

DRAFT TESTIMONY ON ESEA REAUTHORIZATION

Good morning Mr. Chairman and Members of the Committee.

I appreciate this opportunity to present the Administration's views on the upcoming reauthorization of the Elementary and Secondary Education Act (ESEA). The Administration is working on a detailed reauthorization proposal that we plan to submit for your consideration in the coming weeks. Today I will focus on the principles governing our reauthorization efforts as well as some of the specific ways we propose to apply those principles to major ESEA programs.

Background and Accomplishments

This is of course our second crack at reauthorizing the ESEA. The 1994 reauthorization, known as the Improving America's Schools Act, was aimed at transforming a Federal role that for too long had encouraged low expectations and low standards for poor children. Along with the Goals 2000: Educate America Act, the 1994 reauthorization supported high academic standards for *all* children by focusing on teaching and learning, increasing flexibility and accountability for States and local school districts, improving parent and community involvement, and targeting resources to our highest poverty schools and communities.

I believe there is strong evidence that these changes, particularly the emphasis on high standards, have helped States and school districts carry out the hard work of real education

reform. States that led the way in adopting standards-based reforms—like Maryland, Kentucky, and Oregon—found new support from Federal programs that helped them to raise reading and math achievement. In other States, the new ESEA and Goals 2000 acted as a catalyst for changes in curriculum and teaching tied to high standards. The General Accounting Office recently reported, for example, that State officials described Goals 2000 as “a significant factor in promoting their education reform efforts” and a “catalyst” for change.

Partly as a result of changes at the Federal level, nearly every State has set higher standards for public schools, and there are promising signs of real progress toward meeting those higher standards. The National Assessment of Educational Progress (NAEP), for example, has shown significant increases in the percentages of 4th grade students scoring at both the basic and proficient achievement levels in mathematics, particularly among students in high-poverty schools. The National Education Goals Panel reported that between 1990 and 1996, 27 States significantly increased the percentage of 8th graders scoring at either the proficient or the advanced level on the NAEP math test.

Individual States have made remarkable progress in a very short period of time. Texas, for example, increased the percentage of its 4th grade students scoring at the Proficient or Advanced levels on the NAEP math test from 15 percent in 1992 to 25 percent in 1996. North Carolina more than doubled the percentage of its 8th graders reaching the same standard in mathematics achievement, from 9 percent in 1990 to 20 percent in 1996.

The 1994 reauthorization also brought real change to the way we do business at the Department of Education. We have worked hard to eliminate paperwork and red tape so that States, schools, and teachers are free to focus on what really counts: educating students. Only 5 out of 49 programs included in the 1994 ESEA reauthorization required regulations. That helped us to eliminate a full two-thirds of the regulations covering elementary and secondary education over the past three years.

Another major improvement was the adoption of a single, consolidated application for all ESEA programs. Moreover, States are required to submit their single, consolidated plan just once during the life of the authorization cycle. Not surprisingly, States reported in fiscal year 1996 that the consolidated application slashed paperwork requirements by 85 percent, saving an average of 318 hours in staff time per State.

The Department also has vigorously implemented waiver provisions that were included in the 1994 reauthorization, which permit States, school districts, and schools to request waivers of statutory and regulatory requirements that present an obstacle to innovative reform efforts. We set up a Waiver Hot Line and provided comprehensive waiver guidance at our site on the World Wide Web. The Department approved 335 waivers through October 1, 1998.

The most far-reaching waiver approach is the ED-FLEX demonstration, which allows the Department to give State-level officials broad authority to approve waivers of Federal statutory and regulatory requirements that stand in the way of effective reform. Twelve States

currently participate in this pilot project, and we have proposed making all States eligible to apply for the ED-FLEX authority.

I believe these accomplishments—both across the country and at the Department of Education—show that we were on the right track in 1994. The evidence demonstrates a clear connection between standards-based reform and raising student achievement. The record also shows, however, that many States and districts are still doing the hard work of phasing in the 1994 reforms. Taken as a whole, our experience since provides a compelling argument for the Administration and Congress to work together to continue supporting standards-based reform and to push for improved incentives and strengthened accountability mechanisms to ensure that these reforms take hold to meet the needs of children.

The Next Stage of Standards-Based Reform

Our proposals for this year's reauthorization of the ESEA are designed to build on the 1994 Act. The overall goal is the same: we want to improve academic achievement for all students, with a special emphasis on closing the gap between poor and minority students and other students. From 1970 to 1988, the achievement gap closed by approximately 50 percent for African Americans and by approximately 35 percent for Hispanic Americans, as measured by the National Assessment of Educational Progress. That progress has stalled since 1988, while minority enrollment in public schools has climbed almost 50 percent, from 24 percent in 1976 to 35 percent in 1995. To eliminate this gap we must keep focusing on high poverty schools as we move to the next stage of standards-based reform by emphasizing accountability and improving teacher quality to bring high standards into the classroom.

The centerpiece of our reauthorization strategy is a renewed commitment to accountability in ESEA programs. Let me say here that I believe the President's State of the Union message on accountability has been misinterpreted. We are not proposing to "take over" local schools or to expand the Federal role in education. We are saying that States, school districts, and schools that show no progress in improving the achievement of their students cannot expect to continue receiving Federal dollars without making changes. To do otherwise would be both an irresponsible use of taxpayer dollars and a violation of the clear intent of the ESEA.

We recognize that a complete accountability system should be multi-dimensional and include accountability for everyone in the system—including the Department of Education. Our reauthorization proposal will include a package of accountability measures designed to hold students, teachers, schools, and districts to high standards, and to ensure that school districts and states provide students with a high quality education.

It is important to note that our proposed accountability measures reinforce and build on similar provisions approved in 1994. For example, the underlying structure of the Title I accountability provisions is sound. States have not fully implemented this structure yet and must accelerate their work. We are proposing several measures to encourage this "acceleration."

First, we would simply retain the current law requirement that States establish content and student performance standards and assessments aligned to the standards by 2000-2001

school year. States that do not meet this deadline would be given one additional year, after which they would begin to lose Federal funds. States must also define adequate yearly progress for Title I schools and local school districts in a manner that would result in continuous and substantial progress toward meeting state standards within a reasonable time frame.

Second, we would require annual report cards at the state, district, and school levels as a condition of receiving ESEA funds. The report cards would include information on student achievement, teacher professional qualifications, class size, school safety, attendance, and graduation rates. Again, this proposal builds on a current law requirement that has been unevenly implemented.

Third, States would be asked to take immediate corrective actions to turn around the lowest performing schools. These are the schools with the lowest levels of student performance which have made little or no improvement over the previous three years. States should identify a reasonable number of low-performing schools in order to be able to provide appropriate assistance to each. Initial corrective actions would include multiple supports such as provision of extended learning opportunities, implementation of proven school reform models, and extensive teacher training. If these initial actions do not lead to improved achievement within two years, States must take more drastic action such as making wholesale staff changes or closing the school down entirely. The Department's 2000 budget request includes a \$200 million set-aside to help jumpstart this process of State intervention in the lowest performing schools.

Fourth, all States receiving ESEA funds would be required to end the practice of social promotion. I want to be clear that we are against both social promotion and retention in grade. Our purpose is to send a twofold message, one telling students that “performance counts,” and a more important message that districts and schools must take aggressive action to help all students meet promotion standards on time. Such actions should include early identification and intervention strategies to diagnosis those students who need additional help, providing extended learning time for students who need extra help, and intensive intervention designed to prevent a student from having to repeat an entire grade. States would be given four years to phase in the requirement to end social promotion.

Fifth, we would hold States and school districts responsible for ensuring teacher quality. Research shows that qualified teachers are the most important in-school factor in improving student achievement. Far too many classrooms, however, are led by teachers teaching “out of field,” individuals granted “emergency” certificates who do not meet State certification standards, and even teaching aides with no more than a high school diploma.

High-poverty urban schools are most likely to suffer from unqualified teachers. In Los Angeles, for example, 60 percent of the new teachers hired last year did not have a teaching license. Even when urban districts succeed in hiring qualified teachers, attrition rates during the first five years often reach 50 percent. Federal support does not necessarily help. Title I schools are hiring teacher aides at twice the rate of certified teachers, and an increasing number of aides are providing direct instruction without a teacher’s supervision.

Our ESEA reauthorization proposal would begin to remedy this problem by requiring states to adopt performance examinations for all new teachers that will test both subject-matter knowledge and teaching expertise. We would also eliminate the use of teacher aides as instructors in Title I schools and 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.

Program-Specific Recommendations

By now I hope our basic approach to reauthorizing the ESEA has become clear. The Administration proposal would build on the previous reauthorization by emphasizing accountability for helping all students to reach high standards. I have described some of the key, cross-cutting accountability measures included in our plan. Now I would like to outline some program-specific issues and recommendations.

Title I

Title I of the Elementary and Secondary Education Act is the largest Federal investment in elementary and secondary education, with a 1999 appropriation of nearly \$7.7 billion that reaches more than 45,000 schools in over 13,000 school districts. With the expansion of schoolwide projects following the last reauthorization, the program now serves

some 12 million students. In the 1996-97 school year, 36 percent of the children served were White, 30 percent were Hispanic, and 28 percent were Black. Seventeen percent of the children served were limited-English proficient.

The 1994 reauthorization sought to fundamentally change Title I from a remedial education program to one closely linked to State and local school reform and focused on helping children in high poverty schools achieve to the same high standards expected of other students. States were required to develop content and performance standards in reading and math, with aligned assessments to measure student progress toward meeting the standards. The 1994 Act also expanded the schoolwide approach, permitting schools with poor children making up at least 50 percent of their enrollment to use Title I funds in combination with other Federal, State, and local funds to upgrade the curriculum of an entire school.

A major issue during the last reauthorization was the effectiveness of Title I, and this issue will likely be revisited following the release of a new National Assessment of Title I later this month. I would like to make a few observations as a prelude to this new report.

Historically, Title I has contributed toward closing the achievement gap between students in high poverty schools and their more advantaged peers. The program also is successful in targeting funds to high poverty school districts. The GAO recently reported that while States provided an additional 62 cents per poor student in 1991-92, Federal funds provided an average of \$4.73 per poor student nationwide.

While much has been made of data showing little impact from Title I, student achievement in high poverty schools is generally going up in States where content standards and aligned assessments have been in place for three years. For example, data from North Carolina and Texas show increases in student performance. Earlier I mentioned that students from high-poverty schools had shown improved mathematics achievement on the National Assessment of Educational Progress.

I would be the first to admit, however, that Title I has not made nearly enough progress in raising the educational achievement of poor and minority children. And in some cases, lingering practices from the remedial era of Title I continue to stand in the way of real improvement. Many States and school districts are still in the process of phasing in the 1994 changes.

Our reauthorization proposal would continue to hold at-risk children in high poverty schools to the same high standards expected of all children, to tie Title I to State and Local standards-based reform efforts, to target resources to areas of greatest need, and to support flexibility at the local level to determine curriculum and instructional practice, and encourage more effective implementation of schoolwide programs.

Major changes to Title I include the accountability provisions I discussed earlier: turning around low-performing schools, ending social promotion, requiring annual report cards, and require certified teachers for all Title I classrooms. One additional change would be a 10-percent set-aside for professional development aligned to standards. I simply cannot

emphasize enough the importance of good teaching in raising student achievement, especially in high-poverty schools.

Our reauthorization plan also would require diagnostic assessment for language proficiency and reading ability in the first grade to ensure early identification of children with reading difficulties so teachers can make appropriate interventions and provide extra support to those who need it. This was a key recommendation of the reading study conducted by the National Research Council. We also will propose to continue the Comprehensive School Reform Demonstrations program, and to incorporate some of its strengths—such as basing reforms on solid research about what works—into the schoolwide program approach.

“High Standards in the Classroom” Consolidation Proposal

To give States and school districts a powerful new tool to continue the work of standards-based reform, we are proposing a consolidated grant program that would replace three current programs: Goals 2000 State grants, the Title II Eisenhower Professional Development State grants, and the Title VI Innovative Education Program Strategies State grants. This new initiative would make available to states and school districts approximately \$1.2 billion to bring standards into the classroom by improving teacher quality through professional development.

Funds would be allocated by formula to the States, with States retaining approximately 10 percent of their allocations to continue the development of State-level standards and assessments. The remaining 90 percent of funds would be awarded to school districts through a competitive process based on district plans to implement standards in schools and invest in

the professional development needed to ensure that teachers are prepared to teach to high standards. Districts would be required to give priority to high-poverty and low-performing schools in distributing funds at the local level.

In part these funds would be used to support State and local efforts to meet new ESEA teacher quality mandates related to the implementation of competency-based assessments for initial licensure over a five year period, the reduction of the number of teachers on emergency credentials each year over time, and the reduction of the number of teachers teaching out of field each year over time.

The overall goal is to support sustained, collaborative, research-based professional development that integrates technology into the classroom and that is part of district-wide plans to help all students reach State academic standards.

Safe, Disciplined, and Drug-Free Schools

The Administration's plans for reauthorizing the Safe and Drug-Free Schools and Communities Act have actually taken shape over the past few years in our annual budget requests. These proposals have been designed to strengthen the program by improving accountability and by targeting funds to local educational agencies with significant drug and violence prevention problems and high-quality, research-based programs to address those problems.

Our reauthorization proposal would build on these earlier efforts by emphasizing a schoolwide approach to drug and violence prevention. All school districts receiving funds would be required to develop a comprehensive Safe and Drug-Free Schools plan to ensure that they have a drug-free, safe, and disciplined learning environment. These plans would have to comply with the recently established “principles of effectiveness,” including the adoption of research-based strategies and setting measurable goals and objectives for drug and violence prevention. Schools also would have to publicize data on in-school and school-related crime and disorder in an annual report card.

Program funded would be distributed in larger, more effective grants by requiring States to compete funds among a limited number of high-need districts. Program evaluations have consistently found that the current practice of allocating funds by formula to all districts spreads funds too thinly to have a significant impact in most districts.

Educational Technology

Since the creation of Title III in the last ESEA reauthorization, the Federal government has helped States and school districts make significant progress in bringing technology into the classroom. With the support of Congress, the Department has delivered over \$1 billion to States through the Technology Literacy Challenge Fund, while the E-Rate is helping to connect all schools and libraries to the information superhighway. With more and more hardware and connections in place, the challenge is to align technology with curricula and make sure that teachers are prepared to use it to improve teaching and learning.

Toward this end, the reauthorization proposal for Title III will focus on putting educational technology behind State and local efforts to raise standards, improve teacher quality, and increase accountability for higher student achievement.

In particular, we want to increase access to educational technology for high poverty, low performing schools and eradicate the "digital divide" that threatens to widen the achievement gap between disadvantaged students and their wealthier peers. We will propose to strengthen the targeting provisions of the Technology Literacy Challenge Fund to continue to reduce the disparity between technology-rich and technology-poor districts.

Our reauthorization plan also will support greater innovations in integrating educational technology with a focus on classroom level improvements, particularly in creating useful models for improving professional development, teacher preparation, instructional materials, and distance learning resources.

Public School Choice

Public education benefits from systems that offer a variety of high-quality educational options that address the different needs of students and their families. In addition to greater options for students, public school choice may contribute to standards-based reform by stimulating innovation and competition within the public school system. The Clinton Administration continues to strongly oppose efforts to divert public funds to private schools through vouchers or similar proposals.

We are considering, however, the possibility of a new choice activity that would help us identify and support new approaches to public school choice. We are interested in promoting choice programs in which the schools and programs are public and accountable for results, that are genuinely open and accessible to all students, that promote high standards for all students, and that provide models for improving low-performing schools and strengthening public education generally.

Conclusion

These are just the highlights of a reauthorization proposal that will span 14 titles and hundreds of pages affecting nearly every area of Federal support for the Nation's elementary and secondary schools. I encourage you to give careful consideration to our full proposal when it is completed in early spring.

I will be happy to take any questions you may have.

Total Pages: 27

LRM ID: CJB146

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, February 17, 2000

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Robert J. Pellicci (for) Assistant Director for Legislative Reference

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SUBJECT: Committee Markup on HR3222 Literacy Involves Families Together Act

DEADLINE: 1:00 p.m. Tuesday, February 22, 2000

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: Please provide comments on this bill, which was ordered reported on Feb. 16, 2000, for inclusion in a Statement of Administration Policy. It is expected that the bill will be considered by the House under Suspension of the Rules, and therefore it will not be amended.

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SUBJECT: Committee Markup on HR3222 Literacy Involves Families Together

☐ Concur
☐ No Objection
☐ No Comment
☐ See proposed edits on pages _____
☐ Other: _____
☐ FAX RETURN of _____ pages, attached to this response sheet

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1 (3) by adding at the end the following:

2 "(7) the State educational agency will encour-
3 age local educational agencies and individual schools
4 participating in a program assisted under this part
5 to offer family literacy services (using funds under
6 this part), if the agency or school determines that a
7 substantial number of students served under this
8 part by the agency or school have parents who do
9 not have a high school diploma or its recognized
10 equivalent or who have low levels of literacy."

11 **SEC. 103. EVEN START FAMILY LITERACY PROGRAMS.**

12 (a) STATEMENT OF PURPOSE.—Section 1201 of the
13 Elementary and Secondary Education Act of 1965 (20
14 U.S.C. 6361) is amended—

15 (1) in paragraph (1), by inserting "high qual-
16 ity" after "build on"; and

17 (2) by amending paragraph (2) to read as fol-
18 lows:

19 "(2) promote the academic achievement of chil-
20 dren and adults:"

21 (3) by striking the period at the end of para-
22 graph (3) and inserting "; and"; and

23 (4) by adding at the end the following:

24 "(4) use instructional programs based on sci-
25 entifically based reading research (as defined in sec-

11/1(c)(1),
1201(1) (4)

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1 tion 2252) and the prevention of reading difficulties
2 for children and, to the extent such research is avail-
3 able, scientifically based reading research (as so de-
4 fined) for adults."

5 (b) PROGRAM AUTHORIZED.—

6 (1) RESERVATION FOR MIGRANT PROGRAMS,
7 OUTLYING AREAS, AND INDIAN TRIBES.—Section
8 1202(a) of the Elementary and Secondary Edu-
9 cation Act of 1965 (20 U.S.C. 6352(a)) is
10 amended—

11 (A) in paragraph (1), by inserting "(or, if
12 such appropriated amount exceeds
13 \$200,000,000, 6 percent of such amount)"
14 after "1002(b)";

15 (B) in paragraph (2), by striking "If the
16 amount of funds made available under this sub-
17 section exceeds \$4,600,000." and inserting
18 "After the date of the enactment of the Lit-
19 eracy Involves Families Together Act."; and

20 (C) by adding at the end the following:

21 "(3) COORDINATION OF PROGRAMS FOR AMER-
22 ICAN INDIANS.—The Secretary shall ensure that
23 programs under paragraph (1)(C) are coordinated
24 with family literacy programs operated by the Bu-
25 reau of Indian Affairs in order to avoid duplication

1702(4)(1), (2), (3)

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1 and to encourage the dissemination of information
2 on high quality family literacy programs serving
3 American Indians."

4 (2) RESERVATION FOR FEDERAL ACTIVITIES.—
5 Section 1202(b) of the Elementary and Secondary
6 Education Act of 1965 (20 U.S.C. 6362(b)) is
7 amended to read as follows:

8 "(b) RESERVATION FOR FEDERAL ACTIVITIES.—

9 "(1) EVALUATION, TECHNICAL ASSISTANCE,
10 PROGRAM IMPROVEMENT, AND REPLICATION ACTIVI-
11 TIES.—From amounts appropriated under section
12 1002(b), the Secretary may reserve not more than 3
13 percent of such amounts for purposes of—

14 "(A) carrying out the evaluation required
15 by section 1209; and

16 "(B) providing, through grants or con-
17 tracts with eligible organizations, technical as-
18 sistance, program improvement, and replication
19 activities.

20 "(2) RESEARCH.—In the case of fiscal years
21 2001 through 2004, if the amounts appropriated
22 under section 1002(b) for any of such years exceed
23 such amounts appropriated for the preceding fiscal
24 year, the Secretary shall reserve from such excess

1202(6)(1) -
(2)

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1 amount \$2,000,000 or 50 percent, whichever is less.
2 to carry out section 1211(b)."

3 (c) RESERVATION FOR GRANTS.—Section 1202(c)(1)
4 of the Elementary and Secondary Education Act of 1965
5 (20 U.S.C. 6362(c)(1)) is amended—

6 (1) by striking "From funds reserved under
7 section 2260(b)(3), the Secretary shall award
8 grants." and inserting "For any fiscal year for
9 which at least one State applies and qualifies and
10 for which the amount appropriated under section
11 1002(b) exceeds the amount appropriated under
12 such section for the preceding fiscal year, the Sec-
13 retary shall reserve, from the amount of such excess
14 remaining after the application of subsection (b)(2),
15 the amount of such remainder or \$1,000,000, which-
16 ever is less, to award grants,"; and

17 (2) by adding at the end "No State may receive
18 more than one grant under this subsection."

19 (d) ALLOCATIONS.—Section 1202(d)(2) of the Ele-
20 mentary and Secondary Education Act of 1965 (20 U.S.C.
21 6362(d)(2)) is amended by striking "that section" and in-
22 serting "that part".

23 (e) DEFINITIONS.—Section 1202(e) of the Elemen-
24 tary and Secondary Education Act of 1965 (20 U.S.C.
25 6362(e)) is amended—

1202(c)(1),
(d)(2), (e)

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1 (1) in paragraph (1)(B), by striking "or" after
2 "higher education," and inserting "a religious orga-
3 nization, or";

4 (2) in paragraph (2), by striking "nonprofit or-
5 ganization" and inserting "nonprofit organization,
6 including a religious organization,".

7 (f) SUBGRANTS FOR LOCAL PROGRAMS.—Section
8 1203(b)(2) of the Elementary and Secondary Education
9 Act of 1965 (20 U.S.C. 6363(b)(2)) is amended to read
10 as follows:

11 "(2) MINIMUM SUBGRANT AMOUNTS.—

12 "(A) IN GENERAL.—Except as provided in
13 subparagraphs (B) and (C), no State shall
14 award a subgrant under paragraph (1) in an
15 amount less than \$75,000.

16 "(B) SUBGRANTEES IN NINTH AND SUC-
17 CEEDING YEARS.—No State shall award a
18 subgrant under paragraph (1) in an amount
19 less than \$52,500 to an eligible entity for a fis-
20 cal year to carry out an Even Start program
21 that is receiving assistance under this part or
22 its predecessor authority for the ninth (or any
23 subsequent) fiscal year.

24 "(C) EXCEPTION FOR SINGLE
25 SUBGRANT.—A State may award one subgrant

1202(e)(1)(A), (2),

1203(b)(2)

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1 in each fiscal year of sufficient size, scope, and
2 quality to be effective in an amount less than
3 \$75,000 if, after awarding subgrants under
4 paragraph (1) for such fiscal year in accordance
5 with subparagraphs (A) and (B), less than
6 \$75,000 is available to the State to award such
7 subgrants."

8 (g) USES OF FUNDS.—Section 1204 of the Elemen-
9 tary and Secondary Education Act of 1965 (20 U.S.C.
10 6364) is amended—

11 (1) in subsection (a), by striking "family-cen-
12 tered education programs" and inserting "family lit-
13 eracy services"; and

14 (2) by adding at the end the following:

15 "(c) USE OF FUNDS FOR FAMILY LITERACY SERV-
16 ICES.—

17 "(1) IN GENERAL.—States may use a portion of
18 funds received under this part to assist eligible enti-
19 ties receiving a subgrant under section 1203(b) in
20 improving the quality of family literacy services pro-
21 vided under Even Start programs under this part,
22 except that in no case may a State's use of funds
23 for this purpose for a fiscal year result in a decrease
24 from the level of activities and services provided to
25 program participants in the preceding year.

1204(a), (c)(1)

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1 “(2) PRIORITY.—In carrying out paragraph (1),
2 a State shall give priority to programs that were of
3 low quality, as evaluated based on the indicators of
4 program quality developed by the State under sec-
5 tion 1210..

6 “(3) TECHNICAL ASSISTANCE TO HELP LOCAL
7 PROGRAMS RAISE ADDITIONAL FUNDS.—In carrying
8 out paragraph (1), a State may use the funds re-
9 ferred to in such paragraph to provide technical as-
10 sistance to help local programs of demonstrated ef-
11 fectiveness to access and leverage additional funds
12 for the purpose of expanding services and reducing
13 waiting lists.

14 “(4) TECHNICAL ASSISTANCE AND TRAINING.—
15 Assistance under paragraph (1) shall be in the form
16 of technical assistance and training, provided by a
17 State through a grant, contract, or cooperative
18 agreement with an entity that has experience in of-
19 fering high quality training and technical assistance
20 to family literacy providers.”.

21 (h) PROGRAM ELEMENTS.—Section 1205 of the Ele-
22 mentary and Secondary Education Act of 1965 (20 U.S.C.
23 6365) is amended—

24 (1) by redesignating paragraphs (9) and (10)
25 as paragraphs (12) and (13), respectively:

1204 (ex 2) - (4),
1205

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1 (2) by redesignating paragraphs (5) through
2 (8) as paragraphs (6) through (9), respectively;

3 (3) by inserting after paragraph (4) the fol-
4 lowing:

5 "(5) with respect to the qualifications of staff
6 the cost of whose salaries are paid, in whole or in
7 part, with Federal funds provided under this part,
8 ensure that—

9 (A) not later than 4 years after the date
10 of the enactment of the Literacy Involves Fami-
11 lies Together Act—

12 "(1) a majority of academic instruc-
13 tion is provided by individuals who—

14 "(I) have obtained an associate's,
15 bachelor's, or graduate degree in a
16 field related to early childhood edu-
17 cation, elementary school education,
18 or adult education; or

19 "(II) meet qualifications estab-
20 lished by the State for early childhood
21 education, elementary school edu-
22 cation, or adult education provided as
23 part of an Even Start program or an-
24 other family literacy program;

1205(5)(A)(i)

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1 "(ii) the individual responsible for ad-
2 ministration of family literacy services
3 under this part has received training in the
4 operation of a family literacy program; and

5 "(iii) paraprofessionals who provide
6 support for academic instruction have a
7 high school diploma or its recognized
8 equivalent; and

9 "(B) beginning on the date of the enact-
10 ment of the Literacy Involves Families To-
11 gether Act, all new personnel hired to provide
12 academic instruction—

13 "(i) have obtained an associate's,
14 bachelor's, or graduate degree in a field re-
15 lated to early childhood education, elemen-
16 tary school education, or adult education;
17 or

18 "(ii) meet qualifications established by
19 the State for early childhood education, el-
20 ementary school education, or adult edu-
21 cation provided as part of an Even Start
22 program or another family literacy pro-
23 gram;"

24 (4) by inserting after paragraph (9) (as so re-
25 designated) the following:

1205(5)(A)(ii) (B)

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1 "(ii) the individual responsible for ad-
2 ministration of family literacy services
3 under this part has received training in the
4 operation of a family literacy program; and

5 "(iii) paraprofessionals who provide
6 support for academic instruction have a
7 high school diploma or its recognized
8 equivalent; and

9 "(B) beginning on the date of the enact-
10 ment of the Literacy Involves Families To-
11 gether Act, all new personnel hired to provide
12 academic instruction—

13 "(i) have obtained an associate's,
14 bachelor's, or graduate degree in a field re-
15 lated to early childhood education, elemen-
16 tary school education, or adult education;
17 or

18 "(ii) meet qualifications established by
19 the State for early childhood education, el-
20 ementary school education, or adult edu-
21 cation provided as part of an Even Start
22 program or another family literacy pro-
23 gram;"

24 (4) by inserting after paragraph (9) (as so re-
25 designated) the following:

1205(5)(A)(ii) (B)

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1 “(10) use instructional programs based on sci-
2 entifically based reading research (as defined in sec-
3 tion 2252) for children and, to the extent such re-
4 search is available, for adults;

5 “(11) encourage participating families to attend
6 regularly and to remain in the program a sufficient
7 time to meet their program goals;”; and

8 (5) in paragraph (13) (as so redesignated), by
9 striking “program.” and inserting “program to be
10 used for program improvement.”.

11 (i) ELIGIBLE PARTICIPANTS.—Section 1206 of the
12 Elementary and Secondary Education Act of 1965 (20
13 U.S.C. 6366) is amended—

14 (1) in subsection (a)(1)(B) by striking “part.”
15 and inserting “part, or who are attending secondary
16 school;”; and

17 (2) in subsection (b), by adding at the end the
18 following:

19 “(3) CHILDREN 8 YEARS OF AGE OR OLDER.—
20 If an Even Start program assisted under this part
21 collaborates with a program under part A, and funds
22 received under such part A program contribute to
23 paying the cost of providing programs under this
24 part to children 8 years of age or older, the Even
25 Start program, notwithstanding subsection (a)(2),

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1 may permit the participation of children 8 years of
2 age or older."

3 (j) PLAN.—Section 1207(c) of the Elementary and
4 Secondary Education Act of 1965 (20 U.S.C. 6367(c)) is
5 amended—

6 (1) in paragraph (1)—

7 (A) in the matter preceding subparagraph
8 (A), by inserting "and continuous improve-
9 ment" after "plan of operation";

10 (B) in subparagraph (A), by striking
11 "goals;" and inserting "objectives, strategies to
12 meet such objectives, and how they are con-
13 sistent with the program indicators established
14 by the State;"

15 (C) in subparagraph (E), by striking
16 "and" at the end;

17 (D) in subparagraph (F)—

18 (i) by striking "Act, the Goals 2000:
19 Educate America Act," and inserting
20 "Act"; and

21 (ii) by striking the period at the end
22 and inserting "; and"; and

23 (E) by adding at the end the following:

24 "(G) a description of how the plan pro-
25 vides for rigorous and objective evaluation of

1207(c)(1)(A), (E),
(F), (G)

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1 progress toward the program objectives de-
2 scribed in subparagraph (A) and for continuing
3 use of evaluation data for program improve-
4 ment."; and

5 (2) in paragraph (2), in the matter preceding
6 subparagraph (A), by striking "(1)(A)" and insert-
7 ing "(1)".

8 (k) AWARD OF SUBGRANTS.—Section 1208 of the El-
9 ementary and Secondary Education Act of 1965 (20
10 U.S.C. 6368) is amended—

11 (1) in subsection (a)—

12 (A) in paragraph (1)(F), by striking "Fed-
13 eral" and inserting "non-Federal"; and

14 (B) in paragraph (1)(H), by inserting
15 "family literacy projects and other" before
16 "local educational agencies"; and

17 (C) in paragraph (3), by striking "one or
18 more of the following individuals:" and insert-
19 ing "one individual with expertise in family lit-
20 eracy programs, and may include other individ-
21 uals, such as one or more of the following:";
22 and

23 (2) in subsection (b)—

24 (A) by striking paragraph (3) and insert-
25 ing the following:

1207(a)(2),
1208(a), (b)

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1 “(3) CONTINUING ELIGIBILITY.—In awarding
2 subgrant funds to continue a program under this
3 part after the first year, the State educational agen-
4 cy shall review the progress of each eligible entity in
5 meeting the objectives of the program referred to in
6 section 1207(c)(1)(A) and shall evaluate the pro-
7 gram based on the indicators of program quality de-
8 veloped by the State under section 1210.”; and

9 (B) by amending paragraph (5)(B) to read
10 as follows:

11 “(B) The Federal share of any subgrant re-
12 newed under subparagraph (A) shall be limited in
13 accordance with section 1204(b).”.

14 (1) RESEARCH.—Section 1211 of the Elementary and
15 Secondary Education Act of 1965 (20 U.S.C. 6369b) is
16 amended—

17 (1) in subsection (b), by striking “subsection
18 (a)” and inserting “subsections (a) and (b)”;

19 (2) by redesignating subsection (b) as sub-
20 section (c); and

21 (3) by inserting after subsection (a) the fol-
22 lowing:

23 “(b) SCIENTIFICALLY BASED RESEARCH ON FAMILY
24 LITERACY.—

1209(b)(3), (5)(B),
1211(b)

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15

1 “(1) IN GENERAL.—From amounts reserved
2 under section 1202(b)(2), the National Institute for
3 Literacy shall carry out research that—

4 “(A) is scientifically based reading re-
5 search (as defined in section 2252); and

6 “(B) determines—

7 “(i) the most effective ways of improv-
8 ing the literacy skills of adults with read-
9 ing difficulties; and

10 “(ii) how family literacy services can
11 best provide parents with the knowledge
12 and skills they need to support their chil-
13 dren's literacy development.

14 “(2) USE OF EXPERT ENTITY.—The National
15 Institute for Literacy shall carry out the research
16 under paragraph (1) through an entity, including a
17 Federal agency, that has expertise in carrying out
18 longitudinal studies of the development of literacy
19 skills in children and has developed effective inter-
20 ventions to help children with reading difficulties.”.

21 **SEC. 104. EDUCATION OF MIGRATORY CHILDREN.**

22 Section 1304(b) of the Elementary and Secondary
23 Education Act of 1965 (20 U.S.C. 6394(b)) is amended—

24 (1) in paragraph (5), by striking “and” at the
25 end;

*see Souder + Kildee + Scott (2)
[15-A through 15-F]*

*1211 (b)(1), (2),
1304 (b)(2)*

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H.L.C

15-A

**AMENDMENT OFFERED BY MR.SOUDER
TO THE AMENDMENT IN THE NATURE OF A
SUBSTITUTE
OFFERED BY MR.G OODLING**

Page 15, after line 20, insert the following:

1 (m) TREATMENT OF RELIGIOUS ORGANIZATIONS.—

2 Part B of title I of the Elementary and Secondary Edu-
3 cation Act of 1965 (20 U.S.C. 6361 et seq.) is amended
4 by adding at the end the following:

5 "SEC. 1213. RELIGIOUS ORGANIZATIONS.

6 "(a) RELIGIOUS ORGANIZATIONS INCLUDED AS

7 PARTNERSHIP PARTICIPANTS.—In carrying out this part,

8 the Secretary, and any grantee or subgrantee receiving as-

9 sistance under this part, shall treat religious organizations

10 the same as other nongovernmental organizations, so long

11 as the part is implemented in a manner consistent with

12 the Establishment Clause of the first amendment to the

13 Constitution. The Secretary, and any grantee or sub-

14 grantee receiving assistance under this part, shall not dis-

15 criminate against an organization that participates in a

16 partnership that is an eligible entity that is receiving as-

17 sistance under this part ~~that is applying to receive such as-~~

18 ~~sistance~~ on the basis that the organization has a religious

19 character.

*will be deleted in
revised bill*

1213(a)

15-12

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2

1 "(b) RELIGIOUS CHARACTER AND INDEPEND-
2 ENCE.—

3 "(1) IN GENERAL.—A religious organization
4 that participates in a partnership that is an eligible
5 entity that is receiving assistance under this part ~~and~~
6 ~~is applying to receive such assistance~~ shall retain its
7 religious character and control over the definition,
8 development, practice, and expression of its religious
9 beliefs.

10 "(2) ADDITIONAL SAFEGUARDS.—Neither the
11 Federal Government nor a State or local government
12 shall require a religious organization —

13 "(A) to alter its form of internal govern-
14 ance; or

15 "(B) to remove religious art, icons, scrip-
16 ture, or other symbols;

17 in order to be eligible to participate in a partnership
18 that is an eligible entity that is receiving assistance
19 under this part ~~and is applying to receive such assistance~~

20 ~~and~~

21 "(3) EMPLOYMENT PRACTICES.—A religious or-
22 ganization's exemption provided under section 702
23 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-
24 1) regarding employment practices shall not be af-

1213(b)(1)-
(3)

15-C

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H.L.C.

3

1 fected by its participation in ~~(or receipt of funds~~
2 ~~from~~ a program under this part.

3 "(c) LIMITATIONS ON USE OF FUNDS FOR CERTAIN
4 PURPOSES.—No funds provided to a religious organiza-
5 tion under this part or section 1002(b) shall be expended
6 for sectarian worship, instruction, or proselytization.

7 "(d) PROHIBITION.—A religious organization may
8 not serve as a fiscal agent for a partnership that is an
9 eligible entity receiving a subgrant under this part.

10 "(e) NONDISCRIMINATION AGAINST BENE-
11 FICIARIES.—Except as otherwise provided in law, a reli-
12 gious organization shall not discriminate against an indi-
13 vidual in regard to rendering services under this part on
14 the basis of religion, a religious belief, or refusal actively
15 to participate in a religious practice. "

1213(c)-
(e)

15-D

**AMENDMENT OFFERED BY MR. KILDEE
TO THE AMENDMENT OFFERED BY MR. SOUDER**

- accepted.

At the end of the matter proposed to be inserted by
the amendment add the following:

- 1 "SEC. 1214. PROHIBITION ON VOUCHERS OR CERTIFICATES.
- 2 "Notwithstanding any other provision of this Act, no
- 3 services under this part may be provided by voucher or
- 4 certificate."

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15-C H.L.C.

~~Employment~~
~~NOT Approved~~
 2

AMENDMENT OFFERED BY MR. SCOTT
 TO THE AMENDMENT IN THE NATURE OF A
 SUBSTITUTE
 OFFERED BY MR. GOODLING

Page 15. after line 20. insert the following:

- 1 (m) TREATMENT OF RELIGIOUS ORGANIZATIONS.—
 2 Part B of title I of the Elementary and Secondary Edu-
 3 cation Act of 1965 (20 U.S.C. 6361 et seq.) is amended
 4 by adding at the end the following:
 5 "SEC 1213 TREATMENT OF RELIGIOUS ORGANIZATIONS.
 6 "For purposes of any Federal, State, or local law, re-
 7 ceipt of financial assistance under this part or section
 8 1002(b) shall constitute receipt of Federal financial assist-
 9 ance or aid."

Section number likely
 to change

Rodgers votes NO.

~~this was voted up~~

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15-F

H.L.C.

accepted by
UC with
charge.

AMENDMENT OFFERED BY MR. SCOTT
TO THE AMENDMENT IN THE NATURE OF A
SUBSTITUTE
OFFERED BY MR. GOODLING

Page 15, after line 20, insert the following:

- 1 (m) TREATMENT OF RELIGIOUS ORGANIZATIONS.—
- 2 Part B of title I of the Elementary and Secondary Edu-
- 3 cation Act of 1965 (20 U.S.C. 6361 et seq.) is amended
- 4 by adding at the end the following:
- 5 "SEC 1213 TREATMENT OF RELIGIOUS ORGANIZATIONS.
- 6 "An eligible entity may not use funds provided under
- 7 ~~program assisted under this part to~~ ^{subject a participant in a}
- 8 ~~this part of section 1002(b) for sectarian worship or in-~~ ^{during}
- 9 ~~struction or proselytization, to a participant in a program~~
- 10 ~~assisted under this part~~ ^{to a participant in a program}

section number likely
to change

Even Start

amended by
Souder with Scott's
approval and
accepted.

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16

1 (2) in paragraph (6). by striking the period at
2 the end and inserting "; and"; and

3 (3) by adding at the end the following:

4 "(7) a description of how the State will encour-
5 age programs and projects assisted under this part
6 to offer family literacy services if the program or
7 project serves a substantial number of migratory
8 children who have parents who do not have a high
9 school diploma or its recognized equivalent or who
10 have low levels of literacy."

11 **SEC. 105. DEFINITIONS.**

12 (a) IN GENERAL.—Section 14101 of the Elementary
13 and Secondary Education Act of 1965 (20 U.S.C. 8801)
14 is amended—

15 (1) by redesignating paragraphs (15) through
16 (29) as paragraphs (16) through (30), respectively;
17 and

18 (2) by inserting after paragraph (14) the fol-
19 lowing:

20 "(15) FAMILY LITERACY SERVICES.—The term
21 'family literacy services' means services provided to
22 participants on a voluntary basis that are of suffi-
23 cient intensity in terms of hours, and of sufficient
24 duration, to make sustainable changes in a family,
25 and that integrate all of the following activities:

1304 (6)(6), (7),

14101 (15)

1 “(A) Interactive literacy activities between
2 parents and their children.

3 “(B) Training for parents regarding how
4 to be the primary teacher for their children and
5 full partners in the education of their children.

6 “(C) Parent literacy training that leads to
7 economic self-sufficiency.

8 “(D) An age-appropriate education to pre-
9 pare children for success in school and life ex-
10 periences.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) EVEN START FAMILY LITERACY PRO-
13 GRAMS.—Section 1202(e) of the Elementary and
14 Secondary Education Act of 1965 (6362(e)) is
15 amended—

16 (A) by striking paragraph (3); and

17 (B) by redesignating paragraphs (4) and
18 (5) as paragraphs (3) and (4), respectively.

19 (2) READING AND LITERACY GRANTS.—Section
20 2252 of the Elementary and Secondary Education
21 Act of 1965 (20 U.S.C. 6661a) is amended—

22 (A) by striking paragraph (2); and

23 (B) by redesignating paragraphs (3)
24 through (5) as paragraphs (2) through (4), re-
25 spectively.

*1401(15)(A)-(D),
1702es, 2252*

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18

1 SEC. 106. INDIAN EDUCATION.

2 (a) EARLY CHILDHOOD DEVELOPMENT PROGRAM.—

3 Section 1143 of the Education Amendments of 1978 (25
4 U.S.C. 2023) is amended—

5 (1) in subsection (b)(1)—

6 (A) by striking "(f)" and inserting "(g)";

7 and

8 (B) by striking "(e)" and inserting "(f)";

9 (2) in subsection (d)(1)—

10 (A) by redesignating subparagraphs (D)

11 and (E) as subparagraphs (E) and (F), respec-

12 tively; and

13 (B) by inserting after subparagraph (C)

14 the following:

15 "(D) family literacy services,";

16 (3) in subsection (e), by striking "(f)," and in-
17 serting "(g).";18 (4) by redesignating subsections (e) and (f) as
19 subsections (f) and (g), respectively; and20 (5) by inserting after subsection (d) the fol-
21 lowing:22 "(e) Family literacy programs operated under this
23 section, and other family literacy programs operated by
24 the Bureau of Indian Affairs, shall be coordinated with
25 family literacy programs for American Indian children
26 under part B of title I of the Elementary and Secondary

1978-1143

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19

1 Education Act of 1965 in order to avoid duplication and
2 to encourage the dissemination of information on quality
3 family literacy programs serving American Indians."

4 (b) DEFINITIONS.—Section 1146 of the Education
5 Amendments of 1978 (25 U.S.C. 2026) is amended—

6 (1) by redesignating paragraphs (7) through
7 (14) as paragraphs (8) through (15), respectively;
8 and

9 (2) by inserting after paragraph (6) the fol-
10 lowing:

11 "(7) the term 'family literacy services' has the
12 meaning given such term in section 14101 of the El-
13 ementary and Secondary Education Act of 1965 (20
14 U.S.C. 8801);"

15 **TITLE II—INEXPENSIVE BOOK**
16 **DISTRIBUTION PROGRAM**

17 **SEC. 201. INEXPENSIVE BOOK DISTRIBUTION PROGRAM**
18 **FOR READING MOTIVATION.**

19 (a) AUTHORIZATION.—Section 10501(a) of the Ele-
20 mentary and Secondary Education Act of 1965 (20 U.S.C.
21 8131(a)) is amended by striking "books to students, that
22 motivate children to read." and inserting "books to young
23 and school-aged children that motivate them to read."

24 (b) REQUIREMENTS OF CONTRACT.—Section
25 10501(b)(4) of the Elementary and Secondary Education

1978- 1146

680A, 10501(a), (b)(4)

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1 Act of 1965 (20 U.S.C. 8131(c)) is amended by inserting
2 "training and" before "technical assistance".

3 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
4 10501(e) of the Elementary and Secondary Education Act
5 of 1965 (20 U.S.C. 8131(e)) is amended by striking
6 "\$10,300,000 for fiscal year 1995" and inserting
7 "\$20,000,000 for fiscal year 2000".

8 (d) STATEMENT OF PURPOSE.—Section 10501 of the
9 Elementary and Secondary Education Act of 1965 (20
10 U.S.C. 8131) is amended—

11 (1) by redesignating subsections (d) and (e) as
12 subsections (g) and (h), respectively;

13 (2) by redesignating subsections (a) through (c)
14 as subsections (b) through (d), respectively; and

15 (3) by inserting after the section heading the
16 following:

17 "(a) PURPOSE.—The purpose of this program is to
18 establish and implement a model partnership between a
19 governmental entity and a private entity, to help prepare
20 young children for reading, and motivate older children
21 to read, through the distribution of inexpensive books.
22 Local reading motivation programs assisted under this
23 section shall use such assistance to provide books, training
24 for volunteers, motivational activities, and other essential
25 literacy resources, and shall assign the highest priority to

10501(e), (a)

1 serving the youngest and neediest children in the United
2 States."

3 (e) NEW PROVISIONS.—Section 10501 of the Ele-
4 mentary and Secondary Education Act of 1965 (20 U.S.C.
5 8131) is amended by inserting before subsection (g) (as
6 so redesignated by subsection (d)) the following:

7 "(e) SPECIAL RULES FOR CERTAIN SUBCONTRAC-
8 TORS.—

9 "(1) FUNDS FROM OTHER FEDERAL
10 SOURCES.—Subcontractors operating programs
11 under this section in low-income communities with a
12 substantial number or percentage of children with
13 special needs, as described in subsection (c) (3), may
14 use funds from other Federal sources to pay the
15 non-Federal share of the cost of the program, if
16 those funds do not comprise more than 50 percent
17 of the non-Federal share of the funds used for the
18 cost of acquiring and distributing books.

19 "(2) WAIVER AUTHORITY.—Notwithstanding
20 subsection (c), the contractor may waive, in whole or
21 in part, the requirement in subsection (c) (1) for a
22 subcontractor, if the subcontractor demonstrates
23 that it would otherwise not be able to participate in
24 the program, and enters into an agreement with the
25 contractor with respect to the amount of the non-

10501(c)(1)-

(2)

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22

1 Federal share to which the waiver will apply. In a
2 case in which such a waiver is granted, the require-
3 ment in subsection (c)(2) shall not apply.

4 "(f) MULTI-YEAR CONTRACTS.—The contractor may
5 enter into a multi-year subcontract under this section, if—

6 "(1) the contractor believes that such sub-
7 contract will provide the subcontractor with addi-
8 tional leverage in seeking local commitments; and

9 "(2) the subcontract does not undermine the fi-
10 nances of the national program."

11 **SEC. 202. EFFECTIVE DATE.**

12 The amendments made by section 201 shall take ef-
13 fect on October 1, 2000.

Amend the title so as to read: A bill to amend the
Elementary and Secondary Education Act of 1965 to im-
prove literacy through family literacy projects and to re-
authorize the inexpensive book distribution program.

10501(f)



Congressional Research Service • Library of Congress • Washington, D.C. 20540

Memorandum

February 15, 2000

TO : Honorable Robert C. Scott
Attention: Theresa Thompson

FROM : David M. Ackerman 
Legislative Attorney
American Law Division

SUBJECT : Questions Concerning Possible Charitable Choice Amendment to the Even Start Program

This is in response to your request for a brief analysis of the possible legal implications of the employment discrimination provision of a charitable choice amendment that may be proposed to the Even Start program and for information on the constitutional standards governing direct public assistance to religious organizations. This memorandum responds to these inquiries in order.

Employment Discrimination

The text of the charitable choice amendment has not been made available to us. But previous charitable choice proposals have included one or both of the following provisions regarding employment discrimination:

(1) **TITLE VII EXEMPTION.** — The exemption of a religious organization provided under section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1) regarding employment practices shall not be affected by the religious organization's provision of services under, or receipt of funds from, [name of program].

(2) **TENETS AND TEACHINGS.** — A religious organization that provides services under [name of program] may require that its employees providing services under such program adhere to the religious tenets and teachings of such organization, and such organization may require that those employees adhere to rules forbidding the use of drugs or alcohol.

Time limitations prevent a thorough analysis of these provisions, but several observations might be made.

First, with the exception of the part concerning the use of drugs and alcohol in the second provision, it appears doubtful that there is any significant difference in the scope of the two provisions. Both provisions appear to allow religious organizations receiving funds

CRS-2

under the pertinent program to discriminate on religious grounds in their employment practices. Title VII of the Civil Rights Act of 1964 generally prohibits public and private employers from discriminating in their employment practices on the bases of race, color, religion, sex, or national origin. But § 702(a) of that statute exempts religious organizations from the ban on religious discrimination, as follows:

Section 702(a): This subchapter shall not apply to ... a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

That exemption, it might be noted, applies not only to the religious activities of a religious organization but also to its secular activities.¹

Title VII, of course, applies without regard to whether an organization receives public funds. The provision in the first charitable choice amendment noted above, thus, would extend the Title VII exemption for religious organizations to situations in which the organizations receive public funds under the pertinent program and allow them to discriminate on religious grounds in their employment practices to the same extent as is currently allowed by Title VII.

The language in the second provision allowing a religious organization that receives funds under the pertinent program to require its employees "to adhere to the religious tenets and teachings of such organization" appears congruent with the Title VII exemption. Under both provisions a religious organization can restrict its hiring not only to members of its own faith but to those who abide by its precepts and otherwise give preference to such persons in their other employment practices.

Second, the scope of each exemption appears to be quite broad. The Title VII exemption, for instance, has been held to protect employment discrimination by religious organizations in a variety of circumstances:

- the Church of Jesus Christ of Latter-Day Saints when it fired several employees because they failed to qualify for a "temple recommend," i.e., a certificate that they were Mormons who abided by the Church's standards in such matters as regular church attendance, tithing, and abstinence from coffee, tea, alcohol, and tobacco (*Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327 (1987));
- a Christian school that fired a teacher for having an affair with the father of three children at the school and breaking up his marriage (*Gosche v. Calvert High School*, 997 F.Supp. 867 (N.D. Ohio 1998), *aff'd mem.*, 181 F.3d 101 (6th Cir. 1999));
- a Baptist university that barred a professor from teaching at its divinity school because his theological views differed from those of the dean (*Killinger v. Samford University*, 113 F.3d 196 (11th Cir. 1997));

¹ *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints v. Amos*, 483 U.S. 327 (1987).

CRS-3

- a number of Christian schools that fired female teachers for having extramarital sex or committing adultery (*Boyd v. Harding Academy of Memphis, Inc.*, 88 F.3d 410 (6th Cir. 1996) and *Dolter v. Wahlert High School*, 483 F.Supp. 266 (N.D. Iowa 1980);
- a Christian college that refused to hire a Jewish professor (*Siegel v. Truett-McConnell College, Inc.*, 13 F.Supp.2d 1335 (N.D. Ga. 1994), *aff'd mem.*, 73 F.3d 1108 (11th Cir. 1995));
- a Catholic school for firing a teacher who remarried without seeking an annulment of her first marriage in accord with Catholic doctrine (*Little v. Wuerl*, 929 F.2d 944 (3d Cir. 1991));
- a Catholic university that refused to hire a female professor because her views on abortion were not in accord with Catholic teaching (*Maguire v. Marquette University*, 814 F.2d 1213 (7th Cir. 1987));
- a Baptist nursing school that fired a student services specialist after she was ordained a minister in a gay and lesbian church that advocated views on homosexuality "which were inconsistent with the [school's] perception of its purpose and mission" (*Hall v. Baptist Memorial Health Care Corporation*, 27 F.Supp.2d 1029, 1038-39 (W.D. Tenn. 1998));
- a Presbyterian college for dismissing a Catholic professor (*Wirth v. College of the Ozarks*, 26 F.Supp.2d 1185 (W.D. Mo. 1998));
- a Christian retirement home that fired a Muslim receptionist after she insisted on wearing a head covering as required by her faith (*EEOC v. Presbyterian Ministries, Inc.*, 788 F.Supp. 1154 (W.D. Wash. 1992));
- the Christian Science Monitor when it refused to hire a non-Christian Scientist (*Feldstein v. Christian Science Monitor*, 555 F.Supp. 974 (D. Mass. 1983)); and
- a Catholic school when it fired a teacher for marrying a divorced man (*Bishop Leonard Regional Catholic School v. Unemployment Compensation Board of Review*, 140 Pa.Cmwlth. 428, 593 A.2d 28 (1991)).

Third, the language in the second provision allowing religious providers to "require that ... employees adhere to rules forbidding the use of drugs or alcohol" potentially has an application broader than the discrimination permitted by the Title VII provision. Rules forbidding the use of drugs and alcohol are an integral part of some religious faiths and in those cases would be legitimate grounds for discrimination under both the tenets and teachings language and the exemption based on Title VII. But not all faiths forbid the use of drugs or alcohol, and in some religions such use is even part of the rituals of the faith. For those faiths the discrimination authorized by the foregoing language would not duplicate either the tenets and teachings language or the exemption based on Title VII. Such organizations could discriminate not only on the basis of the religious character of their employees or applicants for employment but also on the basis of their use of drugs or alcohol. To that extent, then, the second employment discrimination provision is slightly broader than the first.

Finally, under both provisions there may be some question about their interplay with other nondiscrimination provisions. Title VII, for instance, allows religious organizations to discriminate on religious grounds but not on grounds of race, color, sex, or national origin. What happens, then, when religious doctrine mandates discrimination that may also implicate the other prohibited bases for discrimination? A number of cases, for example, have

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involved the legality of Christian schools firing unmarried female teachers after they became pregnant. At least two courts have said that the Title VII exemption would allow the schools to dismiss a female teacher for adultery under these circumstances but that a dismissal simply for pregnancy would raise a possibility of prohibited sex discrimination.² Similarly, Title VII's ban on sex discrimination was held to apply to a Christian school's policy of extending health insurance benefits to men and single persons that were not available to married women in its employ, notwithstanding the school's contention that its religious beliefs regarded husbands as the head of the household in any marriage and as the primary provider for that household.³

Although there does not appear to be any dispositive case law, some question may also exist if an organization whose religious tenets mandate racial separation or differential treatment on the basis of race discriminates on racial grounds in its employment practices. One case involving a charge of racial discrimination by a religious institution violative of Title VII, at least, held that "if a religious institution ... presents convincing evidence that the challenged employment practice resulted from discrimination on the basis of religion, § 702 deprives the EEOC of jurisdiction to investigate further to determine whether the religious discrimination was a pretext for some other form of discrimination."⁴ In the context of a program that receives public funds, of course, racial discrimination is constitutionally dubious even if it is motivated by religious belief.⁵

Similar questions would seem to be raised by either of the employment discrimination provisions.

Constitutional Standards Governing Public Aid to Religious Organizations

With respect to public aid provided directly to a religious organization in the form of a grant or contract, a basic tenet of the Supreme Court's interpretation of the establishment of religion clause of the First Amendment⁶ is that the clause "absolutely prohibit[s] government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith."⁷ Thus, the Court has held that such public assistance must be limited to aid that is "secular, neutral, and nonideological...."⁸ That is, under the establishment clause government can provide direct support to secular programs and services sponsored or

² See *Vigars v. Valley Christian Center of Dublin, California*, 805 F.Supp. 802 (N.D. Cal. 1992) and *Ganzy v. Allen Christian School*, 995 F.Supp. 340 (E.D. N.Y. 1998).

³ *EEOC v. Fremont Christian School*, 781 F.2d 1362 (9th Cir. 1986).

⁴ *EEOC v. Mississippi College*, 626 F.2d 477 (1980), *cert. denied*, 453 U.S. 912 (1981).

⁵ Cf. *Bob Jones University v. United States*, 461 U.S. 574 (1983) (holding in part that the federal government has an interest in eliminating racial segregation sufficiently compelling to override the university's claim that its policies of racial discrimination are protected by the free exercise of religion clause).

⁶ The clause provides in pertinent part that "Congress shall make no law respecting an establishment of religion"

⁷ *Grand Rapids School District v. Ball*, 473 U.S. 373, 385 (1985).

⁸ *Committee for Public Education v. Nyquist*, 413 U.S. 756, 780 (1973).

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provided by religious entities but it cannot directly subsidize such organizations' religious activities or proselytizing.⁹ Direct assistance must be limited to secular use.

Thus, religious organizations are not automatically disqualified from participating in publicly funded programs, and numerous religious organizations do so. But they must carry out the programs in a secular manner. That means that for purposes of direct public aid a religious organization's secular functions and activities must be able to be separated from its religious functions and activities. If they are separable, government can directly subsidize those functions. However, if the entity is so permeated by a religious purpose and character that its secular functions and religious functions are "inextricably intertwined," *i.e.*, if the entity is "pervasively sectarian," the Court has held the establishment clause generally to forbid direct public assistance.¹⁰

The Court has not articulated precise rules for determining what makes a religious organization "pervasively sectarian." It has looked at such factors as the proximity of the organization in question to a sponsoring church; the presence of religious symbols and paintings on the premises; formal church or denominational control over the organization; whether a religious criterion is applied in the hiring of employees or in the selection of trustees or, in the case of a school, to the admission of students; statements in the organization's charter or other publications that its purpose is the propagation and promotion of religious faith; whether the organization engages in religious services or other religious activities; its devotion, in the case of schools, to academic freedom; *etc.*¹¹ But the Court has

⁹ In most of the cases involving aid to religious institutions, the Court has used what is known as the *Lemon* test to determine whether a particular aid program violates the establishment clause: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion...; finally, the statute must not foster 'an excessive entanglement with religion.'" *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).

The secular purpose prong of this test has rarely posed an obstacle to public aid programs benefiting sectarian entities, but the primary effect and entanglement prongs have operated, in Chief Justice Rehnquist's term, as a "Catch-22" for such programs. That is, under the primary effect test a direct aid program benefiting religious organizations but not limited to secular use has generally been held unconstitutional because the aid can be used for the organizations' religious activities and proselytizing. But if a program is limited to secular use, it has often still foundered on the entanglement test because the government's monitoring of the secular use restriction has intruded it too much into the affairs of the religious organizations. See *Lemon v. Kurtzman*, *supra*. The Court has for some time been sharply divided on the utility and applicability of the tripartite test and particularly of the entanglement prong. Nonetheless, the Court still uses the *Lemon* test, although it is no longer the exclusive test for establishment clause cases. Moreover, in *Agostini v. Felton*, 521 U.S. 203 (1997) the Court eliminated excessive entanglement as a separate element of the tripartite *Lemon* test and held it to be part of the inquiry into primary effect. As reformulated, the entanglement inquiry now asks whether government monitoring of a program would have the effect of inhibiting religion.

¹⁰ *Committee for Public Education v. Nyquist*, *supra*; *Lemon v. Kurtzman*, *supra*; *Bowen v. Kendrick*, *supra*.

¹¹ See, e.g., *Bradfield v. Roberts*, 175 U.S. 291 (1899); *Lemon v. Kurtzman*, *supra*; *Tilton v. Richardson*, 403 U.S. 672 (1971); *Committee for Public Education v. Nyquist*, *supra*; *Meek v.* (continued...)

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also made clear that "it is not enough to show that the recipient of a ... grant is affiliated with a religious institution or that it is 'religiously inspired.'"¹² Indeed, none of these factors, by itself, has been held sufficient to make an institution pervasively sectarian and therefore ineligible for direct aid.¹³ Such a finding has always rested on a combination of factors.

As a practical matter the Court has generally found religious elementary and secondary schools to be pervasively sectarian. In contrast, it has generally held religiously affiliated hospitals, social welfare agencies, and colleges not to be pervasively sectarian. But in its most recent decision involving public aid to religious social welfare agencies, the Court held open the possibility that some agencies might be pervasively sectarian.¹⁴

Thus, the secular use limitation on direct public aid under the establishment clause has two dimensions. The aid cannot be used for religious purposes, nor can it flow to institutions that are pervasively sectarian. As the Court summarized in *Hunt v. McNair*¹⁵:

Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting.

I hope the foregoing is responsive to your request. If we may be of additional assistance, please call on us.

¹¹ (...continued)

Pittenger, 413 U.S. 349 (1975); *Roemer v. Maryland Board of Public Works*, 426 U.S. 736 (1976); and *Bowen v. Kendrick*, 487 U.S. 589 (1988).

¹² *Bowen v. Kendrick*, *supra*, at 621.

¹³ For higher federal court discussions of the criteria bearing on whether an institution is pervasively sectarian or not, see *Minnesota Federation of Teachers v. Nelson*, 740 F.Supp. 694 (D. Minn. 1999) and *Columbia Union College v. Clark*, 159 F.3d 151 (4th Cir. 1998), *cert. denied*, 119 S.Ct. 2399 (1999).

¹⁴ *Id.*

¹⁵ 413 U.S. 743 (1973).

TO: Alex Nock
RE: Technical Assistance Request

The following was prepared in response to your request for technical assistance. As requested, the Department has tried to develop criteria for an alternative certification system for paraprofessionals that could augment the two-year college minimum for classroom-based paraprofessionals proposal put forth in the *Educational Excellence for All Children Act of 1999*. However, due to the lack of significant research regarding and evaluation of such certification systems, we have found this a challenging task. If anything, the additional research and discussion that has ensued in preparing this memo has strengthened our fundamental belief in the strength of the Administration's original proposal.

Two-Years of College Credit

The goal of Title I and indeed the sum of the Administration's proposal is to ensure that all children, particularly children from disadvantaged backgrounds, receive the highest quality instruction in the most appropriate academic settings possible. Paraprofessionals are widely used in Title I in instructional roles, especially in high-poverty schools, despite the lack of evidence supporting this as an effective practice and in spite of evidence to the contrary. The Department recognizes the need to address upcoming teacher shortages and supports the notion of "grow-your-own" models, which build paraprofessional service into career ladders leading to full teacher certification, but at the base of the Administration's proposal is the fundamental tenant that all children deserve high quality instruction.

Rationale: The Administration argues that instructional paraprofessionals should have a minimum of two years of college credit because:

- Research [?] and common sense suggest that people who have some higher education in content fields and who have gained greater speaking, writing and presentation skills will be better able to instruct students than those who have not.
- The formal training programs transitioning paraprofessionals to fully certified instructors with which we consulted, such as Pathways and [others] require that participants come into the program with at least two years of college experience, suggesting that this is should be a baseline for all paraprofessionals

Alternatives in Response to Request: Paraprofessional Certification System Components

Despite our concerns over this approach, we recognize your wish to entertain the concept of an alternative state or local paraprofessional certification system that could be offered in addition to the two-year college credit minimum for paraprofessionals helping teachers in the classroom. We have reviewed existing state system for certification, paying particular attention to Maine's certification system as it is frequently mentioned as exemplary, as well as that of the Oakland District in Michigan. Our hope had been to make recommendations based on the positive practices used in these states and districts, however given that no evaluation data exists tying these certification systems to students' academic achievement, we are reluctant to offer them as models.

We have also reviewed research on the use of paraprofessionals in high performing school districts and the use of tutors (some of whom may be paraprofessionals) in specific high quality reading and academic support programs. From this research, we have extrapolated two common factors: paraprofessionals should be highly trained for the function they perform [I'm not sure what this means] and receive continual professional development at the same level and quality as those in in-service development or training to become fully certified instructors. Based on this research we offer the following:

Proposal #1: A paraprofessional may perform one-on-one tutoring for eligible students at times that are in addition to the time that a student would otherwise receive instruction from a teacher, assist with classroom management, or provide assistance in a computer laboratory only if she or he--

- is under the direct supervision of a teacher;
- has completed at least two years of college or has received State or local certification that the individual has received training that, at a minimum addresses tutoring skills and content knowledge in the subject in which tutoring is provided, and other school-specific knowledge and skills needed to carry out the paraprofessional's responsibilities [meaning?]; and
- The certification is time-limited and in order to renew certification, paraprofessionals must be provided ongoing professional development, consistent with the principles for professional development laid out in Title II. This should include participation in the professional development provided to the lead teacher with whom the paraprofessional is working.

Pros:

- The criteria are based on factors in use in existing teaching certification programs.
- It is reasonable to assume that if high-quality professional development can contribute to improvements in teachers' skills and practice, this holds true for paraprofessionals—i.e. that high quality professional development can improve the skills and of paraprofessionals.

Cons:

- We are still not aware of evaluation data suggesting that this particular mix of professional development for paraprofessionals leads to improved student achievement. [I'm confused – isn't this what we are saying above? That this is based on research?]
- It will still be difficult to hold certification systems to high standards. We have outlined the basic elements of what a training and professional development should cover, but some could decide that providing this training in a two-day workshop is sufficient. [Can't we offer an alternative then that doesn't do that?]

Option #2 - Alternative Proposal

Your request for technical assistance has led us to consider an alternative option to ensure students in Title I classrooms are receiving the highest quality instruction, yet

paraprofessionals are provided the opportunities to grow as valued members of the school community. The proposal suggests three linked parts in order to achieve the goal:

- 1) Require that a portion of the 3 percent set aside which the Administration proposes for Title I National Activities go to support the development, dissemination and early implementation of model paraprofessional training curriculum and career ladder programs.
- 2) Establish a mandatory set-aside for professional development for paraprofessionals, in which at least XX of professional development set aside to be used for professional development for paraprofessionals including joint professional development with teachers; and
- 3) Prohibit the use of paraprofessionals and require that instruction and instructional support be provided only by certified teachers in classrooms in Title I schools that have been identified for corrective action.

Pros:

- Builds on what we know generally about the importance of professional development in building teacher skills and what we know specifically about professional development for paraprofessionals working in effective schools. It does this by requiring professional development for paraprofessionals and by promoting the development of new models for paraprofessional training programs which schools can use to inform local professional development for paraprofessionals.
- Builds on research findings that paraprofessionals have no significant impact on student achievement by removing paraprofessionals from classrooms in the lowest performing schools to ensure that students receive instruction only from certified teachers.
- Permits the continued use of paraprofessionals with enhanced professional development in classrooms of schools that meet the State's definition for continuous improvement.

Cons:

- Does not restrict the role of paraprofessionals in the classroom to tutoring, classroom management, and assisting in computer labs thereby permitting the continuation of current practices in the majority of schools where paraprofessionals often provide direct instruction to students or small groups of students instead of certified teachers.
- It may not have the intended impact of limiting the potential impact on currently employed paraprofessionals by narrowing the scope of paraprofessionals who might lose their job, as paraprofessionals are more likely to be employed in high-poverty

schools which are more likely to be identified for corrective action. (Note: These are also the schools mostly likely to have problems hiring certified teachers.)

- There may be greater political opposition to this option. Paraprofessionals may not want to get two years of college, but at least it is an option for keeping their jobs, while this provides no options for currently employed paraprofessionals for their jobs would be eliminated.

Definitions

You have also asked us for some simple definitions of some of the terms we use in *The Educational Excellence for All Children Act of 1999* in order to clarify our proposal.

They are as follows:

Direct Instruction – introducing new material to students, reviewing existing material, and assessing acquisition of skills

Instructional support/instructional paraprofessional—any paraprofessional working in a classroom conducting one-on-one tutoring, assisting in classroom management or in assisting students in the use of computers.

We hope that this information is of use and we are happy to discuss these options or any additional ideas for ensuring that all of our students are provided the opportunity to gain instruction from highly qualified and supported staff.

O'Leary, Ann

From: Cohen, Gillian
Sent: Wednesday, August 25, 1999 11:48 AM
To: O'Leary, Ann; 'annmoleary@aol.com'
Subject: Update

Hey Ann,

Hope you had a great time in Boston/Cambridge. I just tried to call you and will give you a buzz again, but in the meantime thought I would write up an update:

Religious Guidance for Charter Schools: Left messages for Jon and also tried Bethany Little as he is out of town this week. I'll let you know if I find anything out.

50/7 Study: Stephanie says that her understanding was that Tom was supposed to making some calls to friendly states and then next steps were to be taken on getting a more official study underway. She thinks Tom has made the calls, but does not believe anything has happened so far on taking next steps. I don't think anyone is taking the lead on making this happen. As you know, Tom is out until the 31st.

ESEA Burden Q&As - I am working on a draft, talked to Sandra Cook who basically thinks we are on track, and will talk to Kathryn about taking the lead on this when I leave.

High School Reform Guidance - Jeff Wilde is supposed to get me a draft, but is on vacation. Tamara says that last week Jeff had a meeting with Judith Johnson and the date for release may have been changed. I am checking with Bill Kincaid who I guess was also there.

Ed Flex Guidance - Sandra Cook has been talking to Brendan about this. His understanding is that a draft has been completed, she hopes to brief the Secretary on Friday. There are some Hill conversations (House R's and D's) planned for not next week, but the next. She is also hoping to get an ODS point person assigned to this (Goodwin's name I guess is floating around) and wants to have Mike Smith strategy meetings (ala ESEA strategy lunches) getting going next week.

Para TA for Alex - Susan and I have worked out a new draft with Cohen's help. We are going to get the draft to Mike Smith and will meet with him about it tomorrow. I've attached it below.

I know nothing about a September 16th WH event on CHIP, though my guess is that it is in anticipation of DoJ's Back to School effort with the United Way and their Weed and Seed Communities. I am checking in with Pauline and Bridget.



ParaTAgillian.doc

Talk to you soon - Gillian