, provide opportunities for students to connect to school, and become an important component of after-school programs.

Educational Excellence for All Children

The 1994 ESEA reauthorization marked a fundamental change in the Federal role in education by establishing the clear expectation that all children can and should reach high standards. Early results suggest that standards-based reform is a powerful tool for raising student achievement and for closing the achievement gap between economically disadvantaged students in high poverty schools and their more fortunate peers. The Educational Excellence for All Children Act of 1999 would build on this early success by reinforcing State and local efforts in key areas like bringing high standards into every classroom, strengthening teacher and principal quality, increasing accountability for student performance, and supporting safe, healthy, disciplined, and drug-free learning environments. The bill provides the Congress a tremendous opportunity to support the changes needed to help all of our children reach high academic standards and to keep America strong and prosperous in the 21st century.

**THE EDUCATIONAL EXCELLENCE FOR ALL
CHILDREN ACT OF 1999**

**The Clinton Administration's Proposal to Reauthorize the
Elementary and Secondary Education Act of 1965**

"We know from hard experience that unequal education hardens into unequal prospects. We know the Information Age will accelerate this trend..."

"We cannot allow this age of opportunity to be remembered also for the opportunities that were missed. Every day, we wake up and know that we have a challenge; now we must decide how to meet it."

**President William J. Clinton
June 5, 1998**

**Commencement Remarks
The Massachusetts Institute of Technology**

CONTENTS

OVERVIEW

AMERICA'S EDUCATION GOALS

TITLE I: Helping Disadvantaged Children Meet High Standards

- Part A — Improving Basic Grants Operated by School Districts
- Demonstration Authority — Comprehensive School Reform
- Part B — Even Start Family Literacy Program
- Part C — Education of Migratory Children
- Part D — Children and Youth Who Are Neglected or Delinquent
- Part E — Reading Excellence Act

TITLE II: High Standards in the Classroom

- Part A — Teaching to High Standards
- Part B — Transition to Teaching: Troops to Teachers
- Part C — Early Childhood Educator Professional Development
- Part D — Technical Assistance: Building Capacity for Improving Schools

TITLE III: Technology for Education

TITLE IV: Safe and Drug-Free Schools and Communities Act

TITLE V: Equity, Excellence, and Public School Choice

- Part A — Magnet Schools Assistance Program
- Part B — Public Charter Schools Program
- Part C — OPTIONS: Opportunities to Improve Our Nation's Schools
- Part D — Women's Educational Equity Act

TITLE VI: Class-Size Reduction

TITLE VII: The Bilingual Education Act

TITLE VIII: Impact Aid

TITLE IX: Indian, Native Hawaiian, and Alaska Native Education

- Part A — Indian Education
- Parts B and C — Native Hawaiian and Alaska Native Education

TITLE X: Programs of National Significance

- Part A — Fund for the Improvement of Education (FIE)
- Part B — Gifted and Talented Students
- Part C — International Education
- Part D — Arts in Education
- Part E — Inexpensive Book Distribution Program
- Part F — Civic Education
- Part G — 21st Century Community Learning Centers
- Part H — High School Reform
- Part I — Elementary School Foreign Language Assistance
- Part J — National Writing Project

TITLE XI: General Provision, Definitions, and Accountability

- Part A — General Provisions and Definitions
- Part B — Education Accountability Act

**THE STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT:
Education for Homeless Children and Youth**

THE WHITE HOUSE

WASHINGTON

April 28, 1999

**BILL SIGNING CEREMONY FOR H.R. 800, THE EDUCATION FLEXIBILITY
PARTNERSHIP ACT OF 1999**

DATE: Thursday, April 29, 1999
LOCATION: Rose Garden
BRIEFING TIME: 2:00pm - 2:20pm
EVENT TIME: 2:20pm - 3:20pm
FROM: Larry Stein, Bruce Reed

I. PURPOSE

To sign into law H.R. 800, a bill authorizing the Secretary of Education to allow all states to participate in the Education Flexibility Partnership (Ed-Flex Partnership) program

II. BACKGROUND

Today you will sign H.R. 800, the Education Flexibility Partnership Act of 1999. The Conference Report to H.R. 800, sponsored by Rep. Mike Castle (R-DE) passed overwhelmingly in the House (368-57) and passed the Senate (98-1). You will hail this legislation as an example of the kind of bipartisan effort that will be necessary to move forward on even more important items on the nation's education agenda.

The Conferees agreed to drop the controversial Lott Amendment, which would have allowed States to divert FY99 federal class size reduction dollars to fund IDEA. Secretary Riley had advised you to veto the bill if it included the Lott Amendment. Instead, the Conferees agreed to a provision sought by Sen. Murray (D-WA) that will make the class size program more attractive to small states and small school districts.

Ed-Flex Bill Will Support Local Education Reform Efforts. You will sign into law this legislation to expand the Ed-Flex demonstration program and enable all states, the District of Columbia, Puerto Rico, and the territories to form Ed-Flex partnerships. As states and communities implement reforms to enable all children to meet challenging academic standards, they should have the ability to use federal resources in the ways that best complement local efforts and innovation. Under Ed-Flex, states can waive many of the requirements of federal education programs to advance school improvement efforts. In exchange, participating states must have a comprehensive school improvement plan, agree to waive comparable state requirements, and hold districts and schools affected by the waivers accountable for results. You first called for this expansion of the Ed-Flex pilot program in a speech last year to the National Governors' Association.

Flexibility Accompanied By Strong Accountability For Results. As Congress considered Ed-Flex legislation, you repeatedly demanded that the expanded flexibility conferred by the bill be accompanied by strong accountability provisions. In particular, you called for, and Congress eventually enacted, provisions to ensure that waivers are tracked to make sure they produce results -- and that waivers are revoked when they fail to do so. The new legislation authorizes the Secretary of Education to deny Ed-Flex status to states that have failed to develop challenging education standards and assessments for measuring student and district progress. It also requires states to measure the impact of their waivers on student performance, and requires the Secretary to terminate a state's Ed-Flex status if he determines that education performance in the state has not been adequate.

Calling on Congress to Move Forward On The Nation's Education Agenda. You will cite the Ed-Flex legislation as a good example of how bipartisanship can produce legislation to improve America's public schools. You will urge Congress to move forward in a similar bipartisan manner on even more important aspects of the Nation's education agenda -- most notably, finishing the job of hiring 100,000 well-prepared teachers to reduce class size, building and modernizing 6,000 public schools across the country, and reauthorizing the Elementary and Secondary Education Act in a way that holds states and school districts accountable for results.

III. PARTICIPANTS

Briefing Participants

The President

John Podesta

Doug Sosnik

Larry Stein

Bruce Reed

Broderick Johnson

Paul Glasris

Event Participants

The President

Secretary Richard Riley

Senator Ron Wyden (D-OR)

Senator Bill Frist (R-TN)

Representative Tim Roemer (D-IN)

Representative Michael Castle (R-DE)

Dr. Iris Metts, Delaware Secretary of Education

IV. PRESS PLAN

Open press.

V. SEQUENCE OF EVENTS

- You will greet the Members of Congress and Dr. Iris Metts, Delaware Secretary of Education, in the Oval Office.
- You will be announced into the Rose Garden, accompanied by Secretary Richard Riley, Senator Ron Wyden, Senator Bill Frist, Rep. Tim Roemer, Rep. Michael Castle, and Dr. Iris Metts.
- Secretary Richard Riley will make remarks and introduce Senator Ron Wyden.
- Senator Ron Wyden will make remarks and introduce Senator Bill Frist.
- Senator Bill Frist will make remarks and introduce Rep. Tim Roemer.
- Rep. Tim Roemer will make remarks and introduce Rep. Michael Castle.
- Rep. Michael Castle will make remarks and introduce Dr. Iris Metts.
- Dr. Iris Metts will make remarks and introduce you.
- You will make remarks and invite Members of Congress to join you on stage for the bill signing.
- You will take your seat at the signing table, sign the bill, and depart.

VI. REMARKS

To be provided by Speechwriting.

VII. ATTACHMENTS

- I. Members of Congress attending.

ATTACHMENT I.

MEMBERS OF CONGRESS ATTENDING (21):

Sen Max Baucus (D-MT)
Sen William Frist (R-TN)
Sen James Jeffords (R-VT)
Sen Jack Reed (D-RI)
Sen Arlen Specter (R-PA)
Sen George Voinovich (R-OH)
Sen Ron Wyden (D-OR)

Rep John Boehner (R-OH)
Rep Michael Castle (R-DE)
Rep Jim Davis (D-FL)
Rep Harold Ford (D-TN)
Rep Joseph Hoeffel (D-PA)
Rep Steny Hoyer (D-MD)
Rep Dale Kildee (D-MI)
Rep Ron Kind (D-WI)
Rep Carolyn Maloney (D-NY)
Rep Dennis Moore (D-KS)
Rep David Phelps (D-IL)
Rep Tim Roemer (D-IN)
Rep Robert Underwood (D-GU)
Rep David Wu (D-OR)

THERE ARE 70 MEMBERS PENDING



Paul D. Glastris
04/29/99 12:07:33 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: revised final ed flex

Revised Final 4/29/99 12:00 p.m.

Paul Glastris

**PRESIDENT WILLIAM J. CLINTON
REMARKS AT SIGNING OF
THE EDUCATION FLEXIBILITY PARTNERSHIP ACT
ROSE GARDEN, THE WHITE HOUSE
WASHINGTON, DC
April 29, 1999**

Acknowledgments: Sec. Riley; Delaware Ed. Sec. Dr. Iris Metts; Sen. Frist; Sen. Wyden; Rep Castle; Rep Roemer; Vermont Ed. Commissioner Marc Hull (Jeffords ally, retiring for health reasons, champion of student testing initiative that helps educators pinpoint schools that need the most attention. Has "completely turned around education in Vermont" says Gov. Dean).

The Founding Fathers understood that importance of allowing state and local governments to manage public institutions without overly-detailed rules from the federal government. As Thomas Jefferson once observed: "Were we directed from Washington when to sow and when to reap, we soon should want for bread." Jefferson's observation used to make me smile when I was governor.

But the Framers also believed that the federal government must assume the critical role of setting national goals. That's why, in 1787, they declared that all new territories must put aside land for public schools, thereby establishing the principle that public education, though a state and local responsibility, must be a national priority.

The Education Flexibility Partnership Act exemplifies, I believe, the Founders' vision of how a properly balanced federal system of government can work to serve the interests and advance the welfare of ordinary Americans. By providing freedom from federal rules and regulations, this new law will allow states and school districts to use federal dollars more creatively, to reflect local needs and conditions. But by demanding accountability in return for these new freedoms, it will make sure states and school districts focus on results. In short, this new law provides opportunity, demands responsibility, and promises real gains in learning

for all of our children.

I think the Founders would also have been pleased with the bipartisan spirit that produced this law--a law I first called for back in March of last year when I met with the nation's governors at the White House. Now, I call on Congress to apply the same spirit of bipartisanship to the rest of my education agenda. Together we must finish the job we began last year, of hiring 100,000 new, highly-trained teachers to reduce class sizes in the early grades. For years, parents, teachers, and researchers have known that smaller classes make a difference in student achievement. Today, Senator Patti Murray and Secretary Riley joined in the announcement of a study in Tennessee that found promising signs of long-term benefits from smaller classes -- including higher graduation rates and better preparation for college.

We must also build or modernize 6000 schools nationwide. We must work to avoid violent tragedies like we saw last week in Littleton, by strengthening the Brady Law to keep guns out of the hands of children and by putting 2000 community police officers in our schools.

Finally, we must fundamentally change the way the federal government invests in our public schools--to support more of what works, and stop supporting what we know does not work. I will soon be sending Congress my Education Accountability Act. It will require states and school districts accepting federal money to do those things which governors, school administrators, teachers, parents, and students have shown are critical for raising student achievement--such as ending social promotion but also giving students all the help they need to meet higher standards; turning around or shutting down failing schools; and ensuring that teachers know the subjects they're teaching.

The greatness of America has always rested on its ability to provide opportunity for its people. And in the 21st Century, we know that education will increasingly be the key to opportunity, for the information age is the education age. If we take these steps, we can provide that opportunity to all our children. And that would make the Founding Fathers proudest of all.

Thank you and God Bless you.

Message Sent To:

Joshua S. Gottheimer/WHO/EOP@EOP
Michael Waldman/WHO/EOP@EOP
Tracy Pakulniewicz/WHO/EOP@EOP
Cathy R. Mays/OPD/EOP@EOP
Bruce N. Reed/OPD/EOP@EOP
Broderick Johnson/WHO/EOP@EOP
Karin Kullman/OPD/EOP@EOP

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

April 29, 1999

REMARKS BY THE PRESIDENT
AT SIGNING OF
EDUCATION FLEXIBILITY PARTNERSHIP ACT OF 1999

Rose Garden

3:04 P.M. EDT

THE PRESIDENT: Thank you. Let me say, first of all, I thank Dr. Metts for being here, for giving us a firsthand and concrete expression of what this bill will mean to the states of our country and to the local school districts. I thank the members of Congress who have spoken -- Senator Wyden, Senator Frist, Congressman Roemer; my old colleague, Congressman Castle.

We're delighted to have the Vermont Education Commissioner here, Marc Hull, along with Senator Jeffords and Senator Kennedy, and a very large delegation of Republicans and Democrats from the United States Congress from the Senate and the House. I'd like to ask the members of Congress just to stand so the rest of you will see how many people here worked on this bill. (Applause.)

You know, there have been days in the last few years when I'm not sure we could have gotten this many members of Congress to agree that today is Thursday. (Laughter.) This was a truly astonishing effort, and I want to thank them all.

I want to say, too, a special word of appreciation to Governor Carper, and a very profound thanks to Secretary Riley. He and I started, as I have told many people, working on education reform 20 years ago this year. And over the last 20 years, we have done our best to sort out what we ought to do and how we ought to do it, and where the responsibility for what particular action ought to lie.

And I suppose, if I could put it into a sentence, I would say that insofar as possible, when it comes to the education of our children in kindergarten through 12th grade, the beginning of what should be done, should be done by the states. And "how" should be decided by the local districts, but, basically, whenever possible, by the local principals and teachers and parents involved in the schools. That the federal government is called upon to meet the needs that states can't meet on their own -- the needs of poor children, children with special needs -- or to fill in the gaps when there are crying national needs unmet; and that when substantial federal dollars are involved, it's okay for the federal government to say "what," too. But we should all be singing out of the same hymnal insofar as possible, and we should all remember that all education -- in the schools, at least -- occurs in the classrooms, in the libraries, on the schoolyards, among the students and parents and principals.

I think it is quite remarkable to see the places where you're really seeing a turnaround, now, where you have high expectation, high standards, discipline and genuine accountability for the students and the teachers and the principals. You also see a dramatic attempt to cut the cost of education where the money's being wasted, and to increase the

investment in education where more is needed.

One of the things I'm very proud of that Secretary Riley has done is -- independent of this bill we're signing today -- is to slash the paperwork burdens on state and local officials by well over 60 percent since he has been the Secretary of Education, while putting an even more ambitious agenda before the educators of America.

Now, the founding fathers understood that this would be a big debate; we'd always be having this debate. Thomas Jefferson once said, "Were we directed from Washington when to sow and when to reap, we should soon want for bread." I may have liked that even more when I was governor, but it still sounds pretty good to me. (Laughter.)

But the framers understood something else, too -- they understood that the country had a right to decide and had to decide from time to time what we were going to do -- maybe not when and how, but what. They believed, for example, in 1787, that education was an important national purpose, and declared that all new territories must put aside land for public schools; thereby establishing the fact that education, though a state and local responsibility, must be a national priority.

This Education Flexibility Partnership Act exemplifies, I think, the founders' vision of how a properly balanced federal system of government can work -- providing freedom from federal rules and regulations. This new law will allow states and school districts not just to save administrative dollars, with less headache and red tape, but actually to pool different funds from different sources in the federal government. But by demanding accountability in return, it will make sure states and school districts focus on results.

Now, Doctor, you mentioned one example. I'll give you an example from my own life that made me so strongly for this bill. In 1990 or '91, when I was governor, the Department of Education under President Bush gave us permission in a very small, very poor rural school district to take all of our federal funds at elementary schools -- including the Chapter I funds and some of the special ed funds -- and put them together and take class size down to 15-to-1, in a district where the test scores were low and the learning was tough.

And this little district had a formula -- they also actually had an idea that even six-year-olds could be used to teach other six-year-olds to read, and to do their alphabet and do basic writing.

And I should tell you that in this first grade class -- they had a rough means of testing the children in the first grade, to test their basic competencies -- and there were four children in these four first grade classes that had been held back for a second year. Everybody else was in the first grade for the first time.

And so we did this. Here's what happened. The four kids that were held back scored four times as high on their basic competencies as they did. All the Chapter I kids scored three times as high, and the overall classes did twice as well as the previous year's class.

It was a wonderful thing, except I couldn't do it everywhere in the state. And I didn't know whether to laugh or cry. See, here we had discovered something that is profoundly important. I got all the help that I think the federal government could give me at the time. And we did the best we could to take those lessons, in the absence of the federal funds, and apply them.

MORE

We want to produce results. We want our children to learn. We want all of our kids to be able to learn to the maximum of their ability, which means that they can learn at a world-class standard. And we need to give people who are on the ground, working with the kids and committed to that, the chance to do it. And if they're not, and the money's being misspent under this law, then we'll revert to another system.

But that is the meaning of this. This can change children's lives. And again I say, I am profoundly grateful to anyone who had anything to do with it.

I hope that -- now, we're getting off to a good start, and we'll keep on doing this. Last year, at the end of the year, we made our first big down payment on providing 100,000 more teachers, so we can have smaller class sizes. We're going to have to hire 2 million new teachers in America in the next few years, with a growing student population and increasing retirement among teachers. This is an important contribution to that effort.

I hope we can pass the bill to modernize or build 6,000 new schools, because we've got a lot of schools that are too old -- some of them even too old to take the computer hookups that have now been made everywhere in Delaware, as you heard the Doctor say.

I hope that we will reauthorize the Elementary and Secondary Education Act to reflect the lessons learned in Chicago and elsewhere, and ask the schools that receive these federal funds to end the practice of social promotion, but to increase the efforts to help children through after-school and summer school programs and mentoring programs; to turn around or shut down failing schools; and to ensure that we do more to see that our teachers know the subjects they're charged with teaching.

The greatness of this country has always been the promise of opportunity for everyone who is willing to work for it. Today you not only have to be willing to work for it, you have to know enough to achieve it. Therefore, there is no important responsibility that should have greater weight on our minds as Americans -- without regard to party, and without regard to whether we work in the national government or the state and local government, or the smallest rural school or the biggest inner-city school, or whether we're just taxpaying citizens, with or without children in those schools -- there is nothing more important for us to be focused on today than making sure that very early in the next century we can look at each other, straight in the eye, and say -- and believe and be right about saying -- that it is possible in America, in every community, to get a world-class education.

Thank you very much. (Applause.)

Now, I'd like to ask the members of Congress to come on up and we'll sign the bill.

END

3:20 P.M. EDT

UNIVERSAL PRE-SCHOOL

* 1m kids

Pay-for-performance

(5B)

AFTER-SCHOOL

* Voucher for failing schools

(1B)

* Double of kids in A/S + summer school

(600m)

TEACHERS BILL OF RESPONSIBILITIES & RIGHTS

* Bonuses, firing, testing, scholarships, Teacher Corps

TURN AROUND OR SHUT THEM DOWN

ZERO TOLERANCE FOR

* 3 yr clock for failing schools - intensive instruction,

FAILING SCHOOLS

shut down and charter if no progress results

* ~~Rollie~~ school vouchers

THE NEW AMERICAN H.S.

* Schools w/ schools

* Every state ~~require~~ ^{require} HS performance exam

* Class size to 20 K-12

* Hispanic drop out plan

TECHNOLOGY - CUSTOM LEARNING

DISCIPLINE, SAFETY, CHARACTER, PARENTS

COLLEGE & JOB TRAINING

THE WHITE HOUSE
WASHINGTON
January 18, 1999

THE PRESIDENT HAS SEEN
1-19-99

THE WHITE HOUSE
WASHINGTON

MR. PRESIDENT:

OMB has signed-off on the
attached memo.

Phil Caplan

17, 1999

copied
Reed/EK
Cohen
Podesta

99 JAN 18 PM 3:12

als

financial bonus for states and school districts
achievement (both in producing overall gains and
which will be passed on to their highest performing
of a denial of administrative costs -- for school
student achievement. These proposals, developed
ESEA proposals you have already approved to
identify and intervene in failing schools; (3)
issue school report cards. The combination of the
into place the set of education reform measures
a set of financial incentives and disincentives to

spur the very best results.

A. Financial Bonuses for High Performance

Our proposal would establish an Education Excellence Fund to provide financial rewards to any state and any of the 100 largest urban school districts that make significant gains, sustained over three years, in raising student achievement across-the-board and reducing disparities in achievement based on race, ethnicity, and socioeconomic background. Directing this money to states reinforces the broad message of our ESEA proposal that they are responsible for the performance of their schools and must adopt policies that achieve results. Directing this money to large urban school districts (aside from being good politics for us) responds to the relative independence of these districts from state governments and to their recent efforts to make far-reaching education reforms.

States and cities would receive rewards if they met, for three consecutive years, improvement targets that the Secretary of Education had set for them. These targets primarily would measure state assessments in reading and math, though they also could take into account additional indicators of performance such as improvements in other academic subjects, drop-out rates, and student attendance. As noted previously, the targets would track both overall performance and success in closing opportunity gaps.

Under the proposal, each state and city receiving an award would have to distribute 90

1-19-99

THE WHITE HOUSE
WASHINGTON

'99 JAN 18 PM3:12

January 17, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Mike Cohen

SUBJECT: ESEA Incentive Proposals

This memo describes proposals for (1) a financial bonus for states and school districts that have made significant progress in student achievement (both in producing overall gains and in closing demographic gaps), almost all of which will be passed on to their highest performing schools; and (2) a financial penalty -- in the form of a denial of administrative costs -- for school districts that fail to make adequate progress in student achievement. These proposals, developed at your direction, are meant to complement the ESEA proposals you have already approved to require states to (1) end social promotion; (2) identify and intervene in failing schools; (3) prevent the use of unqualified teachers; and (4) issue school report cards. The combination of the two sets of proposals will ensure that states put into place the set of education reform measures that recent studies show work, and then provide a set of financial incentives and disincentives to spur the very best results.

A. Financial Bonuses for High Performance

✓ Our proposal would establish an Education Excellence Fund to provide financial rewards to any state and any of the 100 largest urban school districts that make significant gains, sustained over three years, in raising student achievement across-the-board and reducing disparities in achievement based on race, ethnicity, and socioeconomic background. Directing this money to states reinforces the broad message of our ESEA proposal that they are responsible for the performance of their schools and must adopt policies that achieve results. Directing this money to large urban school districts (aside from being good politics for us) responds to the relative independence of these districts from state governments and to their recent efforts to make far-reaching education reforms.

States and cities would receive rewards if they met, for three consecutive years, improvement targets that the Secretary of Education had set for them. These targets primarily would measure state assessments in reading and math, though they also could take into account additional indicators of performance such as improvements in other academic subjects, drop-out rates, and student attendance. As noted previously, the targets would track both overall performance and success in closing opportunity gaps.

Under the proposal, each state and city receiving an award would have to distribute 90

percent of it to the schools most responsible for its performance results; the state or city could retain the remaining 10 percent of the award. States, cities, and schools could use the bonus funds for any activities geared toward continuing to improve student performance.

Our proposal would authorize the Excellence Fund at a level of one billion dollars over five years. This level of funding could support awards of about \$40,000 to about 5 percent of all public schools (4500 schools). We would provide the first awards three years after the passage of ESEA to allow the Secretary to establish improvement targets and determine whether a jurisdiction had met the targets for three years running.

B. Financial Penalties for Low Performance

Our proposal would impose an appropriate and credible financial penalty on school districts that fail to make gains in student achievement over three consecutive years. The penalty would equal half of the Title 1 funds provided to the district for administrative purposes (about 2.5 percent of total Title 1 funds). Prior to imposing the penalty, the Secretary would give the school district an opportunity to turn its performance around under a corrective action plan approved and supervised by the state. We believe that this level of penalty would motivate school districts, without endangering the educational opportunities of their students. We could put into place a similar set of performance penalties for states, but think that making this proposal would not be worth the political costs.

We do not believe we should impose financial penalties on individual schools, no matter how low-performing. Our proposal requires states, working with school districts, to take effective actions to turn around these schools (with \$200 million in your FY 2000 budget to support this effort). Initial action might include extensive teacher training, support to improve school discipline, and implementation of proven approaches to school reform, such as Reading Recovery or Success for All. If these efforts did not lead to improved student achievement, the state would have to take more drastic action, such as making wholesale changes in school staff or closing the school and reopening it as a charter school. We think that this approach to turning around low-performing schools is superior to withdrawing federal money, which would pose too great a danger of entrenching existing disparities and harming the most disadvantaged students.

* * * * *

If you approve, it might be appropriate to mention this proposal -- in particular, the part about performance bonuses -- in the State of the Union.

Approve _____

Disapprove _____

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20502

99 JAN 20 AM 8:51

January 20, 1999

MEMORANDUM FOR WHITE HOUSE SENIOR STAFF

FROM: JEFFREY A. FRANKEL *JF*

SUBJECT: December Housing Starts and Permits,
Department Release, Wednesday, 8:30

25 copies

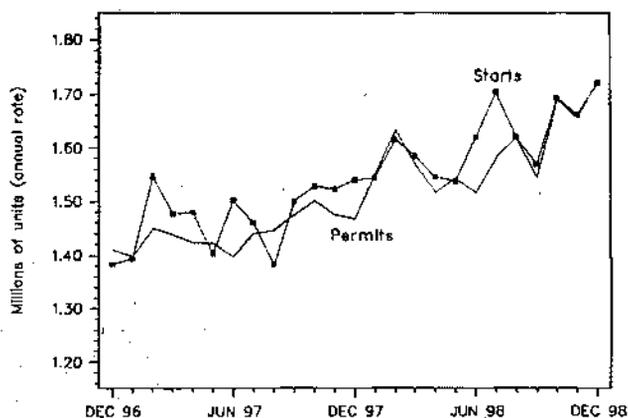
Housing starts increased 3 percent in December to 1.72 million units at an annual rate--above market expectations.

- All of the December increase was in the volatile multi-family component. Single-family starts were little changed.
- The pace of housing starts in 1998, at 1.62 million units, was the strongest since 1987.

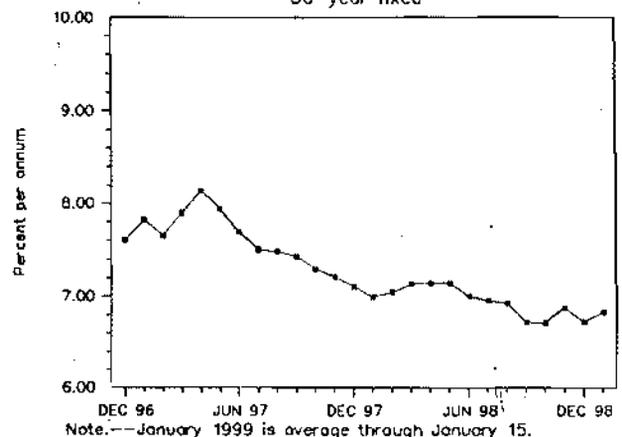
Housing permits--a more stable and forward-looking measure of construction activity--increased 4 percent in December. The level of this series foreshadows strong housing starts next month.

Residential construction has increased substantially faster than GDP in each of the past four quarters, and the recent pattern of housing starts points to another such gain in the fourth quarter. The recent strength reflects large gains in real income as well as the general decline in mortgage interest rates over the past year and a half (chart at lower right). Longer-run models, however, suggest that housing starts are running above their demographic fundamentals.

HOUSING STARTS AND BUILDING PERMITS



MORTGAGE COMMITMENT INTEREST RATE
30-year fixed



THE PRESIDENT HAS SAID
1-19-99

Copied
Spierling
Reed/OK
Cohen
Podesta

THE WHITE HOUSE
WASHINGTON

'99 JAN 7 PM1:17

January 5, 1999

January 14, 1998

MR. PRESIDENT:

Chris Edley sent you the attached memo as a follow-up to your phone conversation. He is quite critical of some of your most recent proposals. Bruce and Gene thought you should have, and I agreed, some background on Chris's criticisms. Therefore, DPC and NEC have prepared cover memos, which are attached at left.

Remember that Chris will be traveling to New York with you later today.

Phil Caplan *PC*

ideas in Relation to

reform, to present a
t just promises. The
in achievement. I
ich focuses on
the national debate
use the means.

s. I stressed the
out equally forceful
reported on the
n the right policies
the resource
or a reprise of the
oncerns of
iards.

e "Trillion Dollar"
ffers little hope for
tion of FHA and
draft book
on community
y side.

employment among
is and edge.
not an answer,
drop in the
ge grant to leverage
for results. I'm

pleased that the budget is silent, because if your book says we must go to the moon, I don't want the budget to unveil the first step as the purchase of a wrench and two screws.

Attachment

1-19-99

99 JAN 7 PM 1:17

THE HARVARD LAW SCHOOL
CAMBRIDGE MA 02138

January 5, 1999

Memorandum for the President

From: Christopher Edley, Jr. 

Re: Your Request for Candid Further Discussion of Opportunity-Related Ideas in Relation to the Race Book, Budget and SOTU

More details are in the attachment. In brief, you and I discussed these items:

Education: ESEA/Title I accountability for results. I stressed that ESEA reform, to present a credible alternative to vouchers, must emphasize accountability for *results*, not just promises. The draft race book urges a specific national commitment to close racial disparities in achievement. I also questioned the "Nation's Superintendent" model of federal leadership which focuses on carrots to spur changes in education inputs and processes, rather than focusing the national debate on accountability for results while leaving state and local governments to choose the means.

Education: Ending social promotion, with associated supports/protections. I stressed the likely objections to this from progressives and the civil rights community without equally forceful rhetoric and measures to deter abuses. The National Academy of Sciences has reported on the risks of high-stakes testing and abusive retention policies. Won't districts claim the right policies but practice something that grabs political credit for toughness while avoiding the resource investments in early intervention, remediation, and improved instruction? I fear a reprise of the National Voluntary Test fiasco, when Administration officials dismissed the concerns of progressives (like me) who support high standards but want enforceable safeguards.

Economic Development, Trillion Dollars, etc. I credited the good will of the "Trillion Dollar" and HUD packages, but voiced concerns that the blizzard of proposals really offers little hope for the well-informed observer. These helpful ideas pale in comparison to the creation of FHA and FNMA. Twenty SBICs and three turtle doves do not a bold legacy make. The draft book recommends re-chartering the Federal Home Loan Bank Board GSE to focus on community development, with a broad set of tools financed off budget or on the mandatory side.

Jobs: I noted the book's "mountain top" goal is to break the back of hyper-unemployment among minority young adults, and contrasted this with a plethora of ideas lacking focus and edge. Something like DOL's new \$250 million Youth Opportunity Areas program is not an answer, with 20 sites, each ten square blocks, serving only 60,000 kids nation wide: A drop in the swimming pool, impossible to scale up. The draft book recommends a challenge grant to leverage metropolitan reinvention; reinvention across bureaucracies; and accountability for results. I'm pleased that the budget is silent, because if your book says we must go to the moon, I don't want the budget to unveil the first step as the purchase of a wrench and two screws.

Attachment

ATTACHMENT

1. Education: ESEA/Title I accountability for results in closing achievement disparities

The DPC/Department reauthorization proposal as of 12/23 is exciting, but leaves the nagging concern that states/districts get and keep their money just by *planning and promising*. Or, arguably worse, we push them to change specific management practices or education inputs (interventions for failing schools, personnel policies) without holding anyone accountable for whether those actions in fact produce better learning outcomes. There are two conceptual problems:

a. Find the Stick. On a scale of incentives running from lofty exhortation to tactical nukes, either extreme is bad, but aren't we still far too soft? As between the "be patient" view of entrenched educrats and the "revolution, else vouchers" view of frustrated parents and business leaders, whose side are we on? I'm told that DPC is now working on options to add stronger consequences. I believe these must be both powerful and credible.

b. Superintendent, or President? Are we going to continue focusing on inputs – leaky roofs, teacher certification, Advanced Placement offerings, technology, class size – or should we try to shift the national discussion to the heart of the matter: *Everyone must be judged by results, and federal taxpayers will not subsidize failure or underwrite excuses*. All of the input interventions and regulations are individually sensible and many are research-based, but most strike me as the agenda for a superintendent of schools rather than a President -- particularly a President trying to demonstrate that New Democrats don't throw money at problems. I suspect you are focusing this way because an idea like fixing the roofs or shrinking class size has just enough intuitive appeal to trump conservative anxiety about an expanding federal role. The alternative conception of presidential leadership, however, is to focus public discourse on closing the achievement disparities and creating tough accountability for results, while stepping way back from top-down prescription of the means of achieving those results. And I think this alternative is the way to present a meaningful, values-based alternative to the Heritage Foundation agenda, striking a responsive popular and populist chord.

c. Connection to your race book. Finally, you have seen the draft chapter urging a focus on the "mountaintop" of eliminating the racial disparities in achievement. I urge that this "man on the moon" goal be explicit in the ESEA reauthorization, and that some dimension of accountability be tied to progress in achieving this goal. The draft chapter recommends a specific challenge fund for this purpose, on the theory that it is politically infeasible to put the larger body of Title I funding at risk when everyone pretty much thinks of that formula as a vital fiscal entitlement.

2. Education: Ending social promotion, with associated supports/protections.

We discussed the danger that, like your call for a Voluntary National Test, calling for an end to social promotion will generate a backlash from progressives who fear abuses – retention driven by the results of a single test, rather than a range of factors, and imposed without the various early interventions and remedial supports that you and the your advisers usually emphasize. In 1997 I urged an early amendment to the VNT proposal to build in protections against the kind of test misuse the expert testing community fears, but Administration officials were, frankly, polite but dismissive of my substantive and political concerns, even after hearing the same message in last minute consultations with civil rights advocates. The response of Congressional progressives, and the results of Congressionally-chartered analyses by the National Academy of Sciences [NAS] (in which I played a role) validated my 1997 concerns. I am right this time, too.

According to the NAS, retention is linked to significant and sometimes dramatic increases in drop-out risk, and while virtually every district has a written retention policy stating all the right things about multiple considerations and early interventions, actual practice is poorly understood but known to include abuses and, civil rights advocates believe, discrimination.

These violations of the professional standards of educators and testing experts are perfectly predictable, and so are the responses to your initiative. No important constituency favors social promotion. I and others fear, however, that it is politically easy for some state or local official to say he's for tough standards and then show it by flunking poor colored kids (we know something is wrong with them anyway). On the other hand, it is politically difficult to spend a lot of money on the interventions, supports, and summer school that will forestall or ameliorate retention. And even more difficult to hold someone other than the kid, like a teacher or principal, responsible for the failure to achieve.

I have heard no persuasive response to these concerns. I predict that, absent adjustment, important voices will be raised against the proposal. It will alienate many of the very interests you should be rallying to unite in a bold school reform strategy. I see no easy way out of it, especially at this late date. As a conceptual matter, however, retention policies are just one of the "inputs" to the achievement equation. If the Federal leadership is focused on results instead of inputs, a new categorical program about social promotion is a distraction. It should be a bully pulpit item, as should other particular solutions that a superintendent ought consider.

3. Economic Development, Trillion Dollars, etc.

You wanted my reaction to the various HUD and "Trillion Dollar Roundtable" proposals. The blizzard of elements gives clear and convincing proof of good will and commendable energy. From a Race Initiative perspective, however, the elements aren't bold enough to make an informed observer believe this will make much difference. They do not inspire an educated hopefulness.

As the draft race book suggests, your goal should be to harness the power of markets and financial institutions and put them to work for distressed communities. But now, judge the FY 2000 proposals by that standard, or the standard of policy historians. When past presidents identified home ownership as a goal, they created FHA, chartered FNMA, and transformed market forces and institutions. When rural depression seemed an intractable blight, past Presidents created the TVA and REA. These ideas were as important for the *structural* changes they wrought as for the incremental dollars involved. Today, your package expanding the SBIC program and so forth is not comparable in vision or boldness, notwithstanding great rhetoric about leveraging billions of dollars. Giving Andrew \$100 million to promote "regionalism" is the substantively right direction, but an almost comic application of the aphorism that a journey of a thousand miles begins with a single step. If I were on the outside, I would write that the scale of the problem makes these measures too much like a handful of band aids, old-Democrat style. These initiatives aren't wrong or bad. Needy people will be helped and important policy principles underscored. But I believe you should offer a grander vision, while respecting fiscal discipline, and make clear that the proposals ready for announcement are part of that grander whole.

As I mentioned to you, the draft book suggests a major refocusing of the large housing-related GSEs -- FNMA, Freddie Mac and the Federal Home Loan Bank Board System. In particular, the FHLBB should be re-chartered as the **National Community Investment Bank**, with a new mission: working side-by-side with CDFIs to fuel economic revitalization in our most distressed communities through affordable financing of a range of community development and job-creating projects. In general, GSEs commonly assert that they are "private" and cannot be expected to make uneconomic investments. But their profitability is fueled by their access to "cheap" money via an implicit government debt guarantee tantamount to a discount Fed window. The FHLBB is the most egregious at playing loose with the public purpose, making much of its profit through arbitrage. Specifically, the Administration should propose to:

- First, adopt new regulatory and statutory provisions to (a) press the GSEs to focus more of their housing activity on severely distressed communities, and (b) give the GSEs more effective tools to promote targeted lending for community development purposes.
- More important, re-charter the FHLBB system as the *National Community Investment Bank* [NCIB] to stem arbitrage abuses and focus on investments and technical assistance that implement *comprehensive strategies for community economic development*, analogous to (good) IMF and World Bank missions in developing nations.
- Third, some or all of the fiscal impact of these Federal subsidies could be placed off-budget or on the PAYGO side; the NCIB could even be a source of financing outside the discretionary caps for CDFIs, SBICs, and many related efforts.

A thoroughly reinvented FHLBB/*National Community Investment Bank* could be a tremendous source of financial support and strategic planning assistance for distressed communities. As an intermediary, it could nurture secondary markets, allocate tax or other subsidies to attract private

financing for SBICs and CDFIs, create insured equity investment vehicles, and more, subject to the existing government safety and soundness oversight.

4. Jobs: Breaking the back of endemic hyper-unemployment in distressed communities.

The point I made to you was that, from the perspective of the race book, there is a need for some focus on a clear goal. We should break the back of hyper-unemployment of minority young adults in distressed areas, raising their employment levels to that of non-minorities in the same metro labor market. The three structural challenges here are: *metropolitan reinvention* across political jurisdictions; *service delivery reinvention* across a wide range of bureaucracies (from schools to reverse commuting to childcare to welfare); and *accountability for results* in closing the employment disparities. The draft book proposes a honey pot of resources available in a competitive challenge grant to metro and state applicants.

In my budget discussions with staff, there was reasonable interest in the idea, but not enough to push other ideas (from HUD, DOL, DOT, NEC) off the table and make the new investment substantial enough to be meaningful. I withdrew the proposal, because I hope to persuade you to include the "Man on the moon" statement of ambition in the book. I don't want to make it hollow with a budget down payment that belies the seriousness of the vision, draining hope away.

1-19-99

THE WHITE HOUSE
WASHINGTON

*Barbara
Gunn/Bur*

99 JAN 12 PM 6:37

January 13, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Mike Cohen

SUBJECT: Education Issues in Chris Edley's Memo

The attached memo from Chris Edley argues that our ESEA proposals do not go far enough in holding states and school districts accountable for results, while going too far in trying to end social promotion. We respectfully disagree with both criticisms, and believe that the alternative proposal Chris lays out is unlikely to achieve our policy objectives. Both the Department of Education and OMB share our views respecting these matters.

A. Ensuring Accountability

With all due respect to Chris, our ESEA proposal is simply not "too soft." The proposal requires all states -- on penalty of losing ESEA funds -- to identify and intervene in failing schools (including in appropriate cases by reconstituting or closing these school), prevent the use of unqualified teachers, end social promotion (more on this below), and issue school report cards. In short, our proposals require states to put into place the set of education reform measures that every recent study tells us works. In addition, our proposal includes specific, appropriate, and feasible bonuses and penalties for performance. At your request, we have developed a new mechanism for providing extra money to schools that make progress on state assessments over several consecutive years. Also in response to your concerns, we have developed a plan to deny administrative cost-sharing to school districts that do not make adequate progress.

It is important to understand two ways in which this proposal diverges from Chris's. First, Chris's proposal would leave Title I and all other programs now authorized under ESEA completely untouched. His proposal relates only to a currently non-existent funding stream, which is unlikely for many years (if ever) to comprise a substantial percentage of federal education funding. Second, Chris's proposal includes no requirements for specific school reforms; it is instead a block grant -- albeit one that can be taken away in certain circumstances -- for a broadly defined educational purpose (reducing racial disparities). Chris would make a virtue of this approach, arguing that it is more "Presidential." But we have never accepted the view that the federal government should leave all education policy decisions to the states; to the contrary, we have tried to use our education dollars to get the states to adopt certain policies we believe will improve performance (for example, reducing class size and modernizing facilities). As Chris himself concedes, we increasingly know what works in this area -- and we know that

too few states are implementing these policies. To rely only on a far-off threat of removing federal money -- a threat that both past practice and common sense suggests is not altogether credible -- is to deprive the federal government of much of its leverage.

B. Ending Social Promotion

Our proposal to end social promotion is sound and will be effective. We do not share Chris's view that ending social promotion is "a distraction" from your education reform agenda. On the contrary, it is a central part of holding schools, teachers and students accountable for results, as you demonstrated in Arkansas and as Chicago, Boston, and other communities are demonstrating today. The policy focuses the attention of students, parents, teachers, schools, and entire school systems on getting students to meet standards, which is the core goal of our education policy. Recall that in Arkansas, passing rates on the eighth grade reading and math tests went from about 83 to about 96 percent once a no-social-promotion was put into effect.

We do not doubt that our proposal will be controversial in some quarters, particularly in the traditional civil rights community. Chris is right to note that some members of this community oppose the use of tests to hold students accountable for performance under almost any circumstance. They will not be happy with any policy to end social promotion that goes beyond paying lip-service to this goal.

We believe that the best way to respond to the concerns of the civil rights community is to insist that states and school districts end social promotion *the right way*. This means, as you have always said, coupling no-social-promotion policies with other steps to strengthen learning opportunities in the classroom, such as extended learning time for students who need it. It also means ensuring enforcement of the civil rights laws and putting in safeguards to prevent abuses. Our proposal that the Department of Education review and approve state plans to end social promotion -- as well as our proposal that states take up to five years to phase in these plans -- should help to ensure high-quality implementation. (By contrast, if we do nothing in this area, some states will adopt irresponsible ways of ending social promotion.) We may not be able entirely to persuade Chris and others, but we believe that our continued insistence on ending social promotion policy the right way will blunt their objections.

THE WHITE HOUSE

WASHINGTON

January 13, 1999

99 JAN 14 AM 7:03

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING

SUBJECT: Edley Memo

Chris's attached memo stresses two areas in economic opportunity and development where he feels our efforts, so far, are inadequate. While we will agree that if we had unlimited resources it would be good to do even more and while there are legitimate differences on how best to tackle these challenges, it is important to put his ideas in both areas in perspective.

Economic Development:

On top of your Empowerment Zones, the Community Reinvestment Act, the Community Development Financial Institution (CDFI) fund, you will announce on Friday the New Markets Initiative, which will dramatically expand capital investments in our underserved areas. This initiative will include:

- **A New Market Investment Tax Credit:** You will propose a new \$1 billion tax credit, which will be available for qualified equity investments in a range of vehicles financing businesses in America's new markets. An investor will receive total tax credits up to a fixed percentage of his/her investment. This tax credit will leverage \$6 billion in additional investment in our distressed communities.
- **The Creation of America's Private Investment Companies (APIC):** In response to concerns that the SBICs are too limited in size to meet the need for larger-scale investment in underserved areas, you will propose a new program to provide government guarantees for investment partnerships targeting larger businesses relocating or expanding in inner cities and rural areas. This initiative will allow government guarantees on debt up to two times the amount of equity investment allowing up to five investment firms each with up to \$300 million to invest -- or up to \$1.5 billion in investment.
- **New Markets Venture Capital Firms (NMVC):** To help small-sized firms in underserved areas that need investment *and* technical assistance, you will propose that SBA finance investment firms offering a new combination of investment and technical assistance to smaller businesses in targeted areas. The program should provide long-term, patient growth capital and facilitate critically needed technology and management skills development for these firms.

- **SBIC Targeting for Underserved Areas:** In order to meet better the needs of minority firms and underserved markets, SBA will hold a series of workshops throughout the country to educate the business and investment community about the SBIC program and to promote the formation of SBICs focused on equity capital for underserved areas. SBA will also provide a new financing mechanism and more favorable regulatory treatment, if an SBIC invests in businesses in underserved areas (or which draw a significant proportion of its employees from those areas).
- **250 Percent Expansion of Microenterprise Investment:** In many underserved areas, fostering opportunities for the smallest of entrepreneurs can help to build the job base and provide economic stability to a community. Your budget calls for a 250-percent increase in funding for technical assistance and lending to very small businesses.

Chris recommends re-chartering the Federal Home Loan Bank System (FHLBS) to create a National Community Investment Bank with the goal of promoting community development. While we share Chris's interest in the potential of GSEs doing more to meet public policy objectives, the issues involving Fannie Mae, Freddie Mac, and the FHLBS are complex and delicate. In the end, we believe that our chances are far greater to get a sound New Markets Initiative passed by this Congress than a prudent new GSE.

However, the complexity and unlikelihood that Chris's proposal will pass Congress in a sensible form are not sufficient enough reasons to exclude it from a visionary statement. You should know, though, that experts within your Administration have significant problems with the proposal on substance grounds.

For example, there is much skepticism that political dynamics will allow us to add new public purpose obligations on the FHLBS -- the off-budget subsidies of which Chris writes -- and reduce arbitrage significantly at the same time. More likely, some fear, the mission will be expanded and the leakage of federal subsidy to private hands will *grow*. Treasury has thus far insisted that these "abuses" be stemmed before any -- even modest -- mission expansion can go forward.

If you would like to pursue this idea further, we can convene a process to evaluate this option and develop a pro/con memo to inform your decision on how to proceed.

Youth Jobs:

We share Chris's goal of "breaking the back of endemic hyper-unemployment in distressed communities." However, we must respectfully disagree with Chris's belief that your Youth Opportunities Initiative is not a good answer because it is too concentrated in a few areas and will serve "only" 60,000 poor children this year.

The overwhelming weight of the academic research shows that in order to truly help out-of-school youth we need to saturate small areas with a lot of resources so that we change the culture of joblessness and high unemployment. This is precisely what the Youth Opportunity Initiative will do. It is important to note that serving 60,000 out-of-school youth nationwide is not a "drop in the swimming pool." For example, last year, there were 280,000 unemployed African-American teenagers. Therefore, we are taking an significant first step toward addressing the problem.

Finally, it is important to note that Youth Opportunities Areas was only one piece of your agenda to help politically powerless disadvantaged youth. Besides the \$250 million in last year's budget for the new Youth Opportunity Areas, you won \$120 million for GEAR-UP -- a program based on solid research on mentoring programs -- and \$70 million more to help minorities prepare for college and stay in college through the TRIO program. In sum, you won \$510 million more in FY99 than in FY98 -- an enormous one-year increase for investments in poor children.

If you include the doubling of GEAR-UP, a new \$50 million regional youth initiative, the new \$100 million Right-Track partnership, and the expansion of existing programs in your FY2000 budget, our investments in programs specifically targeted at poor children will be \$902 million higher than in 1998. (See attached table) In the face of a partisan Republican Congress, this is quite significant progress and will certainly purchase more than "a wrench and two screws."

**FUNDING FOR PROGRAMS THAT
HELP DISADVANTAGED YOUTH**

	<u>Actual FY1998</u>	<u>Actual FY1999</u>	<u>Proposed FY2000</u>	<u>Increase from 1998-2000</u>	<u>5-Year Total</u>
Youth Opportunity Areas	--	\$250 million	\$250 million	\$250 million	\$1,250 million
GEAR-UP Mentoring Program	--	\$120 million	\$240 million	\$240 million	\$1,200 million
Right-Track Partnerships	--	--	\$100 million	\$100 million	\$500 million
Regional Youth Initiative	--	--	\$50 million	\$50 million	\$250 million
Rewarding Achievement in Youth	--	--	\$20 million	\$20 million	\$100 million
TRIO -- Helping Minorities Go to and Stay in College	\$530 million	\$600 million	\$630 million	\$100 million	\$500 million
YouthBuild	\$35 million	\$43 million	\$75 million	\$40 million	\$200 million
JobCorps	\$1,246 million	\$1,308 million	\$1,348 million	\$102 million	\$510 million
TOTAL				\$902 million	\$4,510 million

ESEA

MEMORANDUM FOR BRUCE REED
ELENA KAGAN
MIKE SMITH
BARBARA CHOW

FROM: Mike Cohen

SUBJECT: Proposal to Expand Flexibility and Reward Performance

Now that we have clearly staked out a position to strengthen accountability in ESEA, I think we also must advance a related proposal to expand flexibility as well. Toward this end, I've sketched out a proposal that would provide new and significant flexibility in the use of federal funds to high poverty school districts, in exchange for increased performance. The core of the proposal is a performance partnership between the federal government and somewhere in the neighborhood of 100 high poverty urban and rural school districts. In this partnership, school districts that first demonstrate significant and sustained improvements in student achievement would be able to combine funds from a number of federal education programs and use them to support a local improvement strategy. The performance partnership would be a three-year agreement between the district and the Education Department, though the districts would continue to enjoy this high level of flexibility as long as they continue to make satisfactory gains in student achievement. More specifically, here is how I envision this program working:

Eligible School Districts. The performance partnership program would be open to high poverty urban and rural school districts nationwide. I would use the same definition of "high poverty" as we used in the Education Opportunity Zones legislation -- more than 20%, or 10,000, students in poverty. This is not very highly targeted, but it includes a broad enough cross section of school districts to have some Congressional appeal. In order to be eligible, school districts must have a track record of improving student achievement, on a districtwide basis, for at least two years. This is a more stringent requirement than we had proposed in the Zones proposal; in our bill we would have accepted gains in a few targeted schools as evidence that the district was capable of intentional improvements.

Interested school districts would compete on the basis of their track record in improving student achievement--the ones showing the greatest gains would be the most competitive. They would also compete on the basis of how ambitious they are--those committed to making the greatest gains in the future should get a leg up in the competition.

We would want the districts to describe their education improvement strategy, in order to help pick the most promising approaches, or perhaps to help us ensure that we pick a set of

partnerships school districts with a range of different approaches, so that we can learn more from this effort. However, I think we want to keep the primary focus on results rather than plans, and we would not necessarily get too deeply involved in reviewing and approving these plans.

Measuring Performance and Success. The key performance indicators for each district would be student performance on measures of achievement, using state and/or local testing programs. We would require tests in reading and math, and a few other core indicators such as the high school graduation rate. Districts would be free to add additional measures that reflect local priorities. As part of the final selection process, the Secretary would negotiate with each district the performance gains that would be required over a three year period, in order to continue in the partnership. In order to make adequate progress, the district would have to demonstrate increases in achievement overall as well as reductions in the gaps between racial, ethnic and income groups, or between the highest and lowest achievers. And we must insist on disaggregated data, at the district and student level, in order for us to provide the kind of flexibility I am envisioning here. This is consistent with the approach we have discussed in the design of a reward-for-performance program for states and local districts.

Districts would be required to comply with our package of accountability measures -- school report cards, ending social promotion, intervening in failing schools and phasing out the use of unqualified teachers. We would also continue to monitor other performance indicators for each district, related to the underlying purposes of specific funding programs.

Rewarding Performance. We would reward improved performance in three ways. First, entering the performance partnership and gaining added flexibility is largely a reward for prior success. Second, continued flexibility is dependent upon continuing success. District's would be given added flexibility for three years, and would lose it if it failed to make adequate progress during that period. And if a district's performance actually dropped during that period, the Secretary could discontinue the partnership sooner if circumstances warranted.

Third, we ought to provide discretionary money as an additional reward for performance. We can link this to the basic plan we already have already developed for rewarding performance, so that after 2-3 years of additional flexibility, those school districts with the greatest gains would be eligible for bonus funds. Under our current proposal for rewarding performance, we would have \$200 million per year, starting in 2003, for rewards to urban districts and states. The districts would get half of the funds. We could use this pot of funds as the pool for rewarding partnership districts making outstanding gains.

Alternatively--and preferably, in my view--if we can figure out a way to make the necessary budget accommodations, we could provide some additional funds immediately--once the districts enters the partnership. In this option, the performance partnership would involve a three year grant of funds as well as a three year "grant" of flexibility. Districts that fail to make adequate progress would lose funds and flexibility after three years. Those that succeed could continue to receive both. This approach would be more compelling to local school districts, but

wouldn't be cheap. I have not costed this out in any detail yet, but it is worth noting that our Zones proposal started at \$200 million for the first year, and would initially fund some 15-20 school districts. Our bonus fund would make \$100 million available to about 50 districts.

why
more
\$7

Expanded Flexibility: Combining Funds from Different Programs. Districts participating in this partnership would be permitted to combine funds from different programs into a "responsible block grant." That is, they could take funds they receive under any ESEA program,-- including Title 1, Safe and Drug Free Schools, Class Size Reduction, the new Reading Excellence Act, the Obey-Porter Comprehensive School Reform program, Eisenhower (or whatever teacher quality grant program we develop), Technology Literacy Challenge, 21st Century Community Learning Centers, and Bilingual Education,-- and use them to support the local improvement strategy that they described in their initial application and that is responsible for the success they have already achieved. Districts would not be required to track dollars to specific programs. We *might* want to give them additional flexibility with regard to the allocation of funds to specific schools, though there are also down sides to this.

In effect, the deal we strike with the district recognizes that if they have already shown they can make significant achievement gains, we are going to let them use our funds to support their own approach and priorities, even if they are different from ours. In their initial application, the district would tell us what approach works for them, and how they would use federal funds to help them carry it out more effectively. They would still have to address the purposes of the underlying program, but with greater ability to make tradeoffs among them than at present, in order to boost student achievement. Thus, if the district's plan called for a greater emphasis on after-school programs and less on computers, this would effectively allow them to spend more federal funds on after-school programs and less on computers. Or if the district believed it was more important to reduce class size in grades four, eight and ten in order to support an end to social promotion the right way, they could do that--as long as it yields the student achievement results they have agreed to.

Since we would normally require states to monitor indicators reflecting underlying program purposes (e.g., ratio of multimedia computers to kids, class size in grades 1-3) we would need to figure out some way to take local priorities into account in this process with respect to the level of progress we would expect to see on some indicators.

Concluding Thoughts

I see a number of advantages to this approach. It balances our strong accountability message, and underscores that we are for accountability and flexibility, sensibly linked. The focus on high poverty local districts helps underscore our commitment to closing performance gaps. The overall focus on local school districts helps in a number of additional ways. It blunts the Republican argument that they are for local control and we aren't. By creating a large-scale demonstration program, it gives us a way to more effectively respond to the push for block grants and preserve the basic structure of federal education programs. Yet it will help us with mayors

such as Daley and Menino, who like our agenda but really do want block grants. It should also help keep the local school boards and administrators closer to us, when they are otherwise tempted by block grant proposals.

This proposal may cause concern in the education community or among our allies in Congress, who may feel this goes too far down the road to block grants. While I don't share that assessment, there are ways this proposal could be modified to address those concerns, while retaining the overall approach. For example, existing programs could be combined into categories (e.g., kid and equity oriented programs such as Title I and Bilingual Education in one category, capacity-building programs such as professional development and technology in another, with district's able to combine funds within but not across categories).

Finally, this emphasis on local school districts leaves out the states, for now. The states will be less important in the reauthorization battles than the local districts will, in light of the Republican interest in bypass states and getting money right to the classroom. Further, we could still address the states in a number of ways. Since they are almost certain to get the Ed-Flex bill the governors are working so hard for, we could argue that their flexibility needs are already addressed. We could still work on a state-level approach to rewarding performance with bonus funds, as we have previously discussed. Or, if necessary we could develop a companion state-level performance partnership proposal, though if we went in this direction we would want to be sure that we don't let states undermine our own efforts to allocate funds to high poverty communities.

January 17, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Mike Cohen

SUBJECT: ESEA Incentive Proposals

This memo describes proposals for (1) a financial bonus for states and school districts that have made significant progress in student achievement (both in producing overall gains and in closing demographic gaps), almost all of which will be passed on to their highest performing schools; and (2) a financial penalty -- in the form of a denial of administrative costs -- for school districts that fail to make adequate progress in student achievement. These proposals, developed at your direction, are meant to complement the ESEA proposals you have already approved to require states to (1) end social promotion; (2) identify and intervene in failing schools; (3) prevent the use of unqualified teachers; and (4) issue school report cards. The combination of the two sets of proposals will ensure that states put into place the set of education reform measures that recent studies show work, and then provide a set of financial incentives and disincentives to spur the very best results.

A. Financial Bonuses for High Performance

Our proposal would establish an Education Excellence Fund to provide financial rewards to any state and any of the 100 largest urban school districts that make significant gains, sustained over three years, in raising student achievement across-the-board and reducing disparities in achievement based on race, ethnicity, and socioeconomic background. Directing this money to states reinforces the broad message of our ESEA proposal that they are responsible for the performance of their schools and must adopt policies that achieve results. Directing this money to large urban school districts (aside from being good politics for us) responds to the relative independence of these districts from state governments and to their recent efforts to make far-reaching education reforms.

States and cities would receive rewards if they met, for three consecutive years, improvement targets that the Secretary of Education had set for them. These targets primarily would measure state assessments in reading and math, though they also could take into account additional indicators of performance such as improvements in other academic subjects, drop-out rates, and student attendance. As noted previously, the targets would track both overall performance and success in closing opportunity gaps.

Under the proposal, each state and city receiving an award would have to distribute 90

percent of it to the schools most responsible for its performance results; the state or city could retain the remaining 10 percent of the award. States, cities, and schools could use the bonus funds for any activities geared toward continuing to improve student achievement.

Our proposal would authorize the Excellence Fund at a level of one billion dollars over five years. This level of funding could support awards of about \$40,000 to about 5 percent of all public schools (4500 schools). We would provide the first awards three years after the passage of ESEA to allow the Secretary to establish improvement targets and determine whether a jurisdiction had met the targets for three years running.

B. Financial Penalties for Low Performance

Our proposal would impose an appropriate and credible financial penalty on school districts that fail to make gains in student achievement over three consecutive years. The penalty would equal half of the Title 1 funds provided to the district for administrative purposes (about 2.5 percent of total Title 1 funds). Prior to imposing the penalty, the Secretary would give the school district an opportunity to turn its performance around under a corrective action plan approved and supervised by the state. We believe that this level of penalty would motivate school districts, without endangering the educational opportunities of their students. We could put into place a similar set of performance penalties for states, but think that making this proposal would not be worth the political costs.

We do not believe we should impose financial penalties on individual schools, no matter how low-performing. Our proposal requires states, working with school districts, to take effective actions to turn around these schools (with \$200 million in your FY 2000 budget to support this effort). Initial action might include extensive teacher training, support to improve school discipline, and implementation of proven approaches to school reform, such as Reading Recovery or Success for All. If these efforts did not lead to improved student achievement, the state would have to take more drastic action, such as making wholesale changes in school staff or closing the school and reopening it as a charter school. We think that this approach to turning around low-performing schools is superior to withdrawing federal money, which would pose too great a danger of entrenching existing disparities and harming the most disadvantaged students.

THE WHITE HOUSE
WASHINGTON

December 28, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Mike Cohen

SUBJECT: ESEA Reauthorization Proposal

We have been working with the First Lady's office, OMB, the Vice President's office and the Education Department to develop the strongest possible proposal to reauthorize the Elementary and Secondary Education Act, with the objective of transmitting it to Congress by March 1. While there is still much to be done to shape and finalize this proposal, we have made progress in addressing some of the most significant issues. (Although Secretary Riley has not reviewed our suggestions in detail, Deputy Secretary Smith has been very closely involved in the process.) This memo looks at how the 1994 reforms are working, where they are falling short, and what improvements we are considering. We are planning to meet with you in early January.

I. Progress Report on the 1994 Reauthorization and Goals 2000

Our reauthorization proposal will build on the framework for federal aid to elementary and secondary education established in Goals 2000 and the Improving America's Schools Act, the 1994 reauthorization of ESEA. In principle, both of these Acts overhauled federal elementary and secondary education programs by:

- *Insisting that every state set challenging academic standards that all students are expected to reach.* Goals 2000 required states to set academic standards for all students and develop assessments aligned to those standards. Title 1 of ESEA built on this requirement by mandating that states use these standards for disadvantaged students, thus ending the practice of setting lower expectations for low-income students.
- *Providing schools, school districts, and states with the flexibility to determine how best to educate students to meet high standards.* Goals 2000 provided states and districts with tremendous flexibility in how funds could be used, and for the first time allowed the Secretary of Education to waive federal requirements if they impeded state or local reform efforts. ESEA reduced regulations, paperwork, and reporting requirements; launched your initiative to establish 3,000 charter schools; and permitted high-poverty schools (with 50% or more students eligible for Title 1) to combine funds from separate streams and use them to improve the whole school.
- *Holding schools accountable for the results they achieve, rather than for compliance with*

rules and regulations. Title 1 now requires states to set annual goals for each school and district relating to the number of students who must reach academic standards; to report progress annually for each school (disaggregating data by demographic subgroups); and to intervene in schools that fail to make adequate progress.

These reforms have sparked considerable state and local education reform activity. There is, however, still much more to be done to achieve significant improvement in elementary and secondary education, especially in high-poverty schools. The key lessons from the implementation of Goals 2000, ESEA, and related state and local reforms include:

- *Standards-based education reform works.* A recent Rand study of education reform in North Carolina and Texas -- the two states with the best track record of improving achievement generally and closing achievement gaps between minority and white students -- shows that a sustained, statewide approach of raising academic standards, providing schools with the flexibility and tools they need, targeting resources for extra help to low-performing students and schools, and holding schools accountable for results produces results, particularly for disadvantaged students. Other studies also have shown that states and school districts -- including urban school districts like Philadelphia, Boston, San Francisco, and Chicago -- that have adopted similar approaches have shown significant gains in reading and math. This data indicate that our overall strategy is sound. If we maintain the recent direction of federal education policy while intensifying our efforts, we can improve elementary and secondary education across the nation.
- *States have adopted policies effecting standards-based education reform, but these policies do not go far enough.* Forty-eight states have set new, more challenging academic standards, and most states are working to develop or adopt new assessments aligned with these standards. Fewer states, however, have adopted accountability systems along with the standards. Only 25 states provide for intervention in low-performing schools, as required by Title 1. In addition, only 17 states provide extra help, such as summer school or tutoring, for students who do not meet the standards, and only five states require students to demonstrate they have met the standards as a condition for promotion.
- *Implementation of state policies providing for standards, assessments, and accountability leaves room for improvement.* Title 1 includes a series of deadlines for implementing state policies on standards, assessments, and accountability. Although not all of the implementation deadlines have been reached, it is already clear that many states are not on track to meet them. In addition, some states are failing to implement these policies as envisioned. For example, some states have evaded the full extent of their responsibility to set goals for "adequate yearly progress" for students and schools. And although half the states have policies that provide for some kind of intervention in low-performing schools, many have shown themselves unable or unwilling to take the actions necessary to turn around these schools so they provide an acceptable education.

- *Improvements in the quality of teachers and teaching are urgently needed.* Governor Hunt's National Commission on Teaching and America's Future has underscored the difficulty of recruiting and retaining talented and well-prepared teachers, especially in schools with the most disadvantaged students. About 50,000 teachers each year enter the profession with emergency or substandard licenses. Nearly one quarter of secondary school teachers lack even a minor in their main teaching field, and in schools with the highest minority enrollment, students have less than a 50% chance of having a math or science teacher with a license and degree in the field. On average, 22% of new teachers leave the field within three years, and in urban areas 30-50% leave within five years. Paraprofessionals are widely and increasingly used to provide instruction to low-achieving students in Title 1 schools, with as many as 20% of Title 1 instructional aides providing instruction without a teacher's supervision. By one estimate, instructional aides account for roughly half (67,000) of the entire Title 1 instructional workforce, and Title 1 aides are being hired at twice the rate of Title 1 certified teachers.

The Eisenhower professional development program, the main federal program to improve teacher quality (Goals 2000 and Title 1 also provide some funds for this purpose), has failed to improve the situation in any significant way. Recent evaluation data suggest that in many districts, the Eisenhower program funds activities of limited effectiveness. And even where the activities are effective, the program often fails to fund them at an adequate level. The Higher Education Act you signed last year includes a new program to provide scholarships to highly qualified individuals who commit to teaching in high-poverty schools, but the current appropriation is sufficient for only about 1,400 of these scholarships.

II. Major Changes to ESEA

Our budget contains a number of initiatives to expand educational opportunity in the elementary and secondary grades: school modernization, class size reduction, after-school funding connected to social promotions policy, and an increase in Title 1 funding for the specific purpose of intervening in low-performing schools. Our ESEA reauthorization can build on these initiatives by insisting on what the studies suggest we most need: accountability -- for students, teachers, and low-performing schools. With this Congress, we may not be able to enact every ESEA reform we want -- indeed, we may not be able to get ESEA done at all this year -- but we can frame the debate in the right way by putting forward a bold vision of the future of education reform.

Our proposal would include a new set of accountability requirements as a condition for any state or district to receive any ESEA funds (not just Title 1). States and school districts would be required to produce annual school report cards, end social promotions, intervene in the lowest performing schools, and end the use of unqualified teachers. Taken together, these new requirements represent a fundamental change in federal aid to elementary and secondary

education. For the first time, the federal government would link investment in state and local education systems with their commitment to take the steps necessary to enable all students, teachers, and schools to meet high standards. In effect, we are saying that the best way for the federal government to help students is to insist that states and local school districts live up to their responsibilities, rather than to try to compensate after-the-fact for their failure to do so.

Along with the investments in your budget, this approach is intended to help close the opportunity gap by lifting achievement in low-performing schools and making sure that disadvantaged students are not left behind. We think the approach would be compelling enough to unite most Congressional Democrats, the education community, and the public, as well as to counter an expected Republican push for vouchers and block grants.

A. Annual School Report Cards. Our proposal would require annual report cards, easily understood by and widely distributed to parents and the public, for each school, school district, and state. The report cards would include information on student achievement, teacher quality, school safety, and class size. Where appropriate, the data collected and published -- especially on student achievement -- would be broken down by demographic subgroups, to allow a greater focus on the gaps between minority and majority, low-income and more advantaged students.

B. Ending Social Promotions. Our proposal would require states and districts participating in ESEA to adopt policies that (1) require students to meet academic performance standards at key transition points in elementary and middle school and for high school graduation; (2) use objective measures -- *i.e.*, tests valid for these purposes -- to make an initial determination if a student has met the standards; and (3) permit other, non-objective factors, including teacher judgment, to enter into a final determination as to whether the student has met the standards. States and school districts would have to show how they will help students meet promotion standards by (1) strengthening learning opportunities in the classroom with steps such as clear grade-by-grade standards, small classes with well prepared teachers, high quality professional development, and the use of proven instructional practices; (2) identifying students who need help at the earliest possible moment; (3) providing extended learning time, including after-school and summer school, for students who need extra help; and (4) providing an effective remedial plan for students who do not meet the standards on time, so that they do not repeat the same unsuccessful experiences. The proposal would phase in this requirement over five years; design the requirement to fit state governance systems (allowing "local control" states to delegate responsibilities to the local school district); and base the requirement on state or local rather than national standards. The Secretary would review and approve each state's plan, with continued funding conditional on adequate annual progress in implementing the plan.

To reinforce this requirement and encourage local school systems to address it even before the enactment of ESEA, your FY2000 budget contains a \$400 million increase in funding for the 21st Century Learning Center program, half of which will be reserved for after-school and summer school programs in school districts implementing policies to end social promotions.

C. Accountability for Teachers. Our proposal would require states and local school districts participating in ESEA to phase out the use of unqualified teachers over five years. In particular, states and school districts would have to end the use of (1) teachers with emergency rather than full certification; (2) secondary school teachers teaching "out of field" -- *i.e.*, teaching subjects for which they lack an academic major or minor; and (3) instructional aides serving as lead instructors. Ending these practices is particularly important for high-poverty schools, where the practices are most prevalent. States also would have to adopt teacher competency tests for new teachers, including tests of subject-matter expertise for secondary school teachers. States and school districts would be able to use funds from a number of ESEA programs, including Title 1, bilingual education, and a new grant program focused in part on teacher quality, to help meet these requirements.

In addition, we are working with the Education Department to fashion a requirement for states and school districts to deal with low-performing teachers. We are exploring a number of approaches, including (1) requiring periodic recertification of teachers, and (2) requiring school districts to adopt procedures to identify low-performing teachers, provide them with needed help, and remove them fairly and quickly if they do not improve. We will work closely with the NEA and AFT over the coming weeks to try and fashion a provision that will meet our objectives while addressing their concerns.

D. Accountability Fund for Title 1 Schools. Our proposal would strengthen accountability requirements in Title 1 so as to require and adequately fund immediate and significant state and local intervention in the lowest performing schools. Because the schools of greatest concern are invariably Title 1 schools and because Title 1 already contains certain accountability provisions, we believe we should incorporate these provisions into Title 1, rather than imposing a broader ESEA requirement.

Our proposal would retain current provisions for states to adopt performance standards and assessments by 2001. In addition, it would strengthen the current provisions in Title 1 relating to low-performing schools by: (1) requiring the immediate public identification of and intervention in the lowest performing schools in each state -- *i.e.*, schools with very low levels of achievement that have made little or no improvement over the previous three years; (2) setting aside 2.5% of Title 1 funds to support aggressive intervention in these schools, including an external assessment of each school's needs and the implementation of needed improvements (such as addressing school safety and security needs, providing better teacher training, acquiring up-to-date textbooks, technology, and curriculum materials, and extending learning time to help students catch up academically); and (3) requiring states to provide recognition or rewards to Title 1 schools showing the greatest improvements.

To increase the appeal of this approach, your FY2000 budget contains a significant increase in Title 1 funding, of which \$200 million is specifically dedicated to this initiative.

III. Other Changes in ESEA

A. Charter Schools and Public School Choice. Earlier this fall you signed the Charter Schools Expansion Act of 1998, which strengthened incentives for states to (1) increase the number of high-quality charter schools, (2) strengthen accountability for charter schools, (3) maximize flexibility for charter schools, and (4) provide charter schools with their proper share of federal program funds. We believe, along with most in Congress, that no further changes relating to charter schools are needed in the ESEA reauthorization process.

Our proposed ESEA legislation, however, would include new authority to enable the Education Department to support other, new approaches to expanding public school choice. At present, the Department has authority only to support specific approaches to choice, such as intra-district magnet schools in the context of desegregation efforts, and (as of last year) high schools on community college campuses. We will propose a new competitive grants program that will give the Education Department the ability to support a much wider range of choice approaches, including district-wide public school choice systems, interdistrict magnet schools and other interdistrict approaches, work-site schools, schools-within-schools, and post-secondary enrollment options.

As a first step in this direction, your FY2000 budget proposal will contain funds and necessary authorizing language for three specific choice initiatives: \$10 million in grants to school districts to establish work-site schools; \$10 million to support interdistrict magnet schools; and (as already authorized) \$10 million to establish high schools on community college campuses.

B. Bilingual Education. Our proposal would make changes to the Title VII Bilingual Education program and to Title 1 (which serves more than 1.1 million LEP students) consistent with statements you and Secretary Riley made in opposing California's Unz Initiative. These statements called for (1) expanding the flexibility given to local communities to select the programs they believe will best educate LEP students; (2) making sure teachers are well trained to teach LEP students; and (3) strengthening accountability for programs serving LEP students by including a goal that all LEP students reach English proficiency within three years.

To expand local flexibility and parental choice, we would remove the Title VII provision in current law that limits expenditures on English-language (rather than bilingual) programs to 25% of the funds available. We also would require parental approval for participation in any program funded under Title VII. To improve teacher quality, we would phase in a requirement that schools receiving Title 1 funds provide LEP students with appropriately trained teachers. We also would strengthen the teacher training provisions in Title VII by giving funding priority to school districts and institutions of higher education that have implemented proven programs to hire, train, and support new ESL and bilingual teachers.

In Title 1, we would require that LEP students be included in the assessment and

accountability requirements for each school. Assessments would be in their language of instruction and, after three years of schooling in the United States, in English. We would require schools to disaggregate data, so that they would report -- and be accountable for -- both the academic achievement and the English language proficiency of LEP students. We also would require schools receiving Title 1 funds to provide alternative instructional strategies for LEP students who do not make adequate progress in English proficiency after three years. Finally, we would cut off Title VII funding to a program after three years if it could not show that students made significant gains in both English and academic subjects.

C. Safe and Drug Free Schools Program. As you announced at the White House Conference on School Safety, we would significantly overhaul the Safe and Drug Free Schools Program to improve its effectiveness at promoting drug-free, safe, and disciplined learning environments. Our proposal would accomplish this by (1) requiring states to allocate funds to local school districts on a competitive basis, with funds going to the districts with the greatest need and highest quality proposals; (2) requiring local school districts receiving program funds to develop and implement a rigorous, comprehensive approach to drug and violence prevention based on proven practices; (3) requiring every school district receiving funds to have a full-time program coordinator; and (4) requiring all schools to issue report cards that include data on crime, disorder, and substance abuse.

D. Class Size Reduction. We would include authorization for our Class Size Reduction initiative in our ESEA package, since the provisions in last year's Omnibus Appropriations Act provide funding and authority for only one year. Although we do not expect Congress to enact the ESEA reauthorization this year, we believe that transmitting authorization legislation will strengthen our ability to fight for additional funds for class size reduction in the FY2000 appropriations bill. Unlike the provision enacted last year, our original proposal required local school districts to provide matching funds (an average of 20%, with a sliding scale based on poverty levels). We intend to include the matching requirement in our ESEA authorizing proposal, so that we can reach our goal of providing 100,000 teachers within 7 years. In all other respects, our proposal would reflect the agreement reached with Republicans last year, which itself was fully consistent with our original proposal.

E. School Modernization. We also intend to include our school modernization proposal, with only minor changes from the one introduced last year, in our ESEA package.

F. Ed-Flex. Our proposal to expand Ed-Flex (which gives states the authority to waive many statutory and regulatory requirements in ESEA) to all 50 states died last year, caught between Democrats who opposed granting greater flexibility and conservative Republicans who insisted on a more sweeping block grant proposal. Governors of both parties aggressively promoted Ed-Flex until the very end of the session, and Governor Carper has indicated that the NGA will take up the cause again next year. Although we believe we should continue to support some version of Ed-Flex, we will need to think carefully about the scope of the proposal. We think it would be a mistake to allow states to waive the full set of accountability provisions

described above or the requirement for using class size funds to reduce class size to 18 in the early grades.

G. Preschool Education. Our ESEA proposal would retain provisions in current law allowing the use of Title 1 funds for pre-school, and would expand the Even Start Family Literacy program to reach greater numbers of children and adults. We also would strengthen the quality of pre-school programs and enhance school readiness by providing funds to local school districts, on a competitive basis, to (1) work with Head Start and other pre-school programs to identify the basic language and literacy skills that children need when they enter school and to design a curriculum to help students acquire these skills; and (2) provide professional development for child care providers and other providers of early childhood services to help children build these basic language and literacy skills.

IV. The future of Goals 2000 and continuing support for standards-based reform.

Goals 2000 has been the flagship Administration initiative promoting standards-based reform, and recent studies show that it has been successful. We do not believe we should let the program expire simply because of the political opposition it faces in Congress. At the same time, we do not believe it is wise -- either for substantive or for political reasons -- to submit a proposal that simply extends the current program. We are instead looking for a way to advance standards-based reform in a somewhat different form -- a kind of second-generation proposal that will reflect the current state of the standards movement.

Most educators agree that while states have made significant gains in developing standards, they still face great challenges in actually putting those standards into place in the classroom. To meet these challenges, schools must have talented and well-prepared teachers, who themselves have the tools — curriculum materials, instructional approaches, technology, and the like — to engage all students in learning to higher standards.

Several currently existing formula grant programs — Goals 2000, the Eisenhower Professional Development program, and the Title VI Block Grant -- could contribute to this objective. We are considering a number of approaches involving these programs, including proposals to consolidate some or all of them into a larger program, which would be designed to help move standards into the classroom and would have a strong focus on improving teacher quality. Such a proposal effectively would create a “responsible block grant,” with clear purposes and accountability. Some Congressional Democrats -- including Senator Kennedy -- are also looking at this approach, in part because it would respond to the Republican push for block grants and in part because it would create a large funding stream to address issues of teacher quality. We still have much work to do on this issue, and we will outline more concrete options in a subsequent memo.

ESEA Issues Summary (based on EXOP comments)

April 27, 1998

Edw ESEA

Action	Original ESEA proposal	Original and current EXOP recommendations	Latest ED response
TITLE I, PART A: GRANTS TO LEAS			
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue	Quantifying goals, defining "continuous and substantial progress." The proposal requires criteria for identifying low-performing schools and LEAs to reflect an expectation that all students reach standards within a reasonable timeframe.	Original: To ensure that application of the expectation is not arbitrary and that timeframes are rigorous, revise this provision to say, "reflect an expectation ... within a reasonable timeframe, as demonstrated by annual numerical goals over that timeframe set forward in the State plan." Current: Add language along the lines of: "The Secretary may regulate on the definition of continuous and substantial progress."	ED is willing to provide guidance (and possibly regulate) on the definition of "continuous and substantial progress," but refuses to make statutory changes. Research and experience have shown that students progress at different rates, and tightening timeframes has not proven to be a very relevant accountability measure. By not including this requirement we increase the likelihood that Title I schools will be held accountable as part of a single statewide system.
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input checked="" type="checkbox"/> Compromise <input type="checkbox"/> Open issue	Extension of grace period: The proposal substantially weakens accountability by providing exceptions to the three-year grace period before corrective action is taken against schools and LEAs. These exceptions are applicable if a school is meeting the goals and objectives in its school improvement plan or if a school will meet the State's continuous improvement standard after an additional year.	Original: Delete these exceptions. Schools and LEAs that are subject to corrective action have failed to make continuous improvement for five consecutive years and deserve to be corrected without exception. Require at least one year of demonstrated continuous and substantial progress as a condition for a one-year extension for schools and LEAs. Compromise: The Department agreed to list specific examples of goals and objectives under which a school should be showing improvement, such as a one-year gain in achievement on the State assessment.	Language has been tightened to clarify that such an exception can only be used for one year. This is based on research that demonstrates that improvement is not a linear activity and may not occur exactly in a three-year timeframe. Proposed language tightens current law but provides an option for LEAs to exercise judgement regarding schools that are very close to meeting their improvement targets.

<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue	<p>Professional development set-aside. The proposal phases in a requirement that LEAs set aside 10 percent of their Title I allocations for professional development.</p>	<p>Original: Delete the set-aside, because it is no longer necessary to ensure a foundation level of investment in professional development, as formula grants under Title II, Part A accomplish the same purpose. The set-aside is also an unnecessary limit on local flexibility.</p> <p>Current: Same as original. Also, apply the Title II performance indicators to be developed by the Secretary to all professional development programs in ESEA, and use them for accountability.</p> <p>Alternative #1: No set-aside, but allow SEA to impose up to 10-percent set-aside if LEA is not making substantial progress on Title II professional development or Title XI teacher quality indicators.</p> <p>Alternative #2: Allow the set-aside, but if an LEA fails to make substantial progress on the Title II professional development or Title XI teacher quality indicators, allow the SEA to take over or delegate to a third party the responsibility for LEA set-aside spending.</p>	<p>ED will not compromise on the 10-percent set-aside. These activities are critical for implementing successful programs in Title I schools and should serve as a foundation. Title II will also provide necessary support, but it will not be sufficient to meet the needs of Title I schools. ED, however, agrees to apply the Title II indicators across ESEA professional development activities.</p>
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue		<p>Permitting Teach for America, alternative certification. Right now, the bill would say that states need to get within 4 years 95% of their teachers in public schools a) certified, or b) have a college degree and are enrolled in a program (including an alternative certification program) leading to full certification in their field within two years). This requires fixes in both Title I and Title XI.</p>	

TITLE II, PART A: TEACHING TO HIGH STANDARDS (Note: Comment summary here reflects indirect response through ED response to EIML comments on bilingual education.)			
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input checked="" type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue	<p>Accountability for student achievement. The proposal does not make any link between professional development activities funded under this part and student achievement.</p>	<p>Original: Create a National Professional Development Certification Board that would certify, on a voluntary basis, outstanding professional development programs that met rigorous criteria such as improved student achievement and classroom instruction. Provide competitive priorities throughout ESEA professional development programs for Board-certified programs.</p> <p>Current: Require a national evaluation of the program that includes objective measures of student achievement. Allow States to use their administration funds for evaluations of effectiveness also.</p>	<p>No change. The Department, through the National Awards Program for Model Professional Development, does something similar. A new board could open the Department and Administration to criticism for trying to set Federal standards in an area that is more appropriately left to State and local governments. Also, the new Board, as described, assumes that schools are "consumers" of professional development. In fact, some of the best professional development is generated by the staff of a school and does not necessarily require a school to buy the time of outside experts.</p>

TITLE II, PART B, SUBPART 1: TROOPS TO TEACHERS			
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue		<p>Program name. We suggested that the name of the program be changed from "Transition to Teaching" to "Troops to Teachers: Transition to Teaching." Education responded that they would rather not saying that this is primarily about other mid-career professionals not troops. This is NOT consistent with staff-level agreements that about half the \$ would be used for expanding troops.</p>	
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue		<p>Recipient of funds. Currently, it is not clear to whom the \$ for the expanded Troops program -- including the stipends and other support -- would be given. Right now, the language only appears to envision a \$1 million contract from Education to Defense and no mechanism or language for providing the larger amount needed to expand the program.</p>	

TITLE II, PART B, SUBPART 2: RECRUITMENT AND RETENTION			
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue	<p>Duplication in new authority. The proposal authorizes a new program for recruitment and retention of teachers and administrators that would establish a teacher clearinghouse/job bank, support Teach For America-type programs, support innovative ways to certify and recruit people to serve as principals in high-need LEAs, and conduct research on teacher pension portability.</p>	<p>Original: Eliminate this subpart, and move its purposes and authorized activities into Title II, Part A, Subpart 4, Federal Activities. The division of activities is arbitrary, as the eligible applicants and authorized activities are largely the same and serve identical purposes of supporting demonstration projects, research, and dissemination to enhance teaching and school administration.</p> <p>Current: Same as original, but add a requirement that any job bank activities be integrated with the Department of Labor's national job bank. (OMB will provide ED with a DOL contact for the job bank.)</p>	<p>ED will check with the Secretary to see if he is agreeable to consolidating this authority into National Activities.</p>
TITLE II, PART C: EARLY CHILDHOOD EDUCATOR PROFESSIONAL DEVELOPMENT			
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue	<p>New authority for early childhood. The proposal authorizes a new competitive grant program from the Federal level for early childhood educator professional development.</p>	<p>Original: Eliminate Title II Part C entirely and, instead, create a set-aside in the Part A State grant program for the same purpose, administered by SEAs. Require SEAs to reserve 5 percent of their subgrants for Early Childhood Educator Professional Development under a new section.</p> <p>Current: Same as original. We will check with Neera Tanden for the First Lady's perspective.</p>	<p>ED says the First Lady wants a separate program.</p>

TITLE IV: SAFE AND DRUG-FREE SCHOOLS AND COMMUNITIES			
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue	<p>Alternative education. Part D, the Gun Free Schools Act, contains a provision requiring that any student who is expelled for possession of a firearm at school be placed in an alternative education setting that will enable the student to continue to participate in the general curriculum and make progress toward the student's educational goals. However, Title XI states that in the case of students who are suspended or expelled from school, the LEAs are to have a plan for helping such students continue to meet the State's challenging standards.</p>	<p>Original: There appears to be a disconnect between these two policies – LEAs would have to provide alternative educational settings for kids who brought guns to school, but not for other expelled students.</p> <p>Current: Delete the Title IV mandate that gun-toting students receive alternative education programs. We are okay, however, with the Title XI requirement that LEAs have plans for helping expelled students achieve to high standards.</p>	<p>No change. ED stands behind the distinction. Students who are expelled for bringing a gun to school are expelled for at least a year, which is certainly not the case for all the suspensions and expulsions covered under the Accountability Act. Without continuing services to students expelled under title IV--most of whom are in their teens--they will never recover academically, or even return to school. In effect, a year's suspension, without services, for these kids is the educational equivalent of capital punishment. The difference in treatment is warranted.</p>
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue		<p>Tobacco. Make sure we have agreement about this.</p>	
TITLE VII: BILINGUAL EDUCATION			
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue	<p>3-year goal, pt. 1. The Secretary shall terminate a grant after three years or four years, if "a significant number of students with limited English proficiency in the project, who have been in United States schools for three consecutive years, have not made continuous progress in learning English and in achieving challenging State content and performance standards."</p>	<p>Original: Change the standard from continuous progress toward English proficiency to attainment of English proficiency, which is a much more meaningful indicator. This would apply to 4- and 5-year grants.</p> <p>Current: Same as original.</p> <p>Alternative#1: Operationalize the 3-year goal by including in the purpose statement for Title VII a goal that substantial numbers of LEP children participating in Title VII programs attain English proficiency and achieve to challenging State standards in other academic subjects within three years.</p> <p>Alternative #2: Change "continuous progress" to "continuous and substantial progress."</p>	<p>No change. Given that the new accountability procedures have not been implemented, the complexities of when LEP students arrive in this country and other important background variables, and the volatility of the issue politically, we prefer "continuous progress", giving the Secretary flexibility to guide the process.</p>

<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue	3-year goal, pt. 2. The proposal is silent on the issue of whether past performance in helping children learn English should be used in assessing grant applicants when they reapply for Federal bilingual funds.	Original: If an applicant has previously received a Federal bilingual grant, it will have to demonstrate that, under its previous grant, substantial numbers of students who had been in U.S. schools for three consecutive years attained English proficiency and made continuous academic progress. This would apply to 3-, 4-, and 5-year grant programs. Current: Same as original. Alternative: If a previous grantee did not demonstrate progress, require an explanation of why, and how the latest proposal has changed for the better.	No change. We find this suggested requirement harsh and unnecessary (at the end of three or four years poor programs would already be terminated). It may penalize grantees (and new students) for problems well outside their control. Also, EDGAR already gives the Secretary the authority to consider past performance in selecting applications.
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue		LEP assessment. Make sure that the current language reflects our agreement about the use of English-language tests.	

TITLE X: PROGRAMS OF NATIONAL SIGNIFICANCE

<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue	NEA and arts education. The proposal retains the current authority for Arts in Education.	Original: Authorize the Secretary to transfer ED funds to the National Endowment for the Arts to carry out arts education programs. Current: Dick Woodruff at the NEA suggests changing sec. 10401(d)(6), which authorizes "supporting collaborative activities with other Federal agencies...such as the NEA," to read, "supporting activities undertaken by other Federal agencies..."	No legislation is needed. This is an appropriations issue more than an authorization issue. But ED will share the current authorizing statute with NEA to see if NEA has suggestions for strengthening it.
--	--	---	--

<input type="checkbox"/> Defer to ED <input checked="" type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input checked="" type="checkbox"/> Compromise <input type="checkbox"/> Open issue	Initiatives in FIE. The proposal for the Fund for the Improvement of Education contains an illustrative list of activities that includes the DC school reform and livability initiatives in the President's Budget.	Original: Delete these items from the list. They raise questions as to whether initiatives we have already proposed under current law are authorized, and we don't want to repeat the debate over our authority for national tests and the early information campaign. Compromise: ED will delete the entire illustrative list of activities.	No change. ED prefers to retain the authorities, because (1) it doesn't mean we lack current authority; (2) it sends a message we really do want to send; and (3) Congress doesn't need encouragement from us to ladle pork onto FIE. They know where to find it. Also, there is much political support (particularly among Democrats) for the livability initiative.
--	--	--	---

<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue	New authorization for secondary schools. The proposal authorizes what is essentially a competitive block grant for high school reform.	Authorize the program, with major structural changes, in Title I. Require matching funds (which can include phased-in Title I, Part A funds) and participation in Title I accountability system. Allow renewal only in cases of continuous and substantial gains.	No response yet.
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue	Two new authorizations for foreign language. The proposal moves the Foreign Language Assistance Program into Title VII and authorizes new programs for professional development (similar to bilingual professional development, except for foreign language) and technology to improve foreign language instruction.	Place this piece back in Title VII where it currently exists as the Foreign Language Assistance Program. Do not authorize new programs for professional development and technology. FLAP can be amended to allow preservice professional development. Title III technology programs can include a priority for programs that enhance foreign language instruction or professional development if there is a pressing need.	No response yet.
TITLE XI, PART B: EDUCATION ACCOUNTABILITY ACT			
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue		Alternative certification. See comment in Title I above.	
<input type="checkbox"/> Defer to ED <input type="checkbox"/> Use old EXOP <input type="checkbox"/> Use new EXOP <input type="checkbox"/> Compromise <input type="checkbox"/> Open issue		Report cards. We suggested changing language to require comparisons of progress made by the school in improving the achievement of its students. These demonstrated gains are often a more accurate reflection of the school's improvement than a straight comparison of overall performance to other schools.	
OTHER ISSUES FOR DISCUSSION			
	Such sums language. ED has authorized \$1.5 billion in appropriations for the Title II, Part A block grant in FY 2001, and such sums in subsequent years. This has raised such sums issues throughout ESEA, which we need to talk about.		

	<p>Relationship to ED-Flex. Since the ED-Flex bill does not contain a sunset provision, ESEA will need to make conforming amendments to ED-Flex and ensure that certain new provisions, such as accountability requirements, cannot be waived. Should the ED-Flex announcement/event reference this need?</p>		
--	--	--	--